MANONMANIAM SUNDARANARUNIVERSITY

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DIRECTORATE OF DISTANCE AND CONTINUING EDUCATION


BUSINESS
LAW

Business Law

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Unit I

Elements of Contract Indian Contract Act 1872: Definition of Contract, Essentials of Valid Contract, Classification of Contract, Offer and Acceptance – Consideration – Capacity to Contract – Free Consent - Legality of Object – Contingent Contracts – Void Contract.

Elements of Contract Indian Contract Act 1872

The Indian Contract Act of 1872 is a comprehensive piece of legislation that governs the law of contracts in India. It was enacted during the British colonial period and continues to be a foundational statute that regulates the formation, execution, and enforcement of contracts. The Act draws inspiration from English common law principles but also incorporates certain indigenous elements.

Key Provisions and Concepts:

1. **Definition of Contract (Section 2):** The Act defines a contract as an agreement enforceable by law. An agreement becomes a contract if it is made by the free consent of parties competent to contract, for a lawful consideration, with a lawful object, and is not expressly declared to be void.
2. **Essential Elements of a Contract:**
    - **Offer and Acceptance (Sections 2(a) and 7-9):** For a valid contract, there must be a lawful offer by one party and the lawful acceptance of that offer by another. The terms of the offer and acceptance must be clear and unambiguous.

- **Intention to Create Legal Relations (Section 10):** The parties must intend to create a legal relationship, and social or domestic agreements are generally not considered contracts.
- **Lawful Consideration (Section 2(d)):** The contract must be supported by a lawful consideration, which can be in the form of money, goods, services, or an act.
- **Capacity of Parties (Sections 10, 11, and 12):** Parties entering into a contract must be competent to contract. Minors, persons of unsound mind, and those disqualified by law are not competent.

3. **Void and Voidable Contracts (Sections 2(g) and 2(i)):**
    - **Void Contracts:** Certain types of contracts are expressly declared void by the Act, such as those involving illegal objects, consideration, or where the parties have not entered into the contract with free consent.
    - **Voidable Contracts:** Contracts that are valid but can be voided at the option of one or more parties due to factors like coercion, undue influence, fraud, or mistake are termed voidable.
4. **Contingent Contracts (Sections 31-36):** The Act recognizes contingent contracts, where the performance depends on the happening or non-happening of a specified event. The rights and obligations of the parties are contingent upon the occurrence of the specified event.
5. **Performance of Contracts (Sections 37-67):** The Act provides rules regarding the performance of contracts, including time and place of performance, and the consequences of failure to perform. It also addresses the discharge of contracts through performance, agreement, or impossibility of performance.

6. **Breach of Contract (Sections 73-75):** In case of a breach of contract, the Act provides remedies such as damages, specific performance, and injunctions, depending on the nature of the contract and the circumstances.

7. **Quasi-Contracts (Sections 68-72):** The Act introduces the concept of quasi-contracts, where a person is bound to make restitution even though there is no formal contract. This is based on the principle of unjust enrichment.

8. **Contracts of Indemnity and Guarantee (Sections 124-147):** The Act defines and regulates contracts of indemnity and guarantee. Indemnity involves a promise to compensate for loss, while guarantee involves a promise to perform the obligations of another party in case of default.

9. **Discharge of Contracts (Sections 73-75):** The Act outlines various ways in which a contract can be discharged, including by performance, agreement, impossibility of performance, and breach.

10. **Specific Relief (Sections 10 and 19):** The Act provides for specific relief, such as specific performance and injunctions, as remedies for breach of contract.

The Indian Contract Act, 1872, is a comprehensive and detailed piece of legislation that provides the legal framework for contractual relationships in India. It has played a crucial role in shaping the principles of contract law and continues to be the basis for contract-related litigation and dispute resolution in the country.

Definition of Contract

The Indian Contract Act, 1872 defines the term “Contract” under its section 2 (h) as “An agreement enforceable by law”. Thus a contract is anything that is an agreement and enforceable by the law of the land.

This definition has two major elements in it viz – “agreement” and “enforceable by law”. So in order to understand a contract in the light of The Indian Contract Act, 1872 two pivots in the definition of a contract are:

Agreement

In section 2 (e), the Act defines the term agreement as “every promise and every set of promises, forming the consideration for each other”.

Promise

The Act in its section 2(b) defines the term “promise” here as: “when the person to whom the proposal is made signifies his assent thereto, the proposal becomes an accepted proposal. A proposal when accepted, becomes a promise”.

In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition says that in order to establish or draft a contract, some steps to be initiated are:

The definition requires a person to whom a certain proposal is made.

The person (parties) in step one has to be in a position to fully understand all the aspects of a proposal.

“Signifies his assent thereto” – means that the person in point one accepts or agrees with the proposal after having fully understood it.

Once the “person” accepts the proposal, the status of the “proposal” changes to “accepted proposal”.

“Accepted proposal” becomes a promise. Note that the proposal is not a promise. For the proposal to become a promise, it has to be an accepted proposal.

To sum up:

Agreement = Offer + Acceptance.

Enforceable By Law

Suppose you agree to sell a bike for 30,000 bucks with a friend. Can you have a contract for this?

Once you and your friend agree on the promise, it becomes an agreement. But in order to be a contract as per the definition of the Act, the agreement has to be legally enforceable.

An agreement to change into a Contract as per the Act, it must give rise to or lead to legal obligations. In other words, must be within the scope of the law. Thus to summarize it as Contract = Accepted Proposal (Agreement) + Enforceable by law (defined within the law)

So a contract is a legal document that bestows upon the party's special rights (defined by the contract itself) and also obligations that are introduced, defined, and agreed upon by all the parties of the contract.

Distinction between contract and agreement

S. No	Contract	Agreement
1	A contract is an agreement that is enforceable by law	A promise or a number of promises that are not contradicting and are accepted by the parties involved is an agreement.
2	A contract is only legally enforceable.	An agreement must be socially acceptable. It may or may not be enforceable by the law.

3	A contract has to create some legal obligation.	An agreement doesn't create any legal obligations.
4	All contracts are also agreements	An agreement may or may not be a contract.

A contract is a legally binding agreement between two or more parties that creates an obligation to do or not do a particular thing. The Indian Contract Act of 1872 provides a comprehensive definition of a contract in Section 2(h). According to this section:

"A contract is an agreement enforceable by law."

Agreement (Section 2(e)): An agreement is a proposal by one party (offer) and the acceptance of that proposal by the other party. It involves a meeting of minds between the parties on the same terms.

The key components of this definition are:

1. **Enforceable by Law:** For an agreement to become a contract, it must be enforceable by law. This implies that the parties have created legal obligations, and the law provides remedies in case of a breach. Certain essential elements, such as lawful consideration, lawful object, competency of parties, and free consent, must be present to make the agreement enforceable.
2. **Offer (Section 2(a)):** An offer is a proposal made by one party to another, expressing a willingness to enter into a contract under specified terms. It must be clear, definite, and communicated to the offeree.
3. **Acceptance (Section 2(b)):** Acceptance is the positive and unconditional response to an offer. It must be communicated to the offeror and must mirror the terms of the offer. Silence generally does not constitute acceptance, except in specific situations.

