

BUSINESS REGULATIONS

Introduction to Law

Meaning of Law: Law denotes the principles and rules that governs and regulates the social conduct and observance of which can be enforced through the courts. Law is the rule of civic conduct, prescribed by the supreme power of state commending what is right and prohibiting what is wrong.

Definition of Law

Oxford Dictionary, "Law is the rule made by authority for the proper regulation of a community or society or for the correct conduct of life."

According to Salmond the law may be defined as "the body of principles recognised and applied by the State in the administration of justice."

Nature/Feature of Law *BeB-2*

- **Law is a body of rules:** These rules prescribe the conduct, standard or pattern to which actions of the persons in the state are required to conform. However, all rules of conduct do not become law in the strict sense. If a person does not observe the law of the land, then legal actions, such as imprisonment or fine etc are imposed upon them.
- **Law is for the guidance or conduct of persons:** The rules embodied in the law are made, so as to ensure that actions of the persons in the society conform to some predetermined standard or pattern. This is necessary so as to ensure continuance of the society. Disputes may be minimised, but will not be eliminated. Rules are therefore drawn up to ensure that members of the society may live and work together in an orderly manner.
- **Law is imposed:** Law is imposed on the members to bring about an order in the group enabling it to continue and prosper. It is not something which may or may not be obeyed at the sweet will of the members of society. Thus, law is made obligatory on the members of the society.
- **Law is enforced:** Unless a law is enforced it ceases to be a law and persons will regard it as dead. If the government passes many laws but does not attempt to enforce them, the citizens lose their respect for government and law, and society is greatly weakened. The force used is known as sanction which the state administers to secure obedience to its laws.
- **Content of law:** The law is a living thing and changes throughout the course of history. Law responds to public opinion and changes accordingly. Law can never be static and amendments are made in different laws from time to time.
- **Two basic ideas involved in Law:** The two basic ideas involved in any law are
 - ✓ To maintain some form of social order in a group
 - ✓ To compel members of the group to be within that order
- **Applicable to all:** Law is applicable to all. Everyone in the eyes of law is equal and no one can escape from the eyes of law.
- **Uniform:** Law is uniform in nature. Power of making Law lies in the hand of the state. State passes those laws which are considered to be for human welfare.
- **Normative in character:** The law is best described as normative. It prescribes the dos and don'ts of the society.
- **Working soundly:** Every state needs the law as it is believed to be the most important element which helps the state to function smoothly.

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- **Penalty:** Law can be the threat to those who are willing to do wrong in the society. Violations of laws are always punished. Punishments are also prescribed by law.
- **Settle disputes:** The courts settle all disputes among the people on the basis of law. Each country has the court which settles any issues taking place in a state according to the laws formulated.
- Law is backed by the coercive power of the state. Law evolves over time in order to meet the specific needs of the society in which it is operative.

Purpose/Objectives of law

- ✓ **To establish standards:** The law is the guide post for minimally acceptable behaviour in society. Some activities are considered to be crimes because the law of the country has determined that it will not tolerate certain behaviours. For example, it is crime to cause physical injury to another person without justification.
- ✓ **Maintaining order:** This is an offshoot of establishing standards. The law when enforced provides order consistent with society's guidelines. Laws reflect the value society places on protection of future generations.
- **Resolving disputes:** Disputes are unavoidable in a society comprised of persons with different needs, wants, values and views. The law provides a formal means for resolving disputes (the court system). There is a central court system and each state has its own separate court system. There are also less formal means for resolving disputes collectively called Alternative Dispute Resolution (ADR).
- ✓ **To protect liberties and rights:** Law protects the liberties and rights from violations or unreasonable intrusions by persons, organisations or government. For example someone who believes that his free speech rights have been prohibited may pursue a remedy by bringing a case in the courts.
- ✓ **To incorporate uniformity and social security among all category of people of the society.**
- ✓ **To establish socio-economic justice and remove the existing imbalances in the socio-economic structure.**
- ✓ **To create awareness of law among the citizen, its contents, purpose, requirements, regulations. It is able to make them follow the law and respect it.**
- ✓ **To make a strong government or state to implement the law positively for the benefit of human being and for the welfare and well-being of society.**

Classification of law

1. **Public and Private law:**

- ✓ Public law can be defined as that aspect of law that deals with relationship between the state, its citizen, and other states. Laws intended for general application i.e., the laws those that apply to the nation as a whole or class of individuals. Examples of public law include Constitutional law, Administrative law, Criminal law, International law and so on.
- ✓ Private law on the other hand, is that category of law that concerns itself with the relationship amongst private citizens. Laws enacted for the benefit of particular individual or small group. Examples include the Law of torts, Law of contract, Law of trust and so on.

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2. Civil and Criminal law

- ✓ Civil law can be defined as the aspect of law that deals with the relationship between citizens and provides means for remedies if the right of the citizen is breached. Examples of civil law includes the Law of contract, Law of torts, Family law etc.
- ✓ Criminal law can be referred to as that aspect of law that regulates crimes in the society. It punishes acts which are considered harmful to the society at large.

3. Substantive and Procedural law

- ✓ Substantive law is the main body of the law dealing with the particular area of law.
- ✓ Procedural law is the law that deals with the process which the courts must follow in order to enforce the substantive law.

4. Municipal/Domestic and International law

- ✓ Domestic law is the aspect of law which emanates from and has effect on members of a specific state.
- ✓ International law is the law between the countries. It regulates the relationship between different independent countries and is usually in the form of Treaties, International customs etc. International law includes the Universal Declaration of Human Rights.

5. Written and Unwritten law

- ✓ A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country.
- ✓ Unwritten law are those laws that are not enacted by the legislature. They include both customary and case law. Customary law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on that fact that it is not enacted by the legislature.

Sec A-2
Meaning of Business law: Business law consists of those legal rules, which govern and regulate the business activities, transactions and trade and encompasses the law relating to regulation of business organisations and other incidental matters. It is also known as Commercial or Mercantile law. It deals with the rights and obligations arising out of commercial or mercantile transactions.

Sec A
Definition of Business law: According to S.R.Daver, "Business law is the branch of law which is applicable to or concerned with trade and commerce in connection with various business transactions".

Objectives of Business law *Sec B 3*

- To lay framework in order to carry out the commercial transactions of individuals, partnership concerns or joint stock companies.
- In case the legal right of the business has been violated, the issue could be raised to legal and semi legal authorities. It helps the merchants avoid and settle their conflicts.
- It also has the social objectives, to serve the country at large. The anti-competition law, pollution law, environment pollution laws are some of the laws through which the government protects the interest of the society at large.
- Business laws strive towards equitable distribution of wealth, by preventing the concentration of economic power in the hands of few business houses.
- It facilitates the businesses to achieve their goal faster.

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see B 1x
Scope

There is a wide and varied scope of business law. The following law was enacted by Indian legislative from time to time are covered in the Indian Business Laws:

- **Indian Contract Act 1872:** It is oldest and most widely referred Act of the Indian Business Act. It was enacted on 1st September 1872. This Act was passed by the British and is based on the principles of the English Common Law. It contains agreements, which can be enforced through law of courts. It is applicable to all over India except in Jammu and Kashmir.
- **The Negotiable Instruments Act 1881:** It is an Act that dates back from British rule. It is an Act that defines and amends the laws relating to Promissory Notes, Bills of Exchange and Cheques. This Act specifies who has the capacity to make them, rules regarding dishonour of cheques, endorsement, calculation of bill, penalties for bouncing of cheque etc.
- **Indian Sale of Goods Act 1930:** It was enacted on 1st July 1930. In 1963 the word "Indian" was omitted and became "The Sale of Goods Act, 1930". This Act regulates the sale and purchase of all the transactions. It is a contract through which the seller transfers or agrees to transfer the goods to the buyer for a price. It is applicable to all over India except in Jammu and Kashmir.
- **The Partnership Act 1932:** It is an Act enacted to regulate the partnership of the firms. It determines the rights and duties that the partners of the contract have to abide by to carry out the business. It is applicable to all over India except in Jammu and Kashmir. This Act specifies the duties of the partners, maximum number of partners, indemnification etc.
- **Insurance Act 1938:** This law governs all forms of insurance and provides strict control over insurance business. It provides for the establishment of the authority to protect the interest of the holder of the insurance policy, to regulate, promote and ensure orderly growth of the insurance. This Act specifies in which type of assets the insurers can invest, rules regarding registration, obtaining registration certificates, issuing licenses, how to protect the interest of policy holders etc.
- **The Indian Patent Law 1970:** This Act was enacted to grant the exclusive rights over the invention. This Act also ensures commercial returns to the inventor for the time and money spent in generating a new product. This Act specifies who can obtain the patent, process in obtaining patent, amount to be paid for obtaining patent, cases of infringement, penalty for infringement etc.
- **The Consumer Protection Act 1986:** This Act was enacted in the year 1986. This Act was enacted to protect the interests of the consumers in India. It makes provisions for the establishment of consumer councils and other authorities in order to settle consumer disputes. This Act specifies who can file the complaint, where to file complaint, procedure for filing complaint, Redressal agencies, jurisdiction, penalty etc.
- **The Environment Protection Act 1986:** The purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environments. It grants the protection and improvement of the human environment and the prevention of hazards to human beings, other

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- living creatures, plants and property. This Act specifies ways to protect and improve the environment quality, control and reduce pollution, prohibiting or restricting in setting or operation of industries, lay down standards for emission of discharge of environmental pollutant, penalties etc.
- **Carriage of Goods Act 1865:** This law governs the rights, responsibilities, liabilities and immunities of the carrier and of the persons employing the services of the carrier.
- **Provincial Insolvency Act 1920:** This Act lays laws relating to any matters of insolvency. The petition for insolvency can be presented either by creditor or debtor.
- **Arbitration and Conciliation Act 1996:** It was enacted to consolidate and amend the law relating to domestic arbitration and international commercial arbitration.
- **The Competition Act 2002:** This Act was established to prevent the activities that has an adverse effect on the competition in India. This Act bans the abusive situation of the market monopoly. This Act deals with ensuring fair competition, prohibition of anti-competitive agreements, prohibition of abuse of dominance position, penalties for violations etc.
- **The Companies Act 2013:** It was enacted in 1956. It regulates the incorporation of a company, directors and dissolution of a company. This Act is administered by the Government of India through the Ministry of Corporate Affairs and the office of the Register of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Register of Companies (ROC) handles incorporation of new companies and the administration of running companies. This Act states and discusses every single provision requires or may need to govern a company. It mentions what type of companies, their differences, constitution, management, members, capital, how shares should be issued, debentures, registration of charge and winding up of a company.
- **The Information Technology Act 2000:** This Act provide legal regulation for transactions carried out by the means of electronic data interchange and other means of electronic communication, commonly referred to as “electronic commerce” involves the use of alternatives to paper-based methods of communication and storage of information. This Act specifies legal recognition to all transactions done via electronic exchange of data, legal recognition for digital signature, keeping books of accounts in electronic form, facilitates electronic filing of documents, transfer of funds and storage of data etc.
- **Foreign Exchange Management Act (FEMA) 1999:** It replaced Foreign Exchange Regulation Act (FERA). It extends to the whole of India. The objective was to bring the main focus on conservation of foreign exchange rather than regulation of foreign exchange. Its also focuses on helping trade and payment in India, development and maintenance of foreign exchange market. It served to make transactions for external trade (Exports and Imports) easier. This Act specifies procedures, formalities and dealings of all foreign exchange transactions, who is the authorised person, what is the limit of foreign exchange permissible for transaction, is there any prior permission required etc.

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Sources

Indian business law is taken largely from the English mercantile law. Before the enactment of the various acts included in the mercantile law, the personal laws of the parties regulated the business transactions. The rights of Hindus were governed by the Hindu Law and that of Muslims by the Mohammedan Law. In case of persons other than Hindus and Muslims, the courts applied the principles of English Law. Further, where the laws of Hindus or Muslims were silent on any point, the principles of English Law were applied.

The important sources of Business Law are

1. **English Mercantile Law/English Law:** This is the most important source of Indian Mercantile Law. It constitutes the foundation on which the Indian Mercantile Law has been constituted. The sources of English Law are
 - ✓ **Law Merchant or A Lex Mercatoria:** It refers to the customs and usages governing commercial transactions of the merchants and traders trading in European ports. They developed first as a separate system of law and subsequently became the part of common law.
 - ✓ **Common Law:** This law is known as judge made law. It is based upon customs and practices handed down from generation to generation. It is oldest unwritten law. The English courts developed these over centuries.
 - ✓ **Equity:** Principles of equity based on the concept of justice, equity and conscience. Equity is unwritten law. It grew as a system of law supplementary to the common law and covered the deficiencies of the common law. Its rules were applied in cases where the rules of common law were considered harsh and oppressive.
 - ✓ **Statute Law:** It is one, which is laid down in the Acts of parliament. Hence, it acts as the most superior and powerful source of law. It overrides any rule of common law or equity.

2. **Statute Law:** A bill passed by the parliament and signed by the President becomes the "Statute" or an Act. Most of the Indian laws are embodied in various Acts passed by the Central and State Legislatures. The following are some of the statute law
 - ✓ **Indian Contract Act 1872:** It is oldest and most widely referred Act of the Indian Business Act. It was enacted on 1st September 1872. This Act was passed by the British and is based on the principles of the English Common Law. It contains agreements, which can be enforced through law of courts. It is applicable to all over India except in Jammu and Kashmir.
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- ✓ **The Companies Act 1956:** This Act is administered by the Government of India through the Ministry of Corporate Affairs and the office of the Register of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Register of Companies (ROC) handles incorporation of new companies and the administration of running companies. This Act states and discusses every single provision requires or may need to govern a company. It mentions what type of companies, their differences, constitution, management, members, capital, how shares should be issued, debentures, registration of charge and winding up of a company.

3. **Judicial Decisions:** Judicial decisions are also called as case laws. They referred to as precedents and are binding on all courts having jurisdiction lower to that of the court, which gave the judgement. The courts in deciding cases involving similar points of law also follow them, unless that there is a change in the circumstances of the case.

4. **Customs and usage:** A well-recognised custom or usage can even override the statute law. Most of the business customs and usage have been codified and given legal sanctions in India. Some of them have been ratified by the decisions of the competent court of law.

- ✓ **Based on principal of justice and public utility:** The natural conscience may well be accepted by the court as an authority to guide. Such of the custom should also obtain the sanction of law. The custom must be acknowledged and approved not by the power of the state but by the public opinion of the society at large.
- ✓ **Rational expectations:** If customs are not ideally just and reasonable, even if it can be shown that the rational conscience has astray in establishing them, it is accepted as they are.
- ✓ **Observance over a long period:** Customs are observed by a large number of people over long period to acquire the force of law.
- ✓ **Interest of a society:** Customs rests on the popular convictions that it is in the interest of the society. This conviction is so strong that it is not found desirable to go against it.

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Indian Contract Act, 1872

Introduction

The Act came into force from 1st day of September 1872 and applies to the whole of India. The Act aims at making the principles and practices relating to business transactions uniform throughout the country. The object is to introduce definiteness in business and other transactions and to ensure the realization of reasonable expectation of the parties, who enter into contract. This Act is neither excusive nor retrospective i.e., it neither deals with all the branches of contract nor affect the contracts which were entered, before 1st September 1872. A large number of other contracts are outside its scope, as there are special laws regulating them e.g., the transfer of property act deals with contracts relating to transfer of immovable property, the Negotiable Instruments Act regulates contracts relating to the cheques, bills of exchange and promissory notes.

The Indian Contract Act consists of following two parts

- **General principles:** These apply to all kinds of contracts irrespective of their nature (Section 1 to 75)
- **Special Contracts (Section 124 to 238):** Special contracts are
 - ❖ Indemnity
 - ❖ Guarantee
 - ❖ Bailment
 - ❖ Pledge and Agency

The law of contract creates jus in personam and not jus in rem.

Jus in personam: This means that right against a particular person or in respect of a person.

Ex: Anvinash owes Rs 50,000 to Babu. Babu has a right to recover this amount from Anvinash. This right of Babu to recover the amount from Anvinash is jus in personam.

Right in rem: This is right against a thing against the entire world. This is studied in Sale of Goods Act 1930. "Rem" means "against a thing".

Ex: Aishu is the owner of a house. Aishu has a right to quiet possession of the house against every member of the society.

Agreement: According to Section 2(e) of the Indian Contract Act, the term agreement is defined as "every promise and every set of promises, forming the consideration for each other".

- An agreement is the result of the proposal made by one party to the other party and the other party gives his acceptance thereto.
- Agreement gives birth to a contract. Therefore all contracts are agreements but all agreements cannot become contracts.
- Agreement which can create legal obligations between the parties can only be called contract.
- Legal obligation is otherwise called as "Vinculum Juris", which means legal bond.
- Agreement is an accepted proposal.
- Every agreement consists of an offer from one and its acceptance by the other.
- Agreement = Offer/Proposal + Acceptance

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Meaning of contract: Contract is an agreement enforceable by law. Contract is the combination of agreement and the enforceability of the agreement. The term contract is derived from "contractum" which means "drawn together".

Contract = Agreement + Enforceability *Sec A 10A*

Definition of contract: According to Section 2(h) of the Indian Contract Act, the term contract is defined as "an agreement enforceable by law is a contract". *Sec A-9*

Essential elements of a valid contract *Sec C 2A*

An agreement to be enforced by law must possess the essential elements of a valid contract as contained in Section 10 of Indian Contract Act. According to Section 10 "all agreements are contracts if they are made by the free consent of the parties, for a lawful consideration and with a lawful object and are not expressly declared to be void". The following essential elements must co-exist in order to make a valid contract:

1. **There must be offer and acceptance:** To constitute a contract there must be an agreement, and for an agreement, there must be a 'lawful offer' or 'valid offer' and a 'lawful acceptance' or 'valid acceptance' of the offer. In other words, in an agreement there must be an offer by one party and its acceptance by the other. The offer when accepted becomes a promise.

Ex: Anitha offered to sell to Bindhu hundred tons of coconut oil for Rs 10,000 and Bindhu accepts to pay Rs 10,000.

2. **Intent to create legal obligation:** Agreement must create legal obligation i.e., an obligation enforceable by law. If the parties do not intend to create legal obligation, there is no contract between them. An obligation which gives rise to a social obligation is not a contract.

Ex 1: Anu invited Brunda to a dinner, and Brunda accepted the dinner invitation. It is merely a social agreement and cannot be enforced in court of law.

Ex 2: Mr Balfour was employed in Ceylon. Mrs Balfour owing to ill health, had to stay in England and could not accompany him to Ceylon. Mr Balfour promised to send her 30 pound per month, while he was abroad. But Mr Balfour failed to pay the agreed amount. Mrs Balfour filed a suit against her husband for recovering the said amount. The court held that it was a mere domestic agreement and that the promise made by the husband in this case was not intended to create legal obligation and it was clear from the conduct of the parties. From the example one can decide as, "All contracts are agreements, but all agreements are not contracts. Only those agreements are contracts which give rise to legal obligation. [Case study: Balfour Vs Balfour (1919)].

3. **Free consent of the parties:** The consent of the parties must be genuine. The term consent means parties to a contract must agree upon the same thing in same sense i.e., there should be consensus-ad-idem. Consent is said not to be free when it is obtained from coercion, undue influence, fraud and misrepresentation. In such cases, the contract becomes voidable at the option of the party whose consent is not free.

Ex 1: X threatened to shoot Z's son unless Z signs a promissory note for Rs 50,000 in favour of X. Z signed the promissory note under the threat. In this case, the agreement is entered into under coercion and hence voidable at the option of Z.

