UNIT – I
The Indian Contract Act, 1872
General Principles of Contract

INTRODUCTION

The law of contract is the most important branch of Mercantile Law. Without such a law it would be difficult, if not impossible, to carry on any trade or business in a smooth manner. The law of contract is applicable not only to business but also to all day-to-day personal dealings. In fact, each one of us enters into a number of contracts from sunrise to sunset. When a person buys a newspaper or rides a bus or purchases goods or gives his radio for repairs or borrows a book from library, he is actually entering into a contract. All these transactions are subject to the provisions of the law of contract.

The term business law refers to those rules which govern and regulate business transactions. These rules, regulations etc bring a sense of seriousness and definiteness in business dealings. They provide for rules regarding the validity of making contracts and their performances.

INDIAN CONTRACT ACT, 1872

In the year 1861,the third law commission of British India under the chairmanship of Sir John Romily presented the report on contract law for India.The law commission submitted a draft on 28th July 1866.The draft contract law after several amendments was enacted as **The Act 9 of 1872 on 25th April 1872** and the **INDIAN CONTRACT ACT 1872** came into force w.e.f**1st September 1872**.The Indian Contract Act, 1872 is one of the oldest in the Indian law regime, passed by the legislature of pre-independence India; it received its assent on 25th April 1872. The statute contains essential principles for formation of contract along with law relating to indemnity, guarantee, bailment, pledge and agency.

WHAT IS A CONTRACT?

Broadly speaking, a *contract is an agreement made between two or more persons to do or to abstain from doing a particular act*. A contract invariably creates a legal obligation between the parties by which certain rights are given to one party and a corresponding duty is imposed on the other party. The law of contract is the most important part of mercantile law in India. It determines the circumstances in which the promise made by the parties to a contract shall be binding on them and provides for the remedies available against a person who fails to perform his promise. The law of contract is contained in the **Indian Contract Act, 1872**, which deals with the general principles of law governing all contracts 'and covers the special provisions relating to contracts like bailment, pledge, indemnity, guarantee and agency. Section **2(h)** of the Act states that an agreement enforceable by law is a contract. Let us discuss these two elements in detail. Every contract thus combines two essential elements(i)*agreement* and (ii)*obligation*.It creates rights and obligations between the parties to the contract which are correlative,in casea party refuses to honor a contacted obligation it will give right of action to other party.

According to the terms of **Section 10** of the Act, an agreement is a valid contract if it is made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. On analysing this definition of contract, you will notice that a contract essentially consists of two elements: (i) *an agreement*, and (ii*) its enforceability by law.*

Agreement

Section **2(e)** of the Contract Act defines agreement as every promise 'and every set of promises forming the consideration for each other. In this context a promise refer to a proposal (offer) which has been accepted. *For example*, Ramesh offers to sell his T.V. for Rs. 8,000 to Shyam. Shyam accepts this offer. It becomes a promise and treated as an agreement between Ramesh and Shyam. In other words, an agreement consists of an offer by one party and its acceptance by the other. Thus, **Agreement** = **Offer + Acceptance**. From the above analysis it is clear that there must be at least two parties to an agreement, one making an offer and the otheraccepting it. No person can enter into agreement with himself. There is another important aspect relating to an agreement i.e., the parties to an agreement must have an identity ofminds in respect of the subject matter. They must agree on the same thing in the same sense. This is also called consensus-ad-idem. Suppose A has two houses, one situated in South Delhi and the other in North Delhi. He offers to sell his North Delhi house to B while B is under the impression that he is buying the South Delhi house. Here, there is no identity of minds. Both theparties are thinking about different houses. Hence there is no agreement.

Legal Obligation

In order that an agreement may be regarded as a contract, it must give rise to a legal obligation i;e., it must be enforceable by law. Any obligation (duty) which is not enforceable by law is not regarded as a contract. Social, moral or religious agreements do not create any legal obligation. For example, an agreement to take lunch together or to go to a picnic is not a contract because it does not create a duty enforceable by law. Such agreements are purely of a social nature where there is no intention to create legal relationship. Hence, they do not result in contracts. , In case of business agreements, however, the usual presumption is that the parties intend to create a legal relationship. For example, an agreement to sell a scooter for Rs. 8,000 is a contract because it gives rise to an obligation enforceable by law. In this agreement if there is default by either party, an action for breach of contract can be enforced through a court of law provided all the essentials of a valid contract are present in the agreement.

DISTINCTION BETWEEN AN AGREEMENT AND A CONTRACT

Agreement.	**Contract**
Offer and its acceptance constitute anagreement.	Agreement and its enforceability ,an agreement. constitute a contract.
An agreement may not create a legal obligation.	A contract necessarily creates alegal obligation.
Every agreement may not be a contract	All contracts are agreements.
Agreement is not a concluded or a bindingcontract. .	Contract is concluded and binding on the concerned parties

CLASSIFICATION OF CONTRACTS

Contracts can be classified on a number of basis. They are:

1) On the basis of creation.
2) On the basis of execution.
3) On the basis of enforceability.

1) On the Basis of Creation

A contract may be (i) made in writing or by word of mouth or (ii) inferred from the conduct of the parties or circumstances of the case. The first category of contract is termed as 'express contract' and the second as 'implied contract' '

i) Express Contract: An express contract is one where the terms are clearly stated in words, spoken or written. For example, A wrote a letter to B stating "I offer to sell my car for Rs. 30,000 to you", B accepts the offer by letter sent to A. This is an express contract. Similarly, when A asks a scooter mechanic to repair his scooter and the mechanic agrees, it is an express contract made orally by spoken words.

ii) Implied Contract: A contract may be created by the conduct or acts of parties (and not by their words spoken or written). It may result from a continuing course of conduct of the parties. For example, where a coolie in uniform carries the luggage of A to be carried out of railway station without being asked by A to do so and A allows it, the law implies that A has agreed to pay for the services of the coolie. This is a case of an implied contract between A and the coolie. Similarly, when A boards a D.T.C bus, an implied contract comes into being. A is bound to pay the prescribed fare. 'There is another category of implied contracts recognized by the Contract Act known as quasi-contracts (Sections 68 to 72). Strictly speaking, a quasi-contract cannot be called a contract. It is regarded as a relationship resembling that of a contract. In such a contract the rights and obligations arise not by an agreement between the parties but by operation of law. For example, A, a trader, left certain goods at B's house by mistake. B treated the goods as his own and consumed it. In such a situation, B is bound to pay for the goods even though he has not asked for the goods.

2. On the Basis of Execution

On the basis of the extent to which the contracts have been performed, we may classify them as (i) executed contracts, and (ii) executory contracts.

i) Executed Contracts: It is a contract where both the parties have fulfilled their respective obligations under the contract. For example, A agrees to sell his book to B for Rs. 30. A delivers the book to B and B pays Rs. 30 to A. It is an executed contract.

ii) Executory Contracts: It is a contract where both the parties to the contract have still to perform their respective obligations. For example, A agrees to sell a book to B for Rs. 30. If the book has not been delivered by A and B has not paid the price. the contract is executory.

A contract may sometimes be partly executed and partly executory. It happens where only oneof the parties has performed his obligation. In the example given above, if A has delivered thebook to B but B has not paid the price. the contract is executed as to A and executory as to B. On the basis of execution, a contract can also be classified as unilateral or bilateral. A unilateralcontract is one in which only one party has to perform his obligation, the other party hadfulfilled his part of the obligation at the time of the contract itself. For example, A buvs a ticketfrom the conductor and is waiting in the queue for the bus. A contract is created as soon as the

ticket is purchased. The other party is now to provide a bus wherein he could travel. 'A bilateral contract is one in which the obligations on the part of both the parties are outstanding at the time of the formation of the contract.

3. On the Basis of Enforceability

From the point of view of enforceability a contract may be (i) valid, (ii) void, , (iii) voidable, (iv) illegal or (v) unenforceable.

i) **Valid Contract:** A contract which satisfies all the conditions prescribed by law is a valid contract. If one or more of these elements is/are missing, the contract is either void, voidable, illegal or unenforceable.

ii) **Void Contract:** According to Section **2 (j)** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. It is a contract without any legal effects and is a nullity. You should note that a contract is not void from its inception. It is valid and binding upon the parties when made, but subsequent to its formation, due to certain reasons, it becomes unenforceable and so treated as void. A contract may become void due to impossibility of performance, change of law or some other reasons. For example, A promised to marry B. Later on, B dies. This contract becomes void on the death of B. A void contract should be distinguished from void agreement. Section **2(g)** says that an agreement nor enforceable by law is said to be void. In the case of void agreement no contract comes into existence. Such an agreement confers no rights on any person and creates no obligations. It is void ab-initio i.e., from the very beginning. For example an agreement with a minor is void because a minor is incompetent to contract.