4. **Lawful Consideration (Section 2(d)):** Consideration is something of value exchanged between the parties as part of the agreement. It can be money, goods, services, or an act. For a contract to be valid, consideration must be lawful.
5. **Lawful Object (Section 23):** The purpose or object of the contract must be lawful. Contracts with illegal or immoral objectives are void.
6. **Competency of Parties (Sections 10, 11, and 12):** The parties entering into a contract must be competent to contract. Factors like age, mental soundness, and legal capacity determine the competency of parties.
7. **Free Consent (Sections 14-22):** Consent must be given freely and without coercion, undue influence, fraud, misrepresentation, or mistake. Any lack of free consent can make the contract voidable.

A contract is a legally binding agreement resulting from the exchange of an offer and acceptance, supported by lawful consideration, with a lawful object, involving parties competent to contract and with free consent. It is the enforceability of such agreements by law that distinguishes them from mere agreements.

The Essential Elements Of A Valid Contract

There are certain elements of a valid contract. These elements should be kept in mind while entering into the contract. Generally, there are 10 Essential elements of a valid contract. The 10 elements of a valid contract are stated below.

1. Offer and Acceptance

The first essential for creating a contract is an offer. The person making the proposal is called an offeror or promisor and the person accepting the offer is called the offeree or promisee.

Essentials of a valid offer:

An offeror expresses his willingness to do or abstain from doing with a view to obtain the assent of the offeree

Intention to create a legal relation.

A valid offer could be in expressed form i.e in words either written or spoken or implied form i.e by conduct.

The terms of the offer must be certain and not ambiguous.

The offer must be clearly communicated to the other party

When the proposal is accepted by the offeree it results in an agreement. Acceptance is the assent given to the proposal.

Essentials of a valid acceptance:

The acceptance must be communicated to the offeror by the offeree.

Communication of acceptance by post: Section 4 of the Act lays down that the communication of the acceptance is complete against the proposer when it is put in the course of transmission to him to be out of the power of the acceptor; as against the acceptor when it comes to the knowledge of the proposer.[iv]

Communication of acceptance by telephone (Instant communication): Parties can communicate the acceptance through direct communication, the communication is completed when the acceptance is clearly heard and understood. Thus, properly received by the offeror.

The acceptance must be unconditional and absolute.

In the case of Bhagwandas Kedia v. Girdharilal & co.[v] Plaintiff made an offer on the telephone from Ahmedabad to the defendants in khamgaon to purchase some goods. The defendant accepted his offer. It was held that the contract was made where the acceptance was communicated i.e Ahmedabad.

The contract is completed when the offeror had heard the acceptance at his end rather than when the acceptor has spoken the words of acceptance unlike the case when the letter of acceptance is posted and it gets completed the moment is posted.

2. Intention to create legal obligation

Agreements made by the parties without an intention to create a legal obligation are not enforceable by law. The law presumes that the parties in case of domestic and social agreements do not have an intention to create a legal obligation.

Illustration: A promised B to come over for lunch at his place but due to some work he couldn't make it. B cannot sue A, as the agreement between them was not made with the intention to create a legal obligation.

In the case of Balfour v. Balfour[vi], A husband agreed to pay his wife a certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. The wife sued him for the recovery of the amount. As it was a social agreement she cannot recover the amount as the parties did not intend to create any legal obligations.

The test of the intention of creating legal relations is objective. What matters is not what the parties had in mind, but what a reasonable man would think. If a promisor contends that he had no intention to create a legal obligation then this would not exempt him from liability.

While in the case of commercial agreements the law presumes that the intention to create legal obligations is present.

3. Lawful Consideration

Under section 10 consideration is said to be one of the essentials of a valid contract and it is reiterated in Section 25 of the Act that without consideration the agreement

becomes void. According to Salmond A promise without consideration is a gift; one made for consideration is a bargain. Consideration must be real and not illusionary though it need not be adequate.

According to Section 2(d) of the Act consideration is when at the desire of the promisor, the promise, or any other person has done or abstained from doing, or does or abstain from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. [vii]Thus, consideration is a reasonable and valuable benefit passed on by the promisor to the promisee.

Section 23 of the Indian Contract Act,1872 lays down that:

considerations or object of the agreement are lawful unless it is forbidden by law or defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another is immoral or opposed to public policy..[viii]

Thus, Consideration is the price of the promise.

Essentials of consideration:

The act of abstinence which is the consideration for the promise should be done at the desire of the Promisor.

It should be done by the promisee or other person. In India privity of consideration is not applicable,i.e the consideration can be moved from the promisor, promisee, or by the third party too but not if the third party is a minor.

The consideration can be Past consideration, Executed consideration, Executory consideration.

In the case of Kedar Nath v. Gorie Mohd.[ix] a town hall was being constructed and subscriptions were invited from the public by the Howrah municipality The defendant was a subscriber to this fund. On the faith of the promised subscriptions, the plaintiff entered into a contract with the contractor to build the hall.

The defendant failed to pay the amount and contended that there was no consideration for the promise. The court held that the defendant is liable as the plaintiff's act to enter into a contract with the contractor was done at the desire of the defendant and thus, it constitutes a lawful consideration.

The Role of Consideration in Contract Law

Consideration is an essential component of contract law, serving as the price or value given by one party to another to secure their promise. It signifies the bargained-for exchange between the parties involved in the contract and acts as an inducement to enter into the agreement. Consideration represents the "something for something" principle, whereby each party exchanges something of value to benefit from the deal.

In contract law, consideration serves the following purposes:

Helps distinguish between legally binding contracts and gratuitous promises

Reflects the mutuality of exchange between the parties, creating a balanced agreement

Ensures that each party reaffirms their commitment to the obligations stated in the contract

Facilitates a measure of damages in case of a breach of contract

Although consideration is usually given in the form of money, goods, or services, it can also come in other forms, such as forbearance or a promise to perform an act or refrain from doing something. The underlying concept is that each party must make a contribution, ensuring a fair exchange.

Legal Requirements for Valid Consideration

To be legally valid and binding in a contract, consideration must fulfil specific requirements. It is crucial to understand these requirements as they determine the enforceability of a contract. The legal criteria for valid consideration include the following:

Presence of an exchange: Valid consideration must feature a bargained-for exchange between the parties. There should be a clear connection between the promise made and the consideration offered. The 'quid pro quo' nature of the consideration ensures the reciprocal aspect of the agreement.

Legality: The consideration exchanged must be lawful. It cannot involve the performance of illegal activities or promises that go against public policy. If the consideration is illegal, the contract itself will be deemed unenforceable.

Adequacy: Consideration must have some value, but it does not need to be of equal value for a contract to be enforceable. Courts generally do not delve into the adequacy of consideration as long as it possesses some value or benefit for the parties involved.

Past consideration: Consideration must be prospective, meaning it cannot be based on past actions or events. Since past consideration does not involve an exchange, it is not generally considered valid consideration for the purpose of forming a contract.

Existing duties: In most cases, a promise to perform an act that one is already legally bound to do does not constitute valid consideration. However, there may be exceptions to this rule if the existing duty is modified or extended beyond its original scope.