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Ex 2: C at the point of pistol asks E to sell his car worth of Rs 1,00,000 for just Rs 20,000. E accepted to sell his car. Here the consent of E is not free. **The agreement therefore can be enforced at the option of E.**

4. **Competence of parties:** The parties must be capable of entering into a contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided,
- ❖ 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

Ex 1: Anurag, a minor borrowed Rs 1,000 from Barun and agreed to repay it within 2 months. **It is not a valid contract as Anurag is not competent to contract.**

5. **Lawful object:** The object of agreement should be lawful and legal. Two persons cannot enter into agreement to do a criminal act. Object of an agreement is unlawful if it
- ❖ is forbidden by law
 - ❖ is of such nature that, if permitted, would defect the provisions of any law
 - ❖ is fraudulent
 - ❖ involves or implies, injury to person or property of another
 - ❖ court regards it as immoral, or opposed to public policy

Ex 1: Ram, Ravi and Raju entered into agreement for the division of gains, among them, which is to be acquired by them by **fraud**. In this case, the agreement is not valid as its object is unlawful.

Ex 2: If Tarun hires a house for running gambling. The object of the agreement is said to be unlawful because **gambling is prohibited by law.**

6. **Agreement must be certain:** In order to give rise to a valid contract the terms of the agreement must not be vague or uncertain. The terms of the agreement must be precise and certain.

Ex 1: Zaara agreed to sell to Yashu green bajaj scooter for Rs 5,000 or Rs 7,000. **There is nothing to show which of the price is to be paid by Yashu.** In this case, the agreement is not valid as it is uncertain.

Ex 2: Ramya agreed to sell to Divya 100 liters of oil for Rs 10,000. **There is nothing to show which oil Ramya agreed to sell.** In this case, the agreement is not valid as it is uncertain.

7. **Lawful consideration:** Consideration means getting **something in return (Quid Pro Quo)**. Every agreement must be supported by consideration. An agreement without consideration with certain exceptions cannot create valid contract. If the consideration is not lawful, **then no valid contract comes into existence.** Consideration is unlawful if it
- ❖ is forbidden by law
 - ❖ is of such nature that, if permitted, would defect the provisions of any law
 - ❖ is fraudulent
 - ❖ involves or implies, injury to person or property of another
 - ❖ court regards it as immoral, or opposed to public policy

Ex 1: Arnav promised to Raheem to obtain an employment in public service and Raheem promises Rs 50,000 to Arnav. **The agreement is void** as the consideration is unlawful.

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Ex 2: A agrees to sell his books to B for Rs 100, B's promise to pay Rs 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay Rs 100.

8. **Possibility of performance:** The performance of an agreement must be possible. An agreement to do an impossible act is not valid and cannot be enforced.

Ex 1: Aadhi agreed with Kishore to discover a treasure by magic. In consideration, Kishore agreed to pay Rs 5,000 to Aadhi. It is not valid agreement as its performance is impossible.

Ex 2: Kushi agreed with Sandhya to bring her dead brother alive. In consideration, Sandhya agreed to pay Rs 1,00,000 to Kushi. It is not valid agreement as its performance is impossible.

9. **The agreement must not be expressly declared to be void:** The agreement must not be the one, which the law declares to be either illegal or void. A void agreement is one, which is without any legal effects. Illegal agreement is an agreement expressly or impliedly prohibited by law. If certain agreement is expressly declared to be void by the law of the country, then such agreement, if entered into, shall not be enforceable by the court of law.

Ex: Agreements in restraint of trade, marriage, etc., are void agreements. Those agreements prohibited by Indian Penal Code e.g. threats to commit murder or publishing defamatory statements or agreements which are opposed to public policy is illegal in nature.

10. **Compliance of necessary legal formalities:** According to Indian Contract Act, a contract may be oral or writing. But in certain special cases it lays down that the agreement, to be valid, must be in writing and registered, it must comply with the necessary formalities as to writing, attestation and registration otherwise unenforceable.

Ex 1: An agreement to pay a time barred debt must be in writing.

Ex 2: Where it requires an agreement to make a gift for natural love and affection, there must be in writing and registration, to be valid.

Types of contract

On the basis of enforceability

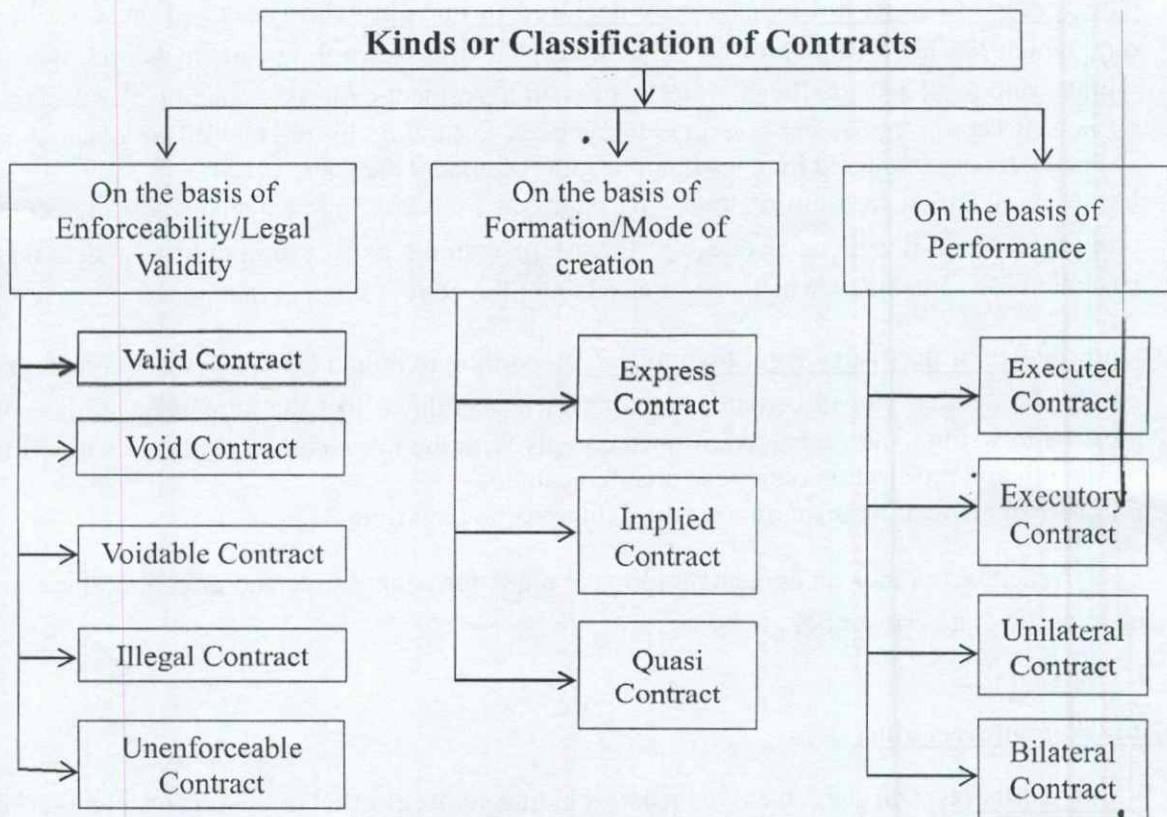
- **Valid contracts:** An agreement which is binding and enforceable is a valid contract. An agreement becomes a valid contract when all the essentials as laid down in Section 10 of Indian Contract Act are fulfilled. A valid contract is that which is enforceable by law at the option of both the parties.
Ex: Akbar offered to sell his refrigerator at Rs 25,000 to Birbal. Birbal accepts to pay Rs 25,000 to Akbar. This will be a valid contract.
- **Void contracts:** Section 2(j) defines a void contract as "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In other words a contract which is not enforceable by law is called void contract. It is a contract without any legal effect. A contract will be valid at the time when it is made but it may become void due to certain reasons or unexpected situations or happening, such contract is known as **void contracts or void expost facto (subsequently)**. A contract may be **void-ab-initio or void agreements (void**

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from the beginning). For example, contract with unlawful consideration or object or contract by or with minor etc.

Ex 1: Anuj contracts with Chandan for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory and everything was destroyed. Here the contract becomes void.

Ex 2: Ram lends Rs 1,00,000 to Shyam, a minor for the mortgage of his house. The mortgage agreement is void ab initio due to minority of Shyam.



- Voidable contract:** *Sec A12* As per Section 2(i), "an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract". A contract can be cancelled or repudiated or avoided by one of the parties, it is a voidable contract. Agreements caused by coercion, undue influence, fraud and misrepresentation are voidable. The party whose consent is so obtained becomes the aggrieved party. Such aggrieved party has the option either to affirm or rescind the contract. The other party does not have such option or right.

Ex 1: Mithun agreed to sell his car to Nithin for Rs 50,000 on the threat of Nithin. The consent of Mithun was obtained by use of force. The contract is voidable at the option of Mithun and he may put end to this contract if he so decides.

Ex 2: Prabeesh threatened to kill Sudash if Sudash did not execute a bond of Rs 5,000 in Prabeesh's favour. Sudash executed a bond for Rs 5,000 in Prabeesh's favour. This bond will be voidable as the consent to it is obtained by threatening to kill Sudash, which is forbidden by the Indian Penal Code.

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- **Illegal contracts:** A contract which is either prohibited by law or otherwise against the policy of law is an illegal contract. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void but all void agreements or contracts are not necessarily illegal.

Ex 1: Rithika agrees with Shakthi to purchase brown sugar. This is an illegal contract.

Ex 2: Contract to commit crime. Contract that is immoral or opposed to public policy are illegal in nature.

- **Unenforceable contract:** Where a contract is good in substance, but because of some technical defects, it cannot be enforced by law, it is called as Unenforceable contract. These contracts are neither void nor voidable. Such contracts are good in substance. But due to non-fulfilment of prescribed legal formalities these cannot be claimed in the court. As soon the technical reason is looked into and rectified such contracts may be allowed to be enforced.

Ex 1: A promise to pay a time barred debt is enforceable when the promise is in writing and signed by the promisor. If there is absence of writing, one or both the parties cannot sue upon it, it is described as an unenforceable contract.

Ex 2: An insurance policy, without proper stamp duty, cannot be produced as evidence of a contract in the court.

- **Ex 3:** An oral agreement for arbitration is unenforceable because the law requires that an arbitration agreement must be in writing. If the oral agreement for arbitration is reduced in writing, it will become enforceable.

On the basis of the formation of contract

- **Express contract:** ^{Sec-A-3*} A contract which is made by words either spoken or written is said to be an express contract. It is formed by making offer and acceptance in words either spoken or written.

Ex 1: Dhanush tells Shiva on telephone that he offers to sell his house for Rs 2,00,000 and Shiva in reply informs Dhanush that he accepts the offer. This is an express contract made orally.

Ex 2: Sangeetha writes a letter to Shraddha, "I offer to sell my car for Rs 1,00,000 to you". Shraddha send a letter to Sangeetha, "I am ready to buy the car for Rs 1,00,000". It is an express contract made in writing.

- **Implied contract:** Where the agreement is made otherwise than words spoken or written, it is implied contract. Where the offer and acceptance are made not by use of words but by the conduct, the agreement is an implied contract. ^{Sec A 8.}

Ex 1: If a person enters a bus, there is an implied promise that he will pay the bus fair.

Ex 2: A went to a restaurant and took a cup of tea. In this case, there is an implied contract that he will pay for the cup of tea.

- **Quasi/constructive contract:** ^{Sec A 9*} A quasi contract is not an actual contract but it resembles to a contract. ^{Sec PB} It is contract in which there is no intension on either side to make a contracts, but the

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law imposes a contract. In such a case the rights and obligations arise not by any agreement between the parties but by the operation of law.

Ex 1: Obligation of finder of lost goods to return them to the true owner.

Ex 2: Liability of person whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. This is said to be quasi contract.

- **Tacit contract:** It is said to be tacit when it has to be inferred from the conduct of the parties.
Exs: Obtaining cash through Automated Teller Machine, sale by fall of hammer at an auction sale.

On the basis of the performance of contract

- **Executed contract:** When both the parties to the contract have fulfilled their respective obligations, the contract is said to be executed. It is referred as a complete contract. In other words, an executed contract is one where nothing remains to be done by the parties.

Ex 1: Anand agreed to sell his colour TV set to Bhoomika for Rs 5,000. Bhoomika paid the price and Anand delivered the television set. It is an executed contract as both the parties have performed their obligations.

Ex 2: Arun sells car to Chandana for Rs 3,00,000. Chandana pays the price and takes the delivery of car. It is an executed contract.

Ex 3: Pradeep makes an agreement for buying one hundred cotton bales from Thiagu at Rs 5,000 per bale. Thiagu delivers these cotton bales to Pradeep and in return of it Pradeep makes payment to Thiagu. This contract becomes executed one.

- **Executory contract:** Executory contract is that where under the terms of a contract something remains to be done by the parties. In other words, where one or both the parties to the contract have completed the contract to some extent and some more is remaining.

Ex 1: Anish agrees to make painting for Diya for Rs 10,000. Mr Anish has yet to make a painting and Diya has not made any payment. So, both the parties are yet to perform their obligations. Suppose if Anish has made the painting in such cases, it is executed on Anish's part and executor on Diya's part.

Ex 2: Ganga agrees to take tuition of Harish, a pre-engineering student, from the next month and Harish in consideration promises to pay Ganga Rs 1,000 per month, the contract is executory because it is yet to be carried out.

Thus executory contract may be

- ❖ **Unilateral contracts:** A unilateral contract is a **one-sided contract** where one party has performed his obligation but the obligation on the other party is still outstanding. The unilateral contracts are also known as **contracts with executed consideration**.

Ex 1: Manish advertises payment of a reward of Rs 500 to anyone who finds his missing boy and brings him. As soon as Abhinav traces the boy, Abhinav has

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performed his share of obligation and it remains for Manish to pay the amount of reward to Abhinav.

Ex 2: Abhinesh promised to pay Rs 100 to anyone who finds his lost dog. Bharath found the dog and returned it to Abhinesh. It is a contract which comes into existence when the dog is found. Now, only Abhinesh has to perform his obligation by paying Rs 100 to Bharath, because Bharath had already performed his part of obligation by finding the dog.

Ex 3: Anish has lost his documents which are very valuable. He offers by advertisement a reward of Rs 1,00,000 to any person, who will find and bring the documents very safely and hand over to him. Drishya who comes across the advertisement, searches and finds the documents and hand it over to Anish. As soon as Drishya does this act, the contract comes into existence. Now only, Anish has to perform his obligation by paying Rs 1,00,000 to Drishya, as Drishya had already performed her part of obligation by finding the documents.

- ❖ **Bilateral contracts:** A bilateral contract is **two-sided contract** where the obligations or promise in a contract is outstanding on the part of both the parties. In such contracts promise on one side is exchanged for promise on other. The bilateral contracts are also known as **contracts with executory consideration**.

Ex 1: Santhosh promise to sell his car to Nisha after 20 days and Nisha promises to pay the price on the delivery of car. The contract is bilateral as obligations of both the parties are outstanding at the time of formation of contract.

Ex 2: Ranbir promises to sell his plot to Shahid for Rs 1 lakh cash down, but Shahid pays only 25,000 as earnest money and promises to pay the balance on next Sunday. On the other hand Ranbir promises to give the possession of plot to Shahid and execute a sale deed on the receipt of the whole amount. The contract between Ranbir and Shahid is executory because there remains something to be done on both sides.

Classification of contracts in English Law

- **Formal contracts:** Formal contracts validity depends upon their form and they are valid even without consideration. There are two types
 - ✓ **Contract under seal:** These types of contracts are in writing and signed by the parties. The following contracts should be under seal, otherwise they are not valid
 - ❖ Contracts without consideration
 - ❖ Lease of land for period of more than three years
 - ❖ Contracts by corporations
 - ❖ Contracts with British shipping
 - ✓ **Contracts of Records:** This is included in the court judgements and recognisances. Obligations in which cases arise out of court judgements and not under contracts.
- **Simple contracts:** All contracts other than formal ones are called simple contracts or parol contracts. They may be created orally, in writing and which may be implied by conduct.

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Difference between agreement and contract

Basis of Difference	Agreement,	Contract
Constituent	Offer and agreement constitute an agreement.	Agreement and its enforceability constitute a contract.
Creation of legal obligation	An agreement may or may not create a legal obligation.	A contract necessarily creates a legal obligation
One in other	Every agreement may not be a contract. All agreements are not agreements.	All contracts are agreements
Binding	Agreement is not a concluded or a binding contract.	Contract is concluded and binding on the concerned parties.
Enforceability	The enforceability depends on the nature of the agreement.	It is enforceable under the provisions of the law of the country.
Scope	The scope of an agreement is more comprehensive than contracts, as agreements can be social, legal, domestic and unlawful agreements.	The scope is limited as only legal agreements become contracts that are enforceable.
Nature	Agreements may be lawful and unlawful.	Only lawful agreements become contracts that is enforceable in the court of law.

Difference between Void contract and Voidable contract

Basis of difference	Void contract	Voidable contract
Definition	Contract ceases to be enforceable by law.	Contract is enforceable at the option of the aggrieved party.
Nature	Contract becomes void either because of sudden and unexpected events or of law changes, before the performance becomes due.	Contract becomes voidable when it is caused by coercion, undue influence, fraud and misinterpretation.
Rights	Does not provide any legal remedy for the parties to the contract.	The aggrieved gets a right to rescind the contract and to declare it void otherwise it remains valid.

Difference between Void agreement and Illegal agreement

Basis of difference	Void agreement	Illegal agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden by law.	Are forbidden by law.
Punishment	Parties are not liable for any punishment under the law.	Parties to the illegal agreements are liable for punishments.
Collateral	It's not necessary that agreements	Agreements collateral to the illegal

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agreement	collateral to the void agreements may be void or may also be valid.	agreements are always void.
Restitution	The money advanced or benefit obtained has to be restored to the other party.	Any money advanced or benefit obtained cannot be claimed back.

Quasi contract

In the case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit of another even in the absence of a contract. In certain circumstances the law presumes the existence of contract even though no agreement was made between the parties. Such contracts are known as quasi contracts. Quasi contracts are based on principle of equity, justice and good conscience. A quasi or constructive contracts rests upon the maxims, "No man must grow rich out of another person loss". These relations are called as quasi contractual obligations. In India, it is called as 'certain relation resembling those created by contract'.

The salient features, of quasi contractual right, are as follows:

1. Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
2. Secondly, it is right which is available not against the entire world, but against a particular person or person only.

Circumstances of quasi contracts

Under the provisions of the Indian Contract Act, the relationship of quasi contract is deemed to have come to exist in five different circumstances. But we will notice that in none of these cases there comes into existence any contract between the parties in the real sense. Due to peculiar circumstances in which they are placed, the law imposes in each of these cases the contractual liability.

- **Claim for necessities supplied to persons incapable of contracting (Section 68):** If necessities are supplied to a person who is incapable of contracting, e.g., minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person.
Ex: Abhinaya supplies to Shanmugam, a lunatic, necessities suited to Shanmugam's status in life, Abhinaya would be entitled to recover their price from Shanmugam's property. She would also be able to recover the price for necessities supplied by her to Shanmugam's wife or minor child since Shanmugam is legally bound to support them. However, if Shanmugam has no property, nothing would be realizable. However, note that in such circumstances, the price only of necessities and not of article of luxury, can be recovered.
- **Right to recover the money paid for another person (Section 68):** A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
Ex: Ashwin holds land in Bengal, on a lease granted by Pugal, the Zamindar. The revenue payable by Pugal to the Government being in arrears his land is advertised for sale by the Government. Under the revenue law the consequences of such sale will be annulment of Ashwin's lease. Ashwin to prevent the sale and the consequent annulment of his own lease,

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pays to the Government the sum due on behalf of Pugal. Pugal is bound to make the goods to Ashwin the amounts so paid.

- **Obligation of a person enjoying the benefits of non-gratuitous act (Section 70):** Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”.

