Contract is an instrument which lays down the rights and duties of the parties.

When contract was not there i.e. before 1872 what were the rules to be followed? Whether contract act is based on customs and usages? All such questions arise in the mind of the learners. So let us go back to the history of Indian contract act.

Contract: it is a Latin term derived cytologically from the words “con” and “trahere” con means together while trahere means to draw.

So when two parties agrees upon something and draws together something could be called as a contract.

If we go to the primitive society, at the time of early men’s, the barter system was prevalent in the world. Goods were exchanged for the goods.

This barter system engenders the principle of Quid Pro Quo i.e. something for something and this principle only is the essence of the term “consideration” in the contract.

Consideration is an essential ingredient of the contract. If there is no consideration in a contract then there is no contract.

Anything given in charity is not a consideration therefore its not a contract and hence its breach cannot be dragged to court. One is not bound to fulfill his promise in such case.

With the span of the time, society get evolved and then the concept of division of labor came and now there was a need to outsource resources.

Now in the society, a need was felt to have interdependence amongst each other. Then later the industrialization came which led to commercialization and increase in trade.

Now people started to live a lavish life which led to the modernization of the society and its ultimate fallout was the globalization.

Therefore, with this globalization, ample of contracts were formed. Some people were not honest with their promises therefore that led to creation of disputes among the parties and due to this many rights were affected.

From the beginning of the day to its end; every act of a person forms more or less a contract.

From taking milk from the vendor to taking the ticket of the bus to taking the groceries from the market, a person does many types of contracts.

Hence, we can say that contract Act is a significant law and its need to get recognized is crucial for the today's world.

Earlier there were no set of rules to solve the disputes of the parties. There were no remedies, procedures and thus the lawmakers felt the need to create a law related to contracts.

Therefore, in the 1872, the English came up with the law of Contracts and it was based on the principles of common law.

English common law is an uncodified law and is based on plethora of judgments and are followed as law.

English common law is very much influenced by ancient roman and Greek thought of law. The evidence regarding this is the judges that time used to follow the works of roman jurists. For instance many times they took the reference of the Greek philosopher Plato.

Plato gave the famous Latin maxim i.e. “Pact Sunt Servanda” that means that agreements must be kept i.e. one should follow his promises.
Many disputes were been resolved from this rule.

13th century

At this time a watershed moment came in which a charter came and the liberties were laid down for the people. in June 1215, King John came up with its magnum opus that is the Magna Carta. This was the settlement document that was signed between the Royal family and its rebellions. Due to magna carta only, right of free trade were given to the people.

Since it was the time for a free trade and hence the dire need for the set of rules to govern those set of rules were felt at both national and international level. But what were in the hands of the judges was to give only judgments by taking the philosophies of the roman jurists.

Then in 1348 came the “hember Ferryman case” in which it was held that even the oral agreements were valid.
The concept of implied contract that is contract by conduct also came from this time period. Hence now contracts could be of three types i.e., Written, Oral and by conduct.

Slade v. Morley: 1596-1602

This case went up to 5 years, this judgment was given by the King's Bench and in this case the chief justice was "John Popham". In this judgment the lordship held that "assumptis claims" are valid which means that right to claim damages for the loss occur is valid.

This principle was based on the principle of Unjust Enrichment. Unjust enrichment means when someone gets enriched on the cost of others, then he is required to restore it back.

Then in 17th century William Manfield, a renowned British Politician and a judge tried to bring law reforms in the English Common law in which he brought international trade rules and customs.

The case precedent was in:
1759:
Luke V. Light:

In this it was held that mercantile law is not the law for a particular country but the law of the nations.

William Manfield also stated in one of his case precedents that the terms of contracts must be certain and there shall be no ambiguity in it.

He also stated that offer shall be mirrored by the acceptance. This means the acceptance should be done only of that thing which was raised in the offer. Such offer shall

be supported by a consideration. Such acceptance shall be made from a free will, free from any duress.

Only if the above conditions, if are fulfilled then the contract will be deemed as valid.

Indian Contract Act

The British came to India in 1600 AD under the name of East India Company for the purpose of commercial transactions and trading. Hence, they were required certain set of rules for free trading but in India there were no such rules were been made.

In Hindu law, the major sources of law were our Vedas /smritis/ shrutis. Only a popular law that dealt with the major principles of contract law was the "Vyavahar Malik" but still there was no comprehensive or the exclusive form of law related to contract and commercial transaction.

Hence by the charter of 1726, they applied English common law directly to India as it is. But India was the not the developed country at that time and hence such decision acted as a blunder.

However, this continued to be applied from 1753 till 1774. Then in 1781, the Supreme Court of Judicature was empowered to apply the personal laws. If he was a Hindu then Hindu law shall be applied, if he was the Muslim then Mohammedan law i.e. "Akad" shall be applied. If one party was the Hindu and another was the Muslim then the law of defendant shall be applied.

The basic feature of Muslim law was the offer and acceptance of the contract which was collectively known as Sigha. Individual offer was termed as Sigha and acceptance was known as Qubool.

The second feature was that there must be parties and the third feature was the property itself which was the subject-matter known as “Ma Qud Alayah”

Only Kings/ preists/ Karta were competent to form the contract. Hence there were no uniformity. Therefore it was the British who again bring their English laws to the land for the smooth trading and to curb out all the disputes relating to the contract and to enforce the rights of the people. But they now with certain modifications as suitable to the natives.

But In India, the customary law was prevalent and it always overrides the statutory laws, so the problem was that how to apply the common law statues enforcing the rules relating to contracts. Britishers tried to amalgamate the law related to the contract to the prevalent customs of that time.

If we go to our preamble, we will find that WHEREAS it is expedient to define and amend certain parts of the law relating to contracts;

The prevalent certain laws were our customs only and Britishers now had bring the contract act just to define those laws and make a new law by adding some amendments to it.

Indian Contract Act per se:

Britishers came up with the Indian Contract Act within 3 phases.

The first phase was the drafting phase that was brought by third law commission made in 1861 who presented a draft in 1866. But this draft was refused because of some political reasons.

In The second phase the rejected draft was expanded by the next law commission by giving certain modifications to it. The modifications were:

- English common law
- New York Draft Code
- Customs of our nation

In the third phase, Sir James Stephen who created the Indian Evidence Act, was given the duty to revised the draft and he added into it the "interpretation Clause". Then the final draft was introduced as the bill in the parliament and it was enacted in 25h April 1872 and then came into operation on 1st September 1872.

After coming of the Indian Contract Act, the applicability of the personal laws to the contracts came to an end. In the case of Madhav Chander V. Raj Coomar 1872 Cal HC, the Hon'ble court held that now the personal laws will not be applicable to the laws of contract.

Features of Indian Contract Act:

It is an instrument that lay down the rights and duties of the parties.

It also tells that whether such contract is valid and enforceable or not.

It also gives us rights and remedies if any breach occurs. Such right and remedy can be right of compensation or right of specific performance.

Since it describes the rights and remedies of a parties and their liabilities therefore contract law is a substantive law.

As per Anson, contract law is a peculiar branch of a substantive law. It is not purely a substantive law as it contains many principles which tells us that how a contract is to be formed and how it is to be performed which are in itself procedural in nature.

Hence Contract law is a peculiar kind of substantive law.

Whether Contract law is exhaustive in nature.

The word exhaustive means complete and comprehensive in nature. It is to be all and end all. No contract act is not an exhaustive law as it is pertinent from its preamble: WHEREAS it is expedient to define and amend certain parts of the law relating to contracts;

The term amends certain parts of the law clearly suggest that there are certain other laws that are related to contract and this act is made to amend them and also there is no

word “consolidate” written therefore it is evident that this act is not exhaustive in nature.

If we go to section 10 para 2, it states that
Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

The highlighted part clearly suggests that there are other laws that deals with the law relating to contracts.

Hence it is saving other laws in which contract shall be in writing, it shall be made in the presence of the witnesses or there shall be its registration. Therefore, we can say that it is not exhaustive in nature.

If Indian contract act is to be made exhaustive in nature, then such act will be very bulky in nature. Hence, it was realized that only the general rules shall be kept in Indian contract act 1872 and branches to be made for the rest law which are related to the contract.

Even the Privy Council in Irawaddy Flotilla v. Bhagwan 1891 das held that Indian contract act is not exhaustive.

Indian contract act does not profess to be a complete code dealing with contracts. The legislature which enacted this act did not intend to exhaustively codified the whole law of contract. Hence the law of contract is not contained in Indian contract act alone rather there are number of statues

with its branches like negotiable instrument act, transfer of property act, sale of goods act, rent laws etc. the Indian contract Act primarily deals with the general principles relating to the contractual relationship.

Indian contract act could be divided into two parts:

- General principles section [1-175]
- Contract-II section [124-238] specific or special contracts
- Section 76-123 dealt under sale of goods act, 1930.
- Section 239-266 dealt under partnership act, 1932.

Contract Act:

Introduction to History of Indian Contract Act:

The history of the Act brings to light the very origin of the economic processes and in this regard, the importance of contracting in order to conduct one's business in everyday life.

The prevalent system in the ancient times was barter and it was based on the mutual principle of give and take.

This was confined to commodities as there was no medium of exchange as is seen in the form of money today and this system can be traced back in time to the Indus Valley Civilization (the earliest human civilization).

The system still finds relevance in the contemporary world, where it can be found in commercially and economically underdeveloped areas.

such a system in modern times is questioned as the complexity in the nature of the economic systems as well as the increasing demand and supply systems due to the change in the wants and needs of the human beings came to the fore.

Saving clause:

Saving— Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act

Contract:

A contract is a lawful agreement.

In other words, an agreement enforceable by law is a contract.

Contract = Agreement + Legal enforceability

Or

Contract = Legally enforceable Agreement

A type of agreement which is enforceable by law is a contract (Section 2(h) of the ICA).

Enforceable by law means that, if somebody is aggrieved then he may approach the court for remedies.

Thus, an agreement becomes a contract when there is free consent of the parties, capacity of the parties to contract, lawful consideration and lawful object or subject matter (Section 10 of the ICA).

For an agreement to become a contract it must give rise to a legal obligation and if it is incapable of doing so, it is not a contract.

Agreement:

An agreement is, therefore, a promise or set of promises forming consideration for all the parties. **[Section 2(e)]**

CONSIDERATION HERE IS FOR THE SET OF PROMISE AND NOT FOR THE SINGLE PROMISE.

FOR AN AGREEMENT= CONSIDERATION IS NOT NECESSARY

BUT FOR A CONTRACT= AGREEMENT+ CONSIDERATION IS NECESSARY.

Agreement = Promise or set of promises (offer + acceptance)
+
Consideration (for all the parties)

If a 7-year-old boy is buying an ice-cream from an ice-cream vendor and giving Rs. 10 in return, it becomes an agreement.

Set of promises= more than one promise
Promise= When a proposal is accepted, it becomes a promise. **[Section 2(b)] [proposal + acceptance]**

Proposal: When a person signifies to another his willingness of doing or omitting to do something with a view to obtain other's assent. [Section 2(a)]

Acceptance: When the person to whom the proposal is made signifies his assent for the same thing in the same sense as proposed by the offeror. **[Section 2(b)]**

Proposal=>>Acceptance=>>promise/ set of promises=>>Agreement=>> legally enforceable=>> CONTRACT=>> BREACH OF SUCH CONTRACT=>> REMEDIES IN THE COURT

Essentials of a valid contract:

(a) Free consent
(b) Competency
(c) Lawful consideration
(d) Lawful object
(e) Not expressly declared void
(f) Intention to form legal relations [not mentioned in section 10 but from precedents]

Agreement:
It contains two rules:

1. Every promise is an agreement
2. Every set of promise forming consideration for each other.

For the enforceability of an agreement, it shall pass the test of section 10. It has to tick mark all the points mentioned in it.

1. Free consent: section [13-22] all deals with free consent. Consent is an essence of agreement. The contract itself says that when two parties "agrees" on something.

2. When two parties agree on same being and in same sense i.e. "consensus ad idem" as defined in section 12 and only in this case a contract is made.

3. Free consent of the parties: When there is absence of Coercion (Section 15), Undue Influence (Section 16), Fraud (Section 17), Misrepresentation (Section 18) and Mistake (Section 20, 21, 22), the consent is said to be free.

   Capacity:
   Section 11 and 12 lay down that the competent parties are persons who have attained majority and

persons who are of sound mind and persons who are not disqualified by law.

Q- why a minor cannot do a contract?

Roscoue pound theory: the theory of social engineering. Function of the law is to bring happiness in the society by removing the frictions.

Therefore, to bring the harmony in the society the lawmakers had an opinion that such persons who are weak to form a contract like of unsound mind or of minor will be more prone to prejudice.

Therefore, law already stated that such agreements are prima facie is void.

Hence this has been made to protect the weaker section of the society because they do not understand the consequences of their act.

According to sociological school of thought and theory propounded by roscoe pound is that the function of law is that of an engineer and it is to remove the friction by curtailing the conflicting interest of the various sections of the society and bringing happiness in the society. Since minor and unsound mind persons are weaker section of the society and to protect them and their interest; the law come into being.

Persons disqualified by law:

1. Alien enemy: No contract can be made with an alien enemy during the subsistence of war, except with the prior approval of the Government of India.

2. Foreign sovereigns and ambassadors: if they choose, enter into contracts and can enforce such contracts in Indian courts.

   In India, under Sec. 86 of the Civil Procedure Code, previous sanction of the Central Government is to be obtained, for suing the rulers of foreign states, ambassadors and envoys.

3. Convicts: A convict cannot enter into a valid contract while undergoing sentence, nor can sue. His incompetency is over, when the period of his sentence is over or he is pardoned.

4. Corporations: Powers of a corporation are limited by its Memorandum of Association, beyond which it cannot do anything. This is because contracts which are ultra vires of the objects of the company, shall not be binding

5. Insolvent

Consideration:

Consideration' means "something in return", i.e. quid pro quo that is an essential element to find out the genuine intention of the parties of the promise to create legal relationship.

Consideration is an essential component of a valid contract.

Consideration is the price for the contract.

An agreement without consideration is void and thus not enforceable by law except under certain circumstances.

According to Sir Frederick Pollock. Consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable."

An agreement without consideration is a bare promise and exnudo pacto non aritio actio, i.e., cannot be held to binding on the parties.

It is defined under section 2[d] of the Indian contract act.

As per section 25 agreement made without consideration is void.

Agreement can be made without consideration also. But an agreement made if not accompanied by consideration cannot be a contract.

Lawful consideration and Lawful object: Section 23 lays down that the consideration and object is lawful unless it is forbidden by law or it defeats provisions of any law or is fraudulent or involves injury to person or property or is violative of public health, morality, peace and order.

Here the court presumes that all considerations and the object in the contract are lawful. Unless it is forbidden by law.

Sometimes consideration and object overlap each other. Consideration is “something in return” but object is the purpose of making such contract. In some cases they are interchangeably used.

Law of Contract:

Contracts which are declared as Void:

Section 26-30 in Indian contract Act expressly states contracts which are void ab initio

26. restraint to marriage
27. restraint of trade
28. restraint of legal proceedings
29. uncertain agreements
30. wagering agreements

Intention to create legal relationships:

intention to create legal relationship can be explained as intention to enter into a legal contract and fulfil its obligations lawfully.

Intention to create legal relationship in a contract is essential as it shows readiness of parties to accept legal sequences of having entered into a contract.

The parties must intend to enter into a legally binding arrangement in which obligations are enforceable

Balfour v. Balfour Case:

Mr. Balfour and his wife went to England for a vacation, and his wife became ill and needed medical attention. They made an agreement that Mrs. Balfour was to remain behind in England when the husband returned to Ceylon (Sri Lanka)

and that Mr. Balfour would pay her £30 a month until he returned.

This understanding was made while their relationship was fine; however, the relationship later soured. The lower court found that there was sufficient consideration in the consent of Mrs. Balfour and thus found the contract binding, which Mr. Balfour made an appeal.

The court held that the parties were not having any intention to create legal relationships
Lord Atkin held that the law of contracts is not made for personal family relationships.

As there was no intent to be legally bound when the agreement was agreed upon, there can be no legally binding contract.

Atkin holds that if the courts were to allow all wives to come to court when agreements had been broken with their husbands then the courts would be overrun with frivolous cases.

Indian Contract Act, 1872 has stipulated following six essential elements to "Valid Contract":

1. Offer and acceptance
2. Consensus ad idem
3. Legal relationship
4. Competency of parties
5. Free consent

6. Lawful Consideration
7. Lawful Object
8. Not declared to be void
9. Certainty and Possibility of Performance
10. Legal Formalities

If any of the condition is missing then such agreement cannot be called as a contract

All CONTRACTS ARE AGREEMENT BUT ALL AGREEMENT ARE NOT CALLED AS A CONTRACT:

A contract is a legally binding agreement that exists between two or more parties to do or not do something.

An agreement starts from an offer and ends on consideration but a contract has to achieve another target i.e., enforceability.

Due to this breach of the contract provide a legal remedy to the aggrieved party against the guilty party.

SECTION 10:

10. All [only] agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall effect any law in force in India and not hereby expressly repealed by which any

contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Ans: in part 1 of this section, the basic requirements are mentioned that are required for any contract to be valid.

Part 2 talks about special or additional requirement that will be required in certain types of contracts. This part also acts as a saving clause as it saves those other statutes which talks about formation of contracts and are not repealed.
Therefore, for those contracts certain additional requirements are also included and they are:

1. In the presence of Witnesses
2. Must be in Writing
3. There shall be a Registration of such contract

Types of Contracts:

1. Valid contracts: it is an agreement that is legally binding and enforceable. It must qualify all the essentials of a contract.
2. Contract when become void: The section 2(j) of the Act defines a void contract as "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". This makes all those contracts that are not enforceable by a court of law as void.

A void agreement is one which is null and void since the time it is formed and thus it cannot be enforced according to law.

Whereas, a void contract is valid at the time it was created but becomes void and unenforceable due to certain consequences later in time.

This implies that Void Agreements cannot be acted out and does not bind any single party nor can it be enforced forcefully by one party on another.

According to section 2(g) of Indian Contract Act, 1872, these agreements do not confer any rights to either party and cannot be tested in the court.

Thus, a void agreement can never change into a binding contract.

VOID AGREEMENT	VS	VOID CONTRACT
Meanings		
Void agreement is void ab-initio and is null or invalid since it was created		Void contract is valid at creation but becomes invalid later due to uncontrollable circumstances.
Enforceability		
Is unenforceable since its creation.		Is enforceable since its creation but subsequently lacks enforceability.
Legality		
There are no legal implications involved.		Is legally binding at the initiation of the contract but becomes unbinding later on.

Legal consequences on annulment	
Void agreements are null and do not confer any rights to any party thus there are no legal consequences.	There might be legal consequences when the contract becomes invalid like fee penalties etc.
Main cause of annulment	
Impossibility to perform since the beginning or if the contract is done with a minor, alien enemy or lunatic.	Change in the country's law, supervening impossibility or inclusion of unlawful object

Voidable Contracts:

A voidable contract is initially considered legal and enforceable but can be rejected by one party if the contract is discovered to have defects.

A voidable contract is a formal agreement between two parties that may be rendered unenforceable for any number of legal reasons, which may include:

- Failure by one or both parties to disclose a material fact
- A mistake, misrepresentation, or fraud
- Undue influence or duress
- One party's legal incapacity to enter a contract (e.g., a minor)
- One or more terms that are unconscionable
- A breach of contract

The legal right to void such a contract is known as disaffirmance.

PROPOSAL: According to section 2(A) of the Contract Act:

- when any person signifies his willingness to another person
- to do or not to do anything
- with a view to obtain his assent (permission) on it,
- is said to make a proposal.

Essential Elements of Proposal

1. There must be two parties.

2. The proposal must be certain.

3. The offer must be communicated.
Related Case: **Lalman Shukla vs. Gauri Dutt**

4. There must be an intention to create a legal relationship.
Related Case: **Balfour vs. Balfour**

1. THERE SHALL BE TWO PARTIES:

One party cannot send a proposal to himself. If a person wants to make a contract with a company then also there will be two parties as company is also been recognized as a person.

Graft v. Evans 1882 QB

In this case, there was an unregistered club so it could not be called as a legal person. A rule was made in btw the members that whosoever wants to have a wine, he needs to pay to reception. The wine was also made by the club itself, hence they demanded that sales tax should not be imposed upon them as there was no contract been made with any party neither their was any intention to be in any kind of legal relationships

A sale involves the element of a bargain. There was no bargain here. It was held that sakes tax will not be levied as the club was not the registered club and there were no parties been made. It was held that court since the club is the unregistered club and is not a legal person. Therefore, it cant be considered as a separate party for a contract and club would have no legal capacity to hold any property separately. The

property and assets of club actually belongs to the members only and thus members can't sell to themselves. Hence, the sale tax cannot be imposed as there was no happening of the sale. Members were the ultimate consumer of the wine of their own.

Communication: it is an essential ingredient for proposal.

There can be two types of communications:

1. Express
2. Implied

Express: spoken or written

Implied: by conduct or through gestures

Upton Rural District Council v. Powell,[1] in which the court held that the defendant wanted the services of Upton; he asked for services of Upton and Upton, in response to that request,

[1] (1942) 1 All ER 220.

provided the services. Hence, the services were rendered on an implied promise to pay for them.

Section 4 in The Indian Contract Act, 1872

Communication when complete. —"***The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.”***

The famous case study regarding this is ***Lalman Shukla v. Gauri Dutt***.[2] It makes clear that acceptance in ignorance of the proposal does not amount to acceptance

Section 3: Communication, acceptance and revocation of proposals.—The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances,

[2] (1913) 11 All.L.J. 489.

respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

The test laid down in **powell's case** was the test of objectivity and not subjectivity. On the basis of this test only, the summon to fire-brigade by defendant was considered to be a valid proposal as hearing to their conversations, any reasonable person would think that the defendant was calling for the services for which he was going to pay.

Lalman Shukla case:

In this case, the defendant Gauri Dutt's Nephew had absconded and was nowhere to be found. After the defendant became aware of the same, Dutt had sent all the servants in search of the missing nephew.

The plaintiff Lalman Shukla was one of the servants who had gone out in search of the nephew. The plaintiff eventually found him and brought him back.

When Lalman Shukla had left the house to leave for Haridwar from Kanpur he was handed some money for his railway fare and other expenses. As soon as Lalman Shukla had left the house, the defendant announced a reward of Rs. 501 for whosoever found Dutt's nephew.

Shukla had no idea that such an announcement was made. The plaintiff found the missing nephew and brought him back to his home in Kanpur. Six months after the said incident occurred, Dutt sacked the plaintiff.

After being removed from the job, the plaintiff claimed the money from the defendant and the latter denied to pay the said remuneration.

As a result, the plaintiff Lalman Shukla filed a case against Gauri Dutt, his master, for not rewarding him as he was entitled to.

Issues Raised In This Case:

The main issues which were raised in this case were as follows:

- Whether Lalman Shukla was entitled to get the reward from Gauri Dutt for tracing the missing boy.
- Whether there was a valid acceptance of the offer made by the plaintiff.
- Whether there exists a contract or whether the situation amounts to a contract between the two

In the present case of Lalman Shukla vs Gauri Dutt, it is derived that in order to enter into a contract, two critical aspects should be considered,

1. To have complete knowledge of the facts of the offer or proposal

2. Acceptance of the offer

A person to whom the offer is made, the offeree, must accept the proposal. The communication regarding the offer is also very important as mentioned in section (4) of the ICA.

It states that communication can only be complete when it comes to the knowledge of the person to whom it is made.

To convert a proposal into an agreement both knowledge and assent must be present. Here, in the given instance, both were missing.

As the plaintiff had no knowledge and hadn’t given his approval or accepted the proposal there did not exist a valid contract between the two.

At the time when the plaintiff was searching for the boy, his obligations and duties were as a servant. Therefore, the plaintiff Lalman Shukla was not entitled to get the award.

William v. carwardine 1933:

Walter Carwardine was murdered between when he was last seen on March 24th 1831, and when his body was found on April 12, 1831.

He was seen on the night that he was supposedly murdered with Mary Anne Williams who was questioned but gave no information to the magistrates of worth.

William, Walter's brother, posted a handbill for information as those who lead us to the discovery of the murderer will get a reward of £20.

The wife gave the evidence being as a witness.

Issue:

The question was raised that whether giving the information was motivated by the reward? Whether the reward should be given?

The court held that Mary Anne Williams had clearly performed the terms of the offer (giving information that led to the conviction of the murderer) and the handbill, which she must have known of given that it was posted all over.

Hereford, promised to give money for that information. As a result, a contract was formed with any person who performed the condition, without considering the motivations of the individual.

- The motive of an individual in accepting the contract offered has nothing to do with his right to recover under the contract.
- Neither mutual consent nor communication of assent is important in case of reward.

Willingness to do or abstain from doing:

A said B that he will give him 10,000Rs if he marries C

Here there is a willingness to do contract since there is a positive duty which A wants to impose upon b, if the contract was as to not to marry C then it would impose a negative duty to B and would fall under "abstain to do".

A, a father ask his son not to go to London and for this he will gift him a house.

This is abstain to do a contract since its imposing a negative duty on the doer that is not to go to London.

Illustration- A sees an article marked Rs 50 in B's shop. He tells B he will buy it and offers him Rs 50.B says that he doesn't wish to sell that article.

In this case, there is no contract at all and the price tag is not an offer but an invitation to offer. It is on the discretion of the shopkeeper if he wants to sell his article or not.

Therefore, an offer is the final willingness of the party to create legal relations. An invitation to offer is not the final willingness but the interest of the party to invite the public to offer him

4. view to obtain the assent of the other: mere supply of information does not amounts to a contract, similarly quotation of a price tag is not a proposal unless it has been put with a view to take assent [acceptance] of other person.

Harvey v. Facey [bumper hallpen case]



FACTS OF THE CASE:

Appellants, Mr. Harvey, who was running a partnership company in Jamaica, wanted to purchase a property owned by Mr. Facey, who was also negotiating with the Mayor and Council of the Kingdom of Kingston City for the same property.

On October 6th, 1893 appellant sent a telegram regarding the purchase of property to Mr. Facey who was traveling on the

train on that day as he did not want that the property was sold to Kingston City.

Telegram said “Will you sell us Bumper Hall Pen? Telegraph lowest cash price-answer paid.” Replying to the question Mr. Facey said “Lowest price for Bumper Hall Pen£900.” Furthermore, Mr. Harvey Replied “We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession.”

Mr. Facey refuses to sell the property resulting in Mr. Harvey sued him, claiming that the contract existed between him and stated that the telegram was an offer and that he has accepted it.

The Petition was dismissed on the first trial by Justice Curran on the ground that “The agreement as alleged by the Appellant did not denote a concluded contract” but won the claim in the appellate court which quashed the trial court judgement declaring that the binding agreement had been proved. Upon taking leave from the appellate court, he appeals to the Queen of Council (i.e. The Privy Council).

ISSUES FRAMED:

1. Was there an explicit offer from Mr. Facey to Mr. Harvey for the sale of the said property for the consideration of £900 and is it capable of acceptance?
2. Was there a valid contract or not?

The Privy Council held that no agreement has ever existed between the parties.

The first conversation is only a request for information, not an offer that could be accepted. Therefore, the telegram sent by Mr. Facey was not credible.

It was concluded that the telegram sent by Mr. Facey is only a piece of information. At no point in time, Mr. Facey made an offer that could be accepted.

CONCLUSION:

A valid contract requires a proposal and an acceptance to it and to make contract binding acceptance of the proposal must be notified to the proposer because a legally enforceable agreement required sureness to hold.

This case clearly explains the differentiation between invitation to offer and offer and it also throws a light explaining the nature of the offer as it plays a very important role.

Mc Pearson v. Apanna 1951

Same case as of Harvey v. Facey

Other rules:

1. Intention to create legal relationship should be there:

With no intention to create legal relations, it may cause the contracting parties are not being legally binding and these circumstances may cause the contract is enforceable.

Therefore, when the contract is enforceable, the contracting parties cannot sue each other and this will spoil their business crisis. This will make the contracting parties hard to enquire their justice

- Without intention to create legal relations the contract may become a mere promise
- If there is no intention to create legal relations the contract would not be enforceable, legal and binding
- Without intention to create legal relations, the parties cannot sue each other

2. Definite and certain in nature:

Offer must be certain as specified in [Section 29], it must be unambiguous means that the thing offered must clearly specified.

For example: Mitesh offered to sell his car to Tanmay. Mitesh is owned two cars one is of Ford & other is of BMW and Mitesh offered his Ford car to Tanmay but Tanmay thought Mitesh if offering him his BMW one. As in the offer it was not definite which car Mitesh wants to sell, thus this is not a valid offer.

Different Types Of Offers

1. GENERAL OFFER:-

When an offer made at large or in public or in general this offer is known as General Offer. It can be accepted by any individual or public at large whoever is interested in the offer offered.

When a person accepts the offer given then offeror and offeree enter into contract. The reward will be given to that person who completed the task given or fulfilled the given condition.

2. SPECIFIC OFFER :-

The offer which is made to an individual or to a specific group of individuals is said to be Specific offer. It can be accepted by that individual or that group of individuals.

Example: Sandhya offer to buy a car from Sona for Rs. 10 lakhs. Thus, a specific offer is made to a specific person, and only Sona can accept the offer.

3. COUNTER OFFER :-

When an [offeror A makes an offer to offeree B] and [offeree B with some modification in it makes converse offer to offeror A]

which makes initial offer void and the other comes in existence,

which reverse the party from [offeror to offeree] and [offeree to offeror] respectively this type of offer is known as counter offer.

CASE : HYDE v. WRENCH (1840)

Defendant(offeror) offered to sell his farm for £1000 but the Plaintiff(offeree) offered him £950 and subsequently rejected the offer. The defendant then rejected to make a contract.

So, the offeree filed the case as the offeror was bind by the contract but it was held that as soon as offeree put the condition the first offer becomes void which means that the offeror is not bounded by the contract as the original offer was rejected by the offeree.

4. CROSS OFFER: -

Cross-offer is a contract law term that refers to an offer made to another in ignorance that the offeree has made the same offer to the offeror. In a cross offer both parties state to each other the same proposal.

An offer by A to sell to B on certain terms and an offer by B to buy from A on the same terms unaware of the A's proposition at that time, is an example of cross offer.

CASE: TINN v. HOFFMAN (1873)

In this case Hoffman wrote a letter to Tinn with an offer to sell 800 tons of iron for the price of 69s per ton.

On the same day without any knowledge Tinn wrote a letter to buy the iron with the price and with same condition as written by Hoffman.

It was held by the court that it was cross offer and no contract exist & no parties are bound by the contract.

5. IMPLIED OFFER :-

When an offer is given by body posture, gesture or by action or by the conduct of the offeror is known as implied offer. The offeree can accept the offer by understanding the action of the offeror.

6. EXPRESSED OFFER :-

When an offer is express in written or in verbal form then this offer is known as expressed offer. For example: “C” writes a letter to “D” to buy his earphone for Rs.500. This is an expressed offer.

7. STANDING OFFER :-

An Offer which remains open for acceptance over a period of time is called a standing offer. Tenders that are invited for supply of goods is a kind of Standing Offer

Thornton drove his car to a car park. Outside the car park, the prices were displayed and a notice stated cars were parked at their owner’s risk.

An automatic ticket machine provided a ticket, a barrier was raised and Thornton parked his car. In small print on the ticket

it was stated to be issued subject to conditions displayed on the premises.

On a pillar opposite the machine was a notice stating the owners would not be liable for any injuries occurring on their premises. Thornton had an accident and sought damages from Shoe Lane Parking (SLP).

Invitation To Offer

An invitation to offer which is also sometimes called as invitation to treat is an offer which is made to the seller and not made by the seller. Here final willingness is missing. For example, tender notice.

An invitation to offer as understood from the term is calling parties to offer something.

As per this, initially, there is no such pure intention of any party to enter into a contract.

Thus, we can say that it is the offer which the buyer makes to the seller and to which, the seller has a complete right to whether accepting or letting it go.

The seller without any dispute, will only accept that offer whichever he finds best for himself.

Illustration

If 'A' displays a certain kind of alcohol at his liquor shop, but intends to sell it only to people who he wants. Here, the displayed alcohol is an invitation to offer and only becomes an offer when the buyer accepts the invitation and makes an offer.

This type of contractual system can be observed mostly at the malls, shops and food outlets around us.

Difference btw Offer and Invitation to offer:

An offer and invitation to offer are two different terms, which must not be confused with one another.

An **offer** is a proposal while an **invitation to offer (treat)** is inviting someone to make a proposal.

In an offer, there is an intention to enter into a contract, of the party, making it and thus it is certain.

On the other hand, an invitation to offer is an act which leads to the offer, which is made with an aim of inducing or negotiating the terms.

So, in an invitation to offer, the offeror, does not make an offer, rather invites other parties to make an offer.

Hence, before simply responding to an offer, one must know the difference between offer and invitation to offer, because that makes a difference in the rights of parties.

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
Meaning	When one person expresses his will to another person to do or	When a person expresses something to another person, to invite him to

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
	not to do something, to take his approval, is known as an offer.	make an offer, it is known as invitation to offer.
Defined in	Section 2 (a) of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Essential to make an agreement	Yes	No
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

Example of Invitation to offer:

- Menu card of a restaurant showing the prices of food items.
- Railway timetable on which the train timings and fares are shown.
- Government Tender
- A Company invites application from public to subscribe for its shares.

- Recruitment advertisement inviting application.

Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd [1953]

Boots implemented a new checkout system, which involved taking pharmaceuticals off the shelves and taking them to a checkout to pay for them (much like we do today)

It was illegal to sell pharmaceuticals without the supervision of a pharmacist

The sale was not completed, the customer was still in the process of offering, hence he could not be liable for selling of illicit drugs as the contract was not concluded yet. However, he could be liable for having possession of illicit drugs.

Thornton v Shoe Lane Parking Ltd [1971] QB 163

Thornton drove his car to a car park. Outside the car park, the prices were displayed and a notice stated cars were parked at their owner's risk.

An automatic ticket machine provided a ticket, a barrier was raised and Thornton parked his car. In small print on the ticket, it was stated to be issued subject to conditions displayed on the premises.

On a pillar opposite the machine was a notice stating the owners would not be liable for any injuries occurring on their premises.

Thornton had an accident and sought damages from Shoe Lane Parking (SLP).