In summary, the role of consideration in contract law is to ensure a fair and balanced exchange between the parties to a contract. By adhering to the legal requirements for valid consideration, individuals and organisations can create enforceable agreements that reflect the intended outcomes and benefits for all parties involved. Effectively understanding and applying the concept of consideration is crucial to forming successful contracts across various contexts within the legal framework.

Offer and acceptance contract law - Key

Agreements enforceable without Consideration:

A written and registered agreement based on natural love and affection between the near relatives.

A promise to compensate a person who has already voluntarily not by request done something for the promisor.

A promise made to pay a time-barred debt.

4. Lawful Object

A contract must be made with a lawful object, which means it must not be forbidden by law; or defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another is immoral or opposed to public policy. A contract made with an unlawful object is void.

Forbidden by law means an agreement made for the purpose which is forbidden by law. For eg. Selling tobacco without a license.

Defeat the provisions of law means that the object of the agreement is such that, though not directly forbidden by law, it would, if permitted, defeat the provisions of any law. For eg. an Agreement to sell drugs.

Fraudulent purpose means an agreement made to defraud others

Injurious to a person or his property: Agreement made to injure a person or his property has an unlawful object and is thus, void.

Immoral Agreements are not allowed to be enforced by Law and immorality depends on the standards of morality prevailing at a particular time in the society and is approved by the Courts. For eg. A promise to cast a person in an adult film.

Opposed to public policy means an agreement that is opposed to the policy of law at a stated time i.e opposed to the public good or public interest.

According to Section 24, if a part of the consideration or object which is unlawful can be separated from the other lawful part, the Court will enforce only the lawful part. If no such aggregation is possible, the whole of the agreement is void.

5. Free consent

According to Section 13 two or more persons are said to consent when they agree upon the same thing in the same sense.

According to Section 14, consent is free consent when it is not caused by:

Coercion

Section 15 defines coercion as, committing or threatening to commit any act forbidden under the Indian Penal Code or the detaining or threatening to detain any property of a person to cause him a legal injury, to make him enter into an agreement .

A threatens to kidnap Bs daughter if he does not agree to sell his Ambala property to him at a stated price. Bs consent has been obtained by Coercion.

Undue Influence

Section 16 defines undue influence as, where the relations between the parties are of such nature that one of them is in the position to dominate the will of the other or holds some authority over the other, and thus, uses that position to obtain an unfair advantage over the other.

A person is regarded to be in a position to dominate the will of the other if he holds a real or apparent authority over the other or is in a fiduciary relationship with him,

or contracts with a person whose mental capacity is temporarily or permanently affected because of illness, age, or mental or bodily distress.

Ama A man having a disease due to old age is induced by B his medical attendant to agree to pay an unreasonable sum for his professional services. Bs consent was tainted by undue influence.

Fraud

Section 17 defines fraud as concealment of the fact which is not true, and the person so concealing also believes and has the knowledge that it is not true.

Mere silence of the party as to the facts which could affect the willingness of the person to enter into the contract is not fraud unless it is the duty of the person to speak or his silence is equivalent to speech.

Misrepresentation

Section 18 defines misrepresentation as to a misstatement of a fact material to the contract which the person making it believes to be true but he does not intend to deceive the other party.

There is no intention to deceive but the circumstances make the party answerable who is misrepresenting and deriving benefit out of the same.

A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of Bs death, prevents the news to reach A, and thus induces A to sell his interest to him. The sale is voidable at the option of A.

Mistake

Two or more people are said to consent when they agree upon the same thing in the same sense. If the mistake prevents the same then there is no meeting of minds and thus there is no contract.

Section 20 will be applied when both the parties are under a mistake of fact essential to the agreement. Thus, the contract will be Void.

Section 21 declares that a contract is not voidable because it is caused by a mistake of law

Section 22 lays down that a contract is not voidable due to unilateral mistake ,i.e only one party is under the mistake of fact.

A agrees to buy a car from B, the car engine stopped working at the time of the sale. Both the parties were not aware of this fact. The agreement is void on account of the mistake.

Sections 10,13 and 14 combined states that in order to constitute a contract both the parties must give consent to it and there must be a meeting of minds(Consensus Ad Idem). Further such consent must be free consent. Thus, in the case of Coercion, undue influence, fraud, misrepresentation the contract is voidable but in the case of bilateral mistake, the contract will be void.

In the case of Derry, v. peek the directors of the company mentioned in their prospectus that they got permission to run tramways with steam instead of animal power. Such permission was not yet granted by the board of trade, but the directors honestly believed that such permission was granted. The board refused such permission the company got wound up. The Court held that there was no fraud ad the directors had no intention to deceive.

6. Two or more competent parties

A contract can be entered between two or more parties only, no one can make a contract with himself. Thus, at least two parties are required to enter into a contract. Further, such parties must be competent to contract. According to Section 11, Every person is competent to contract who is not:

i) A minor (Age of majority is 18, where a guardian is appointed it is 21

Law acts as a protector of children's rights because they are not that mature to make rational judgments about contracts. Thus, an agreement with a minor is void except where the contract is for his benefit

Estoppel cannot be applied against a minor. The minor is not estopped against taking the defense of minority even if he acted fraudulently. The procedural rule of estoppel cannot override the plain provision of law laid down in the Contract Act.

A minor is liable for a tort but not liable for a tort arising out of contracts.

The doctrine of Restitution: If a minor misrepresents his age and obtains property, he can be compelled to restore it, only if it is traceable in his possession. If he sold the goods and converted them, he cannot be made to repay the value of the goods. This doctrine is not applied where the minor has taken cash instead of goods.

In the case of Mohori Bibi v. Dharmodas Ghose[xvi], a minor executed a mortgage of Rs. 20,000/- and received a certain sum for the mortgage.

The mortgagee filed a suit for the recovery of his mortgage money and the sale of the property in default. The Court held that an agreement by a minor was absolutely void as it is against him, thus the mortgagee cannot recover the money or sell the minors property.

ii) Of unsound mind: According to Section 12 a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it he's capable of understanding it and of forming a rational judgment as to its effect upon his interests. It will include a drunken or delirious person also.

A patient in a mental asylum, who is sane during the intervals can make a contract in those periods when he is sane.

In the case of Inder Singh v Parmeshwardhari Singh [xviii], property worth Rs. 25,000 was agreed to be sold for just Rs. 7000/-. His mother proved that he was a born idiot incapable of understanding the contract and making a rational judgment about his interests. The court held the contract to be void. Mere lunacy will not make the contract void and that person must be incapable of exercising his judgment.

iii) Disqualified from contracting under any law he is governed.
For eg. Alien enemies, Ambassadors, Convicts, Insolvents

7. Terms of the agreement must be certain

The terms and conditions present in an agreement must be clear and unambiguous. According to Section 29 of the Act lays down that the contracts made with uncertain terms are void.

Illustration:
A agrees to sell B hundred tons of oil, it is not clearly intended which oil. Thus, the agreement is void. Here, A should have specified clearly the kind of oil he agreed to sell.