For a suit to succeed, the plaintiff must prove that

- ✓ He had done the act or had delivered the thing lawfully
- ✓ He did not do so gratuitously
- ✓ The other person enjoyed the benefit

Ex: Anitha, a tradesman, leaves the goods at Sundari’s house by mistake. Sundari treats the goods as her own. She is bound to pay Anitha for them.

- **Responsibility of a finder of goods (Section 71):** Sometimes, a person finds certain goods belonging to some other person. In such cases, the goods do not become the property of the finder. The law imposes certain obligations on the finder of goods. Under the law, the responsibility of finder of goods is the same as that of a bailee. This provision is contained in section 71 of the Indian Contract Act, which states that “**A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as a bailee**”

A ‘Bailee’ is a person to whom goods have been delivered for some specific purpose upon a condition that on the fulfillment of the purpose, the goods shall be returned to the actual owner. The bailee should keep the goods with proper care. Thus, it becomes the duty of the finder to keep the goods with care and take some steps to trace the true owner and return the goods to him. He is bound to take as much care of the goods as a man of ordinary prudence would take for his own goods under the similar circumstances. He also gets some rights in respect of the goods in certain circumstances, e.g., when the true owner cannot be found, he can sell the goods which are of perishing nature.

Ex: Pavan, a customer in Ambani’s shop, puts down a broach with coats and forgets to pick it up. One of Ambani’s assistant found it and it was placed in a drawer over the weekend. On Monday it was discovered as missing. Ambani was liable to Pavan in view of absence of that ordinary care which in the circumstances, a prudent man would have taken.

- **Liability for money paid or thing delivered by mistake or under coercion (Section 72):** Sometimes, a certain amount of money is paid or something is delivered to a person by mistake or under coercion. In such cases, the person receiving the money or goods must repay or return the same to the person who has paid or delivered by a mistake or under coercion. This provision is contained in section 72 of the Indian Contract Act, which states that “**A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it**”

Ex 1: Renuka and Pushpa jointly owed Rs 1,00,000 to Mamtha. Renuka alone paid the amount to Mamtha. And Pushpa, not knowing this fact, also paid Rs 1,00,000 to Mamtha. In this case, Mamtha is bound to repay the amount to Pushpa who has paid it by mistake.

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Ex 2: Karthika paid Rs 10,000 to Nagarjun by mistake which was in fact due to Amala. In this case, Nagarjun must repay the money to Amala as it had been paid under a bonafide mistake.

Ex 3: Chaitanya supplied 10 kgs of wheat to Samantha by mistake. In fact, the goods were to be supplied to Mohan. However, Samantha used the goods as her own. In this case, Chaitanya is entitled to recover the compensation from Samantha. And the compensation shall be determined keeping in view the market rates of the wheat at the date of delivery of wheat to Samantha.

Offer

Meaning of offer: An offer is the proposal by one party to another to enter into a legally binding agreement with him. An offer is a sign of willingness to agree on certain terms from one person to another.

Definition of offer: It is defined under Section 2(a) of the Indian Contract Act, 1872 as "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".

- The person making the offer is called offeror, promisor and proposer.
- The person to whom the proposal is made is called offeree, proposee, promisee or acceptor.

Essentials of a valid offer

1. **Offer must be capable of creating legal relations:** If the offer does not intend to give rise to legal consequences and creating legal obligations or creating legal relations, it is not considered as a valid offer in the eyes of law. An offer must be such that when accepted it will result in a valid contract. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

Ex 1: Appu invited Pappu to a dinner and Pappu accepted the invitation. It is a mere invitation. And Appu will not be liable if he fails to provide dinner to Pappu.

Ex 2: Mr Balfour was employed in Ceylon. Mrs Balfour owing to ill health, had to stay in England and could not accompany him to Ceylon. Mr Balfour promised to send her 30 pound per month, while he was abroad. But Mr Balfour failed to pay the agreed amount. Mrs Balfour filed a suit against her husband for recovering the said amount. The court held that it was a mere domestic agreement and that the promise made by the husband in this case was not intended to create legal obligation and it was clear from the conduct of the parties. Only those agreements are contracts which give rise to legal obligation. (Case study: Balfour Vs Balfour (1919)).

2. **Offer must be certain, definite and not vague:** If the contents of the offer are indefinite, uncertain and vague, it is not a valid offer and no contract comes into existence. It is essential that the terms of the offer must be clear and certain, so that the rights and obligations can be exactly fixed.

Ex 1: Anika offers to sell Shivaay 100 quintals of oil. But there is nothing to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.

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Ex 2: Aadhi offered to take the house of Pankudi for rent for 3 years at the rate of 85 pounds per annum. Aadhi added a condition that the house should be thoroughly repaired and drawing room is to be decorated according to the present style. Pankudi did so. But Mr. Aadhi did not accept the way in which the drawing room was decorated and refused to take the house rent. Pankudi files a suit against Mr. Aadhi. It was held that though putting the house into thorough repairs is a definite term, decorating the drawing according to the present style is not a definite term. It is a vague term because it means one term to Aadhi and another to Pankudi. So, the court held that the offer made by Aadhi is not a valid offer.

3. **Offer must be communicated to the offeree:** An offer to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated, there can be no acceptance by it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not create any right on the acceptor. In other words, the person who does not have the knowledge of offer cannot accept it.

Ex 1: Dutt's nephew ran away from the house. So, he sent his servant Lalmanshukla, to search the boy. Later he announced a cash reward of Rs 501 for tracing the boy. Shukla traced the boy in ignorance of the award announced by Mr. Dutt, subsequently when he came to know about the offer, he claimed it. His claim was rejected by Mr. Dutt. Hence, Shukla filed a suit against Dutt. It was held that Mr. Shukla was not entitled to receive the amount as he traced the boy without any knowledge about the offer and reward. [(Case study: Lalmam Shukla Vs Gauri Dutt (1913)].

Ex 2: Parvathi, without knowing that a reward has been offered for the arrest of a particular criminal, catches the criminal and gives the information to the superintendent of police. Parvathi cannot recover the reward as she cannot be said to have accepted the offer when she was not at all aware of it.

4. **Offer may be express or implied:** An offer may be made either by words or by conduct. An offer which is expressed by words, spoken or written is called an express offer and the one which is inferred from the conduct of a person is called an implied offer.

Ex 1: A boy starts cleaning the car as it stops on the traffic signal without being asked to do so, in such circumstances any reasonable man could guess that he expects to be paid for this, here boy makes an implied offer.

Ex 2: Manu says to Naveen that he is willing to sell his motorcycle to him for Rs 20,000. This is an express offer.

5. **Offer must be distinguished from an invitation to offer:** An invitation to offer means the person inviting the other party to make an offer. It is only circulation of offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

Ex 1: The price list of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.

Exs: The prospectus issued by companies, the display of goods in a shop, the tender notices, a catalogue, a quotation, an action of sale etc are considered as invitation to offer as per law.

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6. **Offer may be specific or general:** Offer is said to be 'Specific' when it is made to a definite person or persons. Such an offer can be accepted only by the person or persons to whom it is made. A 'General offer', on the other hand is the one which is made to the world at large or public in general and may be accepted by any person who fulfills the requisite conditions.

Ex 1: The Carbohc Smoke Ball Co advertised in several newspapers that a reward of 100 pounds would be given to any person who contract influenza after using the smoke balls (which is medicine in the form of capsules, which is the company's product) for a certain period according to the printed direction. One, Mrs Carlill used the smoke balls according to the directions of the company, but contracted influenza; then, Mrs Carlill demanded the reward, but the company refused to pay the reward. She then filed a suit in the court of law. Then the court held that **she could recover reward** offered on the ground that the company's offer through public advertisement amounted to a general offer, and **a general offer may be accepted by any member of the public**. In return the company filed the petition, pleading that Mrs Carlill had not communicated her intension to accept, then the judge refusing the petition, pointed that in cases like this, communication is not necessary, since, her **doing the required act amounted to an acceptance of the offer**. [Case study: Calill Vs Carbohc Smoke Ball Co (1983)].

Ex 2: Viren makes an offer to Jeevika to sell his bicycle for Rs 25,000. There is a specific offer and only Jeevika can accept it.

7. **An offer may be conditional:** An offer can be made subject to any terms and conditions by the offeror. The offeree will have to accept all the terms of the offer, otherwise contract will be treated as invalid.
8. **Offer must be made with a view to obtain the assent of the other party:** The main purpose of an offer is to get the assent of the other party. Just expressing a mere intention or making an enquiry is not sufficient to constitute an offer.
9. **Offer should not contain a term of non-compliance:** The offer should not contain a term of non-compliance of which would amount to acceptance. Thus a man cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.
- Ex: Nivetha proposes Thomas to purchase his android mobile for Rs 500 and if no reply by him in a week, it shall be assumed that Thomas had accepted the proposal. This is not a contract.

Types of offer *see B 7A*

1. **General offer:** It is an offer made to the public in general and hence anyone can accept and do the desired act. Section 8 of the Indian Contract Act, points out that performance of the conditions of a proposal is an acceptance of the proposal.

Ex 1: The Carbohc Smoke Ball Co advertised in several newspapers that a reward of 100 pounds would be given to any person who contract influenza after using the smoke balls (which is medicine in the form of capsules, which is the company's product) for a certain period according to the printed direction. One, Mrs Carlill used the smoke balls according to the directions of the company, but contracted influenza; then, Mrs Carlill demanded the

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Ex 2: An advertisement given in the newspaper announcing a reward for tracing out a missing person. It can be accepted by any person, who trace out the missing person and is entitled to claim the reward.

2. Specific offer: When offer is made to a definite person, it is known as specific offer and such offer can be accepted only by that specified person.

Ex 1: Virat offers to sell his car to Manvi at Rs 5,00,000. This is a specific offer. It can be accepted only Manvi.

Ex 2: Abhi offer to sell his house for Rs 25,00,000 to Bhaskar. This offer amounts to a specific offer. None except Bhaskar can accept it.

3. Express offer: An express offer is one which may be made either by words spoken or written.

Ex 1: Inder offered to sell his car by a letter to Rukmini for Rs 1,000. This is an express offer.

Ex 2: Illesh offered to sell his bicycle orally to Rashi for Rs 1,000. This is an express offer.

4. Implied offer: An implied offer is one which may be gathered from the conduct of the parties or from the circumstances of the case.

Ex 1: Niara goes to doctor for treatment. Her conduct implies an offer. If treatment is given by the doctor, Naira has to pay the charges. This is an implied offer.

Ex 2: A boy starts cleaning the car as it stops on the traffic signal without being asked to do so, in such circumstances any reasonable mam could guess that he expects to be paid for this, here boy makes an implied offer.

5. Counter offer: When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. In other words a **counter offer is the rejection of original offer** and making a new offer. A person who makes a counter offer and subsequently changes his mind and wishes to accept the original offer cannot do so as the first offer lapses and he cannot treat it as still open. Ex: Akshara offers to sell her plot to Nethik for Rs 10 lakhs. Nethik agrees to buy it for 8 lakhs. It amounts to counter offer. It may result in the termination of the offer of Akshara. And if later on Nethik agrees to buy the plot for Rs 10 lakhs, Akshara may refuse.

6. Cross offer: When two parties make identical offer to each other in ignorance of each offer, such offers are known as cross offer. There is no binding contract in such a case, as one's offer cannot be constructed as acceptance by the other.

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Ex 1: Tamil, by letter, offered to sell his motorcycle to Tulsi for Rs 10,000. Without knowing about Tamil's offer, Tulsi also, by a letter, offered to buy Tamil's same motorcycle for Rs 10,000. Both the offers crossed each other in post. In this case, the offers are cross offers and thus no binding contract will come into existence.

Ex 2: Archana wrote to Selvam on 28th Dec 2020, offering to sell 1,000 tons of irons at Rs 7,000 per ton. On the same day Selvam wrote to Archana offering to buy 1,000 tons of iron at Rs 7,000 per ton. The two letters crossed each other in post and neither of them knew anything about the offer to the other. Selvam contended that there was a good contract. It was held that Selvam was not bound, as a result of the simultaneous offers, each being made in ignorance of other.

7. **Standing, open or continuing offer:** An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continuing offer.

Ex: Tender for supply of goods is a kind of standing offer.

Communication of offer

The communication of an offer is complete when it comes to the knowledge of the person to whom it is made. An offer may be communicated either by words of spoken or written or it may be inferred from the conduct of the parties.

Ex 1: Tenali makes a proposal to Ram to sell his house for 2 lakhs. The letter was posted on 10th March. This letter reaches Ram on 12th March. **The offer is said to have communicated on 12th March, when Ram receives the letter.**

Ex 2: Surya offers, by letter to sell his house to Jyothika at Rs 75,00,000. The letter is posted on 25th December. It reaches Jyothika on 27th December. **Here, the communication of the offer is complete on 27th December, when Jyothika receives the letter.**

Revocation of offer *sec 34*

An offer can be revoked at any time before the communication of acceptance is complete as against the proposer. It means that an offer may be revoked at any time before the letter of acceptance is posted.

Ex 1: Ajay offers, by letter, to sell his house to Varun. Varun accepts the offer by a letter. **Ajay may revoke his offer at any time before Varun posts his letter of acceptance and not afterwards.**

Ex 2: Rajini offered, by letter, to sell his car to Kamal for Rs 1,00,000. The letter was posted on 15th March which reached Kamal on 17th March. Kamal accepted the offer and posted his letter of acceptance on 20th March. **Here, Rajini become bound by the offer on 20th March. In this case, the offer could be revoked by Rajini at any time before 20th March.**

Communication of revocation of offer

The communication of revocation of offer is complete

- **For the person who makes revocation**, when it is put into course of transmission to the person to whom it is made.
- **For the person to whom the revocation is made**, when it comes to his knowledge

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Ex: Meera offered, by letter, to sell her car to Simran for Rs 95,000. The letter was posted on 10th Jan which reached Simran on 13th Jan. Meera revoked her offer by telegram on 14th Jan which reached Simran on 15th Jan. **For Meera, the communication of revocation of offer is complete when the telegram is dispatched i.e., 14th Jan. But for Simran, it is complete when Simran receives the telegram i.e., on 15th Jan.**

Modes of revocation: Revocation means cancellation:

Revocation of offer here is withdrawal of offer by the offeror. It can be revoked or cancelled at any time before it is accepted by the offeree. A proposal may be revoked by any of the following ways

- **Revocation by communication of notice:** An offer may be revoked by the offeror by giving notice of revocation to the other party before it is accepted. Notice of revocation will take effect only when it comes to the knowledge of the offeree. Communication of revocation of offer should reach the offeree before the acceptance is communicated.
- **Revocation by lapse of time:** Where time is fixed for the acceptance of the offer, and it is not accepted within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.
- **Revocation by non-fulfillment of conditions:** Where the offer requires that some conditions must be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition. That is an offer must be accepted according to the mode prescribed. In absence of the mode prescribed, then it should be on a reasonable or usual mode.
- **Revocation by death or insanity of the offeror:** When offeror dies or becomes insane before it is accepted, then the offer gets cancelled.
- **Revocation by rejection:** When the offeree disagrees or rejects the offer made by the offeror, the offer is cancelled or revoked. Rejection of an offer is effective only when it comes to the knowledge of the offeror.
- **Revocation by counter offer:** Where a counter offer is made by the offeree, then the original offer automatically comes to an end, as the counter offer amounts to rejection of the original offer.
- **Revocation by subsequent illegality or change in law:** An offer lapses, if it becomes illegal after it is made and before it is accepted. Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

Ex: Where an offer is made to sell 1000 bags of rice for Rs 25,000 and before it is accepted, a law prohibiting the sale of rice by the private individuals is enacted. Hence the offer comes to an end.

Acceptance

Meaning: 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.

Definition: According to Section 2(b), of the Indian Contract Act, 1872 “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise”.

Rules regarding Acceptance

- **Acceptance must be communicated:** Acceptance must be communicated to the person who made the offer. Until the acceptance is communicated, it does not create any legal obligations.
Ex: Ankith offers to buy Rajesh’s plot for Rs 10 lakhs. Rajesh discusses the proposal with Chirag, his own lawyer, and agrees to sell the plot for Rs 10 lakhs. But Rajesh does not communicate the acceptance to Ankith. In this case, no contract comes into existence between Ankith and Rajesh.
- **Acceptance must be absolute and unqualified:** Acceptance is valid when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribed in the manner in which it is to be accepted. An acceptance with variation is no acceptance. It is simply a counter offer. Counter offer puts an end to the original offer, and it cannot be revived by the subsequent acceptance.
Ex 1: Illesh enquires from Antony, “will you purchase my dog for Rs 100”? And Antony replies, “I shall purchase your dog for Rs 100 provided you purchase my cat for Rs 60”. Antony in such a case would not be said to have accepted the proposal of Illesh.
Ex 2: Manoj offered to sell a piece of land to Nuthan at Rs 1,00,000. Nuthan accepted and enclosed Rs 80,000 with a promise to pay the balance by monthly installments of Rs 10,000. It was held that there is no contract between Manoj and Nuthan, as the acceptance was not absolute.
- **Acceptance must be in the mode prescribed:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. Acceptance given in any other mode than the prescribed one, then the offeror may reject the acceptance. If no mode is specified the acceptance may be given in any usual mode.
Ex: Krishna offered to sell his house to Nithish for Rs 5,00,000 and informed him to send his acceptance in writing. But Nithish sent an oral message. There is no acceptance of the offer because the acceptance is not according to the prescribed mode.
- **Acceptance should be given within the time prescribed or within a reasonable time:** Acceptance must be given within the specified time limit, if no time is specified, acceptance must be given within the reasonable time and before the offer lapses. The term “Reasonable time” depends upon the facts and circumstances of each case.
Ex: Manjunath applied for share in a hotel company in the month of June. The company allotted shares in the month of November. Manjunath rejected the delivery of the shares on the ground that the company has taken unreasonable time in allotting the shares. Company filed a suit against Manjunath. It was held that Manjunath was not bound to take the delivery of shares because the reasonable period during which the offer could be accepted had lapsed.

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- **Acceptor must be aware of the offer:** The acceptor must be aware of the offer before giving consent to it. If the acceptor without knowing the proposal conveys his acceptance, it is not a valid acceptance. The acceptance given in ignorance of the offer is not valid.
Ex: Dutt's nephew ran away from the house. So, he sent his servant Lalman Shukla, to search the boy. Later he announced a cash reward of Rs 501 for tracing the boy. Shukla traced the boy in ignorance of the award announced by Mr. Dutt, subsequently when he came to know about the offer, he claimed it. His claim was rejected by Mr. Dutt. Hence, Shukla filed a suit against Dutt. It was held that Mr. Shukla was not entitled to receive the amount as he traced the boy without any knowledge about the offer and reward. **(Case study: Lalman Shukla Vs Gauri Dutt)**
- **Mere silence is not accepted:** 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.
Ex 1: Alok expresses to Bindesh that if "I don't hear from you by next Monday, I shall presume that you have accepted to the proposal". Silence is not acceptance and hence there is no contract.
Ex 2: Tanvik proposes Avyukth to purchase his android mobile for Rs 500 and if no reply by him in a week, it shall be assumed that Avyukth had accepted the proposal. This is not a contract.
- **Acceptance by conduct:** When the acceptance is given by the conduct, it is implied acceptance.
Ex 1: When a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the tradesman subsequently by sending the goods. It is a case of acceptance by conduct.
Ex 2: Ananth subscribed for the weekly magazine for one year. Even after the expiry of his subscription, the magazine company continued to send him magazine for five years. And also Ananth continued to use the magazine but denied to pay the bills sent to him. Ananth would be liable to pay as his continued use of the magazine was his acceptance of the offer.
Ex 3: A widow promised to settle some immovable property to her niece if the niece stayed with her in her residence. Thus, niece stayed with her in her residence till her death. It was held that the niece was entitled to the property.
- **Acceptance must be made before the offer lapses or revoked:** Acceptance must be given when the offer is in force. Due to the reasons offer may be lapsed or revoked, but the acceptance is to be before the lapse or revoke of an offer.

