LAW OF CONTRACTS- Indian Contract Act, 1872

UNIT 1: FORMATION OF CONTRACT

a. Meaning, Nature and Scope of Contract
b. Offer / Proposal: Definition, Communication, Revocation, General/ Specific Offer
c. Acceptance: Definition, Communication, Revocation, Tenders / Auctions
d. Effect of Void, Voidable, Valid, Illegal, Unlawful Agreements

a. Meaning, Nature & Scope of Contract

Every person enters into multiple contracts everyday knowingly or unknowingly. Law of Contracts specify the law governing such oral or written contracts. Whether it is buying groceries from supermarkets, employing domestic help at home, taking a taxi to work everything falls under this domain.

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;

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;

The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

Every promise and every set of promises, forming the consideration for each other, is an agreement;

Promises, which form the consideration or part, of the consideration for each other are called reciprocal promises;

An agreement not enforceable by law is said to be void;

An agreement enforceable by law is a contract;

An agreement which is enforceable by law at the option of one or more of the parties - thereto, but not at the option of the other or others, is a voidable contract;

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

b. Offer/Proposal

Proposal

Section 2(a) states that when one person signifies another person his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such an act or abstinence, he is said to make a proposal'. A proposal is also known as an offer. In other words, it is termed that the whole process of entering into the contract begins with the proposal or the offer that is made by one party to another. In order to enter into a valid agreement, one must first accept the proposal.

Features Associated with the Offer

- The offer or proposal is made by the person known as the promisor or is referred to as the "offeror". The person accepting the offer is known as "acceptor" or "promise".
- The offeror is required to express his/her willingness to either do an act or abstain from doing the act. It is denoted that the simple desire to either do or not do the act is not considered as an offer.
- An offer can be considered as positive or negative in nature. It can be considered as a commitment to execute an act or in other words, to abstain from doing something or provide a service. Both the offers are considered as valid, legally.

Classification of Offer

The types of offers vary in terms of timing, nature or intentions and some categories of offers are discussed below:

General Offer

The offer that is made to the public at large is known as general offer. The particular offer is not made to any party in particular. The offer can be accepted by any member of the general public and the award is entitled to rewards or considerations. This further means that any

member of the general public can accept the offer and the same is entitled to the reward that is offered at the completion of the offer.

Specific Offer

The specific offer refers to the offer which is made to specific parties and hence, only they can be the ones who can accept the proposal or offer. Sometimes these are also referred to as special offers. For instance, if a person known as X offers to sell his car for Rs. 50000/- to another person B, then the offer is specifically valid for B only and only B can accept the offer.

Cross Offer

Under some given circumstances, cross offer can be made by two parties. This case refers to the scenario where both the parties make an identical offer to each other at the exact same time.

Counter Offer

There might be times when a guarantee will just accept portions of an offer, and change certain terms of the offer. This will be a certified acceptance. He will need changes or modifications in the terms of the first offer. This is known as a counteroffer. A counteroffer adds up to a dismissal of the first offer.

Essentials of a Valid Offer

- *Offer must make Legal Relations*

The offer must prompt an agreement that makes legal relations and legal outcomes if there should be an occurrence of non-execution. So, a social contract which does not make legal relations won't be a legitimate offer. For instance, an invitation to dinner offered by A to B is anything but a substantial offer.

- *Offer must be Clear, not Vague*

The terms of the offer or proposition ought to be clear and distinct. On the off chance that the terms are vague or indistinct, it won't add up to a substantial offer. Take for instance the accompanying offer – A offers to sell B natural products worth Rs 5000/ -. This is anything but a legitimate offer since what sorts of natural products or their specific amounts are not referenced.

- *Offer must be Communicated to the Offeree*

For a proposition to be finished it must be obviously conveyed to the offeree. No offeree can accept the proposition without learning of the offer. The renowned contextual investigation with respect to this is ***Lalman Shukla* v. *Gauri Dutt*[1].** It clarifies that acceptance in ignorance of the proposition does not add up to acceptance.

- *Offer might be Conditional*

While acceptance can't be conditional, an offer may be conditional. The offeror can make the offer subject to any terms or conditions he considers vital. So, A can offer to pitch products to B in the event that he makes a large portion of the payment ahead of time. Presently B can accept these conditions or make a counteroffer.

- *Offer can't contain a Negative Condition*

The resistance of any terms of the offer can't prompt programmed acceptance of the offer. Consequently, it can't state that if acceptance isn't imparted by a specific time it will be considered as accepted. Precedent: A offers for sale of his dairy animals to B for 5000/ -. In the event that the offer isn't dismissed by Monday it will be considered as accepted. This is anything but a substantial offer.

- *Offer can be Specific or General*

As we saw before the offer can be to at least one specific parties. Or then again, the offer could be to the general population in general.

- *Offer might be Expressed or Implied*

The offeror can make an offer through words or even by his lead. An offer which is made through words, regardless of whether such words are composed or verbally expressed (oral contract) we consider it an express contract. Also, when an offer is made through the direct and the activities of the offeror it is an implied contract.

Promise

[1] (1913) 11 ALJ 489.

As per Section 2(b) of the Contract Act, a proposal when accepted becomes a promise. When the assent is signified by a person to whom the proposal is made, it is implied that the proposal is accepted. When a proposal is deemed accepted, it becomes a promise. In other words, an

accepted promise is considered as an agreement, which further covers all the parties that are involved or are accepted by it. So, in a way, the definition in itself explains the sequence of events involved and the steps that are required to establish a contract or a draft.

Definition: A commitment by which the promisor contracts towards another to perform or accomplish something to the benefit of the last mentioned. At the point when a promise is decreased to the type of a written agreement under seal, it is known as a pledge. So as to tie on the promisor, the promise must be made upon an adequate thought - when made without thought, be that as it may, it might tie in *foroconscientice*, it isn't mandatory in law, being *nudtimpactum*.

At the point when a promise is made, all that is said at the time, in connection to it, must be considered; assuming, subsequently, a man promise to pay all he owes, joined by a refusal that he owes anything, no activity will deceive enforce such a promise. What's more, when the promise is conditional, the condition must be performed before it happens to binding force. Promises are express or implied.

Proof - When a litigant has been captured, he is habitually instigated to make admissions in result of promises made to him, that on the off chance that he will come clean, he will be either released or supported: in such a case proof of the admission can't be gotten, in light of the fact that being acquired by the sweet talk of expectation, it comes in so sketchy a shape, when it is to be viewed as proof of blame, that no credit should be given to it. This is the guideline, however what adds up to a promise isn't so effectively characterized.

The steps are as follows:

i) A person is required by definition, to whom a proposal is made

ii) The proposal has to be completely understood by the parties involved, or in other words, the parties must be in a condition to understand the terms of the proposal, without any hindrance or noise; neither should be the parties pressurized to accept the proposal without completely understanding the elements involved

iii) An aspect which is involved with the whole definition of proposal is that of, "*signifies his assent thereto*". This refers to the fact that the person involved, accepts the proposal after understanding it fully and completely

iv) When the proposal is accepted by the "person", it is considered as an "accepted proposal"

v) "Accepted Proposal" further becomes a promise. It must be noted that the proposal is not a promise. In order for the proposal to become a promise, it must be duly accepted

In short, the above sequence explains that:

Agreement = Offer + Acceptance

Enforceable by Law

One of the primary aspects in the definition of a contract is that of "enforceability by law". This means that the aspects about which the proposal is in question, should be a legal function and can be covered under law. For example, if A proposes to B that he would supply him "mermaids" in exchange for "magic wands", this statement cannot be legally bound because this is nothing more than fantasy. The elements covered in a statement of proposal should be logical and legal in nature. If the agreement has to be converted into a Contract, it must be a legal obligation and must be within the scope of the law. This denotes:

Contract = Accepted Proposal (Agreement) + Enforceable by Law (defined within the law)

Promiser and Promisee

According to Section 2© of the Act, the person making the proposal is called the 'promisor' and the person accepting the proposal is called the 'promisee'.

PROMISEE: An individual to whom a promise has been made.

In general, a promisee can keep up an activity on a promise made to him, yet when the thought moves not from the promisee, however some other individual, the last mentioned, and not the promisee, has a reason for activity, since he is the individual for whose utilization the agreement was made.

PROMISOR: One who makes a promise.

The promisor will undoubtedly satisfy his promise, except if when it is in opposition to law, as a promise to take or to submit a threatening behaviour; when the satisfaction is anticipated by the demonstration of God, as where one has consented to encourage another drawing and he loses his sight, so he can't show it; when the promisee keeps the promisor from doing what he consented to do; when the promisor has been released from his promise by the promisee, when the promise, has been made without an adequate thought; and, maybe, in some different cases, the obligations of the promisor are at an end.

