

UNIT 1

Indian Contract Act 1872

Meaning & Essentials of Contract

The law of contract in India is contained in the Indian Contract Act, 1872. It extends to the whole of the India except J&K and came into force on the first day of September 1872.

As per Section 2h of the Indian Contract Act: “An agreement enforceable by the law is a contract”. A contract therefore is an agreement the object of which is to create legal obligation i.e. a duty enforceable by law.

1. An Agreement: As per Section 2e, “Every promise & set of promises, forming the consideration for each other is an agreement”.
2. Legal Obligation: An agreement to become a contract must give rise to a legal obligation i.e. a duty enforceable by law. “All contracts are agreements but all agreements are not contracts”. Agreement that is enforceable by the law is a contract.

Essential Elements of a Valid Contract

As per Section 10, “All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void.”

- I. Offer & Acceptance: There must be a lawful offer and a lawful acceptance, both must satisfy the requirements of the Contract Act.
2. Intention to Create Legal Relations: In commercial agreements, an intention to create legal relations is presumed.
E.g. M promises N a saree if she sings a song, she does but M refuses to buy the saree, she can't sue M. (Balfour vs. Balfour – separate case)

3. Lawful Consideration: Consideration is the price paid by one party for the promise of other. Gratuitous promises are not enforceable by the law, same for unlawful or fraudulent considerations.
4. Capacity of Parties: Parties must be competent to contract, otherwise the agreement cannot be enforced by law. Age of Majority, Sound Mind etc. are forms of incompetence.
5. Free Consent: Consent means that the parties must have agreed upon the same thing in the same sense. There is absence of Free Consent if agreement is induced by Coercion, Undue Influence, Fraud, Misrepresentation, Mistake.
An agreement is voidable in case of the first 4 factors. In case of Mistake, the contract is void.
6. Lawful Object: The object of agreement must not be fraudulent or illegal else it is void.
7. Writing & Registration: A contract may be oral or in writing, in some special cases it must be written & registered.
8. Certainty: The agreement must not be vague or uncertain. E.g. Agreement to sell 100 tons of oil without any valid proof.
9. Possibility of Performance: It must be capable of performance. E.g. To sell land on moon.
10. Not Expressly Declared Void: Sections 24-30, specify certain agreements which have been expressly declared to be void.
E.g. Agreement in restraint of marriage, agreement in restraint of trade, an agreement by way of wager have been expressly declared void.

Kinds of Contract

From POV of Validity

1. Valid Contract: An agreement enforceable by law, when all essential elements of a valid contract are present.
2. Voidable Contract: Section 2(i), An agreement which is enforceable by law at the option of one or more parties, but not at the option of the other or others, is a voidable contract. A contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue influence, misrepresentation or fraud.

3. Void Contract: A useless contract which has no legal effect at all. “A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable”.
4. Unenforceable Contract: A contract which is valid in itself, but is not capable of being enforced because of some technical defect such as absence of writing, registration, requisite stamp etc.
5. Illegal Contract: A contract whose object/consideration is illegal, and thus the contract is void ab-initio.

From POV of Mode of Formation:

1. Express Contract: When both the offer and acceptance of agreement are made in words, spoken or written.
2. Implied Contract: When the offer & acceptance are made not in words but by acts and conducts of parties.
3. Constructive or Quasi Contract: The obligation of finder of lost goods to return them back to the true owner or liability of person to whom money is paid under mistake to repay it back are quasi contracts, as there is neither offer nor acceptance nor consent.

From POV of Execution/Performance

1. Executed Contract: When both the parties to a contract have completely performed their share of obligation and nothing remains to be done by either party under the contract.

(Unilateral Contract: When only one of the parties has performed her share of obligation and other one is yet to perform, then also it is called executed.)

2. Executory Contract (Bilateral Contracts): One in which both the obligations are outstanding, either wholly or in part at the time of formation of contract.

Offer & Acceptance

Proposal or Offer

Section 2a of the Indian Contract Act (ICA) defines a ‘proposal’ as “when one person signifies to another his willingness to do or 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”.

Essential of proposal:

- It must be an expression of the willingness to do or to abstain from doing something.
- The expression of willingness to do or to abstain from doing something must be to another person. There can be no ‘proposal’ to oneself.

- The expression of willingness to do or to abstain from doing something must be made with a view to obtaining the assent of the other person to such act or abstinence.

The one making the proposal – promisor/offeror, one to whom offer is made is offeree, one who accepts the offer is promisee or acceptor.

Types of Offer

1. Express Offer
2. Implied Offer
3. General Offer – Offer made to the public in general, hence anyone can accept and do the desired act. (Section 8)
4. Specific Offer – When the offer is made to a definite person, it is known as a specific offer and can be accepted by only that person.
5. Cross Offer – When two parties exchange identical offers in ignorance at the time of each other's offer.
6. Counter Offer – When the offeree offers to accept the original offer subject to modifications, he makes a counter offer.