Automatic vending machines are offers because as there is a final willingness in them. They are automated with programming set in them which shows the final and definite willingness of a proposal with an intention to get the assent of other.

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* Difference b/w offer and invitation to offer :-

OFFER	Invitation to offer
1) final expression of willingness by the offeror to contract in the terms stated and the thing which is waited is only acceptance. If acceptance from others come, offeror will be bound by the offer and contract will be formed.	1) ITO is merely a statement or expression of interest and proposal of certain terms on which the person making invitation to offer is willing to negotiate and is only waiting the other party to make an offer on these terms.
2) When statement is made to obtain assent from other.	(2) In ITO statement is made to obtain proposal from other.
(3) Offer when accepted amount to contract.	(3) No contract is formed in this case.
(4) In offer, it is a part of contract as first stage to form a contract.	(4) It is not a part of contract and is a pre-stage of formation of contract.
5) Burden to accept the offer falls on the person to whom the proposal is made.	5) Burden of acceptance lies on the person who make invitation to offer.

General offer

Offer → Specific → person or class of person
Offer → General → public at large.

Case ⇒ Weeks v/s Tybold [1605]
The defendant made an offer to the public that whosoever is going to marry his daughter, he will pay him 100£. The plaintiff married the daughter and claimed the money but he rejected his claims. The matter went to the Court.

Held:- The court held that offer was not a good offer in this case as it was not made to a specific person. So, the boy couldn't recover the money in this case.

Case:- Carlill v/s Carbolic smokeball Co. [1893]

Facts:- A lady (Carlil) was the plaintiff. The Carbolic Co. invented a vaccine for influenza. They assured that whoever will take their smokeball, will never get influenza. The Plaintiff consumed the smokeball but still got 'influenza'. The Co. stated that they will pay 100£ to people who get influenza after consuming smokeball. The lady went to the company for her claim but they denied and stated it was a mere advertisement.

Issues:- (1) Whether advertisements are general offer?
(2) Whether general offers are valid?
(3) No acceptance by plaintiff.

Held:- Issue 1 => Advertisements are generally not an offer. In this particular case, it was held that the offer given by the company was not a mere advertisement but actually a general offer because the direction was given to do something and also intention to create legal relationship was shown the company by depositing £1000 ₹ in the bank in advance. Therefore, in this case, this advertisement was a general offer.

Issue 2:- General offers

acceptable by one

acceptable by many

first Info. Theory => Harbhajan v/s Hardharan [1925] All.
first Information Theory was applied.

General offers are good offers, it is wrong to say that in case of general offers the contract arises with all persons rather contract arises with the purpose to come forward and perform the prescribed conditions or accepts the proposal. Further, the Court clarified that general offers are of two types:

① acceptable by one
② acceptable by many

① – In such cases offers comes to an end once they are accepted. eg – lost dog.

② – In these cases ~~general~~ the offer is continuing one and can be accepted by more than one person. Such offers do not come to an end once they are accepted. In fact, they come to an end only when they are withdrawn or revoked.

eg ⇒ Carlil v/s Carbolik Smokeball

Issue 3:– There is no need to signify acceptance. This is a case of Implied acceptance.

In case of general offers, the performance of the act directed by the proposals amounts to acceptance only. * In Indian Contract Act, S.8 specifically lays down performance of the prescribed conditions in the proposal leads to acceptance of the same.

Revocation of offer

"Once an offer, is always an offer."

In India, there is a provision of revocation of offer. It can be revoked or withdraw any offer.

Section 5 ⇒ Revocation of proposal

A proposal may be revoked at any time before the communication of its acceptance is complete as against

Acceptance is to offer what a lighted match is to train of gunpowder. The position is related to revocation of proposal or acceptance has been describe by Anson in the following words:- this statement primarily good under the English low. here gunpowder = offer and lighted match stick = acceptance. when a lighted match is to train of gunpowder ,it explode and something happen. which cannot be undone,similarly an offer once accepted cannot be revoked. But so long a lighted match is to shown the gunpowder remain insert and can be removed , similarly an offer can remove before its acceptance. But in Indian Contract act ,acceptance can be revoked by resorting to quicker means of communication ,So that offeror learn about before its acceptance. Thus the above statement doesn't hold in relation to revocation of acceptance under Indian Law

the proposer but not afterwards.

* Modes of Revocation [section 6]

(1) by the communication of Notice of revocation by the proposer to the other party.

→ no automatically revocation is valid / permitted.

Case → Dickinson V/S Dodds [1876]

A gave proposals to

B C

B accepted the contract was made b/w A and B. C got to know about the contract of A and B by 'D'. Court held this revocation valid as per English law.

It was held that, since 'C' had information from 'D' about the sale of goods to B by A is a valid revocation. Thus, acceptance by C doesnot conclude a contract b/w A and C. Thus, A is not liable for breach of contract. [ENGLISH LAW]

But, in India the position is different. In India, the notice of revocation must be given by proposer only and not from any other source.

(2) Lapse of time prescribed in such proposal
- after the expiry of the time prescribed, automatic revocation.
- and if no time is prescribed then after the reasonable time. [question of fact]

(3) Condition precedent
If the condition is not fulfilled then ~~no~~ the offer will be revoked.

State of WB V/S MC Das [1990]

'Salt bulk - offered for lease.

It was held that he was not entitled for the lease, the offer was cancelled for him as he didnot fulfil the condition precedent.

(4) By death or insanity of the proposer
If the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

-) No automatic revocation
-) Knowledge of death or insanity can be from any source.

In case of knowledge of death after the acceptance :-
legal representatives of the proposer will complete the contract.

But, in case of personal skill => LR's will not be bound of the proposer to complete the contract [S.37 Para-II]

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Acceptance => Section 2(b) R/W S.3, 7, 8, 9.

Ingredients

(1) when the person to whom the proposal is made
(2) signifies / communicated
(3) his assent
(4) the proposal is said to be accepted

(1) Person to whom the proposal is made :-
   a) the person or his agent.

Case => Powell v/s Lee

Plaintiff applied for the post of headmaster. The selection committee selected the plaintiff but was not conveyed to him, the person (member) of selection of committee who was not authorized to communicate the acceptance. Later on, the committee chose someone else and cancelled the plaintiff's application. Now, the plaintiff went to the court.

Held :- In this case, it was held that the contract was not concluded as the notice of acceptance was given by a member of the selection committee who was not an authorised person to do so. This acceptance is equivalent to overhearing from behind

the doors. The notice of acceptance must be from the contracting party or the person authorised by him.

(2) Signifies / Communication :-
It is necessary that it must be Communicated.

- effect of communicating
  - usual
  - reasonable [S.7]

- express and implied acceptance [S.9]

- Prescribed mode → [S.7(2)]
  - Deviated Mode
    - will it be valid or Not?

If the proposal prescribes the manner in which it is to be made [accepted] and acceptance is not made in that manner of the proposal

- He can Accept it as it is
- within Reasonable time, Ask him to give in Prescribed Time.

Prescribed Conditions Fulfilled - S.8 General Offer For Acceptance.

Eliason V/S Henshaws [1819]
In English law, deviation is allowed as long as the Communication of acceptance is not delayed and nothing goes wrong.

* whereas, in India according to S.7(2) if the proposal has prescribed the manner of acceptance, then the acceptance is to be done in that prescribed manner only. But further S.7(2) lays down that if the acceptance is done in deviated mode then the proposal has two options:-

(1) he may within a reasonable time insist the acceptor to accept in prescribed manner.
(2) if he does not do so, then the acceptance is deemed to be accepted by the proposal.

Gadder Mal V/S Tata Industries Bank [1927]

Mere mental acceptance or silence is not valid acceptance :- [silence]
Not communicated - no acceptance.

Case - Pellhouse V/s Bindly [1863]
Uncle wrote a letter to his nephew to buy his horse. "I want to buy your horse, if I hear no reply or no more about the horse, I will consider the horse mine at ₹ 33,155."
Manager by mistake auctioned that horse. Uncle sued the nephew.

Held => 1) Mere mental/silence is not sufficient to conclude the contract. For a valid acceptance, acceptance must be done to the proposal himself or to any person prescribed by him.
2) The court held that a proposer cannot impose upon the acceptor the burden of refusal. He cannot say that if no acceptance is received in the certain time, the same shall deemed to be accepted.
- LIC V/s Ammama [1999].

Communication of acceptance when complete :-

- parties are communicating directly
  - Inter-presentees
  - instantaneous mode (phone/zoom etc)
- through some agencies
  - Inter-absentees
  - agency (letters, messengers)

- Inter-presentees parties
  - Entores Ltd V/s Miles far East Cor [1955]
  - contract is not concluded, unless the acceptance is received to the Proposer.

• Acceptance must be heard by the other party [Proposer]
– This rule has been interpreted by the Courts.
Bhagwan Das Gowardhan Das v/s Girdharilal [1966] SC (Landmark) – accepted the Entores Case's rule.
In case of instantaneous mode of acceptance, only when it is heard or received by the proposer. The Court clarified that place of conclusion of Contract is where the acceptance is heard or received.

• Inter-Absentees rule — Postal Rule
↳ party communicating through agency.
↳ receipt of acceptance

Section 4: (2) Acceptance when Complete

(1) as against the proposer
when it is put in a course of transmission to him so as to be out of the power of the acceptor.

(2) as against the acceptor
when it comes to the knowledge of the proposer.

Acc. to S. 4 Para 2, communication of acceptance is Complete in two stages :-

(1) Proposer gets bound : when the acceptance is put on the course of transmission, in such a way that it goes out of the power of acceptor, the proposer gets bound by the acceptance.
Effect :- (1) proposer gets bound by the acceptance and he cannot revoke his proposal anymore.
(2) No conclusion of Contract yet.
(3) still the acceptor has the chance to revoke his acceptance.

(2) Accepter gets bound :- when the letter of acceptance Comes to the knowledge of the ~~accept~~ proposer.
Effect :- conclusion of contract, acceptor is now bound and no revocation can be made.

Communication of Offer

Section 4 of the Indian Contract Act 1872 says that the communication of the offer is complete when it comes to the knowledge of the person it has been made to.

So, when the offeree (in case of a specific offer) or any member of the public (in case of a general offer) becomes aware of the offer, the communication of the offer is said to be complete.

So, when two people are talking, face-to-face or via telephone, etc. the communication will be complete as soon as the offer is made. Example if A tells B he will fix his roof for five thousand rupees, the communication is complete as soon as the words are spoken.

Let us take the same example. A write to B offering to fix his roof for five thousand rupees. He posts the letter on 2nd July. The letter reaches B on 4th July. So, the communication of acceptance is said to complete on 4th July.

Communication of Acceptance

Mode of Acceptance

In this case of communication of acceptance, there are two factors to consider, the mode of acceptance and then the timing of it. Let us first talk about the mode of acceptance. Acceptance can be done in two ways, namely

A. **Communication of Acceptance by an Act**: This would include communication via words, whether oral or written. So, this will include communication via telephone calls, letters, e-mails, telegraphs, etc.

B. **Communication of Acceptance by Conduct**: The offeree can also convey his acceptance of the offer through some action of his, or by his conduct. So, say when you board a bus, you are accepting to pay the bus fare via your conduct.

Timing of Acceptance

The communication of acceptance has two parts. Let us take a look

A. **As against the Offeror/proposer**: For the proposer, the communication of the acceptance is complete when he puts such acceptance in the course of transmission.

After this it is out of his hand to revoke such acceptance, so his communication will be completed then.

So, for example, A accepts the offer of B via a letter. He posts the letter on 10th July and the letter reaches B on 14th For B (the proposer) the communication of the acceptance is completed on 10th July itself.

B. **As against the Acceptor:** The communication in case of the acceptor is complete when the proposer acquires knowledge of such acceptance.

So, in the above example, A's communication will be complete on 14th July, when B learns of the acceptance.

Revocation of Offer

The Indian Contract Act lays out the rules of revocation of an offer in Section 5. It says the offer may be revoked at any time before the communication of the acceptance is complete against the proposer/offeror. Once the acceptance is

communicated to the proposer, revocation of the offer is now not possible.

Let us take the same example of before.

A accepts the offer and posts the letter on 10th July. B gets the letter on 14th July. But for B (the proposer) the acceptance has been communicated on 10th July itself.

So, the revocation of offer can only happen before the 10th of July.

Revocation of Acceptance

Section 5 also states that acceptance can be revoked until the communication of the acceptance is completed against the acceptor. No revocation of acceptance can happen after such date.

Again, from the above example, the communication of the acceptance is complete against A (acceptor) on 14th July.

So, till that date, A can revoke his/her acceptance, but not after such date. So technically between 10th and 14th July, A can decide to revoke the acceptance.

A sends letter of acceptance on: 6th of Jan which would be reaching to B on 9th of Jan.

B sends letter of revocation on: 7th of Jan which would be reaching to A on 9th of Jan

In this case, both the revocation and the acceptance are at the same time.

B may revoke his acceptance at any time before or at the moment when the letter communicating it [acceptance] reaches A, but not afterwards.

Hence, we can say that if revocation and acceptance both are coming at the same time, then revocation will be done and not the acceptance.

However, some authors are of view that these are accidental forms of contract and it totally dependant on time. If the letter of acceptance is open first then the contract will be deemed as accepted and if the letter of revocation is been opened then the contract would act as revoked.

It's the question of fact and parties has to prove that which letter was opened first. But if we strictly go with the law then at the moment, contract will be revoked.

English case law:

Household fire& carriage insurance co. v. Grants 1879: which concerns the "postal rule"

Mr Grant applied for shares in the Household Fire and Carriage Accident Insurance Company.

The company allotted the shares to the defendant, and duly addressed to him, posting a letter containing the notice of allotment. The letter was lost in the post and he never received the acceptance.

Later the company went bankrupt, and asked Mr Grant for the outstanding payments on the shares, which he refused saying there was no binding contract.

The liquidator sued. The question was whether Mr Grant's offer for shares had been validly accepted and as such whether he was legally bound to pay.

It was held that in English law, communication of acceptance is completed moment the letter of acceptance is posted. The contract is deemed as concluded. In English law, there is no rule of revocation of acceptance.

the majority held that there was a valid contract, because the rule for the post is that acceptance is effective even if the letter never arrives.

He noted that anyone can opt out of the rule, and that even if it sometimes causes hardship, it would cause even more hardship to not have the rule.

As Anson has rightly said, “what has been done cannot be undone”

But this principle is not applicable in India as we have rule of revocation of acceptance.

Place of conclusion of contract:

In English law, the place where letter was put in course of transaction will be the place of conclusion. If the letter of acceptance was to send from Wales to London, then the place of conclusion of contract will be Wales.

in India, the place of conclusion of contract was explained by SC in the case of Bhagwandas Goverdhandas Kedia vs. Girdharilal Parshottamdas & Co. & Ors.

The court stated that the language of the Contract Act cannot be completely ignored.

Saha, J stated that when acceptance of the offer was intimated by the offeror the contract becomes complete.

Hence, the same English law rule that is the postal rule was applied by the SC. Therefore, in India also If the letter of acceptance was to send from Chandigarh to Delhi, then the place of conclusion of contract will be Chandigarh.

Place of jurisdiction in case of inter-absentees' negotiations, the place of conclusion of contract would be where the letter of acceptance was put in course of transaction as laid down in household fire co. case.

When letter of acceptance is lost in India and it never reached?

As far as SC is concerned, there is no strict rule been made in this case. However, there are certain High Courts cases in which it is held that if the letter is duly posted and rightly

addressed then the contract is taken to be concluded and parties are bound. [Kallu Ram v. State of MP 1986 MP 204]

JK Enterprises v. State of MP 1997

In such situations where the letter of acceptance is lost and is never been received by the proposer. The court held that conclusion of contract can be presumed provided the letter was duly posted and duly addressed.

Emails:

In case of e-mails, it is a fragmented process.

First the sender sends an E-mail, if it is in the outbox that means that it is still in the domain of the sender. After then it sends through an internet server to another person.

So here the internet servers are acting as a postal agency. Hence, the parties are not communicating directly and communicating via agencies, hence postal rule will apply.

Sender is only bound at the time when the mail has been sent to the receiver. While the receiver is bound at the time when the mail puts into course of transaction. Hence, revocation of acceptance is possible.

Special cases of E-contracts:

E-contracts are very common nowadays, where the parties negotiate via internet websites and use different electronic means like emails, websites, messages, etc.

Generally in the case of e-mail, for the completion of acceptance inter-absentees or postal rule applies because in case of emails, sending an e-mail is the fragmented process and the servers through which the e-mail is sent is acting like an agency and the parties sending the acceptance is not aware/notified whether the e-mail is received by the other party or not, therefore to bind the parties postal rule is applicable in such case. Whereas in exceptional cases, where the sender of email [acceptor] gets the notification that the other party has not received the acceptance due to various reasons like no space in the inbox of the proposer, wrong e-mail address, etc.

In such cases, inter-presentees rule will apply and the proposer will be bound only when he receives the e-mail.

Chwee kim keong v. digiland mall.com PVT ltd. 2004 SLR

In this case, it was held that the acceptance is complete against the proposer once it is sent. Whereas, in the case where the acceptor typed the wrong email address or got notified about the failure of the message or email then in such cases, the proposer will be bound only when it will be received by him.

Where the delivery report is received by the acceptor then in such cases inter presentees rule will apply and where no

delivery report is received or there are some agencies involved then in such cases, inter-absentees rule will apply.

Mulla's Mirror rule in contract:

The mirror image rule means that when you accept an agreement, you're doing so based on the *exact* terms of the original offer.

Let's say you want to sell your house. You put it on the market, and a buyer accepts it as-is. In this case, the mirror image rule applies. The buyer accepts your exact terms and you move forward with a contract for sale.

The principle behind this rule is that one party accepts the offer as is, and then it's contractually written to mirror that. It's also called the "absolute acceptance" rule, meaning that the parties offer and accept the exact terms, in order to create a contract.

Partial acceptance is no acceptance in the contract law, EVERY ACCEPTANCE SHALL BE UNCONDITIONAL-s/7,

Ram bhai v. Ghasi ram 1918 Bom HC

The party accepting the offer is not allowed to partially accept it and partially reject the same. The offer can be accepted or rejected absolutely only. Either to accept the whole or reject the whole. Mere enquiry is not a counter offer.

Provisional acceptance is not a valid acceptance. Provisional acceptance is the type of acceptance by the offeree which is made subject to the final approval.

A provisional acceptance does not ordinarily bind either party to the contract until the final approval is given to the provisional acceptance made by the offeree.

Until the approval is given, the offeror is at liberty to cancel the offer made to the offeree

In Union of India v. S. Narain Singh, the High Court of Punjab held that where the condition attached to the auction sale of the liquor was that the acceptance of the bid shall be subject to confirmation by the Chief Commissioner.

The contract will not be complete till the highest bid is confirmed by the Chief Commissioner and till the confirmation is made the person whose bid is provisionally accepted is at liberty to withdraw the bid.

An acceptance is to offer is what is a lighted matchstick to a train gunpowder, explain the statement with relevant cases and how far this statement is valid in India?

17th oct:

Inter absentes

A Contract made inter absentes occurs when the parties do not meet face-to-face. The contracting parties use different types

of methods to communicate their offers and acceptances in the case of contracts inter-absentes like postage, telegram, telegraph, telephone, email, etc. negotiation is through agency here.

Acceptance is completed in two stages:

1. As against the proposer: when the letter of acceptance is put into the course of transaction
2. As against the acceptor: when the letter of acceptance comes into the knowledge of the proposer

Place of jurisdiction: where letter of acceptance is put into course of transaction

Revocation is possible at any time before the completion of acceptance as against the acceptor.

Inter praesentes

A contract made inter praesentes occurs when the parties meet face-to-face. Negotiation is direct or through instant mode of communication. Acceptance is completed when received.

Place of jurisdiction: where acceptance is received or heard

No revocation of acceptance is there

Consideration:

'Consideration' means "something in return", *i.e. quid pro quo* that is an essential element to find out the genuine intention of the parties of the promise to create legal relationship.

- Consideration is an essential component of a valid contract.
- Consideration is the price for the contract.
- An agreement without consideration is void and thus not enforceable by law except under certain circumstances.

According to Sir Frederick Pollock. Consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable."

An agreement without consideration is a bare promise and *exnudo pacto non aritio actio, i.e.,* cannot be held to binding on the parties. In English law, it is called as "Nudum Pactum": bare promise cannot be enforced.

Hence, consideration bounds the promiser to fulfil his promise.

Essentials

1. Something should be done or abstained from doing at the desire of the ***promisor*** only.
2. ***Promisee or any other person*** has done or abstained from doing something at the desire of the promisor.
3. It can be Past, Present or Future.
4. It is not necessary that Consideration must be adequate. It can be detriment or loss to the promisee.
5. Consideration must be Real and Not Illusory or Impossible.

6. It must be Lawful.

- A promisor is someone who makes a promise to a promisee.

- The person making the promise is called the promisor. The person to whom he makes the promise is a promise.
- Consideration is given at the demand of promisor.

Caselaw:

In ***Durga Prasad* v. *Baldeo,*** on the order of the collector of a town Durga Prasad built some shops on his own expense in a market.

The shopkeepers who occupied these shops promised to pay to Durga Prasad commission on their sales. Durga Prasad sued the shopkeepers when he did not receive the commission.

The court held that the promise was not supported by any consideration as the shops were built on the collector's order and not at the request of the shopkeepers.

Therefore, there could not be a recovery.

Consideration here which is construction of the shopping mall was not done at the desire of the promiser [defendant] in fact it was done at the desire of the govt.

In Kedarnath Bhattacharji v. Gorie Mohammad 1886 SC,

the offended party was a Municipal Commissioner of Howrah and one of the trustees of the Howrah City Council

Fund. Sometime before, it was thought to make a City Hall in Howrah, they gave the essential resources that could be raised and, provided that things existed, people were intrigued to work to perceive what memberships they could obtain.

After gaining enough membership to support the funds required to build the town hall, the commissioners including the offended party made an agreement with the defendant to build the town hall.

The plans for the proposed structure were submitted and passed. But as the membership list increased the plans also expanded.

Hence the expected cost of construction is increased from Rs. 26,000 to Rs. 40,000; the now increased amount of Rs. 40,000 stayed approved and obligated by the commissioners including the offended party.

the defendants one of the subscribers of this fund for Rs 100 signed his name in the subscription book at that amount. On the faith of the promised subscription the plaintiff entered into a contract with a contractor for the purpose of the building the town hall.

Later the defendant subscriber said that there was neither promise nor consideration was involved.

Defendant was held liable and was stated that the purpose of subscription was known and on faith of their subscription and an obligation was to be incurred to pay the contractor for the work, which is consideration involved on the basis of promise.

Secretary had acted on the faith of the promise and incurred a liability.

Here the person subscribing has an implied desire for building the town hall. On the basis of the subscription, the other party took the liability and ordered the construction material. Thus, here liability taken by promisee on the basis of the promise done by the promisor is a good consideration and the promise is enforceable.

This concept is also called as promissory estoppel which is a doctrine of equity and justice. According to which, if one party has promised something to other and that other party has undertaken any liability or change his legal position on the basis of that promise, then the promiser cannot deny from his promise and thus is bound by the same.

Abdul aseez v. Masoom Ali 1914 All HC

FACTS

- The appellate here belongs to Islam Local Agency Committee, Agra. In 1907 a movement was set up on foot to collect money for repairing and reconstruction of a mosque known as Masjid Hamman Alawardi Khan.
- The committee themselves sanctioned a subscription of 3000/-. Besides this, 100/- was paid by Hakim, 500/- was promised by Munshi Abdul, and another sum of 500/- was promised by Munshi.
- Among them, Munshi Abdul was appointed as treasurer. The committee handed over their contribution to Munshi Abdul, and he also received 100/- from Hakim.
- Munshi Jan gave cheque of 500/- on 12th September 1907. On 29th Sep 1907, the cheque was presented to the bank. The bank returned the cheque with notice of irregularity in an endorsement.
- It was again presented on 12th Jan 1909. The bank again returned the cheque with a notice saying that it was out of date. Munshi Abdul died on 20th April 1909 and a suit was initiated against his heirs on 14th April 1910. Munshi Jan died in May 1910.

- This suit was brought against heirs of Munshi Abdul for the recovery of 1000/- that is, 500/- paid by him and 500/-, the amount paid by Munshi Jan that was not cashed. The Lower Appellate Court made the heirs liable to pay 1000/-.
- A second appeal was made in the High Court.

ISSUE

- Whether the promise is enforceable without any consideration?
- Whether the heirs of Munshi Abdul are liable to pay 1000/- for negligence?

CONTENTIONS

Plaintiff's contentions

1. It was contended on behalf of the appellants that the money promised by treasurer did not go beyond the stage of promise.
2. Secondly, he had enough money but had not transferred from his private account.
3. Thirdly, on strength of promise, no liability was incurred.

Defendant's contentions

1. The defendants contended that the promise was made by treasurer himself.
2. The committee suffered a loss through the negligence of Munshi Abdul paid via cheque was questionable if he were alive.
3. He was appointed as an agent to undertake these works. But this resulted in gross negligence for which committee has to suffer.

RATIO DECIDENDI

The Hon'ble Judges present to hear this case were Sir Henry Richards, Chief Justice, and Justice Pramada Charan Banerji. The bench was of the opinion that-

1. It was a mere gratuitous promise on Munshi Abdul's part with regard to his subscription.
2. Under the circumstances of this case it is admitted if the promise had been made by outsider it could not have been enforced.
3. There is no evidence which tells that he set aside 500/- to meet his promised subscription.

4. He had presented the cheque for payment; the mistake in the endorsement was a natural one and the delay in representing the cheque or getting a replacement from the drawer may well be explained by the delay in carrying out the proposed work.
5. Under these circumstances, Munshi Abdul could not have been sued in his lifetime and no suit can lay against his heirs after his death for the same.
6. The appeal is allowed and the appellants will get the costs, including the court fees.

DECISION

The court held that Munshi Abdul could not be sued or any suit can be laid against his heirs after his death as there is a lack of evidence to prove the consideration for his promised subscription and there is a great difficulty in holding that a suit could have been brought against Munshi Abdul with respect to the cheque in his lifetime. Therefore, the appeal is allowed and the costs shall be received.

CONCLUSION

This judgment made it clear that mere promise to contribute to charitable purpose is not enforceable as it is without consideration.

Promise to pay subscription for constructing the masjid, but nothing was done by the promisee for that purpose. Since the promisee has not done anything on behalf of the promise, the promise of the promiser is not enforceable on that basis. Thus if the promiser refuse to pay for the subscription, he cannot be compelled for the same.

Injurious reliance theory:

If someone has relied upon a promise and on the basis of the promise, the person has suffered some loss. In that case, it is a valid consideration and is enough to enforce the promise.

Consideration does not always mean some benefit to the promisor but it also means some loss or detriment to the promisee.

It is a modern concept of consideration, according to this if the promisee has undertaken some liability of suffered some loss on relying the promise given by the promisor. That is enough or good consideration for enforcement of that promise.

Benefit theory: if in return of the promise, the promisor is getting some benefit only in that case the promise may be enforced. Something for something.

Now in modern times, even detriment, loss to the promisee on the desire of the promisor is the good consideration.

Honour theory: every one fulfils their promises for the sake of their reputation. When the promise is fulfilled for the reputation of the promiser himself.

Moral theory: promise is fulfilled on the basis of morality.

According to section 2[d], consideration may move from promisee himself or any other person, this means that for the enforcement of that promise the consideration is must and it is

immaterial who has furnished the same. Thus, consideration may be given by the promisee or any other person also.

Privity of Contract and Privity of Consideration

Only the parties of the suit are bound by the terms and conditions as well as by the consequences of the contract. A stranger to contract, cannot file a suit to enforce any of the right or liability arising out of the contract.

It means that a person who stands to obtain a benefit from the contract (a third-party beneficiary) is not entitled to take any enforcement action even if he or she is denied the promised benefit.

The doctrine of privity of contract states that only the parties to the contract can enforce the contract or take action against it.

A person who is not a party to the contract but perceives some benefits from the contracts is not entitled to take any enforcement action

"The doctrine of privity means that a contract cannot, as a general rule confer rights or impose obligations arising under it on any person other than the parties to it."

For example, if a party 'A' promised 'B' to pay Rs.100 to the third party 'C'. Thus, 'A' and 'B' can sue each other in case of a breach of contract. However, 'C' cannot sue the parties. This is known as the privity of contract.

Privity of contract is a legal rule which states that only parties to a contract can sue for breach of contract and this right to sue does not extend to the third party.

Strangers to the contract or consideration cannot sue in English law.

Privity of consideration:

In English law, the position is different, only parties to the contract can give the consideration. Strangers to the contract cannot give consideration. Privity of consideration does not applies to India.

Chinnayya v. Ramayya 1876 Mad HC

lady granted/ gifted a property consisting of some land to her daughter (defendant) by a gift deed. The deed was registered to the proper authorities.

One of the terms of the deed was that the daughter had to pay a sum of Rs.653 annually to his uncle. Later the old lady died, and the defendant refused to pay the money to the uncle whom she had promised to pay so. And hence the plaintiff sued the defendant for the recovery of the same.

Issue: Whether the plaintiff can bring an action against the defendant for the amount promised in a contract where the consideration for such promise has been furnished by the mother of the defendant (plaintiff's sister)?

Appellants argument: The consideration for getting the property was a promise to pay the amount annually to the plaintiff.

Respondents argument: The plaintiff was not a party to contract, hence was having no right to compel respondent for paying the promised amount.

Judgement: The Madras High Court held that in this agreement between the defendant and plaintiff, the consideration has been furnished on behalf of the plaintiff (uncle) by her own sister (respondents mother).

Although the plaintiff was stranger to the consideration but since he was a party to the contract he could enforce the promise to the promisor, since under law, Consideration may be given by the promise or anyone on her behalf – vide section 2(D) of Indian Contract Act,1872.

Thus, consideration furnished by the old lady constitutes sufficient consideration for the plaintiff to sue the defendant on her promise.

Held, the uncle was entitled to a decree for payment of the annual sum of money.

Conclusion: In Indian Law, consideration may be given by the promise or any other person. In India, there is a possibility that consideration for the promise may move not from the promise but a third person, who is not a party to the contract, different from the English Law in which the consideration must move from only the promise.

In ***Dunlop Tyre Co.*** **v.** ***Selfridge Ltd,*** D supplied tyres to a wholesaler X, on the condition that any retailer to whom X resupplied the tyre should promise X, not to sell to the public

below D's list price. X supplied the tyres to S, a sub-dealer, S sold two tyres at less than the list price, and thereupon, the Dunlop Co., sued him for breach of the contract. Held, Dunlop Co., could not claim the benefit of the contract as against S, a sub-dealer, there was no privity of contract between the two.

23th oct:

Doctrine of Privity of Contract

The Indian Contract Act. 1872, allows the 'Consideration' for an agreement to proceed from a third-party. However, a stranger (third-party) to consideration is different from a stranger to a contract.

The law does not allow a stranger to file a suit on the contract.

This right is available only to a person who is a party to the contract and is called Doctrine of Privity of Contract.

Let's understand this with the help of an example:

- Peter has borrowed some money from John.
- Peter owns a property and decides to sell it to Arjun.
- Arjun promises to pay John on behalf of Peter.

However, if Arjun fails to pay, then John cannot sue since Arjun is a stranger to the contract.

It is important to note that the Doctrine of Privity has exceptions which allow a stranger to enforce a claim as given below.

Exceptions:

1. Statutory exceptions
2. Judicial exceptions

Statutory exceptions:

1. Nominee can sue
2. Sec 231 of ICA : undisclosed principle, if the agent makes an contract with third party and that third party does not know who is the principle, here undisclosed principle can sue and be sued.
3. Sec 53 Of TPA: fraudulent transfers. If debtor defrauds the creditors, then the creditor may sue any contract btw debtor and third party.
4. Covenants running with the land, sec 11 TPA; covenants are specific agreements made by the party

A Covenant Running with the Land

When a person purchases a piece of land with the notice that the owner of the land will be bound by all duties and liabilities affecting the land, then he can sue upon a contract between the previous land-owner and a settler even if he was not a party to the contract.

Peter owned a piece of land which he sold to John under a covenant that a certain part of the land will be maintained as a public park. John abided by the covenant and eventually sold the land to Arjun. Though Arjun was aware of the covenant, he built a house in the specific plot.

When Peter came to know of it, he filed a suit against Arjun. Although Arjun denied liability since he was not a party to the contract, the Court held him responsible for violating the covenant.

Tulk v. Moxhay 1848:

A owned a peice of land which he sold to B under a covenat that a certain part of the land will be maintained as public park. B abided by the covenatn and eventually sold the land to C. though C was aware of the covenant, he built a house in the specific plot. when A came to know of it, he filed a suit against C. altough C denied liability since he was not a party to the contract, the court held him responsible for violating the covenant.

Judicial exceptions:

A stranger or a person who is not a party to a contract can sue on a contract in the following cases:

1. Trust
2. Family Settlement
3. Assignment of a Contract
4. Acknowledgement or Estoppel
5. A covenant running with the land
6. Contract through an agent

Trust

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract.

Arjun's father had an illegitimate son, Ravi. Before he died, he put Arjun in possession of his estate with a condition that Arjun would pay Ravi an amount of Rs 500,000 and transfer

half of the estate in Ravi's name, once he becomes 21 years old.

After attaining that age when Ravi didn't receive the money and asked Arjun about it, he denied giving him his share. Ravi filed a suit for recovery. The Court held that a trust was formed with Ravi as the beneficiary for a certain amount and share of the estate. Hence, Ravi had the right to sue upon the contract between Arjun and his father, even though he was not a party to it.

Khwaja Mohd Khan v. Hussaini Begum PC 1909

Facts: The plaintiff, namely Husaini Begam, who was a Mohammedan lady, married the son of the defendant, namely Khwaja Muhammad Khan. As per Islamic customs the plaintiff was to be given Rs. 500 as Kharch-i-Pandan.

The agreement was enforced by the defendant at the time of marriage. The agreement was to be initiated after her reception into conjugal domicile, which started 6 years of their marriage.

After 13 years of being together, the plaintiff abandoned her husband's home and stayed in Moradabad as a result of certain altercations.

The husband Rustam Ali Khan never bought an action against his wife for the restoration of conjugal rights.

The plaintiff sued the defendant for recuperation of Kharch-i-Pandan.