Acceptance and Promise

According to Section 2(b) of the Indian Contract Act: 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.

AGREEMENT AND CONTRACT

Contract

Section 2(h) of the Indian Contract Act,1872 states that 'an agreement enforceable by law is contract'.

Definition: The meaning of the contract, refers to an agreement that is reached between two parties, which further create a mutual obligation, which is eventually enforced by law.

In order to understand the exact nature of the contract, it is very essential to understand what exactly is "Not" a contract. A contract is considered as an accepted proposal which understood by law, fully and is enforceable by law as well as legally defined. It is however defined as a legal document which provides special rights to the parties, which is defined by the contract itself. The contract also defines the obligations which are agreed by all the parties of the contract.

Agreement

Section 2(e) of the act defines it as: Every promise and every sort of promises forming the consideration for each other is an agreement. There are however, certain elements which are required in order to make the agreement enforceable on legal grounds. The elements are:

a) Mutual Assent; which is further bound by an *offer and acceptance*

b) Capacity

c) Legality

Difference between Contract and Agreement

Contract	**Agreement**
An agreement enforceable by law is known as contract.	The number of promises that are accepted by the parties and are not contradicting form the agreement.
The contract is only enforceable, legally.	The agreement is required to be acceptable, socially and it may not be legally, enforceable.
A legal obligation is required to be created to form a contract.	An agreement does not require any legal obligation
All contracts are treated as an agreement	An agreement may or may not be a contract

How an Offer Becomes a Contract

An offer when accepted gives rise to an agreement. It is at this stage that the agreement is reduced into writing and a formal document is executed on which parties affix their signature or thumb impression so as to be bound by the terms and conditions of the agreement as set out in the document. Such an agreement has to be lawful and we know from the definition of contract of the Indian Contract Act, 1872 that an agreement enforceable by law is a contract. This is how an offer becomes a contract.

In contracts, a promise is essential to a binding legal agreement and is given in exchange for consideration, which is the inducement to enter into a promise. A promise is illusory when the promisor does not bind herself to do anything and, therefore, furnishes no consideration for a valid contract.

For an offer to be accepted there must be an offer and that has to be accepted to make an agreement. Though this might seem self-explanatory, but one has to differentiate it from the legal phrase ‘amounts to a valid offer’. The various modes of making an offer are orally, in a written form or by conduct. Irrespective of the mode in which the offer is made, it is the

intention or willingness of the offeree which is of paramount importance and that is clearly a subjective issue.

It is important to differentiate at this point between an offer and an "invitation to offer". ***Carlill* v. *Carbolic Smoke Ball Co***[2] is an important case which brings out the difference between offer and "invitation to treat." Parties may enter into preliminary negotiations before entering into a contract. The issues they discuss will not necessarily be a part of the contract and are considered to be 'invitations to offer'. A classic example of this is the display of products at Supermarkets and on shelves, e.g. ***Pharmaceutical Society of Great Britain* v. *Boots***[3]. The advertised price results in an 'invitation to an offer' only. The offer does not become a contract until the merchandise is taken to the counter and the price checked. At this point the customer can accept the merchandise and pay the price, thereby completing the transaction and forming the contract. Also, the legality of acceptance of acceptance is equally as important as the offer and this acceptance to the terms of this offer must be an 'unqualified expression' of acceptance of the offer. Acknowledgement of an offer would neither amount to credence acknowledgement nor would a 'statement of intent'. On the footing laid forward by the offer there must be a clear unequivocal communicating of acceptance of the offer.

The offer and acceptance are the prominent conditions of the contract, but perhaps even more prominent is the requirement of 'consideration'. Consideration means transaction of money for goods or services rendered or the exchange of an item of 'value' to the parties. It perhaps can be regarded as extremely contentious of the requirements for a legal and valid agreement and also the most complex.

In English Law, a promise will never materialize into an enforceable contract without some form of consideration. But it is not enough that the parties make this exchange of worth, the consideration must be of 'adequate value' and not 'inadequate' consideration.

c. ACCEPTANCE

A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something [Section 2 (b)].

[2] [1892] EWCA Civ 1.
[3] [1953] EWCA Civ 6.

Rules governing acceptance

1. Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

2. The acceptance must be communicated

An acceptance must be communicated to the person who made the offer. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.

3. Acceptance must be in the prescribed mode

Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner.

4. Mere silence is not acceptance

The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

5. The proposer cannot prescribe the method of refusal

The proposer needs to be informed if the offer made by him is accepted, but he cannot insist on him being informed of its non-acceptance. It is the right of the offeree to accept the proposal or not to accept it.

6. An offer once rejected cannot be accepted until it is renewed.

A rejected offer is dead offer and needs to be revived before it can be considered for acceptance.

7. Acceptance may be express or implied

Express acceptance may be written or by word of mouth whereas implied acceptance could be reflected by the action or behaviour of the person accepting the offer. The latter is also called tacit acceptance. According to Section 8 of the Act, tacit acceptance can be acceptance by performing conditions or acceptance by receiving consideration.

8. An action without the knowledge of the proposal is no acceptance

Without the knowledge of the proposal, even if the action conforms to the conditions of the proposal, it does not constitute an acceptance. Acceptance can be given only by the person to whom the proposal is made.

9. Acceptance can only be given by the person to whom the offer is made

This is true of a specific proposal which can only be accepted by the person to whom it is made.

10. Acceptance must be made before the lapse or withdrawal of an offer.

If the person making the offer has set a time limit for its acceptance, the offer must be accepted within that time.

COMMUNICATION OF OFFER AND ACCEPTANCE & REVOCATION

Communication of Offer and Acceptance

Presently we have seen beforehand that an offer cannot be renounced after the offeror has communicated it to the offeree. At that point the offer becomes binding, it creates legal relations between the two parties. So, when is the communication complete? Compelling communication of the offer and a clear understanding of it is important to avoid misunderstanding between all the parties. On the off chance that the parties are talking face-to-face this isn't a problem. The communication happens in real time and the offer and acceptance will be communicated on the spot, creating no disarray. But in many cases in business the communication happens via letters and emails and so on. Along these lines, in this case, the course of events of the communication is important.

Communication of Offer and Acceptance and Revocation of Offer

Communication of Offer

The segment 4 of Indian Contract Act 1872 says that the communication of the offer is complete with regards to the learning of the individual it has been made to. So, when the offeree

(in case of a specific offer) or any member of the public (in case of a general offer) becomes aware of the offer, the communication of the offer is said to be complete. So when two individuals are talking, face-to-face or via telephone and so on, the communication will be complete as soon as the offer is made. Example if A reveals to B he will fix his rooftop for five thousand rupees, the communication is complete as soon as the words are verbally expressed. Example. A; keeps in touch with B offering to fix his rooftop for five thousand rupees. He posts the letter on second July. The letter reaches B on fourth July. So, the communication is said to complete on fourth July.

Communication of Acceptance

Method of Acceptance

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

Communication of Acceptance by an Act: This would incorporate communication via words, regardless of whether oral or written. So, this will incorporate communication via telephone calls, letters, messages, telegraphs and so forth.

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

Timing of Acceptance

The communication of acceptance has two parts. Give us a chance to take a look

As against the Offeror: For the proposer, the communication of the acceptance is complete when he puts such acceptance over the span of transmission. After this it is out of his hand to deny such acceptance, so his communication will be completed at that point. In this way, for example, An accepts the offer of B via a letter. He posts the letter on tenth July and the letter reaches B on fourteenth For B (the proposer) the communication of the acceptance is completed on tenth July itself.

As against the Acceptor: The communication in case of the acceptor is complete when the proposer acquires learning of such acceptance. So, in the above example, A's communication will be complete on fourteenth July, when B learns of the acceptance.

Revocation of Offer

The Indian Contract Act lays out the principles of revocation of an offer in Section 5. It says the offer may be renounced any time before the communication of the acceptance is complete against the proposer/offeror. When the acceptance is communicated to the proposer, revocation of the offer is currently unrealistic.

A accepts the offer and posts the letter on tenth July. B gets the letter on fourteenth July. But for B (the proposer) the acceptance has been communicated on tenth July itself. So, revocation of offer can just happen before the tenth of July.