8. Agreements must be capable of performance

According to Section 56 of the Contract Act, any agreement made to do an impossible or unlawful act is itself a void agreement.

When a contract is made and afterward, it becomes impossible or unlawful to perform due to some reason which the promisor could not prevent, the contract becomes void. Here, the section provides for the subsequent or supervening impossibility which made the performance of the contract impossible. This is also known as the Doctrine of frustration.

In the famous case of Taylor v. Caldwell[xix], a contract was entered into for the use of a music hall for a concert, but a day before the concert the hall was destroyed by fire. The Court held that the performance becomes impossible.

In the case of Krell v. Henry[xx], a flat was rented only for viewing a coronation procession, but the coronation got canceled due to the kings illness. It was held that the main object or the foundation of the contract was the viewing of the coronation ceremony and thus the object of the contract was frustrated by the non-happening of the coronation.

Frustration of the contract only terminates the contractual liability, it does not extinguish the contract and the arbitration clause survives.

Further, According to section 65 of the Act, if a contract is frustrated and one of the parties received a benefit out of it must restore them to the other party. Eg. Any money paid in advance must be restored.

Specific grounds of frustration

If the subject matter of the contact gets destroyed

If the event which is contemplated does not occur

If the party died or became incapable of performing the contract.

Any Government or legislative intervention transforms the contemplated conditions.

If there is any change in the circumstances.

In case of war or warlike situations.

Situations which does not attract Doctrine of frustration:

Act of the third Person

Commercial hardships

Failure of one of the objects

Self-induced

In case of completed transfers or contracts.

9. Not Expressly declared to be void

According to Section 2 (g), all those agreements which are not enforceable by law are void. Certain agreements are expressly declared void by the Contract Act such as:

Agreements by way of the wager (Section 30

Agreements to do impossible acts (Section 560

Uncertain and ambiguous agreements (Section 29)

Agreements without consideration (Section 25)

Agreement having unlawful consideration or object 9Section 23 and Section 24)

Agreements in which the consent is based on a mistake (Section 20)

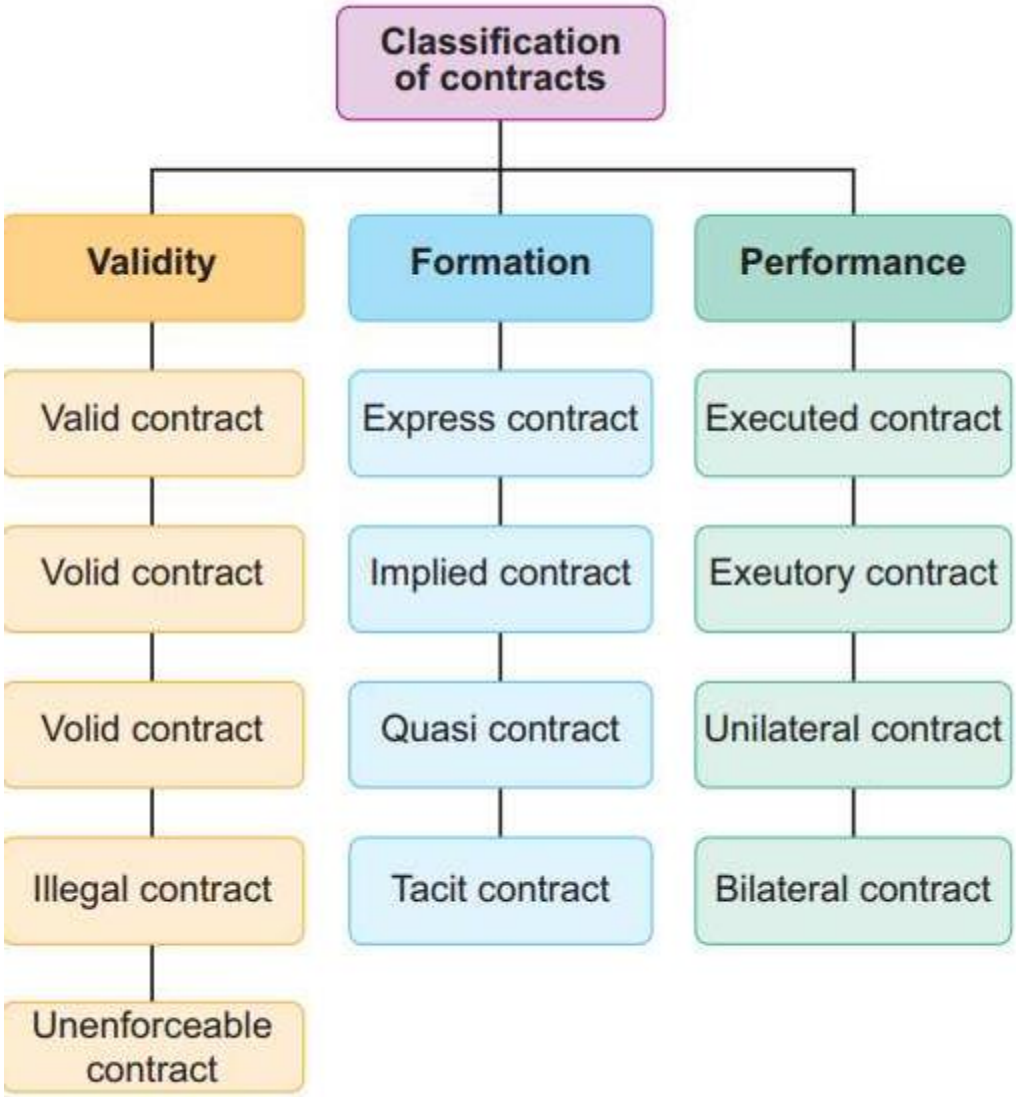
Agreements in restraint of marriage (Section 26), trade (section 27), and Legal proceedings (section 28)

10. Other legal formalities

A contract can be in written form or can be entered orally. In certain cases, it is given under the Act that the contract must be in writing, registered or there must be witnesses, etc. All these legal formalities also decide the validity of a contract.

The aforementioned essentials of a contract are the basics of any valid contract, and any contract devoid of any of these essentials is not a valid contract and thus, not enforceable by Law. This means that the courts will not protect the rights and obligations of the aggrieved party forming out of a void contract. There are various special laws or Acts under which other conditions to a contract are laid down and thus the general law of the Indian contract Act will not override them and the special Act will prevail.

Classification of Contract



I On the basis of Validity

1. Valid Contract

An agreement which fulfils all the essentials prescribed by law on the basis of its creation. For example S offers to sell his car for Rs.2,00,000 to T. T agrees to buy it. It is a Valid Contract.

2. Void Contract (2(j))

A contract which ceases to be enforceable by law. A contract which does not satisfy any of the essential elements of a valid contract is said to be Void. For example A contract between drug dealers to buy and sell drugs is a void contract.

3. Voidable Contract 2(i)

An agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract. This is the result of coercion, undue influence, fraud and misrepresentation.

4. Illegal Contract

It is a contract which is forbidden by law. All illegal agreements are Void but all void agreements or contracts are not necessarily illegal. Contract that is immoral or opposed to public policy are illegal in nature.