The plaintiff was allowed to enforce the contract. The court said that the rule of privity of contract does not apply to the

said case, as the facts and circumstances of this case are different.

it was held that the plaintiff girl here although not the party to the original contract btw her father and father-in-law, but in the agreement, she was made the beneficiary and a charge was created in her favour for the enforcement of kharch-i-pandan. She can sue for the enforcement of the same.

Family Settlement

If a contract is made under a family arrangement to benefit a stranger (person not a party to the contract), then the stranger can sue in his own right as a beneficiary of the contract.

Peter promised Nancy's father that he would marry Nancy else would pay Rs 50,000 as damages. Eventually, he married someone else, thereby breaching the contract.

Nancy filed a case against Peter which was held by the Court since the contract was a family arrangement with Nancy as the beneficiary.

Ritika was living in a Hindu Undivided Family (HUF). The family had made a provision for her marriage. Eventually, the family went through a partition and Ritika filed a suit to claim her marriage expenses. The Court held the case because Ritika was the beneficiary of the provision despite being a stranger to the contract.

Shuppu Ammal and Anr. Vs .K. Subramaniam and Ors

at the time of partition of HUF the brothers, agreed to invest a certain sum of money in equal shares for maintenance of their mother. but subsequently refused to do so. mother sued them in the court of law. the court held that the mother is beneficiary to the contract between the brothers and hence entitled to require her sons to make the investment.

Acknowledgment or Estoppel

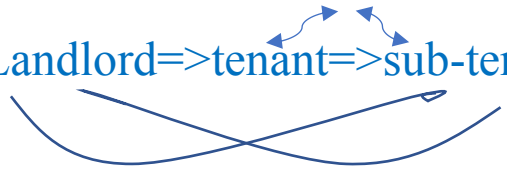
If a contract requires that a party pays a certain amount to a third-party and he/she acknowledges it, then it becomes a binding obligation for the party to pay the third-party. The acknowledgment can also be implied.

Peter gives Rs 1,000 to John to pay Arjun. John acknowledges the receipt of funds to be paid to Arjun. However, he fails to pay him. Arjun can sue John for recovery of the amount.

Rita sold her house to Seema. A real estate broker, Pankaj, facilitated the deal. Out of the sale price, Pankaj was to be paid Rs 25,000 as his professional charges. Seema promised to pay Pankaj the amount before taking possession of the property. She made three payments of Rs 5,000 each and then stopped paying him. Pankaj filed a suit against Seema which was held by the Court because Seema had acknowledged her liability by conduct.

Khirod Behari Dutt v. Man gobinda Panda 1934 Cal

Landlord=>tenant=>sub-tenant.



Present, past and future consideration:

***Past consideration*:**

Past consideration is a promise for a voluntary act done in the past to help the party who is making promise to pay or to do something subsequently.

It means consideration is promised to pay later for an act done without any promise from the other party.

A promise is said to be given for past consideration when the promisor's motivation for making the promise is a past benefit he received that gave rise to an obligation to make compensation.

Earlier past consideration was no consideration but now it is a good and valid consideration.

B house is on fire. A rush to B's help and saved his life. In a show of gratitude, B promises to pay A 5,00,000 for the help provided by A. In this case, B's motivation for making this promise is the past benefit that A provided which gave rise to the moral obligation to compensate A.

A look after the children of B at B's request. A year later B agreed to pay A. a sum of Rs. 2000 for his services. For the promise of B, the services of A will be taken as past consideration.

A rendered services to B during his minority at B's request; which were continued after B ceased to be a minor. After attaining a majority, B promised to pay an annuity to A for the services rendered in the past. It was held that this was a good contract and A can recover the money.

past consideration can only be called as a good consideration if there was a desire of the promiser involved at past events.

This is as per section 2[d] of Indian contract act and to overcome this, we made section 25 [2] in ICA. In which it was held that if there is no desire of the promisor, still it would be a valid past consideration.

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do

Past services can be a good consideration for a subsequent promise, the past service done at the desire of the promiser and the subsequent promise for compensating the same is enforceable under section 2D. whereas, past voluntary service can be a good consideration and the subsequent promise to compensate for the same is enforceable but not under section 2D but under section 25{2}.

Lampleigh v. Brathwait 1615

In English law, past consideration is not a good consideration but in this case the court held that if the past consideration is given at the desire of the promiser, then in such case it becomes good consideration. The person who was giving the service was throughout the negotiation was having the mind that he is going to be paid for it.

MCardle Case:

William McArdle left a house to his five children in equal shares, subject to a life interest for his widow.

The wife of one of these sons, Mrs Marjorie McArdle, carried out improvements to the house amounting to £488. She also bore the cost of these repairs.

After the repairs had been carried out, she got all the five children of McArdle to sign a document in which they promised to repay Mrs McArdle the £488 out of the estate when it was eventually distributed.

After the testator's widow died, Mrs McArdle asked for payment. However, the other four sons refused to pay her.

She tried to enforce her interest in the property in court.

The Court of Appeal held that the transaction had not been completed and was imperfect.

Therefore, it was only a promise to pay and not a gift. Mrs McArdle had already performed the work before she asked for payment. Her consideration was in the past.

Past consideration is not good consideration. Therefore, the agreement was unenforceable.

Present or executed consideration:

When the promisor receives consideration simultaneously with his promise, the consideration is termed as Present Consideration.

A purchased goods from a shopkeeper of the worth of ` 10,000 A pays money to the shopkeeper immediately. Consideration is “Present”.

Difference between Past and Executed Consideration

Past consideration always consists of an act done without any promise But an executed consideration means an act which has been done in response to a promise

***Future or Executory Consideration*:**

When a promise is to be executed on a future date it is called executory consideration or future consideration.

In this the promisor makes an offer for a future date and the promisee promises to accept and execute the contract after that date this is future consideration.

In this case both parties move the consideration to a future date. The liability becomes outstanding on both parties on a future date.

Ruhi promises to sell and deliver a new wristwatch to Rekha after a week.

Rekha accepts the offer and promises to pay after one month of receiving the watch.

This is executory or future consideration

Future promise v. reciprocal promise:

Section 2(f) of the Indian Contract Act, 1982 talks about what are reciprocal promises. Reciprocal promises which form are a part of the consideration.

A want to buy the car from car agency B. B is saying that they will give the car by next month. So, there is one promise btw A and B. A says that he will do the payment at the time when he received the car that is by next month. This is promise 2.

Promise 1 and promise 2 are forming consideration to each other. Hence, they are called as reciprocal promises i.e., promise for promise.

There are rules relating to reciprocal promises that are in section 51 to 56.

While in future consideration, one party performs his promise already and second party is promising to perform his part at the future date.

A is saying that I will give you 20rs for curd after a week. He has already received curd although by the shop keeper.

In reciprocal promise: one promise is being the consideration for other promise. Here, the performance of both the parties is in future.

In future consideration: one party has already perform his part and only the promisee is yet to perform his part.

“Something”:

It can be:

1. Benefit
2. Detriment
3. Affirmation
4. Restriction

5. Abstinence
6. Promise.

Consideration must be Real and Not Illusory or Impossible

It must have some value in the eyes of the law.

Real consideration means that the consideration should not be physically or legally impossible. Consideration is not real in the case of physical and legal impossibility or uncertainty.

Physical Impossibility: If a promise is made to do impossible things that are not possible to do physically, it is not real.

For example, A promises to pay B ` 1,00,000 if he will be able to run 200 km in 5 minutes. This is not a valid consideration as it is physically impossible for anybody to do this.

Legal Impossibility:

If a promise is made to do things that are prohibited by law then also it is not valid consideration.

For example, A enters into contract with B that he will pay ` 5,00,000 to B if B will murder C. This contract cannot be executed as consideration is illegal.

Uncertain Consideration: Consideration must be certain otherwise it is impossible to carry out an agreement.

White v. Bluett 1853

Bluett Sr. lent his son, the respondent in this case, a sum of money and died before his son had repaid this to him. Bluett Sr. and Jr. had agreed on this and completed a promissory note to this effect.

Bluett's will was executed by White. In the course of executing the will, White sued Bluett's son for the outstanding payment.

The son argued, as a defence, that Bluett Sr. had stated that repayment was not necessary to render the promissory note ineffective if the son stopped complaining about the manner in which Bluett Sr. spread his estate among the other members of the family.

The court was required to define whether the son's promise to stop complaining about his father's plans would satisfy the requirement of consideration in constructing a contract.

the court held that there was no consideration given by the son which would absolve him of having to repay the debt to his father's estate. The court also believed that the son had no right to complain as the father was free to distribute his property as he wished. As a result, ceasing from complaining was not consideration and was ultimately an intangible promise.

Chidambaram Iyer v. P.S Ranga Iyer 1965 SC

In this case, the Supreme Court interpreted the term "something" and held that it could be anything having value in the eyes of law and not only for the parties.

Consideration need not be Adequate

What is important to convert agreement into contract is the presence of the Consideration, but it is not essential that the consideration should be adequate. It may or may not be adequate. Consideration should be of some value in the eyes of the law.

Example:

A agreed to sell his Mobile worth ` 40,000 for ` 2,000 with his free consent. This is a valid Contract.

Explanation 2 to Section 25

An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustration (f) to Section 25 explains that if A agrees to sell a horse worth ` 1,000 for ` 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

The court does not take the responsibility of repairing any bad bargains made between parties but if it is so unjustified then it is a ground to ascertain that whether consideration was given freely with the consent of the other party of the contract or not.

Illustration (g) to section 25 explains that if A agrees to sell a horse worth ` 1,000 for ` 10. A denies t hat his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Forbearance to sue also amounts to good consideration as per Indian laws of contract.

Promise to perform existing duties can also be a good consideration?

This can be classified into three parts:

1. Public duty
2. Contractual duty towards promiser
3. Contractual duty towards third party.

In case of public duty, there is nothing new that is done on the desire of the promiser. It's the existing duty of the person that is given by the law to perform. So, this is not a good consideration.

Some obligations are created by contracts too, in case of contractual obligations towards the promisor; he is already bound to perform the existing duties and a new promise is being made on that existing duty which is not possible. Hence this does not amount to a valid consideration.

Stilk v. Myrick 1809

A return voyage between London and the Baltics was in peril when two of the crew abandoned the ship.

The seamen were due to receive wages of £5 per month during the voyage.

The captain offered the remaining crew an equally divided share of the deserted seamen's salary if they could return sail the ship to London with reduced crew.

The ship was returned to London by the remaining seamen however, the additional payment was not made.

It was held that the agreement is void for want of consideration. There was no consideration for the ulterior pay promised to the mariners who remained with the ship. Before they sailed from London, they had undertaken to do all that they could under all the emergencies of the voyage.

They had sold all their services till the voyage should be completed. If they had been at liberty to quit the vessel,

the case would have been quite different;

But the desertion of a part of the crew is to be considered an emergency of the voyage as much as their death; and those who remain are bound by the terms of their original contract to exert themselves to the utmost to bring the ship in safety to her destined port.

Therefore, without looking to the policy of this agreement, I think it is void for want of consideration, and that the plaintiff can only recover at the rate of £5 a month.

Liston v. owners Carpathien 1915 KB

In this case the sailors refused to complete the voyage because of the war risks not originally contemplated but remained on the duty on the promise of extra pay they were allowed to recovered.

Pre-existing duty to third party:

This amounts to a good consideration.

Shadwell v. Shadwell 1860

The defendant was the plaintiff's uncle. The uncle promised to pay his nephew £150 a year until the nephew's income reached 600 guineas provided the nephew married his fiancée. The uncle paid 12 instalments but then died, and the payments stopped. The nephew sued his uncle's estate for the remaining payments.

It was held that performance of the marriage contract was consideration, even though the contract was made with a third party to the agreement, as the uncle's promise was an inducement to the nephew to perform this contract.

He said that the plaintiff had, by getting married, made a material change in his position and had induced his wife to do the same.

They may have incurred pecuniary liabilities that would be a loss to them if the promised income was withheld.

He recognised that marriage could be a benefit to interested relatives, and so the uncle did derive a benefit from the marriage.

Therefore, the marriage was good consideration.

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. —

An agreement made without consideration is void, unless—

it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other;

or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; ill D.

or unless;

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1— Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

In gift there is no consideration required.

Gift is made under section 122 of TPA. However, explanation 1 also expressly talks about gift too. It is a general gift which can be anything but in TPA it covers only immovable property.

Explanation 2—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

185. Consideration not necessary.—No consideration is necessary to create an agency.

159. Restoration of goods lent gratuitously

Illustrations (a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B‟s purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B‟s infant son. B promises to pay A‟s expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A‟s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A‟s consent was freely given.

1]

Agreements on account of natural love and affection under the Indian Contract Act

if the agreement emerges out of affection and is registered in written form, it will amount to a valid contract.

When a husband formed and registered an agreement with his wife that he will give his earrings to her, it was held that there was a valid agreement.

On the Contrary, the existence of the near relation between the parties is not sufficient to show that there is affection between them.

On this line of reasoning in ***Rajlukhy Dabee v Bhootnath*** **1899**

the defendant promised to pay his wife a certain amount every month as maintenance. The promise was made in writing and the quarrels the husband and wife had were also mentioned. A case was filed to recover the amount promised to be paid as maintenance.

The court ruled in favour of the husband stating that "the terms of the arrangement between the husband and wife clearly show that there was no affection between them and so, it was without consideration. Thus, it was void ab initio.

2]

Compensation for voluntary services

Section 25 (2) covers this exception and there is no requirement of consideration if a person does an act or gives his service to the promisor without the knowledge of the

promisor. And in turn, the promisor shows his willingness to compensate for it by an undertaking.

Promise to pay a time-barred debt

This type of no-consideration contract falls under Section 25(3) and for invoking it, some essentials must be satisfied:

- There should be a written promise signed by a person or his appointed agent.
- A promise must be there, either to pay a whole or a part of the debt.
- The debt must have been enforced by the creditor for the limitation period.

A debtor can enter into a written agreement under Section 25 (3) for paying a part of the complete debt and a suit can lie in such cases when there is a written promise for paying it.

Limitation period bars only the remedy but not the right.

1. Debt barred by limitation

The term “debt” denotes an ascertained amount of money which is payable in respect of money demand and by action, may be recovered. Section 25 (3) only applies when there is the applicability of the law of limitation and with its aid, the debt is enforceable against the defendant. Section 25 (3) is not applicable when the defendant is not bound to pay the debt for other reasons.

2. The debt of the Promisor

This exception comes into picture only in cases when a promisor is a person liable for the debt and it does not extend to situations when the promise is to pay the debts of a third person.

In addition, a Hindu son's agreement to pay for his father debts can only be enforced against the joint family property which he inherited.

3. Promise to pay

This is a condition precedent for the application of this section. The promise must be expressed and it must not be qualified to result in any kind of confusion i.e., it must be equivocal.

In addition, for an endorsement to comply with the exception under Section 25 (3), the promissory note must consist of an undertaking to pay.

4. Promise in writing

The promise must be in written form. A proposal becomes a promise when it is accepted and, in this case, there may be a proposal by the promisor which may be accepted before an action lie.

5. To pay wholly or in part

The promise to pay a debt barred by the law of limitation can restrict itself to pay a part or may extend for the whole debt.

Jay Mann v. Satish Lovely 2013

Time barred debt does not fall under "something" under sec 2[d] and is not a valid consideration. That is the reason, a separate provision is made on this. Because of this statutory

provision only, a promise to pay a time barred debt is enforceable.

Time barred debt: POL already lapsed. Remedy is gone but not right.. it can be invoked if the debtor recognize that he has to pay his debts.

Acknowledgment of debt: POL is still there but moment the debt is been acknowledged, POL gets extend from the day.

Golden rules laid down by the judiciary:

There are some golden rules that are laid down by the judiciary to protect the interest of society in standard forms of contract which are as follows:

1. Reasonable notice

A reasonable notice must be given by the person delivering the document to give adequate information about the terms and condition laid down in the contract. Where it is not done, the acceptor will not be bound by the terms.

This principle was propounded in the case of *Henderson V. Stevenson* from House of Lords. Case facts were that, a person buy a ship ticket on face of it only boarding place and arriving place was written on it but on its back side there were certain terms and conditions which party didn't see nor anything was written on face of it to turn over and look at the back of ticket.

Simple reason given by court was that a person cannot agree to a term if he had not seen it or is not told of it.

The plaintiff was entitled to recover the loss because there was no acceptance of terms as no reasonable notice was given on the face of it for drawing the attention of the parties entering into the contract.

Plaintiff could recover the loss despite of the exemption clause.

2. notice should be contemporaneous with the contract

Notice of the terms and condition should be given before or at the time of contract when it is to be signed. A subsequent notification will indeed amount to a modification to the

original contract and will not bind the parties unless he has assented thereto.

Olley v. Marlborough Court ltd 1949

Olley was a guest in the defendant hotel. On arrival, Olley paid for a week's board in advance and then went to the room. In the room, a notice was displayed stating the proprietors would not be responsible for any items lost or stolen, unless handed to them for safe keeping.

Olley left the room and deposited her key on the board in reception before leaving the hotel.

The key was taken and several items were stolen from her room. Olley sought damages in negligence.

In this case the court held the hotel authorities are liable because the notice of the terms and conditions were given subsequently at the time of checking in and hence was not the part of the agreement.

AVM machines: terms and conditions written on the back of their ticket are not the conditions written at the time of contract. Hence, they are not binding to us as because they are subsequent conditions. A notice board is always there before a person enters any contract with an AVM Machine.

As clearly said by Lord Denning it is duty of the party relying on a clause to its benefit to make it clear to other party the terms and condition of contract in the famous case of *Thornton V. Shoe Lan Parking Ltd.*

3. Theory of fundamental breach:

According to this rule, one cannot exempt themselves from the fundamental duty by imposing the conditions in the contract and the party entering into the contract may not rely on them if the party imposing the conditions has committed a breach of contract which can be described as fundamental.

Hollins v. Darvey Ltd 1963

If the party slip exempting the people from the liability of loss of car from mis delivery or theft of car, it is fundamental breach as it is their fundamental duty to take care the car and not misdeliver the same. Thus, in such cases these people can be made liable.

NEGLIGENCE AND FUNDAMENTAL BREACH

OPPONENTS of the doctrine of fundamental breach of contract will no doubt derive considerable satisfaction from the decision of Sachs J. in *Hollins* v. *J. Davy, Ltd.*[1] The plaintiff garaged his motor-car at the defendants' garage under a monthly contract which stated: "Conditions for garage facilities. (A) That the customer relieves the company from all liability for loss of or damage to customer's goods, however caused. (B) All customers are therefore respectfully notified that we do not accept responsibility for loss or misdelivery of, or damage to, any vehicle, accessories or other goods, whilst in our hands for any purpose, arising from any cause including negligence."

Davies v. collins 1945

In this case, court held that sending the uniform to the sub-contractor was outside the terms of contract, thus exemption

clause will not apply here and the drycleaners were made liable for the full value of the uniform.

In England, this has been given a statutory recognition i.e. unfair contract terms Act 1977

It is an Act of Parliament of the United Kingdom which regulates contracts by restricting the operation and legality of some contract terms. It extends to nearly all forms of contract and one of its most important functions is limiting the applicability of disclaimers of liability. The terms extend to both actual contract terms and notices that are seen to constitute a contractual obligation.

Liability in Tort:

Contractual liability may not be there but tortious liability is always there.

White v. John Warwick & co. 1953

The plaintiff hired a trademan's cycle from the defendants. The written agreement stated that "Nothing in this agreement shall render the owners liable for any personal injury". While the plaintiff was riding the cycle, the saddle tilted forward and he was injured. The defendants might have been liable in tort (for negligence) as well as in contract. The Court of Appeal held that the ambiguous wording out of the exclusion clause would effectively protect the defendants from their strict contractual liability, but it would not exempt them from liability in negligence.

UNREASONABLE TERMS:

Lily white v. Munuswami 1966 MAD

the laundry receipt of the appellant contained the condition that in the event of loss of or damage to the article given for washing, the customer would be entitled to claim only 50 per cent. of the market price or value of the article. The respondent's new saree was lost. The court gave relief to the customer, holding that the condition would place a premium upon dishonesty inasmuch as it would enable the cleaner to purchase new garments at 50 per cent of the price and that would not be in public interest.

Levision v. patent steam &co 1972

Unreasonable terms could not be imposed and are not applicable on the parties, therefore the whole amount could be recovered from the person.

Capacity to Contract



Capacity to Contract

Capacity to contract means the competency to enter into a valid contract legally.

The capacity to contract binds the parties of the contract with a promise to oblige by it. But only certain persons have the competency or the capacity to make a contract.

According to section 11& 12, the capacity to contract is determined.

The following are the people who have the capacity to contract:

1. People who have crossed the majority age [majority is been specified by Indian Majority Act 1875] Any person who is not of the age of majority is a minor. In India, 18 years is the age of majority. Below the age of 18 years does not have the capacity to enter into a

contract. A contract or agreement with a minor is null from the beginning, and no one can sue them.

the main purpose of this is to safeguard the interest of the weaker sections of the society. This concept is based on the concept of "social engineering"

agreements with minor are void ab initio:

Mohori Bibee v/s dharmodas Ghose 1903 PC

It is a case that covers the ambit of minor's agreement. This case basically deals with a minor's contract or a contract with a minor. In India, an agreement or a contract with a minor (a person who is below the age of 18 yrs. or any person who has not completed 18 yrs. of age legally) is void ab-initio (void from very beginning) such rules and regulations are made because, according to law such people does not comes under the ambit of capacity of contract or agreement of doing so.

FACTS:

- ✓ Dharmodas Ghose, was the respondent in this case. He was a minor (i.e. has not completed the 18 years of age) and he was the sole owner of his immovable property. The mother of Dharmodas Ghose was authorized as his legal custodian by Calcutta High Court.

- ✓ When he went for the mortgage of his own immovable property which was done in the favour of appellant i.e. Brahmo Dutta, he was a minor and he secured this mortgage deed for Rs. 20,000 at 12% interest rate per year.

- ✓ Bhramo Dutta who was a money lender at that time and he secured a loan or amount of Rs. 20,000, and the management of his business was in the control of Kedar Nath, and Kedar Nath acted as the attorney of Brahmo Dutta.

- ✓ Dharmodas Ghose's mother sent a notification to Brahmo Dutta informing him about the minority of Dharmodas Ghose on the date on which such mortgage deed was commenced.

- ✓ but the proportion or sum of loan that was actually provided was less than Rs. 20,000.

- ✓ The negotiator or representative of the defendant, who actually acted instead of on behalf of money lender has given money or sum to the plaintiff, who was a minor and he fully had knowledge about the incompetency of the plaintiff to perform or enter into contract and also that he was incompetent legally to mortgage his property which belonged to him.

- ✓ After that, on 10thSept. 1895 Dharmodas Ghose along with his mother brought an legal suit or action against Brahmo Dutta by saying that the mortgage that was executed by Dharmodas was commenced when he was a minor or infant and so such mortgage was void and disproportionate or improper and as a result of which such contract should be revoked

or rescinded.

- ✓ When this petition or claim was in process, Brahmo Dutta had died and then further the appeal or petition was litigated or indicted by his executor's.

- ✓ The plaintiff argued or confronted that in such case no relaxation or any sought of aid should be provided to them because according to him, defendant had deceitfully or dishonestly misinterpreted the fact about his age and because if mortgage is cancelled at the request by defendant i.e. Dharmodas Ghose.

JUDGMENT:

According to The verdict of Trial Court, such mortgage deed or contract that was commenced between the plaintiff and the defendant was void as it was accomplished by the person who was an infant at the time of execution of mortgage.

the Privy Council also dismissed the appeal of Brahmo Dutta and held that there cannot be any sought of contract between a minor and a major person.

The final decision that was passed by the Council were:-

1.Any sought of contract with a minor or infant is void/ void ab-initio (void from beginning).

2.Since minor was incompetent to make such mortgage hence the contact such made or commenced shall also be void and id not valid in the eyes of law.

3.The minor i.e., Dahrmodas Gosh cannot be forced to give back the amount of money that was advanced to him, because he was not bound by the promise that was executed in a contract.

Modern Day view:

Hon'ble SC accept the view of Privy council in the case of:

1) Wali singh v. sohan singh SC 1954
2) Padma Vithoba v. Mohd Multani 1965 SC

Effect of Minor's Agreement

Ratification: it means to regularise something. If the person who was minor at the time of contract but later he become major.. he cannot ratify that earlier contract. If it get ratify it means that it is giving the effect to that agreement which was void ab initio. This is based on the doctrine of colourable legislation which means: What cannot be done directly cannot be done indirectly

Suraj Narayan v. Sukhu Amir 1928 All HC

Irwin v. Union Bank of Australia

Estoppel: Estoppel is a legal principle that **prevents someone from arguing something or asserting a right that contradicts** what they previously said or agreed to by law. It is meant to prevent people from being unjustly wronged by the inconsistencies of another person's words or actions.

Nawab Sadiq Ali v. Jai Kishore PC 1927

A person who is contending that because of the misrepresentation done by the minor of his age, he entered into a contract does not have any defence of the plea of estoppel. Law of estoppel cannot be applied against the statutory law. It is a principle of equity and justice and it cannot override statutory law. Estoppel means to help the law not to contradict the law. Therefore in the above cited case, privy council held that when section 11 specifically says minor is not competent to contract then it can't be changed because of the estoppel.

Doctrine of restitution:

If a minor has gained a property or any goods by falsely representing his age, he can be compelled to restitute it, but only if the same is traceable.

The Courts may, on the ground of equity, ask the minor to return his ill-gotten gains as he cannot have under the guard of infancy liberty to cheat.

Where the minor has sold the property or goods or converted it to something else, he cannot be made to repay or restore the value of goods, because that would amount to enforcing a void contract.

The doctrine of restitution cannot be applied in cases where it becomes difficult to trace the goods or the minor has acquired cash instead of goods.

A well-known case of Leslie (R) Ltd v. Sheill where a minor tricked some money-lenders by misrepresenting his age and got them to lend him the amount of £ 400 thinking of him being an adult.

The plaintiff attempted to recover the principal amount and interest as damages for fraud but failed as there is no estoppel against the minor. Further, the money-lenders relied upon the doctrine of restitution, contending that the minor should be liable under the equitable grounds to restore the money.

Lord Sumner rejecting this contention held that the money paid to the defendant (minor) was used for his own use. There is no way of tracing the money and no option of restoring it as this would lead to enforcing a void contract.

However, where a minor moves the court for cancellation of his contract, the court may grant relief with a condition that he shall restore all the gains obtained by him under the contract, or make suitable compensation to the opposite party under Section 30 and Section 33 of the Specific Relief Act, 1963.

If the minor has sold a land for cash, then that cash cannot be recovered from that minor as the goods are not traceable and are sold.

Doctrine of restitution in Indian laws:

They are been reflected under section 64 and section 65 of Indian Contract Act. Section 64 talks about the restitution of cases in voidable contracts while section 65 talks about the contracts which were discovered to be void. In case where the contracts were later discovered void, then the court has the full power to grant restitution as well as compensation to the parties.

They are also reflected under old SRA's section 41 and new SRA's section 30& 33.

In Mohiri Bibi case the Hon'ble SC denied the party to give restitution rights on the basis of the principle that notice to the agent is the notice to the party and thus applied the equity principle that one must come to the court with the clean hands. The court also denied for restitution under rest two provisions that is sec 64 and sec 65 ICA.

After which the judgment acted as a weapon for the minor, therefore Indian courts tried to modify the doctrine as per the situations prevalent.

Khan gul v. Lakha Singh 1928 lahore HC case

In this justice Shadilal clarified the applicability of doctrine of restitution in our country. He categorically held that this doctrine is not however confined to those cases cover by those sections. The doctrine rest upon the statutory principle that an infant cannot be allowed by the court of equity to take advantage of his own frauds. Therefore, in this case even though the doctrine does not apply to cash cases but still the refund was initiated from the accused.

The law commission also prefer the view of justice shadilal and the controversy was finally ended by upcoming of section 33 of SRA, 1963.

Under section 33, the minor himself went to court to declare the contract void.

(1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

Restoration will be done in this case only to the extent he and his estate get the benefit thereby.

Where a defendant successfully resists any suit on the ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit [only the permanent benefit] [temporary benefits are excluded from it] to that party or to make compensation for it;

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

Bhim Mandal v. Mangaram corain 1961 Pat HC

In this case It was held that doctrine of restitution does not apply in case the party itself is willing to enter into a contract via making an agreement with the minor. Even when the minor is the plaintiff and where the other party was aware of the infancy or the minority and that means he was not deceived.

Exceptions:

Where the contract is beneficial for the minor, in that case the agreement is valid.

Contract beneficial to the minor:

The decision in *Mohoribibi* case is confined to cases where a minor is charged with obligations and the other contracting party seeks to enforce those obligations against him.

Accordingly, a minor is allowed to enforce a contract, which is of some *benefit* to him and under which he is required to bear no obligation.

The justification is that law protects the interest of the weaker sections of the society, here the contracts are made for his benefits thus his interest can only be protected by making enforceable. Hence, they are and they should be enforceable by law.

- ✓ Minor can be transferee

Raghav Chariar v. Srinivas Mad HC 1916

Privy Council in Mohori Bibee v. Dharmodas Ghose (1909) which decided, so far as is material for the present case, that a mortgage by a minor was void.

A mortgage is a transfer of property and their Lordships pointed out that under Section 7 of the Transfer of Property Act persons competent to contract are competent to transfer property and went on to show that under the Contract Act a minor is not competent to contract.

They, therefore, as I understand, held that the transfer by the minor was bad.

The question then raised was whether it makes any difference that the transfer in favour of the minor by way of sale or mortgage is made in consideration of a price paid or a loan advanced by the minor.

Abdur Rahim, J. answer in the affirmative that a mortgage executed in favour of a minor who had advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf.

Thakar Das v. *Mt Putli 1924 lah HC*

it was held that a minor is capable for purchasing immovable property and he may sue to recover the possesion of the property purchased upon tender of the purchase money.

K Balakrishnan v. Kamalam 2004 SC

Gift deed can also be made in favour of the minor. Hence, he can also be a donee. Section 127 TPA also clears the same.

Great American Insurance Co. v. Bom HC 1935

In this case the court held that agreements made for the benefit of the minor are enforceable. Thus, in this case the minor who had insured his goods with an insurance co. and paid the premium amount then the company cannot deny the performance on the basis that agreement with minor is void. Hence in this case the minor was entitled to the insurance money.

Sharfat ali v. noor mohammad Bom HC 1924

In this case it was held that promissory note executed in favour of the minor can be enforceable by the law.

Jaykant HarKrishna Das Shah v. Durga Shankar 1970 Guj

Minor cannot be the lessee, lease is not like other transfers as in lease, there arose a liability. It is to be executed by both the parties.

Covern v. Nield 1912 KB

Trade contracts are not included in beneficial contracts. Thus when a minor, while carrying on business, enters into a trade contract such contract, will not be binding on him. A minor can also be supplied with "*necessaries* suited to his condition in life" (e.g. food, lodging, education) and the supplier of such necessaries is entitled to be reimbursed from the property of the minor.

Contract of apprenticeship

A minor is bound by the contract of *apprenticeship* under the Apprenticeship Act, 1850.

Under English law, infant is bound by the contract of apprenticeship as well as contract of service because such contracts are beneficial to him and help him in earning his livelihood.

Unlike English law, contracts of *service* entered into by a minor are void in India.

In *Raj Rani* v *Prem Adib* (AIR 1949 Bom),

The father of Raj Rani, who was a minor, entered into a contract on her behalf with Prem Adib, a film producer. According to the contract, Raj Rani was to act as a film actress on payment of a certain amount. Raj Rani was not given any work.

She sued the producer for the breach of contract. The Bombay High Court held that neither she nor her father could have sued on the promise.

If it was a contract with the plaintiff, she being a minor, it was a nullity. If it was a contract with her father it was void for being without consideration.

Contract for marriage:

A contract for the *marriage* of a minor is also prima facie for his or her benefit. While the contract of marriage could be enforced against the other contracting party at the instance of the minor, it cannot be enforced against the minor.

Abdul Razak v. Mohd Hussain 1916 bom

It was clarified that a contract of marriage could be enforced only in the favor and not against the minor

Tulsi ram v. Roop chand 2006 Mah

It was the plaintiffs' case that the betrothal ceremony was held and where about 100 guests descended and 300 guests of the defendants feasted.

Plaintiff No. 1 was required to spend about Rs. 7,300/- on this ceremony. He had reserved a marriage hall by depositing a sum of Rs. 1,300/-. 1,500 marriage invitation cards were also distributed.

The defendants with their other relations came to the plaintiffs' house and demanded scooter, gold ring, etc. Plaintiff No. 1 expressed his inability to give such gifts. Defendant No. 1, therefore, refused to marry plaintiff No. 2.

The marriage was broken on 4th June, 1989. The plaintiffs, therefore, claimed damages of Rs. 35,000/- for lowering the plaintiffs' esteem in the Society, mental torture and compensation of amounts actually spent.

It would be clear from the facts of the said case that it rested on the absence of capacity in the minors to clothe their uncle with power to contract on their behalf.

Jamna Bai v *Vasanta Rao* (1916)

A minor cannot be a partner in a partnership firm, but under Sec. 30 of the Indian Partnership Act, he can be admitted to the 'benefits of partnership'.

The minor shall not share losses except when liability to third parties has arisen but then too upto his share in the partnership assets; he cannot be made personally liable.

Where a minor and an adult *jointly* enter into an agreement with another person, the minor has no liability but the contract as a whole can be enforced against the adult.

2. Those with a sound mind

The contract law refers to the medical dictionary for the definition of an unsound mind person.

The mental incapacity prevents the person from understanding the transactions and also the awareness of its implications.

An agreement or contract with an unsound mind person stays inoperative and void. Such a person cannot avail any benefits from the contract. The property of such a person is always liable.

A person who is normally of unsound mind but occasionally of sound mind can contract when he is of sound mind. This is the lucid intervals.

3. Person Disqualified by Law

If the law does not accept any person, then he does not have the capacity to enter into a contract. The law should qualify a person for them to be a part of a contract. For example, person declared by Bankruptcy and insolvency act as insolvent is a person disqualified by law.

Conduct of Partnership:

Q- can a minor be Partner?

Section 30 of the Indian Partnership Act, provides that though a minor cannot be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership by an agreement executed through his guardian with the other partners.