Communication of acceptance

Communication of acceptance is complete

- **As against the proposer,** when it is put in course of transmission to him (as soon as the letter of acceptance is posted by the offeree).
- **As against the acceptor,** when it comes to the knowledge of the offeror.

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Ex 1: Anusha wrote a letter on 2nd Jan, offering to sell his car to Bhavya for Rs 1,00,000. This letter of offer reached Bhavya on 5th Jan. Bhavya wrote a letter of acceptance on 8th Jan, posted on 10th Jan and it finally reached Anusha on 14th Jan. So, **the communication of acceptance is complete against the offeree (Bhavya) on 14th Jan and the communication of acceptance is complete against the offeror (Anusha) on 10th Jan.**

Ex 2: Vishal offers to sell his house to Suhas for Rs 15 lakhs by a letter dated 25th Dec. The letter reaches Suhas on 27th December. Suhas accepts the offer by a letter posted on 28th Dec. This letter of acceptance reaches Vishal on 30th Dec. **Here, for Vishal, the communication of acceptance is complete when the letter of acceptance is posted i.e., on 28th Dec. And for Suhas, the communication of acceptance is complete when the letter of acceptance is received by Vishal i.e., on 30th Dec.**

Revocation of acceptance

An acceptance may be revoked at any time before the communication of the acceptance is complete for the acceptor, but not afterwards. It means an acceptance may be revoked at any time before the letter of acceptance reaches the offeror.

Ex 1: Subramani offers, by a letter, to sell his house to Vikas. Vikas accepts the offer by a letter. **Vikas may revoke his acceptance at any time before his letter of acceptance reaches Subramani, and not afterwards.**

Ex 2: Prakash offered, by a letter, to sell his car to Neeraj for Rs 1,00,000. The letter was posted on 15th March which reached Neeraj on 17th March. Neeraj accepted the offer and posted his letter of acceptance on 22nd March which reached Prakash on 29th March. Here, Neeraj becomes bound by his acceptance on 29th March. **In this case, the acceptance could be revoked at any time before 29th March.**

Communication of revocation of offer and acceptance:

The communication of revocation of offer and acceptance is complete

- **For the person who makes revocation**, when it is put into course of transmission to the person to whom it is made.
- **For the person to whom the revocation is made**, when it comes to his knowledge

Ex 1: Bagavan offered, by letter, to sell his car to Vikram for Rs 95,000. The letter was posted on 10th Jan which reached Vikram on 13th Jan. Vikram dispatches his acceptance by telegram on 13th itself. Vikram revoked his acceptance by telegram on 16th Jan which reached Vikram on 17th Jan. **For Vikram, the communication of revocation of acceptance is complete when the telegram is dispatched i.e., 16th Jan. But for Bagavan, it complete when Bagavan receives the telegram i.e., on 17th Jan.**

Ex 2: Sambram offered, by letter, to sell his car to Kavin for Rs 1,25,000. The letter was posted on 12th Feb which reached Kavin on 15th Feb. Kavin dispatches his acceptance by telegram on 20th Feb. Kavin revoked his acceptance by telegram on 22nd Feb which reached Kavin on 24th Feb. **For Kavin, the communication of revocation of acceptance is complete when the telegram is dispatched i.e., 22nd Feb. But for Sambram, it complete when Sambram receives the telegram i.e., on 24th Feb.**

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Consideration

RE A 11
DE A 10
[Consideration is another important element of contract. Where one party promises to do something, the other party must get something in exchange (return). This "Something in return" is known as consideration.] This is called in Latin word as "**Quid Pro Quo**". An agreement made without consideration is "**nudum pactum**".

Section 2(d) defines consideration 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**".

Essentials and legal rules for valid consideration

• Consideration must move at the desire of the promisor: The act or abstinence must have been done by the promisee or the third party at the desire of the promisor only. Act performed by the promisee at the desire of the third party cannot form a consideration. Act done or services rendered voluntarily will not amount to valid consideration.

Ex 1: Varun saves Jathin's goods from fire without being asked to do so. **Here Varun cannot demand payment for his service.**

Ex 2: Sudev constructed a shopping bazaar at the desire of the district collector. Tanvika not knowing this had been paying commission to Sudev, with the option that Sudev had constructed the shopping bazaar as per her desire. Later Tanvika came to know the truth and stopped paying commission to Sudev. Sudev filed a suit against Tanvika. **It was held that the shopping bazaar constructed by Sudev was not at the desire of Tanvika but at the desire of the District Collector. So Tanvika was not liable to pay commission to Sudev.**

• Consideration may move from the promisee or the third party: Consideration may be given by the promisee or any other person who is not a party to the contract. Under Indian Law stranger to the contract may give consideration. **There can be a stranger to the consideration but not stranger to a contract.**

Ex: Angelina, an old lady, by a deed of gift, transferred certain property to her daughter Ramayya, with a direction that the daughter should pay an annuity to Angelina's brother Chinnayya, as done by Angelina. Accordingly, on the same day, Ramayya, the daughter, executed a writing in favour of her maternal uncle Chinnayya agreeing to pay annuity. Afterwards she declined to fulfill her promise saying that no consideration had moved from her maternal uncle i.e., the promisee. It was held, the word, "The promisee or any other person", in Section 2(d) clearly show that stranger to, the consideration may maintain a suit. Hence the maternal uncle, though a stranger to the consideration was entitled to maintain the suit.

✓ Consideration may be past, present and future: Section 2(d) states that consideration may be past, present and future.

❖ Past Consideration: Where the promisor receives consideration from the promisee before the date on contract.

Ex: Veeresh, a lawyer at the request of landlord gave up his practice and served as a manager with him. For this the landlord paid salary to the lawyer and also promised to pay pension after his retirement but he did not pay the pension on the grounds that there

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was no consideration from the lawyer. Lawyer sued landlord. **It was held that giving up the practice by the lawyer was a past consideration. Hence landlord was liable to pay pension to lawyer.**

❖ **Present consideration:** When the promisor receives consideration along with the contract, it is said to be present consideration.

Ex: Aarushi agrees to sell her car to Kushboo for Rs 5,00,000. Kushboo pays money at the time of contract and took the delivery of car. Here, the consideration will be termed as present consideration.

❖ **Future consideration:** When the promisor has to receive the consideration at a future date, it is a future consideration.

Ex 1: Ramcharan agrees to deliver the goods to Alluarjun when the ship arrives and Alluarjun promised to pay Rs 5,000 to Ramcharan against the receipt of goods. This is a case of future consideration which is to be performed by both the parties at the future date i.e., when the ship arrives.

Ex 2: Mahesh promises to sell and deliver a bag of rice of 50 kgs to Prabhas at Rs 1,000 after a week, upon Prabhas's promise to pay the amount to Mahesh at the time of delivery. The promise of Mahesh is supported by promise of Prabhas and the consideration is executory on the both the sides.

• **Consideration need not be adequate:** It is not necessary that the consideration should be adequate or equal in value with the promise for which it is exchanged. But it must be of some value. But the in-adequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given or not.

Ex 1: Suprith agrees to sell his house worth Rs 10,00,000 to Vinay for Rs 10,000. If the consent to the agreement is given freely, then the consideration is a good consideration.

Ex 2: Amudha agrees to sell her car worth Rs 50,000 to Ramani for just Rs 1,000. If Amudha's assent to the agreement is not given freely, then the consideration is a not a good consideration.

Ex 3: Aalaya agrees voluntarily to sell the motorcycle for Rs 200 to Brundha. It is a valid contract despite the inadequacy of consideration.

• **Consideration must be real not illusory:** Though consideration need not be adequate but it must be real and not illusory. If it is physically and legally impossible, the agreement cannot be enforced.

Ex 1: If Akash promises to put life in a dead body of Kanna's son for Rs 1,00,000 the agreement is void, because of the physical impossibility of the performance.

Ex 2: Anokia promise to make two parallel lines meet is no good consideration.

Ex 3: Jerry promised to pay Rs 500 to Tom if he brings a star from the sky to earth. Here, consideration for Jerry's promise to pay Rs 500 to Tom is "to bring a star from the sky". The agreement is void as the consideration is illusory.

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Ex 4: Merry promises to discover treasure by magic. This transaction can be said to be void as it is illusory.

- **Consideration must be lawful:** Consideration for an agreement must be lawful. An agreement is void if it is based on unlawful consideration. The consideration of agreement is unlawful unless:

- ❖ It is forbidden by law.
- ❖ It would defect the provisions of law if it is permitted.
- ❖ It is fraudulent and involves or implies injury to a person or property of another.
- ❖ The court regards it immoral or opposed to public policy.

Ex 1: Bala promises to obtain Sharath an employment in the Government services and Sharath promises to pay Rs 50,000 to Bala. The agreement is void as the consideration for it is unlawful.

Ex 2: Rithika promises to maintain Darsha's child and Darsha promises to Rithika to pay Rs 5,000 per month for this purpose. This is a lawful consideration.

- **Consideration must be something which the promisor is not already bound to do:** A promise to do what one is already bound to do either by general law or under an existing contract is not good consideration.

Ex: Sudeep promises to pay money to the police officer to investigate into crime. The agreement was held to be invalid because the officer is already under the duty to do so by the law.

- **Consideration may be act, abstinence or promise:** Consideration may be act, abstinence or promise: According to Section 2(d), consideration may be an act, abstinence or promise. In other words consideration may consist of either a positive act or abstinence i.e., negative act or a promise.

- ❖ **An act:** An act refers to a positive consideration. Act means doing anything on the saying of other party to the contract.

Ex: Amrutha request to Varshini to sell and deliver certain goods on credit. Varshini agrees to do so provided Hithyshi guarantees the payment of the price. Here sale of goods by Varshini to Amrutha is the consideration for Hithyshi's promise to guarantee the payment.

- ❖ **An abstinence:** An abstinence refers to a negative consideration. Abstinence means not doing or restraining ourselves from doing anything on the saying of other party to the contract.

Ex: Chiranjeevi, the lender, entered into an agreement with borrower Balakrishna. The loan becomes due. Balakrishna fails to pay the loan. Chiranjeevi claims that he is going to file a suit against him. Balakrishna promises to pay additional money in excess of the loan amount if he is refraining from filing a suit against Balakrishna for a year. Here Chiranjeevi's abstinence is a consideration for Balakrishna's promise.

Exceptions to the rule of consideration

As per the law it is clearly defined as "No Consideration No Contract" and all consideration must be lawful and unlawful consideration are considered as void. But there are few exceptions given by the

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law, where the contract can be enforceable even though there is no consideration. The following are exceptions

- **Natural love and affection [Section 25(1)]:** Agreement made without consideration may be valid if it is in writing and registered and is made on account of natural love and affection between the parties standing in a near relation to each other.

Ex 1: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

Ex 2: Aadhavan in natural love and affection, promises to give his daughter Mithra Rs 10,000. Aadhavan puts his promise into writing and registered it, hence there is a contract.

Ex 3: Rahul and Tina were husband and wife. Because of so many disagreements and quarrels they decided to live apart. At the stage Rahul executed registered agreement in favour of Tina where he agreed to pay her separate residence and maintenance. In the agreement it was mentioned that the cause of separation i.e., disagreements and quarrels. Rahul did not pay the said amount. Rahul sued Tina. The suit filed by Rahul was rejected by court which held the view quarrels make the couple separate. There was no love and affection between the parties and hence there was no contract.

- **Compensation for past voluntary services [Section 25(2)]:** An agreement made without consideration may be valid if it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor. A promise to pay for the past voluntary services be binding, the following essential factors must exist:

- ✓ The services should have been rendered voluntarily.
- ✓ The services must have been rendered for the promisor.
- ✓ The promisor must be in existence at the time when the services were rendered.
- ✓ The promisor must have intended to compensate the promise.

Ex 1: Androose finds Dhanalakshmi's purse and gives it to her. Dhanalakshmi promises to give Androose Rs 1,000. This is a valid contract.

Ex 2: Amjith found Piyush's cycle and gave it to him. Piyush promised to give Amjith Rs 100 as reward. This is a valid contract.

Ex 3: Zakir, a neighbor helped putting down the fire in Hussain's house. Afterwards, Hussain promised Zakir to give Rs 1,000. This is a valid contract even though the consideration did not move at the desire of the promisor.

- **Promise to pay time barred debt [Section 25(3)]:** A promise to pay a time barred debt is enforceable if such promise is in writing and duly signed. The following conditions must be satisfied

- ✓ The promise to pay must be in writing
- ✓ The promise must be signed by the promisor or his authorized agent
- ✓ The debt must be time barred i.e., the limitation period for the recovery of the debt must have expired

Ex 1: Hithesh owes to Zainab Rs 10,000. Later debt becomes time barred. Hithesh promises in writing to pay Rs 5,000 on account of time barred debt. Though there is no consideration for the second agreement, it is considered valid one.

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Ex 2: Madhu is indebted to Sangavi Rs 6,000 but the debt is time barred by the Limitation Act. Madhu signs a written promise now to pay Rs 5,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

- **Complete gifts [Section 25(4)]:** The absence of consideration does not affect the validity of the gifts actually made. Thus, gift without consideration is valid.

Ex: If a certain person gives property to another accordingly to the provisions of transfer of property act, he cannot subsequently demand property back on the ground that there was no consideration.

- **Agency (Section 185):** No consideration is necessary to create an agency.
- **Bailment (Section 148):** No consideration is required to effect the bailment.
- **Guarantee (Section 127):** When a person wants loan from other person the later may ask the former to give a third party guarantee. If such party guarantees it becomes a contract of guarantee. A contract of guarantee is made without consideration and is valid.
Ex: Anbuselvan took a loan of Rs 10,000 from Maya. Pandiyan guarantees Maya. Though there is no consideration in the contracts between Pandiyan and Maya and between Pandiyan and Anbuselvan, they are valid.

- **Remission (Section 63):** Remission means acceptance of lesser amount or lesser degree of performance than what was actually due under the original contract.
Ex: Maha owed Rs 10,000 to Puttu under a contract. Knowing the inability to pay money Puttu asked Maha to pay Rs 5,000 to discharge the debt. For this purpose they entered into a separate contract. The second contract though not supported by consideration is a good contract.

- **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

Suit by a third party on an agreement

Though under the Indian Contract Act, 1872 the consideration for an agreement may proceed from a third party, the third party cannot sue on agreement. Only the person who is party to a contract can sue on it.

Ex: Prakruthi who is indebted to Santhanam, sells his property to Rakul and Rakul promises to pay off the debt amount to Santhanam. If Rakul fails to pay, then in such situation Santhanam has no right to sue, as **Rakul is stranger to contract.**

The aforesaid rule, that stranger to a contract cannot sue is known as a “Doctrine of Privity of Contract”, is however subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

- **Beneficiaries in case of trust:** Where a benefit is given to a person by creating a trust in some property in his favour, such a beneficiary may enforce the contract even though he is not a party to it.

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Ex: Rose transferred certain properties to Lily to be held by her in trust for the benefit of Pankaj. In this case, Pankaj although not a party to the contract, can sue for the benefits available to him under the trust.

- **Family settlement:** In case of family settlement, if the terms of the settlement are reduced in writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

• Ex 1: On the partition of joint properties, two brothers agreed to invest, in equal shares, a certain sum of money for the maintenance of their mother. It was held that she was entitled to require her sons to make the investments for her maintenance although she was not a party to the partition of the property.

Ex 2: A female member can enforce a provision for marriage expenses, made on the partition of the Hindu Undivided Family although she was not a party to the contract.

- **Assignee of contract:** In case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.

Ex: S sells goods to B and is entitled to receive the price. S by giving notice to B assign his right to receive the price in favour of third party X. X, the assignee, may then sue B for the price of goods.

- **Contracts entered into through an agent:** The principal can enforce the contracts entered into by his agent provided the agent acts within the scope of his authority and in the name of the principal.

Ex: Jaggu the agent of Bheem, on behalf of Bheem entered into an agreement with Kalia for the purchase of his property. If Kalia refuses to perform his obligation Bheem has the right to enforce the contract.

- **Estoppel by acknowledgement of liability or acknowledgement of payment:** Where, by the terms of the contract, party is required to make a payment to a third person, and that party acknowledges the payment to the third person or admits the liability, then the third person can recover the amount from such a party.

Ex: If Likith gives to Manu Rs 2,000 to be given to Neethu, and Manu informs Neethu that he is holding the money for him, but afterwards Manu refuses to pay the money. Neethu will be entitled to recover the same from the former.

Capacity to contract

Meaning: Capacity refers to the competence of the parties to make a contract. It is one of the essential element to form a valid contract.

Who is competent to contract?

According to Section 11 Every person who

- Has attained the age of majority
- Is of sound mind
- Is not disqualified from contracting, is competent to contract.

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Sec A 4
Minor: A minor is a person who has not attained the age of majority. *Sec A 3* The Indian Majority Act, 1875, provides the meaning for majority under Section 3 as, "A minor is a person who has not completed 18 years of age". In two exceptional cases a minor attains majority when he completes 21 years of his age:

- A guardian is appointed by court, for the minor to look after his person or property or both or
- A court of wards has been appointed for the superintendence of minor's property

Laws relating to a Minor *Sec - 4**

- **Agreement with a minor is void-ab-initio:** Entering a contract with a minor is void-ab-initio i.e., void right from the beginning. Section 10 of the Contract Act requires that the parties to the contract must be competent and Section 11 says that a minor is not competent.
Ex: A minor mortgaged his house in favour of a money-lender to secure a loan of Rs 20,000 out of which the moneylender paid the minor a sum of Rs 8,000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage. It was held that the mortgage was void, and therefore, it was cancelled. Further the money lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted. Therefore the money lender was not entitled to recover his money. (**Case study: Mohori Bibi Vs Dharmodas Ghose**)
- **No ratification:** Ratification means subsequent approval of an act already done. A minor cannot ratify the agreement on attaining a majority, because a void agreement cannot be ratified.
Ex: Lal, a minor borrowed money from Dilip and executed a pro-note in favour of Dilip. Lal after attaining the age of majority ratified the pro-note. Lal failed to pay Dilip. Dilip sued Lal. It was held that the suit was not maintained as the agreement of Dilip with Lal was during Lal's minority and was void. Lal cannot ratify the old agreement which has already become void.
- **Minor can be promisee or beneficiary:** A minor can be a beneficiary. Any agreement which provides some benefit to the minor and under which he is required to bear no obligation, is valid. As per the law, minor is not incompetent for accepting a benefit. If a contract is beneficial to a minor, it can be enforced by him. There is no restriction on minor from being beneficiary.
Ex: A, minor insured his goods with the insurance company. The goods are insured in the transit. A filed a suit for the recovery of claim. The insurance company took the place that the **person on whose behalf the goods were insured was a minor, so the contract was void.** The court rejected the plea of the insurance company and allowed the company to recover the insurance money, in the capacity of the promise or beneficiary.
- **Minor can always plead minority or No estoppel against a minor:** A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. But court may direct the minor to restore the property to the other party as "**minors have no privilege to cheat men**".
- **No Specific Performance:** An agreement by a minor is absolutely void, the court will never direct specific performance of such agreement by him.