- **Unlike illegal agreements there is no punishment to the parties to a void agreement.**

- **Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.**

5. Unenforceable Contract

Where a contract is unenforceable because of some technical defect i.e. absence in writing barred by imitation etc. If the parties perform the contract it will be valid, but the court will not compel them if they do not

II On the basis of formation

1. Express Contract

A contract made by word spoken or written. According to Section. 9, in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express. For example P says to Q „will you buy my bicycle for Rs.1,000?" Q says to P "Yes".

2. Implied Contract

The implied contract is one, which is not expressly written but understood by the conduct of parties. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. For example A gets into a public bus, there is an implied contract that he will pay the bus fare.

3. Quasi Contract

It is a contract created by law. Actually, there is no contract. It is based on the principle that "a person shall not be allowed to enrich himself unjustly at the expense of the other". In other words

it is an obligation of one party to another imposed by law independent of an agreement between the parties.

4. Tacit Contract

A contract is said to be tacit when it has to be inferred from the conduct of the parties. For example obtaining cash through automatic teller machine, sale by fall of hammer of an auction sale.

III. On the Basis of Performance

1. Executed Contract

A contract in which both the parties have fulfilled their obligations under the contract. For example X contracts to buy a car from Y by paying cash, Y instantly delivers his car

2. Executory Contract

A contract in which both the parties are yet to fulfil their obligations, it is said to be an executor contract. For example A agrees to buy B"s cycle by promising to pay cash on 15th June. B agrees to deliver the cycle on 20th June.

3. Unilateral Contract

A unilateral contract is a one sided contract in which only one party has performed his promise or obligation, the other party has to perform his promise or obligation.

For example X promises to pay Y a sum of Rs.10,000 for the goods to be delivered by Y. X paid the money and Y is yet to deliver the goods.

4. Bilateral Contract

A contract in which both the parties commit to perform their respective promises is called a bilateral contract. For example R offers to sell his fiat car to S for Rs.10,00,000 on acceptance of

R"s offer by S, there is a promise by R to Sell the car and there is a promise by S to purchase the car, there are two promises.

1. **Offer and Acceptance**

Offer and acceptance are the fundamental building blocks of contract law, establishing a clear and mutual agreement between both parties. An offer is a

clear and specific proposal made by one party (the offeror), with the intention of being accepted by another party, (the offeree), while acceptance is the unconditional agreement to the terms of the offer.

An offer is a proposal made by one party, communicating the terms to another party, with a view to forming a contract. Acceptance, on the other hand, is a positive action or statement by the offeree agreeing to the terms of the offer without any modifications or conditions.

Understanding Offer and Acceptance

In the formation of every contract, there must be an offer made by one party and the acceptance of that offer by the other party. The principle of offer and acceptance ensures that there is:

A meeting of minds or a mutual agreement (also known as consensus ad idem)

A clear intention to create legal relations

Certainty in the terms of the offer and acceptance

The moment the offeree communicates their acceptance, a legally binding contract is formed, and both parties are obligated to fulfill their promises as defined by the agreed terms.

Requisites for a Valid Offer and Acceptance

For an offer and acceptance to be valid in contract law, certain elements must be present. These elements include:

Offer

Clear, specific, and complete terms

Intention to create legal relations

2. Acceptance

Unconditional agreement to the terms of the offer

Communication of acceptance (silence cannot be treated as acceptance)

3. Consideration

Something of value exchanged between the parties

4. Capacity

Both parties must have the legal capacity to enter into a contract

5. Legality

The object of the contract must not be illegal or violate public policy

The concept of offer and acceptance is a fundamental aspect of contract law, which ensures that there is a clear understanding and mutual agreement between the parties involved. By adhering to the elements and principles that govern offer and acceptance, individuals and organizations can mitigate the risk of disputes and establish legally binding contracts.

Breach of Contract and its Impact on Offer and Acceptance

Breach of contract occurs when one party fails to perform or fulfill their obligations under the contract. This breach can significantly impact the offer and acceptance process that forms a legally binding contract. To better understand this impact, it is vital to delve into the effects of the breach on offer and acceptance and explore available remedies for breach of contract in offer and acceptance cases.

Effects of Breach on Offer and Acceptance

A breach of contract can occur in several ways, such as non-performance, defective performance, or anticipatory breach. Each type of breach can have different effects on the offer and acceptance process.

The effects of breach on offer and acceptance can be categorised as follows:

Termination of contract: A significant breach can lead to the termination of the contract, which means that the offer and acceptance, as well as the parties' contractual obligations, cease to exist.

Loss of trust: When one party breaches the contract, it can damage the trust within the parties involved and hinder the effectiveness of offer and acceptance in future negotiations and transactions.

Legal consequences: Breach of contract may result in legal consequences such as monetary damages, performance of the contract, or equitable remedies. These legal remedies can have a negative impact on the party in breach and may deter them from entering into contracts in the future.

Reputation: A breach can cause damage to the parties' reputation, particularly if the breach is flagrant or of high value. A damaged reputation may affect the party's ability to engage in the offer and acceptance process with other parties.

Remedies for Breach of Contract in Offer and Acceptance Cases

In cases where a breach of contract has affected the offer and acceptance process, there are several legal remedies available to the aggrieved party. These remedies aim to redress the injured party and potentially reinstate the offer and acceptance process or provide compensation for the breach.

The primary remedies for breach of contract in offer and acceptance cases include:

Monetary damages: A common remedy, whereby the court orders the party in breach to compensate the injured party for their losses. Damages can be categorised as:

Compensatory damages - to compensate the injured party for their actual loss

Consequential damages - to cover indirect losses resulting from the breach

Nominal damages - a small sum awarded when a breach occurs but no real loss is suffered

Liquidated damages - a pre-agreed sum to be paid in the event of a breach

Specific performance: A court may order the party in breach to perform their contractual duties or complete the contract. This remedy is granted in cases where monetary damages are inadequate or the subject matter of the contract is unique (e.g., real estate transactions or unique goods).

Injunction: A court order prohibiting the party in breach from engaging in certain activities, such as actions that may lead to a breach of contract or continuing with a breach. Injunctions can be temporary or permanent, depending on the merits of the case.

Rescission: A legal remedy that cancels the contract and releases both parties from their contractual obligations. It is typically granted in cases of fraud or misrepresentation and restores the parties to their pre-contractual positions.

Reformation: In some cases, the court may correct or modify the contract to reflect the parties' original intentions. Reformation is usually granted when there is a mutual mistake, ambiguity, or a need to fulfill the contract's purpose.

The appropriate remedy for a breach of contract depends on the specific circumstances and severity of the breach. It is always recommended that both parties attempt to resolve the dispute amicably through negotiation, mediation, or

arbitration before resorting to litigation. Ensuring that contracts are well-drafted and include clear offer and acceptance terms is essential to minimise the risk of disputes, maintain trust between parties, and facilitate a smooth contract formation process.

Difference between Offer and Acceptance

Although offer and acceptance are interrelated concepts in contract law, there exist fundamental differences between the two, which are essential to understand when forming a contract. These distinctions play a significant role in determining the roles and responsibilities of the parties involved in a legal agreement.