1. A **minor can be admitted** to the benefits of partnership with the consent of all the existing partners. It should be noted that consent of **all the partners** is required for a minor to be admitted in a partnership.
2. There must be a **partnership in existence** before a minor can be admitted to its benefits. Thus, a minor cannot form a new partnership but can be admitted in an existing partnership.
3. There cannot be a partnership consisting of all minors

q- whether Minor can be made liable in case of loss?

NO as he is not personally liable. He could only be held liable to the extent of share he is holding in such partnership firm.

The minor is not personally liable to the debts of 3rd parties for the debts of the firm, but his liability is limited only up to his share in the partnership assets and profits. If partnership falls short in short in extinguishing the debts of the firm the separate person property of the minor cannot be applied for the payment of the debts of the firm.

Agreement btw adult and Minor with third party; is it enforceable?

Yes..

But in this case if there's any liability then that minor will be excluded from it.

Where a minor and an adult *jointly* enter into an agreement with another person, the minor has no liability but the contract as a whole can be enforced against the adult *[Jamna Bai* v *Vasanta Rao]*

MINOR as AGENT: SEC 184 ICA

MINOR as Principal: Sec 183 ICA

Sec 8&9 Hindu Minority and Guardianship Act:

The guardian on the behalf of the minor can transfer the property of minor with the leave of the court. However, it is voidable at the option of the minor.

According to the above stated provisions, a guardian can alienate the property of the minor with the permission of the court for the benefit of the minor. If the property is alienated without court's permission, it will be voidable at the instance of the minor or person claiming under him.

Section 68 of ICA:

68. Claim for necessaries supplied to person incapable of contracting, or on his account. —

If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person

So, a *minor's agreement* amounting to payment for necessaries can be enforced. If a minor had acquired payment falsely by concealment of age, then he might be compelled to restore the payment. However, he cannot be obliged for an identical amount, if any, as it would sum to enforcing a void contract.

Chapple v Cooper (1844)

- A minor whose husband had recently died contracted with undertakers for his funeral. She later refused to pay the cost of the funeral, claiming her incapacity to contract. The court held her ***liable*** to pay the bill.

- The funeral was for her private benefit and was a necessary as she had an obvious obligation to bury her dead husband.

'**Necessary**' does not mean '**necessity**'

'the proper cultivation of the mind is as expedient as the support of the body'.

Baron Alderson in *Chapple v Cooper*

- "Necessary" can be more than just food and clothing.
- what is deem necessary may differ according to the particular minor.

Example :

Latest Apple laptop – for a Business student or Graphic Design student.

How the Court determine what is "necessary"?

2-part test :

(1) The goods must be necessary according to the 'station in life' of the minor.

- The goods or services must suit the actual requirements of the minor at the time of the contract.

The onus is on the **supplier** to satisfy the Court.

Nash v Inman (1908)

- A Cambridge undergraduate, the son of an architect, was supplied with clothes, including 11 'fancy waistcoats', to the value of $122.

- The cloth could be appropriate to the *station in life* of the undergraduate, but the contract was not enforceable because the minor was already adequately supplied with clothes.

- Therefore clothes supplied by the tailor could not be classified as necessaries.

Person of Unsound Mind:

According to Section 12: A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind."

illustration: (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b): A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Sanity must be seen at the time of entering into a contract and not during the execution of the contract.

In **Inder Singh V. Parmeshwar dhari Singh (AIR 1957)**

a property worth about Rs. 25,000 was agreed to e sold by a person for Rs. 7,000 only.

His mother proved that he was a born idiot incapable of understanding the transaction. The court held sale to be void.

The Court observed: *"According to Sec. 12, the person entering into a contract must be person who understands what he is doing and is able to from a rational judgment as to whether what he is about to do is to his interest or not. The crucial point, therefore, is to find out whether he is entering into the contract after he has understood it and in regard to his interest…*

It does not necessarily mean that a man must be suffering from lunacy to disable him from entering into a contract. A person may behave in a normal fashion, but at the same time, he may be incapable forming a judgment of his own… In the present case (he) was incapable of exercising his own judgment."

Test of Unsoundness of Mind:

It is whether a person is incapable of understanding the business concerned and of forming a rational judgment as to its effect upon its interest.

Sanity:

1. Medical insanity
2. Legal insanity

Rational judgment:

Its literal meaning is using reason or **logic** in thinking out a problem. It means the person has the capacity to

evaluate the effects of the transaction. He is able to see the pros and cons of the contract.

What if the judgment goes wrong as the person was of very low IQ? Whether that person be covered under unsound mind?

NO

IN CASE of person of unsound mind, judgment per se cannot be formed. Therefore, a mentally weak person and a mentally incapable person both have a distance of ground and sky.

Case laws:

1. Tilok Chand v. Moti chand 1933 Lah HC

In this case it was held that for a valid contract, the test of soundness of mind must be satisfied at the time of contract is made.

2. Imperal loan v. store 1892

It was held that contract by unsound mind person is a voidable contract at the option of party who is of unsound mind.

Disqualified from entering into Contract

Following are disqualified to enter into contract:

1. Convicts
2. Insolvent Person
3. Alien enemy
4. Foreign Sovereigns & Ambassadors
5. Company going Ultra Vires it's memorandum
6. Pardanashin Women

Alien enemy: A person who is not an Indian citizen is called an alien or non-citizen of the Republic of India.

An alien enemy is a person whose country is at war with India.

In India, a contract with an alien enemy is void but a contract with an alien friend is valid under the Indian Contract Act.

No contract can be made with an alien enemy during the subsistence of war, except with the prior approval of the Indian Government.

Sec 83 CPC also lays down that enemy alien residing in India without permission of central govt. cannot sue in the country.

Convicts: A convict is a person, who is sentenced by a competent court to the death sentence or imprisonment.

A convicted person cannot enter into a contract while undergoing sentence.

When the period of his sentence is over or he is pardoned, then his incompetency is also over.

However, he can sue anyone by the help of his agent but in case his personal performance is required therefore because of the non-availability he cannot entered it into.

Insolvent: There is no prohibition against a contract by an insolvent after the insolvency proceedings have commenced but before adjudication.

In simple words, the insolvent is disqualified from entering into a contract until he is discharged by the court of law. However, he can make contracts such as personal contracts or for buying the property. he is only been disqualified from selling his property.

Foreign sovereigns and diplomats: Foreign sovereigns have some special privileges.

Generally, they cannot be sued unless they, themselves surrender under the jurisdiction of the Indian court of law. They cannot enter into a contract unless an Indian citizen obtained a prior sanction of the Government of India, in order to sue them in the Indian court of law.

Corporations: The power of a corporation to make a contract vary according to the character of the corporation.

A company is an artificial person created by law and is competent to contract.

But its power of contract is subject to the limitation which may be either necessary or express.

A company cannot enter into contract if the objective of such contract does not fall in their memorandum of association.



Consent:

- According to Section 13 of the Indian Contract Act, 1872 consent means when both parties agree to a thing in the same sense of mind or unison of mind.
- Same thing in same sense [Smith v. Hughes 1871 Lr QB]
- The principle of *consensus-ad-idem*
- *Consent is a bilateral act whereas proposal and acceptance are unilateral acts.*
- Proposal and acceptance assent is required while in bilateral acts where proposal assent and acceptor assent meets, then there is consent.
- Illustration

“A” and “B” are the two parties in a contract. It was seen that there was some crisis and “A” had put a plan forward to solve it. “B” after being made aware of this fact and analysed that it was the perfect solution, agreed to it. In this case, both parties showed their consent.

Elements of free consent

- Consent is considered to be free consent when the following factors are satisfied:
- It should be free from coercion.
- The contract should not be done under the pressure of undue influence.
- The contract should be done without fraud.
- The contract should not be made through misrepresentation.
- The contract should not be made by mistake

According to section 10:

For an agreement to become a contract, there must be free consent.

Free consent is defined u/s 14.

Sec 14:

—Consent is said to be free when it is not caused by—:

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Section 15:

Coercion:

Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code.

- the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

The consent given by acceptor under coercion is not a valid consent. Such consent is voidable u/s 19.

the party under coercion has a right to challenge the legality and validity of such contract.

Detention of property:

Unlawful detention of the property is not an offence in IPC. However, such detention of person is an offence. Therefore, its specifically written.

A had a plot worth Rs 1 crore. B kidnaps A's Son and threats him that he will kill his child if he did not sell his property in 10 lakh rs.

Even though the offence is committed against a person stranger to the contract, it is still covered in coercion. The essential element is that it must be done with an intention of causing another person to enter into agreement. Moreover, it is not necessary that the offence must be committed by B. it is also covered if done to the stranger for a contract.

A' went out for a walk, 'B' approaches 'A' with a stranger, pulls out his gun and asks 'A' to give all his possessions. The consent of 'A' is obtained by coercion here.

Effect

Coercion has the effect of making the contract voidable. It implies that at the discretion of the party whose consent was not free, the contract is voidable. The aggravated party will, therefore, determine whether to enforce the contract or to cancel the contract.

Coercion under English Law:

Entering into a contract under duress, which is a type of coercion, will make the contract unenforceable. For instance, if you purchase a product from a company, and the company refuses to complete the delivery until you give them more money, this would be a form of duress.

Difference between Coercion and Duress

The term ‘duress’ corresponds to coercion in English law. However, Coercion under the Indian Contract law has a wider amplitude than duress under the English law. The difference was laid down in the case of Karappayae Ammal v. Karruppiah Pillai 1887 Mad HC

Coercion	Duress
Coercion can be employed against any person	Duress can be employed only against the life or liability of the other party to the contract or members of his family.
Immediate violence subsequent to coercion is not an essential element.	Duress must cause immediate violence.
Unlawful detention of goods is a kind of coercion.	Unlawful detention is not duress under the English Law.

Techniques for causing coercion

- Threatening to commit any act which is prohibited by the Indian penal Code.
- Detaining not as per law or even threatening to detain any property, with the sole intention of compelling a person to enter into a contract.

Acts forbidden by IPC

- The word act prohibited by the Indian penal code makes it necessary in a civil action for the court to decide whether the alleged act of coercion is amount to an offence.

- A threat of bringing a false charge with the object of making another do a thing amounts to blackmail or coercion.

- In the case of Ranganayakamma v Alwar Sett, where the widow was prohibited from removing the corpse of her husband until she consented for the adoption.

- The court said that her consent was not free and it was coerced. It is clear that coercion is committing or threatening to commit any act which is contrary to law.

Unlawful Detention of property

Consent can be said to be caused by coercion if it is induced because of illegal confining of a property, or a danger to do as such.

With a specific goal of acknowledging the child's due fine, the legislature annexed the property both of him and his father having a place, the instalment made by the father at that stage bearing in mind the ultimate goal of saving the property from being sold was kept to be made under coercion.

Refusal by the government to discharge a temporary worker's instalment unless he surrenders his demand for additional rates adds up to intimidation under the land detention class.

Moot Proposition:

A died leaving her widow B with no child. A's brother forced B to adopt a child by restraining her from doing funeral rights of her husband. The widow adopted the brother's child.

The adoption was done under coercion. Hence, it is voidable. This is also an offence u/s 297 IPC. Causing disrespect to the human dead body.

Chikham Amiraju v. Chickam Seshamma 1912.

In the instant case, the Husband Held held out a threat of committing suicide to his wife and son if they did not execute a release deed in favour of his brother. The wife and son executed the release deed under the threat.

The question was whether a threat of committing suicide amounts to coercion?

Court Held that the threat of suicide amounted to coercion within Section 15 of the Indian Contract Act, 1872 and the release deed was, therefore, voidable"

Aksari Mirza v. Bibi Jai Kishori 1912

- A criminal prosecution was instituted against a person and fearing the result of prosecution, he entered into an agreement in consideration of the other party abandoning the prosecution. It was held that the threat of criminal prosecution is not per se an act forbidden by **the Indian Penal Code.** Hence, consent is **valid.**

Explanation.—

It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

Illustration:

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code. (45 of 1860).

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code (45 of 1860) was not in force at the time when or place where the act was done.

Undue influence:

unfair advantage is the advantage or enrichment which is obtained through unrighteous or unjust means.

According to Section 16 of the Indian Contract Act, 1872 an influence will be considered as Undue Influence when:

- One party to the contract is in a position of trust and controls the other party wrongfully.
- Such a person uses his dominant position to gain an unfair advantage over the other.

There are two key elements of undue influence-

1. The relationship- trust, confidence, authority.
2. Unfair persuasion- careful examination of the terms of the contract.

16. “Undue influence” defined.—

(1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

- There shall be relation btw the parties
- It shall be such that one party has the dominance over other
- The other person is used to obtain any unfair advantage

A person in a blind spiritual faith to some Guru who in his dominance takes his property be said to be in undue influence.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or [

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Real or apparent authority:

In this type of influence, there is a real authority like a police officer or an employer who uses his dominance for his enrichment.

A father- son relation could also be a suitable example for real or apparent authority.

Where one party is in a fiduciary relation to the other party

Fiduciary relationship means a relationship of trust and confidence. When a person imposes faith and confidence on the other, he expects not to be betrayed. If the other party betrays the confidence and trust reposed in him and gains an undue influence.

Examples of fiduciary relationship includes:

- Solicitor and client;
- Trustee and trust;
- Spiritual adviser and devotee;
- Medical attendant and patient;
- Parent and child;
- Master and servant;
- Employer-employee

In other words, we can say that Undue influence occurs when the decision of another party to the transaction can be influenced by one party.

Example

'A' sold his gold ring to his teacher 'B' for Rs 200 after he had been offered good grades by his teacher. Here, A's permission is not given freely, he was influenced by his teacher.

Effect

The effect of undue influence makes an agreement voidable at the option of the party whose consent was caused. Any such contract can be set aside. Only a party to the contract can avoid or rescind the contract. This right does not lie in the hands of the third party.

Mental Capacity affected:

This could be:

1. Temporarily

2. Permanent

It could be by the reason of age, illness, mental or bodily distress.

The person in no case here is an unsound person. He is not mentally capable but still he can make rational judgement.

Without prejudice to the generality of the foregoing principles.

This phrase includes persons who apparently are not in any fiduciary relationship but they may have some kinds of dominance over the party. For instance, relation of friends, husband- wife etc.

Here the party has to prove that the other party was having a dominance over it. There is no presumption left to the court for such cases.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him,

and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable,

the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

A general rule is that the submissive party has to prove the fact that he received dominance from the party- 102 IEA.

But 16(3) is an exception to it., any transaction if it's unconscionable. or unbelievable and same been shown to the court. Then in such case, the BOP shifts to the dominating party that he did not induce the other.

Examples of Such Exceptional Cases:

If the person has inequal bargaining power for instance, a widow had no money even to do the last rites of her husband and the money lender let her money at 100% interest.

Annapurani v. Swaminathan Chettiar 1909 ILR Mad.

In this case, a Hindu widow having no means of maintenance borrowed money at 100% interest. the court held that this was a case of undue influence on such helpless widow.

Wajid Khan v. Raja Ewaz Ali Khan 1890 PC

There was an illiterate old lady who was not able to do any business. So she conferred upon her managing agent, a pecuniary benefit under a guise of a trust without any consideration which would be unconscionable. Therefore, BOP shifts on the manager to prove that this gift deed was not from any undue influence.

A Transaction with Pardanashin Woman

When a Woman can be viewed from the screen or is placed behind the screen i.e veiled is called Pardanashin Woman.

The protection of those women is rooted in the principle of good conscience and equity. Special laws are made for these women because they are subjected to ignorance, infirmity, illiteracy, etc are thus easily influenced.

The burden of proof should be provided against the person who is transacting with a Pardanashin woman.

He has to prove that the transaction had taken place with the consent of the women and her decision was taken by her without any coercion or enforcement and she was made well aware of the provision

mentioned in the document of the transaction by the other party with whom she has made the contract.

In the case of Tara Kumari vs Chandra Mauleshwar Prasad Singh, it was delivered by the court that the essential thing to establish the burden of proof is that the party executing them should be a free agent and the women should be informed about the terms and conditions of a contract.

In the case of Kuna Dei vs Md Abdul Latif, it was delivered by the court that showing of the document to the Pardanashin women won't be enough to establish the burden of proof. Thus, he has to show that the women were explained clearly the facts in the document of the transaction.

This principle also applies to men also, as in the case of Daya Shanker Vs Bachi, who by their physical or mental capacity is prone to easy influence and after inducement tends to enter into a contract or transaction relating to purchase and sale of the property.

The principle on which the protection by law is made for a Pardanashin women is based on equity and good conscience of women

Chand Singh v. Ram Kumar PLR 1987

Pardarshini Ladies completely cut off from the society and remains behind the parda. They don't make any public appearance at all.

In this case, a similar lady had 3 daughters but she gifted her all property to her manager. Since she had 3 daughters already therefore, the BOP is on the manager that he had not done any undue influence.

Bhima Bai v. Yashwant Rao 1909 Bom HC

The person was unable to pay his debts. He sold his property to his creditors in 1/3rd price. The court held that here the BOP is on the creditors that the transaction was genuine.

It is not necessary that where there an inequal opportunity of bargaining will always be an undue influence. For instance, standard forms of contract.

16(3) does not affect sec 111 IEA

111. Proof of good faith in transactions where one party is in relation of active confidence.—

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence. Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

[19A. Power to set aside contract induced by undue influence.—

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

(a) A‟s son has forged B‟s name to a promissory note. B under threat of prosecuting A‟s son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

This section is an effect of contract made under undue influence.

In case of undue influence, there is an option of partial recission which is not available in case of coercion, fraud and misrepresentation.

Contract can be partially set-aside which is an unfair advantage and remaining part can be enforced.

20th Nov

Fraud:

Section 17 of the Indian Contract Act, which defines fraud in contracts.

The section provides an inclusive definition.

fraud is a kind of misrepresentation but in this the person who commits fraud on another has an intention to deceive.

Derry v. Peak 1889

The court held that fraud is when false misrepresentation is made knowingly or without believe into the truth or recklessly with intention to deceive.

Section 17 describes fraud and lists the acts that amount to fraud, which are:

a false claim, active concealment, promise without the intention of carrying it out, any other deceptive act, or any act declared fraudulent.

To constitute fraud, the essential conditions are:

1. *There must be a contracting party, or any other individual with his connivance [stranger], or his agent,*

2. *That person induces him [opposite party] to enter into the agreement, should have performed such acts.*

3. *There must be always an intention to deceive.*

4. *Overhearing of false information by the party from any other person does not amounts to fraud.*

Fraud implies and involves any of the following acts committed by a contracting party or his connivance or his agent with the intention of deceiving or inciting another party or his agent to enter into the agreement.

- *The suggestion, as a fact, of that which is not true by one who does not believe it to be true.*

- *The active concealment of a fact by one having knowledge or belief of the fact.*

There are two types of concealment:

Active

Passive

This section deals with the active concealment.

For instance, A, a shopkeeper wilfully hides the fact that the chair is broken from a side, he temporarily taped it for the purpose of sale. This is active concealment.

Mere silence: passive concealment

The parties have no duty to speak about facts likely to affect the consent of the other party to the contract.

> *This rule is based on the principle of "caveat emptor".it means "let the buyer be*

beware". This duty is enshrined in sec 16 of SOGA.

mere silence does not amount to fraud unless the circumstance of the case shows that there is a duty to speak or silence equivalent to speech.

Illustration– *A sells by auction to B a horse, which A knows to be unsound, A says nothing to B about the horse's unsoundness. This is not fraud in A.*

Exceptions to caveat emptor:

1. *Duty to speak: uberimma fides [utmost faith] fiduciary relationship cases usually come under this.*
2. *Where silence itself equivalent to speech[exp to sec 17]*

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, As silence is equivalent to speech.

- *A promise made without any intention of performing it.*

Dilip Singh v. state of Bihar 2005 SC

In this case, the couples were having a live-in relationship. The boyfriend obtained the consent of the girl for having sexual intercourse with making her believe that he will marry her. Since the promise of marriage was false and was made to receive unjust benefits. Therefore, this amounts to fraud.

Y Srinivas v. State of AP 2006 SC

The facts of the case are the girl used to attend cooking in her sister's house in day time. The accused used to visit the house during noon regularly when the girl was alone. HE persuaded her to have sexual intercourse by telling her that he would marry her. Girl resisted for this for sometimes but later on one day, the accused came to the house, closed the doors and committed forcible sexual intercourse with her against her will and consent.

When she protested as to why he spoiled her life, accused promised that he would marry her.

Subsequently, the process continued for some time. When she became pregnant she informed the accused and he gave tablets for

abortion in order to get rid of pregnancy which did not work. Subsequently, the girl insisted the accused to marry her.

The accused informed her that as his parents were not agreeing for the marriage, he would not marry her.

She brought this fact to the notice of her sister - PW2.

Thereafter, the matter was reported to the Panchayat. The accused accepted the guilt and promised to marry PW1 but subsequently, he absconded from the village.

Since the persuasion could not fructify, PW1 lodged a report against the accused to police and, therefore, the police registered a case as per the prosecutrix report for the offences punishable under Section 376 and 417, IPC. After completion of investigation, police filed a challan against the accused.

> The girl was not able to prove that at the time of making the promise to marry, the boy has no intention to actually marry. Thus, the boy was held not liable to rape. Though it is a breach of contract but it is not fraud.

The court held that intention to deceive its to be seen at the time of making the promise. If

the promisor had made the promise without intention of performing it at the time of making the promise, then it will not amount to fraud even if subsequently the situation changes and he could not perform his promise.

Any other act fitted to deceive.

This clause is a residuary clause and non-exhaustive in nature. /

- *Any such act or omission as the law specially declares to be fraudulent.*

This is covered under clause 5. One example could be sec 53 of TPA

In following situations deceit will not amount to fraud:

1. *Explanation to sec 19.*

—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

if a party is not induced by or did not cause his consent because of the fraud and knew the truth. The deceit will not amount to fraud and the contract will not be voidable. -smith v. Chadwic 1884

lord Blackburn- the deceit is not fraud if it does not defraud.

2. *Exception to sec 19*

If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

This applies only to mere silence.

In case of fraud by mere silence, if party had the opportunity to discover the truth with ordinary diligence then the contract will not be voidable.

Consequences of fraud:

- ✓ Voidable at the option of the party whose consent was so taken.
- ✓ There shall be restitution of all the benefits u/s 64
- ✓ In SRA sec 30, compensation may also be given.
- ✓ Damages under torts
- ✓ Criminal liability u/s 420 IPC be given.
- ✓ S 19 Para 2 [remedy only available in case of fraud and misrepresentation. This is an additional remedy that is been provided.

In this, the party on whom the fraud is exercised can insist the other party to specifically perform the contract along with the compensation so that he be placed in the position as if not fraud has been done.

Misrepresentation

It is always done by an innocent agent who himself believes the fact to be true. Sec 18 gives an inclusive definition regarding the misrepresentation. Misrepresentation includes

a positive assertion made from an unwarranted source [not reliable source]

Unwarranted Statements

A statement made without any reasonable basis is an unwarranted statement.

When a person makes a positive statement of a fact without any trustworthy source of information and believes that statement to be true, the act amounts to misrepresentation.

When something is unwarranted it is not called for under the provided circumstances.

For instance, arguing the merits of someone's talent is one thing, but addressing them stupid is unwarranted.

Mohan Lal v. shri Ganga ji cotton mills 1900

In this case, it was held that a statement is said to be warranted by the information by the person making it, when it receives it from a trustworthy source. It should not be a mere hearsay.

Where a party making a misrepresentation has no intention to deceive but is deriving any

benefit from the transaction so is equally answerable as in case of fraud.

Breach of duty

Once a duty has been established in relation to the defendant, we must find that the defendant has breached the duty.

A breach of the duty of care occurs when one fails to achieve his or her duty of care to act wisely in some aspect.

Commonly, if a party does not act in a reasonable manner to prevent foreseeable injuries to others, the duty of care is breached.

Derry v. Peek 1889

In the prospectus released by the defendant company, it was stated that the company was permitted to use trams that were powered by steam, rather than by horses.

In reality, the company did not possess such a right as this had to be approved by a Board of Trade.

Gaining the approval for such a claim from the Board was considered as a mere formality in such circumstances and the claim was put forward in the prospectus with this information in mind.

However, the claim of the company for this right was later refused by the Board.

The individuals who had purchased a stake in the business, upon reliance on the statement, brought a claim for deceit against the defendant's business after it became liquidated.

Judgment:

The claim of the shareholders was rejected by the House of Lords. The court held that it is not a case of deceit but was the case of misrepresentation as there was no intention to

deceit and they genuinely believe that board's permission was mere formality.

Section 18(2)

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him. [duty to tell but he didn't which cause prejudice to the party]

Inducing mistake as to subject-matter:

ASHA Qureshi v. Afaq Qureshi 2002 MP

Non-disclosure of material facts but without the intention to deceive falls under misrepresentation.

Johnson v. Groove 1874

There was an agreement to sell the boilers. The plaintiff represented the defendant that the road from which the boilers are to be send is motorable. The seller in the misrepresentation agreed to supply the boiler.

But in a way there was a suspension bridge which was not so strong to carry the weight of the boiler and hence led to a heavy loss to the party.

3] false representation:

If it was done by one party, however innocently [without intention to deceive] and it causes a mistake as to the subject matter to the other party will amount as misrepresentation.

Consequences:

1. Voidable u/s 19
2. Exception and explanation to sec 19
3. Restitution u/s 64
4. Compensation u/s 30 of SRA
5. Sec 19(2) of SRA

MISTAKE:

Word ‘Mistake’ is used interchangeably with ‘error’. In law, misunderstanding or erroneous

belief about a material fact may prevent the formation of a valid contract.

There is no meeting of minds for the contract and hence vitiates the contract. A mistake means ‘believe in those things which do not exist in reality’. Thus, the mistake is an erroneous belief.

Smith v. Hughes 1871 QB

Justice lord Hannen discuss the requirements of consent which arise a contract I.e., parties to agree on the same thing in the same sense. There shall be consensus ad idem.

Raffles v. Wichelllous 1864

The main essential of creating a contract is agreeing of the parties on the same thing in the same sense. If two parties enter into appearing contract concerning a particular person or ship and it turns out that each of them misled by similarity of name, had a different person or ship in mind then no contract would exist btw them.

Law relating to mistake is given under sec 20-22 of ICA.

There can be two kinds of mistake:

Mistake of fact [20,22]

Mistake of law. [21]

Mistake of Fact is of three types:

Bilateral mistake, Unilateral mistake and Common mistake.

A is an officer of the court and he is ordered to arrest Y. A arrests Z by mistake, as he believes Z is Y. Here, A can take the base of bona fide intention as a defence in the mistake of fact.

Mistake of fact can be because of:

1. Subject matter
2. Identity
3. Nature of the promise

Bilateral Mistake

According to Section 20, “Where both the parties to an agreement are under a mistake

as to a matter of fact essential to the agreement, the agreement is void".

In simple words, if parties are involved in an agreement without knowing any essential facts related to the agreement, then it is considered as a Bilateral Mistake and that agreement will be void.

For example- A agrees to sell to B any goods supposed to be on its way from America to Bombay.

It is found that before the day of the bargain, the ship containing goods had been cast away and the goods were lost.

But neither party was aware of these facts. The agreement is void.

A, being entitled to an estate of the life of B, agrees to sell it to C, B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Essential's elements of Bilateral mistakes are:

(i) Both parties must be under a mistake.

(ii) The mistake must be of fact, not of law.

(iii) The mistake must be related to an essential fact.

What facts are essential in Bilateral Mistake?

Now, it is very important to know what are the essential facts which make an agreement void.

An agreement is a void where there is a bilateral mistake as to the subject matter.

A bilateral mistake as to the subject matter includes the following:

- Mistake as to the existence of subject matter.
- Mistake as to the identity of subject matter.
- Mistake as to the quantity of subject matter.

- Mistake as to the quality of subject matter.
- Mistake as to the price of subject matter.
- Mistake as to the performance of subject matter.
- Mistake as to the existence of subject matter

Illustration:

'A' and 'B' are involved in a contract to sell a horse in a specific amount. But horse dies before the contract is performed and both the parties (A and B) are unaware of this fact that the horse does not exist. In this case, the Contract is void.

Mistake as to the quantity of subject matter

'A' and 'B' made a contract in which a transaction of 200 pens in return of some amount involves. But 100 pens are sold early by the brother of 'A' before the contract could be performed and both the parties (A and B) were unaware of this fact that only 100 articles do exist. In this case, the contract is void.

Mistake as to the quality of subject matter

‘A’ and ‘B’ made a contract together in which ‘A’ sold his car in return of some amount to ‘B’. They believed that the car is for racing purpose but the car was for tourism purpose. In this case, the Contract is void.

Mistake as to the price of subject matter

‘A’ and ‘B’ made a contract to sell things in consideration for some money which was not a valid amount and both the parties (A and B) are unaware of this fact. In this case, the Contract is void.

Matter as to the identity of subject matter

‘A’ and ‘B’ made a contract in which ‘A’ promise to sell his car to ‘B’. ‘A’ has two different types of car (one for racing and other for tourism purpose). Here, the real identity of the car is not clear and both the parties are thinking about different types of car. In this case, the Contract is void.

Can a unilateral mistake of identity be void?

There may be certain exceptional cases for instance in the case of Boultan v. Jones 1857

Facts of the case:

The defendant i.e. Jones sent a written order for goods to a shop which is owned by Brocklehurst and which was addressed to him by name.

Unknown to the defendant, Brocklehurst had earlier that day sold and transferred his business to Boulton.

But Boulton fulfilled the order and delivered the goods to the defendant without notifying him that he had taken over the business.

The defendant accepted the goods and consumed them in the belief that they had been supplied by Brocklehurst.

When he received Boulton's invoice he refused to pay it claiming that he had intended to deal with Brocklehurst personally, since he had dealt with them previously and had a set-off on which he had intended to rely.

The court held that the defendant i.e. Jones was not liable for the price. When a Contract is made for the identity of the person is important to the Contract. Hence, there was no Contract. "**POLLOCK"** said that the rule of

law is clear, that if you propose to make a contract with A, then B cannot substitute himself for A without your consent and to your disadvantage, securing to himself all the benefit of the contract.

Further it was discussed, when anyone makes a contract in which the personality so to speak of the particular party contracted with is important for any reason whether because it is to write a book or paint a picture or to do any work of skill or whether there is a set off due from the party, no one else is at liberty to step in and maintain that he is the party contracted with.

In the case of Cundy v Lindsay, it is held that contract as a mistake as a matter of identity will be automatically void.

Facts:

The plaintiff received orders in writing form a fraudulent man called BLenKArn. The order papers had printed headings Blenkarn & CO. [37, wood street].

There was also a well-known and respectable firm called as Blenkiron & co [123 wood street].

The plaintiff believing that the orders came from the same reputed firm after seeing such a large quantity of goods and they send them on credits.

Later, the claimants alleged that, as they sold the goods to Blenkarn under the mistaken assumption that they were selling it to Blenkiron & Co., there was no real consent to the contract of sale. Consequently, there was no valid transfer of title, which remained with the claimants, and accordingly, they sued the defendants for conversion of goods.

Ruling:

The court held that the plaintiff's were under the mistake of identity as they intended to form a contract with the original blankiron & co. as no contract was concluded between the claimant and Blenkarn so as to constitute a valid transfer of title which the latter could rightfully convey to the defendants, the title remained with the claimant. Hence, the defendants, being in possession without a good title over such goods, were held liable for conversion.

Matter as to the possibility of subject matter

Sometimes, a contract is made but during the performance of the same, we come to know that it is impossible to fulfil the performance of the contract.

The agreement is void where there is a mistake as to the possibility of performance. Impossibility is an excuse for non-performance of a contract.

Impossibility can be of two types:

Physical impossibility: Any performance of the contract when physically impossible, can be taken up as an excuse for non-performance of duties under a contract and contract will be void.

For example- a painter made a contract with a person to paint a house but before the performance of duties, the house burns. Now, it is impossible for the painter to perform his duties under the contract. Thus, it is considered as an excuse for non-performance of duties.

Legal impossibility: Any performance of the contract is when legally impossible, can be taken as an excuse for non-performance of duties under a contract and contract will be void.

For example- any amendment made by legislation which makes it impossible to fulfil the performance of duties under the contract.

Unilateral mistake of identity caused by fraud of other party

It will lead to make the agreement void-candy v. lindsat 1878

The only condition is that there should be someone who is having the identity with whom the party is confused.

Kind’s Norton Metal Co v. Edrigde Merett & co 1897

It was held that there can be a mistake of identity only when a person bearing a particular identity exists within the knowledge of the plaintiff and plaintiff intends to deal with him only.

Mistake of identity or nature of the subject matter:

It includes:

1. Non-existence of the subject matter
2. Mistake as to quantity
3. Quality
4. Identity of the subject matter.

Mistake as to nature of the promise:

This can be explained with an illustration:

A sign a document thinking it’s a power of attorney whereas it was a gift deed. Consequently, all the property of A then goes to B.

The agreement here was declared as void agreement.

There is a difference btw nature of the promise and the contents of the document.

In former case: agreement is void

In latter case: the agreement is voidable

Dularia Devi v. Janardan Singh 1990 SC

In this case the court categorically held that there is a distinction btw fraudulent misrepresentation as to the character or mistake of the document and as to it contents. When the misrepresentation is as to the character of the document the transaction is then wholly void.

This distinction was first observed originally in the case of Nagawwa v. Byrappa Shidappa 1968 SC

The English case which was followed to establish the said principle in India was Foster v. Mackinnon 1869

In case there is unilateral mistake as to the character of the document or promise and the mistake is caused by the ignorance or fraud or misrepresentation committed by some other party, the agreement is void even though unilateral mistake does not affect validity of the agreement but here it is an exception:

This distinction is based on the doctrine of “non-est factum”

Mistake of law:

1. As to Indian law
2. As to foreign law

If the mistake is as to Indian law, then it is no mistake. Therefore, it is presumed that everybody knows the law of the land.- MH George v. State of Maharashtra.

Sec 22 further lays down that if there is unilateral mistake as to foreign law, the contract will be valid.

But in case of bilateral mistake as to foreign law, the contract will be void.

Mistake of fact: 20

Mistake of law: 21

Mistake of foreign law: 22

Lawful Object and Consideration:

Section 23 of The Indian Contract Act states that for a contract to be valid, there must be the legality of object and consideration. The object is the purpose for which the parties enter into a contract.

The fulfilment of the object leads to the transfer of the consideration agreed from one party to the other. Let's look into the parameters under the legal object contract

law that define what is a lawful object and consideration.