Rules of a Valid Offer

1. Offer may be expressed by words spoken or written (express offer), or can be implied i.e. inferred from the conduct of a person or the circumstances of the case (implied offer).
2. An offer must intend to give rise to legal consequences and be capable of creating legal relations, otherwise it is not a valid offer.
(An offer to one's wife to show a movie is not a valid offer because in social agreements the presumption is that parties do not intend legal consequences in case of breach of agreement)
3. The terms of an offer must be definite and certain, and not loose or vague. (Taylor vs Portington – Horse Case)
4. An invitation to offer is not an offer – A person who circulates information that he is willing to deal with anybody who wants to enter into an agreement, is not making an offer but is inviting for an offer. (Similarly, declaration of intentions or a statement of price is not an offer)
5. An offer may be specific (to a particular person) or can be general (made to the public, advertisements, restoration of lost articles). (Carlill vs Carbolic Smoke Ball Co.)
6. Offer must be communicated to the offeree – Doing anything in ignorance of offer can never be treated as its acceptance, for there was never a consensus of wills. (Lalman Shukla vs Gauri Dutt)

7. An offer should not contain a term the non-compliance of which amounts to acceptance (e.g. an offeror saying that if the acceptance is not communicated up to 20th August, the offer will be presumed as accepted)

8. An offer can be made subject to any terms and conditions – Such as prescribing the mode of acceptance, amount to be paid etc. There is no contract unless all the terms of the offer are complied with and accepted.

Sec 7 (ICA) – Offeror (A) asks for sending acceptance via mail and the offeree (B) sends it by text, then Offeror (A) may decline to treat the acceptance as valid provided he gives a notice to the offeree (B) within a reasonable time after the acceptance is communicated to him (A).

9. Two identical cross offers by two parties (in ignorance of each other's offer) do not constitute acceptance of one's offer by the other and is not a contract.

Lapse & Revocation of Offer

1. An offer lapses, if acceptance is not communicated within the time prescribed in the offer, or if not, time is prescribed then within a reasonable time. [Sec-6(2)] (Reasonable time depends upon circumstance, if offer made by telegram that suggest that a reply is required urgently then even a delay of 1-2-day results in lapse of offer) (Ramsgate Victoria Hotel Co. vs Montefiore)
2. An offer lapses by not being accepted in the mode prescribed, or if no mode is prescribed then in some usual or reasonable manner. (However, it is for the offeror to insist that his proposal shall be accepted only in the prescribed manner)
3. An offer lapses by rejection of the offeree which maybe expressed (spoken-written) or implied (where the offeree makes a counter offer or where the offeree gives a conditional acceptance) (Hyde vs Wrench)
4. An offer lapses by the death or insanity of the offeror or offeree before acceptance
 - If the **offeror** dies or becomes insane before acceptance, the offer lapses provided the fact of his death or insanity comes to the knowledge of acceptor before acceptance. [Sec-6(4)]
5. An offer lapses by revocation: It is revoked when it is retracted back by the offeror. It may be revoked any time before acceptance, by communicating to the other party. [Section 6(1)]
6. Revocation by non-fulfilment of a condition by an offeree precedent to acceptance. [Section 6(3)] E.g. A offers to sell his bike to B given B joins the football team within 3 days, if B doesn't do the same then offer is revoked.
7. Offer lapses by subsequent illegality or destruction of subject matter – An offer lapses if it becomes illegal after it is made, and before it is accepted. An offer may also lapse if the subject matter of the offer is destroyed or substantially impaired.

Acceptance

Section 2b states that “A proposal when accepted becomes a promise” and defines ‘acceptance’ as ‘when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted’.

Legal Rules regarding Valid Acceptance

1. An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract, it cannot be accepted by another person without the consent of the offeror. (An offer made to public can be accepted by anyone with its knowledge)
2. Acceptance must be absolute and unqualified in all the terms of the offer. Even the slightest deviation from the terms of the offer makes the acceptance invalid.
3. Acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted [Section 7(2)].
Express acceptance is given by words spoken or written, while implied acceptance is given by some required act (search of lost goods) or by accepting some service (using public bus)

When Communication is complete

In case of Offer: The communication of offer is complete when it comes to the knowledge of the person to whom it is made. [Section 4 Para 1]

In case of Acceptance [Section 4 Para 2]

- i. As against the proposer – when it is put in course of transmission to him, so as to be out of the power of acceptor.
- ii. As against the acceptor – when it comes to the knowledge of proposer

Revocation

1. Revocation of Offer – A proposal is revoked at any time before the communication of its acceptance is complete as against the proposer.
2. Revocation of Acceptance – Before the communication of acceptance is complete as against the acceptor

Revocation can be done by Communication, Non-Fulfilment of a condition of Offeree, Not being accepted in the prescribed mode, Lapse of Time, Death or Insanity, Destruction, Subsequent Illegality, Counter Offer.

Consideration

As per Section 2d, “When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

Essentials of Valid Consideration

1. Consideration must move at the desire of the promisor: Acts done or services rendered voluntarily or at the desire of the third party will not amount to valid consideration so as to support a contract. (The logic is found in the worry and expense to which one might be subjected, if he were obliged to pay for the services, which he doesn't need)

Moreover, the consideration can benefit any third party, only at the will of promisor.

2. Consideration may move from the promisee or any other person. [Section 2d]

It is immaterial who has furnished it, as long as consideration exists. Even a stranger to the consideration can sue on a contract, provided he is a party to the contract. (Doctrine of Constructive Consideration) (Chinayya vs Ramayya)

Case: A an old lady (promisor) named a property to her Daughter R (promisee) with direction that she must pay annuity to her uncle C (brother of A). Initially daughter agreed, later on she declined to fulfil her promise, saying that no consideration had been made by maternal uncle C, however the consideration moves from her mother A, therefore the uncle could claim annuity.