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- **Liability for torts:** A tort is a civil wrong. A minor is liable for torts. Minors are liable for causing injury or damage to the property to others, due to their negligence. They are hence liable for torts.
- **Minor as an insolvent:** Minor cannot be declared as an insolvent. This is so because all agreements with a minor are absolutely void. Moreover, the minor is not personally liable for any debt incurred during the period of minority. *Sec A 3*
- **Minor as a partner:** As a general rule minor cannot be admitted as a partner in a partnership firm. But minor can be admitted for the benefits of partnership by an agreement executed by the guardian on his behalf, with the consent of all the partners.
- **Minor as an agent:** A minor can be an agent. He shall bind the principal by his act done in the course of agency. But he cannot be held personally liable for negligence or breach of his duty. Principal has a risk in appointing minor as an agent. He cannot become principal.
- **Liability for necessaries:** Necessaries means the things that are essentially needed by a minor. They do not include luxuries, costly items and unnecessary articles. The supplier of necessaries can claim reimbursement from the property of minor, but not personally from the minor.
- **Contract by guardian – how far enforceable:** Though a minor's agreement is void, his guardian can under certain circumstances enter into a valid contract on the minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of minor, there will be a valid contract which the minor can enforce.
But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable property. But a contract entered into by a certified guardian (appointed by court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.
- **Minor as a guarantor:** Minor cannot be surety or cannot act as guarantor as he is not personally liable to pay.

Person of sound mind: A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect on his interests. As per section 11 of the Contract Act, for a valid contract, it is necessary that each party to it must have a 'sound mind'.

Section 12 states that:

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

Ex 1: A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

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Ex 2: A patient in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.

Persons disqualified from contracting by law (Section 11)

The following persons, who are disqualified by the law to which they are subject, or not competent to enter into a contract:

- **Alien enemies:** An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or 'alien enemy'. If the sovereign or state of the alien is at peace with the country of his stay he is an alien friend. And if a war is declared between the two countries, he is termed as an alien enemy. During the war, an alien enemy cannot enter into a contract with an Indian citizen. The contracts made before the declaration of the war are either terminated or suspended and will be revived after the war is over.
- **Foreign sovereigns, diplomatic staff and accredited representatives of foreign states:** Such persons can enter into valid contracts and can enforce them in Indian courts. However, a suit cannot be filed against them, in the Indian courts, without the prior sanction of the central government.
- **Insolvents:** When a person is declared as an insolvent, his property vests in the Official Receiver. Insolvent is deprived of his power to deal with the property. Therefore, he cannot enter into a contract relating to property. However, this disqualification of an insolvent is removed when the court passes an order of discharge.
- **Corporation or company:** A company/corporation is an artificial person created by law. It cannot enter into contracts outside the powers conferred upon it by its Memorandum of Association or by the provisions of the Special Act, as the case may be. Being an artificial person it cannot enter into contracts of personal nature e.g., marriage.
- **Married women:** Married women are competent to enter into contracts with respect to their separate properties provided they are major and sound mind. They cannot enter into contracts with respect to their husband's properties. A married woman can however, act as an agent of her husband and bind her husband's property for necessaries supplied to her, if he fails to provide her with these.
- **Convicts:** Convict cannot enter into contract while he is undergoing imprisonment. But when he is pardoned or the sentence expires, he becomes capable of entering into a contract. The incapacity is only during the period of sentence.

Free consent

Consent means willingness of the parties to enter into a contract. To constitute a valid contract, the consent of the parties must be present in it. In English law consent is called as **Consensus-*ad-Idem* (Agreeing upon the same thing in same sense)**.

Definition of Consent: According to Section 13, "Two or more persons are said to have consented when they agree upon the same thing in same sense".

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Free consent: Section 14 lays down that consent is not free if it is caused by

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

Coercion (Section 15)

Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into the agreement. *Sec A 4*

- It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.
- The threat of suicide amounts to coercion.
- A contract brought about by the coercion is voidable at the option of the party whose consent was so caused.
- From the above section the following are elements for coercion:
 - ✓ Committing of any act forbidden by the IPC or
 - ✓ Threatening to commit any act forbidden by IPC or
 - ✓ The unlawful detaining of any property, or
 - ✓ Threatening to detain a property wrongfully

Committing any act forbidden by IPC: When a person commit any act forbidden by the IPC with a view to obtaining the consent of another, it amounts to coercion.

Ex 1: Ruthvik told Kanish to sign the promissory note for Rs 50,000 in favour of him. When he refused to do so, Ruthvik shoot Kanish's son. Kanish signs a promissory note for Rs 50,000 in favour of Ruthvik. In this case, **the agreement is entered into under coercion and hence voidable at the option of Kanish.**

Ex 2: Ramesh told Sajjan to execute a bond of Rs 5,000 in favour of him. When he refused to do so, Ramesh shoot Sajjan's son. Sajjan executed a bond of Rs 5,000 in favour of Ramesh. In this case, **the agreement is entered into under coercion and hence voidable at the option of Sajjan.**

Threatening to commit any act forbidden by IPC: If a person obtained the consent of the other party by threatening to commit an act forbidden by IPC, it amounts to coercion.

Ex 1: Simbu at the point of pistol asks Yathish to sell his car worth of Rs 1,00,000 for just Rs 20,000. Yathish accepted to sell his car. Here the consent of Yathish is not free. **The agreement therefore can be enforced at the option of Yathish.**

Ex 2: Aarmugam obtained the consent of his wife and son for transferring property in favour of his brother by threatening that he would commit suicide unless the consent is given. They gave their consent later they filed a suit to avoid the contract. It was held by the court, that **the threat to commit suicide amounts to coercion and hence they can avoid the contract.**

Ex 3: Ambika threatens to kill Sourab if he does not agree to sell his car to Ambika for Rs 10,000. Fearing death, Sourab enters into an agreement with Ambika for the sale of his car for Rs 10,000 only.

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The agreement is voidable at the option of Sourab as the consent to it is obtained by threatening to kill a person, which is forbidden by the Indian Penal Code.

Ex 4: Amba threatened to kill Krish if he did not execute a bond of Rs 5,000 in his favour. Krish executed a bond for Rs 5,000 in Amba's favour. This bond will be voidable as the consent to it is obtained by threatening to kill a person, which is forbidden by Indian Penal Code.

The unlawful detaining of any property: When a person detains the property of another to get the consent to unlawfully, it amounts to coercion.

Ex: An agent refused to hand over the books of accounts to the new agent unless the principal released him from the liability in respect of certain past transactions. Under this circumstance the principal gave the release deed. Later principal filed a suit against the old agent. It was held that the demand of the old agent amounts to coercion and release deed given by the principal was invalid and the old agent was liable for his past transactions, if they are beyond the powers of principal.

Threatening to detain a property wrongfully: Obtaining the consent of a party to the contract by threatening to detain his property unlawfully amounts to coercion.

Ex: The Chief Secretary of the state of Madhya Pradesh threatened Mr. Vineeth that his properties would be attached unless the tax arrears due by his son were settled by him. So Mr. Vineeth agreed to settle the arrears of tax of his son which he was not legally bound to pay. Later, he filed a suit against Chief Secretary. It was held by the court that the act of Chief Secretary amounts to coercion. So, Mr. Vineeth can avoid the contract.

Burden of proof: The burden of proof lies on the party who wants to avoid the contract on the plea of coercion.

Effects of coercion

The effect of coercion is that

- When the consent is caused by coercion, the contract is voidable at the option of the party whose consent was so caused i.e., the aggrieved party can put an end to the contract if he so chooses.
- A person to whom money is paid or anything delivered under coercion, must repay or return it. That means restitution applies in this case.

Undue influence (Section 16)

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 of the other. A person is deemed to be in the position to dominate the will of the other, when he holds real and or apparent authority over the other, or when he stands in a fiduciary relation to the other.

As per section 16(2), "A person is deemed to be in a position to dominate the will of another:

- **Where he holds a real or apparent authority over the other**
Ex: Relationship between master and servant, Relationship between officer and accused, Relationship between teacher and student
- **Where he stands in a fiduciary relation of mutual trust and confidence:** Where relation of trust and confidence exist between the parties to a contract.

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Ex: Relationship between father and son, Relationship between doctor and patient, Relationship between trustee and beneficiary

- **Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress**

Exs: Persons who are mentally weak, illiterates, very old age

Ex 1: An illiterate old man who is physically ill and mentally distressed executed a gift deed in favour of his relative who was taking care of him. Here relative is in position to dominate the will of an old man.

Ex 2: Ankush was suffering from number of ailments, and Harry was his family doctor. Harry induced Ankush to agree to pay him unreasonable sum for his professional services. Here, Harry has employed undue influence over Ankush. In this case, Harry used his superior position to obtain unfair advantage over Ankush.

Note: A pardanashin woman is one who, by virtue of the custom of her community, is required to live behind a veil and is totally secluded from ordinary social interaction. Such women may not have any knowledge of the outside world. She may have a direct contact with female person of the family but she is not in a position to speak directly with the male members leaving few. Law protects pardanashin woman. A contract with pardanashin woman is presumed to have been induced by undue influence. She is not bound by the contract unless the other party can prove it was her voluntary act.

Burden of proof: The burden of proof lies on the person who could dominate the will of other.

Effect of undue influence

- The contract can be voidable at the option of the party whose consent so obtained.
- The contract may be set aside either absolutely or subject to restitution of the benefit or it may be amended.

Ex 1: Anoop, a money-lender, advanced Rs 10,000 to Sampath, an agriculturist. By undue influence, Anoop induced Sampath to execute a bond for Rs 20,000 with an interest at 6% per month. The bond is voidable at the option of Sampath. And the court may set the bond aside, ordering Sampath to repay Rs 10,000 with such interest as it may seem just.

Fraud

Fraud means to deceive or to cheat. (Fraud refers to false statement or active concealment of a material fact with an intent to deceive another party. The fraud includes all the acts committed by a person with an intention to deceive another person.)

As per the Section 17 of the Indian Contract Act, 1872, "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- the suggestion, as to fact, of that which is not true by one who does not believe it to be true;
- the active concealment of a fact by one having knowledge or belief of the fact;
- a promise made without any intention of performing it;
- any other act fitted to deceive;
- any such act or omission as to law specially declared to be fraudulent

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False Statement (the suggestion, as to fact, of that which is not true by one who does not believe it to be true): The suggestion as to fact, of that which is not true by one who does not believe it to be true”, A false statement intentionally made is fraud.

Ex 1: Kannan while selling his car to Mani says that it is of the latest model and brand new knowing fully well that it is a used car of old model. His representation or statement amounts to fraud.

Ex 2: A company issued prospectus inviting public to subscribe for shares. But the Board of Directors of company stated in the prospectus, the company did not have any liability. In fact it had. By this act the company had created a good impression and there by bit induced the public to make investments. A shareholder, who came to know the reality, sued the company. It was held that the act of the Board of Directors amounts to fraud and anyone who bought shares can avoid the contract.

Active concealment (the active concealment of a fact by one having knowledge or belief of the fact): The active concealment of a fact by one having knowledge or belief of the fact. Mere non-disclosure is not fraud where the party is not under any duty to disclose all facts. Active concealment is fraud.

Ex 1: Shantanu, a scooter dealer, showed a scooter to Yogi, Shantanu knew that its handle and body are cracked which he had repaired in such a way as to defy detection. The defect was subsequently discovered by Yogi. Hence he refused to buy the scooter. Here, the contract could be avoided by Yogi as his consent was obtained by fraud.

Ex 2: Arivu , a horse dealer sold a mare to Bujji. Arivu know that the mare had a cracked hoof which he filled up in such a way to defy detection. Later, Bujji disclosed it and rejected the mare. Here the act of Arivu amounts to fraud.

Intentional non-performance (a promise made without any intension of performing it): A promise made without any intension of paying for them.

Ex: Purchase of goods without any intension of paying for them.

Deception (any other act fitted to deceive): Any act fitted to deceive.

Ex: Kicchu, intending to deceive Bheem, falsely stated that his scooter runs 35 kilometers in one litre of petrol. And there by induced Bheem to buy the scooter. But actually the scooter runs 24 kilometres in one litre. The contract is voidable at the option of Bheem.

Fraudulent act or omission (any such act or omission as to law specially declared to be fraudulent): Any such act or omission as the law specially declares to be fraudulent.

Burden of proof: The burden of proof lies on the party who was defrauded by other party.

Effects of fraud

The effect of fraud on the contract is in 3 ways

- The contract can be avoided by the defrauded party.
- The defrauded party may sue upon the specific performance of the promise.
- He may even file a suit for damages.

In the following two circumstances, the contract is not voidable on account of fraud

- Where the silence amounts to fraud, the contract is not voidable, if the other party had the means of discovering the truth with ordinary diligence.

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- Where the fraud does not induce the other party to enter into a contract, the contract is not voidable.

Can silence be fraudulent?

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud. But where it is the **duty of a person to speak, or his silence is equivalent to speech**, silence amounts to fraud.

- **His silence equivalent to speech**

Ex: Keerthi says to Suresh "If you do not deny it, I shall assume that the horse is sound". Suresh says nothing. Here Suresh's silence is equivalent to speech.

- **Duty to speak:** The duty to speak i.e., disclose all facts exists where there is fiduciary relationship between the parties such as father and son, guardian and ward etc, and also in the insurance contracts, marriage contracts, partnership contracts etc which are contracts based on good faith.

Ex: Nayan sells by auction to Tara, a horse which Nayan knows to be unsound. Tara is Nayan's daughter. Here the relation between parties would make it Nayan's duty to tell Tara if the horse is unsound.

Misrepresentation (Section 18)

Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Misrepresentation may be either innocent or without reasonable ground. Misrepresentation is misstatement of facts by one, which misleads the other who, consequently, can avoid the contract.

According to section 18, there is misrepresentation:

- When a person positively states that a fact is true when his information does not warrant it to be so;
- When there is a breach of duty by a person without intension to deceive which brings an advantage to him, and loss to the other;
- When a party causes the other party to the agreement

Positive unwarranted statement (When a person positively states that a fact is true when his information does not warrant it to be so): A statement made without reasonable basis is unwarranted statement. When a person makes a positive statement that a fact is true when his information does not warrant it to be so, though he believes it to be true, this act amounts to misrepresentation. Therefore, a false statement made without any trustworthy source of information amounts to misrepresentation.

Ex: Vivek believed his horse to be sound although he had no sufficient ground for his belief. Vivek, while selling his horse to Parthu, stated the horse to be sound. On the basis of this statement, Parthu bought the horse. Later on, Parthu found the horse to be unsound. In this case, the positive statement made by Vivek is a misrepresentation.

Breach of duty which brings advantage to the person committing it (When there is a breach of duty by a person without intension to deceive which brings an advantage to him, and loss to the other): This clause covers all those cases where one party is under legal duty to disclose all material

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facts to the other party. But the concerned party does not disclose the same. Such cases of misrepresentation are often termed by the courts as cases of 'constructive fraud'.

Ex: Dulquar while selling his land to Salman, told him that all the farms of the land were fully let out. But he negligently omitted to inform that the tenants had given notice to quit. Here, Dulquar is liable for misrepresentation.

Innocent mistake (When a party causes the other party to the agreement): If one of the party causes the other, however, innocently, to make a mistake as to the nature or substance of the agreement, it is considered misrepresentation.

Ex 1: Viji chartered a ship to Sumi, which was described in the lease contract, and was represented to her as being not more than 2,800 tons registered. It turned out that the registered ton was 3,045 tons. Sumi refused to accept the ship in fulfillment of the charter-party (i.e., an agreement between a ship owner and merchant for the use of ship). It was held that Sumi was entitled to avoid the charter-party by reason of erroneous statements as to tons.

Ex 2: Anil, by misrepresentation, leads Yash erroneously to believe that 5 hundred TV sets were manufactured per month in his factory. Upon his misrepresentation, Yash bought the factory. The actual production was found to be only 4 hundred sets per month. Here, his consent is caused by misrepresentation, and thus, the contract is voidable at his option.

Effects of misrepresentation

The aggrieved party, i.e., the party whose consent was obtained by misrepresentation, has the following two remedies

- The contract can be avoided
- The party may sue upon the specific performance of the promise

In the following circumstances, the aggrieved party loses the right to rescind the contract

- Where he fails to rescind the contract within a reasonable time
- Where he expressly or impliedly affirms the contract
- Party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence, he has no remedy.

Mistake

Mistake is said to be occurred where the parties intending to do one thing by error to do something else. Mistake is an erroneous belief concerning something. The term 'mistake' may be defined as incorrect belief about something.

Types of mistake: It may be of two kinds

- **Mistake of law (Section 21):** When a person enters into a contract to create legal obligation he should have the knowledge of rules of law. Mistake of law may be of two types
 - ❖ **Mistake of Indian law:** Every citizen should have the knowledge of laws of the country. Everyone is deemed to be conversant with the law of their country and hence the maxim "Ignorantia Juris Non Excusat". Mistake of law, therefore, is no excuse and it does not give right to the parties to avoid the contract. If a mistake of law leads to formation of contract, section 21 enacts that "a contract is not voidable because it was

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caused by a mistake as to any law in force in India". A person cannot get any relief on the ground that he had entered into a contract in ignorance of law.

Ex: Minors contract

- ❖ **Mistake of Foreign law:** When a person wants to enter into a contract with a foreigner, it is better to understand the law of such foreign country. However the rule of Ignorantia Juris Non Excusat is not applicable. The party can plead excuse in the court of law.
- **Mistake of fact (Section 20 and 22):** When a contract is made by two parties without proper understanding of the terms and conditions of contract, it is called contract created under the mistake of fact. It is reclassified into two types
 - ❖ **Bilateral Mistake:** When both the parties to the contract are under a misconception of the facts of the contract, it is called as bilateral mistake. The bilateral mistake may be subdivided into two
 - ✓ **Mistake as to the Existence of subject matter:** Where both the parties entered into a contract with the opinion that the subject matter is in existence, in fact it is not. This is called mistake as to existence of subject matter.
Ex: Amir and Babu entered into an agreement to sell and buy the horse. But unknown to the parties the horse was dead before they entered into an agreement. The contract becomes void.
 - ✓ **Mistake as to the Title of the subject matter:** Where both the parties unknown to them about the title to the subject matter make a mistake and enter into an agreement. It is a bilateral mistake and is void.
Ex: Amrith believed that she had inherited rights over a fishery from her father. Nagesh, her cousin brother also believed in Amrith's rights. Nagesh agreed to take the fishery on lease from Amrith. Actually the fishery belonged to Nagesh. The agreement, caused by mistake as to title, was held to be void.
 - ✓ **Mistake as to quantity of the subject matter:** Where both the parties have different quantities in their minds, it is bilateral mistake and is void.
Ex: Shakthi wrote to Guna asking for quotation for 50 rifles. Accordingly Guna sent the quotation. Shakthi sent a telegram stating send 3 rifles. But by the mistake of the clerk of postal department the message on the telegram was entered as "send the rifles". B sent 50 rifles. Shakthi took 3 and returned the rest. Guna filed a suit against Shakthi for non-acceptance of 47 rifles. It was held that there was a mistake as to the quantity of the subject matter and declared that the contract is void.
 - ✓ **Mistake as to quality of the subject matter:** Where both the parties had a mistake as to the quantity of the subject matter and enter into an agreement, it is void.
Ex: A contract for horse believed it to be a race horse would be void if it turned out to be a cart horse.

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- ❖ **Unilateral Mistake:** Where only one of the contracting parties is mistaken as to a matter of fact, the mistake is unilateral mistake. Section 22 provides that “A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to the matter of fact”. If one of the parties to the contract by mistake gives consent to the contract he cannot avoid it. He has to face consequences. He cannot pray the court an excuse. So under unilateral mistake the contract is neither void nor voidable but is binding.

Ex: Humayun contracted with Naresh to build number of houses calculating the cost of the project Humayun by mistake deducted a sum twice and submitted the estimates. The Naresh accepted the estimates and entered into a contract with Humayun. Later Humayun found the mistake and tried to avoid the contract, which was rejected by Naresh. Humayun sued Naresh to avoid the contract. It was held that the mistake amounted to unilateral mistake and was binding on Humayun and he has to face the consequences. He had no chance of avoiding the contract.