Now it should be clear to you that a void agreement is not the same thing as a void contract. A void agreement never matures into a contract, it is void from the very beginning. A voidcontract, on the other hand, was valid when it was entered into, but subsequently, because of one reason or the other, became void. A contract cannot be void ab-initio, it is only an agreement which can be void ab-initio.

iii) **Voidable Contract:** According to Section **2(i)** of the Contract Act, An agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of the other or others, is a voidable contract. Thus, a voidable contract is one which can be set aside or repudiated at the option of the aggrieved party. Until it is set aside or avoided by the party entitled to do so, it remains a valid contract. A contract is usually treated as voidable when the consent of a party has not been free i.e., it has been obtained either by coercion, undue influence, misrepresentation or fraud. The contract is voidable at the option of the party whose consent has been so caused. For example, A threatens to shoot B if he does not sell his new scooter to A for Rs. 5,000. B agrees. Here the consent of B has been obtained by coercion. Hence, the contract is voidable at the option of B, the aggrieved party. If, however, B does not exercise his option to set aside the contract within a reasonable time and if in the meanwhile a third party acquires a right in relation to the subject matter for some consideration, the contract cannot be avoided. For example, A obtains a ring by fraud. Here, B's consent is not free and therefore he can cancel this contract. But if, before this option is exercised by B, A sells the ring to C' who acquires it after paying the price and in good faith, contract cannot be avoided.

Void Agreement	Voidable Contract
It is void from the very beginning.	It remains valid till it is repudiated by the aggrieved party.
A contract is void if any essentialelement of a valid contract (otherthan free consent) is missing.	A contract is voidable if the consent of a party is not free.
It cannot be enforced by any party.	If the aggrieved party so decides,the contract may continue to bevalid and enforceable.
Third party does not acquire anyrights.	An innocent party in good faithand for consideration acquires goodtitle before the contract is avoided.
Lapse of time will not make it avalid contract, it always remains void.	If it is not avoided withinreasonable time, it may become valid.
Question of damages does not arise.	The aggrieved party can also claimdamages.

iv) **Illegal or unlawful contract:** The word illegal means contrary to law. You know that contract is an agreement enforceable by law and therefore, it cannot be illegal. It is only the agreement which can be termed as illegal or unlawful. Hence, it is more appropriate to use the term 'illegal agreement' in place of 'illegal contract'.

An 'illegal agreement' is one which has been specifically declared to be unlawful under the provisions of the Contract Act or which goes against the provisions of any other law of the land. Such agreement cannot be enforced by law. For example, A agrees to pay R;. 50,000 to B if B kills C. This is an illegal agreement because its object is unlawful. Even if B kills C, he cannot claim the agreed amount from A.

The term 'illegal agreement' is wider than the term 'void agreement'. All illegal agreements are void but all void agreements are not necessarily illegal. For example, an agreement to sell a scooter to the minor i,e void but it is not illegal because the object of this agreement is not unlawful. The other important difference between the illegal and the void agreement relates to their effect on the transactions -which are collateral to the main agreement. In case of illegal agreements even the collateral agreements become void. For example, A engages B to shoot C. To pay B, A borrows Rs. 10,000 from D who is aware of the purpose of the loan. In this case, there are two agreements - one between A and B and the other between A and D. Since the main agreement between A and B is illegal, the agreement between A and D ,which is collateralto the main agreement, is also void. D cannot recover the money from A. Take another example. A borrows money from D to pay off his wagering (betting) debts to B. Here the main agreement is void (not illegal). Hence the agreement between A and D being a collateralagreement shall not be affected even though D was aware of the purpose of the loan. From these examples, it should be clear to you that the agreements collateral to the illegal agreements are also void but the transactions collateral to void agreements are not affected in any way, they remain valid.

v) **Unenforceable contract:** It is a contract which is actually valid but cannot be enforced because of some technical defect. This may be due to non-registration of the agreement, non-payment of the requisite stamp fee, etc. Sometimes, the law requires a particular agreement to be in writing. If such agreement has not been put in writing, it becomes unenforceable. For example, an oral agreement, for arbitration are unenforceable because the law requires that an

arbitration agreement must be in writing. It is important to note that in most cases, such , contracts can be enforced if the technical defect involved is removed. For example, if the document which embodies a contract is under stamped, it will become enforceable if the requisite stamp is affixed.

Void	Illegal
All void agreements are not necessarily illegal.	1) All illegal agreements are void.
Collateral transactions to a void agreements are not affected i.e.,they do not become void.	) Collateral transactions to an illegal agreements are also affected i.e they also become void.
If a contract becomes void subsequently, the benefit received has to be restored to the other party.	The money advanced or thing given cannot be claimed back.

ESSENTIALS OF A VALID CONTRACT

An agreement enforceable by law is a contract. An agreement in order to be enforceable must have certain essential elements. According to Section 10 - All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Thus, an agreementbecomes a valid contract if it has the following elements.

1) Proper offer and its proper acceptance
2) Intention to create legal relationship
3) Free consent
4) Capacity of parties to contract
5) Lawful consideration
6) Lawful object .
7) Agreement not expressly declared void
8) Certainty of meaning
9) Possibility of performance
10) Legal formalities

Let us now discuss these essential elements one by one.

1) Proper offer and proper acceptance: In order to create a valid contract it is necessary that there must be at least two parties, one making the offer and the other accepting it. The law has prescribed certain rules for making the offer and its acceptance that must be satisfied while entering into an agreement. For example, the offer must be definite and duly communicated to the other party. Similarly, the acceptance must be unconditional and communicated to the offerer in the prescribe mode, and so on. Unless such conditions with regard to the offer and the acceptance are satisfied the agreement does not become enforceable.

2) Intention to create legal relationship: There must be an intention among the parties to create a legal relationship, If an agreement is not capable of creating a legal obligation it is not a contract. In case of social or domestic agreements, generallv there is no intention to create

legal relationship. For example, in an invitation to dinner there is no intention to create legal relationship and therefore, is not a contract. Similarly, certain agreements between husband and wife do not become contracts because there is no intention to create legal relationship. This point can well be illustrated by the famous case of Balfour v. Balfour. Mr. Balfour had promised to pay £30 per month to his wife living in England when she could not accompany himto Caulon where he was employed. Mr. Balfour failed to pay the promised amount. Mrs. Balfour filed a suit against her husband for breach of this agreement.It was held that she could not recover the amount as it was a social agreement and the parties never intended to create any legal relations.

In commercial. or business transactions the usual presumption is that the parties intend to create legal relations. However, this presumption may be negated by express terms to the contrary. The case of Rose & Frank Co. v. Crompton Brothers is relevant here. In this case there was an agreement between Rose & Frank Company and Crompton Brothers Ltd. whereby the former was appointed as selling agents in North America. One of the clauses in the agreement read, "This agreement is not entered into as a formal or legal , agreement and shall not be subject to legal jurisdiction in the law courts." It was held, that this agreement was not a legally binding contract as there was no intention to create legal relations.

You must note that whether intention to create legal relationship exists in an agreement or not is a matter for the court to decide which may look at the terms and conditions of the agreement and the circumstances under which the agreement was made

3) Free consent: For a contract to be valid, it is essential that there must be free and genuine consent of the parties to the contract. They must have made the contract of their own free will and not under any fear or pressure. According to Section 14, consent is said to be free when it is not caused by (i) coercion,' (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) mistake. In case the consent is obtained by any of the first four factors, the contract would be voidable at the option of the aggrieved party. But if the agreement is induced by mutual mistake which is material to the agreement, it would be void.

4) Capacity of parties: The parties to an agreement must be competent to contract i.e., they must be capable of entering into a contract. If any party to the contract is not competent to contract, the contract is not valid. Now the question arises as to who are competent to contract? Answer to this question is provided by Section 1 I of the Act which says that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. Hence in order to be competent to enter into a contract, the person should be a major (adult), should be of sound mind and he must not be declared disqualified from contracting by any law to which he is subject. Thus, the flaw in capacity may be due to minority, lunacy, idiocy, etc. If a party to a contract suffers from any of these flaws, the agreement, with a few exceptions, is not enforceable at law.

5) Lawful consideration: An agreement must be supported by consideration. Consideration means something in return. It is also defined as the price paid by one party to buy the promise of the other. However, this price need not always be in terms of money. For' example, A agrees to sell his book to B for Rs. 20. Here the consideration for A is Rs. 20, and for B it is the book.

The consideration may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something, The consideration may be past, present or future,

consideration must be real i.e., it must have some value in the eyes of law. However, the consideration need not be adequate. For example, A sells his car worth Rs. 50,000 to B for Rs. 10,000 only. This is a valid promise provided the consent of A is free. .
For a contract to be valid, the consideration.should also be lawful. The consideration is considered lawful unless it is forbidden by law, or is fraudulent, or involves or implies injury to the person or property of another; or is immoral, or is opposed to public policy (Section 23).