Doctrine of Privity of Contract – A person maybe a stranger to the consideration, but if he is a stranger to the contract, then as per “Privity of Contract” – ‘A stranger to a contract cannot sue, only a person who is a party to contract can sue on it’/

Exceptions to Doctrine of Privity of Contract

- i. Where an express or implied trust is created, the beneficiary can sue in his own right, to enforce his rights under the trust, though he was not a party to the contract. e.g. An addressee of an insured article is entitled to sue the post office in case of loss of an article it was to be received, the Post office becomes a constructive trustee. (Amir Ullah vs. Central Govt.)
- ii. Family Settlement: In family separation, certain provisions are made for handling expenses of family members, such members although not parties to the agreement can sue. (Daughter agreed to take care of mother if her father transfers to her the property, she later disagrees, in such case the mother can sue)
- iii. When the defendant constitutes himself as the agent of the third party: If A receives some money from B to be paid to C and he admits of this receipt to C, then C can recover his amount from A who will be held agent of C.

- iv. When a contract is entered into by an agent, the principal can sue on it.
 - v. In case of assignment of rights under a contract in favour of a third party either voluntarily or by operation of law, the assignee can enforce the benefits of the contract. (assignee of insurance policy)
3. Consideration maybe Past, Present or Future
 4. Consideration must be 'something of value' – It need not be adequate. If C sells his bike of 20k, only for 1k with free consent, then it is a valid contract.
 5. Consideration must be real – It should not be physically impossible (revive a dead man), illegal, uncertain or illusory.

No Consideration – No Contract

Exceptions (Section 25)

1. Natural Love & Affection: An agreement made without consideration is enforceable if it is i. Expressed in writing ii. Registered under the law for the time (being in force for the registration of documents), iii. Made on account of natural love & affection, iv. Between parties standing in a near relation to each other
2. Compensation for Voluntary Services - A promise made to compensate wholly or in part a person who has already voluntarily done something for the promisor.
3. Agreement to pay time barred debt – A time barred debt cannot be recovered and therefore a promise to repay such a debt without consideration is an exception. (A owes B 1000, but the debt is barred by the Limitation Act, A signs a written promise to pay B 500 on account of the debt. This is a contract)
4. Completed Gift – A gift that does not require consideration in order to be valid. Any gift made will be valid and binding even though without consideration.
5. Agency (Section 185) – No consideration is necessary to create Agency.
6. Contribution to Charity – A promise to contribute to charity is enforceable if on the faith of the promisor, the promise takes definite steps to further the objective and undertakes a liability, to the extent of the liability incurred, not exceeding the promised amount of subscription. (Kedarnath vs. Gorie Mohammed) (Abdul Aziz vs. Masum Ali)

Competency/Capacity to Contract (Contractual Ability)

A person must have the ability to give consent before he can be legally bound to an agreement, thus Capacity is the ability to incur legal obligations and acquire legal rights. Section 11 deals with the competency of parties and provides that every person is competent to contract who is of age of majority, who is of sound mind, who has not been disqualified by law from entering into a contract.

A. Minors – A Minor is a person who is under the age of 18 years old. As they have less experience, the law tries to protect minors from situations where they might enter into contracts which do not benefit them,

1. An agreement with and by minor is void (void ab initio). Since their mental faculties are not mature, they don't possess the capacity to make prudent judgement. (**Mohiri Bibi vs Dharmodas Ghose**) - **Benchmark Case**
2. His/her agreement cannot be ratified by him on attaining the age of majority. Ratification means subsequent acceptance of an act or agreement.
3. He can be a beneficiary of an agreement under which he bears no obligation.
4. Rule of Estoppel does not apply to minor (Section 115 – When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, then neither he or his representative shall be allowed to deny the truth of that thing.)
5. Minor's liability for necessities: "If a person incapable of entering into a contract or any one whom he is legally bound to support, is supplied by necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person". A minor is not personally liable, it's his property which is liable, if a minor owns no property then supplier will lose price of necessities.
6. Minor as a partner: A minor cannot be a partner in a partnership firm, but can be admitted to the benefits of partnership. (He shall not share losses except when liability to third parties has arisen)
7. Position of Minor's Parents – Parents are not liable for agreements made by a minor, whether the agreement is for the purchase of necessities or not. The parents can be held liable when the child is contracting as an agent for the parents.
8. Minor Agent – A minor can be an agent (S-184), but cannot be held personally liable for negligence or breach of duty.
9. Minor & Insolvency – Minor cannot be adjudicated as insolvent, for he is incapable of contracting debts.

10. Contract by minor & adult jointly – Minor has no liability, but contract can be enforced against the adult.
11. Minor's Liability in Tort – Tort is a civil wrong for which the remedy is damages. Minor is liable for his tort.
12. Contract of Apprenticeship – An employment contract to provide young workers with training. 14 Year age and Guardians are necessary.

Person of Unsound Mind

Section 12 states that "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.

1. Idiots – An idiot is a person, who is of unsound mind by birth. His incapacity to be rational is permanent and therefore a contract with an idiot is void-ab-initio.
2. Lunatics – A lunatic person is one who is mentally disturbed due to some mental strain or other personal experiences. In this case, the unsoundness is not permanent. He can enter into a contract during lucid intervals i.e. during the period when he is of sound mind.
3. Drunkard – A drunkard is a person who is under the influence of alcohol or intoxicating substances. When he is drunk, he cannot understand the contract, therefore cannot enter into a contract. Any agreement entered thereon will be void.