Revocation of Acceptance

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

Again, from the above example, the communication of the acceptance is complete against An (acceptor) on fourteenth July. So, till that date, A can repudiate his/her acceptance, but not after such a date. So technically between tenth and fourteenth July, A can choose to deny the acceptance.

d. VOID AND VOIDABLE AGREEMENTS

Void Agreement

Section 2(g) of the Act defines a void agreement as “an agreement not enforceable by law’. There are sure fundamental components of a legitimate contract. Furthermore, on the off chance that those components are absent, the agreement would then be void or voidable. Nonetheless, there are sure agreements that are explicitly void agreements. This implies these agreements that are pronounced void by the law itself. Give us a chance to investigate. The Indian Contract Act 1872 characterizes a void agreement as "an agreement that isn't enforceable by law". What's more, there can be ordinarily of void agreements, some of which we have shrouded in the past articles. In any case, the agreement expresses certain agreements that are explicitly announced as void agreements. Some of the void agreements are discussed below:

- *Agreement in Restraint of Marriage*

Any agreement that limits the marriage of a major (grown-up) is a void agreement. This does not make a difference to minors. Be that as it may, if a grown-up concurs for some thought not to wed, such an agreement is explicitly a void agreement as per the agreement demonstration. So, A concurs that if B pays him 50,000/ - he won't wed such an agreement is a void agreement.

- *Agreement in Restraint of Trade*

An agreement by which any individual is controlled from employing a trade or rehearsing a legal calling or practicing a business of any sort is an explicitly void agreement. Such an agreement damages the established privileges of an individual.

Nonetheless, there are a couple of special cases to this standard. On the off chance that an individual sells his business alongside the altruism, at that point the purchaser can request that the vender abstain from rehearsing a similar business at as far as possible. So, if as per such an agreement as long as the purchaser or his successor continue such a business the agreement to limit the trade of the vender will be substantial.

Correspondingly, if an active accomplice can go into such a restraint of a trade agreement with the organization firm. Additionally, an agreement between accomplices not to do any contending business amid the duration of an organization is likewise a legitimate contract.

One point to remember with respect to the above agreements is that the terms of such an agreement need to sensible. Such sensible terms are not characterized under the demonstration but rather are to be made a decision as indicated by every one of a kind circumstance and condition.

Consider the instance of physician A who utilizes B as his collaborator for a long time. For this length of three years, B concurs not to rehearse prescription anyplace else. This is a legitimate agreement despite the fact that it is in restraint of trade.

In any case, say A pitches his legal practice to B alongside the generosity. Furthermore, A concurs never to rehearse as a legal advisor anyplace in the state for the following 20 years. This is anything but a substantial agreement since the terms are totally absurd.

- *Agreement in Restraint of Legal Proceedings*

An agreement that keeps one party from upholding his legal rights under an agreement through the legal procedure (of courts, mediation and so on) at that point such an agreement is explicitly void agreement. In any case, if the agreement expresses that any question between gatherings will be alluded to discretion and the sum granted in such assertion will be last will be a substantial contract. Likewise, if the parties concur that any debate between them in the present or the future will be alluded to mediation, at that point such an agreement is additionally legitimate. Be that as it may, such an agreement must be recorded as a hard copy.

- *An Agreement Whose Meaning is Uncertain*

An agreement whose importance is questionable can't be a legitimate agreement, it is a void agreement. In the event that the fundamental significance of the agreement isn't guaranteed, clearly the agreement can't proceed. In any case, on the off chance that such vulnerability can be evacuated, at that point the agreement ends up substantial. For instance, A consents to sell to B 100 kg of organic product. This is a void contract since what type "f" organic product isn't referenced. Be that as it may, in the event that A solely sells just oranges, at that point the agreement would be substantial in light of the fact that the importance would now be sure.

- **Wagering Agreement**

As indicated by the Indian Contract Act, an agreement to bet is a void agreement. The premise of a bet is that the agreement relies upon the incident or non-occurring of a questionable occasion. Here each side would either win or lose cash contingent upon the result of such a questionable occasion. The essentials of a wagering agreement are as per the following. On the off chance that all components are met, at that point the agreement will be void.

- Must contain a promise to pay cash or cash's value
- Is conditional on the occurrence or non-occurring of a specific occasion
- The occasion must be questionable. Neither one of the parties can have any authority over it
- Must be the basic expectation to wager at the season of making the agreement
- Parties ought to have no other intrigue other than the stake of the wager

The accompanying agreements are not considered wagering agreements:

- Chit Fund

- Business Transactions, i.e Transactions of the Share Market
- Athletic Competition and Competitions including Skills
- Insurance Contracts
- Voidable Contract

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of others, is a voidable contract-Section 2(I).

Exception to the rule as per Judicial Interpretation: -

Exclusive Dealing Agreements: - Business practice in vogue is that a producer or manufacturer likes to market his goods through a sole agent or distributor and the latter agrees in turn not to deal with the goods of any other manufacturer. In the case of Percept D. Mark (India) Pvt. Ltd. v Zaheer Khan, it was observed by the Court that Negative Covenant in a contract that the covenantee would not sell a similar product of a competitor does not necessarily in restraint of trade, it could also be in furtherance of the trade.

Restraints Upon Employee: - An agreement of service often contains negative covenants preventing the employee from working elsewhere during the period covered by the agreement. Trade Secrets, name of customers etc. are also the property of master and servant is not supposed to disclose it to anyone else. An agreement of this class does not fall within Section 27.

Agreement in restraint of legal proceedings is void. (Section 28): An agreement purporting to oust the jurisdiction of the courts is illegal and void on grounds of public policy. Section 28 of the Act renders void two kinds of agreement , namely:

An agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract by the usual legal proceedings in the ordinary tribunals.

An agreement which limits the time within which the contract rights may be enforced.

However this is also not an absolute rule and it has two exceptions to it which is as follows :-

This section shall not render illegal a contract , by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration , and that only the amount awarded in such arbitration shall be

recoverable in respect of the dispute so referred.

Nor shall this section render illegal any contract in writing, by which two or more persons agree to arbitration any question between them which has already arisen , or affect any provision of any law in force for the time being as to references to arbitration.

But right to Appeal does not come within the purview of this section. A party to a suit may agree not to appeal against the decision.

An agreement the terms of which are uncertain is void. (Section 29): Agreements, the meaning of which isn't certain, or capable of being made certain, are void. It is a necessary prerequisite that an agreement so as to be binding must be adequately clear to enable the court to give it a practical meaning. An agreement to agree in the future is void, for there is no certainty whether the parties will be able to agree.

Where just a part or a clause of the contract is uncertain, but the rest is capable of bearing a reasonably certain meaning, the contract will be regarded as binding. Similarly, if the agreement is totally quiet as to value, it will be valid, for, in that case, Section 9 of the Sale of Goods Act,1930 will apply and reasonable cost shall be payable.

An agreement by way of wager (betting/gambling) is void. (Section 30): Agreements by way of wager are void; and no suit shall be brought for recouping anything alleged to be won on any wager or endowed to any person to abide by the consequence of any game or other uncertain occasion on which any wager is made . The section does not characterize "Wager". But wager can be said as a promise to give cash or cash's value upon the determination or ascertainment of an uncertain occasion.

This standard has two special case to it, which is as per the following:

Steed Race: This section does not render void a subscription or contribution, or an agreement to subscribe or contribute, towards any plate, prize or aggregate of cash of the value or amount of 500 Rupees Or upwards to the winner or winners of any pony races.

Crossword Competitions and Lottery: - If expertise plays a substantial part in the outcome and prizes are awarded according to the merits of the arrangement, the challenge isn't a lottery. Else it is. Along these lines, literary rivalries which include the application of aptitude and in which an exertion is made to choose the best and most able contender, are not wagers.

An agreement contingent upon the happening of an impossible occasion is void. (Section 36): A contingent contract is a contract to do or not to accomplish something, if some occasion,

collateral to such contract, does or does not happen. Contingent agreements to do or not to do anything, if an impossible occasion happens, are void, regardless of whether the impossibility of the occasion is known or not to the parties to the agreement at the time when it is made. For example: An agrees to pay B 1000 Rupees if two straight lines ought to encase a space. The agreement is void.

Agreement to do impossible acts is void. (Section 56): An agreement to complete an act impossible in itself is void. A contract to complete an act which, after the contract is made, becomes impossible, or, by reason of some occasion which the promisor couldn't anticipate, unlawful, becomes void when the act becomes impossible or unlawful.

4. Voidable Contract: An agreement which is enforceable by law at the choice of the at least one of the parties thereto, but not at the alternative of others or others, is a voidable contract. Voidable Contract are valid except if one of the parties has put it aside. Voidable Contract generally happens when one side of the party is deceived into entering a contract by other party.