6) Lawful object: The object of an agreement must be lawful. An agreement made for any act which is prohibited by law will not be valid. For example, if A rents out a house for use as a gambling den, the agreement is void because the object of the agreement is unlawful. If the object is unlawful for any of the reasons mentioned in Section 23, the agreement shall be void, Thus, the consideration as well as the object of the agreement should be lawful.

7) Agreement not expressly declared void: The agreement must not have been expressly declared void under Contract Act. Sections 24 to 30 specify certain
types of agreements which have been expressly declared void. They are . agreement in restraintof marriage, agreement in restraint of legal proceedings, agreement in restraint of trade and agreement by way of' wager. For example, A agreed to pay Rs. 1,000 to B if he (B) does not marry throughout his life. B promised not to marry at all. This agreement shall not be valid because it is in restraint of marriage which has been expressly declared void under Section 26. You should note that if an agreement possesses all other essential elements of a valid contractbut belongs to the category of such agreements that have been expressly declared void by the Contract Act, no power on earth can make it a valid contract.

8) Certainty of meaning: Section 29 of the Contract Act provides that Agreements, the meaning of which is not certain or capable of being made certain, are void. Thus to make a valid contract it is absolutely essential that its terms must be clear and not vague or uncertain. For example, A agreed to sell 100 tonnes of oil to B. Here it is not clear what kind of oil is intended to be sold. Therefore, this agreement is not valid on the ground of uncertainty. If, however, the meaning of the agreement could be made certain from the circumstances of the case, it will be treated as a valid contract. In the example given above if we know that A and B are dealers in mustard oil only, then the agreement shall be enforceable because the meaning of the agreement could be easily ascertained from the circumstances of the case.

9) Possibility of performance: The terms of the agreement must also be such as are capable of performance. An agreement to do an act impossible in itself is void (Section 56.) If the act is impossible of performance, physically or legally, the agreement cannot be enforced by law. The reasoning is very simple. For example, A promises to B that he will run at a speed of 200 kms. per hour or that he will bring gold from the sun. All these acts are such which are impossible of performance and therefore the agreement is not treated as valid.

10) Legal formalities: You have learnt that an oral agreement is as good as is a written agreement. The Contract Act does not require that a contract must be in writing to be valid. But, in some cases the Act has specified that the agreement must be made in writing. For example, a promise to pay a time barred debt must be in writing and an agreement for a sale of immovable property must be in writing and registered under the Transfer of Property Act, 1882. In such a situation, the agreement must comply with the necessary formalities as to writing, registration, etc. If these legal formalities are not carried out, then the contract is not enforceable by law.

After discussing the essential elements of a valid contract, it is now clear that all these elements must be present in an agreement so that it becomes .a valid contract. If any one of them is missing or absent, the agreement will not be enforceable by law.

OFFER

For making a valid contract there must be a lawful offer and a lawful acceptance of that offer. An offer is also called 'proposal'. The words 'proposal' and 'offer' are synonymous and are used interchangeably. Section **2(a**) defines the term 'proposal' as follows:

"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. "

From the above definition of offer you will notice that an offer involves the following elements.

i) It must be an expression of readiness or willingness to do or to abstain from doing something. Thus, it may involve a 'positive' or a 'negative' act. For example, A offers to sell his book to B for Rs. 30. A is making a proposal to do something i.e., to sell his book. It is a positive act on the part of the proposer A. On the other hand, when A offers not to file a suit against B if the latter pays A the outstanding amount of Rs. 1,000, the act of A is a negative one i.e., he is offering to abstain from filing a suit.

ii) It must be made to another person. There can be no 'proposal' by a person to himself,

iii) It must be made with a view to obtain the assent of that other person to such act or abstinence. Thus a mere statement of intention- "I may sell my furniture if I get a good price" is not a proposal.

The person making the offer is called the 'offerer' or the 'promisor' and the person to whom itis made is called the 'offeree'. When the offeree accepts the offer, he is called the 'acceptor' or the 'promisee'. For example, Ram offers to sell his scooter to Prem for Rs. 10,000 This is an offer by Ram. He is the offerer or the promisor. Prem to whom the offer has been made is the offeree and if he agrees to buy the scooter for Rs. 10,000 he becomes the acceptor or the promisee.

Express or Implied Offer

An offer may either be an 'express offer' or an 'implied offer'

Express Offer: When an offer is made by words, spoken or written, it is termed as an express offer. When A says to B that he wants to sell his book to B for Rs. 20, it is an express offer. Similarly, when A writes a letter to B offering to sell his car to him for Rs. 40,000, it is also an express offer by A. The oral offer may be made either in person or over telephone. Section 9 of the Contract Act reads: "In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. "

Implied Offer: It is an offer which is not made by words spoken or written. An implied offer is one which is inferred from the conduct of a person or the circumstances of the particular case. For example, public transport like DTC in Delhi or BEST in Bombay runs buses on different routes to carry passengers who are prepared to pay the specified fare. This is an implied offer. Similarly, when a coolie picks up your luggage to carry it from railway platform to the taxi, it means that the coolie is offering his service for some payment. This is an implied offer by the coolie. Section 9 says that "In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

General or Specific Offer

An offer may be 'specific' or 'general'. When an offer is made to a definite person or particular group of persons, it is known as specific offer and it can be accepted only by that definiteperson or that particular group of persons to whom it has been made. For example, A offeredto buy certain goods from B at a certain price. This offer is made to a definite person B. Therefore, if goods are supplied by P, it will not give rise to a valid contract (Boultan v. Jones). On the other hand, if an offer which is not made to a definite person, but to the world at large or public in general, it is called a general offer. A general offer can be accepted by any person by fulfilling the terms of the offer. Offers of reward made by way of advertisement for finding lost articles is the most appropriate example of a general offer. For example, B issues a public advertisement to the effect that he would pay Rs. 100 to anyone who brings hack his missing dog. This is a general offer and any member of the public can accept the said offer by finding the lost dog.

Legal Rules for a Valid Offer

An offer or proposal made by a person cannot legally be regarded as an offer unless it satisfies the following conditions.

1) Offer must intend to create legal relations: An offer will not become a promise even after it has been accepted unless it is made with a view to create legal obligations. It is so because the very purpose of entering into an agreement is to make it enforceable in a court of law. A mere social invitation cannot be regarded as an offer because if such an invitation is accepted it will not give rise to any legal relationship. For example, A invites his friend B to a dinner and B accepts the invitation. If B fails to turn up for dinner, A cannot go to the court to claim his loss. In social agreements the presumption is that the parties do not intend to create legal relationship(Balfour vs Balfour).

2)Terms of offer must be certain, definite and not vague: No contract can be formed if the terms of the offer are vague, loose and indefinite. The reason is quite simple. When the offer itself is vague or loose or uncertain, it will not be clear as to what exactly the parties intended to do. A vague offer does not convey what it exactly means. For example, A promises to buy one more horse from B if the horse purchased earlier proves lucky. This promise cannot be enforced because it is loose and vague. If, however, the terms of the offer are capable of being made certain, the offer is not regarded as vague. For example, A offers to sell to B "a hundred 4 quintals of oil". The offer is uncertain as there is nothing to show what kind of oil is intended to be sold. But, if A is a dealer in coconut oil only, it is
quite clear that he wants to sell coconut oil. Hence, his offer is not vague. It is a valid offer.

3) The offer must be distinguished from a mere declaration of intention: Sometimes a person may make a statement without any intention of creating a binding obligation. Such statement or declaration only indicate that he is willing to negotiate and an offer will be made or invited in future. For example an auctioneer advertised in a newspaper that a sale of office furniture will be held on a certain date. A person with the intention to buy furniture came from a distant place for the auction, but the auction was cancelled. He cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction, (Harris v. W Nieversion).

4) Offer must be distinguished from an invitation to offer: An offer must be distinguished from an invitation to receive an offer or to make an offer or to negotiate. In the case of invitation to

offer there is no intention on the part of the person sending out the invitation to obtain the assent of the other party to such invitation. On the other hand, offer is a final expression of willingness by the offerer to be bound by his promise, should the other party choose to accept it. In case of an invitation to offer, his aim is to merely circulate information of his readiness to negotiate business with anybody who on such information comes to him. An invitation to offer is not an offer in the eyes of law and does not become a promise on acceptance.
You must have noticed that shopkeepers generally display their goods in showcases with pride tags attached. The shopkeeper in such cases is not making an offer so that you can accept it. Heis in fact inviting you to make an offer which he may or may not accept. You cannot compel the shopkeeper to sell the goods displayed in the showcase at the market price. Similarly, quotations, catalogues, price list, advertisements in a newspaper for sale or a circular sent to prospective buyers do not constitute an offer. Similarly, a prospectus issued by a company for subscription to its shares by the members of the public is only an invitation to offer.