Other Persons Disqualified by Law from entering into a Contract

1. Alien Enemy (Suspended During War): A citizen of foreign country living in India can enter into contract during peace time only.
2. Insolvent – He can enter only certain contracts – incur debts, purchase property or be an employee
3. Convicted – One who is found guilty and imprisoned.
4. Married Women – Cannot enter contract with respect to their husband's properties. (They can enter into contract with respect to their separate property i.e. Stridhan)
5. Foreign Diplomatic Staff & Representatives of Foreign States – They can sue others to enforce the contracts, but cannot be sued themselves.
6. Company – A Company is an artificial person and cannot enter into contracts outside the powers conferred upon it by its Memorandum of Association

Free Consent

Section 13 defines Free Consent as “Two or more persons are said to consent when they agree upon the same thing in the same sense” i.e. Consensus Ad idem.

Section 14 states that Consent is said to be free when it is not caused by:

Coercion (S-15)

Undue-Influence (S-16)

Fraud (S-17)

Misrepresentation (S-18)

Mistake (S-20, 21, 22)

1. **Coercion**: Section 15 defines Coercion as “Coercion is committing or threatening to commit any act forbidden by the Indian Penal Code or 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 agreement.”

The act constituting coercion may be directed at any person, and not necessarily at the other party to the agreement. It may proceed even from a stranger.

- Threat to file a suit (False Charge)
- Threat to commit suicide

The contract is voidable at the option of the party whose consent was obtained by coercion. If the aggrieved party does not take any action against it then it works as a valid contract.

2. **Undue Influence**: The strong mind overpowers the weak mind of a person & induces him to do which he would not have done if left to his own judgement.
(Mental Coercion)

Section 16: “A contract is said to be induced by undue influence where:

- a. The relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other.
- b. He uses the position to obtain an unfair advantage over the other.

A person is deemed to be in a position to dominate the will of another:

- i. Where a person holds a real or apparent authority over the other, say Master & Servant, Moneylender & Borrower, Police Officer & Accused.
- ii. When a person stands in a fiduciary relation (of trust & confidence) with the other. E.g. Father-Son, Advocate-Client, Doctor-Patient.

3. Misrepresentation – A representation means a statement of fact made by one party, either before or at the time of contract relating to some matter essential to the formation of the contract. The statement must be innocent or without an intention to deceive other.

E.g. X says to Y who intends to purchase his land that it produced 50 quintals of wheat per acre. X believes the statement to be true although he did not have sufficient grounds for the belief. Later it was found that the land produced only 30 quintals of wheat per acre.

Essentials of Misrepresentation – There should be a representation of facts, The representation is untrue, The representation induces the other party to enter into a contract, The party who relied on the untrue statement suffers from loss.

Consequences of Misrepresentation – The contract is voidable at the option of aggrieved party so he can **rescind** the contract, treating it as voidable or; He may affirm the contract and insist that he shall be put in the position in which he would have been if the representation made had been true.

4. Fraud: When any person makes to another a statement which he does not himself believe to be true to induce the latter to enter into the contract, he commits a fraud. (Intentional mis-representation amounts to fraud)

Section 17 states that: “Fraud means and includes any of the following acts committed by a party to a contract. or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- i. The suggestion, as to a fact that which is true when it is not true by one who does not believe it to be true
- ii. The active concealment of a fact by one having knowledge or belief of the fact
- iii. A promise made without any intention of performing it
- iv. Any other act to deceive
- v. Any such act or omission as to law specially declared to be fraudulent

Ordinarily Silent does not amount to fraud however there are two exceptions,

i. It is the duty of the person keeping silence to speak – in fiduciary (trust) relations, contract of insurance, contract of marriage etc.

ii. When Silence is in itself equivalent to speech.

A sells by auction to B a horse which A knows to be unsound. B says to A – ‘if you do not deny, I shall assume the horse is sound’. A says nothing, here A’s silence is equivalent to speech.

Consequences of Fraud

1. Contract is voidable
2. Aggrieved party may claim damages

Restitution (Recompense for loss): To be put back in the position in which the aggrieved would have been if the representation made had been true.

5. Mistake: It can be of two types

A. Mistake of Law: “Ignorance of a law” is no excuse, Mistake of law therefore is no excuse and it does not give the right to parties to avoid contract, and the contract is thus not voidable.

Mistake of a Foreign Law: It is equivalent to Mistake of Fact, and the agreement is void in case of bilateral mistake.

B. Mistake of Fact: It can further be of 2 types:

- i. Bilateral Mistake – When both parties misunderstood each other. Here there is no agreement at all, and there is entire absence of consent. The agreement is void ab-initio. However, both the parties must be under mistake, and the mistake must relate to some fact (essential to agreement) and not to judgement or opinion.
- ii. Unilateral Mistake – “A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact”. Thus, the contract remains valid.

If the unilateral mistake is caused by fraud or misrepresentation, on part of one party, then the contract is voidable and can be avoided by the injured party.

Note: Mistake related to identity of person, or to the nature and character of written document are void.

Void Agreements

Section 2g: An Agreement not enforceable by the law is said to be void.

1. Agreements in restraint of marriage (Sec 26): Every individual enjoys freedom to marry, and so every agreement in restraint of marriage of any person, other than a minor is void.

Promise to marry a particular person is valid contract.