(I) Voidable Agreements according to provisions of Indian Contract Act,1872:

Voidability of agreements without free assent: when agree to an agreement is caused by intimidation, fraud or misrepresentation the agreement is voidable at the alternative of the party whose assent was so caused.

A party to a contract, whose assent was obtained by fraud or misrepresentation, may, on the off chance that he supposes fit, demand that the contract shall be performed.

Capacity to set aside contract instigated by Undue Influence: When agree to an agreement is caused by undue impact, the agreement is a contract voidable at the choice of the party whose assent was so caused. A contract is said to be prompted by undue impact where the relation subsisting between the contracting parties are with the end goal that one of the parties is in a situation to dominate the desire of the other.

In such a case the burden of demonstrating that such a contract was not instigated by undue impact shall lie upon the person who is in a situation to dominate the desire of other.

Liability of a Party forestalling occasion on which contract is to take effect: When a contract contains reciprocal promises and one party to contract keeps the other from playing out his promise, the contract becomes voidable at the alternative of the party so prevented. Obvious

standard is that a person cannot take advantage of his own off-base. For ex. An and B contract that B shall execute certain work for A for a certain whole of cash. B is ready and willing to execute the work accordingly, but A keeps him from doing in this way, the contract is voidable at the alternative of B.

Effect of failure to perform at fixed time, in a contract in which time is essential: When time is embodiment of contract and party fails to perform in time, it is voidable at the choice of other party. A person who himself delayed the contract cannot avoid the contract on account of (his own) delay.

(II) Consequences of rescission of Voidable Contract: When a person at whose alternative a contract is voidable repeals it, the other party thereto need not play out any promise in that contained in which he is promisor. The party cancelling "voidable" contract shall, in the event that he has gotten any benefit there under from another party to such contract, reestablish such benefit, so far as may be, to the person from whom it was gotten.

(III) Mode of Communicating or denying rescission of voidable contract: The rescission of a voidable contract may be communicated or denied in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Void and illegal Agreement: The Contract Act draws refinement between an agreement which is just void and the one which is unlawful or illegal. An illegal agreement is one which is forbidden by law; but a void agreement may not be forbidden, the law may just say that in the event that it is made, the courts won't enforce it. Accordingly, every illegal contract is void but a void contract isn't necessarily illegal.

The main distinction between a void and illegal contract is that, a void contract isn't punishable and its collateral transactions are not affected but rather on the contrary illegal contract is punishable and its collateral transactions are also void.

Difference between Void and Voidable Agreement:

A void contract is viewed as a legal contract that is invalid, even from the start of marking the contract. Then again, a voidable contract is also a legal contract which is declared invalid by one of the two parties, for certain legal reasons.

While a void contract becomes invalid at the time of its creation, a voidable contract possibly becomes invalid on the off chance that it is cancelled by one of the two parties who are engaged in the contract.

On account of a void contract, no performance is possible, whereas it is possible in a voidable contract. While a void contract isn't valid at face value, a voidable contract is valid, but can be declared invalid at any time.

While a void contract is deemed, nonexistent and cannot be maintained by any law, a voidable contract is a current contract, and is binding to at least one party associated with the contract.

Conclusion: To secure the performance and enforceability of a contract, the contract ought to be a valid contract. As the void contracts can't be enforced.

UNIT II: Consideration and Capacity

a. Consideration- Definition, Kinds, Essentials, Privity of Contract

b. Capacity to Enter into a Contract

c. Minor's Position

d. Nature /Effect of Minor's Agreements

CONSIDERATION: DEFINITION

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise".

From the above definition, it can be inferred that,

(1) Consideration must be at the desire of the promisor.

(2) Consideration may move from one person to any other person

(3) Consideration may be past, present or future and

(4) Consideration should be real though not adequate.

Authorizing any legal contract expects it to have a component of consideration incorporated into it. In basic words, it is only a value that the promisee agrees to pay to the promisor. Presently, this cost can be paid as a benefit to the promisor and/or a misfortune or disadvantage to the promisee. In this article, we will take a gander at this dual aspect of consideration in detail.

Consideration is the foundation of ever contract. The law demands the presence of consideration if a promise is to be enforced as creating legal obligations. A promise without consideration is invalid and void.

KINDS OF CONSIDERATION

- Past Consideration

In case of past consideration, the promisor had gotten the consideration before the date of promise, such consideration is called Past Consideration.

- Present consideration

Present consideration is one in which one of the parties to the contract has played out his part of the promise, which Constitutes the consideration for the promise by the opposite side it is known as present consideration.

- Future Consideration

Future Consideration is one in which one party makes a promise in exchange for the promise by the opposite side the performance of the obligation by each side to be made subsequent to the making of the contract the consideration is known as Future Consideration.

ESSENTIAL ELEMENTS OF CONTRACT

Two Parties Minimum

At least two parties are expected to go into a contact. One party has to make an offer and other must accept it.

- Offer and Acceptance

There must be an offer and an acceptance to the offer, coming about into an agreement. Both offer and acceptance ought to be lawful.

Legal Obligations

The parties must mean to create a legal obligation. The agreement tried to be enforced ought to contemplate legal relations between the parties to it.

Lawful Consideration

A contract is basically a bargain between two parties, each getting something of value or benefit to them. Consideration is an essential component of a valid contract. It is the cost for which the promise of the other is bought. A contract without consideration is void.

Competent Parties

The parties making the contract must be legally able as in each must be of the age of majority, of a sound personality, and not expressly disqualified from contracting.

Free Consent

The contracting parties must give their consent freely. Consent means that the parties must agree about the subject matter of the agreement in the same sense and at the same time.

Lawful Object

The object of the agreement must be lawful. According to section 10 of The Indian Contract Act, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to void. It should be for lawful consideration and with a lawful object.

Certainty and Possibility of Performance

The terms of a contract must not be vague or uncertain. On the off chance that an agreement is vague and its meaning cannot be ascertained, it cannot be enforced.

Legal Formalities

Generally, a contract may be oral or recorded as a hard copy. In any case, certain contracts are required to be recorded as a hard copy and may even require registration.

Validity of an Agreement without Consideration/Agreement without consideration-Exceptions

An agreement without consideration is void. Not only that, even inadequate consideration would render the enforceability of the contract quite difficult as the free consent of the parties would become suspect. The Act however contains certain exceptions to this important rule. Section 25 also lists the exceptions under which the rule of no consideration no contract does not hold, as follows:

Natural Love and Affection

If that an agreement is recorded as a hard copy and enrolled between two parties in close relation (like blood relatives or mate), based on natural love and affection, at that point such an agreement is enforceable even without consideration.

Sam and John are brothers. In his will, their father nominates Sam as the sole proprietor of his whole property after his death. John documents a case against Sam to claim his entitlement to the property but loses the case. Sam and John go to a mutual choice where Sam agrees to give half of the property to his brother and register an archive regarding the same.

Eventually, Sam didn't satisfy his promise and John documented a suit for recuperation of his share in the property. The Court held that since the agreement was made based on natural love and affection, the no consideration no contract rule didn't apply and John had the privilege to recuperate his share.

Past Voluntary Services

In the event that an individual has completed a voluntary administration in the past and the beneficiary promises to pay at a later date, at that point the contract is binding given:

- The administration was rendered voluntarily in the past
- It was rendered to the promisor
- The promisor was in presence when the voluntary administration was done (especially important when the promisor is an organization)
- The promisor demonstrated his readiness to compensate the voluntary administration

Sam discovers Johns wallet on the road and returns it to him. John is happy to locate his lost wallet and promises to pay Sam Rs 2,000. In this case, as well, the no consideration no contract rule does not apply. This contract is a valid contract.

Promise to pay a Time-Barred Debt

On the off chance that an individual makes a promise recorded as a hard copy marked by him or his authorized agent about paying a time-barred debt, at that point it is valid notwithstanding there being no consideration. The promise can be made to pay the debt completely or in part.

Sam owes Rs 100,000 to John. He had borrowed the cash 5 years ago. In any case, he never paid a solitary rupee back. He signs a written promise to pay Rs 50,000 to John as a final

settlement of the loan. In this case, the no consideration no contract rule does not apply either. This is a valid contract.

Creation of an Agency

According to section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

Endowments

The standard of no consideration no contract does not apply to endowments. Explanation (1) to Section 25 of the Indian Contract Act, 1872 states that the standard of an agreement without consideration being void does not apply to endowments made by a giver and accepted by a done.

Bailment

Section 148 of the Indian Contract Act, 1872, characterizes bailment as the conveyance of merchandise starting with one individual then onto the next for some reason. This conveyance is made upon a contract that post accomplishment of the reason, the merchandise will either be returned or discarded, according to the headings of the individual conveying them. No consideration is required to impact a contract of bailment.