Lawful Object and Lawful Consideration

The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when:

- They are specifically forbidden by law.
- They are fraudulent in nature.
- The nature of the object and the consideration is such that it defeats the purpose of the law.
- They involve injury or harm to a person(s) or property.
- Are considered immoral by the court of law.
- Are against the public policy.

1. Forbidden by the Law

An object and/or a consideration prohibited by law are not considered legal and render a contract void. Unlawful consideration of the object means unlawful acts that are punishable by the law.

The acts disallowed by the appropriate authority by means of their rules and regulations are also considered for determining the legality.

However, if these rules and regulations are not in tandem with the law, they are not applicable.

Forbidden by law provision renders a contract void but all void contracts may not be illegal.

Banarsi Das v. Shakuntala 1989

In this case, the landlord leased the property to tenant. In their agreement the term was that he cannot sub lease unless the permission of landlord had been taken.

He still sub let the property without his permission. Here it was just a regulatory clause. It did not make the sub lease agreement void.

The tenant was allowed to recover rent from the tenant. It was clarified by the court that when the intention of the legislature is to regulate an act by prescribing certain terms and conditions and the object of the statute is not to forbid certain transactions but only to impose a penalty. In such cases, if the person does not observe statutory requirements, then the agreement is not void. Thus, agreement will be valid.

2. Fraudulent in Nature

The object and the consideration of the contract must not be fraudulent as then, the contract will become void.

Example - A enters into a contract with B where he agrees to pay B if he embezzles money from C. This is considered a fraudulent object and the contract is not valid.

3. Defeats the Purpose of the Law

If the purpose of entering into the contract is to go against any provisions of law, the contract will be deemed void. The contract is void if:

- The object of the contract is to perform an illegal act.
- The object of the contract is explicitly or in an implied manner prohibited by law.
- The completion of the contract is impossible without going against the provisions of the law.

Example - A enters into a contract with B whereby B promises to not pursue legal proceeding against A if A commits a robbery in B's house. This contract is against the provisions of the IPC law.

Mohinder Singh v. State of Punjab 2009 SC

In this case the persons who were elected as sarpanch agreed that for 3 years A will be sarpanch and for later 2 years B will hold the post. The said agreement was void as per the statutory requirements of Panchayati Raj Act 1974.

4. Involves Injury or Harm to Another Person or Property
The object of the contract must not cause any destruction to property or cause injury to another person.

Examples:

- Publishing a book on the life of a person without his consent.
- Destruction of a property.
- Violation of licenses.
- Violation of copyrights.

A enters into a contract with B whereby he agrees to pay a sum of money to B if he destroys a city landmark. This contract does not have a lawful consideration and lawful object and it is not deemed legal.

5. Immoral as Per Law

If the object and/or consideration of the contract are considered immoral, the contract will not be deemed void. Immoral acts are against the reasonable and acceptable general behavior or personal conduct accepted by society.

Example - A lends money to B on the condition that B will divorce C, and later get married to A. If B does not divorce C, then A cannot pursue legal proceedings against B to recover the money. The basic premise of this contract is immoral so it will be deemed void.

Gherulal v. Maha deo Das 1959 SC

- Wagering agreements are not covered here
- Immoral term here is subjective and dynamic
- It depends upon time and place for eg homosexuality has now been allowed by the SC
- Adultery is no offence now [joseph shine case]

With reference to place: In many countries bigamy is allowed and in other countries its not.

According to justice subba rao, the case law both in England and India confines the operation of doctrine

of sexual immorality. The learned Judge also pointed out that the word immoral being comprehensive must be restricted to sexual immorality only. Thus, in this case it was held that wagering agreement could not be regarded as immoral.

6. Against the Public Policy

A lawful object in business law means that it should not be against public policy. The purpose of public policy is not to curtail any individual's rights but to maintain and protect the general welfare of the community. Let's see what kind of contracts are considered to be against the public policy:

1. Entering into an agreement with a party that belongs to a country with which India does not have peaceful relations, makes the agreement void.

   Lord McNaughton in Janson v, drifontein consolidated mines ltd 1902

   Held that king's subjects cannot trade with an enemy alien without king's licence

   RK matishaw v. Merchantile Bank of India 1921 BBy HC

   It was held that this doctrine applies to all contracts which involves intercourse with the enemy or tend to assist the enemy even though no enemy be a party to the contract.

2. Restraining from prosecution: A contract that prohibits a person from pursuing legal recourse is considered void.
3. Maintenance and Champerty: In a maintenance agreement, a person promises to maintain a lawsuit in which he has no vested interest. Champerty is when a person agrees to assist another party in litigation in return for a portion of the damages or proceeds received.

Haritlal nathelal talati v. Bhailal Pranlal 1940 Bom HC

The division bench of Bom HC dealt with an agreement in which person had agreed to give half share of the property to the financer valued at rs 30,000 from such property. the court held that the agreement was extortionate and unconscionable and opposed to public policy.

4. An agreement to indulge in trafficking in public offices.
5. Agreements to create monopolies.
6. An agreement to brokerage marriage as rewards.
7. An agreement to induce judiciary or state officials to act in a corrupt manner and interferes with legal proceedings.

Richardson v. Mellish 1824

Justice Borrough warned that public policy is an unruly horse and when once you go outside it, you never know it will carry you.

That means anything can come under against the public policy. That is why courts must be careful enough while opening a new head for declaring an agreement to be against public policy.

Section 24:

Agreement void, if consideration and object are unlawful in part.

If such part is separable then only such part is void. Otherwise whole has to declared as void.

Void agreements:

Void agreements are those agreements which are not enforced by law courts.

Section 2(g) of the Indian Contract Act defines a void agreement as, “an agreement not enforceable by law”. Thus the parties to the contract do not get any legal redress in the case of void agreements.

Agreement being not included in the list of those specially declared to be void by the Indian Contract Act by its Section:

1. Sec 23 & 24 unlawful objects and consideration
2. Sec 25 agreements without consideration
3. Sec 56 part 1 doctrine of frustration
4. Sec 20 mistake as to matter of fact essential to the agreement
5. Sec 36 contingency
6. Sec 12 minors and unsound

Section 26:

Section 26 of Indian Contract Act provides that *every agreement in restraint of the marriage of any person, other than a minor,*

is void. Thereby, it reinforces a person's right to enjoy the freedom of marriage by delegitimizing the agreements which impede that granted freedom.

Thus, the agreement which limits a person from choosing his/her life partner or to get married to a person of his/her own wish is void, *pro tanto*. But it is pertinent to note that the agreement in the restraint of marriage is a pole apart from the contract of betrothal agreements and prenuptial agreements.

Under article 21, every person has a right to marry. Thus, every law has to be in consonance with.

Madhav Chandar v. Raj Loomar 1874 Cal HC

In this case the court clarified that under section 26 both the restraints are covered [absolute and partial].

The interpretation was done keeping in mind sec 28.

There must be restraint per se.

A promise to pay B 10 lacks if he marries C. this agreement is a valid agreement and there is no restraint.

Lowe v. Peers 1768

In this case, it was held that promise to marry particular person is not void whereas if promise stipulates that promisor will not marry anyone else then it could be called as void.

Exception:

If any restraint is made for the minor in marriage, then it will be valid.

Agreement btw 2 widows if any one of them remarries she will loose the claim in the property of the deceased husband. This agreement is valid. Because there is no restraint over marriage. Only there is penalty if a person remarries and that is to lose the claim in the husband property.

A suryanarayan murthy v. P krishna Murthy 1957 Oriss HC

The court held that it is not a restraint of marriage as only penalty is imposed on

remarriage and there is no as such restraint on the marriage and such agreements are valid.

Badu v. Badarnessa 1919

There was a Muslim couple. Agreement btw these husband and wife was that if husband undergoes a 2nd marriage then wife would get a right of divorce. The agreement was valid.

Section 27:

Section 27 of the Contract Act, 18721 (ICA) dealing with agreement in restraint of trade states as

Agreements in Restraint of Trade

Agreement in restraint of trade is void under Section 27 of the Act. That is, any agreement that debars one person from starting or continuing his trade or profession, in return for some consideration is void. Therefore, any agreement stopping a person from trading in the manner he likes or wherever he likes, on an agreement with other party, in which the other party benefits from him stopping his trade or profession, will be called an agreement in restraint of trade. Apart from two exceptions, which we will discuss below, all agreements in restraint of trade are void. The two exceptions lie in Sale of Goodwill and Partnership Act.

Common Law

The background for delegitimizing an agreement in restraint of trade lies in the history of conflict between free markets and the freedom of contracts. Ensuring freedom to the contract would mean legitimizing agreements in restraint of trade, which would result in parties agreeing to curb competition. Under the common law, the current position is derived from the case of-

Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd

In this case, Thorsten Nordenfelt was a manufacturer of guns in Sweden and England. Thorsten sold his business to a company, which then transferred the business to Maxim Nordenfelt. At this time, Thorsten entered into an agreement with Maxim that he would not engage in the manufacture of guns for 25 years, other than what he manufactures on behalf of the company. Later, Thorsten broke his vow claiming that the agreement was not enforceable as it was in restraint of trade. The decision of the court was in Thorsten's favour.

In common law, a *test of reasonability* is followed. An agreement in restraint of trade is valid, if:

1. There is a valid interest that the party imposing the restraint is trying to protect.
2. The restraint is no more than that which is necessary to protect this interest.
3. Restraint is not contrary to public interest.

Position in India

Section 27 of the Indian Contract Act declares all agreements in restraint of trade, void *pro tanto*, with the only exception being Sale of Goodwill. Yet, it is important to understand that these agreements are *void,* not *illegal.* Which means, these agreements are not unlawful to make, they are just not enforceable in a court of law if either of the parties fails to perform his part of the agreement. Unlike the common law, even partial agreements in restraint of trade or reasonable restraint are not valid under the Contract Act.

Illustration

Shalini has a business of office supplies and books in a locality in Bareilly. A person Zahida is planning to open her business of similar goods in the same locality. Fearing competition in the market, Shalini enters into an agreement

with Zahida not to open her business in the area for 15 years, and as a consideration promises to pay a certain sum of money to her every month. Later, Shalini fails to pay the sum agreed upon. Zahida tries to take the matter in a court of law. The agreement being void, Zahida has no case.

Cases

Madhub Chunder v. Rajcoomar

In this case, the parties were businessmen in Calcutta. The defendant, Rajcoomar suffered loss due to the plaintiff's competition and entered into an agreement with the plaintiff that if he closed his business there, he would pay him all the advances he had made to his workmen. When the defendant failed to pay, the plaintiff filed a suit to recover the amount but failed to do so because it was an agreement in restraint of trade, therefore not enforceable in a court of law.

Superintendence Co. of India Pvt. Ltd. v. Krishan Murgai

In this case, the Supreme Court came to the conclusion that Section 27 expressly declares all agreements (apart from one exception) to be void and the section cannot be attributed two meanings. The test of reasonability as applicable in England cannot be applied in India.

Exceptions to Restraint of Trade

Section 27 of the Act mentions only one exception validating restraint of trade, i.e., Sale of Goodwill. Another exception is found in the Partnership Act.

What is a Sale of Goodwill

Goodwill is an intangible asset of a firm, that is, it exists, yet it is not material or physical. It essentially means the reputation or status of the firm in society. Goodwill has its origin in brand value, employee morale, reputation, customer advantage etc. It is an important asset because a customer is expected to engage with the same favorable firm, that he was engaged with earlier, because of its name and reputation. This why Goodwill of a firm holds a value.

Like other assets of the firm, the goodwill of the firm can also be sold. Once the goodwill of a firm is sold, the buyer acquires some rights:

1. He/she can use the firm's name.

2. He/she can represent the firm.
3. He/she can restrain the seller of the goodwill from being in contact with the previous customers of the firm.

After a sale of goodwill, the seller continues to enjoy the right to carry out a competing business. But, in case,it is agreed upon through a contract that the seller will not enter into any such agreement, such rights extinguish.

Conditions that make restraint of trade valid

There are certain conditions that make a restraint on trade during a sale of goodwill valid, these are:

1. The seller can be restrained only from carrying out a *similar* business.
2. The restraint can be applied only to certain *local limits.*
3. The limits/restraint should appear to be reasonable.

Case

Chandra v. Parsullah

Here, the plaintiff was the owner of a fleet of buses that used to ply between Pune and Mahabaleshwar. The defendant also had a similar business in the same area. To avoid competition, the plaintiff bought the defendant's business along with the goodwill, and by contract made him agree not to open a similar business in the area for 3 years. The defendant did not comply and started his business. It was held by the court that the agreement was valid, as it fell within the exception to S.27.

Partnership Act

Another exception to the rule of limitation on agreements in restraint of trade is provided under the Partnership Act, 1932. The Act lays down three exceptions. These are:

1. An agreement with a partner of the firm to not carry out his own business so long as he/she is a partner in the said firm will be valid under Section 11 (2) of the Partnership Act.
2. An agreement between partners to not engage in a similar business as that of the said firm within specified territorial and time limits (period of restraint). (Section 36 (2))

3. In anticipation of dissolving the firm, the partners may come to an agreement in restraint of carrying out a similar business within specified territorial and time limits so long as this restraint is *reasonable.*

Case

Firm Daulat Ram vs. Firm Dharm Chand

In this case, two similar business owners, in a partnership, came to an agreement that only one of their factories would work at a time and the profit will be shared between them. This restraint was held to be valid.

Exceptions

1. Statutory exceptions
2. Judicial exceptions

Statutory exception

1. Sec 27:

Restriction can be imposed upon the seller of the goodwill provided it should be reasonable.

Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd

The appellant, Thorsten Nordenfelt, was a Swedish gun manufacturer with a valuable, world-wide business.

He sold the business to a company, the respondents, and agreed to enter into a restrictive covenant not to work for any rival business for a 25-year period in an unlimited geographical area. Later, he worked for a rival business.

The respondents brought an action to enforce the covenant by inunction.

The case came to the House of Lords.

Decision / Outcome

Lord McNaughton said a clause by which someone restrains themselves from the exercise of his trade

was *prima facie* unlawful. It was a principal of English law all trade should be free. However, it would discourage trade if someone who has built up a valuable business could not dispose of it to his best advantage

Therefore, restraint of trade clauses would be upheld if they were reasonable.

Difference btw Indian law and English law

In English law, sale of goodwill is not a specific exception to the provision of restraint of trade. The English courts decide according to the facts and circumstances whether the condition is reasonable or not. Only then the agreement is held to be valid.

Whereas in Indian law, the exception is specified u/s 27 itself and it provides the blanket to the contract.

Paras ullah Mallick v. Chandra Kanta Das 1917 Cal HC

In this case Cal HC held that the restrictions imposed must be reasonable. The party can be restrained within certain territorial or geographical limits which must be reasonable and the reasonableness depends upon many factors like the area in which the goodwill is actually enjoyed, price paid for it, number and place of customers and extent of business etc.

Section 11 of the partnership act, 1932

Sec 11 has its operation when partnership firm is still going on. A person while he is a partner may agree with other partners that he shall not carry any other business other than that of the firm.

Sec 36 of Indian Partnership act

Similar kind of restriction can be imposed on outgoing partners.

A, B and C are partners. C is leaving the firm. A&B may restrict C not to carry on any business similar to that of the firm within specified period or within specific local limits. Such condition must be reasonable.

Sec 54 of Indian partnership act:

Restriction may be imposed mutually on partners upon or in anticipation of dissolution of the firm not to carry on a business similar to that of the firm.

Sec 55:

Sale of goodwill after dissolution

It is almost similar to exception 1 of sec 27 ICA. In case of sale of goodwill after dissolution of partnership firm.

Judicial exceptions:

Trade combinations:

It is a concept of competition law. Eg. Two manufactures or traders have very high competition btw them and to eradicate the competition btw them they amalgamated. As a result, they fixed the price.

This is called as trade combinations. The main objective of this agreement is to eradicate the competition among them.

However, if they want to create monopoly then it is not allowed.

Sometimes the traders and manufacturers combine together to eliminate the competition as btw themselves and make agreement fixing minimum prices, regulating the supply of goods and putting profits in a common pool and then dividing amounts themselves.

For eg A and B are two vegetable venders

In order to attract customers. A fix the tomato price at 30/kg later B fixed it at 25. A again change it to 20/kg. however later as they realise this result is more in loss to them therefore, they create a trade combination agreement and fixed the tomato price at minimum selling price. So, setting MSP is allowed.

SB Fraser v. Bombay Ice Mfg Co 1904 Bom HC

There were two ice producers. They created trade combination and agreed that no manufacturer would

sell ice below the minimum price fixed by them and whatever profits will be received it will go in their common pool. This agreement was allowed.

The court held that trade combination agreements are allowed and valid as long as the object of the agreement is to regulate the business and not to restraint it and also such agreements are not valid if the object of the agreement is to monopolise.

Solus agreements:

There is a manufacturer of pens. He is supplying pens to 3-4 retailers. One retailer has so much money that he offers the manufacturer to sell the whole stock to him only though at a higher price. Such agreement is solus agreement.

It is allowed provided they are giving business to each other and provided it is not with the intention to monopolise the market. If it so then such agreement will be void.

C Nephew & co v. Richmanth 1882 Cal HC

The court held that such agreement are valid as there is no restraint of trade as such. In fact, the manufacturers are encouraged to do the business of assured marker.

Further the court observed that so long as the object of such agreement is the benefit of the parties to the contract rather than monopolising the trade, there is nothing unreasonable in it.

Shaikh kalu v. Ram Sareen Bhagat 1909

In this case, it was held that binding a party with solus agreement from generation to generation, the agreement cannot be considered to be lawful.

Contract of service:

Suppose a company employs an employee and did an agreement with him that for the first 2 years you will not work in any other company. This agreement is valid.

Charlesworth v. Mc Donald 1898 cal HC

A person A signed a bond with a surgeon to remain his assistant for 3 years and not to do private practice for those 3 years. But A breached the bond and thus committed breach of contract.

The court held that if in an agreement, the employee bonds the employee for ascertained duration for not serving anybody else or doing private practice during that period is a valid agreement.

Niranjan Shankar v. century spinning mfg co SC 1967
the court held that if the agreement to restrain the

employee from company with his employer or not to serve anyone after leaving the employment then it will be said to be a restraint of trade and thus will be not allowed.

Agency given with condition that any other agency is not allowed:

if the agency is given to any person with a condition that you cannot take any other agency then this condition is valid.

Gujrat Bottling co v. Coca cola 1995 SC

FACTS:

On September 20th, 1993, Gujarat Bottling Company entered into an agreement with Coca Cola Co to bottle and distribute “Thumbs Up”, “Maaza”, “Limca”, “Rim Zim” and “Gold Spot”, whose trademarks were acquired by Coca Cola from Parle.

Paragraph 14 of the above contract posed a negative covenant on GBC wherein they were forbidden from bottling, distributing or simply dealing with any other company or trademarks during the subsistence of the contract.

It was to remain in effect till 1998 and could be terminated at the option of either party by sending a 1-year prior notice or by mutual consent.

The above contract also bound GBC from the supply of syrup in case of subsequent transfer of control without the consent of Coca Cola.

This contract was followed by another contract in 1994 for the purpose of registration under registered user agreement.

The contract dealt with the specifications and standards of the product and their due registration and formulation under the Trademarks Act.

A term of the contract reduced the duration of prior notice from 1-year to 90 days. In 1995, due to internal issues pertaining to the expansion of GBC, majority shares were transferred to the representatives of PepsiCo, thereby transferring the ownership rights.

The new owners contended that the 1994 agreement had superseded the existing 1993 agreement.

They therefore served a 90-day prior notice to Coca Cola for the termination of 1994 agreement. They also

forwarded designs for Pepsi product acting beyond the scope of the terms of the 1993 agreement.

JUDGMENT:

It was held that the 1994 and 1993 agreements were distinctive in nature. The 1993 agreement served the purpose of granting license to Gujarat Bottling Company for dealing with Coca Cola products and the 1994 agreement dealt with the registration of user agreement.

Both the agreements served different purpose and varied in the scope of its application. Furthermore, under section 62 of the Indian Contract Act, no agreement can supersede a pre-existing agreement without the consent of the contracting parties or without the intention of substitution which was lacking in the case.

It was therefore concluded that GBC failed to act in terms of the contract binding both the parties and was held responsible for the violation.

It was also held that paragraph 14 of 1993 agreement was not in restraint of trade as its application is

confined to the subsistence of the agreement and not thereafter.

It was also mutually entered into by the parties for the promotion of coca cola products for their mutual benefit and therefore doesn't fall under the ambit of restraining trade.

It was also contended that the interim injunction granted to the appellants was in consonance with the terms of the negative covenant of 1993 contract and restricted GBC and numerous others parties involved in the due manufacture and dealings of coca cola products to carry on any such contract with any other company or trademark, for a period of one year from the date of termination notice, that is 25th January 1996.

SEC 28:

Section 28 of the Indian Contract Act, 1872 states that an agreement in absolute restraint of legal proceedings is void.

Section 28 (a) of the Indian Contract Act, 1872 states that:

- No agreement can debar enforcement of rights through a court of law.
- No agreement can oust the jurisdiction of a court.
- No agreement can stipulate a time limit below the time limit prescribed under the Indian Limitation Act, 1963.

The 97th Law Commission suo moto analyzed Section 28 and proposed an amendment. Section 28(b) of the Indian Contract Act, 1872, inserted via the Indian Contract (Amendment) Act, 1997, states that:

No agreement can extinguish the rights of any party on the expiry of a specified period.

No agreement can discharge any party from any liability on the expiry of a specified period.

Insertion of the aforesaid provisions to restrict any party from enforcement of their rights will render a contract void to that extent. The amendment blurred the lines between ‘right’ and ‘remedy’.

Exceptions to Section 28

Section 28 of the Indian Contract Act, 1872 is not absolute. It has three exceptions.

The first exception states that an agreement must refer all disputes to arbitration that may arise between the parties will not be void.

Further, a mere arbitration award will be recoverable in the disputes referred. The second clause of Exception 1 was repealed by the Specific Relief Act, 1877.

The second exception states that an agreement to refer to questions that arose before the insertion of the clause to arbitration between the parties will not be void.

The third exception states that a bank's or financial institution's guarantee agreement with a provision to extinguish the rights of any party or discharge any party from any liability upon the expiration of a specified period (>1 year) from the date of occurrence/non-occurrence of a specified event will not be void. Exception 3 was inserted via The Banking Laws (Amendment) Act, 2012 in 2013 on the recommendations of the Indian Banks' Association.

Important cases related to Section 28

In *Tapash Majumdar v. Pranab Dasgupta (2006)*, the East Bengal Club authorized the Executive Committee to take action against the members of the club who challenged the election process of the Executive Committee in the court. The Calcutta High Court ruled that such a restriction was against public policy and violated Section 28 of the Indian Contract Act, 1872.

In *Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd. (2008)*, the amount of liquidated damages in an advance purchase order, evaluated and imposed by the purchaser, was declared unchallengeable by the supplier. The Court ruled that the unilateral right of the purchaser to determine liquidated damages was in restraint of legal proceedings and thus void under Section 28 of the Indian Contract Act, 1872.

In *Union of India v. Indusind Bank Ltd. (2016)*, the Union of India submitted that the bank guarantees which limited the time period within which they could be invoked would not be affected by an amendment introduced a year later. The Supreme Court ruled that Section 28 is substantive law. It operates prospectively and not retrospectively. The court did not delve into the repercussions of the addition of Section 28(b) on the bank guarantees but stated that the Parliament addressed the grievances of the banks through the addition of an exception in Section 28.

Delhi High Court Judgment on Exception 3

In *Larsen and Toubro Limited v. Punjab National Bank and Another*, Punjab National Bank's and the Indian Banks Association's interpretation of Exception 3 of Section 28 of Indian Contract Act, 1872 was challenged.

Facts

The Indian Banks Association in an attempt to interpret Exception 3 of Section 28 issued circulars wherein a minimum claim period of less than 12 months was declared void on the basis of which Punjab National Bank compelled Larsen and Toubro to set the minimum claim period of bank guarantee to one year.

Issues Raised

The misinterpretation of Exception 3 of Section 28 by the respondents cost the petitioner superfluous commission charges. The petitioner was also required to maintain collateral security for an extended period. The

misinterpretation put an impediment on the petitioner to conduct their business and thus affected their fundamental right under Article 19(1)(g) of the Constitution of India.

A writ petition was filed seeking to quash and set aside the letters issued by Punjab National Bank dated 18.08.2018 and 28.03.2019 to Larsen and Toubro and the letters issued by Indian Banks Association dated 10.02.2017 and 05.12.2018 to all member banks. The petition also sought any interpretation of Section 28(b) read with Exception 3 of the Indian Contract Act, 1872 which prescribed a minimum claim period of less than 12 months void to be set aside.

Observation of the Court

Section 28 does not deal with the claim period but the rights of the creditor to enforce his rights. The circular of the Indian Banks Association and Punjab National Bank's communication is erroneous. The claim period is a grace period that extends beyond the guarantee's validity period and may or may not even exist in a bank guarantee.

11 dec:

Exception 3:

[Exception 3.—Saving of a guarantee agreement of a bank or a financial institution.—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

This exception was added in 2013 by banking laws [amendment act] 2012

In case of bang guarantees, the restriction clause can be inserted in which the period to invoke the guarantee be specified which should not be less that 1 year. If not invoked, the liability of the bank will get extinguished. Such condition is valid. This exception was introduced to safeguard banks and financial institutions from hardships created by sec 25(b) after 1997. Banks in their normal course of business issue guarantee against deposit of margin money on behalf of their clients in favour of the government or government owned entities or private parties. Banks need to know with certainty, their liability and cut-off date when they would get extinguish from their liability for issued bank

guarantees as the period of limitation is 3 years for private banks and 30 years for govt parties. Thus to save the banks and financial institutions from this situation, exception 3 of sec 28 was added in 2013 which allows banks and financial institutions to incorporate clauses providing for extinguishment of rights of the beneficiary or discharge of bank's liability on the expiry of a specified period, thereby curtailing the limitation period for a beneficiary to enforce his claim before a court of law.

Indusind Bank v. UOI 2017 SC

It was held in this case that the restrictive clause in the bank guarantee whereby the beneficiary was required to enforce its claims within a stipulated period after expiry of bank guarantee violated sec 28, but a clause in an agreement which provides for forfeiture or waiver of right itself. If no action is commenced within the specified period, then it would not violate sec 28.

- If that specified time period is less than 1 year then that condition is void as it hits by sec 28(b).

Section 29:

Section 29 provides the meaning of an agreement that should be clear on the face of it.

a contract is not void if its terms are capable of being made certain. The meaning of the contract should not be uncertain and further, it needs to be shown that it is not capable of being made certain.

Mere vagueness or uncertainty which can be easily removed by proper interpretation does not make a contract void. Even oral agreements will not be considered vague if its terms are ascertainable with precision.

A contract will be void for uncertainty only if its essential terms are uncertain or incomplete unless the uncertain part being not essential is severed, leaving the balance of the agreement intact.

To ascertain what is essential and what is not, one must look into the intention of the parties.

There is no concluded contract when an essential or critical terin is expressly left to be settled by future agreement of the parties.

Also, there will not be a binding contract where the language is obscure and incapable of any definite meaning.

Illustrations

(a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A‟s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d) A agrees to sell to B “all the grain in my granary at Rajnagar”. There is no uncertainty here to make the agreement void.

(e) A agrees to sell B “one thousand mounds of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.

Ascertainable means agreement is not certain but is capable of ascertainment. It is also called as laten ambiguity. Sec 90-95 IEA, oral evidence can be given to remove such ambiguity.

Section 30: wagering agreements.

The basic fundamental of a wagering agreement is the presence of two parties who are of sound mind to get profit or loss. A *Wager* in the common language means *Betting or Gambling*. The basic meaning of the term wager is betting. Section 30 of the Indian Contract Act specifically talks about agreements by way of wager, as void. The section read as follows:

"Agreements by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain events on which any wager is made."

Carlill vs Carbolic Smoke Ball co.(1893):



This is the only case law which has defined a wagering contract in the most expressive and encompassing way.

It States as follows:

"One by which two persons, professing to hold opposite views touching the issue of a future uncertain event,

mutually agree that,

dependent on the determination of that event, one shall win from the other,

and that other shall pay or hand over to him, a sum of money or other stake;

there is no other consideration for making of such contract by either of the parties.

If either of the parties may win but cannot lose or may lose but cannot win, it is not a wagering contract".

all wagering agreements are contingent agreements but all contingent agreements are not wagering agreements.

Thus, in the simple language, we can understand that a wagering contract is a futuristic contract which is based upon the happening of a certain event in the future.

A wagering contract may or may not be imposed depending upon the circumstances in the future.

Under Section 30 of the Indian Contract Act, the term Wager has not been defined and it does not even define about wager agreement it only says that such agreements are void with the proviso of section 294A of the Indian Penal Code.

DIFFERENCE BETWEEN WAGER AGREEMENT AND CONTINGENT CONTRACT:

WAGER CONTRACTS	CONTINGENT CONTRACT
1)All wager contracts are void.	**1)Contingent contracts are not void.** **section 31. "Contingent contract" defined.** A "**contingent contract**" is a contract to do or not to do something, if some event,

	collateral to such contract, does or does not happen
2)Wager contracts come under the ambit of Contingent contracts and thus is a narrow concept.	2)These contracts cover the concept of wager contracts and is a wider concept.
3)The happening of the uncertain event is the sole condition of the wagering contract.	3)The happening of the event is not the sole condition of the contingent contracts.
4)The parties have only one interest in the contract i.e the winning or losing depending upon the outcome.	4)The parties have their personal and other motives attached to the contract except for the profit or loss.
5)The parties are required to keep mutual promise under the rules of the wagering contract.	5)The parties are not required to keep mutual promises under the contract.

Thus, these agreements by way of wager are void and thus no suit can be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide by the result of any game or any other such uncertain event on which any wager is made.

Essentials of a wager

1) It must be dependent on an uncertain event

For an agreement to be a wagering agreement, it is necessary that the subject matter of the agreement must be dependent on an uncertain event.
In the case of *Jethmal Madanlal Jokotia v. Nevatia & Co(1962)*, it was held that although a wager is generally about a future event, it may also be of an event that happened in the past but the parties were not aware of its result or the time of its happening.

2) There is a mutual chance of gain or loss

A necessary element in a wagering agreement is that both the parties should have a mutual chance of winning or losing based on the uncertain event. Therefore it is not a wager when one party has a chance or winning but not losing or a chance of losing but not winning or neither winning or losing.

In the case of *Narayana Ayyangar v. Vallachami Ambalam(1927)*, it was held that a chit fund cannot be called a wager because although some members have a chance to gain, yet none of them have a chance to lose as the recovery of the amount contributed is assured even if the time period is unknown.

Illustration
A cricket match is about to start in Delhi between India and Australia. If India wins the match, Pallav agrees to pay Nishant Rs. 2000, whereas if Australia wins the match, Nishant agrees to pay Rs. 2000 to

Pallav. This is a wagering agreement since both parties have a chance to win or lose.

3) Neither of the parties must have control over the event

If one of the parties has the power to influence the results of the wager, the agreement will lack an essential ingredient of a wager as said in the case of *Dayabhai Tribhovandas v Lakshmichand(1885).*

Illustration

Shivani and Munish enter into an agreement that if Shivani resigns from her job, Munish will pay Rs. 20000 to Shivani and Shivani will pay Rs. 20000 to Munish if she does not resign from her job. Here Shivani has control over her resignation and therefore will not constitute a wager.

4) Must have no other interest other than the stake

The only interest that both the parties should have is the stake of winning or losing on the happening of the uncertain event. If either of the parties has some other interest other than the amount at stake, it will not constitute a wager.

Illustration

Jay insures his car against any damage by taking a car insurance policy and also pays an insurance premium for the same. Here we can say that Jay has

an interest in the car and in case of the future uncertain event i.e an accident he will not gain anything. Therefore it is not a wager.

Exceptions to the wagering agreements:

1. Showcase of talent is not a wager:

2.Share Market:

3.Horse race competition:

4.Insurance Contracts:

5.Commercial transactions:

Note:

Lucky draw: not a wagering agreement. But lottery is a wagering agreement.

Contingent contract:

There must be a valid contract to do or abstain from doing something

Section 32 and 33 of the Act talks about enforcement of the contingent contract on the happening or not happening of the events respectively. The contract will be valid only if it is about performing or not performing an obligation.

Illustration 1: X makes a contract with Y to buy Y's dog if X survives Z. This contract cannot be enforced by law unless and until Z dies in X's lifetime.

Illustration 2: X agrees to pay Y a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Performance of the contract must be conditional[i]

The condition for which the contract has been entered into must be a future event, and it should be uncertain. If the performance of the contract is dependent on an event, which is although a future event, but certain and sure to happen, then it'll not be considered as a contingent contract.

The said event must be collateral to such contract

The event on whose happening or non-happening of the event on which the performance of the contract is dependent should not be a part of the consideration of the contract. The happening or non-happening of the event should be collateral to the contract and should exist independently.

Illustration: X enters into a contract with Y and promises to deliver 10 books to him. Y promises to pay Rs. 2000 upon delivery. This is not a contingent contract since Y's obligation depend on the event which is a part of the contract(delivery of 10 Books) and not a collateral event.

The event should not be at the discretion of the promisor

The event so considered as for contingency should not at all to be dependent on the promisor. It should be totally a futuristic and uncertain event.

Illustration: X promises to pay Y, Rs. 10,000 if Y leaves Delhi for London on 31st March 2019. This is a contingent contract. Going to London can be within Y's will but is not merely his will.

Enforcement of contingent contract

Provisions related to the enforcement of the contingent contract are given under section 32 to 36 as follows:

Condition #1- enforcement of contract contingent on the happening of an event

The contingent contracts to do or abstain from doing something if an uncertain future event happens. However, the contract cannot be enforced by law unless the event takes place. If the event becomes impossible, such contracts become void. [Section 32]

Illustration: X promises to pay Y, Rs. 100,000 if he marries Z, the prettiest girl in the neighborhood. This is a contingent contract. Unfortunately, Z dies in a car accident. Since the happening of the event no longer possible, the contract is void.

Condition #2- enforcement of contract contingent on an event not happening

The contingent contracts to do or abstain from doing something if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible. If the event takes place, then the contingent contract is void. [Section 33]

Illustration: X promises to pay Y a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. On the other hand, if the ship returns, then the contract is void.