Exception: Remarriage of Widow

2. Agreement in restraint of trade (Sec 27)

Constitution of India guarantees freedom of trade and commerce to every citizen and therefore every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Some of the exceptions are:

- i. Sale of Goodwill – As per explanation 1 of Sec 27, a seller of goodwill of a business may agree with the buyer to restrain from carrying on a similar business within specified limits of territories/time, so long as the buyer or any one deriving title to goodwill from him (seller) carries on a like business.
- ii. Agreements of Partners: Indian Partnership Act 1932 has also laid down certain exceptions being:
 - a. As a partner in firm: Sec 11(2) of the act “A Partner shall not carry on business other than that of the firm”
 - b. As an outgoing partner: Under Sec. 36(2) “An outgoing partner may agree with his partners not to carry on a business similar to that of the firm within a specified period or within specified local limits”
 - c. In case of dissolution of the firm: As per Sec 54, “Partners may upon or in anticipation of the dissolution of the firm make an agreement that some or all of them will not carry on a business similar to that of the firm within specified period or within specified local limits.
- iii. Trade Combinations: An agreement between traders not to sell their goods at a price below the one agreed upon, and to share the profits in a certain proportion is not void.
- iv. Negative Stipulations in Service Agreement: An agreement of service by which a person binds himself during the term of agreement not to take service with anyone else.

3. Agreement in restraint of legal proceedings (Sec 28): Any agreement which absolutely restricts/limits the time of legal proceedings.

4. Agreement the meaning of which is uncertain (Sec 29): Any agreement with uncertain, vague or indefinite words.
5. Agreement by way of wager (bet) (Sec 30)

Section 30 states that “Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.”

Essentials of Wager

- There must be promise to pay money or money worth
- The promise must be conditional to pay on an event of happening or not happening
- The event must be uncertain. If any party has the event in his own hands, the transaction is not a wager
- Each Party must stand to win or lose under the terms of agreement
- The stake must be the only interest which the parties have in the game

(Govt. Authorized lotteries are valid/The prize depending on skill & intelligence is valid/Insurance is valid/Share market transactions are valid)

6. Agreement to do impossible acts (Sec 56): Self Explanatory
7. Agreement Contingent on impossible events (Sec 36): A would pay B 1000 as a loan if he marries C, but C is dead. Agreement is void.

Performance of Contract

Meaning: Performance of contract means that each party to a contract has done, whatever he has required to do under the contract, within the prescribed time in a manner that no party to the contract has any claim, grievance or right outstanding against the to the other party and the contract has come to an end. (Sec 37)

Types of Performance:

i. Actual Performance

ii. Offer to Perform: The promisor has to offer performance of his obligation under the contract at the proper time and place. If the promisee refuses to accept the performance, the act is called ‘tender of performance’ or attempted performance. (If tender is before due date, and promisee does not accept it, then tender is not valid)

Essentials of Valid Tender

It must be i. Conditional ii. Tender of whole obligation iii. Made at proper time & Place (as per contract or reasonable) iv. To proper person and by proper person v. Exact Amount

Effect of Refusal to Accept Valid Tender: The contract is deemed to have been performed by the promisor and the promisee can be sued for breach of contract. A valid tender thus discharges the contract.

Who must perform the contract?

- a. The promisor himself (personal nature – paint a picture)
- b. His Agent (contract of goods)
- c. His Legal Representative (in case of death, not in case of personal skill)
- d. Third Persons
- e. Joint Promisor (S:2-44): when several joint promisors make a promise with single promisee, or a single promisor makes a promise with several joint promises, or several with several.

Who can demand performance of Joint Promisors – Right to claim rests with all the promisees jointly and a single promisee cannot demand performance.

Who must perform joint promise: (Assume A, B, C borrow 3k loan)

- i. All promisors must jointly fulfil the contract (A-B-C pay 3k)
- ii. Any one or more joint promisor maybe compelled to perform (A pay 3k)
- iii. Right of contribution between joint promisors (A retrieve 1k from B, C)
- iv. Sharing of loss by default in contribution (if C unable to pay, then A can claim B an amount of 1500)
- v. Effect of release of one joint promisor (say C leaves, the liability stays on C to A, B but not on the creditor D, and the A, B are not discharged from their liability)

Who can demand performance of Contract

The promisor himself, His Legal Representative, Third Person (Beneficiary), Joint Promisees

Time & Place of Performance: Where prescribed by the promisee, incase not prescribed by the promises → Reasonable Time & Place

Reciprocal Promises – Promises which form the consideration for each other.

- Mutual & Independent (52): Where each party must perform his promise independently and irrespective of whether the other party has performed or willing to perform. E.g. Seller agrees to deliver on 5, Buyer agrees to pay on 15.
- Mutual & Dependent (54): Performance of promise by one party depends upon prior performance of promise by other party. E.g. Buyer agrees to pay for goods 15 days after delivery. Hence unless seller deliver goods, buyer's liability does not arise.
- Mutual & Concurrent (51): Where the promises of both the parties must be performed simultaneously. E.g. Buyer agrees to pay immediately on delivery of goods.

Discharge of Contract:

When the rights and obligations arising out of a contract come to an end, the contract is said to be discharged or terminated.

1. Discharge by Performance: When parties perform their share of promises.
2. Discharge by Attempted Performance (Discussed earlier)
3. Discharge by mutual consent or agreement – It can be discharged by the fresh agreement between the same parties. A contract can be terminated by following ways:
 - a. Novation – The parties change part or whole subject matter of the contract, discharging the old contract.
 - b. Alteration – When one or more terms of the contract are changed with the consent of all the parties, the original contract is discharged, a new contract takes its place.
 - c. Rescission – Rescission means cancellation of contract by mutual consent. A contract maybe cancelled by agreement between the parties at any time before the performance.
 - d. Waiver – Waiver means the intentional abandonment of a right, which a person is entitled to under a contract. A party may waive her rights under the contract, by which it is released from its obligations.
 - e. Remission: Acceptance of a lesser sum than what was contracted for a lesser fulfillment of the promise is made.