Charity

On the off chance that an individual undertakes a liability on the promise of another to contribute to charity, at that point the contract is valid. In this case, the no consideration no contract rule does not apply.

Sam is the trustee of his town's charity organization. He wants to build a small lake in the town to enhance greenery and offer the occupants a decent place to walk around in the nights. He raises a charity fund where he appeals to individuals to come ahead and contribute to the cause. Many individuals approach as subscribers the fund and agree to pay Sam their share of the amount once he goes into a contract for building the lake.

After raising half the amount, Sam enlists contractors for building the lake. Be that as it may, 10 individuals back out at the last minute. Sam documents a suit against them for recuperation. The Court requested the 10 individuals to pay the amount to Sam since he had undertaken a liability based on their promise to pay. Despite the fact that there was no consideration, the contract was valid and enforceable by law.

PRIVITY OF CONTRACT

The doctrine of Privity of contract states that any outsider, which isn't even particularly related to the two included parties, does not have a privilege to initiate a suit against the said parties to the contract despite the fact that he/she is the beneficiary. Apart from promisor and promisee, all people establish the outsider. In this way, the outsider cannot sue the contracting parties for the enforcement of the beneficiary clause in the contract.

In layman's language, the Doctrine of Privity can be worded in order to mean that a contract cannot present rights or force those obligations arising under it, on any individual with the exception of the parties to it. Be that as it may, at whatever point there are outsider beneficiaries in a contract, it may become necessary to decide as to, who, according to the law ought to be liable or ought to be secured in occasion of inexorable breaches that may happen occasionally.

The application of Doctrine of Privity has been appreciated by the Indian courts with the all-around perceived special cases like beneficiaries of a trust, family arrangement and marriage settlements, tort, collateral contracts, creation of charge or covenants running with land. The aforementioned are pretty much the all-around accepted and settled exemptions to the Doctrine of Privity. Be that as it may, these are not exhaustive and now and again, number of special cases against the Doctrine of Privity has been advanced and perceived by Indian judiciary and more than frequently cited exemption is that an individual for whose benefit the contract is gone into can certainly sue as it is beneficiary in the contract. At the point when two parties to a contract present benefits on an outsider who has not marked the contract, at that point no doubt they expected that the outsider ought to be in a situation to autonomously enforce that right. In such circumstances, the outsider would be adversely affected if the two parties marking the contract were to cancel or amend the contract to the drawback of the outsider.

b. Capacity to Enter into a Contract

According to Section 11, *"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."*

- Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in India is characterized as 18 years. To enter into a contract, even a day not as much as this age disqualifies the individual

from being a party to the contract. Any individual, domiciled in India, who has not attained the age of 18 years is named as a minor.

Individual of Sound Mind

According to Section 12 of the Indian Contract Act, 1872, to enter into a contract, an individual is said to be of sound personality on the off chance that he is capable of understanding the contract and being able to assess its belongings upon his interests.

Disqualified Persons

Apart from minors and individuals with unsound personalities, there are other individuals who cannot go into a contract. The reasons for disqualification can incorporate, political status, legal status, and so on. Some such people are foreign sovereigns and ambassadors, alien enemies, convicts and insolvents.

c. Minor's Position

While a minor cannot enter a contract, he can be the beneficiary of one. Sec. 30 of the Indian Partnership Act, 1932, also determines that while a minor cannot become a partner in the partnership firm, the benefits of the firm can be stretched out to him.

A Minor is always given the Benefit of being a Minor

Regardless of whether a minor falsely represents himself as a major and takes a loan or goes into a contract, he can plead minority. The standard of estoppel cannot be applied against a minor. He can plea his minority in protection.

Contract by Guardian

In specific situations, a guardian of a minor can go into a valid contract on behalf of the minor. Such a contract, which the guardian goes into, for the benefit of the minor, can also be enforced by the minor. Nonetheless, guardians cannot bind a minor by a contract for buying immovable property. But, a contract went into by a guaranteed guardian of a minor, appointed by the Court, with an approval from the Court for the sale of a minor's property can be enforced.

Insolvency

A minor cannot be declared wiped out as he cannot avail debts. Also, if some contribution are pending from the properties of the minor and he isn't personally liable for the same.

Joint contract by a Minor and an Adult

In case of a joint contract between an adult and a minor, executed by the guardian on behalf of the minor, the liability of the contract falls on the adult.

d. Nature / Effect of Minor's Agreements

Nature of Minor Agreement

While Section 10 mandates that the agreement shall be between parties competent to contract and Section 11 indicates that the minor is incapable of entering to contract. But neither section provides as to the effect of agreement entered into by a minor.

Controversial Precedent:

Mohori Bibee v. Dharmodas Ghose4

FACTS: A minor mortgaged his properties in favor of pt., a money lender to secure the loan of Rs. 20,000/-, after some money was advanced pt. came to know about infancy of the dt. He filed a suit to repudiate the contract and recover the money advanced

HELD: Minor's agreement is void ab initio

REASON: "the question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant. General presumption that every man the best judge of his own interests is suspended in the case of children." Ruling is generally followed in India and applied both to the advantage and disadvantage of minor.

Effects of Minor's Agreement

No Estoppel Against Minor

At the point when a minor by misrepresenting his age actuates another to contract with him no estoppel is available against him:

- there cannot be estoppel against statute

- policy of law is to shield minor from contractual liability

- doctrine of estoppel cannot be applied to defeat the approach an infant isn't estopped from setting up the safeguard of minority.

No Liability for Tort

A contract cannot be changed over in to tort to sue an infant Minor isn't liable for tort associated with contract, but an infant isn't absolved from liability for autonomous tort. (Johnson v. Pye Minor's agreement)

- Doctrine of Equitable

There is no doubt of tracing it, no possibility of re-establishing the extremely same thing got by fraud. Impulse to repay an equivalent whole out of his present and future assets would amount to implementing a void contract. *(Leslie v. Sheill HELD Lord Sumner)*

- Liability to Restore Benefits

[4] (1903) 30 Cal. 539.

Where a minor looks for the assistance of court for the cancellation of his contract, the court may grant the help subject to the condition that he shall restore all benefits obtained by him under the contract, the court may grant alleviation subject to the condition that he shall restore all benefits obtained by him under the contract or make suitable compensation to the next party.

Beneficial Contracts are Enforceable by Minor

Law laid down in Mohari Bibee has been generally pursued and progressively constrained to cases where minor is charged with obligations and the other contracting party looks to enforce those obligations against the minor.

No Ratification

An individual cannot on attaining majority ratify an agreement made by him amid his minority. Ratification relates back to the date of making the contract and hence a contract which was then void cannot be made valid by subsequent ratification.

UNIT III: Validity, Discharge and Performance of Contract

- **a. Free Consent**
- **b. Coercion, Undue Influence, Misrepresentation, Fraud, Mistake**
- **c. Unlawful Consideration and Object**
- **d. Discharge of Contracts**
- **e. Performance, Impossibility of Performance and Frustration**
- **f. Breach: Anticipatory and Present**

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 that it has been caused by coercion, undue influence, fraud, misrepresentation, or mistake,

For example, X, makes Y agree to sell his house to X for Rupees 500000, at a gun point, Here, Y's consent has been obtained by coercion and therefore, it shall not be 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.

a. Coercion, Undue Influence, Misrepresentation, Fraud, Mistake

COERCION

Coercion means forcibly convincing an individual into a contract i.e., the consent of the party is obtained by utilization of force or under a threat. Section 15 of the Contract Act characterizes 'coercion' as Coercion is:

(i) the submitting or threatening to submit, any act forbidden by the Indian Penal Code

(ii) The unlawful detaining or threatening to detain, any property, to the bias of any individual whatever, with the goal of causing any individual to go into an agreement.

At the end of the day, the consent is said to be caused by coercion when it is obtained by practicing some weight by either submitting or threatening to submit any act forbidden by the Indian Penal Code or unlawfully detaining or 1 threatening to detain any property. Coercion, in this manner, suggests submitting or threatening to submit some act which is contrary to law

UNDUE INFLUENCE

The second factor which affects consent and makes it unfree, is undue influence. The term 'undue influence' means the ill-advised or unfair utilization of one's better power all together than obtain the consent of an individual 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.

MISREPRESENTATION

The word representation means a statement of fact made by one party to the next, either before or at the season of making the contract, with regard to some matter essential for the contract, with a goal ta-initiate the other party to go into contract. A representation, when wrongly made, either honestly or intentionally, is called misrepresentation. You realize when wrong representation is made adamantly with the goal to cheat the other party, it is called fraud. But, when it is made honestly; with no aim to cheat the other party, it is named as 'misrepresentation'. In such a situation, the party making the wrong representation sincerely believes it to be valid.