Identifying the Key Distinctions

In order to differentiate offer and acceptance, it is crucial to examine the distinctions in their definitions, characteristics, consequences, and purpose in the context of contract formation. Recognising the disparities between the two concepts ensures a better understanding of the contract formation process and helps avoid potential disputes or misunderstandings between the parties.

A Comparison of Offer vs. Acceptance

The following table highlights the key differences between offer and acceptance in contract law:

Definition A proposal made by one party, expressing the terms of a potential agreement, with the intention to be bound in a legally enforceable contract.

A positive action or statement by the offeree, agreeing unconditionally to the terms of the offer, creating a binding contract.

Characteristics

Initiates the contract formation process.

Must have clear, specific, and complete terms.

Can be made to a specific person, a group of people, or the public.

Can be revoked or withdrawn by the offeror before acceptance.

Completes the contract formation process.

Must be communicated unconditionally and without modification.

Can only be made by the offeree or their authorised agent.

Once communicated, acceptance cannot be revoked.

Consequences

Creates the possibility of a binding contract.

Defines the terms and conditions of the proposed agreement.

No legal obligations on the offeror until acceptance is communicated.

Establishes a legally binding contract.

Confirms agreement to the offeror's proposed terms.

Imposes legal obligations on both parties under the contract.

Purpose To propose the terms of a legal agreement and invite the offeree to accept those terms, thereby forming a contract. To display the offeree's agreement to be bound by the terms of the offer, thus creating a legally enforceable contract between the parties.

Overall, understanding the differences between offer and acceptance ensures that both parties can navigate the contract formation process effectively. With this comprehension, they can better articulate and manage their obligations

under the contract and minimise potential disputes arising from misunderstandings or ambiguities. Knowing these distinctions is vital for the successful creation and execution of contracts in various contexts.

Consideration is what makes the foundation of a contract. An agreement without consideration cannot amount to a legally enforceable contract. According to the Indian Contract Act, 19872, consideration is something done at the desire of the promisor. As consideration, the promisor may ask the promisee or any other person to do or abstain from doing something. This act of abstinence from it is known as the consideration to the contract.

Let us understand this in simpler terms with an example.

Assume Mr. X sells his car to Mr. Y for Rs. 2,00,000. Mr. Y accepts the offer and agrees to pay him the amount. The sum of Rs. 2,00,000 will be a valid consideration, making this agreement a contract.

To get into more detail, let us see the types of consideration to a contract.

What are the types of consideration?

Consideration may be of three types– past, present, and future. These are explained as:

Past consideration

Past consideration is something that the promisee has already done (or abstained from doing) before entering into any agreement. For example, Mr. A provided transportation to Mr. B in June. In July, Mr. B agreed to pay Mr. A Rs. 1,000 for the service. Since the act occurred before promising to pay, it serves as past consideration.

In many cases, it is also known as moral consideration. Let us see how.

Assume that you are driving when you witness an accident on the road. You help the injured person and take them to a hospital. A few days later, as a token of appreciation, the person offers Rs—2,000 for your help and any expense you may have incurred. The help you extended is taken as past consideration.

Present or executed consideration

This is when you provide the promisor with the consideration simultaneously while entering into a contract. This kind of act is always done (or not done) in response to an agreement with another party.

For example, you buy fruits from a vendor and immediately pay him the price. This payment is taken as executed or present consideration.

Future or executory consideration

Future consideration is when the promisor, promisee, or both move the act to a future date. It means that the parties have not yet performed their obligations.

For instance, you purchase a car from a showroom, which will be delivered next week. You agree to pay the seller when the car arrives. This implies that there is a contract between you and the seller, with a future consideration.

Various factors make the consideration valid. Let us get into the details.

What are the essentials of a valid consideration?

The following things are required to make a consideration valid:

The consideration must move at the desire of the promisor

This implies that the consideration will only be valid when the promisor has requested it. Effectively, any act done voluntarily does not constitute valid consideration. For example, if you help a person find his missing wallet and then

ask for a reward, he is not bound to pay you. The help you provided was voluntary and not asked for by the person.

The consideration may move from the promisee to any other person

It is not necessary for the promisee to supply the consideration. It may move from any other person. Even if you are a stranger to consideration, you can sue as long as you are a party to the contract.

The consideration must be lawful

An illegal consideration is not valid and makes the contract void. The Act declares consideration as unlawful if it is a forbidden act under any law, if it causes injury to a person or his property, or if it is immoral.

The consideration must be real and possible

An impossible act cannot be classified as valid consideration. Whatever is decided and agreed to as consideration must be capable of being performed. Impossibility may be legal or physical. Moreover, the consideration must not be uncertain.

The consideration may not be adequate

The Indian law states that adequacy of consideration is not necessary. The parties are free to bargain. A poor negotiation by one party does not make the contract void. However, the decision must be made with the free consent of both parties. For example, you sell your books worth Rs. 1,000 for Rs. 200 as per your wish. You cannot legally claim this as inadequate consideration later.

Importance of consideration in a contract

The Indian Contract Act, 1872 clarifies that any contract without consideration is void. It is essential because it creates an obligation on both parties to fulfill their promises. If it is not present, the burden on the parties may not be enough to ensure the completion of the contract.

However, there are exceptions to this rule. Here is how they are classified.

Can there be contracts without any consideration?

Even though the Act deems consideration as necessary, there are cases where valid contracts can be entered into without consideration.

These are:

When the agreement is out of natural love and affection. This is between parties who are closely related. The agreement should be in writing.

When someone provides voluntary services for another person's benefit. The first condition is that the act must be done in gratitude, not for personal benefit. Secondly, the promisor's intent must be to compensate the promisee. The agreement may be oral or written.

A promise to pay a time-barred debt can also be without consideration. However, the agreement must be in writing.

If it is a contract to create an agency.

If the promise is to give a complete gift.

Consideration is an essential element of a valid contract. Without it, the contract is void and thus cannot be enforced. It is important to note that when a contract, is entered, it must have a valid consideration, adequacy of which is immaterial. It may be an act done in the past, present, or future.

CAPACITY OF CONTRACT [Sections 10–12] One of the essentials of a valid agreement is that the parties to the contract must be competent to contract (Section 10).

Who are competent to contract?

Section 11 provides that "Every person is competent to contract who is of the age of majority according to the lawto which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which heis subject."

Thus, incapacity to contract may arise from:

(i) minority,

(ii) (ii) mental incompetence, and

(iii) (iii) status.

1. MINORITY

According to Section 3 of the Indian Majority Act, 1875, a minor is a person who has not completed 18 years ofage. However, in the following two cases, a minor attains majority after 21 years of age:

1. Where a guardian of minor's person or property has been appointed under the Guardians and Wards Act, 1890,or

2. Where the superintendence of minor's property is assumed by a Court of Wards.

Minors' contract

The position of minors' contracts is summed up as follows:

1. A contract with or by a minor is void and a minor, therefore, cannot, bind himself by a contract. A minor isnot competent to contract. In English Law, a minor's contract, subject to certain exceptions, is only voidable atthe option of the minor.In 1903 the Privy Council in the leading case of Mohiri Bibi v. Dharmodas

Ghose (190, 30 Ca. 539).Held : That in India minor's contracts are absolutely void and not merely voidable.