4.

4. Discharge by Subsequent Impossibility or Supervening Impossibility

- I. Impossibility at the time of contract: An agreement to do impossible act is void ab-initio. (if promisor knows and promisee does not then promisor must compensate the promisee)
- II. Supervening Impossibility – Impossibility supervenes after the contract is made – Destruction of Subject Matter, Change of Law, Outbreak of War, Death of Promisor, Failure of Ultimate Purpose (say H booked a room for business meeting, but meeting got cancelled)

Causes not covered by ^

Increased Difficulty of performance, Commercial Impossibility (unavailability of raw material), Impossible due to default of third person, Strikes/Lockouts, Failure of one of the several objects.

5. Discharge by lapse of Time: Time is of essence in a contract. The limitation act lays down that the contract should be performed within the specified period. If a contract is not performed and no legal action is taken by the promisee within the period of limitation, he is deprived of his remedy at law. The contract is terminated in such a case.
6. Discharge by operation of law:
 - i. Insolvency – When a person is declared insolvent, he is then discharged from all his liabilities, thus terminating his contracts.
 - ii. Merger – Merger takes place when an inferior right available to a party merges into a superior right available to the same party under some other contract. As a result of merger, the former contract stands discharged automatically.
 - iii. Unauthorized Material Alteration – Where a party to the contract makes any material alteration in the contract without the consent of other party, then other party can avoid the contract.
 - iv. Death: When contract is of personal nature, the death of promisor discharges the contract. (Otherwise rights and liabilities pass on to the legal representative)
7. Discharge by Breach of Contract: When one party to contract breaks the contract by non-performance of the promise or otherwise, the other party is discharged from his obligations under the contract and has a right of action against the responsible party.

Breach of Contract

It occurs when parties fail to perform his obligation upon the date fixed for performance of the contract.

Remedies of Breach of Contract:

Whenever there is a breach of contract, the injured party becomes entitled having the following remedies against the guilty party.

- a. Rescission of Contract: Breach of contract by one party, other party can rescind the contract and need not to perform, while is entitled to compensation for any damage which he has sustained through non-fulfilment of contract.

- b. **Suit for Damage:** Damages are monetary compensation allowed to the injured party for the loss of injury suffered by him as a result of breach of contract. (Fundamental principle is not punishment but compensation) (look below)
- c. **Suit upon quantum meruit:** The phrase quantum meruit means “as much as is earned” or in proportion to the work done. A right to sue upon quantum meruit usually arises where after part performance of the contract by one party, there is a breach of contract or the contract becomes void.
- d. **Suit for specific performance:** Specific Performance is a court order that requires a party to do that which he has already agreed to do in the contract, because in such cases Monetary compensation is not an adequate remedy.

Cases where specific performance will not be ordered – When monetary compensation is adequate relief, Contract is made by an agent in violation of his power, Contract made by company in excess of its powers as laid down in MOA

- e. **Suit for Injunction:** Injunction is an order of court restraining a person from doing a particular act. It is a mode of securing the specific performance of the negative terms of a contract. (where he is doing something which he promised not to do)

Quasi Contract

A quasi-contract is a legal obligation imposed by law in the absence of a formal contract. It aims to prevent unjust enrichment, ensuring that no one benefits unfairly at another's expense. Though not an actual contract, courts treat it as one to enforce equity and justice.

Key Characteristics of Quasi-Contracts

1. **Imposed by Law:** They arise not from the parties' agreement but from situations where one party has been unjustly enriched.
2. **No Prior Agreement:** There is no formal or implied agreement between the parties.
3. **Unjust Enrichment Principle:** The main goal is to prevent one party from gaining an unfair benefit.
4. **Equity-Based Remedy:** The court seeks to restore the position of the aggrieved party as if a contract existed.

Quasi-Contracts Under the Indian Contract Act, 1872

The Indian Contract Act, 1872 provides provisions for quasi-contracts in **Sections 68 to 72**. These are known as "*Certain Relations Resembling Those Created by Contract.*"

1. Section 68: Supply of Necessities

- If a person incapable of contracting (e.g., a minor or a person of unsound mind) or their dependents receive necessities of life, the supplier is entitled to reimbursement.
- **Example:** If food is provided to a minor, the supplier can recover the cost from the minor's property.

2. Section 69: Payment by an Interested Person

- If a person pays money on behalf of another person who is bound to pay, the payer can recover the amount.
- **Example:** A tenant pays property taxes on behalf of the landlord to prevent property seizure. The tenant can claim reimbursement.

3. Section 70: Obligation of Person Enjoying Benefits of a Non-Gratuitous Act

- If a person lawfully provides a service or delivers goods with no intention of making it a gift, and the other party voluntarily accepts the benefit, they are bound to compensate.
- **Example:** If someone repairs your car without being asked, and you accept it, you must pay for the service.

4. Section 71: Responsibility of Finder of Goods

- A person who finds goods belonging to another and takes them into custody must take reasonable care of them and restore them to the owner.
- **Example:** If someone finds a lost wallet and keeps it, they are obliged to return it to the rightful owner.