5) The offer must be communicated: An offer must be communicated to the person to whom it is made. It means that an offer is complete only when it is communicated to the offeree. You should note that a person can accept the offer only when he knows about it. In the case of Fitch v. Snedakar, S offered a reward to anyone who returns his lost dog. F brought the dog without any knowledge of the offer of reward. It was held that F was not entitled to the reward becauseF cannot be said to have accepted the offer which he was not aware of.

6) Offer should not contain a term the non-compliance of which would amount to acceptance: The offer should not impose on the offeree an obligation to reply. While making the offer the offerer cannot say that if the offer is not accepted before a certain date it will be presumed to have been accepted. Unless the offeree sends his reply, no contract will arise. For example, A .writes to B "I offer to sell my scooter to you for Rs. 7,000. If I do not receive a reply by Wednesday next, I shall assume that you have accepted the offer." If B does not reply, it shall not imply that he has accepted the offer. Hence, there will be no contract.

7) Special terms or conditions in an offer must also be communicated: The offerer is free to lay down any terms and conditions in his offer, and if the other party accepts the offer then he will be bound by those terms and conditions. The important point is that if there are some special terms and conditions they should also be duly communicated, The question of special terms arises generally in case of standard form of contracts. For example, the Life Insurance Corporation of India has printed form of contracts containing large number of terms and conditions. Similarly, standard contracts are made with railways, shipping companies, banks etc. If the terms and conditions in a standardized contract are unreasonable, then the other party will not be bound by them. For example, if a drycleaner limits his liability to 20 per cent of the market price of the article in case of loss, the customer will not be bound by this conditions because it means that the drycleaner can purchase garments at 20 per cent of their price.

Cross Offers

Two offers which are similar in all respects, made by two parties to each other, in ignorance of each other's offer are known as 'cross offers". Cross offers do not amount to acceptance of one's offer by the other and as such no contract is concluded. For example, A of Delhi, by a letter offers to sell his house to B of Bombay for Rs. 10 lakh. At the same time B of Bombay also makes an offer to A to buy A's house for Rs. 10 lakh. The two letters cross each other. There is no concluded contract between A and B because both the parties are making offers. If they

want to conclude a contract, at least one of them must send his acceptance to the offer made by the other.

Standing Offers

Sometimes an offer may be of a continuous nature. In that case it is known as standing offers, A standing offer is in the nature of a tender. Sometimes a person or a department or some other body requires certain goods in large quantities from time to time. In such a situation, it usually gives an advertisement inviting tenders.

An advertisement inviting tenders is not an offer but a mere invitation to offer. It is the person submitting the tender to supply goods or services who is deemed to have made the offer, whena particular tender is accepted or approved, it becomes
a standing offer. The acceptance or approval of a tender does not however, amount to acceptance of the offer. It simply means that the offer will remain open during a specified period and that it will be accepted from time to time by placing specific orders for the supply of goods. Thus each order placed creates a separate contract. The offerer can however withdraw his offer at any time before an order is placed with him. Similarly, the party who has accepted the tender is also not bound to place any order unless there is an agreement to purchase a specified quantity. For example,

A agrees to supply coal of any quantity to B at a certain price as will be ordered by B during the period of 12 months. It is a standing offer. Each order given by B will be an acceptance of the offer and A will be bound to supply the ordered quantity of coal. A can however, revoke the offer for future supplies at any time by giving a notice to the offeree.

ACCEPTANCE

When an offer is accepted, it results in an agreement. Acceptance is an expression by the offeree of his willingness to be bound by the terms of the offer. This results in the establishment of legal relations between the offerer and offeree. Section 2(b) of the Indian Contract Act defines the term 'acceptance' as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. " For example, A offers to sell his book to B for Rs. 20. B agrees to buy the book for Rs. 20. This is an acceptance of A's offer by B.

Legal Rules for a Valid Acceptance : The acceptance of an offer to be effective must fulfil certain conditions. These are:

1) Acceptance must be absolute and unqualified : Section **7 (1)** of the Indian Contract Act provides that 'In order to convert a proposal into a promise, the acceptance must be absolute and unqualified . This is so because a qualified and conditional acceptance amounts to a counter offer leading to the rejection of the original offer. No variation should be made by the offeree in the terms of offer. If while giving acceptance, any variation is made in the terms of the offer the acceptance will not be valid and there will be no contract. For example, A offers to sell his scooter to B for Rs. 8,000 and B agrees to buy it for Rs. 7,500. It is a counter offer and not an acceptance. If, later on, B is ready to pay Rs. 8,000 A is not bound to sell his scooter, because E's counter offer has put an end to the original offer.

Further an offer must be accepted in toto. If only a part of the offer is accepted the acceptance will not be valid. For example, G offers to sell 10 quintals of wheat to B at a certain price. B accepts to buy 70 quintals only. It is not a valid acceptance since it is not for the whole of the

offer. Thus, an offer should be accepted as it is, without any reservations, variations or conditions. Any variation, howsoever unimportant it may be, makes the acceptance invalid.

2) Acceptance must be in the prescribed manner : Where the offerer has prescribed a mode of acceptance, it must be accepted in that very manner. If the offer is not accepted in the prescribed manner it is up to the offerer to accept or reject such acceptance. But when the acceptance is not in the prescribed manner and the offerer wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance since it is not in the prescribed manner. If he does not do so within a reasonable time, he will be bound by the acceptance. For example, A makes an offer to B and says "send your acceptance by telegram". B sends his acceptance by a letter. A can refuse this acceptance on the ground that it was not accepted in the prescribed manner. But, if A fails to inform B within a reasonable time he will be deemed to have accepted the acceptance by ordinary letter and it will result in the formation of a valid contract: If, however, no mode has been prescribed, it should be accepted in some usual and reasonable manner.

3) Acceptance must be communicated: Acceptance should be signified. In other words, the acceptance is complete only when it has been communicated to the offerer. A mere mental acceptance, not evidenced by words or conduct, is no acceptance. In Brogen v. Metropolitan Railway Co.'s case an offer to supply coal to the railway Co. was made. The manager wrote on the letter 'accepted', put it in his drawer and forgot all about it. It was held that no contract was made because acceptance was not commumicated.

Communication of acceptance does not mean that the offerer must come to know about the acceptance. Even if the letter of acceptance is lost in transit or delayed, the offerer is bound by the acceptance because the acceptor has done all that is required of him.

4) Acceptance must be communicated by a person who has the authority to accept: For an acceptance to be valid it should be communicated by the offeree himself or by a person who has the authority to accept. Thus, if acceptance is communicated by an unauthorised person, it will not give rise to legal relations. The case of Powell v. Lee can be mentioned in support of this point. In this case P applied for the post of a headmaster in a school. The managing committee passed a resolution appointing P to the post but this decision was not communicated to P. However, a member of the managing committee, in his individual capacity and without any authority, informed P about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else. P filed a suit for breach of contract. It was held that he was not informed about his appointment by some authorised person, hence there was no communication of acceptance.

5) Acceptance must be made within the time prescribed or within a reasonable time: Sometimes the offerer while making the offer fixes the period within which the offer should be accepted. In such a situation, the acceptance must be given within the prescribed time and if no time is prescribed, it should be . accepted within a reasonable time. What is the reasonable time depends upon the facts of the case. Where an offer to buy shares of a company was made in June but the acceptance was communicated in November, it was held that because acceptance was not give within a reasonable time the offer had elapsed. (Ramagate Victoria Hotel Co. v. Montefiore).

6) Acceptance must be given before the offer lapses or is withdrawn: The acceptance must be given while the offer is in force. Once an offer has been withdrawn or stands lapsed, it cannot

be accepted. For example, A offered, by a letter, to sell his car to B for Rs. 40,000. Subsequently, A withdraws his offer by a telegram, which was duly received by B: After the receipt of the telegram, B sends his acceptance to A. This acceptance is not valid.

Contractual Capacity/ Competence of Parties

Section 11 of the Indian Contract Act clearly states as to who shall be competent to contract. It provides that every person is competent to contract (i) who is of the age of majority according to the law to which he is subject, (ii) who is of sound mind, and (iii) who is not disqualified from contracting by any law to which he is subject. Thus, a person to be competent to contract should not be

i) a minor, or

ii) of an unsound mind, or

iii) disqualified from contracting.

Agreements by a Minor

According to Section **11,** as stated earlier, no person is competent to contract who is not of the age of majority. In other words, a minor is not competent to contract. In fact, the law acts as the guardian of minors and protects their rights because they are not mature and may not possess the capacity to judge what is good and what is bad for them. Hence the minor is not bound by any promises made by him under an agreement.