FRAUD

Fraud just means a stubborn wrong representation of fact, made by a party to a contract with the goal to betray the other party or to instigate him into a contract.

The term 'fraud' is defined by Section 17 of the Indian Contract Act as follows: "Fraud means and includes any of the following acts committed by a party to a contract or by any one 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, of that which 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 an,y intention of performing it; iv) any other act fitted to deceive; v) an9 such act or omission as the law specially declares to be fraudulent.

MISTAKE

Mistake may be defined as the erroneous belief concerning something. Whenever an agreement is made under a mistake, there is no consent, and the agreement is not valid. Broadly speaking, Mistake may be of two types:

(1) Mistake of Law and
(2) Mistake of fact.

Mistake of law can be further classified into

(a) mistake of Indian law

(b) mistake of foreign law.

Similarly, mistake of fact can be

(a) bilateral mistake or

(b) unilateral mistake.

Unlawful Consideration and Object

In majority of the cases, the words Object and Consideration mean the same thing. But now and again, they may be extraordinary. For example, where cash is borrowed with the end goal of the marriage of a minor, the consideration for the contract is the loan and the object is the marriage. It is noticed that an agreement won't be enforceable if its object or the consideration is unlawful.

According to section 23 of the Act, the consideration and the object of an agreement are unlawful in following cases:

- If it is forbidden by law

If that the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the nation or when it is prohibited by special legislation got from the legislature.

Example: A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back (Srinivas v. Raja Ram Mohan)

- If it defeats the provisions of any law

In the event that it is of such a nature, that whenever allowed, it would defeat the provisions of any law. At the end of the day, if the object or the consideration of agreement is of such a nature, that, however not legitimately forbidden by law, it would defeat the provisions of the law, the agreement is void.

- If it is fraudulent

An agreement so as to defraud others is void.

- If it includes or infers damage to the individual or property of another

If the object of an agreement is to harm the individual or property of another, it is void. ***(Ram Swaroop* v. *Bansi).***

- If the Court regards it as immoral or restricted to public policy

An agreement whose object or consideration is immoral or is against the public policy, is void.

For example, A let a cab on contract to B, a drug-trafficker, realizing that it would be utilized for immoral purposes. The agreement is void

Discharge of Contracts

According to the Indian Contract Act, 1872, Discharge of Contract means the termination of contractual relationship between the parties. Hence, a contract is said to be discharged once it ceases to operate that is, the point at which the rights and obligation which have been created by it arrived at an end.

Following are the various ways in which a contract may get discharged:

- By performance or tender

(i) Actual Performance: When the parties to a contract play out their promise

(ii) Attempted Performance or tender: There is just an offer to play out the obligation under the contract

- By impossibility of performance which can additionally be partitioned into two parts

(i) innate impossibility

(ii) subsequent impossibility

- By promise failing to offer facilities for performance.
- By operation of law
- By lapse of time
- By breach
- Discharge by mutual consent or agreement

Performance, Impossibility of Performance and Frustration

Section 56 first lays down the straightforward rule that "an agreement to complete an act impossible in itself is void". For example, an agreement to find a treasure by magic, being impossible of performance, is void. Section 56 also lays down the impact of subsequent impossibility of performance. Here and there the performance of a contract is very possible when it is made, but some occasion subsequently happens which renders its performance impossible or unlawful. In either case the contract becomes void. Where, for example, after making a contract of marriage, one of the parties goes mad, or where a contract is made for the import of merchandise and the import is thereafter forbidden by a Government Order, or where a vocalist contracts to sing and becomes too sick to even consider doing along these lines, the contract in each case becomes void. Compensation for misfortune through non-performance of act known to be impossible or unlawful.

"Where one individual has promised to accomplish something which he knew, or, with reasonable persistence, may have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any misfortune which such promisee sustains through the non-performance of the promise."

Contracts entered into between parties force contractual obligations on both the parties for the performance of such contract. In any case, many occasions unanticipated or unforeseeable

supervening occasions happen which make the performance of the contracts impossible because of no fault of either party. In such cases, the contract is said to be frustrated. Frustration of contract results in involuntary eradication of the contractual obligations of both parties and thus, the parties are alleviated from their rights and liabilities.

he Indian Contract Act, 1872, does not specifically characterize frustration of contract. In any case, the doctrine is envisaged in Section 56 of the Act, which states that an agreement to complete an act impossible in itself is void. Further, a contract to complete an act which, becomes impossible, or, by reason of some occasion which the promisor couldn't avert, unlawful, becomes void when the act becomes impossible or unlawful. Subsequently, frustration is the happening of an act outside the contract and such act makes the culmination of a contract impossible. After the parties have finished up a contract, occasions beyond their control may happen which frustrate the reason for their agreement, or render it exceptionally troublesome or impossible, or as even illegal, to perform.

Frustration of contract can be established upon the satisfaction of the accompanying conditions;

- Existence of a valid contract between parties
- The contract is yet to be performed
- The performance of the contract becomes impossible or unlawful
- The impossibility to perform is caused by an occasion which is beyond the control of both the parties.

Frustration of a contract makes the contract void, and discharges the parties of the contractual obligations. Nonetheless, Section 65 of the Act states that when an agreement has become void, the individual who has gotten any advantage under such agreement is bound to restore it or to make compensation for it, from whom he got it. The issue arises whether this section also applies to contracts rendered void by frustration. Frustration of a contract happens without the fault or control of either party, and in this manner, a party ought not be made to compensate in such occasion. Be that as it may, not giving adequate compensation may also cause misfortune to the next party. Along these lines, it is trusted that the Indian judiciary reveals some insight into such issues and give a suitable solution for cases of frustration of contracts.

f. Breach: Anticipatory and Present

Breach means failure or inability to play out one's obligations under a contract. Breach may be either actual breach or anticipatory breach. When one party to the contract submits breach on the due date it is called actual breach. When he submits breach before the due date it is called anticipatory breach.

Anticipatory breach of contract happens when a party repudiates the contract before the time fixed for its performance or when a party by his very own act disables himself absolutely from playing out the contract.

Section 39 of the Indian Contract Act, 1872 states: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

UNIT 1V: Remedies and Quasi Contracts

a. Breach

b. Remedies: i Damages: Kinds ii Quantum Merit

c. Quasi Contracts

a. Breach

REMEDIES FOR BREACH OF CONTRACT

Generally, a contract is agreed between the parties with an aim to perform it. At the point when all the provisions of a contract have been agreed to, the contract is said to have been discharged by performance. In actuality, the contract is never again existing. But in some cases, the contract may never reach this stage because one party basically won't perform or may handle the agreement in an unsatisfactory manner. This makes the performance of the contract

impossible. In this way, parties to a lawful contract are bound to play out its particular obligations. But when one of the parties fails to play out their separate obligation, he is said have submitted a breach of contract.

A contract offers ascend to correlative rights and obligations. A privilege accruing to a party under a contract would be no value if there were no solution for enforce that directly in a law court in case of its encroachment or breach of contract. A cure is the means given by law for the enforcement of right. At the point when there is a breach of contract by one party, the other party called harmed party or aggrieved party shall have certain cures against him. They are solutions for the breach of contract.

RESCISSION

Where one of the parties to a contract submits breach, the other party may sue to treat the contract as rescinded and deny further performance. In such a case, he is freed from all the obligations under a contract. Under Section 64, the party rescinding avoidable contract shall, on the off chance that he has gotten any benefit thereunder from another party to such contract, restore such benefit to the individual from whom it was gotten. Further under Section 75 an individual who legitimately rescinds a contract is qualified for compensation for any damage, which he has sustained through the non-satisfaction of the contract.

b. Remedies: i Damages: Kinds ii Quantum Merit

SUIT FOR DAMAGES

Under section 73, where a contract has been broken, the party who endures by such breach is qualified for get compensation for any misfortune or damage caused to him from the party who has broken the contract. Damages are a monetary compensation allowed to the harmed party by the court for the misfortune or damage endured by him. The object of awarding damages for the breach of a contract is to put the harmed party in the same financial position as if the contract had been performed. This is called the doctrine of compensation. The fundamental basis of awarding damages is that law of contract does not try to rebuff the liable but rather the court will propel the party in breach to make great the misfortune by paying damages to the next party.