5. Section 72: Mistake or Coercion

- If money or goods are delivered by mistake or under coercion, they must be returned.
- **Example:** A bank mistakenly deposits money into your account. You are legally bound to return it.

Contract of Indemnity & Guarantee

Contract of Indemnity (124) – ‘A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.’

E.g. A promises to B that if you face any loss due to him (A) or C then he (A) will be liable to pay that loss of B. (Insurance)

There are only two parties involved i.e. the person who promises to make good the loss generally known as the **indemnifier** and the person whose loss is to be made good called as the **indemnified**.

There is only one contract between the parties. There is an undertaking on part of the indemnifier to be answerable, and this contract is for the reimbursement of loss.

Essentials

1. All the essentials of a valid contract should be there
2. There must be a promise to save other from a loss
3. Loss may be due to conduct of the promisor himself or any other person.

Rights of Indemnity Holder (Indemnified) when sued (125)

1. Rights to recover damage – He is entitled to recover all damages which he might have been compelled to pay in a suit in respect of any matter covered by the contract.
2. Rights to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.
3. Right to recover the sums paid under compromise of such suit.

Rights of Indemnifier

Not clearly available in this act.

Contract of Guarantee (126): “A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default”

-It is a contract to perform the promise or discharge the liability of a third person in case of his default.

-It is made to enable a person to get a loan or goods on credit or an employment

-There are three parties involved i.e. the person who gives the guarantee known as **surety**, the person in respect of whose default the guarantee is given known as the **principal debtor**. the person to whom the guarantee is given known as **creditor**.

-There are three contracts: first between creditor and principal debtor, second between principal debtor and surety, third between surety and creditor.

-The primary liability is of principal debtor, and the surety has a secondary liability which means that the payment is to be made by the surety only if the debtor does not pay.

Essentials of Contract of Guarantee

1. Primary Liability
2. Essentials of Valid Contract
3. Writing not necessary
4. No concealment of facts
5. Consideration for the principal debtor, may be sufficient consideration to the surety for giving the guarantee

Nature & Extent of Surety's liabilities: The liability of surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

-Liability of surety is secondary and contingent

-Liability of surety arises immediately on default of principal debtor

-In case of security held by creditor, it has to be handed over to surety when debt is paid by surety

-Surety will not be liable where creditor or Principle Debtor (PD) has obtained guarantee by mistake or misrepresentation.

Continuing Guarantee – When a guarantee extends for a series of distinct and separable transactions,

Ordinary Guarantee – When a guarantee is given for a single specific debt or transaction.

Revocation of Continuing Guarantee

- By notice of Revocation (130): “A continuing guarantee may at any time be revoked by surety, as to future transactions, by notice to creditor”
- By death of surety (131): The death of surety operates, (in the absence of any contract to the contrary), as a revocation of continuing guarantee, so far as regards to future transactions.

Bailment

Definition:

Bailment is a relationship in which the owner of goods (the **bailor**) delivers the goods to another person (the **bailee**) for a specific purpose, under a contract, with the condition that the goods will be returned once the purpose is accomplished or otherwise disposed of as per the bailor's instructions.

- **Governing Sections:** Sections 148–171 of the Indian Contract Act, 1872.

Essentials of Bailment

1. **Delivery of Goods:**
 - Only tangible goods can be bailed.
 - Possession is transferred to the bailee, not ownership.
2. **Purpose:**
 - Goods are delivered for a specific purpose agreed upon by both parties.
3. **Return or Disposal:**
 - The bailee must return the goods or dispose of them according to the bailor's directions after the purpose is fulfilled.
4. **Existence of a Contract:**
 - Bailment arises from a contract, which can be express or implied.
5. **Delivery of Possession:**
 - The bailor voluntarily transfers possession to the bailee.

Rights and Duties of Bailor and Bailee

Rights of the Bailor

1. **Right to Claim Damages (Sec 151–152):**
 - If the bailee fails to take reasonable care of the goods, the bailor can claim damages for any resulting loss.
2. **Return of Goods (Sec 160):**
 - The bailor can demand the return of the goods once the purpose of the bailment is fulfilled.
3. **Termination of Bailment (Sec 153):**
 - If the bailee acts inconsistently with the terms of the bailment, the bailor has the right to terminate the contract.
4. **Compensation for Unauthorized Use (Sec 154):**
 - The bailor can claim compensation if the bailee uses the goods unauthorizedly.

Duties of the Bailor

1. **Disclose Defects (Sec 150):**
 - The bailor must inform the bailee of known defects in the goods, especially for gratuitous bailments.
2. **Pay Extraordinary Expenses (Sec 158):**
 - The bailor must reimburse extraordinary expenses incurred by the bailee during the bailment.

Rights of the Bailee

1. **Right to Compensation (Sec 164):**
 - The bailee can recover compensation for any loss due to the bailor's defective title or faults.
2. **Right to Retain Goods (Sec 170):**
 - The bailee can retain the goods if the bailor fails to pay necessary charges or expenses incurred.
3. **Right to Claim Lien (Sec 170):**
 - The bailee has the right of lien, meaning they can hold onto the goods until the bailor fulfills their payment obligations.