Dharmodas Ghose, a minor, entered into a contract for borrowing a sum of Rs. 20,000 out of which the lender paid the minor a sum of Rs. 8,000. The minor executed mortgage of property in favour of the lender.Subsequently, the minor sued for setting aside the mortgage. The Privy Council had to ascertain the validity of themortgage. Under Section 7 of the Transfer of Property Act, every person competent to contract is competent tomortgage. The Privy Council decided that Sections 10 and 11 of the Indian Contract Act make the minor'scontract void. The mortgagee prayed for refund of Rs. 8,000 by the minor. The Privy Council further held that as a minor's contract is void, any money advanced to a minor cannot be recovered

A minor can be a promisee or a beneficiary. During his minority, a minor cannot bind himself by a contract, but there is nothing in the Contract Act which prevents him from making the other party to the contract to be bound to the minor. Thus, a minor is incapable of making a mortgage, or a promissory note, but he is notincapable of becoming a mortgagee, a payee or endorsee. He can derive benefit under the contract.

3. A minor's agreement cannot be ratified by the minor on his attaining majority. A minor cannot ratify theagreement on attaining the age of majority as the original agreement is void ab-initio and, therefore, validity cannot be given to it later on. Example A, a minor makes a promissory note in favour of B. On attaining majority, he makes out a fresh promissory notein lieu of the old one. Neither the original, nor the fresh promissory note is valid. [Indran Ramaswamy v. Anthiappa Chettiar (1906) 16 M.L.J. 422.)

4. If a minor has received any benefit under a void contract, he cannot be asked to refund the same. The facts of Mohiri Bibi's case: Under that case, the lender could not recover the money paid tothe minor. Also the property mortgaged by the minor in favour of the lender could not be sold by the latter for the realization of his loan.

5. A minor is always allowed to plead minority, and is not estopped to do so even where he had procured a loanor entered into some other contract by falsely representing, that he was of full age. Thus, a minor who has deceived the other party to the agreement by representing himself as of full age is not prevented, from later asserting that he was a minor at the time he entered into agreement. Example S, a minor, borrowed £400 from L, a moneylender, by fraudulently misrepresenting that he was of full age. On default by S, L sued for return of £400, and damages for the tort of deceit

Held : L could not recover £400, and his claim for damages also failed. The court did not grant the relief;otherwise, it would have been an indirect way of enforcing a void contract. Even on equitable grounds, the minorcould not be asked to refund £400, as the money was not traceable and the minor had already spent the same[Leslie v. Shiell (1914) 3 K.B. 607].It is to be noted that if money could be traced then the court would have, on equitable grounds, asked the minorfor restitution, as minor does not have a liberty to cheat. In the case of a fraudulent misrepresentation of his age bythe minor, inducing the other party to enter into a contract the court may award compensation to that other partyunder sections 30 and 33 of the Specific Relief Act 1963.ExampleA minor fraudulently mortgaged and sold certain properties. On the cancellation of the agreement at the instance ofthe minor, the lender and purchaser were awarded compensation. The lender and purchaser did not know about the fact that the seller was a minor. In fact, the minor fraudulently represented that he was of full age

6. A minor cannot be a partner in a partnership firm. However, a minor may, with the consent of all the partnersfor the time being, be admitted to the benefits of partnership (Section 30, the Indian Partnership Act, 1932).

7. A minor's estate is liable to a person who supplies necessaries of life to a minor, or to one whom the minor islegally bound to support according to his station in life. This obligation is cast on the minor not on the basis of anycontract but on the basis of an obligation resembling a contract (Section 68). However, there is no personal liability ona minor for the necessaries of life supplied. The term 'necessaries' is not defined in the

Indian Contract Act, 1872.The English Sale of Goods Act defines necessaries as “goods suitable to the condition in life of the minor andto his actual requirements at the time of sale and delivery” (Section 2).

From the above definition, it is obvious that in order to entitle the supplier to be reimbursed from the minor’s estate, the following must be satisfied:

(i) the goods are ‘necessaries’, for that particular minor having regard to his station in life’ (or status or standard ofliving) and thus purchase or hire of a car may be a necessity for a particular minor, and

(ii) the minor needs the goods both at the time of sale and delivery. What is necessary to see is the minor’s ‘actual requirements’ at the time of sale and at the time of delivery, where these times are different.

Example

I, a minor, was studying in B.Com., in a college. He ordered 11 fancy coats for about £45 with N, the tailor. The tailor sued I for the price. I’s father proved that his son had already a number of coats and had clothes suitable to his condition in life when the clothes made by the tailor were delivered.

The minor’s estate is liable not only for the necessary goods but also for the necessary services rendered to him. The lending of money to a minor for the purpose of defending a suit on behalf of a minor in which his property is in jeopardy, or for defending him in prosecution, or for saving his property from sale in execution of a decree is deemed to be a service rendered to the minor. Other examples of necessary services rendered to a minor are: provision ofeducation, medical and legal advice, provision of a house on rent to a minor for the purpose of living and continuing his studies.

Example G, a minor and a professional billiards player, agreed with R, a leading professional player, to go on a world tour, competing against each other in matches. G was to pay a certain sum of money to R for this purpose and also for the purpose of

learning the game. R made all arrangements for the matches and spent money, but G refused to go. R sued G and claimed damages for breach of his contract. Held : G was liable to pay as the agreement was for the minor's benefit in that he would in effect be receiving instruction [Roberts v. Gray (1913) 1 K.B. 520].

8. Minor's parents/guardians are not liable to a minor's creditor for the breach of contract by the minor, whether the contract is for necessaries or not. However, the parents are liable where the minor is acting as an agent of the parents or the guardian.

9. A minor can act as an agent and bind his principal by his acts without incurring any personal liability. Minor's Position Under English Law In England, one who has not attained full age is treated as an infant or a minor. Infancy, under the English law, means the period of life which precedes the completion of the twenty-first year, and persons under that age are regarded as infants.

Contracts entered into by an infant are classified into the following categories:

(i) Void contracts.(ii) Voidable contracts.(iii) Valid contracts.(iv) Contracts enforceable at the option of the infant but not at the option of the other party.

(i)Void Contracts. Section 1 of the Infants Relief Act, 1874 provides that the following three types of contracts(whether speciality or simple) are void:(a) Any agreement for the repayment of money lent or to be lent,(b) Any contract for goods supplied or to be supplied, other than 'necessaries, (C) All accounts stated

(ii)Voidable Contracts. In this category of contracts, the position is that they are binding upon a minor unless he repudiates them before he reaches the age of majority or within a reasonable time thereafter. However, the contractcannot be enforced against him during infancy. Some such types of contracts are:(a) Contracts of a continuing nature.(b) Contracts under which a minor acquires an interest in property of a permanent kind, e.g., (i) leases of property, (ii) partnership agreement*, and (iii) agreements to take shares (which are not fully paid up).(iii)Valid Contracts. An infant is bound by such contracts.