QUANTUM MERUIT

Quantum meruit is another cure available for a party to a contract on its breach by another. Now and then, it so happens that one party to the contract has performed part of the promise and fails to play out the remaining part because the other party has submitted a breach. The principal party must, consequently, be compensated for the part he has performed. This is called the doctrine of quantum meruit. It means as much as meruited or earned or merited. The claim for quantum meruit arises just when the original contract is discharged. On the off chance that the original contract exists, the party not in default cannot have quantum meruit cure. In

such a case, he has to take cure in damages. Further, just the party who isn't at default can bring the claim for quantum meruit.

SPECIFIC PERFORMANCE OF CONTRACT

Sometimes damages are not an adequate solution for breach of contract. The harmed party may ask the court to force the defaulting party to actually carry out promises what ought to have been agreed according to the terms of contract. In such cases, the court may guide the party in breach to carry out his promise according to the terms of the contract. This is a course by the court for specific performance of the contract at the suit of the harmed party. In any case, a harmed party cannot claim specific performance as an absolute right. It is the prudence of the court to grant such a cure.

INJUNCTION

When a party is in breach of a negative term of a contract for example where he is accomplishing something which he promised not to do, the court may, by issuing a request, restrain him from doing what he promised not to do. Such a request of the court is known as injunction. To put it plainly, an injunction is a request of the court restraining a party from completing an unfair act. On breach of contract, the court can restrain a party, by a request of injunction, from submitting the breach. Be that as it may, the intensity of the court to grant injunction is discretionary and may be granted for a temporary or an uncertain period.

It is granted when

- damages would be an inadequate cure and

- the specific performance of the contract would include a general superintendence with the court couldn't undertake.

c. Quasi Contracts

Once in a while, contracts are created not by the parties but rather by the law itself. They are not gotten from the consent of the parties but rather are forced by law regardless of their consent or dispute. These are certain obligations which are not in truth contractual in the feeling of laying on agreements, but which the law treats as on the off chance that they were. Such obligations are called quasi contracts. They are also called helpful contracts implied contracts or certain relations resembling those created by contract. Carefully speaking, a quasi-contract is the principal that the law as well as equity should attempt to avert 'treacherous improvement' or enhancement of one individual at the expense of another. The law won't allow an individual to become rich

out of the exertion of another. An individual who has gotten benefit from another must pay it. Else, it would be low for him to retain such benefit.

Types of Quasi Contract

SUPPLY OF NECESSITIES (Section 68)

On the off chance that an individual, incapable of going into a contract, or anyone whom he is legally bound to help, is provided by another with necessaries suited to his condition throughout everyday life, the individual who has outfitted such supplies is qualified for be reimbursed from the property of such incapable individual.

PAYMENT BY AN INTERESTED PERSON (Section 69)

An individual who is keen on the payment of cash which another is bound by law to pay, and who in this manner pays it, is qualified for be reimbursed by the other.

The conditions of the liability under sec. 69 are:

The plaintiff ought to be keen on making the payment. It isn't necessary that he ought to have a legal proprietary enthusiasm for the property in regard of which the payment is made. Be that as it may, frequently it is utilized to decide if plaintiff was intrigued. Sec. 69 does not welcome such judicial limitation that an individual who has not an enthusiasm for the property can be keen on a payment of that property.

The plaintiff himself ought not be bound to pay. He should just be keen on making the payment so as to secure his own advantage.

The defendant ought to be under legal impulse to pay.

The plaintiff ought to have made the payment to another parson and not to himself.

OBLIGATION TO PAY FOR NON-GRATUITOUS ACTS (Section 70)

At the point when an individual lawfully does anything for another individual or conveys anything to him, not meaning to do as such gratuitously, and such other individual appreciates the benefit thereof, the latter is bound to make compensation to the previous in regard of, or to restore, the things so done or conveyed.

RESPONSIBILITIES OF FINDER OF GOODS (Section 71)

An individual, who discovers merchandise to another and takes them into his guardianship, is subject to the same responsibilities as a bailee. He is bound to take as much care of the merchandise as a man of ordinary reasonability would, under similar circumstances, take of his own products of the same bulk, quality and value. On the off chance that he doesn't, he will be liable of improper transformation of the property. Till the proprietor is discovered, the property in merchandise will vest in the discoverer and he can retain the products as his very own against the entire world.

- MISTAKE OR COERSION (Section72)

An individual to whom cash has been paid, or anything conveyed, by mistake or under coercion, must repay or return it to the individual who paid it by mistake or under coercion.

UNIT V: Indemnity, Guarantee and Agency

a. Meaning & Distinction between Indemnity and Guarantee

b. Right and Duties of Indemnifier and Discharge

c. Rights and Duties of Bailor/Bailee, Lien, etc

d. Definitions of Agent and Principal, Creation of Agency and its Termination

a. Meaning & Distinction between Indemnity and Guarantee

Meaning of Indemnity

A type of unexpected contract, whereby one party promises to the next party that he will compensate the misfortune or damages struck him by the conduct of the primary party or any other individual, it is known as the contract of indemnity. The number of parties in the contract is two, one who promises to repay the other party is indemnifier while the other one whose loss is compensated is known as reimburse.

The indemnity holder has the privilege to reimburse the accompanying sums from the indemnifier:

Damages caused, for which he was constrained

The amount paid for guarding the suit

The amount paid for bargaining the suit.

Meaning of Guarantee

When one individual connotes to play out the contract or discharge the liability brought about by the outsider, on behalf of the second party, in case he fails, then there is a contract of guarantee. In this type of contract, there are three parties, for example the individual to whom the guarantee is given is Creditor, Principal Debtor is the individual on whose default the guarantee is given, and the individual who gives a guarantee is Surety.

Three contracts will be there, first between the principal debtor and creditor, second between principal debtor and surety, third between the surety and the creditor. The contract can be oral or written. There is an implied promise in the contract that the principal debtor will repay the surety for the sums paid by him as an obligation of the contract gave they are legitimately paid. The surety isn't qualified for recoup the amount paid by him improperly.

Key Differences Between Indemnity and Guarantee

The following are the major differences between indemnity and guarantee:

- In the contract of indemnity, one party makes a promise to the next that he will compensate for any misfortune jumped out at the other party because of the act of the promisor or any other individual. In the contract of guarantee, one party makes a promise to the next party that he will play out the obligation or pay for the liability, on account of default by an outsider.

- Indemnity is characterized in Section 124 of Indian Contract Act, 1872, while in Section 126, Guarantee is characterized.

- In indemnity, there are two parties, indemnifier and reimburse but in the contract of guarantee, there are three parties for example debtor, creditor, and surety.

- The liability of the indemnifier in the contract of indemnity is primary whereas in the event that we talk about guarantee the liability of the surety is secondary because the primary liability is of the debtor.

- The motivation behind the contract of indemnity is to save the other party from enduring misfortune. Notwithstanding, on account of a contract of guarantee, the aim is to assure the creditor that either the contract will be performed, or liability will be discharged.

- In the contract of indemnity, the liability arises when the possibility happens while in the contract of guarantee, the liability already exists.

Right and Duties of Indemnifier and Discharge

Rights of the Indemnifier

The privileges of the indemnity-holder are the obligations of indemnifier, and obligations of the indemnity-holder are the privileges of the indemnifier. There are not prescribed any specific privileges of the indemnifier in Indian law.

Notwithstanding, he isn't liable for indemnity:

If the indemnity-holder acts carelessly.

If indemnity-holder is acting with the expectation of causing any misfortune or damage.

If he is acting against the directions of the other party/promisor.

Duties of Indemnifier:

The obligations of an indemnifier arise in the accompanying circumstances:

- There must be a misfortune as per the contract to make the indemnifier liable.
- There must be an event of the anticipated occasion. With no event of the prescribed occasion, there is no indemnity by the indemnifier.
- Where the privilege of indemnity is utilized by the indemnity-holder judiciously and the guidance of the indemnifier isn't contravened or when there is no breach of contract.

- If the expenses demanded by the indemnifier are not caused by carelessness, haphazard behaviour.

a. Rights and Duties of Bailor/Bailee, Lien, etc

Duties of a Bailor

Section 150 of the Indian Contract Act, 1872 bound the bailor with certain duties to uncover the latent facts specifically pertaining to abscond in merchandise.

- Gratuitous Bailment: It is the obligation of the bailor to reveal all the imperfections in the merchandise that he knows about to the Bailee that can meddle with the utilization of products or can open him to extraordinary dangers. And failure to do the same will make bailor liable for damages.
- Non-Gratuitous (Bailment for Reward): This obligation particularly deals with the products given on contract. According to this arrangement, when the products are bailed for contract, at that point in such a situation regardless of whether the bailor knows about the deformity in the merchandise or not will be held liable for the damage that has been caused because of the presence of such imperfection.