Condition #3- when an event on which contract is contingent to be deemed impossible if it is the future conduct of a living person

If a contract contingent upon how a person will act at a future time, the event shall be considered impossible when such person does anything which makes it impossible for the event to happen. [Section 34]

Illustration: X agrees to pay Y, Rs. 100,000 if Y marries Z. However, Z marries A. The marriage of Y to Z must now be considered impossible, although it is possible that A may die and that Z afterward marry Y.

Condition #4- contracts contingent on an event happening within the fixed time

Contingent contracts to do or not to do anything if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time lapses. It is also void if before the time fixed, the happening of the event becomes impossible. [Section 35(para 1)]

Illustration: X promises to pay Y a sum of money if a certain ship returns before 1st April 2019. The contracts may be enforced if the ship returns within the fixed time. On the other hand, becomes void if the ship sinks.

Condition #5- contracts contingent on an event not happening within the fixed time

Contingent contract to do or not to do anything if an uncertain event does not happen within a fixed time may be enforced by law when the fixed time has expired, and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.[Section 35(para 2)]

Illustration: X promises to pay Y a sum of money if a certain ship does not return before 31st March 2019. The contract may be enforced if the ship does not return before 31st March 2019. Also, if the ship burnt before the given time, the contract is enforced by law since the return is impossible.

Condition #6- contract contingent of impossible event void

If an agreement to do or not to do is based on the impossible event, then such agreement is void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.[Section 36]

Illustration: X promises to pay Y, Rs 500 if two straight lines should enclose a space. The agreement is void.

Conditions when a contingent contract becomes void

- **Section 32-** if the event on the happening of which the contract is contingent becomes impossible, the contract becomes void.

Illustration: Mohan contracts to pay Ram a sum of Money when Ram marries Geeta. Geeta dies without being married to Ram. The contract becomes void.

- **Section 35-** contingent contract to do or not to do something, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Illustration: Saurabh promises to pay Servesh if a certain ship returns within the year. The contract becomes void if the ship is burnt within the year.

- **Section 34-** if the future event on which a contract is a contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.
- Section 36- contingent agreement to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustration: X agrees to pay Y, Rs. 10,000 if Y will marry X's daughter P. P was dead at the time of the agreement. The agreement is void.

Commercial applications of contingent contracts

1. Insurance is a contract to do something if the future event occurs that will be contracted by the parties and liability will be taken by the offeror. In all Insurance like Life Insurance, Marine Insurance, Fire Insurance, and other Insurances, the Offeror promises to take the risk of the offeree against the incident to do or not to do something and for that the offeree agrees to pay a certain amount of money.
2. The contingent contract can be used in the contract of guarantee as well as the contract of warranty. Contingent guarantees generally are used when a supplier does not have a relationship with a counterparty.
3. We can use a contingent contract in negotiation. Contingent contracts normally occur when negotiating parties fail to reach an agreement.
4. We can use the contingent contract in mergers and acquisitions (M&A) as well. Depending on the M&A deal, contingent payments such as earn-outs, Seller notes, and Buyer stock may be part of the Seller's proceeds. After the deal is finalized, these contingent payments will need continuous contact between Buyer and Seller.
5. It can also be used in the contract of indemnity.

Performance of contract:

Sec 1-36: formation of contract.

This tells us about how the contract will be formed.

Now comes the 2nd phase that is determination of rights and liabilities of the parties.

Ques:

1. How it will be performed?
2. Who will perform it?
3. Is it excusable?
4. How the parties will get discharged?
5. Breach of contract and relief thereby?

DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it come to an end.

DISCHARGE OF CONTRACT

A contract may be discharged –

1. By performance.
2. By agreement or consent
3. By impossibility or performance
4. By lapse of time
5. By operation of law
6. By breach of contract.

Discharge by performance:

Sec. 37 of the Indian Contract Act- Obligation of parties to contracts- the parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions [sec 56, voidable contract, recission, novation, etc.] of this Act, or of any other law.

Promises bind the representative of the promisors in case of the death of such promisors before performance, unless a contrary intention appears [for e.g., special skills] from the contract.

for sec 37 to apply, it is required that the contract must be concluded. If not concluded then parties are not bound to perform.

Great eastern energy corp ltd v. Jain irrigation systems ltd 2010 mah

In case of submission of tender, the party is not bound to the contract as it is not been concluded yet. It is just an invitation to offer which is yet to be accepted.

When a tender is submitted in response to an invitation, it is a proposal and not a contract. It requires to be accepted. The validity period of the tender as specified in the tender itself was 4 months. Naturally no acceptance could be made after expiry of such period. The forfeiture of the security deposit amount by accepting the tender after validity period and failure of performance by tenderer was not proper.

In case, if there are no legal representatives, who will be bound to perform?

According to cuttack HC in the case of basanti bai v. Prafulla kumar routrai 2006 Cut HC

The court came to the conclusion that if the contract is legal and enforceable then even if one of the party to the contract dies leaving no legal heir, the persons who acquired interest over the subject-matter through that deceased party would be bound by the contract and specific performance can be enforced against such persons.

There is a land owned by A. A contracted B to sell that land. Before the performance of sale, A died. A had given this land to C in a will. Now it is the duty of C to perform the contract of sale.

Section 38:

Effect of refusal to accept offer of performance

Promisor gave offer of performance to promisee and here the promisee refused to accept.

Effect:

- Promisor not responsible for non-performance
- Promisor does not lose his rights under the contract
- Offer of performance is equivalent to performance itself

- This offer of performance is also called as tender of performance.

Section 38(2) of the Act mandates that the tender of performance should necessarily be made at a time and place and under such circumstances so as to afford the person to whom the offer is made a reasonable opportunity to ascertain that the offeror is able and bound to do whatever he has promised under the terms of contract to do.

Every tender of performance must fulfil a certain essential condition:

- **Section 38(1):** The offer should be unconditional;
- **Section 38(2):** The offer must be made at a proper time and place so as to allow the party to have a reasonable time for ascertaining that the person who is making the offer to him is competent to enter into a contract;
- **Section 38(3):** If the offer to the offeree is such as to deliver some goods addressed to the offeree, then it is the duty of the offeror to provide reasonable time to the offeree in which he can ascertain that the goods offered to him is the same by which the offeror is bound under the terms of the contract.

Startup v. MacDonald 1843 Eng

Startup (S) contracted with McDonald (M) to supply specified quantity of linseed oil within the last fourteen days of the month of March. S tendered on the last of the fourteen days at 9'o clock at night. M refused to accept owing to the lateness of hour.

ISSUES:

1) Whether S supplying the goods at such period of time amounted to valid tender?

2) Whether M by denying to take delivery breached the contract?

HELD:

1) *The promisee must have a* ***reasonable opportunity*** *of ascertaining that the thing offered by promisor is thing which latter is bound to deliver*. (S.38-2)

Though the time of delivery was unreasonable due to lateness of the usual business hours, yet there was full and sufficient time for M to weigh, examine and receive into their possession the delivered oil before midnight (*in dissenting opinion, however, C.J. points out* ***there ought to be reasonable time as well as opportunity.*** *Absence of all workers from the warehouse or any other reason thereof due to the lateness of the hour could be pleaded as factor negating the tender for it will not provide reasonable opportunity to examine the product*).

Since in present case, M was present at the warehouse and was in a position to reasonably ascertain the quality, quantity of the product delivered, hence, there was a valid tender even when made at unreasonable time for it was made within the time stipulated under the contract and thus rendered literal possibility of performance within the letter of contract.

Subsection 1 of Section 38 states that a tender to valid must be unconditional which means that it should not be accompanied with any clause, provision or condition precedent or subsequent.

Section 38(2) of the Act mandates that the tender of performance should necessarily be made at a time and place and under such circumstances so as to afford the person to whom the offer is made a reasonable opportunity to ascertain that the offeror is able and bound to do whatever he has promised under the terms of contract to do.

Section 38(3) of the Act provides that the goods which are subjected to tender must be same as mentioned under the description of the tender otherwise the tender will be invalid.

Section 40:

By whom contracts must be performed

Section 40 of the Contract Act contains provisions regarding the performance of the contract. The Section provides that if by the terms of the contract it appears that the intention of the parties to the contract was such that any promise contained in it must essentially be performed

by the promisor himself and no other person on his behalf can perform his promise.

In all the other contracts the terms of which do not indicate any similar intention then in the absence of the promisor for the performance of the promise any other competent person can perform the promise on his behalf.

For example, where A promises to B a certain sum of money. The money could be paid to B by A personally or by any other authorized person authorized by A on his behalf. If in the above case A dies without authorizing the person who can make the payment on his behalf. Then his representative will be bound to make the payment on his behalf or they can appoint any other person to do so.\

Effect of accepting performance by the third party

Section 41 of the Contract Act contains provisions regarding the effect of acceptance of performance of promise by the third party.

The Section provides that where the promisee agrees to performance of a promise which is made to him by the offeror, by the third party.

He cannot at a later point of time enforce the contract against the promisor who initially promised to perform the promise.

If the terms of the contract indicate that from the very beginning of entering into the contract the parties to the contract intended specific performance of the promise by the promisor himself.

The effect of reflection of such intention would be that the promise should essentially be performed by the promisor himself and the promise cannot be enforced against his legal representative nor can his legal representatives can enforce the promise. This type of situation can usually be seen in cases which involve the personal skills of the promisor himself.

Generally, the rules laid down under Section 37 is that the promises of the deceased promisor will bind his representatives. Therefore, the general principle of the law of contract is that unless there appears a contrary

intention in the terms of the contract. The representatives of a deceased promisor are bound by the promise of the deceased and the promises of the deceased are enforceable against his representatives.

Joint promises

Section 42 of the Indian Contract Act talks about the joint promises. When two or more promisors agree to perform the terms of the promise together, they are said to have made a joint promise and the people who jointly agreed to perform the promise are called the joint promisors.

The section provides that the promisors are jointly liable to fulfil the promise until the terms of the contract provide anything to the contrary.

The Section also provides that in case of death of any one of the joint promisors his legal representatives will be bound by the obligation under which the promisor was in his lifetime.

Section 43:

Under this Section, the lender may sue all or any of the joint promisors as he may choose, even where one of the promisors has undertaken the liability as a surety. Section 43 read along with O I r 6, CPC, makes the effect of joint liability arising on a contract the same as where the liability is several.

Suit Against One of the Several Partners

The Section applies as much to partners as other contractors. In a suit brought upon a contract made by a partnership firm, a plaintiff may select as defendants, those partners of the firm against whom he wishes to proceed, without making all the partners defendants. Where a partner of a registered firm entered into a contract of tenancy on behalf of the firm, a suit against that partner for recovery of rent was maintainable in the absence of the other partners, who were not necessary parties, non-payment of rent being an act of the firm within the meaning of The Indian Partnership Act, s 25.

The word contribution in s 43 and reimbursement is in s 69 covey two different ideas and applicable in two different ideas and applicable in two different circumstances. A contribution is between persons equally

bound, while reimbursement lies between a person interested in payment and persons bound to pay. Contribution signifies payment by each of the parties interested in his share in any common liability. Mutuality is the test of contribution.

Under the English law, joint and several debtors have a right of contribution among themselves based on restitution.

Unless a contrary intention appears, the right to claim contribution is an absolute right, and the courts have no option but to give effect to it.

The fact that one happens to escape from legal liability to the creditor, without consent of his associates, and perhaps even without their knowledge, cannot be allowed to disturb the original obligation between co-debtors or to alter the proportions of liability or contribution, which must be ascertained from the note at the time it was made as held in *Ramskill v Edwards*.

If one liable person is not in a position to pay his share, that amount should be divided equally within the Section between the others, but it was held that the amount could be divided by the proportion of the benefit each received.

Conclusion to section 43:

This section talks about joint and several liability of the joint promisors. It is divided into 3 parts:

1. Sec 43 [para 1]: according to which promisee may compel any one or more of the joint promisors to perform the whole promise.
2. Sec 43 [para 2] : this is right of contribution, according to this provision, the joint promisor who had performed or has been compelled to perform the whole promise may require the other joint promisor to make equal contribution to the performance of the promise.
3. Sec 43 para 3: this is about sharing of deficiency. According to this provision, if any one of the joint promisor make a default in contribution, the remaining joint promisor must bear the loss or deficiency in equal shares.

Explanation to sec 43:

According to this explanation, sec 43 will not apply in case of principal debtor and surety. Therefore, if a surety has paid the liability on default of the principal debtor. He shall not be prevented from recovering any payment from his principal debtor. Further the principal debtor is also

not entitled under section 43 para 2 to recover the contribution from the surety.

Ques:

If A,B & C are joint promisor. D file a suit only against A. So can he subsequently file suit against B&C ?

Yes as per the case of

Mohd. Askari v. Radhe Ram Singh ILR 1900 All HC

According to the words of CJ STRACHEY, there is no such bar in the words of sec 43 and therefore in a subsequent suit against other joint promisors should be allowed to proceed. But some other HC's have different opinion about this.

In English law: the position is different here. No subsequent suit can be filed. It is constituted to be the part of same cause of action.

Section 44

Effect of release of joint promisor.

Release of one joint promisor

Section 44 of the Contract Act grants the Right to release to the creditor under which he may release either of the joint promisors from liability. The section provides that where the creditor has released either of the joint promisors from the liability. The other joint promisors are not discharged from their liabilities and they are still bound to fulfil the promise which they have made to the person. The release of the promisor from his liability towards the promisee, however, does not result in his release from the liability which he has towards the other joint promisors.

Section 44 of the Indian Contract Act marks a departure from the common law principle in which the release of one of the promisors from liability tantamount to the release of the other promisors from their liability towards the promisee. Unless the promisee expressly provides for the preservation of rights against them.

Section 45:

45. Devolution of joint rights.—

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and then, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and then, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

" Illustration A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B’s representative jointly with C during C’s life, and after the death of C, with the representatives of B and C jointly. A, in consideration of

5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C, with the representatives of B and C jointly."

This section lay down rules regarding devolution of joint rights. According to sec 45, if a promise is made to 2 or more persons. i.e., there is one promisor and several promises then unless a contrary intention appears from the contract [expressly or impliedly] the right to claim the performance rest with all the promises jointly and a single promise cannot demand the performance.

Further if any of the promisee dies before the performance then his legal representative along with the surviving promise's jointly can claim the performance and after death of all the promisee, the LR's of all may jointly claim the performance.

Jahar roy v. Premji bhimji mansata 1977 SC

In this case, the question came into the consideration that what will happen if one of the promisee does not join the suit with other promisee's against such promisor.

It was held that the court will add him as proforma defendant. So, this is how the Res judicata applies upon that person.

If a joint promisee refuses to join as co-plaintiff then he should be set on record as proforma defendant because the court cannot compel any person to be as plaintiff but by doing this he would be bound by the decree and thus res judicata will apply on him.

Time and place of performance of contract:

1) When no application is to be made by the promisee and no time is specified – *Section 46*

In situations where there is no time period specified for the performance of the contract and the promisor has to perform the contract without any request by the promisee, in such a case the promisor must perform the contract within a "reasonable time".

Here reasonable time means a fair amount of time that is required to do something conveniently and as soon as the circumstances permit. Hence here time is not important since a specified date for completion is not mentioned but

this does not mean that the promisee does not have the right to have the contract performed by the promisor.

Also, the term reasonable time depends on the facts and circumstances of the case and will also depend on the nature of the transaction.

Illustration
Srishti takes a loan of Rs 10,000 from Shivani and says that she will return it to her when she receives her next salary. Here the reasonable time for performance of the contract is after Srishti receives her next salary.

2) When time and place of performance is specified but no application is to be made by the promisee- *Section 47*

When the terms of the contract say that the promisor has to perform the contract without any request by the promisee, on the place specified by the promisee and on the exact date specified by him.
In case no specific time is mentioned then the promisor should deliver the goods during the usual hours of business.

Illustration
Ankita promised to deliver goods to Ira on an advance payment of Rs 10,000. Ira made the payment and asked Ankita to deliver the goods on 13th of the same month at her office at Tis Hazari. Since the time is not specified, she should deliver it between 10 am and 5 pm, assuming those are the regular court timings.
If Ankita attempts delivery after the business hours, then Ira has the right to not accept the goods and ask Ankita to deliver again during business hours.

3) When Performance is to be made on a proper place and time but an application is to be made by the promisee to the promisor for its performance- *Section 48*

When the terms of the contract say that a performance of a contract has to be made on a particular day but the promisor will only do so when the promisee makes an application to the promisor on that specific day for performance. Hence, here since it is specifically mentioned in the contract that the promisee has to request the promisor for performance on that specific day, he must do so at the proper place and during the usual business hours as specified by him.

Illustration

Manu agrees to supply Nishant 50 cartons of alcohol on 3rd November at his office. As per terms of the contract, Nishant would have to request Manu for performance. Thus, on the due date and within usual business hours, Nishant should request Manu regarding a time and place for the supply of goods.

4) Where no place is fixed and no application has to be made to the promisor by the promisee- *Section 49*

When the terms of the contract do not specify the place where the goods have to be delivered and that no request has to be made by the promisee for the performance of a contract, in such a situation it is the duty of the promisor to request the promisee of a place reasonable to both where the goods can be delivered and then accordingly perform the contract.
The place for the performance of goods implies both the delivery and payment of goods.

Illustration
Sheela entered into a contract for supplying 100 cartons of Gram Flour to Anu on 5th September at a specific price. On the due date of performance, Sheela must apply or request Anu for determining a reasonable place and also make the payment at the same place.

5) When the performance has to be made in the time and manner as specified by the promisee- *Section 50*

A contract can also exist in which the promisor agrees to perform the contract in a manner and at a place and time prescribed by the promisee.

Illustration

Ankur's son is in the hospital and needs money for his son's operation. Harshil owes money to Ankur and agrees to repay him in at any place or time decided by Ankur. In this case, Ankur has the liberty to ask for the performance of the promise in any manner and at any place or time suited to him.

The consequence of Failure to perform the contract at a fixed time when the time is essential

Section 55 of the *Indian Contract Act,1872* deals with the effect of failure to perform the contract at a fixed time when the time is essential.

- If an act is not done within the stipulated time, the contract becomes voidable at the option of the promisee provided the Intention of the parties was that time should be of the essence of the contract.

Thus, whether time was the essence of the contract depends on the intention of the parties and also on the nature of the contract.

Where we can say that time is the essence of the contract?

It is always a question of fact. It has to be determined in each case. But sometimes it becomes very difficult to determine.

Later this some general principles have been developed by judiciary.

1. Where time is expressly given by the parties.

2. Where delay is an injury i.e. delay by promisor causes injury to the promisor.

3. Where nature and necessity of the contract is such that it is necessary to perform the contract in particular time only.

   Where nature and necessity of contract requires it to be so constructed. For eg. Parties asked for permission to extend the time. It means that the contract is of such nature that time is the essence of the contract.

In *Bhudra Chand v. Betts(1915)* the defendant promised to deliver an elephant to the plaintiff for the capture of a wild elephant as a part of Kheda Operations. The contract provided that the elephant would be delivered on the 1st of October, 1910, but the defendant obtained an extension of the time till 6th Oct and yet did not deliver the elephant till 11th. The plaintiff refused to accept the

elephant and sued for damages for the breach. It was held that the plaintiff was entitled to recover damages since it was proved that time was the essence of the contract since the defendant had tried to obtain an extension of time.

- This section says that if it was not the intention of parties to make time of the essence of the contract, the contract does not become voidable by the failure to perform the contract on or before the specified time but the promisee is entitled to claim compensation for any loss caused by the default
- Finally, the section goes on to say that if time is intended to be of the essence by the parties but performance is accepted on some other time other than the time agreed, compensation cannot be claimed by the promisee unless he gives such a notice to the promisor.

Time Can Be Made Essence By Notice

When time is not of the essence in a contract, it can be made so by giving notice to the promisor. The notice must contain clearly that it wants to make time as the essence of the contract and the necessary implications if it is not adhered to. The promisor can also be intimated through the notice that default in the compliance with the terms will lead to the cancellation of the contract. The party serving the notice must himself be bound by it.

Extension of time

Since one party to the contract cannot unilaterally vary the terms of the contract, he also cannot extend the time without the consent of the other party through an agreement, Therefore, time for performance can be extended only by an agreement arrived at between the promisor and promisee. Thus if one party requests the other party for extension of time but the other party does not communicate his acceptance, the time cannot be extended in such a case

Smt. Swarnam Ramachandran and Another versus Aravacode Chakungal Jayapalan 2000 BOM HC

In this case, it was held that the parties may take time as essence of the contract either expressly but it may be inferred also from the nature of the contract, the property or the surrounding circumstances.

It has been held in the case of *China Cotton Exporters v. Beharilal Ramcharan Cotton Mills Ltd (1961)* that in commercial contracts time is ordinarily of the essence of the contract.
Thus It is ordinarily presumed that except in commercial contracts, time is not of the essence in other contracts. This presumption can be rebutted by showing the intention of the parties.

For example, Time is presumed not to be of the essence in contracts relating to immovable property, but of the essence in contracts of renewal of leases.

The intention of the parties

In Indian law, the question of whether the time is of the essence of the contract or not is determined by the intention of the parties.

The intention of the parties can be determined from:

(a) The express words used in the contract
(b) The nature of the contract itself
(c) The nature of the property which forms the subject matter of the contract
(d) The surrounding circumstances

In the case of *State of Kerala v. M.A Mathai(2007)*, it was held that if there are any delays in the performance of reciprocal obligations by an employer, the contractor gets the right to avoid the contract but if he does not avoid the contract and accepts the belated performance, he cannot claim compensation for any loss sustained to him due to delay in performance, unless he gives a notice of the same to the delaying party.

In *M/S Citadel Fine Pharmaceuticals vs M/S Ramaniyam Real Estates Pvt. Ltd. and Ors. (2011)*, It was held that time was the essence of the contract which was specifically mentioned in *clause 10* and the consequences of non-completion are mentioned in *clause 9*. So, from the express terms of the contract and the commercial nature of the transaction and the surrounding circumstances make it clear that the parties intended time to be of the essence of the contract.

However, merely specifying the time at which the contract has to be performed does not make time the essence of the contract. In order to determine this the terms and conditions of the agreement should be read carefully. If the contract in its terms provides that time is the essence of the contract, but other terms of the agreement show that the parties did not intend time to be of the essence, the court has held that time is not of the essence.

For Example, in the Case of *Hind Construction Contractors v. State of Maharashtra (1979)* the Appellant entered into a contract with the respondent on July 2, 1955, for some construction work with the condition that the contract should be completed within 12 months from the commencement of the work. The Appellant could not complete the work within the stipulated time and the Respondent canceled the contract with effect from August 16, 1956. The Appellant contended that time was not of the essence and further on account of several difficulties, such as excessive rains, lack of proper road and means of approach to the site, the completion was delayed. The Supreme Court, in deciding that time was not of the essence in relied on two clauses in the contract –

1. First, there was a power to grant an extension of time on reasonable grounds by the respondent on an application by the appellant. Even though the appellant made an application for extension, the respondent revoked the contract which was wrong.
2. Second, there was a provision to recover penalty/compensation from the appellant at specified rates during the time the work remains unfinished.

These two provisions, as per the court, exclude the inference that time was intended to be of the essence of the contract.

Sec 55 para 2: effect of such failure when time is not essential:

Not voidable but compensation can be demanded.

MC Dermett Int. v. Burn Standard co ltd 2006 SC

In this case, it was held that when time is not the essence of the contract, promisee is bound to accept the delayed performance but he has a right to recover compensation for the delay and no notice would be necessary for exercising the right to seek compensation.

In a contract, the promisor and the promisee both undertake certain obligations towards each other. These obligations can also be in the form of a reciprocal promise or a promise in exchange of a promise.

Both parties will be fulfilling their performance at a future certain date. It is called as reciprocal performances.

Promise v. promise = reciprocal promises.

When you go to a shop, the shopkeeper agrees to give you the product in exchange for money. This is an example of a reciprocal promise in case where you promise to pay the value of the product and the shopkeeper promises to give you the goods on receipt of the payment at a future time period.

[jab aap yeh kar doge tab m vo kar dunga]

Section 51:

When a contract consists of reciprocal promises to be simultaneously performed, no promiser need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations
(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Section 52:

A Sequence of Performance of a Reciprocal Promise (Section 52)

When a contract includes a reciprocal promise, the parties might agree upon the order in which the promises are performed. If that is the case, then the order, as mentioned in the contract should be followed.

However, if the contract does not specify any such order, then the order of performance of the reciprocal promises is determined based on the nature of the transaction. [first work then payment]

Illustrations
(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Section 53– One party preventing the other to perform their promise

If one party prevents, or makes it impossible for the other party to perform their job, then the affected party has the option of voiding the contract. They also have the option of asking for compensations for the damages.

For example, Ashok is willing to supply coats to Navya, but on the day of delivery, Navya does not show up or locks Ashok in his shop; then Ashok can void the contract or collect compensation.

MUTUAL + INDEPENDENT PROMISES

Illustration
A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so.

The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Section 54– Reciprocal and dependent promises

When the nature of the promise is conditional, the first party (the party who has to perform in order for the other party to perform) can not ask the other party to perform their promise, if they do not perform first.

The second party can also ask for compensation if they face damages due to the non-performance of the first party.

For example, Aaryan is a carpenter and Sara provides wood. They have a contract that Sara will provide wood to Aaryan and then he will make a table for her. If Sara refuses to provide the wood, then she cannot expect Aaryan to make the table. If Aaryan faces any loss due to the fact Sara failed to provide wood, then he can ask for compensation.

Illustrations
(a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish and scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Section 51:

Mohammad v. Pushpalatha 2008 SC

There was an agreement of reconstructing tenanted premises with a washroom. The tenant agreed to pay higher rent on the reconstruction. Possession was given to the tenant of that reconstructed premises but washroom was not provided. SC held that tenant is not bound to pay higher rent though he was given possession of reconstructed premise. The reciprocal promises have to be performed simultaneously and not in isolation.

It was held in this case that tenant is not bound to pay higher rent though he was given possession of reconstructed premises but the promise of constructing the washroom was not fulfilled and reciprocal promises has to be performed simultaneously and not in isolation.

Sec 53:

Liability of party preventing event on which the contract is to take effect.

According to sec 53, if the reciprocal promises are mutual and independent and one of the parties prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented and also, he can claim compensation from the party who is preventing him to perform for the loss he has suffered due to non-performance.

Sec 54:

According to sec 54, if the reciprocal promises are mutual and dependent that is one cannot be performed or its performance cannot be claimed unless the other party performs his promise. In this situation, the latter party who fails to perform his promise cannot claim performance from the other and must make compensation to the other party for any loss occurred to the other due to non-performance of the contract.

Section 57– Reciprocal promises or legal and illegal acts

The parties may have entered the contract to do legal acts. But after the contract was established, under specific conditions, they agreed to do illegal acts. In this case, the previous legal acts are valid and the preceding illegal acts are held void.

For example, Ashok promises to supply coats to Navya. Navya then promises to sell such coats on the black market for more profits. Here Ashok's promise to supply coats to Navya is valid but Navy's promise to sell such coats on the black market is invalid.

Illustration
A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Section 58– Alternative promise of legal and illegal acts

Parties may promise to do legal acts that branch off into illegal acts.

For example, Preeti promises to pay back her loan to Rohit. But this loan shall be paid with black money. Thus, while Preeti's promises to pay back the loan is valid, the promise to pay with black money is invalid.

Illustration
A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

In section 57, there are 2 sets of promises but in sec 58, there is only one set of promise.

Doctrine of frustration:

The doctrine of frustration is present in S. 56 of the Indian Contract Act 1852.

It says that any act which was to be performed after the contract is made becomes unlawful or impossible to perform, and which the promisor could not prevent, then such an act which becomes impossible or unlawful will become void.

The Supreme Court pointed out that the doctrine of frustration could not be availed by the defendant when the non-performance of the contract was attributable to his own decision.

The doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of the parties or the change in circumstances makes the performance of the contract impossible.

The source of the doctrine of frustration in English Law is the case of **Taylor v. Caldwell**. In this case it was held that when an opera house, which was rented for holding concerts was destroyed by fire, the contract was frustrated. This was because the very thing on which the contract depended on ceased to exist or if a certain thing happened.

Thus, it was held that for the doctrine of frustration it must be so that the nature of contract is such that it would not operate if a thing ceased to exist.

Section 56:

The scope of this section is wider and is not limited only up to doctrine of frustration of the contract.

Section 56– Impossible or unlawful act

If the promisor promises to do something which is impossible to do, then the contract is void. This section, thus, deals with the 'Doctrine of Frustration'.

The conditions that should be satisfied in order to invoke this section are –

1. The cause should not be a result of a default of the parties.
2. The cause must be unforeseeable and inevitable.
3. The cause must render the entire contract impossible to do.

There are two scenarios which are illustrated below-

Initial impossibility

This is when the promisor and promisee enter into a contract to do any act which they both know is impossible to do then the contract is void.

They are void ab initio

If the promisor promises to do an act that he knows can not be done, then he is liable to pay compensation for the losses suffered by the promisee due to his incapability to perform the act.

Thus, Ashok promises to supply Navya a coat made of bear fur. Navya wishes to wear this coat for a television interview. But, Ashok is aware that it is impossible for him to supply a bear coat to her in this season, but he still promises to sell her one and enters into a contract with her. In this situation, Navya can void the contract and can ask compensation for the losses she suffered.

Subsequent Impossibility

At the time of making the contract, the act might have been possible and lawful, but later on, it became impossible to do due to some reasons which is called as legal impossibility. In this case, the contract becomes void when the act becomes impossible to do due to supervening reasons.

Here the contract had been valid. Hence it had fulfilled all the essential ingredients of the contract. But after coming into the contract, due to some reasons the performance cannot be made.

Taking from the previous example, at the time that Ashok enters the contract, he will be able to provide a coat made of bear fur to Navya. But after he enters the contract, the Government puts a ban on the supply of products made of bear fur. Now Ashok cannot supply Navya with the coat she wanted. Thus, the contract becomes void when the Government passes the law.

This mainly deals with doctrine of frustration.

Dictation:

According to the doctrine of frustration of the contract, if the performance of a contract becomes impossible due to some subsequent supervening impossibility, the contract will become void and the parties will get discharged from the performance. Same principle was recognized in the Taylor v. Caldwell case.

Again, in **Krell v. Henry 1903**, where rooms were rented out along the route of the procession for the king's coronation and

the coronation was postponed due to the king's illness, the contracts for renting out the rooms were held to be frustrated. This meant that the doctrine of frustration would also apply to cases wherein a certain thing did not happen.

Indian law:

It was held in Satyabrata Ghose vs. Mugneeram Bangurn & Co & Anr. 1954 SC,

that the term 'impossible' has not been used in section 56 of the Contract Act in the sense of physical or literal impossibility. It is not necessary that the performance of act be literally impossible but it may be impracticable and if an event totally changes the very foundation of the contract, it can be said that the promisor finds it impossible to do the act which he promised to do. Therefore, when we say the object of contract is lost, the contract is said to be frustrated.

Specific grounds of application of doctrine of frustration:

1. Destruction of the subject matter

2. Change in circumstances [here the subject matter does not destroy]

•Thus in Joseph Constantine Steamship Line, Ltd V. Imperial Smelting Corporation, Ltd [1941] The day before chartered ship was due to load her cargo an explosion of such violence occurred in her auxiliary boiler that the performance of the charter-party became impossible. The cause of the explosion could not be definitely ascertained, but only one of three possible reasons would have imputed negligence to the ship-owners.

•It was held by the House of Lords that, since the characters were unable to prove that the explosion was caused by the fault of the owners, the defence of frustration succeeded and the contract was discharged.

Maxims on doctrine of frustration of the contract:

1. Lex non cogit an impossibilia

Law does not recognize what is impossible

2. Impossibilium nulla obligito est

Impossibility creates no obligation

3. Non haec in foedera veni

It was not this that I had promised to do

Force majeure:

Some supervening event which has to be explicitly mentioned in the contract which will discharge the contract.

Supervening or unforeseeable event.

Force majeure clauses are mentioned in the contract.

Change in circumstances:

Joseph case:

When there occurs the change of circumstances to the extent that it make the performance of the contract impossible or even extremely difficult in the manner and at the time contemplated then the contract in such situation will get frustrated and will become void.

Non-occurrence of contemplated event:

This is also a case of practical impossibility.

Krell v. henry

Parshottam das v. Batala MC 1949 PC
the tong stand was leased to this person for Rs5000 but throughout the year, no horse carriage was kept at that stand.

It was held that doctrine of frustration is applicable and the lessee is entitled for the refund of his lease amount.

The court held since the contemplated events did not occur which was the foundation of the contract, the contract got frustrated.

Death and incapacity of the party:

Robinson v. davinson 1871

- a contract by a pianist to perform on a specific day was held to be frustrated when the pianist became too ill to perform. Incapacity of the promisor to perform his part discharges the parties from the liability.

- Delay and obstruction of performance: Where caused by external events, delay and/or obstruction may be held to be frustration if the delay is so long, or the obstruction so extreme that it would make the result of the contract fundamentally different from what had been contemplated.

Government or legislative intervention:

This is the case of legal impossibility.

You contracted for a product to be imported in India. Later on, law impose ban on that product's import. Now it has become frustrated.

Sham sunder v. Durga 1966 all HC

In this case vendor of the land could not execute the sale deed because he ceased to be the owner of the land by operation of law. The court held that due to legal impossibility which occur subsequent to the contract, the contract has become void. So the vendor is discharged from the performance.

Boothalinga agencies v. VTC Pariaswami 1969 SC

This case is related to import ban only. The Supreme Court held that the statutory provisions contained in Section 56 of the Contract Act lay down a positive rule of law and the provisions of Section 56 cannot apply to a case of "**self-induced frustration**

Self-induced frustration is the event which creates hindrance in the performance of the contract, by act of either of the party.

If subsequent to the contract, if there is any legal intervention due to which the performance of the contract is legally impossible, then the parties get discharged from the performance and the contract becomes void.

Intervention of war:

Ill [d] of sec 56 clarify this.

War like situations due to which the performance of the contract becomes impossible, then also DOF applies.

But however if the performance becomes difficult instead of impossible, then there is no excuse.

Tsakiorglou & co ltd v. Noblee throl GMBH 1962

It is also known as suez canal case

The goods were to be delivered. Usually, it was done from the Suez Canal route. But because of the Anglo-French war, this canal was closed. But the other route was available but it was expensive and difficult.