The position with regard to minor's contracts may be summed-up as follows:

1) **Contract with or by a minor is absolutely void and the minor therefore cannot bind himself by a contract:** The Privy Council in the case of MohiriBibee v. DharmodasGhosh held that a minor's agreement is altogether void. The facts of the case were: Dharmodas a minor, entered into a contract for borrowing a . sum of Rs. 20,000. The lender advanced Rs. 8,000 to him and Dharmodas executed a mortgage of his property in favour of the1ender. Subsequently, the minor sued for setting aside the mortgage. The Privy Council held that sections 10 and 11 of the Indian Contract Act make the minor's contract void and therefore the mortgage was not valid. Then, the mortgagee, prayed for refund ' of Rs. 8,000 by the minor. The privy council further held that as a minor's contract was void, any money advanced to him could not be recovered.

2) **Fraudulent representation by a minor:** Will it make any change in case minor is guilty of deliberate misrepresentation about his age thereby inducing the other party to contract with him? No! it will make no change in the status of the agreement. The contract shall continue to remain void because if such a thing is permitted, unscrupulous people while dealing with a minor shall, as a first thing, ask him to sign a declaration that he is of the age of majority. It will thus defeat the whole objective of protecting his interests.

In the case Leslie v. Sbeill. S, a minor by fraudulently representing himself to be a major,induced L to lend him f 400. He refused to repay it and L sued him for the money. Held, that thecontract was void and S was not liable to repay the amount due. But, should it mean that those younger in age have liberty to cheat the seniors and retain the benefits. Sections 30 and 33 of the Specific Relief Act. 1963 provide that in case of a fraudulent misrepresentation f his age by the minor, inducing the other party to enter into a contract, the court may award compensation to the other party.

3) **Ratification of a contract by minor on attaining the age of majority:** A minor's agreement is void ab-initio. Hence, there can be no question of its being ratified even after he attains majority.

4) Minor's contract jointly with a major person: Documents jointly executed by a minor and an adult major person would be void vis-a-vis the minor. But they can be enforced against the major person who has jointly executed the same provided there is a joint promise to pay by such a major person (Jumna Bai v. VasaaataRino).

5) Minor as a partner: A minor cannot be a partner in a partnership firm. However, a minor may, with the consent of all the partners for the time being, be admitted to the benefits of partnership (Section 30 of the Partnership Act, 1932). This means he can share the profits without incurring any personal liability for losses.

6) Minor as an agent: A minor can act as an agent and bind his principal by his acts without incurring any personal liability.

7) Minor as a shareholder: There has been a strong controversy as to whether a minor can become a shareholder/member of a company. In view of the provisions of the Indian Contract Act and the Privy Council's decision, a minor cannot become a member of the company (Palaniaga v. Pnsupati Bank). Thus, if a minor acquires partly paid shares the company will not be able to recover . the uncalled amount from the minor. However, there are contrary decisions wherein it has been held that a minor can become a subscriber to the memorandum of association and can acquire shares by allotment. In Laxon Co.'s case, it was held that a minor can be a shareholder unless the articles of association OF the company prohibit it. In Dewan Singh v. Minewe Films Ltd., the Punjab High Court held that there was no legal bar to a minor becoming a member of a company by acquiring shares (i.e., by way of transfer) provided the shares were fully paid up and no further obligation or liability was attached to them. It may thus be concluded that a minor can become a shareholder/ member of a company provided that the shares held by him are fully paid shares and the articles of association do not prohibit it.

AGREEMENTS BY PERSONS OF UNSOUND MIND

Who is a person of sound mind has been amply clarified by Section 12 of the Indian Contract Act which reads 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 judgement as to its effect upon his interests.

Position of Agreements by Persons of Unsound Mind

1) Lunatics: A lunatic is a person who is mentally deranged due to some mental strain or other persona1 experience. However, he has some intervals of sound mind. He is not liable for contracts entered into while he is of unsound mind. However, as regards contracts entered into during lucid intervals, he is bound. His position in this regard is identical with that of a minor.

2) Idiots: An idiot is a person who is permanently of unsound mind. Idiocy is a congenital defect. Such a person has no lucid intervals. He cannot make a valid contract. In Inder Singh v. Parmeshwardhari Singh a property worth about Rs. 25,000 was agreed to be sold by a person for Rs. 7,000 only. His mother proved that he was a congenital idiot, incapable of understanding the transaction. Held the sale to be void.

3) Drunken Persons: Drunkenness is on the same footing as lunacy. A contract by drunken person is altogether void. It should be noted that partial or ordinary drunkenness is not sufficient to avoid a contract. It must be clearly shown that, at the time of contracting, the person pleading drunkenness was so intoxicated as to be temporarily deprived of reason and was not in a position to give valid consent to the contract.

PERSONS DISQUALIFIED BY LAW

Besides minors and persons of unsound mind, there are some other persons who have been declared incompetent of contracting, partially or wholly, so that the contracts of such persons are void. Incompetency to contract may arise from political status, corporate status, legal status, etc.

Alien Enemy: An alien is a person who is the citizen of a foreign country. Thus, in the Indian context an alien may be (i) an alien friend, or (ii) an alien enemy.

In the case of contracts with an alien enemy (i.e., an alien whose country is at war with India) the position may be studied under two heads: (i) contracts during the war and (ii) contracts made before the war. During the subsistence of the war, an alien can neither contract with an Indian subject nor can be sued in an Indian Court except by licence from the Central Government. As regards contracts entered' into before the war breaks out, they are either dissolved or merely suspended. All contracts, which are against the public policy or are such that may benefit the enemy, stand dissolved. The contracts which are not against public policy are merely suspended for the duration of the war and revived after the war is over, provided they have not already become time-barred under the law of limitations.

Convicts: A convict is not competent to contract during the continuance of sentence of imprisonment. This inability comes to an end with the expiration of the period of sentence. A convict can, however, enter into, or sue on, a contract when on parole or when he has been pardoned by the court.

Company under the Companies Act or Statutory Corporation under special Act of Parliament: A company or a corporation is an artificial person. It exists only in contemplation of law, its contractual capacity, is determined by its constitution. The contractual capacity of a statutory corporation is expressly defined by the statute creating it. The contractual capacity of a company registered under the Companies Act is determined by the objects clause of its memorandum of association. Any act done in excess of the powers given in the memorandumis ultra-vires and void.

Insolvents: When a debtor is adjudged insolvent, his property stands vested in the Official Receiver or Official Assignee appointed by the Court. He cannot enter into contracts relating to his property and sue, and be sued, on his behalf. This disqualification of an insolvent is removedafter he is discharged.

FREE CONSENT

Section 14 of the Act states that Consent is said to be free when it is not caused by (i) coercion, or (ii) undue influence, or (iii) fraud, or (iv)misrepresentation, or (v)mistake. Thus, the consent of the parties to a contract is regarded as free if . it has not been induced by any of the five factors stated under Section 14. In other words, the consent is not free if it can be proved thatit has been caused by coercion, undue influence, fraud, misrepresentation, or mistake, For example, X, at a gun point, makes Y agree to sell his house to X for Rs. 50,000. Here, Y's consent has been obtained by coercion and therefore, it shall not regarded as free.

When the consent of any party is not free, the contract is usually treated as voidable at the option of the party whose consent was not free. If, however, the consent has been caused by mistake on the part of both the parties, the contract is considered void.

COERCION

Coercion means forcibly compelling a person to enter into a contract i.e., the consent of the party is obtained by use of force or under a threat. Section 15 of the Contract Act defines 'coercion' as Coercion is (i) the committing or threatening to commit, any act forbidden by the Indian Penal Code; or (ii) 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. Let us now analyse the implications of this definition.

1) Committing any act forbidden by the Indian Penal Code : When the consent of a person is obtained by committing any act which is forbidden by the Indian Penal Code, the consent is said to be obtained by coercion. Committing a murder, kidnapping, causing hurt, rape, defamation, theft etc. are some of the examples of the acts forbidden by the Indian Penal Code. For example, A beats B and compels him to sell his scooter for Rs. 2,000. In this case the consent of B is induced by coercion.

2) Threatening to commit any act forbidden by the Indian Penal code : From the definition you will observe that not only the committing of an act forbidden by the Indian Penal Code amounts to coercion but even a threat to commit such act amounts to coercion. Thus, a threat to shoot, to murder, to kidnap or to cause bodily injury will amount to coercion.

3) Unlawful detaining of any property : If a person unlawfully detains the property of another person and compels him to enter into a contract with him, the consent is said to be induced by coercion. For example, an agent refused to hand over the account books of the principal to the new agent appointed in his place unless the principal released him from all liabilities. The principal had to give a release deed as demanded. It was held that the release was not binding because the consent of the principal was obtained by exercising coercion (Muthia v. Karuippan).