  In ***Hyman v Nye and Sons***, the plaintiff took a carriage on contract from the defendant but the carriage was not fit for the adventure and subsequently, the plaintiff endured wounds. The court held that despite the fact that the defendant was aware of such deformity or not he shall be liable.

Duties of Bailee

Bailee has to satisfy several obligations according to Indian Contract Act, 1872:

- Duty to take reasonable care: It is the obligation of the Bailee to take care of products as his very own merchandise. He shall guarantee all safety measures that are necessary to secure the products. (Section 151-152)
- Duty not to make unauthorized utilization of the merchandise: Bailee is compelled by a solemn obligation to utilize the products for a specific reason just and not something else. (Section 153-154)
- Duty not to blend bailor's merchandise with his very own goods: It is the obligation of the Bailee not to blend bailor's products with his own. (Section 155-157)

Duty to return the merchandise on the satisfaction of direction: Bailee is compelled by a sense of honour to restore the products once the object is achieved or on the expiry of the timeframe for which the products were bailed. (Section 160-161)

Duty to convey to the bailor increase or benefit if any on the merchandise bailed: The Bailee has an obligation to restore the products along with increase or benefit subject to contract to the contrary. Accretion that has accrued from the bailed products is the part of the bailed merchandise and along these lines bailor has the directly over such accretions assuming any. (Section 163)

Rights of a Bailor

As such Indian Contract Act, 1872 does not accommodate Rights of a Bailor. So the rights of bailor are:

Enforcement of Bailee's Duty

Since Right of the bailor is same as the privilege of the Bailee, in this way on the satisfaction of all duties of Bailee the bailor's privilege is accomplished. For example, it is the obligation of the Bailee to give the accretions and it is the privilege of bailor to demand the same.

Right to claim damages

If the Bailee fails to take care of the products, the bailor has the privilege to claim damages for such misfortune. (Section 151)

Right to Termination the Contract

If the Bailee does not agree to the terms of the contract and acts in a careless manner in such case the bailor has the privilege to rescind the contract. (Section 153)

Right to claim compensation

If the Bailee utilizes the merchandise for an unauthorized reason or blends the products which cause loss of merchandise in such case bailor has the privilege to claim compensation.

Right to demand the arrival of goods

It is the obligation of the Bailee to restore the products and the bailor has the privilege to demand the same.

Rights of a Bailee

- Right to recover expenses

  In the contract of Bailment, the Bailee brings about costs to guarantee the safety of merchandise. The Bailee has the privilege to recover such costs from the bailor. (Section 158)

Right to remuneration

When the merchandise is bailed to the Bailee he is qualified for get certain remuneration for administrations that he has rendered. But in case of gratuitous bailment, the Bailee isn't awarded any remuneration.

Right to recover compensation

Every now and again a situation arises wherein bailor did not have the capacity to contract for bailment. Such a contract causing misfortune to the Bailee, thusly the Bailee has the privilege to recover such compensation from the bailor. (Section 168)

Right to Lien

Bailee has the directly over Lien. By this, we mean that if the bailor fails to make payment of remuneration or does not pay the amount due, the Bailee has the privilege to keep the products bailed in his ownership till the time debtor duty are cleared. Lien is of two types: particular lien and general lien. (Section 170-171)

In Surya Investment Co. v. S.T.C, the court held that costs caused by Bailee amid preservation of products under lien shall be borne by bailor.

Right to suit against a wrongdoer

After the products have been bailed and any outsider denies the Bailee of utilization of such merchandise, at that point the Bailee or bailor can bring an action against the outsider. (Section 180)

Definitions of Agent and Principal, Creation of Agency and its Termination

Agency

An agent is characterized as an individual utilized to do any act for another or represent another in dealings with third individual. The individual for whom such act is done, or who is so represented, is called the "principal" at the end of the day, agency is the relationship which subsists between the principal and the agent, who has been authorized to act for him or represent him in dealings with others. Any individual who is eighteen years old and above and who is of sound personality may be a principal. As between the principal and third people, any individual may become an agent, but people of unsound personality and who are below 18 years of age are not liable towards their principal for acts done by them as agents. Like any different contracts, a contract of agency can be expressed or implied for the circumstances and the direct of the parties. As such, the authority of an agent may be expressed or implied.

CREATION OF AGENCY

- By Express Appointment by the Principal

  Generally, authority is given by the Principal to the Agent. In the event that the agent surpasses this authority, at that point the principal won't be bound and the agent will be personally liable to the outsider for breach of warranty of authority. Be that as it may,

the custom-based law may expand the extent of the agent's authority beyond this, to ensure an honest outsider. The principal will at that point be bound to the outsider, but the principal can sue the agent for exceeding his actual authority if it's a breach of the agency contract.

- By Implied Appointment by the Principal

  The law can construe the creation of an agency by implication when an individual by his words or direct acts as in the event that he has such authority and the principal acknowledges that he was qualified for act accordingly. Implied authority, isn't specifically referenced by contract but assumed or implied by the nature of the relationship, are ventured to be given to an agent if that authority is necessary to play out the duties or responsibilities generally assigned to the agent or representative.

- Apparent/Ostensible authority

  While actual authority arises from an agreement, apparent authority is that which the law regards the agent as having, although the principal may not have consented to the agent having such authority.

  Apparent authority can happen in two situations:

  i) Where principal by words/lead, makes an outsider believe that 'agent' has the authority to make a contract for the principal.

  ii) Where the agent recently had authority to act, but that authority was terminated by the principal and the principal did not advise outsiders that he has terminated it.

- By Necessity

  The roots of the doctrine of necessitous mediation by somebody who is in a legal relationship with the defendant lie in the rule of the agency of necessity, where an agent went beyond his or her authority by interceding on behalf of the principal in a crisis. Because of the circumstances of necessity, particularly the impracticability of the agent communicating with the principal, the courts were prepared to treat the agent as however the individual in question had the necessary authority to do what was reasonably necessary to save the principal's property. In the event that an agency of necessity was established, the agent would be reimbursed for the cost acquired in protecting the principal's property.

  An agency of necessity may be created if the accompanying three conditions are met:

  i) It is impossible for the agent to get the principal's guidance.

ii) The agent's action is necessary, in the circumstances, so as to forestall misfortune to the principal to keep them from rotting.

iii) The agent more likely than not acted in accordance with some basic honesty. In a critical situation, an agent has authority to act in the best enthusiasm to protect his principal from misfortunes.

- By Estoppel

  An individual cannot be bound by a contract made on his behalf without his authority. In any case, on the off chance that he by his words and direct allows an outsider to believe that that particular individual is his agent notwithstanding when he isn't, and the outsider depends on it to the disservice of the outsider, he will be estopped or blocked from precluding the presence from claiming that individual's authority to act on his behalf.

- Ratification by the Principal

  Agency by ratification can arise in any one of the accompanying situations:

  i) An agent who was appropriately appointed has surpassed his authority;

  ii) An individual who has no authority to act acted as on the off chance that he has the authority.

TERMINATION OF AGENCY

Ways by which an agency can be terminated:

- An agency created for a specific reason as well as an agency created by an intensity of attorney is terminated once the particular reason for which it was created was accomplished. After the termination of the agency, the agent is free of any fiduciary obligation to the principal arising from the agency relationship.
- The parties can terminate the agency by mutual agreement. An agency relationship requires the mutual assent of the parties and both the parties have the ability to withdraw their assent. An agency may not be terminated by the act of one of the parties and ought to be done mutually.
- An agency contract may be cancelled on the basis of an express stipulation in the contract. In such a case, the parties will have a privilege of cancellation at the desire of either party or upon the happening of a possibility or the non-performance of some expressed condition.
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- An agency may be renounced at the desire of the principal when an agency isn't combined with an intrigue, and no outsider's rights are included. The party terminating the agency must show great cause.
- A principal may unilaterally cancel an agency without bringing about liability for breach of contract under the accompanying instances: wrongdoing or habitual intoxication of the agent which meddles with his/her work, the refusal of the agent to obey reasonable directions or to allow the principal to make an appropriate audit of his/her accounts, genuine disregard or breach of obligation by the agent, contemptibility or dishonesty of the agent, the agent's failure to pay an indebtedness inferable from the principal, disloyalty of the agent like utilizing the agency to make mystery benefits.
- Ordinarily, an agent may revoke the agency relationship by expressly informing the principal, either orally or recorded as a hard copy. An agent's cessation of all relations with the principal and abandonment by the agent may be treated as a renunciation. In any case, minor violation of guidelines by the agent won't amount to renunciation.