Duties of the Bailee

1. **Reasonable Care (Sec 151–152):**
 - The bailee must take the same care of the goods as a reasonably prudent person would take of their own goods.
2. **Return of Goods (Sec 160):**
 - The bailee must return the goods once the purpose of the bailment is achieved or at the agreed time.
3. **Not Use Goods Unauthorizedly (Sec 154):**
 - The bailee cannot use the goods for any purpose other than the agreed purpose.
4. **Avoid Mixing Goods (Sec 155–157):**
 - The bailee must not mix the bailor's goods with their own without the bailor's consent. If mixing occurs:
 - If separable, the bailee bears the cost of separation.
 - If inseparable, the bailee may compensate the bailor.
5. **Return Increase or Profit (Sec 163):**
 - Any natural increase or profit from the goods must also be returned to the bailor (e.g., offspring of cattle).

Termination of Bailment

- **Completion of Purpose (Sec 162):** The bailment ends when the purpose is fulfilled.
- **Expiry of Time:** If bailment is for a specified time, it terminates after the agreed period.
- **Inconsistent Use:** Bailment can be terminated if the bailee uses the goods inconsistently with the terms of the contract.

Contract of Pledge (172-179)

172 – ‘The bailment of goods as security for payment of a debt or performance is called pledge.’ The bailor here is called the ‘pawnor’(pledger), the bailee is called ‘Pawnee’ (pledgee).

Rights of Pawnee

-Right of retainer (Particular Lien): Right to retain the goods pledged until his dues are paid, which includes the payment of debt, interest and necessary expenses.

-Right to recover extraordinary expenses, but he cannot retain the goods, if such expenses are not paid.

-Right to sue the pawnor or sell goods on default of pawnor

He must sell after giving a notice

He cannot sell to himself

If value of goods sold is less than his amount then he can recover the deficit from pawnor, but if he gains surplus then he must pay.

Duties of Pawnee (Like Bailee)

- To take reasonable care of pledged goods
- Not to make unauthorized use
- Not to mix the pledge with his own goods
- To return the goods pledged on receipt of his full dues
- To delivery any accretion (addition or increase in profit) to the goods pledge

Rights of Pawnor

- Enforcement of Pawnee's duties
- Right to claim back the security pledged on repayment
- In case of sale, the pawnor is entitled to receive any surplus
- If any mishandling or negligence on part of the Pawnee, the pawnor has right to claim the same or claim damage

Duties of Pawnor

- Must disclose any material faults in goods
- Pawnor is responsible to pay any extraordinary expenses incurred by Pawnee
- In case of sale, if any shortfall occurs, then pawnor is liable to pay

Pledge by Non-Owners:

- Mercantile Agents (Sales of Good Act)
- Person in possession under voidable contract can make valid pledge of goods (coercion)
- Pledger having limited interest, the pledge is valid to extent of that interest
- Seller in possession of goods after sale (Sales of Good Act)
- Co-owner in possession – With consent of other owners, one of them can pledge

Agency

Definition:

An agency is a legal relationship where one person (the **agent**) is authorized to act on behalf of another (the **principal**) to interact with third parties, creating legal obligations for the principal.

- **Governing Sections:** Sections 182–238 of the Indian Contract Act, 1872.

Essentials of Agency

1. Principal-Agent Relationship:

There must be an agreement where one party (the agent) acts on behalf of another (the principal).

2. Authority to Act:

The agent must have the authority to act as a representative of the principal.

3. Legal Relationship:

The actions of the agent bind the principal to third-party dealings, provided they fall within the scope of the agency.

Creation of Agency (Section 182)

1. Express Agreement:

- Agency is created when terms are explicitly stated, either orally or in writing.
- Example: A contract appointing a manager to negotiate deals on behalf of a company.

2. Implied Agreement:

- Inferred from the conduct or circumstances of the parties.
- Example: A person acting as a spokesperson for another at a public event.

3. Necessity:

- Agency arises in emergencies where the agent must act to protect the principal's interests.
- Example: A ship's captain selling cargo to save a sinking vessel.

4. Ratification:

- If the principal approves the actions of a person who acted without authority, an agency is created retrospectively.
- Example: Approving a purchase made by someone on your behalf without prior authorization.

Rights and Duties in Agency

Rights of the Principal

1. Demand Accounts (Sec 213):

The principal can demand accounts and details of the agent's dealings on their behalf.

2. Recover Damages (Sec 215):

The principal can recover damages if the agent acts dishonestly or without due authority.

Duties of the Principal

1. Indemnify Agent (Sec 222):

The principal must reimburse the agent for lawful expenses incurred while acting on their behalf.

2. Not Prevent Work (Sec 223):

The principal must not interfere in the lawful duties of the agent.

Rights of the Agent

1. Right to Remuneration (Sec 219):

The agent has a right to receive agreed payment for services rendered.

2. Right of Lien (Sec 221):

The agent can retain goods, papers, or property of the principal until dues are cleared.

Duties of the Agent

1. Act in Good Faith (Sec 211):

The agent must perform their duties with honesty and diligence, ensuring the principal's interests are protected.

2. Avoid Conflict of Interest (Sec 216):

The agent must avoid actions that conflict with the principal's interests or benefit the agent personally at the expense of the principal.

Termination of Agency

Agency can be terminated under the following circumstances as per **Sections 201–210**:

1. By Agreement:

The principal and agent mutually agree to terminate the relationship.

2. By Operation of Law:

- Death, insanity, or insolvency of the principal or agent terminates the agency.
- Example: If a sole proprietor dies, their agent loses authority to act.

3. Revocation:

- The principal can revoke the agent's authority, provided it is done reasonably and before the agent performs any binding act.
- Example: If a principal dismisses an agent before the agent negotiates a deal.