This case refers to the situation where there was closure of Suez Canal following the Anglo-French war with Egypt, being the normal and usual route and was closed due to intervention of war. The court held even if the normal route was closed, the shipment could have been bought through other reasonable and practical route even if it would have been expensive or inconvenient method. Thus, the contract here was held not to be frustrated and the party was made liable for the breach of the contract.

Industrial Finance Corporation of India Ltd vs The Cannanore Spinning & Weaving Mills Ltd. and Ors.

In this case, it was held that to apply the DOF, following 3 conditions are required to trigger the DOF u/s 56 of ICA i.e.,

1. There should be a subsisting contract

2. Some part of the contract is still to be performed.

3. After the contract is entered into, it becomes impossible of performance.

However, if the performance of contract is not impossible but has become hard/expensive for e.g. any business hardships, etc.

the supplier or the promisor cannot claim the benefit of the doctrine of frustration.

Therefore, commercial hardships are not covered under DOF.

Samuel Fitz & Co v. standard cotton co. 1945 Mad

The defendants ordered to the plaintiff's some goods and they mentioned that they are going to sell it in Australian market. Later on, Australia banned import of that goods. Defendants cancelled the order. Plaintiff sued them for the breach of contract.

In this case, defendants placed an order with the plaintiffs for the supply of certain goods making it clear that they intended to sell it in Australian market. But the Australian govt. prohibited the import of such goods subsequently the defendant loses their major market and cancelled the order. The court held that the foundation of the contract was not that the goods should be re-sold in Australian market. This is a case of commercial hardships and not of impossibility. Therefore, the cancellation of order here amounts to breach of contract and DOF will not apply.

Another instance where the DOF does not apply is:

Self-induced frustration

A contract to supply certain goods to B. but later on he supply the same goods to C which were supposed to be supplied to B. here DOF will not apply as it is the case of self-induced frustration.

Another instance

Failure of one of the objects

Horne Bay stream Boat & co v. Hutton 1903 PB

There were 2 objectives for the hiring of the stream boat

1. Naval review
2. Day's cruise around the fleet.

Here one of the objectives was frustrated. It was held that DOF is not applicable here.

The court held that the defendant is liable to pay the remaining amount as the review was not the frustration of the contract and there were other objects too.

Executed contracts:

It means already performed contracts.

In such cases where the contract has already been performed the DOF cannot be applicable.

Raja Dhruv Dev v. raja Harmohinder Singh 1968 SC

In this case, land was leased out before partition of India. After the partition of India, land remained in Pakistan and lessee came to India. The court held that since the deed was already executed. So, on the ground that you was not able to use it cannot be raised. DOF cannot be applied. The possession of the property was delivered.

The court held that no recovery of rent is allowed in this case as the contract is already executed and is out of the scope of section 56.

Restitution in cases where contracts are frustrated.

Restoration of benefit is allowed u/s 65 when the contract becomes void. Therefore, of some subsequent impossibility [sec 56 para 2]. But no restoration is allowed in case of initial impossibility i.e, sec 56 para 1.

Restitution: sec 65

If any party has received any advantage, they have to return it after the contract becomes frustrated.

SECTION 65 OF THE INDIAN CONTRACT ACT

Section 65 of the Indian Contract Act deals with the doctrine of the restitution.

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

The principle laid down in this section is that when the parties have entered into valid a contract and some benefits have been passed under it and subsequently the contract is either discovered to be void, the party who has received the benefits must restore them to the other.

IN CASE OF INFANT

If the infant obtains property or goods by misrepresenting his age, he can be compelled to restore it, but only when the goods is in his possession

or converted such goods, he cannot be made to repay the value of the goods as it is a void contract.

CONDITIONS

- *There must be valid contract between the parties.*
- *There must be some consideration in the contract.*
- *One of the parties to the contract failed to perform the contract or cannot execute the contract because of happening of an uncertain events.*

EXCEPTIONS

- *When there is no agreement or contract between the parties, the doctrine of restitution will not be applied.*
- *If the contract is void-ab-inito sec 56 para 1, Section 65 is not applied.*
- *When there is an agreement between the major and minor persons, the doctrine of restitution will not be applied.*

Sec 56 para 3:

Compensation for loss through non-performance of act known to be impossible or unlawful.—

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy.

A must make compensation to B for the loss caused to her by the non-performance of his promise.

Appropriation of payments and Discharge by agreement

Appropriation means 'application' of payments. In case of a creditor and a debtor, Section 59 to 61 of the Indian Contract Act, 1872, lay down certain rules regarding the Appropriation of payments.

When a debtor pays an amount to the creditor, the creditor is to take note of these sections before applying the payment to a particular debt, because the creditor would be inclined to appropriate payments to the debt which is not likely to be realized easily. In case both parties do not specify the appropriation then the law would take the responsibility and appropriate accordingly.

A discharge of a contract by agreement, on the other hand, is when the contract is ended because the conditions are not fulfilled.

However, the involved parties can also terminate a contract when the primary terms and conditions of the said contract have not been fulfilled.

Essentially, the difference between a discharge of a contract and terminating contract is the reasons why the contract is coming to an end.

Appropriation by debtor

Under Section 59 of the Indian Contract Act, 1872, it is stated that if the debtor owes several debts to the creditor, and makes a payment to any of them and later requests the creditor to apply the payment to the discharge of a particular debt.

If the creditor agrees to this request, he is bound by such appropriation. This section applies to several distinct debts and not to a single debt, or to various heads of one debt.

This is not applicable where the debt has merged into a decree. The appropriation may be implied or expressed by the creditor.

The basic idea is that "When money is paid, it is to be applied according to express the will of the payer and not the receiver.

If the party to whom the money is offered does not agree to apply it according to the will of the party offering it, he must refuse it and stand upon the rights which the law has given him"

Clayton's Case

In England, it has been considered a basic rule since the case of Devaynes vs Noble, also known as Clayton's case. In this, it was held that the debtor can request the creditor to appropriate the amount to any of the debt in case he owes to the creditor several and distinct debts, if the creditor agrees to it, then he is bound by it.

Several and Distinct Debts

Section 59 applies to the debt which is several and distinct and does not apply in the cases where there is only one debt even if it is to be paid in installments. The test to know whether the debts are distinct is the person can sue for it separately.

(a) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first June, A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Intimation by the Debtor

The debtor must at the time of the payment of the debt, must intimate the creditor that the amount must be paid for the liquidation of a certain debt, and the creditor has to appropriate it accordingly. The creditor has the right to refuse any conditions made by the debtor during the payment of the debt. Once appropriation has been accepted, then the creditor cannot alter the terms of the appropriation, without the consent of the debtor.

The debtor should communicate his appropriation either expressly or impliedly, through the circumstances indicating such intention.

pari delicto

Latin for "in equal fault (better is the condition of the possessor) is a legal term used to refer to two persons or entities who are equally at fault, whether the malfeasance in question is a crime or tort.

Appropriation by creditor

Under Section 60, the creditor is also competent for appropriation.

If the debtor makes any payment without any appropriation then the creditor can use his discretion to wipe out any debt which is due.

He may use it for the payment of a time-barred debt or wipe out the debt which is carrying a lower interest rate. The right of appropriation lies with the creditor until the last moment, even when he is examined at the trial or before any act which renders him inequitable for him to exercise this right.

The creditor, in this case, has a lot of scope for exercising his right, he can put himself in the most advantageous position.

Moreover, he need not express himself in express terms while doing so.

As long as notice has not been given in respect of the appropriation of any amount, the creditor can change it and can appropriate some other claim.

Section 25:

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a time barred debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Lawful Debts

The creditor must establish the existence of a lawful debt actually due. Under this section, the appropriation cannot be made against any unlawful debt. In several cases, it was held by the court that a creditor can even appropriate towards an unenforceable debt due to some defect.

Time-Barred Debts

The creditor, in the absence of any appropriation by the debtor, can appropriate the amount of a debt barred by the Limitation Act,1963. This usually happens as the creditor appropriate the amount to a time-barred debt and sue the debtor for the ones not barred. However, the amount cannot be appropriated to a debt barred by a statute after an action has been brought and judgment has been delivered.

Appropriation by law

Section 61 is applied in a situation when neither of the parties makes the appropriation. To settle this deadlock, then the law gets the right to appropriate.

In such cases, the debt is settled in accordance with the order of the time they have incurred.

In case all the debts are of the same time then the debts would be discharged proportionately.

Under this Section not only the express agreement but also the mode of dealing between the parties.

Hence acc to section 61, if neither party makes an appropriation then in such a situation, law gets the rights to appropriate it in order of time.

if the debts are of equal standing in time, then the payment is to be applied in discharge of each debt proportionately.



If both the parties to the contract, expressly or impliedly, agree to terminate the contract, the contract is said to have been discharged by mutual consent.

Example: A buys a scooter from B with the condition that if it's working is not found satisfactory, he will return it within 10 days. A is not satisfied with the performance of the scooter and returns it to B within 10 days. The contract is discharged by mutual consent.

Ways Mutual discharge of contract takes place

Mutual discharge of a contract may take place in any of the following ways:

Novation: Novation means substitution of a new contract in place of the old one. It creates a new contract in exchange of the old contract. It discharges the old i.e., the original contract. New contract here may be either between the same parties or between different parties, the consideration being mutually the discharge of the old contract.

- Old contract must be valid and subsisting
- New agreement must be valid too
- Novation must be done before breach of contract or before expiry of due date of performance
- Mutual consent of parties must be there, if consent of parties is not there then the old contract will not be discharged.

2. **Alteration**: Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid, if it is done with the consent of all the parties to the contract. In such a case, the old contract is discharged.

3. **Remission**: Remission means the acceptance of less than what was contracted for.

4. **Rescission**: Rescission means cancellation of all or some of the terms of a contract. It may occur under various circumstances such as

1. By mutual consent of the parties, or
2. Where a party to a contract fails to perform his obligations, the other party can rescind the contract without prejudice to his rights to receive compensation for breach of contract.

3. In case of a voidable contract, one of the parties has the option to rescind it.

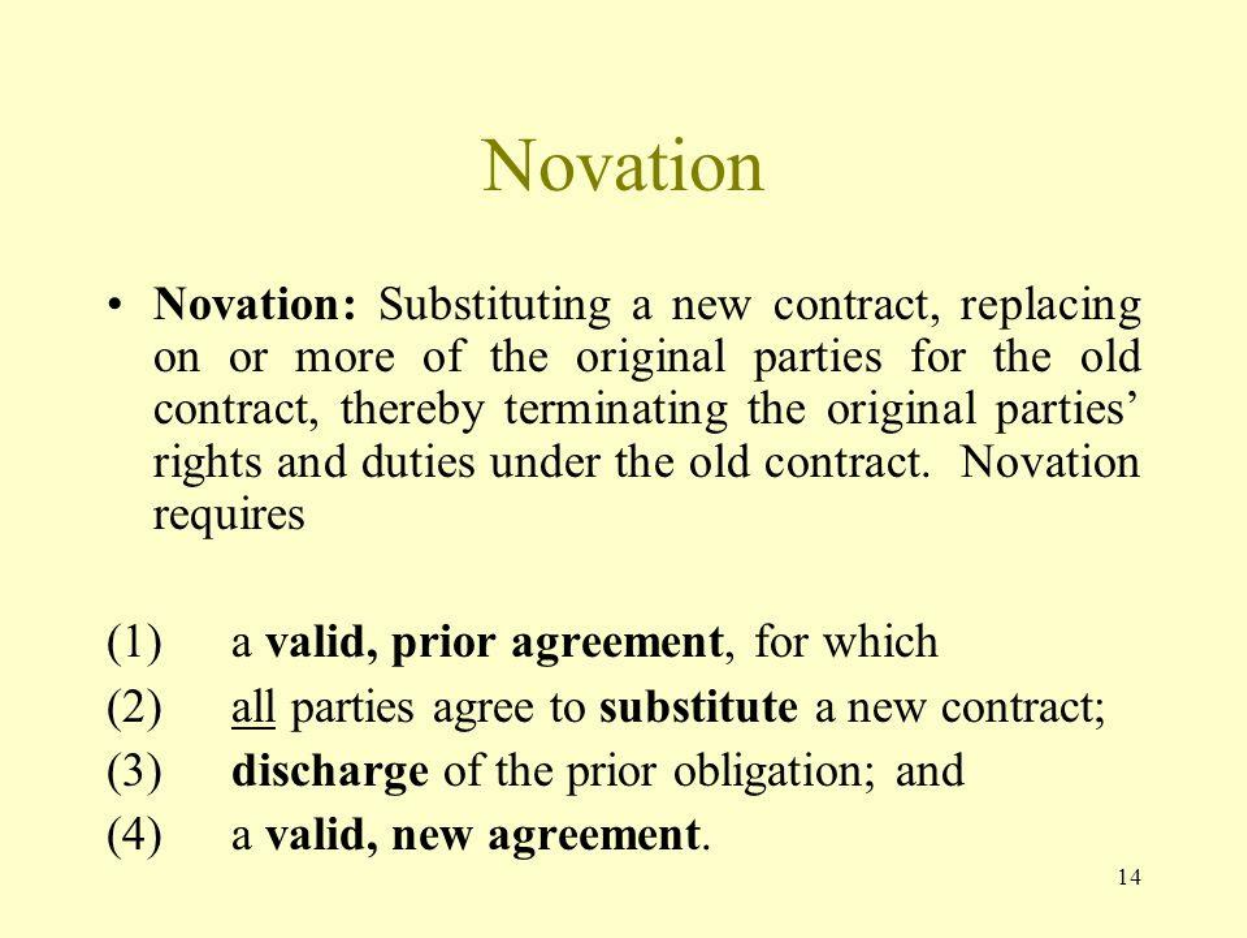
5. **Waiver**: Waiver means “Abandoning” the rights. When a party to the contract abandons or waives his rights, the contract is discharged. Here, both the parties mutually agree that they shall no longer be bound by the contract. It amounts to a release of parties from their contractual obligations.

6. **Merger**: Merger denotes coinciding and meeting of an inferior and superior right in one and the same person. In such a case, inferior right available to a party under an agreement will vanish automatically.

Contracts which need not be performed

Under Section 62 of the Indian Contract Act, 1872, it is given that if the parties to a contract agree to substitute a new contract for the earlier contract or rescind it all together then the original contract need not be performed.

Novation



The word "novation" is not used in the section per se but is present in the marginal notes. It is defined that a contract that is already in existence is substituted by a new contract and the consideration mutually discharged of the old debt.

The outline principle of novation is "discharge of one debt or debtor and substitution of one debt or debtor".

Novation cannot be done unilaterally; it has to be with the consent of both the parties.

Novation is the complete substitution of the old contract with the new contract and not mere variation in the terms of the original contract.

Novation would come into effect when the terms of the new contract are so inconsistent with the former, that it is impossible to perform the former.

In the case of Vishram Arjun vs Irakulla Shankaraiha, the court held that the essence of novation does not lie in the complete dissimilarity of the terms but in the intention of the parties to substitute the original contract with the new one.

A common instance of the novation of the contract is in the case of a partnership where on the dissolution if some partners continue to do business and undertake between themselves and the retiring partner that they will assume and discharge the liabilities of the business.

They give this notice to the creditor and if he gives his asset to it than a contract and a new firm is formed.

Hence novation of a contract is of two kinds:

- *Novation involving a change of the party. Terms same*

- *Novation involving the substitution of a new contract in place of the old. Parties same*

A novation usually takes place:

- *When a new partner is admitted,*
- *When a partner retires,*
- *The new firm is constituted after the admission or retirement and it accepts the liabilities of the old firm.*

Change of parties

The substituted contract would subsist between the parties of the original contract. The novation cannot be forced on a party.

It has to be considered in every case not only whether the new debtor has accepted the liability but also if the creditor has agreed to accept his liabilities in substitution of the original debtor.

The discharge of the original debtor must precede and is distinct from the acceptance of the creditor.

The statutory novation is usually comprised in a single statue or decree of practical purposes, they function simultaneously but has a distinct legal identity of its own.

Substitution of a new agreement

If A is a debtor, and the creditor agrees to accept B in the place of A as a debtor, then the previous contract between A and the creditor comes to an end.

For the novation of the contract, the original contract must be substituted by a new contract and the original contract is now discharged and need not be performed.

It is important that the original contract must be subsisting and unbroken. The substitution of the contract cannot take place if the original contract is breached.

In the case of Koyal vs Thakur Das Naskar, the plaintiff sued to recover a sum owed to the defendant. After the due date, the plaintiff agreed to accept a particular amount in cash and the rest by way of the bond, which was to be paid on the installment basis. However, the defendant neither paid the bond nor the cash. The plaintiff subsequently sued him for the original bond. The court held that the original bond is discharged by the breach and not by novation, hence the plaintiff has to sue on the basis of breach of contract.

The Supreme Court in Lata Construction vs Rameshchandra Ramniklal stated that one of the essential conditions of the novation of the contract is that there should be a complete substitution of the new contract in place of the earlier contract. In this situation, the original contract need not be performed. Substitution of the new contract in place of the old which would have the effect of completely rescinding or altering the terms of the original contract has to be an agreement between the parties. The substituted contract should extinguish the previous contract.

It is further necessary that the new agreement should be valid and enforceable. Thus, where an existing mortgage is replaced by a new agreement of mortgage and the new agreement is not enforceable because of lack of registration, in this case, it is held that the original contract is still functional.

It is obvious that the presence of consideration in these cases is mandatory, as unilateral alteration of terms is permissible.

The promise of a fresh contract in place of the original one is also a sufficient consideration in these cases.

Effect of Novation

After a novation, when a new contract is enforceable, then the relationship between the parties would be governed by the new contract and the obligor will be relieved of all his pre obligations.

The substituted agreement gives rise to a cause of action and limitation would be counted on the basis of a new promise.

Where the parties release each other from the mutual obligation of each other, then at that point of time at which such settlement was made would be the time at which the contract terminates.

No Novation

However, where the parties had the option to terminate the contract and the parties by subsequent contract postponed the termination of the contract, then this will not amount to novation of a contract.

Even if the terms of the old contract are kept alive, even then, it would not amount to proper substitution and hence no novation will take place.

It is important to note that if in the original contract the provision of arbitration is present then the novation of the

contract will have no effect on the arbitration clause and it would not get discharged.

There would be no novation where the contract itself contains a provision for the payment by one party of the enhanced rates dependent upon a contingency.

Moreover, to secure a debt by a deed, which will operate only as a mortgage and would not replace the existing personal liability, then such is not a novation of a contract.

Dictation:

Novation implies the replacement of fresh contract with original one. With novation, the parties are discharged and are no more bound to fulfil the obligations of old contract.

Alteration of contract

Alteration of contract means the modification of the terms of the contract with the consent of both the parties. The elements of the alteration are:

1. *The alteration must be done deliberately and by mutual consent.*
2. *The alteration must have been material.*

When the instrument which has been altered does not itself contain the obligations of the parties but is to be relied upon by them for the purpose of carrying out the contract, the alteration does not necessarily operate to discharge the parties from their underlying obligations.

The effect of alteration of contract is that the new contract is formed and both the parties have to follow the rules of the new contract.

It is essential to have assent of both the parties when the contract is altered. Also, in alteration of contract parties do not change.

If parties decide to alter or modify the terms of the contract, then it is necessary that the alteration of the contract should be done either by express agreement or by necessary implication which would negate the application of the doctrine of acceptance sub silentio.

In the case of Satya Pal Anand v. State of Madhya Pradesh and Ors., it was stated that any novation, rescission and alteration of contract, can be made only through bilaterally and with the amicable consent of both the parties.

The terms and conditions of a contract may be altered but cannot be done unilaterally unless there exists any provision in the contract, or in any law, or there is an implied acceptance through silence.

In the case of Suresh Kumar Wadhwa v. State of Madhya Pradesh, it was stated that the party to the contract has no right to unilaterally alter the terms and conditions of the contract and nor they have the right to add any additional

terms and conditions unless both the parties agree to alter such terms in the contract.

In the alteration of contract, the liability of the parties in the original agreement is extinguished and the parties become bound by the new altered agreement.

Effect of alteration of contract through the consent of the parties

The contract is only altered when there is consent by both the parties. If there is no consent between the parties to alter the contract, then the contract is said to be void.

Effect of alteration of contract with the consent of parties

Material alteration

It is the alteration which varies the rights and liabilities or legal position of the parties as ascertained by deed from its original state or otherwise varies the effect of the instrument as originally expressed or which may otherwise prejudice the party bound by the deed as originally executed.

An alteration is material which affects the substance of the contract expressed in the document or which alters the legal effect of the document, which affects the document itself, at all events where identification may be important in the ordinary course of business.

The alteration is not material if they merely express what was already implied in the document or add particulars consistent with the document as it stands.

In the Pigot's case, it was stated that the material alteration of a document by a party to it after its execution without the consent of the other parties renders it void and the alteration is not material.

Material alteration must depend upon the nature of the instrument as also upon the changes.

If the alteration causes the contract to operate it differently from the original, then it is said to be material alteration. An instrument is not discharged by an immaterial alteration.

The alteration is said to be immaterial when it does not alter the legal effect of the instrument or impose a greater liability on the promisor.

Immaterial alteration does not affect the rights and liabilities under a writing, irrespective of the person by whom the alteration was made or his purpose in making it.

Also, alteration made by adding or changing a statement of the consideration does not ordinarily change the legal effect of an obligation is considered as immaterial.

In the Pigot's case, it was held by Coke that when any deed is altered by any stranger then the deed is said to be void.

The alteration is said to be immaterial if the alteration in a deed is signed by the parties before its execution so far as those who have signed have not affected their interests.

Burden of proof

The burden of proof lies on the promisor that the promise has made the alteration in the contract without the consent of the promisor. But if it is proved that the contract is altered then the burden shifts to the promisee and the promisee has to show that the alteration made is not improper.

Effect of alteration of contract without the consent of parties

If one of the parties alters the contract without the consent of the other party, then the contract is said to be void.

The effect of alteration of contract without the consent of the parties is not given in the Indian Contract Act but India practice allows the authorities of the Common Law.

If there is unauthorized alteration of documents or terms and conditions of the contract then the contract is said to be void.

There is no provision given in The Indian Contract Act about the unauthorized alteration of documents of the contract. The Indian Courts follow the English rule for the same.

Blue Pencil Doctrine is a doctrine which is used by the courts to make some portions of the contract void or unenforceable and other portions of the contract enforceable.

In Blue Pencil Doctrine, the words which are not binding in nature or invalid are declared as void and makes other parts of the contract enforceable. It is also called the doctrine of severability.

Sometimes, there is alteration of contract in which some parts of the contract are altered which is unauthorized and illegal but with the help of the blue pencil doctrine this alteration can be declared as unenforceable as it invalid and not binding in nature.

MH. M. Yakoob v. M Krishnan 1992 Mad HC

If there is any material alteration in the contract unilaterally than it will make the contract void. It was held that the effect of making a material alteration without consent of the party bound, is exactly the same as that of cancelling the deed.

What Is Rescission?

Rescission is when a contract is rendered null and void, and so is no longer recognized as legally binding. The courts can free non-liable parties from their agreed obligations and, when possible, will effectively seek to restore them to the position they were in before the contract was signed.

KEY TAKEAWAYS

- *It is an extinguishment of the old contract*
- *Rescission is the voiding of a contract by a court that does not recognize it as legally binding.*
- *Courts can free non-liable parties from their obligations in a contract.*
- *Rescission can occur when there is a material error in the contract, evidence of fraud, a lack of legal or mental capacity, or other applicable circumstances.*

Under section 19& 19A, only a single party was having the right to rescind the contract and they were called up as voidable contracts. However, in section 62 both the parties mutually decide to rescind the contract.

Novation v. recission

In novation, there is formation of new agreement in place of old agreement. Parties undergo new liabilities in place of old liabilities.

In recission, there are no new obligations. Parties are simply cancelling the old obligations.

Note:

in all 3 cases NAR, parties with mutual consent can discharge themselves from the old contract.

A contract may be discharged by mutual consent btw the parties in which they decide to end or rescind or extinguish the old contract. The main key feature of recission is that

there is extinguishment of old obligations and no new obligations are undertaken by the parties unlike novation.

Section 63:

Section 63 of the Indian Contract Act states:

Promisee may dispense with or remit performance of the promise.—

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead any satisfaction which he thinks fit.

This section provides the promisee with the right to waiver. Under this section, a promisee may release the promisor from his performance either before or even after the breach of contract occurs due to the non-performance on the part of the promisor.

Remission or dispensing either in whole or in part

The promisee may:

1. *Waive the performance of the contract completely. The promisor now has no obligations with respect to the promise he had made to the promisee. The promise stands to be waived off in whole.*

2. *Waive only a part or specific parts of the promise. The promisor now has to perform only the part/parts of the promise which are not waived by the promisee and is relinquished from fulfilling the parts which are waived off by the promisee.*

Time extension

The promisee may extend the time for the performance of the promise. The time in which the promisor was supposed to fulfil the promise now stands void and the extended time frame now constitutes the duration of the promise.

There is no need for an agreement to extend the time period of the promise. Consequently, there is no requirement of consideration to be in place for the time period to be extended by the promisee.

However, it is to be kept in mind that there has to be consent from both parties so if the promisor feels that the extended time frame might hamper the performance of his promise, he may choose not to accept the extended time.

This principle is explained by the Supreme Court in Keshavlal Lallubhai Patel v. Lalbhai Trikumlal Mills Ltd. *where it was held that an extension of time for the performance of the contract under Section 63 of the Indian Contract Act must be based upon an agreement between the parties, and it would not be open to the promisee by his unilateral act to extend the time for performance of his own*

accord for his own benefit. Such an agreement need not necessarily be reduced to writing and can be proved by oral evidence or by evidence of conduct.

No consideration is required for waiver

There is no consideration required for the performance to be remitted. The waiver does not depend upon any consideration or reciprocal consideration for the promisor to be relieved of his performance.

The Supreme Court held in Waman Shriniwas Kini v. Ratilal Bhagwandas and Co. that waiver is the abandonment of a right which normally everybody is at liberty to waive. However, the absence of consideration does not mean the absence of intention.

The promisor should have the complete knowledge and intention of waiving his right to a claim which the promisor is entitled to perform. It is just that the right of waiver should exist with the promisee at the time of waving his claim.

The law with regard to waiver in India is very different from the law in England. In England, the waiver is contractual and there must be an agreement to waive either supported by consideration or it must be by contract under seal.

A waiver can be expressed or implied

There is no new written agreement that is required to be entered into for the discharge of performance of the

promisor. The waiver of performance can be conveyed either orally or in an implied manner from the conduct of the promisee. Waiver in an implied manner should be by such conduct or a positive act done towards waiving off the promisor from his obligations. Generally, mere silence is not considered a waiver of contract.

Principle of accord and satisfaction

If the promisor is not able to perform his part of the promise and a breach has occurred, the parties can enter into an agreement whereby the promisee accepts some consideration apart from the legal remedy available to him.

Thus, when the promisor performs his obligations with respect to the new agreement, he is discharged from the liability arising out of the breach of the previous contract. This discharge is done by accord and satisfaction between the two parties.

This principle is applicable in Section 63 since, by accord and satisfaction, the promisee waives off his claim arising out of the original contract.

Keshavlal lallubhai patel v. lalbhai trikumlal 1958 SC

In this case, the court held that the promisee cannot by unilateral act extend the time of his performance of his own accord and for his own benefit. Whenever there is prejudice to the promisor because of extension of time, the consent of promisor is necessary.

Illustrations: sec 63.

1. A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
2. A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.
3. A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.
4. A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.
5. A owes B 2,000 rupees and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B’s demand.

Consequences of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promiser. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

This section does not talk about any compensation. It can be given under SRA and in sec 75 ICA.

Sec 65:

65 of the Indian Contract Act, 1872, states,

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, [if he was not vigilant then no restoration be done] or to make compensation for it, to the person from whom he received it."

This provision is based on the principle of justice, equity or good conscience.

Section 66. Mode of communicating or revoking rescission of voidable contract-

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation [3,4,5] of the proposal.

Section 67:

Effect of neglect or promise to afford promisor reasonable facilities for performance

If any promisee neglects or refuses to afford the promisee reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby.

Illustration

A contract with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

What Is a Quasi Contract?

A quasi contract is a retroactive arrangement between two parties who have no previous obligations to one another. It is created by a judge to correct a circumstance in which one party acquires something at the expense of the other.

Each of them has been talked about separately in Sections 68 to 72 (Chapter V) of the Indian Contract Act, 1872.

The term "quasi" is of foreign origin. Chapter 5 does not include the word quasi. It is stated as "of certain relations resembling those"

The Principle of Unjust Enrichment

Quasi-contracts are based on the principle of ***"Nemo debet locupletari ex aliena jactura",*** *which means 'No man should grow rich out of another person's loss'.*

Therefore, liability in the case of quasi-contractual obligations is based on the principle of 'unjust enrichment'.

It essentially means that no man should get unjustly enriched at the cost of another person's loss.

That means no person should gain anything unjustly, when his gaining such a thing may mean a loss for another person.

Features of a Quasi-Contract

- *Their origin does not lie in the offer and its acceptance, that is, in an agreement between the parties.*
- *They are rather based on justice, equity, and a good conscience and on the principles of natural justice.*

Section 68 (Claim for necessaries supplied to person incapable of contracting, or on his account)

If the "necessaries" for a person, who is incapable of contracting (for example, a minor or a mentally disabled person) or of the dependents of such a person are taken care of by someone, he has the right to be reimbursed from the property of such incapable person.

Although the word "necessaries" has not specifically been defined in the Act, it is impliedly clear that it means the necessaries to sustain life, basic things like food, clothing, education, etc.

These are things without which a person cannot reasonably exist. In simple terms, if a person A supplies another person B (who is incapable of entering into a contract) or his family or anybody else who is dependent on him, with necessaries for life, he is entitled to take his due return from the property of person B.

Necessaries: chappel v. cooper 1844 ER

Court interpreted that necessaries means the basic essentials without which a person cannot survive.

He is entitled only to such a reasonable amount as the value of the goods or services he may have supplied hold.

Necessaries does not include luxuries generally. It is a subjective term and it will depend upon standard of life of that person.

Types of necessaries:

1. *Quality= standard of living*
2. *Time= whether that thing is needed at that particular point of time*

Nash v. Inman 1908

FACTS:

A tailor supplied 13 waistcoats and other things of that kind to a undergraduate student when latter was a minor. Student refused to pay for the goods supplied and tailor brought this suit against him for recovery of price of those goods.

ISSUES:

1. *Whether the goods so supplied fall into the category of necessary?*
2. *If the answer is No, whether the contract was enforceable at law?*
3. *On whom does the onus to prove or disprove the necessity of goods so supplied fall?*

HELD:

"Necessaries means goods or services ***suitable to the condition in life*** *of minor, or any other person incapable of forming contract for himself, and as to his* ***actual requirements*** *at the time of sale and delivery".*

This means that not only the goods need to be suitable and necessary to the condition in life of a minor (here) but also be needed by minor in actuality, i.e., he must not be already having sufficient supply of such goods.

The onus to prove that the thing contracted for was a necessity lies on plaintiff, however difficult it may be to prove that it was needed by minor in actuality.

In English Law, incompetent person is to compensate the supplier of necessities to him by paying a reasonable price for such necessities.

However, if the necessities so supplied are services instead of goods, then action for recovery lies against estate of such person and not against him.

Ryder v. Wombell 1868

a minor who moved in high society was supplied with a pair of diamond and ruby cufflinks and a silver goblet.

The court held that the goods in the particular case could not be necessary as the supplier could not prove that the ornamental goods were especially necessary for the minor in question.

Reimbursement of person paying money due by another, in payment of which he is interested

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

According to section 69, a person who is interested in the payment of money which another is bound by law to pay and the interested person pays it, is entitled for reimbursement by the other.

Essentials:

1. *The person who is making the payment on behalf of another must be having some interest in the payment which means by making the payment, he is saving himself from some inconvenience or some loss.*
2. *The interested person making the payment must not himself be liable to make the payment. He is making the payment only to protect his own interest.*
3. *Suppose where a person making the payment is jointly liable with others to pay. A payment by him of other's share would not give him a right of recovery under this section-* *Gopinath v. Raghu vansh Kumar Singh 1949 Pat*

A& B both have joint liabilities. A liable for 50K. B liable for 50K. joint liability of Rs 1 lakh. Here if A makes the whole payment, he cannot claim reimbursement under sec 69.

The person on whose behalf, the payment is made must be bound by law to pay not bound morally. It should be his legal obligation not a moral obligation.

Raghvan v. Alamelu Ammal 1907

If he is not bound by law and he is only morally bound, then sec 69 will noy apply and he will not be bound to reimburse the party discharging his moral obligation.

A gifted some claims to his friend B. A died. A's widow now has the legal liability to pay the taxes for A's estate.

A's widow filed a suit against B to reimburse her as some claims were gifted out of that property to B. court held that the municipality authorities did not compel B to pay taxes. Therefore, B was not legally bound to pay, he was just morally bound. No reimbursement can be ordered and B is not bound u/s 69 to reimburse the widow, his share for this property tax.

Obligation of person enjoying benefit of non-gratuitous act

Where a person lawfully does anything for another person,[1]

or delivers anything to him, not intending to do so gratuitously, [2]

and such other person enjoys the benefit thereof, [3]

the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.



pizza delivery to wrong person but such person takes undue advantage of it.

Fire broke out in your house. Fire brigade was nearby. It came and fire was controlled. Now fire brigade can claim compensation from you, u/s 70 as the act was non-gratuitous.

The person enjoys/ use the benefit is the keyword. If there was any option to reject the use of such thing, and the person did not reject it rather used it, then only compensation can be claimed under this section [s 70.]

But if there is no option to reject. There is mandatory enjoyment for e.g, in train when the acrobats for begging do

certain tasks, the person is not under any obligation to pay them.

State of Bengal v. BK Mandal & sons 1962 SC

The word enjoyment was interpreted in the case by SC.

There are 2 types of enjoyment,

1. *Voluntary enjoyment where one has option to reject*
2. *Compulsory enjoyment where one does not have any option to reject.*

Law commission in its 13th report suggested that in place of "enjoys the benefit", it should be accepts and enjoys the benefit.

But no amendment has been done till yet.

Section 70 is based on the principle of quantum meriut

Paying for the services given.

Lawfully done:

It must not be hit by sec 23, the thing done or delivered must be lawful. It should not be hit by sec 23.

Neha bhasin v. Anand Raj Anand 2006 DL

In this case, the plaintiff was singing for the firm of defendants. During the process of recording, she did not seem to have acted gratuitously. Although there was no formal contract btw the parties but the court ordered that because the defendant make business use of here work,

quasi contract arose u/s 70 making the defendants liable to pay for her services.