Exceptions: However there are two exceptions

- **Mistake as to nature of the contract:** Sometimes one of the parties to the contract may be at a mistake regarding the nature of contract due to some reason or other. In that case the contract is not binding on the party who is at mistake, but is void.

Ex: An illiterate old man having poor eye sight signed a document with an assumption that he was signing as a witness on the will of Rahman, but infact it was a pro-note. Rahman endorsed it to Chinna. Chinna paid money in good faith. Chinna sued old man on the pro-note on the due date. It was held that old man’s mistake was related to the very nature of the contract, and it was not binding on old man. It was void.

- **Mistake as to the identity of parties:** If one party makes a mistake as to the identity of a person and makes a contract with a wrong person, the contract is void.

Ex: A company named Lindsay & Co had regular dealing with a firm Blenkiron & Co, having office in Wood Street. Another person with a similar name Blenkarn, maintaining an office in the same street sent an order on its printed letter head to the company for purchase of some goods. The company led to believe that the order came from the famous firm they knew. They sent the goods. The fraudulent Blenkarn sold the received goods down to Cundy. In a suit by Lindsay against Cundy for recovery of goods, it was held that as Lindsay never intended to contract with Blenkarn, there was no contract between them and as such even as innocent purchaser of the goods from Blenkarn did not get title, and must return them or pay their price.

See B 24
Difference between coercion and undue influence

Basis of difference	Coercion	Undue influence
Nature of pressure or force	It involves physical pressure or force	It involves mental pressure
Relationship	Parties to a contract are not related to each other.	Parties to a contract are related to each other under some sort of relationship.
Consent	Consent is obtained by committing an offence or threatening to commit an offence	Consent is obtained by dominating the will of the other party

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Third party	It may be employed either against the party to the contract or against any third person who is not a party to the contract.	It is exercised against a person who is a party to the contract. No third party is involved in creating undue influence.
Nature of liability	The party committing or threatening to commit an act will be punishable under IPC	It is not a crime or offence. So it does not involve any criminal liability
Remedies	The contract is voidable at the option of one of the parties of the contract	The contract is either voidable or may be set aside means court may enforce it in a modified form
Restitution	Where the contract is rescinded by the aggrieved part, any benefit received has to be restored back to the other party	Where the contract is rescinded by the aggrieved part or the court has the discretion to direct the aggrieved party to return the benefit in whole or in part.

Difference between fraud and misrepresentation *Sec 13-15*

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth	There is no such intention to deceive the other party
Knowledge of truth	The person making the suggestion believes that the statement as untrue	The person making the suggestion believes that the statement as true, although it is not true
Rescission of the contract	The injured party can repudiate the contract and claim damages	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth	Party can always plead that the injured party had the means to discover the truth

Legality of object and consideration

According to section 10 of Indian Contract Act every agreement must be supported by lawful object and consideration. If they are unlawful the agreement is void. According to section 23 of Indian Contract Act the consideration or object of the agreement is unlawful in the following circumstances.

Unlawfulness of object and consideration (Section 23)

- **If it is forbidden by law:** If the object or consideration of agreement is forbidden by law, the agreement is void. An act is said to be forbidden by law when it is punishable either by criminal law or the country or by special legislation.
Ex 1: Kapoor promises to obtain for Bindesh an employment in the public service and Bindesh promises to pay Rs 1,00,000 to Kapoor. The agreement is void as the consideration for it is unlawful.

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Ex 2: A Hindu already married and his wife was alive entered into marriage agreement with Amala an unmarried girl. The agreement is void as the object for it is unlawful according to Hindu law.

- **If it defeats any provision of law:** If the object or consideration of an agreement is of such a nature that, if permitted, it would defeat the provision of any law. An agreement with such object or consideration is unlawful, thus void.

Ex 1: Ambalika's estate was to be auctioned for arrears of revenue under the provisions of an Act of the Legislature. According to the Act, the defaulter was prohibited from purchasing his own estate. Badra, on understanding with Ambalika, purchased the estate in auction, and agreed to return the same to Ambalika after receiving the price paid by him (Badra). The agreement between Ambalika and Badra is void as, by this agreement, the defaulter will be able to purchase back the estate. It would defeat the object of law.

Ex 2: Kanish promises to drop prosecution which he has instituted against Chiranth for robbery, and Chiranth promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

- **If it is fraudulent:** If the object or consideration of an agreement is to defraud others, the agreement is void.

Ex: Amir, Akbar and Anthony entered into an agreement of the division among them of gains acquired or to be acquired by them by fraud. The agreement is void as its object is unlawful.

- **If it involves or implies injury to a person or property of another:** If the object of an agreement is to injure a person or the property of another, the agreement is void.

Ex 1: Suhana requested an editor of a newspaper to publish a defamatory article against Ishwar, and promised to pay Rs 5,000 for this work. The agreement is void as it involves injury to Ishwar, and the editor cannot recover the amount from Suhana.

Ex 2: Cannady agrees to pay Rs 15,000 to Vijeesh if he kills Ajmal. The agreement is void.

- **If the court regards as immoral or opposed to public policy:** Immoral means inconsistent what is right. The object or consideration of agreement is unlawful, where it is regarded as immoral or opposed to public policy. An agreement which injures the public interest or the public welfare is said to be an agreement opposed to public policy. An agreement which is opposed to public policy cannot be enforced by either of the parties to it, because it is unlawful.

Ex 1: Kamal gave Rs 1,00,000 to Deepika, a married women to obtain a divorce from her husband. Kamal agreed to marry her as soon as she obtains divorce. Deepika took the money and kept quiet. Kamal sued Deepika. It was held that Kamal was not entitled to recover the money as the agreement was void for its immorality.

Ex 2: Virat let cab on hire to Kanika, a prostitute, knowing that it would be used for immoral purposes. The agreement is void.

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Agreement opposed to public policy

An agreement which injures the public interest or the public welfare is said to be an agreement opposed to public policy. An agreement which is opposed to public policy cannot be enforced by either of the parties to it, because it is unlawful.

Public policy is not capable of exact definition. It varies from time to time. The courts do not usually go beyond the decided cases on the subject. Courts are generally disinclined to create a new item in the list of agreements against public policy.

The following are some of the acts which were regarded as opposed to public policy by various courts of law:

- **Agreements of trading with alien enemies:** The agreements between Indian and Foreign nationals are valid in normal times. In this case the foreign nationals are called alien friends. But if war broke out between the countries the alien friends become alien enemies. The agreements with alien enemies are considered as opposed to public policy and are declared as void.
- **Agreements for stifling (suppressing) prosecution:** When an offence has been committed, the guilty party must be prosecuted and any agreement which seeks to prevent the prosecution of such a person is opposed to public policy.
Ex: Ram, knowing that Mohan has committed a murder, obtains a promise from Mohan to pay him (Ram) Rs 10,000; in consideration of not exposing Mohan, this is a case of stifling prosecution and the agreement is illegal and void.
- **Trafficking in public offices:** The agreements which affect the normal working of Government offices are void as they are opposed to public policy e.g., appointment decisions in consideration of money are void. Similarly, the agreement for the procurement of a public recognition such as Parm Veer Chakra or any other title, for monetary or other consideration are void.
Ex: Sushmitha paid Rs 1,00,000 to Illango, a public servant, inducing him to retire from the service. This was done for the purpose of paving a way for Sushmitha to be appointed in place of Illango. It was held that the agreement was void.
- **Agreements of champerty and maintenance:** Champerty and Maintenance are British terms and can be described as the promotion of litigation in which one has no self interest. When a person helps (financial or otherwise) another in litigation in which he is not himself interested and does not share in the proceeds of the action, it is called Maintenance. When a person helps another in litigation in exchange of a promise to hand over a portion of the fruits of the litigation, if any, it is called Champerty.
Ex: Praveen files a suit against Anuj for the recovery of a claim of Rs 1,00,000. Kani promises to advance Rs 20,000 to Praveen for the costs of the litigation and Praveen promises to give to Kani Rs 40,000 if he is successful in his suit. This is an agreement by way of Champerty. If Praveen had been liable to return to Kani only the amount taken by him, then it would have been a mere Maintenance agreement.

Note: In India, an agreement to finance litigation in return of a portion of the results of the litigation is valid provided the litigation was instituted with a bonafied motive and the terms are not unfair or unjust to the helped person. If, however, the litigation was

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inspired by a malicious motive or to instigate litigation or is of a gambling character, or is against public policy, the agreement is bad or void.

- **Marriage brokerage contracts:** An agreement made to procure a bride for a groom or vice versa for some fees or consideration is void on account of opposed to public policy. Such agreement cannot be enforced in the court of law by either of the parties as they are void.
Ex: Kundavi promised with Tejas to procure a wife for him. And Tejas agreed to pay Rs 5,000 to Kundavi for the procurement of the wife. In this case, the agreement is void as it is opposed to public policy.
- **Agreements in restraint of parental rights:** Father and mother are the natural guardians of a minor child. This right of guardianship cannot be bartered away by any agreement. Thus, an agreement which is inconsistent with the duties arising out of such guardianship is void as being opposed to public policy.
Ex: Lava, for a sum of Rs 500, agreed to place his daughter at the disposal of Kusha, to be married as he likes. The agreement is void as it interferes with Lava's parental duty to select a husband in the best interest of the girl.
- **Agreement in restraint of personal liberty:** An agreement which restricts the personal liberty of an individual is void as being opposed to public policy.
Ex: Danny, a servant, borrowed money from his employer, Ramnathan. And Danny agreed that he would not leave Ramnathan's job, borrow money, dispose of his property, or move from his house without Ramnathan's written consent to this effect. It was held that the agreement was void as it unduly restricted the liberty of Ramnathan.
- **Agreement to commit crime:** An agreement to commit a crime is void being opposed to public policy. Thus, an agreement to indemnify a person against consequences of his criminal act is void as opposed to public policy.
- **Interference with the court of justice:** An agreement whose object is to induce any judicial officer to act partially or corruptly is void, as opposed to public policy.
Ex: An agreement by Anushka to reward Akilesh, who is an intended witness in a suit against Anushka of Akilesh's absents himself from the trial. This agreement is void.
- **Interest against obligation:** Agreements are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.
Ex 1: An agreement by an agent to receive compensation without his principal's consent from another for the performance of his agency is invalid.
Ex 2: Aman, who is the manager of a firm, agrees to pass a contract to Zakir if Zakir pays to Aman Rs 2,000 privately, the agreement is void.
- **Agreement for the creation of monopolies:** Agreements to create monopoly is void as it is having the object of establishment of monopolies. Hence are opposed to public policy and therefore void.
- **Agreement in restraint of marriage:** Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding.

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Ex: Nived promised to Raksha that he will not marry any other girl, if he marries he will pay 2,000 to Raksha. Nived married Anjana. Raksha sued Nived. It was held that the agreement between Nived and Raksha was an agreement in restraint of marriage, opposed to public policy and was void and also held that Nived need not pay 2,000 to Raksha.

- **Agreement to influence the elections to public offices:** An agreement with the voters tending to influence them by improper means or agreement with third person to influence voters by indirect means or an agreement with the rival candidates to withdraw his candidates in consideration of a promise are all invalid on account of opposed to public policy.
- **Agreement of interfering with marital duties:** The husband and wife are bound under a marriage contract and will have number of rights and duties in a civilized society. No one should restrict the married person for exercising the marital rights or interfere with the discharge of marital duties. An agreement made to do this is void on the ground of opposed to public policy.
- **Agreements in restraint of legal proceedings:** Section 28 declares void, the types of agreements which restraint the parties to the contract to take recourse to legal proceedings
 - ✓ Agreements which oust jurisdiction of courts in trying the legal dispute
 - ✓ Agreements which curtail the period of limitation and prescribe a shorter period than that prescribed by law
 - ✓ Agreements which provide for forfeiture/waiver/extinguishment of the legal right itself, if no action is commenced within the period stipulated by the agreement

Certain exceptions to the above rule are

- ✓ A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract.
 - ✓ Similarly, a contract by which the parties agree to refer to arbitration any question between them which had already arisen or which may arise in future, is valid; but such a contract must be in writing.
- **Agreement in restraint of trade:** “Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, to that extent void” – Section 27 “to that extent” means only that portion of agreement is void which is restrictive. Public policy requires that every man shall be at liberty to work for himself and shall not be at liberty to deprive himself of the fruit of his labour skill or talent, by any contract that he enters into”.

Exceptions to the rule Agreement in restraint of trade is void

Agreement in restraint of trade is valid in the following cases

- ✓ **Statutory Exceptions**

- ❖ **Sale of goodwill (Section 27):** This seller of the goodwill of a business can be restrained from carrying on
 - A similar business
 - Within specified local limits
 - So long as the buyer or his successor in interest carries on a similar business provided

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- The restraint is reasonable in point of time and place

❖ Partner's Agreements (Exceptions given in the Partnership Act):

- **Partner's competing business:** A partner of a firm may be restrained from carrying on a similar business, so long as he remains a partner – (Section 11(2), Partnership Act)
- **Rights of outgoing partner:** A partner may agree with his partners that on ceasing to be a partner he will not carry on a similar business within a specified period or within specified local limits - (Section 36(2), Partnership Act)
- **Partner's similar business on dissolution:** Partners may, in anticipation of the dissolution of the firm, agree that all or some of them shall not carry on similar business within a specified period or within specified local limits - (Section 54, Partnership Act)
- **An agreement between any partner and the buyer of the firm's goodwill:** That such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits provided the restrictions imposed are reasonable - (Section 55(3), Partnership Act)

✓ Legal decisions

- ❖ **Trade combinations:** An agreement, the primary objective of which is to regulate business and not to restrain it, is valid. Thus, an agreement in the nature of a business combination between the traders or manufacturers e.g., not to sell their goods below a certain price, to pool profits or output and to divide the same in an agreed proportion does not amount to a restraint of trade and is perfectly valid. An agreement attempts to create monopoly, it would be void.
Ex: An agreement between ice manufacturer not to sell ice below a stated price and to divide profits in a certain proportion is not void under section 27.
- ❖ **Negative stipulation in service agreements:** An agreement of service by which a person binds himself during the term of the agreement, not to take service with anyone else, is not in restraint of lawful profession and is valid. Thus, a chartered accountant employed in a company may be debarred from private practice or from serving elsewhere during the continuance of service. But an agreement of service which seeks to restrict the freedom of occupation for some period, after the termination of the service is void.
- ❖ **Sole selling agent agreement:** An agreement between a manufacturer and sole selling agent in which the sole selling agent agrees not to deal with the goods of any other manufacturer, such a restraint in trade is binding.

Wagering agreements

The term 'wagering agreement' or 'wager' may be defined as an agreement in which one person agrees to pay certain amount of money to the other person on the happening or non-happening of a

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specified uncertain event. The wagering agreements are void. A 'wager' is a game of chance in which winning or losing is wholly dependent on specified uncertain event, i.e., it is an agreement of betting. It may be noted that the contracting parties should not have any interest in the contract other than the amount which they win or lose.

Wagering agreement: ^{Sec A 7A} A promise to give money or money's worth upon the determination of an uncertain event.

Ex: Ranbir and Deep enter into an agreement that if it rains on Monday, Ranbir will pay Rs 100 to Deep. And if it does not rain on Monday, Deep will pay Rs 100 to Ranbir. This is a wagering agreement. ^{Sec A 6}

Characteristics of wagering agreement

- The consideration for the promise under a wagering agreement is to pay or get money.
- The money is payable on the happening and non-happening of an event.
- The agreement depends on a future and uncertain event.
- The essence of gaming and wagering is that one party is to win and other loose.
- In wagering agreement no party has control over the event.
- Commercial transactions are valid, but to pay price differences in a wagering agreement is void.

Exceptions

- Shares: Share market transactions in which there is clear intention to give and take delivery of shares. Agreement to deliver shares or stocks for a price agreed between the parties is valid although the prices of shares change very often.
- Agreement of lottery: A lottery is a game of chance, so an agreement to buy a lottery ticket is void. The amount if any won in a lottery cannot be recovered through the court of law, except in the case of government lotteries.
- Game of skill: Agreement to pay fixed sum prize money to the winners of skill games and sports are valid. They are not considered as wagering agreements, if the prize amount exceeds Rs 1,000.
- Statutory exceptions: An agreement to contribute to the payment of a prize of the value of Rs 500 or upwards to the winners of a horse race is valid. This is statutory exception laid down in section 30 of the Contract Act.
- Insurance contracts: Insurance contracts look like to be a wagering contract, but in fact it is not. It means that the insurance are not wagering contracts but are valid contracts.

Effects of wagering agreement: Agreement of wager is void in India except in the state of Gujarat and Maharashtra, where they are declared as illegal. No suit can be filed to recover the amount on wager.

Contingent contracts

Contingent contract: ^{Sec A 7} Section 31 of the Act defines contingent contract as "a contract to do or not do something, if some event collateral to such contract, does or does not happen". Contracts of insurance, indemnity and guarantee are examples of contingent contract. ^{Sec A 6}

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Collateral event means an event which is “neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise”.

Ex: Aaliya contracts to pay Manasa Rs 1,00,000 if Manasa’s house is burnt. This is a contingent contract, because the burning of Manasa’s house is neither a performance promised as part of the contract nor it is the consideration obtained from Manasa. The liability of Aaliya arises only on the happening of a collateral event which is an independent event but collateral to the main contract.

Essentials of contingent contracts

1. The performance of such contracts depends on a contingency i.e., on the happening or non-happening of the future event.
2. The event on which performance is made to depend, is an event collateral to the contract, i.e., it does not form part of the reciprocal promises which constitute the contract. Thus the event should neither be a performance promised, nor the consideration for a promise.

Ex: Anupama agrees to deliver 100 bags of wheat and Divya agrees to pay the price only afterwards, this is not contingent; because the event on which Divya’s obligation is based is the part of the promise itself and not a collateral event.

3. The contingent event should not be the mere will of the promisor.

Ex: Ramki promises to pay Nirosha Rs 10,000 if he so chose. It is not a contingent contract, infact it is not a contract at all.

Rules regarding contingent contracts (Sections 32 to 36)

Rules regarding contingent contract are summarised below

- **Enforcement of contracts contingent on the happening of a future uncertain event (Section 32):** Contracts contingent upon the happening of a future uncertain event, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.
Ex 1: Where a car was insured against loss in transit, the car was damaged without being put in the course of transit, the insurer was held to be not liable.
- **Enforcement of contracts contingent on the non-happening of a future uncertain event (Section 33):** The non-happening of an uncertain future event, can be enforced when the happening of that event becomes impossible.
Ex 1: Nuthan agrees to pay Sirish a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.
- **Enforcement of contracts contingent on the happening of an event within a fixed time (Section 35 (1)):** Contracts contingent upon the happening of an event within a fixed time become void if, at the expiration of the fixed time, such event has not happened or if, before the time fixed, such event becomes impossible.
Ex: Santhosh promises to pay Janani a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within a year, and becomes void if the ship is burnt within a year. (Since the event becomes impossible)
- **Enforcement of contracts contingent on the non-happening of an event within a fixed time (Section 35(2)):** Contracts contingent upon the non-happening of an event within a fixed time may be enforced by law when the time fixed has expired and such event has not

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happened, or before the time fixed has expired, if it becomes certain that such event will not happen.

Ex: Murari promises to pay Vasundara a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within a year, or is burnt within a year.

- **Enforcement of contracts contingent on the future conduct of a living person (Section 34):** Contracts contingent on the future conduct of a living person is enforceable, if that person acts in that way or the future conduct of any person is considered impossible, if that person does something which makes it impossible to perform in the given circumstances. If a promise depends on the act of a third party, it will become void if such third party refuse to do act or if he incapacitates himself from doing it.