4) Threatening to detain any property unlawfully : If a threat is held out to detain any property of another person, this also amounts to coercion. In Bansrajvs The secretary of State, the government gave a threat of attachment against the property of A for the recovery of a fine due from B, the son of A. A paid the fine. It was held that the consent of A was induced by coercion and he could recover the amount paid under coercion.

5) Intention of causing any person to enter into an agreement : The act of coercion must have been done with the object of inducing or compelling any person to enter into a contract.

6)Threat to File a Suit: Sometimes a doubt may arise whether a threat to file a suit amounts to coercion or not. You should know that a threat to file a civil or criminal suit does not amount to coercion because it is not forbidden by the Indian Penal Code. However, a threat to file a suit on false charge amounts to coercion since such an act is forbidden by the Indian Penal Code.

7)Threat to Commit Suicide: Under the Indian Penal Code a suicide and a 'threat to commit suicide' are not punishable. But, an attempt to commit suicide is punishable. Now, the question arises whether a 'threat to commit suicide' shall amount to coercion or not. This point was considered by Madras High Court in the case of Ammiraju v. Seshamma. In this case a person, by a threat to commit suicide, induced his wife and son to execute a release deed in favour of his brother in respect of certain property. The transaction was set aside on the ground of coercion. The court held that though a threat to commit suicide is not punishable under the Indian Penal Code, it is deemed to be forbidden by that code.

From the above discussion it becomes clear that the definition does not say anywhere as to by whom or against whom coercion can be exercised. Hence, whether the act of coercion is

directed against the promisor or any other person in whose welfare the promisor is interested, the consent will not be free. For example, A threatens to kill B's son C if B refuses to sell his car to him. Here, the threat is directed against C (B's son). So, the consent is treated as induced by coercion. Similarly, it ia not necessary that the threat should come from a party to the contract, it may come from a stranger.

UNDUE INFLUENCE

The second factor which affects consent and makes it unfree, is undue influence. The term 'undue influence' means the improper or unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position. Section 16 (i) of the Contract Act defines undue influence as '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.

If we analyse this definition, two essentials of undue influence become clear :

i) the relations subsisting between the parties should be such that one of them is in a position to dominate the will of the other, and

ii) the dominant party should have used that position to obtain an unfair advantage over the other.

Both the characteristics must be present simultaneously. The presence of one without the other will not invalidate the contract on the ground of undue influence.

A, a lady gifted all her property to B, her spiritual guru so that she may secure benefits to her soul in next world. Later on, she disputed the validity of the gift deed. Here, the spiritual guru was in a position to dominate the will of his disciple A and by using his strong position obtained an unfair advantage. Hence, it was held that the consent of A was obtained by undue influence.

Presumption of Domination of Will

You have learnt that undue influence is involved only when one party is in a position todominate the will of the other. Now the question arises as to when can a person be said to bein a position to dominate the will of the other. Answer to this question is provided by Section16 (2) of the Act. It states that o person is deemed to be in a position to dominate the will of another where :

i) He holds a real or apparent authority over the other : Examples of such cases are relations between master and the servant, parent and child, income tax officer and assessee.

ii) He stands in a fiduciary relation to the other: It means a relationship based on trust and confidence. The category of fiduciary relationship is very wide. It includes the relationship of guardian and ward, spiritual adviser (guru) and his disciples, doctor, and patient, solicitor and client, trustee and beneficiary, a woman and her confidential managing agent. You should note that by judicial decisions it has been held that undue influence cannot be presumed between husband and wife, landlord and tenant, and creditor. and debtor.

iii)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: Persons of weak intelligence, old age, indifferent health or those who are illiterate can be easily influenced. Hence, the law gives thein protection. For example, A, an illiterate old man of about 90 years, physically infirm and mentally in distress, executed a gift deed of his properties in favour of B, his nearest relative who was looking after his daily needs and managing his cultivation. The court held that B was in a position to dominate the will of A (Sher Singh v. Prithi Singh).

CONTINGENT CONTRACTS

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 (section 31). For example, A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

The following are the essential features of a contingent contract.

1. Performance of a contingent contract is made dependent upon the happening or non-happening of dome event.
2. The event on which the performance is made to depend, is an event collateral to the contracti.e., it does not form part of the reciprocal promises which constitute the contract. For example, where A agrees to deliver 100 bags of wheat and B agrees to pay the price only afterwards, the contract is a conditional contract and not contingent, because the event on which B's obligationis made to depend is a part of the promise itself and not a collateral event. Similarly, where A promises to pay B Rs. 10,000 if he marries C, it is not a contingent contract.
3. The contingent event should not be the mere will of the promisor. For instance, if A promises to pay B Rs. 1,000 if he so chooses, it is not a contingent contract. However, where the event is within the promisor's wi!l but not merely his will, it may be a contingent contract. ,For exarple, if A promises to pay B Rs. 1,000 if A left Delhi for Bombay, it is a contingent contract, because going to Bombay is an event no doubt within A's will, but is not merely his will.

Rules Regarding Enforcement of Contingent Contracts

The rules regarding contingent contracts are summarised hereunder (sections 32 to 36):

1 .Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. And if, the event becomes impossible, such contract becomes void (section 32).

Examples i) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

2 .Contracts contingent upon the non-happening of a certain future event can be enforced when the happening of that event becomes impossible, and not before (section 33). For example, A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

3 .If a contract is contingent upon as to how 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 34). For example, A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

4 .Contracts contingent upon the happening of an uncertain specified event within a fixed time become void if, at the expiration of the time fixed, such event has not happened or if, before the time fixed, such event becomes impossible (section 35) For example, A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

5 .Contracts contingent upon the non-happening of a specified event within a fixed time may be enforced by law when the time fixed .has expired and such event has not happened, or before the time fixed expired, if it becomes certain that such event will not happen' (section 35). For example, A promises to pay B a sum of money if a certain ship does not return within a year.

The contract may be enforced if the ship does not return-within the year, or is burnt within the year. 6.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, * Examples i) A agrees to pay B Rs.'1,000 if two parallel straight lines should enclose a space. The agreement is void. ii) A agrees to pay B Rs. 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. The agreement is void.

TERMINATION AND DISCHARGE OF A CONTRACT

The term 'discharge of a contract' means that the parties to it are no more liable under the contract. A contract may be discharged in any one of the following ways:

1 By performance
2 By mutual agreement
3 By lapse of time
4 By operation of law
5 By impossibility of performance
6 By breach.

1. **Discharge by Performance :**The most obvious or natural mode of discharge of a contract is by performance. The term 'performance' means that the parties to the contract have fulfilled or carried out their respective obligations arising out of the contract. For example, A contracts.to sell his book to B for Rs. 50. A delivers the book and B makes the payment, the contract is discharged by performance.

Section **37** of the Indian Contract Act lays down.the obligations of the parties regarding performance. It provides that, 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 provision of this Act, or any otrher law.

Types of Performance

From Section 37 you can infer that the performance may be either actual or attempted. **a)Actual performance:** When a party to a contract has done, what he had undertaken to do andthere remains nothing to be done by him the promise is said to have been actually performedand the liability of such a party comes to an end. For example A who is indebted to B for Rs.1,000, promises to repay the amount after two months. A repays the.amount on the due date.This is actual performance. .

b)Attempted Performance: Sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance. This is known as 'attempted performance' or 'tender. For example, A promises to deliver certain goodsto B. A takes the goods to the appointed place during business hours but B refuses to take the delivery of goods. Thus, A has done what he was required to do under the contract, It is, an attempted performance. In case of an attempted performance, the promisor shall not be held liable for non-performance as an attempted performance or tender is as good as performing the contract. Section 38 of the Contract Act provides. where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract.

2. Discharge by Mutual Agreement: Just as a contract is created by means of an agreement, it can be terminated or discharged by mutual agreement. If the parties to a contract agree to make a fresh contract in place of the original contract, the original contract is discharged. A contract can be discharged by mutual agreement in any of the following ways.

a) Novation: The term 'novation' means the substitution of a new contract for the existing one. This arrangement may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract. Since novation implies a new contract, all the parties to the existing contract must agree to it.