VR Subramanyam v. B thayappa 1961 SC

The SC held that where a contractor whose work has been accepted by the other party claims compensation under an oral agreement, which he is not able to prove. He would still be entitled to compensation under section 70.

Sec 71:

Responsibility of finder of goods:

According to section 71 of Indian Contract Act, a person who find goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Since the position of the finder of the goods is that of a bailee he is supposed to take the same amount of care with regard to the goods as is expected of a bailee under section 151.

He is also subject to all the duties of a bailee, including a duty to return the goods after the true owner is found.

If he refuses to return, he could be made liable for conversion.

If we talk about Section 71 of the Indian Contracts Act, there are some loopholes in this provision which needs to be changed.

Grey areas of the Act

It has been noticed that the finder of lost goods maintains a limited connection with the terms and conditions of Quasi-contracts.

It would be worth nothing if we match the duties and responsibilities of the bailee with the finder of lost goods.

There is no criteria on which we can find a similarity between the bailee and the finder of goods.

Both of them entered with different circumstances into a contract of bailment, so the treatment they will receive should not be the same.

The finder of goods shall not have the same obligation towards the owner as given to the bailee.

Sometimes the goods are delivered to the wrong person who appropriates them and now it is difficult to distribute the benefits obtained by such a person.

Also, sometimes the owner of goods dies and it becomes hard to find the real owner of the goods.

Likewise, the provisions related to the expiration of time have not proven efficient because it makes bailee liable without considering the reason behind such delay.

In case, theft of the bailed goods occurs from the bailee, it becomes hard to prove the duty of bailee and there are not

any specific rights mentioned under the statute to prevent bailee from this mishap situation.

Also, the interpretation of the word 'reasonable care' is required because the meaning of this word varies from person to person.

- Section 151: As per Section 151, the finder of the lost goods is bound to take care of that goods bailed to him as a prudent person who would under similar circumstances take such care as his goods. If he failed to act as a prudent man, he cannot argue by saying that he had taken the same care for his own goods and his own goods have also been damaged along with bailed goods.
- Section 152: As per Section 152, the finder of lost goods in lack of a special contract, is not liable or responsible for the loss, deterioration or destruction of that goods, if he has taken the sufficient amount of care as mentioned under Section 151.

"Liability of person to whom money is paid or thing delivered by mistake or under coercion"

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations
(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

Whether this provision includes mistake of fact only or it includes mistake of law as well.

Earlier there was a controversy but SC set right it in the case of sales tax officer Banaras v. M/s Kanhaya lal 1954 SC and in

In this case, Sales tax was levied on the firm and consequently the firm had to pay it. But later on the sales tax was declared to be unconstitutional. The firm claimed recovery of the excess tax paid which was paid under mistake of law. But the govt [i.e. tax authority] pleaded that money cannot be recovered under sec 72 as it was paid under the mistake of law and it will contradict sec 21 of Indian Contract Act.

Shri shiv prasad singh v. Maharaja srish chand nandi 1948 SC

Both mistake of fact and law are covered.

In the Banaras case, the plaintiff paid more tax than he is liable for. The sales tax authority has to pay back the money.

Supreme Court held and laid down two points:

1. *Under section 72, the term mistake has been used in general sense as nothing has been specified by the law makers. If it had been to given limited meaning, it must be specified by the law makers. Thus, omission of the same, indicates that mistake has a general meaning here and it covers both mistake of fact and mistake of law.*
2. *It also observed that there is no comparison of sec 72 and sec 21 as section 72 deals with payments made by mistake whereas sec 21 deals with consent by mistake of law to an agreement. Thus, there is no contradiction.*

Ayurveda pharmacy v. state of Tamil NADu 1989

Here also excess tax was paid. The chemist collected taxes at allopathy decided slab which was higher than ayurvedic slab. He further even paid tax at allopathic slab rate. Therefore, in this case also the tax authorities are bound to repay the tax excess tax amount paid.

Issue was: to whom the repayment be done?

Ultimately the tax was paid by the customers and those customers who were not traceable, since the amount cannot be paid to them. Court ordered the money to be paid to the trust which works for the promotion of ayurvedic medicines.

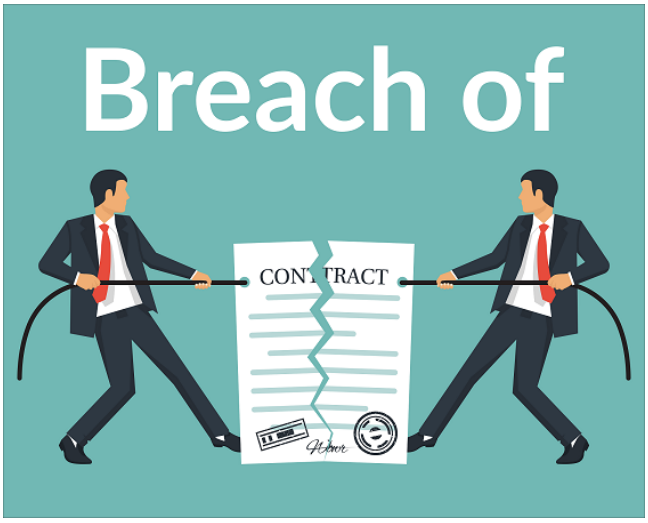


Coercion : lawful or unlawful both are covered under section 72.

It covers any kind of duress which although is not covered under section 15.



wrongful or excess chalan can be recovered under section 72.



The parties of a contract face a risk of "breach of contract" when they enter into the contract. Such risk arises when any of the parties fails or refuses to perform the obligations as promised under the contract.

A breach of contract is a failure, without any legal excuse, to perform any or a part of a promise that forms all or a part of the contract.

Any party who has broken or failed to comply with the promises under the contract is liable to compensate or fulfil the damages and loss caused to the suffered party.

Such remedial provisions are provided under Part VI of the Indian Contract Act, 1872.

Contractual breach: *meaning and significance*

The contract exists in the form of a legally binding agreement supported with some consideration, for the violation or non-binding of which damages as a remedy is available.

The term "breach of contract" arises when a party or parties in the contract contravene the terms of the contract, break

the promise or don't follow the terms and condition in a manner as provided in the contract.

Section 39 of the Indian Contract Act, 1872 defines the breach of contract as 'when a party has refused to do or non-performance his promises in contract, omit to do or disable himself from performing his promise, this promise may put an end to the contract unless he has signified by words or conducted his acquiescence in its continuance'.

It means that if a party to the contract has promised to perform his obligation, and he fails to do the same, it is said that he has made a breach of contract.

For example, C is a builder who enters into a contract with his client B to construct a rectangular house of 1200 sq. feet having 4 windows and two doors. C builds a house of 1180 sq. feet with 3 windows and one door, violating the terms of the contract. Here, B is entitled to the damages for the losses incurred in conformity with the contract.

So, the breach of a contract is a precondition for the injuries incurred to the suffered party in the form of damages as a remedy.

The contractual agreement is based on the Latin maxim 'Ubi jus, ibi remedium' which means 'where there is a right, there is a remedy'.

So, the contract has a set of correlative rights and obligations for the respective parties to perform. In case there

is a breach of contract, the remedies arise for the enforcement of such rights.

In absence of remedies for the non-performance or violation of the contractual terms, the rights and obligations for the parties shall be of no value.

The party who commits a breach of contract is known as the "guilty party" whereas, the party who suffers the loss is known as the "aggrieved party or injured party."

Types of contractual breach

On the basis of the intensity of the breach, the contractual breach is classified into three types:

Minor breach

A minor breach of contract also referred to as partial breach or immaterial breach refers to the situation where the breaching party fails to perform certain aspects of the contract but the other party still receives the object or services as specified in the contract.

In such a type of breach, the other party fails to perform a part of the obligation as specified in the contract still it doesn't affect the contract as the major part of the obligation is performed by the defaulter party.

However, the remedy is available only when the injured party can prove that a minor breach has led to financial loss.

So, in a case where the tailor delays in delivering the costume to his/her client at the stipulated time (as provided in the contract), it will not attract remedy till the injured

party proves that such delay has incurred him/her financial losses.

Material breach

A breach where the guilty party fails to perform some of the obligations of the contract and the other party receives a product/service which is substantially different from what mentioned in the contract.

If the contract specifies the sale of the printers of Epson brand and the aggrieved party receives the same product of Canon brand, there is a material breach of contract.

In case of material breach the injured/aggrieved party is not required to perform his obligation, and she is entitled to the immediate remedy.

Anticipatory breach

The anticipatory breach is a condition where the actual breach of contract doesn't occur but either of the parties in the contract indicates that they are willingly not interested in performing their obligations.

The claim of such breach shall only arise when either party to the contract have a clear indication of non-performance of the obligation under the contract.

Actual breach

The actual breach refers to a condition where the breach of the contract has already occurred as either of the parties have already not performed their duties/obligations by the provided deadline or they have incompletely or improperly performed their duties.

Several kinds of remedies are available in such a breach.

What are damages

The term damages refer to the monetary compensation to the aggrieved party in a contract for the losses, injury or damages caused by the guilty party.

The quantum of the damages caused is determined by the magnitude of the damages caused to the injured party due to the breach of contract.

As the injured party suffers loss or inconvenience so, if the matter for damages reaches the court the court desires the victim party to accept his mistake and pay adequate compensation to the affected party as the damages.

The principle behind the damages is explained by Fuller and Prude as damages may seek the protection of "expectation interest", "reliance interest" or "restitution interest".

The expectation interest, also known as performance interest, refers to putting the suffering party in a position where he would have been if the promise would have been fulfilled.

The reliance interest, also known as the status quo interest, seeks to restore the position of the injured party where he was before the promise was made and in the course of which the promise altered his position by putting reliance over the promise.

The restitution interest tends to prevent the defaulter promiser from gaining due to the loss caused to the promisee.

Section 73 and Section 74 of the Indian Contract Act, 1872 finds the provisions of the contractual damages. Section 73 deals with the "General or unliquidated damages" whereas Section 74 deals with the "liquidated damages".

Since the contractual breach is civil in nature, the purpose behind the damages is to compensate the injured party for the loss and not to punish the victim party.

Holchester v. Deal tours 1853 118

The plaintiff was hired by the defendant for courier service. The defendant wanted the plaintiff to accompany him to the tour which was to commerce from 1 June 1852.

Before 1 June 1852, the defendant refused to take the service from the plaintiff. He breached the contract.

The plaintiff sued him for compensation for the loss defendant took the plea that until due date has come no compensation can be demanded.

Court said that there is a concept called anticipatory breach which can be done even before the due date.

The aggrieved party does not have to wait for the due date of performance to file suit for damages.

So, in this case for the first time, the concept of anticipatory breach of contract was discussed/ recognized by the court in this case.

It is now enshrined under section 39 ICA.

In this case, the plaintiff was courier. The defendant hired his services and asked him to accompany to a tour which to commerce on 1st June 1852 but merely a month before the date, the defendant refused to take his service. Then the

plaintiff sued him for damages for breach of contract. The defendant contended that there can be no breach of contract, before the due date.

The court held that this is a case of anticipatory breach and the aggrieved party need not to wait for due performance day to file the suit for breach of contract of the other party has refused to perform it before the due date.

Now in case of anticipatory breach, promisee has 2 options:

1. *To immediately rescind the contract and sue for compensation u/s 75.*
2. *To wait till the date of due performance and on due date of promisor did not perform then sue him compensation u/s 73.*

What are the effects?

If immediately rescinded:

If contract has been rightfully rescinded, then compensation can be claimed under sec 75.

Wait for due date of performance

If contract was not rescinded immediately, then he can sue for damages only after due date. Then he can claim damages under section 73 ICA.

During the period, if performance is frustrated then doctrine of frustration applies. In such a case, compensation cannot be claimed under section 73. Only restoration is possible u/s 65.

Promise in its entirely

Means anticipatory breach by promisor shall be deemed only if he wilfully denies the whole contract. The denial must be entire.

A owes B certain money Rs 1 lakh. A was returning him through instalments. During 3rd instalment, he has no money therefore he denies 3rd instalment. It is not anticipatory breach in its entirety.

If it is not in its entirety then it is not anticipatory breach. Whether the party has denied the contract in its entirely or not is to be decided by the court according to facts and circumstances of each case. It is a question of fact.

There are some categories which can be derived from unliquidated damages that are on the basis of the amount

1. *Compensation*
2. *Punitive*
3. *Exemplary*

If the loss is such that can be compensated, then it is compensation.

When damages claimed are higher than the loss suffered for instance in case of penalty, that is punitive cost

Exemplary damages are given in those cases, in which loss suffered is irreparable and is connected with public at large, it is given normally in environment matters. ‘

Under Indian Contract Act, only compensation is covered under section 73. Punitive and exemplary damages are not covered in it.

Therefore, we can say from above explanation that the term “damages” is the genus in which compensation is a specie.

Section 73:

Compensation for loss or damage caused by breach of contract:

Loss or damage which the parties knew, at the time of contract to be likely to result from the breach.

Special circumstances, that compensation will be granted in the case of special circumstances only if they were in the knowledge of the parties beforehand i.e., at the time when they made the contract.

Section 73 lay down the principles:

1. *General damages: always recoverable*
2. *2. Special damages: these are recoverable only if the parties had the knowledge of special circumstances before hand*

Hadley v. Baxendale 1843 ER

In this case, rules of general damages and special damages were laid down

consequential damages can be claimed by the non-breaching party only if both the parties to the contract were aware of the possibility of such losses arising from the breach of contract. It is also to be noted that the rule on consequential damage is applied based on the knowledge of the parties at the time of contracting and according to the standard of a reasonable man.

The rule about consequential damages is effectively limiting the liability of the parties to a contract in the event of a breach of a contract.

For example, consider the same situation we discussed in case of general damages involving the delivery of food grains by A to B on a specified date.

If the food grains were required by B as input to his food processing industry and a failure of A to deliver the items on time will lead to halting of operation of the industry.

A will be liable for the loss of profit only if B had informed him that the production will have to be stopped in case of delay in delivery of food grains.

The rule of Hadley v. Baxendale has wide acceptability and is incorporated in the contract laws of most common law jurisdictions.

One of the earliest case laws in India applying the rule of Hadley v. Baxendale was Madras Railway Co. v. Govinda Rau. In this case, the petitioner Govinda Rau was a tailor who employed the Railway Company to ferry his sewing machine and clothes to Karamadai, where the former was to set up shop during a local festival. But the delivery of the goods was delayed and Govinda Rau had to return without being able to run his business.

Rau sued the Railway Company for damages to compensate for his travel expenses and for the profits lost from operating his business during the festival.

The High Court of Madras did not entertain the claim for damages for lost profit, citing the provisions of Section 73 of the Indian Contract Act, 1872, as Rau had not informed the Railway Company of the date by which the goods were to be delivered or the purpose for which the goods are being transported.

Another application of the rule is seen in Union of India v. Hari Mohan Ghosh. The case was related to a lost consignment of artificial silk which was under transportation by the Indian Railways. Hari Mohan the owner of the goods sued the railways for the value of the goods and the lost profit. T

he Guwahati High Court did not grant damages for the lost profit as the Railways was not aware of the nature or the purpose of the goods transported.

Contemporary criticisms to the Rule of Hadley v. Baxendale

Despite the wide acceptability of the rule of Hadley v. Baxendale contemporary writers have criticised it. It is argued that the rule has taken the form of a rigid principle that acts to curtail any claim of damages for events not mentioned in a contract.

In the changing business climate where large companies are entering into high value and high impact complex commercial dealings the parties are expected to understand all the possible consequences of a breach of contract. The advancements in technology have brought in a situation where all the consequences of a breach of contract can be predicted at least as likely, if not definitely.

Also, enterprises are expected to keep up their vigil even after contracting for any change in circumstances that may lead to an altogether different consequence from breach of a contract. The parties are also expected to guard against such possibilities. Thus, the rigidity of the rule of Hadley v. Baxendale which allows damages only for losses contemplated at the time of contracting may be counter-acting fairness and equity.

Despite the criticism, the rule of Hedley v. Baxendale still holds wide acceptability in English common law jurisdictions.

For claiming the special damages, special circumstances must have been bought in the knowledge of the defendant beforehand.

General damages: *it means the losses which arise naturally in the usual course of things from the breach caused. It depends upon the reasonable man's foresight of the loss that will naturally result from the breach. Such damages are always payable in the case of breach.*

Special damages:

These are those damages which arise on account of unusual circumstances affecting the plaintiff. They are not always payable. They are payable only if the special circumstances are bought to the knowledge of defendant party beforehand.

Victoria laundry Windsor ltd v. Newman Industries Ltd 1949 KB

Facts

Victoria Laundry Ltd (VLL) ordered a large boiler from Newman Industries Ltd (NIL) in contemplation of some lucrative dyeing contracts. NIL were aware of the nature of VLL's business, and that it was intended for the boiler to be put to use as soon as possible. The delivery of the boiler was delayed by five months and VLL claimed for breach of contract.

Issues

VLL claimed damages for their lost profits caused by the delay. They argued losses which would reasonably foreseeably flow from the breach would be recoverable and, therefore, since NIL knew the boiler was required as soon as possible for business purposes, they must have contemplated the use for which the boiler was to be put. VLL claimed it was not necessary to prove actual knowledge of the precise loss. NIL argued they had no special knowledge of running a laundry business or that the boiler was necessary for immediate profit making and, therefore, they were not liable for lost profits. NIL claimed that lost profits amounted to special circumstances which must have

been explicitly brought to their attention prior to the breach if they were to be held liable. They could not be assumed to have known the delay would cause lost profits.

Decision/Outcome

VLL successfully recovered the lost profits. NIL knew the boiler was required for VLL's business and had promised delivery by a specific date. They could not reasonably argue they could not foresee that lost profits would result from the delay. It was unnecessary to prove NIL had specific knowledge of the specific contracts which had been lost. Damages would be awarded for losses which could reasonably have been expected to be lost.

Here, special damages cannot be claimed.

Both these principles [general damages & special damages] have been established in para 1 of sec 73.

Consequences of breach

1. *Direct loss or damage*
2. *Indirect or remote loss*

Para 2 of sec 73 says that no compensation can be claimed for indirect or remote damages.

A&B bought a train ticket. But they were dropped not at their destination but at some other place. Due to which this couple has to walk by foot.

Which cause:

1. *Inconvenience*
2. *Bought a new ticket to reach actual destination*
3. *Illness and mental harassment*

Court held that inconvenience and a second ticket being brought is the direct consequence, therefore it can be claimed. But everybody does not fall ill due to it. So, it is an

indirect or remote consequence. Therefore, it cannot be granted.

What are the different types of damages?

General and Special Damages

Difference between general and special damages are:

General Damages	***Special Damages***
General damages refer to those damages which arose naturally during the normal course of the events.	*Special damages are those that do not, of course, arise from the breach of the defendant and can only be recovered if they were in the reasonable consideration of the parties at the time they made the contract.*
In relation to the pleadings, the complained of is presumed to be a natural and probable consequence with the result that the	*It refers to those losses that must be specifically pleaded and proven.*
In relation to proof, it	*It refers to those*

refers to those losses, usually but not exclusively non-pecuniary, which in monetary terms are not capable of precise quantification.	*losses that can be calculated financially. It represents the exact amount of pecuniary loss that the claimant proves to have suffered from the set of pleaded facts.*

Nominal Damages

If the defendant is found liable for breach of contract, the plaintiff is entitled to nominal damages even if no actual damage is proven. Nominal damages are awarded if there is an infringement of a legal right and if it does not give the rise to any real damages, it gives the right to a verdict because of the infringement.

In the following circumstances, nominal damages are awarded to the plaintiff:

- *The defendant committed a technical breach and the plaintiff himself did not intend to execute the contract;*
- *The complainant fails to prove the loss he may have suffered as a result of the contract breach;*
- *He has suffered actual damage, not because of the defendant's wrongful act, but because of the complainants' own conduct or from an outside event;*
- *The complainant may seek to establish the infringement of his legal rights without being concerned about the actual loss. Where there is no basis for determining the amount. The view that nominal damage does not connote a trifling amount is erroneous; nominal damage*

means a small sum of money. Nominal damages have been defined as a sum of money that can be spoken of, but which does not exist in terms of quantity.

Where the loss is small and quantifiable, the damages awarded, although small, are not nominal damages.

If the market rate on the date of the breach is not proven, the plaintiff shall be entitled to nominal damages. However, the fact that the buyer does not sustain any actual loss as a result of the seller's failure to deliver the goods is no reason to award the buyer nominal damage.

Substantial Damages

In cases where an offense is proven, many authorities may claim substantial damages even if it is not only difficult but also impossible to calculate the damages with certainty or accuracy. In all these cases, however, the extent of the breach has been established. There was a complete failure to perform the contract on one side. However, where the breach is partial and the extent of the failure is determined, only nominal damage is awarded. The plaintiff who can not show that after the breach he would have had the contract performed, he is in a worse financial position, usually, recover only nominal damages for breach of contract.

Where a defendant refuses to accept goods sold or manufactured for him, the plaintiff sells them to a third party on the same terms as the defendant agreed and makes a similar profit, the plaintiff shall be entitled to nominal damages if the demand exceeds the supply of similar goods; but if the supply exceeds the demand, the plaintiff shall be entitled to recover his loss of profit on the defendant's contract.

Aggravated and Exemplary Damages

In certain circumstances, by taking into account the motives or behavior of the defendant, the court may award more than the normal measure of damages. Such damage may be:

Aggravated Damages	***Exemplary Damages***
Aggravated damages, that compensate a victim for mental distress or injured sensations in circumstances where the injury was caused or increased by the manner in which the defendant committed the wrong or the defendant's behavior following the wrong.	*Exemplary damages are intended to give the punishment to the defendant an example they are punitive and not intended to compensate the defendant for loss, but rather to punish the defendant.*
It is compensatory in nature.	*It is punitive in nature.*

Where the motives, conduct or manner of inflicting the injury on the defendant may have aggravated the damage to the plaintiff by injuring his proper feelings of dignity and pride, the damages awarded to compensate the plaintiff would be aggravated. These are awarded in tort, but not in a contract because the motives and conduct of the defendant are not to be taken into account when assessing damages and it is not to be awarded in respect of feelings of disappointment or

injury; they are too remote. Thus, if an employee is wrongly dismissed from his job, the damages payable to him will not include compensation for the manner in which he is dismissed, for his injured feelings, or for the loss that he may suffer from the fact that the dismissal of himself makes it more difficult for him to obtain fresh employment.

Liquidated and Unliquidated Damages

Damages are said to be liquidated once agreed and fixed by the parties. It is the sum agreed by the parties by contract as payable on the default of one of them, Section 74 applies to such damages. In all other cases, the court quantifies or assesses the damage or loss; such damages are unliquidated. The parties may only fix an amount as liquidated damages for specific types of a breach, then the party suffering from another type breach may sue for unliquidated damages resulting from such breach.

Where, under the terms of the contract, the purchaser was entitled to claim damages at the agreed rate if the goods were not delivered before the fixed date and if they were not delivered within seven days of the fixed date, the purchaser was entitled to cancel the contract and pay guarantee amount to the bank, but the goods were delivered within the extended period. It was held that the buyer was only entitled to claim damages at the agreed rate and that the banking guarantee confiscation clause could not be invoked as the contract was not cancelled.

What does loss or damage mean?

The word loss or damage means:

- *Harm to persons through physical injury, disabilities, loss of enjoyment, loss of comfort, inconvenience or disappointment, injured feelings, vexation, mental distress, loss of reputation.*
- *Harm to property, viz. damage or destruction of property; and*
- *Injury to an economic position which is the amount by which the plaintiff is worse off than he would have been performed, and would include loss of profits, expenses incurred, costs, damages paid to third parties, etc.*

Consequential Damage and Incidental Loss

Consequential damage or loss usually refers to pecuniary loss resulting from physical damage, such as loss of profit sustained due to fire damage in a factory. When used in the exemption clause in a contract, consequential damages refer to damages that can only be recovered under the second head in ***Hadley v Baxendale,*** *i.e. the second branch of the section, and may also include recovery of profit and losses under the first branch.*

Another term incidental loss refers to the loss incurred by the complainant after he became aware of the breach and made to avoid the loss, i.e. the cost of buying or hitting a replacement or returning defective goods.

How to measure the damage caused?

The measure of damage or measure of damages is concerned with the legal principles governing recoverability; the principle of the remoteness of damage confines the recoverability of damages. Questions of quantum of damages are only concerned with the amount of damages to

be awarded and are, therefore, different from the measure of damages; the latter involves consideration of the law.

What does the remoteness of damages mean?

The term remoteness of damages refers to the legal test used to determine which type of loss caused by contract breach can be compensated by awarding damages. It has been distinguished from the term measure of damages or quantification which refers to the method of assessing the money the compensation for a particular consequence or loss which has been held to be not too remote.

How to test the remoteness?

In deciding whether the claimed damages are too remote, the test is whether the damage is such that it must have been considered by the parties as a possible result of the breach. If it is, then it cannot be considered too remote. The damage shall be assessed on the basis of the natural and probable consequences of the breach. Actual knowledge must be demonstrated that mere impudence and carelessness is not knowledge.

The defendant is only liable for reasonably foreseeable losses- those who would have reason to foresee the likelihood of future infringement if a normally prudent person in his place had this information when contracting.

The remoteness of damage is a matter of fact, and the only guidance that the law can give is to lay down general principles.

The principle governing the remoteness of damages was elaborated in the landmark case of ***Hadley v. Baxendale.*** *The rules stated in this case were that a party*

injured by a breach of contract could recover only those damages which were either to be considered "reasonably as arising naturally, i.e., according to the usual course of things" from the breach, or could reasonably have been considered by both parties at the time they entered into the contract as the likely result of the breach. This is the basis for understanding special damages. In this case, the Court acknowledged that the defendant's failure to send the crankshaft for repair was the only cause for the plaintiffs' mill to stop, resulting in loss of profits.

Part 3:

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract

A's dog was lost. B finds it. B took it into the custody. By virtue of S 71, B becomes the bailee. u/s 151 & 152, B's duty is to take care this dog but he did not take care of it due to which dog fell ill and medical expenses was incurred by A. here though it is a quasi contract, but still A can claim compensation from B u/s 73 para 3.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying

the inconvenience caused by the non-performance of the contract must be taken into account.

For eg:

B promises A that he will deliver TV in 22000 B breaches his contract. A went to market and purchases the same in 28000 from another shop. Some other shop was selling it for 25000.

Here the possible compensation he may get will be only of 3000rs/

Duty to mitigate the loss

The provision imposes a duty on the aggrieved party that when a breach of contract is committed, if he has an opportunity at that time, he should try to mitigate the loss. If he does not do so this carelessness will be taken into account while calculating the compensation for the loss occurred.

PS NS Ambala Vana Chettiar v Express News paper Ltd 1968 SC

In this case it was held that the injured party has to make reasonable efforts to avoid the losses resulting from breach so that his loss is kept to the minimum. If he does not do that, then he cannot recover the enhanced loss.

A.K. A.S jamal v. moola Dawood Sons and CO IlR 1916 Cal

In this case, PC held that the loss to be ascertained is the loss at the date of the breach and the duty of the aggrieved party to mitigate the loss is only at the time of the breach and not thereafter.

Sec 74:

Compensation for breach of contract where penalty stipulated for:

Indian law doesn't distinguish between a liquidated penalty and damages.

The awarded compensation cannot exceed the amount specified in the contract. Under Section 74 of the Indian Contract Act of 1872, the Court will not allow more if the parties fix the damage.

It can, however, award a smaller amount, depending on the case.

The suffering party, therefore, receives reasonable compensation, but no penalty.

An exception to Section 74

*There is an exception to **Section 74**, which states that if a party concludes a contract with the State or Central Government to carry out an act in the interest of the general public, A breach of such a contract then makes the party responsible for paying the entire amount specified in the contract.*

Scope of Section 74 of the Indian Contract Act, 1872

*In **Fateh Chand v. Bal Kishan Das** While talking about the scope of **Section 74**, the Court stated that it deals with damages divided into two classes of cases:*

1. *Firstly, if there is a pre-determination of the amount to be paid in the event of contract breach.*

2. *And secondly, where the contract may contain any further penalty stipulation.*

Section 75 of the Indian Contract Act, 1872

Under this section, if a party rightly rescinds a contract, it may claim compensation for any loss or damage caused by non- performance.

Quantum of Liquidated Damages

- *With regard to the amount of liquidated damage, the Supreme Court of India held that if the court could not assess the compensation, the sum named by the parties may be considered as a measure of reasonable compensation if it is considered to be a genuine pre-estimate (although not if the sum named is in the nature of a penalty).*
- *Since the contracts do not quantify indirect consequential damages, however, the said principle laid down by the Supreme Court could also apply to such damages.*

It is also a well- established position in law that losses in terms of money can be determined, the claiming party must prove the loss incurred by him. In addition, the causation principles and the attempt by parties to mitigate such losses also play a key role in determining damage liability.

Estimation of Damages

The object of the award of damages for breach of contract is to place the injured party in the position in which he would

have been if the contract had been executed. ***Section 73 to Section 75*** *of the Contract Act deals with the rules relating to loss or damage resulting from contract breach.*
The rules lay down that:

1. *Damage is paid as compensation and reimbursement and not as sanctions. In fact, damage efforts are made to restore the party to the same position as if the contract had been carried out. (****Hadley v. Baxendale****)*
2. *Compensation is paid for near losses, as in the normal course of events, natural, fair and reasonable may occur.*
3. *No compensation may be paid for any losses that are remote or indirect as provided for in* ***Section 73****.*
4. *Compensation may be paid for any loss or damage known to the party when the contract was entered into.*
5. *No consideration is given to subsequent circumstances leading to an increase or a decrease in the amount of damage.*
6. *A damage claim must be fair and reasonable.*

Role of Reasonable Foreseeability

It can be concluded that the general principle with regard to the claiming of consequential damages by a non-defaulting party is that the non-defaulting party is only entitled to recover/claim any part of the damage or loss arising from the infringement by the defaulting party as reasonably foreseeable (as arising from the infringement at the time the contract was executed). The reasonably foreseeable damage

or loss would depend, inter alia, on the knowledge possessed and shared between the parties.

Parties Determining Damages

In ***SitaramBindraban v. Chiranjanlal Brijlalit,*** *It was held that the parties to a contract can create special rights and obligations for themselves, such as the measurement of infringement damages. In a contract, the Parties may also provide that, in the event of a breach, no compensation shall be payable except for the reimbursement of amounts paid and that such a term was deemed enforceable.*

The Principle of Mitigation

In ***M Licha Setty& Sons Ltd. v. Coffee Board Bangalore****, the Supreme Court held that the mitigation principle does not give any right to a party in breach of contract but is a concept to be borne in the assessment of damages.*

In this case, it was held that the complainant had to take all reasonable steps to mitigate the loss and if he failed to do so, he could not claim such losses that could have been prevented.

The complainant is only obliged to act reasonably and whether or not he has done so is not a matter of law but in each case a question of fact.

He must act reasonably not only for his own sake but also for the sake of the defendant and reduce the damage by acting reasonably in the matter.

In the event of a breach of contract, the complainant must do more than act in the ordinary course of business and if he is embarrassed, the measures he takes to remove himself

should not be weighed on a nice scale in the event of a breach of contract. The complainant is not obliged to destroy his property or to injure himself or his business reputation in order to reduce the damages paid by the defendant.

Fixation of Pre-Determined Amount

*In the case of **Fateh Chand v. Bal Kishan Das**, the Supreme Court stated that the grieved party is entitled to a reasonable compensation that should not exceed the amount of the penalty or the amount pre-determined to be paid after the breach of the contract.*

The court further stated that the application of these provisions is not limited to cases in which the grieved party approaches the court for relief only.

*In this case, the Court interpreted **Section 74** as legal liability in the event of a breach of the contract whether compensation is paid by pre-determined agreement or by penalty.*

The Court discussed the main purpose of determining a predetermined amount and its benefits:

- *The pre-determination method of loss at the time of contract facilitates the recovery of damages.*
- *At the same time, the calculation error is reduced.*
- *It reduces costs and inconvenience and proves the real loss and damage.*
- *It reduces the risk of under-compensation and to a large extent avoids the problem in evaluation in cases where the results of the breach of contract are established.*

Rule of Reasonable Compensation

The Supreme Court has recently reiterated this latter principle(as mentioned above) in ***ONGC Ltd. v. Saw Pipes*** *it was discussed that "In some contracts, it would be impossible for the Court to assess the compensation arising from the breach, and if the compensation envisaged is not punishable or unreasonable, the Court may award the same compensation if it is genuinely pre-estimated by the parties as a reasonable compensation measure."*

The Supreme Court held that it would be completely unjustifiable to conclude that the defaulting party is not liable to pay compensation if the parties had pre-estimated such a loss after clear understanding. The Court also held in this case:

- *The terms of the contract must be considered before concluding whether the party claiming the compensation has the right to the same.*
- *If the terms are clear and unambiguous, liquidated damages shall be stipulated in the event of contract breach, unless it is held that such estimate of damages/ compensation is unreasonable or a penalty, the party who has committed the infringement is obliged to pay such compensation and that is provided for in* ***Section 73****of the Contract Act, 1872.*
- ***Section 74*** *to be read in conjunction with* ***Section 73*** *and therefore in all cases of contract breach, The person grieved by the breach is not required to prove that he has suffered actual loss or damage before he can claim a decree. The court is competent to grant reasonable compensation in the event of a breach, even*

if no real damage has been demonstrated as a result of a breach of contract.

- *In some contracts, it would be impossible for the court to assess the compensation resulting from the breach and if the compensation in question is not punishable or unreasonable, the court may award the same if it is a genuine preliminary assessment by the parties as a measure of reasonable compensation.*

*In **Sudhir Gensets Ltd. v. Indian Oil Corporation**, the court summarised:*

- *Firstly, where the actual loss and damage cannot be shown, the terms of the contract must be taken into account.*
- *Secondly, Section 74 and 73 must be dealt with together and stipulate pre-determined damages which are not unreasonable and do not amount to a penalty, and the party should pay such compensation in accordance with Section 73.*

Evidence to prove Actual Loss

*In **Maula Bux v. Union of India**, the Supreme Court held that a claimant may have to provide evidence to prove the actual loss or damage resulting from the breach if the adjudicating authority believes that compensation can be calculated in accordance with the settled rules in the given facts and circumstances.*