Ex 1: Saanvi agrees to pay Ragavan a sum of money if Ragavan marries Rose. Rose marries Jack. The marriage of Ragavan to Rose must now be considered impossible although it is possible that Jack may die and that Rose may afterwards marry Ragavan.

Ex 2: Nani promised to marry Priya on the death of his father. While the father was still alive, he married another woman. It was held that it had become impossible.

- **Enforcement of agreements contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Ex 1: Bunny agrees to pay Madhu Rs 1,000 if two straight lines join. The agreement is void.

Ex 2: Shakthi agrees to pay Karthik Rs 1,000 if Karthik will marry Jacob's daughter Jessy. Jessy was dead at the time of the agreement. The agreement is void.

Difference between wagering agreement and contingent contract

Wagering Agreement	Contingent Contract
A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	A contingent contract is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
In wagering agreement the uncertain event is the sole determining factor.	In a contingent contract the event is collateral.
A wagering agreement is essentially of contingent nature.	Contingent contract may not be of wagering nature.
A wagering agreement is void.	Contingent contract is valid.
A wagering agreement consists of reciprocal promises.	Contingent contract may not contain reciprocal promises.
In a wagering agreement, the parties have no other interest in the subject matter of the agreement except winning or losing of the amount of the wager. In other words wagering agreement is game of chance.	In contingent contracts the either parties have interest in the subject matter of the event.

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Performance of contract

“Performance of a contract” means carrying out of obligations. Section 37 of the Contract Act lays down that “The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law”.

Performance may be

- **Actual performance:** When each party to a contract fulfils his obligations arising under the contract within the time and in the manner prescribed, it amounts to actual performance of the contract and the contract comes to an end or stands discharged.
- **Attempted performance or offer to perform or tender:** When the promisor offers to perform his obligation under the contract, but is unable to do so because the promisee does not accept the performance, it is called attempted performance. A valid tender of performance is equivalent to performance.

Essentials of a valid tender

- **Unconditional:** It must be unconditional. Tender is said to be unconditional when it is made in accordance with the terms of the contract.
Ex: Ashwini offers to deliver 100 bales of cotton to Pandri Bai if Pandri Bai sells her one machine to Ashwini. It is a conditional tender and hence invalid.
- **Proper time and place:** It must be at proper time, i.e., at the stipulated time (if there is an agreement as to time) or during business hours (if there is no agreement as to time). It must be at proper place.
- **Whole obligation:** It must be of the whole obligation contracted for and not only of the part. However a minor deviation from the terms of the contract may not render the tender invalid.
- If the tender relates to delivery of goods, it must give a reasonable opportunity to the promisee for inspection of goods so that he may be sure that the goods tendered are of contract description.
- It must be made by a person who is in a position and is willing to perform the promise.
- It must be made to the proper person i.e., the promisee or his duly authorized agent. Tender made to a stranger is invalid.
- If there are several joint promisees, an offer to any one of them is a valid tender.
- In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a properly made tender (section 38)

Where the promisor has made an offer of performance to the promisee, and the offer has not been accepted then according to section 38 the promisor's obligation under the contract come to an end but his rights continue. He need not perform his part of the contract but may initiate action against the promisee for breach of contract.

Exception

If a debtor has properly offered to pay money, and the creditor refuses to accept payment, the debtor's liability to pay shall not come to an end. However, he will get one relief starting from the date of rejection of the tender. He will not be liable to pay interest on the due amount from the date of rejection.

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Effect of refusal of party to perform promise wholly (section 39)

When the party to the contract has refused to perform, or disabled himself from performing his promise entirely, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Ex: Mahalakshmi, a singer enters into a contract with Balu, the manager of a theatre to sing at his theatre two nights in every week during the next 2 months, and Balu engages to pay her Rs 1000 for each night performance. On the 6th night Mahalakshmi willfully absent herself from the theatre. Balu is at liberty to put an end to the contract.

If in the above example, with the assent of Balu, Mahalakshmi sings on the 7th night, Balu is presumed to have signified his acquiescence in the continuance of the contract and cannot put an end to it, but is entitled to compensation for the damages sustained by him through Mahalakshmi's failure to sing on the 6th night.

By whom must a contract be performed? (Section 40 and 41)

- **Promisor himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

Ex 1: Aadhi promises to take CA classes for Pankudi and this must be performed by the promisor himself.

Ex 2: Vijay promises to paint a picture for Sangeetha for Rs 1,00,000. Vijay is bound to perform the promise himself. He cannot say some other painter to paint the picture on his behalf. If Vijay dies before painting the picture, the contract cannot be enforced either by Vijay's representative.

- **Agent:** Where personal consideration is not foundation of a contract, the promisor or his representative may employ a competent person to perform it.

Ex: Surya promises to Jyothika to pay Rs 1,000 on delivery of goods. Surya may perform this promise either himself or causing someone else to pay the money to Jyothika.

- **Representatives:** A contract which involves the use of personal skills or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability is limited to the value of the property they inherit from the deceased.

- **Third persons:** When a promisee accepts the performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is performance by stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorized nor ratified the act of the third party.

Ex 1: Ajith delivered goods to Shalini for a promise to pay Rs 5,000. Later on Shalini expresses her inability to clear the dues. Deepa, who is known to Shalini, pays Rs 2,000 to Ajith on behalf of Shalini. Before making this payment Deepa did not tell Shalini about it. Now, Ajith can sue Shalini only for the balance and not the whole amount.

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Ex 2: Sharath received certain goods from Radhika promising to pay Rs 10,000. Later on Sharath expressed his inability to make payment. Richard, who is known to Sharath, pays Rs 6,000 to Radhika on behalf of Sharath. However, Sharath was not aware of the payment. Now Radhika is intending to sue Sharath for the amount of Rs 10,000. When a promisee accepts performance from a third person, he cannot afterwards enforce it against the promisor. That is performance by a stranger accepted by the promisee produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of third party. Therefore, in the present example, Radhika can sue only for the balance amount i.e., Rs 4,000 and not for the whole amount.

- **Joint promisors:** When two or more persons have made a joint promises, then unless a contrary intension appears from the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with surviving promisors fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

Who can demand the performance?

- **The promisee:** The promisee, i.e., the person to whom promise is made, can demand the performance.
Ex: Shiva promised Aarthi to give Rs 1000 to Aaradhana. But Shiva did not pay the amount to Aaradhana. In this case, the person who can demand performance is Aarthi (i.e., the promisee) and not Aaradhana.
- **Agent:** The agent can also demand performance on behalf of the promisee.
- **Legal representatives:** In case of death of promisee before performance, his legal representatives can demand performance.
- **Performance of joint promisees:** When a person has made a promise to several promisees then unless a contrary intention appears from the contract, the right to claim performance rests with all of them. When one of the promisees dies, right to claim performance rests with his legal representatives of deceased promisee jointly with the surviving promisees. When all the promisees die, it rests with their legal representatives jointly.

When Contracts need not be performed?

Sections 62 to 67 of the Contract Act are listed under the heading "Contracts which need not be performed". The relevant provisions are as follows

- **Novation (Section 62):** Novation occurs when a new contract is substituted for an existing contract either between the same parties or between different parties. The consideration for the new contract is the discharge of old contract.

To effect novation

- ✓ There must be a valid enforceable new substituted contract.
- ✓ Consent of all parties is necessary for novation.
- ✓ Novation should take place before the breach of contract.

Ex 1: Vishal is indebted to Arya and Arya to Sayyesha. By mutual agreement Arya's debt to Sayyesha and Vishal's debt to Arya is cancelled and Sayyesha accepts Vishal as his debtor. There is novation.

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Ex 2: Ananya owed Rs 100 to Bunny, under contract. Bunny owed Rs 100 to Chintu. It was agreed among Ananya, Bunny and Chintu that Ananya would pay Rs 100 to Chintu.

- **Alteration:** Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all the parties to the contract. In alteration there is change in the terms of the contract but no change of the parties to it.

Ex: Anandraj agreed with Ranju to supply 100 TV sets at a certain price by the end of October. Subsequently, Anandraj and Ranju mutually agreed that the supply be made by the end of November. This is an alteration in the terms of the contract by the consent of both the parties.

- **Remission (Section 63):** Remission means acceptance of lesser amount, or lesser degree of performance than what was contracted for in full discharge of the contract.

According to section 63 a party may

- ✓ Dispense with or remit performance wholly or in part
- ✓ Extend the time for performance
- ✓ Accept any other satisfaction instead of performance

For such a release or promise there no need for consideration or new agreement.

Ex: Nagarjun owes Amala Rs 5,000. Nagarjun pays Rs 2,000 to Amala and Amala accepts in full satisfaction for the whole debt. The old debt is discharged.

Under English law, “**Accord and Satisfaction**” are used as counterpart of the term remission. Under English law, “accord” means the promise to accept less than what is due under the original contract. And “satisfaction” means the actual payment or the fulfillment of the smaller obligation.

- **Rescission (Section 64):** Rescission occurs when the parties to a contract agree to dissolve the contract. In case of rescission only the old contract is cancelled and no new contract comes to existence in its place.

It may take place

- With the mutual consent of the parties
- By a party whose consent was not freely obtained
- One party may rescind the contract, if there is a breach of contract by the other party

- **Waiver:** Waiver means the abandonment of a right. A party to the contract may relinquish (waive) his rights under the contract. Thereupon the other party is released from his obligations.

Ex 1: Waiver of farmer’s bank loan by the Government. In such a case the banks give up its claim on the loan.

Ex 2: Suraj promises to supply goods to Mahendra. Later on, Mahendra exempts Suraj from carrying out the promise. It amounts as waiver of right of performance on the part Mahendra.

- **Merger:** When a superior right and an inferior right coincide and meet in one and same person, the inferior right vanishes into the superior right. This is known as merger.

Ex 1: A man holding property under a lease buys the property. His rights as lessee vanish. They are merged into the rights of ownership which he has now acquired.

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Ex 2: Chaitanya may agree to work as a part time employee of Samantha. Later, they may decide that Chaitanya will work as full time employee. Here Chaitanya's inferior and superior right is coinciding and the inferior right vanishes.

- If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusals as to non-performance caused thereby (Section 67).

Ex: Mara contracts with Vidhi to repair Vidhi's house. Vidhi neglects or refuses to point out to Mara the places in which his house requires repair. Mara is excused for the non-performance of the contract, if it is caused by such neglect or refuse.

Devolution of joint liabilities and joint rights (Section 42 and 45)

Devolution of liabilities of joint promisors (Section 42)

When two or more persons have made a joint promises, then unless a contrary intension appears from the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with surviving promisors fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

Ex: Bhagavan, Spoorthy and Kusumitha who had jointly borrowed money must during their life jointly repay the debt. Upon the death of Bhagavan his representative along with Spoorthy and Kusumitha should jointly repay the debt and so on.

Any one the promise may be compelled to perform (Section 43)

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

- **Each promisor may compel contribution:** Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intension appears from the contract.

Ex: Amrutha, Varshini and Hithaishi jointly execute a promissory note for Rs 30000 in favour of Neeraj. Amrutha is compelled to pay the whole amount. Amrutha, in such a case would be able to realise Rs 10000 each from Varshini and Hithaishi. (The amount to be realised by Amrutha might differ based on the agreement entered into by them)

- **Sharing of loss by default in contribution:** If any one of two or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Ex: In the above example Amrutha, Varshini and Hithaishi jointly execute a promissory note for Rs 30000 in favour of Neeraj. If Hithaishi was unable to pay anything, then Amrutha would be able to realise from Varshini by the way of contribution of Rs 15000 instead of Rs 10000.

Effect of release of one joint promisor (Section 44)

Where two or more persons have made a promise, a release of one such joint promisors by the promisee does not discharge the other joint promisors; neither does it free the joint promisor so released from responsibility to the other promisor or joint promisors.

This section gives to the promisee a right to release any one or more of the joint promisor from the liability under the joint promise. Once the release is granted, the promisee will not be able to file a suit against the released joint promisor. But, the liability of the other joint promisor shall continue unchanged. Similarly, the liability of the released joint promisor towards other joint promisors for

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contribution shall also continue. The net result is that there is no substantive gain to the released promisor.

Devolution of rights of joint promisees (Section 45)

When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and with them during the joint lives, and, after death of any of them, with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

Ex: Yashas, in consideration of Rs 5,000, lent to him by Trisha and Thara, promises Trisha and Thara jointly to repay them that sum with interest on a day specified – Trisha dies. The right to claim performance rests with Trisha's representative jointly with Thara during Thara's life and after the death of Thara with the representative of Trisha and Thara jointly.

Time and place of performance (Section 46 to 50)

Time and place of performance of a contract are matters to be determined by agreement between the parties themselves. If there is no such agreement, then provisions of sections 46 and 50 apply.

- If no time is specified in a contract for the performance of the promise, the promise may be performed within a reasonable time. The expression reasonable time is to be interpreted having regard to the facts and circumstances of a particular case.
- If a promise is to be performed on a specified date but the hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day.
Ex: If the delivery of goods is offered say after sunset, the promisee may refuse to accept the delivery, for the usual business hours are, between 10 AM and 5 PM. Moreover, the delivery must be made at the usual place of business.
- When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise.
- Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Reciprocal promises (Section 51 to 54 and 57)

According to Section 2(f) promises which form the consideration or part of consideration for each other, are called reciprocal promises. Such promises are mutual promises, i.e., promise for a promise. When one party gives a promise in consideration for the other's promise, both the promises are called reciprocal promises.

Ex: In a transaction of sale, there are two reciprocal promises. The buyer promises to pay the price and seller promises to deliver the goods.

Kinds of reciprocal promises

- **Mutual and independent promises:** Where one party has to perform his promise independently without waiting for the performance of the other party, the promises are mutual and independent.

Ex: Gagan agrees to sell the car and deliver the same to Deepika on 1-1-2020, while Deepika agrees to pay the price on 15-1-2020. The promises are independent.

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- **Mutual and dependent promises:** Where the performance of the promise by one party depends upon the prior performance of the promisor or by the other party, the promises are conditional and dependent.

Ex: Rama agrees to construct a house for Seeta. Seeta agrees to supply cement for building the house. The promises are conditional and dependent.

- **Mutual and concurrent promises:** Where the two promises are to be performed simultaneously, they are said to be mutual and concurrent.

Ex: Nandini promises to deliver rice and Bhagya promises to pay the price on delivery, both the promises are to be performed simultaneously, and both Nandini and Bhagya must be ready and willing to perform their respective promises.

Rules regarding performance of reciprocal promises

- When reciprocal promises have to be simultaneously performed the promisor is not bound to perform unless the promisee is ready and willing to perform his promise. (Section 51)

Ex: Viren agrees to sell goods to Jeevika on cash payment, which Jeevika agrees. If Viren find that Jeevika is not ready to pay the cash then and there, he need not sell the goods.

- The reciprocal promises must be performed in the order fixed by the contract. (Section 52)

Ex: Virat and Maanvi contract that Virat shall build a house for Maanvi for Rs 10,00,000. Virat's promise to build the house must be performed before Maanvi's promise to pay for it.

- If one party prevents the other party from performing his reciprocal promise, the contract become voidable and the party so prevented can claim compensation. (Section 53)

Ex: Ganga and Yamuna contract that Yamuna shall execute the work for Ganga for Rs 1,000. Yamuna is ready and willing to execute the work accordingly, but Ganga prevents her from doing so. The contract is voidable at the option of Yamuna and if she elects to rescind it, she is entitled to recover from Ganga the compensation for any loss which she has incurred by its non-performance.

- Where the nature of reciprocal promises is such that one cannot be performed unless the other party performs his promise in the first place, then if the latter fails to perform he cannot claim performance from the other, but must make compensation to the first party for the loss. (Section 54)

Ex: Krishna hires Pratigya's ship to take cargo from Calcutta to Mauritius. Krishna fails to supply the cargo. Krishna cannot force Pratigya to perform his obligation. Rather, Krishna has to give compensation to Pratigya for any loss that Pratigya may suffer by the non-performance of the contract.

- **Reciprocal promises to do things legal and also things illegal (Section 57):** The first is a contract, but the latter is a void agreement.

Ex 1: Krishna and Kaveri agree that Krishna shall sell Kaveri a house for Rs 10,000 but that if Kaveri uses it as a gambling house, he shall pay Krishna Rs 50,000 for it. The first set of reciprocal promises namely to sell a house and to pay Rs 10,000 for it is a contract. The second set is for an unlawful object, viz, that Kaveri may use the house as a gambling house, and is a void agreement.

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Time as the essence of contract

- Where the intension of the parties is that the time should be of the essence of the contract, the contract must be performed within the fixed time. And if the party, who is bound to perform his promise within the fixed time, fails to do so, then the contract becomes voidable at the option of the other party. Thus, the innocent party may put an end to the contract if he so chooses. (Section 55)
- Where the intention of the parties is that the time should not be of the essence of the contract, the contract may or may not be performed within the fixed time. And the failure to perform the contract within the fixed time does not make the contract voidable. Thus, the innocent party does not have the right to put an end to the contract. However, he has the right to receive the compensation from other defaulting party for any loss caused to him by the delayed performance. (Section 55)

Appropriation of payments

Appropriation of payments means the application of payment by a creditor to the discharge of same particular debt. When the money is paid, it must be applied according to the rule of the payer and not the receiver. Appropriation is a right primarily of the debtor and for his benefit. Section 59 to 61 lays down 3 rules regarding appropriation of payments

- **If the debtor indicates:** As per section 59, where the debtor, owing several distinct debts indicates at the time of actual payment that the payment should be applied towards the discharge of a particular debt, the creditor must do so. If there is no clear instructions from the debtor but the circumstances of the case imply that the payment should be applied to a particular debt, then the accepted payment must be applied accordingly.
- **If the debt to be discharged is not indicated (Section 60):** If the debtor does not indicate, then the creditor may apply the payment at his discretion to any lawful debt. He cannot, however, apply the payment to a disputed or unlawful debt, but he may apply it to a debt which is barred by the law of limitation.
- **Where the debtor does not intimate and the creditor fails to appropriate (Section 61):** The payment shall be applied in discharge of the debts in the order of time. If the debts are of the same date, the payment shall be applied in discharged of each proportionately.

Assignment of contract

Assignment means transfer. The rights of a party to a contract can be assigned under certain circumstances. Assignment may occur

1. Assignment by act of parties

- Contracts involving personal skill, ability, or other personal qualifications, cannot be assigned.
Ex: A contract to marry, a contract to paint a picture, a contract of personal service etc.
- The obligations under a contract i.e., the burden and the liabilities under the contract cannot be transferred.
Ex: If Ananth owes Vaidyanathan Rs 10000 he cannot transfer the liability to Gokar, and force Vaidyanathan to collect his money from Gokar.

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Exception: In both the cases 1 and 2, the parties to a contract may agree to replace the original contract by a new one under which the obligations of one of the parties are shifted to a new party. This in the above example given above if Vaidyanathan agrees to accept Gokar as his debtor in place of Ananth, the liability to pay the debt is transferred from Ananth to Gokar. Such cases are known as Novation.

- A contract may be performed through the agency of a competent person, if the contract does not contemplate performance by the promisor personally. But in this case the original party remains responsible for the proper performance of the obligations under the contract.

- The rights and benefits under a contract can be assigned.

Ex: If Paarthu owes Puvi Rs 5000. Puvi is entitled to receive Rs 5000 from Paarthu, he can assign his right to Arasu where upon Arasu will become entitled to receive the money from Paarthu.

- Actionable claims can be assigned but only by a written document. Notice must be given to the debtor. An actionable claim is a claim to any debt or to any beneficiary interest, e.g., a money debt.