Examples

i) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is discharged, and a new debt from C to B has been contracted. This is novation involving change of parties. 8 ii) A owes B Rs. 10,000. A enters into an agreement with B and gives B a mortgage of his estate for Rs. 5,000 in place of the debt of Rs. 10.000. This arrangement constitutes a new contract and terminates the old.

b) Rescission : Rescission means cancellation of the contract. If by mutual agreement the contracting parties agree to rescind the contract, the contract is discharged. A contract can be rescinded before the performance becomes due. Non-performance of a contract by both the parties for a long period, without complaint, amounts to implied rescission. Rescission is different from novation in the sense that in case of novation a new contract is substituted for the original contract whereas in rescission the original contract is cancelled and no new contract is made.

c) Alteration: It means a change in one or more of the terms of a contract with consent of all the parties. Alteration has the effect of terminating the original contract. In an alteration there is a change in the terms of a contract but no change of parties to it. In novation there may be change of parties.

d) Remission: It means the acceptance of a lesser sum than what was contracted for or a lesser fulfilment of the promise made. According to section 63, every promisee may (a) remit or dispense with it, wholly or in' part, or (b) extend the time of performance, or (c) accept any other satisfaction instead of performance. A owes B Rs. 5,000. A pays to B Rs. 3,000 who accepts it in full satisfaction of the debt. The whole debt is discharged.

e) Waiver: Waiver means abandonment or intentional relinquishment of a right under the contract. When a party waives his rights under it, the other party is released from his obligation. For example, A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

3. Discharge by Lapse of Time: The rights and obligations under a contract can be enforced only within a specified period called the 'period of limitation'. The Limitation Act has prescribed the period of limitation for various contracts: For example, period of limitation for exercising right to recover an immovable property is twelve years and right to recover a debt is three years. After the expiry of this limitation period, the contractual rights cannot be enforced. In other words, if a debt is not recovered within three years of its payment becoming due, the debt becomes time barred and is discharged by lapse of time.

4. Discharge by Operation of Law: A contract may be discharged by operation of law in the following cases.

i) Death of the Promisor: Contracts involving the personal skill or ability of the promisor come to an end with the death of the promisor.

ii) Insolvency: When a person is declared insolvent by an Insolvency Court, he is discharged from his obligation existing at that time. So, if a promisor is declared insolvent, he is discharged from his liability.

iii)Merger: When an inferior right accounting to a party in a contract merges into the superior rights accruing to the same party, the earlier contract is discharged. For example, A took a land on lease from B. Subsequently, A purchases that very land. Now A becomes the owner of the land and the earlier contract of lease stands terminated.

iv)Material alteration: In a written contract if any party makes some material alteration in the terms of the contract without the approval of the other party, the contract stands terminated. A material alteration is one which varies the rights, liabilities or the position of the parties as such, You should note that immaterial alterations, such as correcting the clerical errors or the spelling of a name has no effect on the validity of the contract.

5. Discharge by Impossibility of Performance: For a contract to be valid it must be capable of being performed. But sometimes, due to some reasons which are beyond the control of the parties, the performance of a contract becomes impossible. In such cases, the contract is discharged on the ground of impossibility of performance. Section 56 of Contract Act provides that an agreement to do an act impossible in itself is void. This rule is based on the principle that law does not recognise the impossible and what is impossible does not create any obligations.

Impossibility may be of two types : (i) initial and (ii) subsequent.

i)**Initial impossibility:** It means impossibility at the time of making the contract. Whether the fact of impossibility is known or unknown to the parties, the agreement is void ab initio. For example A agrees with B to discover a treasure by magic. The agreement is void due to initial impossibility. If, however, the promisor alone knows about the initial impossibility while making the contract, he shall have to compensate the promisee for any loss which the promisee may suffer on account of non-performance. This rule is given in Para 3 of section 56. For example, A contracts to marry B, being already married to C. Being forbidden by the law of which he is subject to practise polygamy, A must compensate B for the loss caused to her by the non-performance of the contract on account of impossibility.

ii)**Subsequent or Supervening Impossibility :** Impossibility which arises subsequent to the making of the contract is called supervening impossibility. If the contract was capable of performance at the time of making it, but subsequently because of some event (over which neither party has any control) the performance becomes impossible or unlawful, the contract becomes void and the parties are discharged' from their obligations. In case of initial impossibility the agreement is void ab-initio while in case of supervening impossibility the contract becomes void.

The performance of a contract may become subsequently impossible due to any of the following reasons.

a) Destruction of Subject-Matter: If the subject-matter of a contract is destroyed after the formation of the contract, without the fault of either party, the contract becomes void.

Examples i) A musical hall was agreed to be let out on certain dates, but before those dates the hall was destroyed by fire. The contract was held to have become void on the ground of

impossibility of performance (Taylor v. Caldwell). ii) A person agreed to deliver a part of a specific crop of potatoes. The potatoes were destroyed by a pest through no fault of the party. The contract was held to be discharged (Howell v. Coupland).

b) Death or personal incapacity: When the peformance of a contract depends upon the personal skill or ability of a party, the contract stands discharged on the . death or incapability of that person. For example, A agreed to perform at a concert on a specified day. A fell seriously ill and so could not perform on the said day. It was held that the contract is discharged on the ground of impossibility (Robinson v. Davison).

c)Change of Law: A contract which was lawful at the time of making it but becomes unlawful by reasons of subsequent change in law, the performance becomes impossible and the contract is discharged.

Examples i) A agreed to transport certain goods belonging to B from one place to another. Subsequently, A's trucks were requisitioned by the Government under a statutory power. It was held that A was discharged from his obligation (Noor Bux v. Kalyan).
ii) A agreed to sell his land to B. Subsequently, the land was acquired by the Government. NowA cannot perform his promise, the contract was held to become void on the ground of impossibility (Shyam Sunder v. Durga).

d) Cessation of a state of things: If a contract is entered into on the basis of the continued existence or occurrence of a particular state of things, the contract is discharged if the state of things ceases to exist or changes. It should be noted carefully that the contract is discharged only when the happening of the event was the basis of the contract,

Examples i) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

e)Declaration of War: If a war is declared subsequent to the formation of the contract, all pending contracts are either suspended or declared as void. If the war is of a short duration, such contracts may be revived after the end of the
war. For example, A contracts to take in cargo for H at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomesvoid when the war is declared.

Some of the cases which do not come within the principle of supervening impossibility are as follows:

Difficulty of Performance:The contract is not discharged simply because the performance has become more difficult, more expensive or less profitable than stipulated at the time of its formation.

Examples i) A agreed to supply coal within certain period. Due to government's restrictions on the transport of coal from collieries, he failed to supply on time. But since coal was available in the open market from where A could have obtained it, A will not be discharged on the groundof impossibility.
ii) A promised to send certain goods from Bombay to Antwerp in September. In August, war broke out and shipping space was not available except at very high rates. It was held that the increase of freight rates did not excuse performance.

Commercial Impossibility **:** Performance cannot be excused on the ground of commercial impossibility. If the raw material is available at a very high rate or wages have gone up and the performance becomes less profitable than anticipated, the contract does not become void.

Commercial impossibility not discharge the parties. For example, A agreed to supply certain goods to B. As a result of an increase in the cost of raw material and wage bill, it is now no longer profitable for A to supply the goods-at the agreed rate, A cannot be excused for non- performance.
***Default of a Third Party*:** If the contract cannot be performed because of the default of a third person on whose work the promisor relied, the promisor is not discharged. For example, A entered into a contract with B for the supply of certain cotton goods to be manufactured by C,a manufacturer of these goods. C did not manufacture those goods. A is not discharged fromhis obligation and is liable to B for damages.

Strikes, Lockouts and civil Disturbances: A strike by the workers or a lockout by the employer or riots etc. will not excuse the parties from performing the contract unless there is a clause in .the contract to that effect.. For example, a contract was entered into between two merchants for $lie sale of certain goods which were to be imported from Algeria. The goods could not be imported because of riots and civil disturbances in that country. It was held that this was no excuse for non-performance of the contract.

***Partial Impossibility* :** If the contract is made for several purposes, the failure of one or more of them does not discharge the contract. 'For example, A agreed to let a boat to H to (i) view the naval review at the coronation of King, and (ii) to cruise round the fleet. Due to the illness of the King, the naval review was cancelled, but the fleet was assembled and the boat could have been used to cruise round the fleet. It was held that the contract was not discharged.

6. **Discharge by Breach**: When a contract is made, the parties to it are expected to perform it, unless they are excused. If any party refuses or fails to perform his part of the contract, a breach of contract occurs and the contract is discharged. In case of breach the aggrieved party is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contract may arise in two ways: (i) actual breach and (ii) anticipatory breach.

Actual Breach: Actual breach of contract may take place either on the due date of performance or during the course of performance. For example, A agreed to deliver 100 bags of rice to B at a certain price on 10th July. If A refuses or fails to deliver ;.he goods on time, there occurs an actual breach. If the promisor has performed part of the contract and then refuses or fails to deliver the remaining goods, it is also actual breach of contract.

Anticipatory Breach: Anticipatory breach occurs when the party declares his intention of not performing the contract before the performance is due. This intention may be declared expressly or impliedly. For example, A agrees to supply certain goods to B on 10th July. Before this date A informs B that he shall not supply the goods. If, instead of, expressly informing B about his intention of not performing the contract, A does something which makes it impossible for him to perform, this will also amount to anticipatory breach. If in the example given above, A sells all the goods before the said date to P at a higher price, this action of A clearly indicates his intention.