2. Assignment by operation of law

Assignment by operation of law occurs in cases of death or insolvency. Upon the death of a party his rights and liabilities under a contract devolve upon his heirs and legal representatives (except in cases of contracts involving personal qualification). In case of insolvency, the rights and liabilities of the person concerned pass to the Official Receiver or the Official Assignee. Assignment by operation of law occurring upon the death of a party is known as **succession**.

Distinction between Assignment and Succession

In succession, the benefits of a contract are succeeded to by a process of law to the legal heirs. Here both, the burden and benefits attaching to the contract devolve on the legal heir. When a son succeeds to the estate of his deceased father he is liable to pay the debts and liability of his father, to the extent of property inherited by him. In case of assignment, however the benefits of a contract can only be assigned and not the liabilities there under. This is because when the liability is assigned, a third party gets involved therein. Thus, a debtor cannot relieve himself of the liability to creditor by assigning to someone else his obligation to repay the debt.

Basis of difference	Succession	Assignment
Meaning	The transfer of rights and liabilities of a deceased person to his legal representative is called as Succession.	The transfer of rights by a person to another person is called as Assignment.
Time	It takes place on the death of a person.	It takes place during the lifetime of a person.
Voluntary act	It is not a voluntary act. It takes place automatically by operation of law.	It is a voluntary act of a person.
Written document	It may take place even without any written document.	It requires execution of an assignment deed.
Scope	All the rights and liabilities of a person are transferred by way of succession.	Only rights can be assigned. Liabilities under a contract cannot be assigned unless there is

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		novation.
Notice	No notice of succession is required to be given to any person.	Notice of assignment must be given to the creditor.
Consideration	No consideration is necessary for succession.	Consideration between assignor and assignee is a must for assignment.

Discharge of contract

When the obligations created by a contract come to an end, the contract is said to be discharged or terminated. A contract may be discharged or terminated in any of the following ways

- Discharge by performance
- Discharge by mutual agreement
- Discharge by breach of contract
- Discharge by operation of law
- Impossibility of performance

Discharge by performance

The obligations of the party to a contract come to an end where he performs his promise. Performance by all the parties, of the respective obligations, puts an end to the contract completely. This is the normal and natural mode of discharging a contract. Discharge by performance may be

- **Actual performance:** Actual performance is said to taken place, when each of the parties has done what he had agreed to do under the agreement.
- **Attempted performance:** When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

Ex: Ramachandran contracts to sell his car to Bindhu on the agreed price, as soon as the car is delivered to Bindhu and Bindhu pays the agreed price for it, the contract comes to the end by performance.

Discharge by mutual agreement

Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed. Termination by mutual agreement may occur in any of the following ways

- **Novation:** Novation occurs when a new contract is substituted for an existing contract either between the same parties or between different parties. The consideration for the new contract is the discharge of old contract. *Sec A11 Sec A-12A*

To effect novation,

- ✓ There must be a valid enforceable new substituted contract.
- ✓ Consent of all parties is necessary for novation.
- ✓ Novation should take place before the breach of contract.

Ex: Babu is indebted to Uma and Uma to Nirmala. By mutual agreement Uma's debt to Nirmala and Babu's debt to Uma is cancelled and Nirmala accepts Babu as his debtor. There is novation.

- **Alteration:** Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all the parties to the contract. In alteration there is change in the terms of the contract but no change of the parties to it. *Sec A11 12A*

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Ex: Avanthika agreed with Rukmini to supply 100 TV sets at a certain price by the end of October. Subsequently, Avanthika and Rukmini mutually agreed that the supply be made by the end of November. This is an alteration in the terms of the contract by the consent of both the parties.

Novation	Alteration
Novation is substitution of old contract by a new contract by mutual agreement between the parties	Alteration means change in terms of the existing contract by mutual agreement between the parties
The parties may either remain the same or a third party may be introduced	Parties remain the same. No third party is involved
Novation rescinds the original contract as a result the original contract need not be performed	Alteration does not rescind the original contract. As the same original contract in a modified manner is performed

- **Remission:** Remission means acceptance of lesser amount, or lesser degree of performance than what was contracted for in full discharge of the contract. *Sec A 11 Sec A 12*
According to section 63 a party may
 - ✓ Dispense with or remit performance wholly or in part
 - ✓ Extend the time for performance
 - ✓ Accept any other satisfaction instead of performance

For such a release or promise there no need for consideration or new agreement.

Ex: Manikandan owes Sundari Rs 5,000. Manikandan pays Rs 2,000 to Sundari and Sundari **accepts in full satisfaction for the whole debt.** The old debt is discharged.

Under English law, “**Accord and Satisfaction**” are used as counterpart of the term remission. Under English law, “accord” means the promise to accept less than what is due under the original contract. And “satisfaction” means the actual payment or the fulfillment of the smaller obligation.

- **Rescission:** Rescission occurs when the parties to a contract agree to dissolve the contract. In case of rescission only the old contract is cancelled and no new contract comes to exist in its place. *Sec A 11 Sec A 12*
- **Waiver:** Waiver means the abandonment of a right. A party to the contract may relinquish (waive) his rights under the contract. Thereupon the other party is released from his obligations. *Sec A 11 Sec A 12*

Ex 1: Waiver of farmer’s bank loan by the Government. In such a case the banks gives up its claim on the loan.

Ex 2: Sukumar promises to supply goods to Mahant. Later on, Mahant exempts Sukumar from carrying out the promise. It amount as waiver of right of performance on the part Mahant.

- **Merger:** When a superior right and an inferior right coincide and meet in one and same person, the inferior right vanishes into the superior right. This is known as merger. *Sec A 11*
Ex 1: A man holding property under a lease buys the property. His rights as lessee vanish. They are merged into the rights of ownership which he has now acquired.

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Ex 2: Barun may agree to work as a part time employee of Saanya. Later, they may decide that Barun will work as full time employee. Here Barun's inferior and superior right is coinciding and the inferior right vanishes.

Discharge by Breach of contract Try the sec B.6 K

Breach means failure of a party to perform his or her obligation under a contract. The breach of contract is one of the modes of discharge of contract. Breach of contract may arise in 2 ways

Actual breach of contract: It occurs when, on the due date of performance or during the performance, a party fails to perform his obligations. Thus, the actual breach of contract may be discussed under the following two heads.

✓ **At the time when the performance of the contract is due:** On the due date of performance, one party fails to perform his obligations. In such cases, the other party is discharged from the performance of his obligations, and can hold the guilty party liable for the breach of contract.

Ex 1: Anusha agreed to sell her car to Vinutha on 1st June. But on 1st June, Anusha refused to sell the car to Vinutha. On Anusha's refusal to sell the car, there occurred a breach of contract. And Vinutha can hold Anusha liable for the breach of contract.

Ex 2: Goutham agrees to deliver 100 bags of sugar to Preetham on 1st Feb, 2020. On the said day, he failed to supply 100 bags of sugar to Preetham. This is actual breach of contract.

✓ **During the performance of the contract:** Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express and implied act.

Ex: Mukesh agreed to sell to Anil 10 tons of wheat at Rs 8000 per ton to be delivered in two equal instalments on 20th December and 21st December. On 20th of December, Mukesh delivered 5 tons and refused to deliver the remaining 5 tons. It is an actual breach of contract during the course of performance.

Anticipatory breach of contract: When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory breach.

Ex 1: Anitha contracts to marry Balakrishnan. Before the agreed date of marriage, she marries Chandan. In this case, Anitha has committed anticipatory breach of contract.

Ex 2: Nirmala agrees to employ Bala from 1st March and on 25th February, he writes to Bala that he need not join the service. The contract has been expressly repudiated by Nirmala, before the date of its performance. This is the anticipatory breach of contract.

On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him.

Discharge by operation of law

A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc. A contract terminates by operation of law in following cases

- **Death:** In contracts involving personal skills or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the dead man.

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- **Insolvency:** When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication. Upon insolvency, the rights and obligations of the insolvent are, with certain exceptions, transferred to an officer of the court, known as the Official Assignee/Receiver.
- **Merger:** Means coinciding and meeting of inferior rights with superior rights in one and the same person. In such case, inferior right available to a party under the contract will automatically vanish.
Ex: Arnav took a land on lease from Kushi. Subsequently, Arnav purchases that land. Now, Arnav becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.
- **Lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act. If it is not performed and no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.
Ex: If a creditor does not file the suit against the buyer for the recovery of the price within 3 years, the debt becomes time barred and hence irrecoverable.
- **Unauthorised material alteration:** If the terms of the contract are materially altered by a party to the contract without the consent of the other parties, the contract is discharged and cannot be enforced any more.

Impossibility of performance

- **Pre-contractual impossibility:** An agreement which at the time was entered into was impossible to perform, is void-ab-initio and creates no rights and obligations. Section 56 states that "An agreement to do an act impossible in itself is void". Such fact of impossibility may be
 1. **Known to the parties:** When both the parties know about the impossibility at the time of making the contract, in such a case the agreement is void-ab-initio and creates no rights and obligations.
Ex 1: Aarav promise to ride a horse to the Sun. The agreement is void.
Ex 2: Chandini agrees with Raji to discover treasure by magic. The agreement is void.
 2. **Unknown to the parties:** When both the parties are ignorant of the impossibility at the time of making the contract, the agreement is void on the ground of mutual mistake.
Ex: Omkara agrees to sell his horse to Gowri but unknown to both the parties the horse had already died at the time of making the contract. The agreement is void.
 3. **Known only to the promisor:** If the promisor alone knew about the impossibility of performance at the time of making the contract, he shall have to compensate the promisee for any loss which such promisee sustains through the non-performance of the promise.
Ex: Vetri being already married to Abhi contract to marry Malar. Vetri must make compensation to Malar for the loss caused to her by the non-performance of the promise.
- **Post-contractual impossibility:** A contract, which at the time was entered into, was capable of being performed may subsequently become impossible to perform or unlawful. In such cases

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the contract becomes void. This is known as the Doctrine of Supervening Impossibility or Doctrine of Frustration.

Grounds of Frustration or Supervening impossibility may occur in many ways, some of which are explained below

1. **Destruction of subject matter of contract:** On the destruction of the subject matter, a contract is discharged and no party is liable to perform.

Ex: A musical hall was let out for holding a musical entertainment programme on a specified date. Before the date, the hall was destroyed by fire. It was held that the parties shall be excused, because performance becomes impossible due to the destruction of the subject matter without the fault of the parties.

2. **Change of law:** The performance of a contract may become unlawful by a subsequent change of law. In such cases, the original contract becomes void.

Ex: Nived of Nasik agrees to export onions to Rakshitha of Dubai. Before the export consignment is sent, the Government bans export of onions. The contract becomes void due to change of law.

3. **Failure of pre-condition:** When a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged if the state of things changes.

Ex: Selvam and Archana contract to marry each other. Before the time fixed for the marriage, Selvam goes mad. The contract becomes void.

4. **Death or incapacity for personal services:** Where the personal qualification of a party is the basis of the contract, the contract is discharged in cases of death or personal capacity.

Ex: Tamil contracts to act for a theatre for 6 months in consideration of a sum paid in advance by Tulasi. On several occasions Tamil is too ill to act. The contract to act on these occasions becomes void.

5. **Outbreak of war:** A contract entered into during war with an alien enemy is void-ab-initio. A contract entered into before the war commenced between citizens of countries subsequently at war, remains suspended during the pendency of the war. After the termination of war, the contract revives and may be enforced.

Exceptions

Impossibility of performance is a rule, not an excuse from performance. Only physical or legal impossibility will excuse the parties. The performance of the contract should have become impossible due to any of the circumstances mentioned above. The doctrine of frustration or supervening impossibility does not apply in the following cases i.e., in these cases the contract is not discharged

- **Difficulty of performance:** Difficulty does not excuse performance of contract.
- **Commercial impossibility:** A wholesale dealer's contract to deliver goods is not discharged because a manufacturer has not produced the goods concerned. Similarly increase of wages of prices of raw materials, unreasonable weather or lack of adequate profits do not excuse performance.

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- **Strikes, lock-outs, civil disturbances and riots:** These events do not terminate contracts unless there is a clause in the contract providing that in such cases the contract is not to be performed or that the time of performance is to be extended.
- **Failure of one of the objects:** When there are several purposes for which a contract is entered into, failure of one of the objects does not terminate the contract.

Remedies for the breach of contract *see c 5A*

1. **Rescission of the contract:** Where there is a breach of contract by one party, the other party may rescind the contract and need not perform his part of obligations under the contract. This is called the right of rescission which means a right to cancel or reject the contract.

Ex: Rakshana contracts to supply 100 kg of tea leaves to Rakesh on 25th April. If Rakshana does not supply the tea leaves on the appointed day, Rakesh need not pay the price. Rakesh may also file a suit for rescission and claim damages.

2. **Suit for damages:** Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court. Thus the liability for the damages may be classified as under

- ✓ **Ordinary damages:** Ordinary damages are those which naturally arise in the usual course of events from such a breach. These damages are the direct loss suffered by the injured party.

Ex: Mithun agrees to sell 50 quintals of wheat to Nithin at Rs 100 per quintal to be paid on delivery. Mithun breaks his promise. Nithin had to purchase wheat from the market and had to pay Rs 120 that means Rs 20 extra per quintal. Nithin can claim Rs 1000 (50 quintals * 20) as damages.

- ✓ **Special damages:** These are the damages which the aggrieved party may claim, besides general damages, for any loss he has suffered owing to special circumstances known to both the parties at the time of contracting. In other words, loss which arises, not in the usual course of events, but extraordinary circumstances of the case which the parties knew at the time of the contract that such loss would arise.

Ex: Prabeesh delivers goods to a carrier Sudash for taking them to Kanpur, where an exhibition is going to be held on 1st Jan. Prabeesh informs Sudash about the special circumstances and directs Sudash to deliver the goods before 1st Jan. Because of some delay the goods could not be delivered on that day i.e., 1st Jan but were actually delivered after the exhibition was over. Here Prabeesh can claim special damages from Sudash.

- ✓ **Liquidated damages and Penalty** *Only Heading*

- ❖ **Liquidated damages:** Where the party fixes a genuine pre-estimate of the probable damage, it is called liquidated damages. They are predetermined damages agreed at the time of contract, which are considered reasonable by both the parties. It is a genuine estimate of the actual loss or damage likely to be suffered by the aggrieved party.

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❖ **Penalty:** Where the sum fixed before hand for the breach of contract does not bear the relationship to the actual damage which the aggrieved party is likely to suffer in the event of actual breach of contract, it is called penalty.

✓ **Exemplary and vindictive damages:** These damages are awarded with the intension of punishing the defaulting party. They are of a deterrent nature and their object is to prevent the parties from committing breach. They are heavy in amount and are awarded by way of punishment only in the following cases

❖ **Breach of a contract to marry:** In case of breach of a contract to marry, damages will include compensation for the loss to the feelings and the reputation of the aggrieved party.

❖ **Wrongful dishonour of a customer's cheque by the banker:** In the case of dishonor of a cheque damages are awarded taking into consideration the loss to the prestige and goodwill of the customer and the general rule is that smaller the cheque the greater is the amount of damages.

✓ **Damages for deterioration caused by delay:** In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not implies physical damage to the goods but it may also mean loss of special opportunity to sale.

✓ **Nominal damages:** They are awarded in cases where there is a breach but the injured party has not suffered any loss. In order to establish the right of the injured party such damages are awarded.

Ex: Thiagu has contracted to buy wheat from Pradeep on 1st Jan. Pradeep refuses to deliver on the said day. Thiagu purchases the wheat from the market at the same rate at which Pradeep agreed to supply. Here, actually Thiagu has not suffered any loss, so nominal amount may be awarded as damages.

✓ **Remote or indirect damages (Not recoverable):** Damages cannot be claimed for any remote or indirect loss or damage sustained by reason of the breach. Remote damages are those which are not reasonably foreseeable. The party breaking or breaching the contract shall not make compensation in respect of loss or damage indirectly or remotely caused.

3. **Suit for specific performance:** Specific performance means actually carrying out of the contract by the parties. Where a party fails to carry out the contract and when the damages are not adequate remedy in the case of breach of contract, the court may at its discretion, direct party in breach, to carry out his promise according to the terms of the contract.

4. **Suit for injunction:** Where a party to a contract is negativating the terms of the contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

Ex: Nisha, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producer. Held, she could be restrained by an injunction.

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5. **Suit upon Quantum Meruit:** ^{80% A S} The phrase 'Quantum Meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which makes it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not at default. (However in certain cases the party may also sue for the work done if the contract is divisible)

✓ **Where work has been done by the person who is not at default**

❖ **Where an agreement is discovered to be void:** Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

Ex: Vedha was appointed as managing director of a company at Rs 35,000 remuneration, by the board of directors. Subsequently it was discovered that the board of directors was not qualified to make this appointment and hence it was void, Vedha in the meantime rendered services to the company. She sued the company for remuneration for the period he provided services. The court held that Vedha could recover on 'Quantum Meruit'.

❖ **Where something is done or delivered without intention to do gratuitously (without consideration):** Where a person does some act or delivers something to another person with the intention of receiving payments for the same in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

❖ **Where there is a breach of contract:** Where a party performs a part of the contract, but the other party breaks it in between, then the injured party can claim compensation for the work done or the services rendered.

Ex: Suresh agreed to write an article for Sasi. The article was to be published in instalments. After 3 instalments were published, the magazine was closed. Here Suresh can claim on the basis of Quantum Meruit.

✓ **Where work has been done by the person guilty of breaching the contract:** In such a case defaulting party would be liable for consequences of breach, but for the work done by him he may be entitled to get payment in the following circumstances

❖ **Where the work to be done was divisible:** A contract is divisible and a party performs a part of it and refuses to perform the remaining part, the defaulting party can claim reasonable compensation for the part performed, on the basis of quantum meruit. Thus two conditions should exist.

Ex: Anu agreed to supply 1000 bales of cotton to Binu at Rs 1000 per bale. The bales were to be supplied in two installments of Rs 500 each. Anu supplied the first installments but failed to supply the second. Binu must pay for 500 bales.

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❖ Where the work to be done is not divisible: In such cases it requires complete performance and the party who has done part performance cannot get payment from the party who has enjoyed the benefit.

Ex: Santhosh, a contractor was appointed to build a house for Shanthi and to receive payment on the completion of the work. After completing half of the work Santhosh discontinued the work and Shanthi had to complete on her own. It was held that Santhosh cannot recover anything for his part performance because part completion of a house has no value. The contractor cannot even get the payment for the materials supplied by him for the part construction work because there was no separate contract for supplying the materials.

Assignment Questions

Section A

1. Meaning and definition of law and business law Pg-1,3
2. Meaning of specific offer, express offer and implied offer Pg-22
3. Who is a minor and insolvent Pg-34,35
4. Meaning of coercion and fraud Pg-37,39
5. Give the meaning of Quantum Meruit Pg-70
6. Meaning of wagering agreement and contingent contracts Pg-51
7. Meaning of breach of contract, actual and anticipatory breach Pg-65
8. Meaning of quasi contract and implied contract Pg-13,14.
9. Meaning and definition of contract and agreement Pg-8,9.
10. Meaning and definition of offer, acceptance and consideration Pg-19,24,28.
11. Meaning of Novation, Alteration, Remission, Rescission, Waiver and Merger Pg-63
12. Define void contract and voidable contracts Pg-11,12

Section B

1. Explain the scope and objectives of Business law
2. Explain the nature and objectives of law
3. Difference between coercion and undue influence, fraud and misrepresentation
4. Difference between void contract and voidable contract Pg-16 fall
5. Explain types of breach of contract
6. Explain types of offer

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Section C

1. Define Contract. Write the essentials of Valid Contract?
2. Explain the sources of Business Law.
3. Explain revocation of offer
4. Explain the laws relating to minor
5. Explain the remedies for breach of contract
6. Explain the essentials, rule of consideration and its exceptions
7. Explain the statement "No man must grow rich out of another person loss".