REMEDIES FOR BREACH OF CONTRACT

When a contract is broken by a party, there are several courses of action (remedies) which the other party may pursue. These remedies include:

1. *Rescission of the contract*
2. *Suit for damage*
3. *Suit for specific performance*

4. Suit for injunction

5. Suit upon quantum meruit

1. Rescission of the Contract : Section 39 of the Act provides that when a party to a contract has refused to perform, or disabled himself from performing his promise in. its entirety, the promisee may put an end to the contract. This is called right of rescission. It means setting aside of the contract. In such a case aggrieved party is discharged from all t obligations under the contract. It should be noted that section 75 of the Indian Contract Act also confers upon a person rightfully rescinding the contract to make a claim for compensation of any loss or damage sustained through the non-fulfilment of the contract.

2. Suit for Damages : In the event of breach of contract; the aggrieved party besides rescinding the contract can claim for damages. Damages are monetary compensation allowed for loss suffered by the aggrieved party due to the breach of contract.

3. Suit for Specific Performance : In certain cases of breach of contract, damages may not be considered as an adequate remedy. The aggrieved party may not be interested in monetary compensation. The court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the contract. This is called 'Specific Performance' of the contract. .' Specific performance of a contract may, at the discretion of the Court, be enforced where the contract involves the sale of a particular house or some rare article or any other thing for which monetary compensation is not enough because the injured party will not be able to get an exact substitute in the market. For example, A agreed to sell an old painting to B for Rs. 10,000. Subsequently, A refused to sell the painting. Here, B may file a suit against A for the specific performance of the contract.

Specific performance is not granted under the following situations :

a) When monetary compensation is an adequate relief;

b) When the contract is of a personal nature, e.g., a contract to paint a picture, etc. In such contracts injunction is granted in place of specific performance.

c) Where it is not possible for the court to supervise the performance of the contract, e.g., a building construction contract.

d)l When the contract is made by a company beyond its powers as laid down in its memorandum of association. e) When the contract is inequitable to either party. '

f) Where one of the parties is a minor.

4. Suit for Injunction : Where a party is in breach of a negative term of a contract (i.e., where he does something which he promised not to do) the court may by issuing an order, prohibit him from doing so. Such an order issued by court is called an 'injunction'.

Example: G agreed to buy the whole of the electric energy required for his house from a certain company. He was, therefore, restrained by an injunction from buying electricity from any other person. (Metropolitan Electric Supply Company vsGinder).

5.Suit upon Quantum Meruit

The phrase 'Quantum Meruit' means 'as much as is merited (earned)'. The normal rule of law is that unless a party has performed his promise in its entirety, he cannot claim performance from the other. To this rule, however, there are certain exceptions on the basis of quantum meruit. When a person has done some work under a contract and the other party repudiates the contract, or some event happens which makes the further performance of the contract impossible, then the party who has already performed the work can claim payment for the

work he has already done. This right of claiming the payment for work already done, before the repudiation of the contract or its further performance becoming impossible is called the right to quantum meruit. For example, X, a writer, was engaged by M who is the editor of a magazine to write a series of twelve articles to be published in the magazine. After X had delivered six articles, the publication of the magazine was discontinued. X is entitled to receive payment for the six articles already written.

QUASI CONTRACTS

There are many situations in which a person may be required to conform to an obligation, although he has neither broken any contract nor committed any tort. For example, A has forgotten certain articles in B's house. Now B is bound to restore . Such obligations are generally described as 'quasi contractual obligations'. Quasi contracts are based on the principleof equity and justice. It simply states that nobody shall enrich himself unjustly at the expense ofanother. In fact, a quasi contract is not a contract at all. It is an obligation which the law creates in the absence of any agreement, when the acts of the party or others have placed in the possession of one person, money or its equivalent under such circumstances that in equity and good conscience, he ought not to retain it, and which in justice and fairness belongs to another.He then is placed under an obligation to restore or repay for such a benefit.

DEFINITIONS OF QUASI CONTRACTS

There is no statutory definition of a ***quasi contract*** available either under the English Law or under the Indian Contract Act. Pollock describes quasi contracts as "contracts 'in law' but not 'infact', being the subject matter of a fictitious extension of the sphere of the contract to cover obligations which do not in reality fall within it" Quasi contracts are also called implied contracts, They are implied because they create such obligations which resemble those created by contracts. The essentials for the formation of a contract are absent but as outcome resembles those created by a contract they are called quasi contracts. Under English Law, they are also termed as Constructive Contracts or Contracts in Law, etc. Indian Contract Act terms quasi contracts as certain relations resembling those created by contracts and are found under sections 68 to 72.

Difference Between Quasi Contracts and Contracts

In case of contracts, it is the consent of the party which produce the obligations. But in quasi contracts there is no question of consent, it is the law alone or natural equity which produces obligations. As noted earlier, a quasi contract is based on the ground that a person shall not be allowed to unjustly enrich himself at the expense - of another. There is, however, similarity between quasi contract and contracts in case of claims for damages. In case of breach of a quasi contract section 73 of the Indian Contract Act provides for the same remedies (claim fordamages) as provided in case of breach of a contract. It reads: 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 has contracted to discharge it and has broken his contract.

TYPES OF QUASI CONTRACTS

Sections 68 to 72 deal with five types of quasi contractual obligations.

' **i)Supply of Necessaries:** According to section 68, if a person incapable of contracting (which would include a minor, idiot and lunatic) or anyone whom he is legally bound to support, is supplied by another with 'necessaries' suited to his condition in life such person is entitled to

recover the value thereof from the property of such incapable person. You should note that the aforesaid claim for necessaries is based upon' quasi contractual obligations because a contract with a person incompetent to contract is void-ab-initio. The following two points must, however, be noted in this regard:

a) The amount is recoverable only from the property (if any) of the incapable person and not from him personally.

b) The goods or services supplied must be 'necessaries'.

ii) **Payment of Money Due by Another(Section 69):** 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. Example : B holds land in Bengal on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears, his land is advertised for sale by the Government, Under the revenue law, the consequences of such sale will be annulment of B's lease. B, to prevent the sale and consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid (Wazarilal v. NaurangLal).

For the section 69 to apply, the following essentials must be met:

a) The person paying must be himself interested in making the payment. Thus, where P left his carriage on D's premises and D's landlord seized the carriage for non-payment of the rent. P paid the rent to obtain the release of his carriage. Held. P could recover the amount from D

b) The payment should not be voluntary one.

c) The payment must be such as the other party was bound by law to pay.

Example : The goods belonging to A were wrongfully attached in order to realise arrears of Government revenue due by G. A paid the amount to save the goods from sale. Held he was entitled to recover the amount from G (AbidHussain v. Ganga Sahai).

iii) **Obligations to Pay for Non-gratuitous Acts :**Where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Under section 70, three conditions are required to establish a right of action at the suit of a person who does anything for another:

a) The thing must be done lawfully.

b) It must be done by a person not intending to act gratuitously.

c) The person for whom the act is done must enjoy the benefit of it.

iv) **Contracts required to be in writing:** You should note that where there is a mandatory provision in an act requiring contracts to be in writing, an oral contract is void. But it has been held by the Supreme Court that where work has been done and accepted, Section 70 is applicable and payment should be made for the work done (State of West Bengal v. B.K. Mandal& Sons).

v) **Responsibility of a Finder of Goods:** A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. In such a case, an agreement is implied by law between the owner and finder of goods and the latter is deemed to be a bailee. A finder is, thus, bound to take as much care of the goods found as a man of

ordinary prudence would under similar circumstances take of his own goods of the same bulk, quantity and value. Besides, he must make reasonable efforts in finding the real owner.

Rights of the Finder of Goods : A finder of goods has the following rights:

1. The finder is entitled to retain the goods against the whole world, except the true owner. For example, A picked up a diamond from the floor of B's shop and handed it over to B to keep it till the owner is found. In spite of best efforts, the true owner could not be found. After some time,A tendered to B the lawful expenses incurred by him for finding the true owner and asked himto return the diamond to him (A). B refused to do so. Held B must return the diamond to A as Awas entitled to retain it against the whole world, except the true owner (Hollins v. Fowler). 2.The finder has lien in respect of any sum which may be due to him on account of expenditureincurred by him in respect of the goods (section 168).

3. Where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it (section 168). This right was re-endorsed in the case of Harbhajan v. Harcharan.

4. The finder may sell the goods in the following circumstances :

a) Where the thing found is in danger of perishing.

b) Where the owner cannot, with reasonable diligence, be found out.

c) Where the owner has been found but he refuses to pay the lawful charges of the finder.

d) Where the lawful charges of the finder, in respect of the thing found amount to 2/3rd or more of the value of the thing found.