These are of two types:

(a) Contracts for 'necessaries' and

(b) Contracts for the minor's benefit such as for his education, training, etc. Example(1) Nash v. Inman Roberts v. Gray

(iv) Contracts enforceable at the option of the infant but not at the option of the other party. All contracts other than(i), (ii) and (iii) discussed above are enforceable at the option of the infant but not as against him, either during or after infancy.

2. MENTAL INCOMPETENCE

One of the essential elements of a valid contract is that the parties to the contract must be competent to contract, and a person must be of sound mind so as to be competent to contract (Section 10–11). Section12 lays down a test of soundness of mind.

It reads as follows:"A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is incapable of understanding it, and of forming a rational judgement as to its effect upon his interests.

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

Examples(1) A patient, in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.(2) 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 interest, cannot contract whilst such delirium or drunkenness lasts.

From the above examples given, it is obvious that Soundness of mind of a person depends on two facts:(i) his capacity to understand the terms of the contract, and(ii) his ability to form a rational judgement as to its effect upon his interests.

If a person is incapable of both, he suffers from unsoundness of mind. Idiots, lunatics and drunken persons are examples of those having an unsound mind. But whether a party to a contract, at the time of entering into the contract,is of sound mind or not is a question of fact to be decided by the court. There is presumption that a person is sane but this presumption is rebuttable. The person interested in proving the unsoundness of a person has to satisfy the court. The liability for necessaries of life supplied to persons of unsound mind is the same as for minors (Section 68).

The position of contracts by persons of unsound mind is given below.

Lunatics

A lunatic is a person who is mentally deranged due to some, mental strain or other personal experience. However, he has some intervals of sound mind. He is not liable for contracts entered into while he is of unsound mind. However, as regards contracts entered into during lucid intervals, he is bound. His position in this regard is identical with minor, i.e., in general the contract is void but the same exceptions as discussed above (under minor's contracts) are relevant.

Idiots

An idiot is a person who is permanently of unsound mind. He does not have lucid intervals. He is incapable of entering into a contract and, therefore, a contract with an idiot is void. However, like a minor, his properties, if any, shall be liable for recoveries on account of necessaries of life supplied. Also he can be a beneficiary.

Drunken or Intoxicated Persons

A person who is drunk, intoxicated or delirious from fever so as to be incapable of understanding the nature and effect of an agreement or to form a rational judgment as

to its effect on his interests cannot enter into valid contracts whilstsuch drunkenness or delirium lasts.Under the English Law, contracts made by persons of unsound mind are voidable and not void.

3.INCOMPETENCE THROUGH STATUS

Besides minors and persons of unsound mind, there are some other persons who are incompetent to contract, partiallyor wholly, so that the contracts of such persons are void. Incompetency to contract may arise from political status,corporate status, legal status, etc.Alien Enemy (Political Status). An alien is a person who is the citizen of a foreign country.Thus, in the Indian context, an alien is a person, who is nota subject of India. An alien may be (i) an alien friend, or (ii) an alien enemy.An alien friend (i.e., a foreigner) whose country is at peace with the Republic of India, has usually the full contractualcapacity of a natural born Indian subject. But he cannot acquire property in Indian ship, and also cannot be employedas Master or any other Chief Officer of such a ship. In the case of contracts with an alien enemy (i.e. an alien whose country is at war with India) the position is studied under two heads: (i) contracts during the war; and **(ii)** contracts made before the war. During the subsistence of the war, an alien can **neither** contract with an Indian subject nor can hesue in an Indian court except by licence from the Central Government.

As regards contracts entered into before the war breaks out, they are either dissolved or merely suspended. Thosecontracts, which are against the public policy or are such which would benefit the enemy, stand dissolved. Other contracts (i.e., not against the public policy) are merely suspended for the duration of the war and revived after the war is over, provided they have not already become time-barred under the law of limitation. It may be observed that an Indian, who resides voluntarily, or who is carrying on business, in a hostile territory would be treated as an alien enemy.

Foreign Sovereigns and Ambassadors (Political status)

. Foreign sovereigns and accredited representatives of a foreign State or Ambassadors enjoy some special privileges. They cannot be sued in our courts unless they choose to submit themselves to the jurisdiction of our courts. They canenter into contracts and enforce those contracts in our courts. However, they cannot be proceeded against in Indian courts without the sanction of the Central Government

Company under the Companies Act or Statutory Corporation by passing Special Act of Parliament (Corporate status)

A company cannot enter into a contract which is ultra vires its Memorandum of Association. A statutory corporation cannot go beyond the objects mentioned in the Act, passed by the Parliament. Similarly, Municipal Corporations (Local bodies) are disqualified from entering into contracts which are not within their statutory powers.

Married Women (Marital status)

A married woman has full contractual capacity and can sue and be sued in her own name. She is not incompetent to contract**.**

Insolvent Persons (Legal status)

Insolvent persons are incompetent to contract until they obtain a certificate of discharge.

Free Consent

Section 13 of the Indian Contract Act defines Consent as “when two parties entered into the contract there should agree upon the same thing in the same manner”, there should be a meeting of minds between the two parties. Consent occurs when one person voluntarily agrees to the proposal or desires of another.

Meaning and Definition of Free Consent

Consent exists when one person voluntarily acknowledges the proposal or desire of another person. The definition of Free consent under the Indian Contract Act is consent that is free from coercion, undue influence, fraud, misrepresentation, or mistake.

According to Section 13, “Two or more persons are said to be in consent when they agree upon the same thing in the same sense (consensus-ad-idem)”. Free consent means consent given to an individual for the performance of an act on his will.

Free consent under the Indian Contract Act has been defined in Section 14.

The section says that consent is considered free consent when it is not caused or affected by the following:

Coercion

Undue influence

Fraud

Misrepresentation

Mistake

Importance of Free Consent

Protects the validity and enforceability of an agreement

It protects parties from coercion, undue influence, misrepresentation, fraud and mistake.

The principle of consensus-ad-idem is followed.

Illustration

“A” is an old man who stays with “B”, his nephew and he takes care of him. “B” demanded to get the property of “A” as he was taking care of him and forced him to sign the papers. Here in this case, “A” is under undue influence.

Case Law- Nokhia vs State of H.P

In this case it was observed that consent to an acquisition cannot be described as real consent. In the absence of these vitiating factors the contract binds and no one can get rid of it by unilateral action.

Vitiating Factors to Free Consent

The main vitiating factors in the law of contracts are:

Coercion

Mistake

Undue influence

Fraud

Misrepresentation

Coercion under the Indian Contracts Act

Definition of Coercion (Section 15)

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

Chikkam Ammiraju v. Chickam Seshamma[2]

In this case, the husband by a threat of suicide induced his wife and son to execute a release deed in favour of his brother in respect of certain proprieties claimed as their own by the wife and son.

The court held that to commit suicide amounted to coercion within the meaning of section 15 of the Indian Contract Act and therefore release deed was voidable.

Illustration

'B' gives his car, causing his agreement to be coerced. 'A' threatens to hurt 'B' if he doesn't give his son, 'C' a large sum of money. 'B' believes the threat and gives 'C' the money. This agreement is believed to be coerced.

Undue Influence under the Indian Contracts Act

Undue Influence is the manipulation of a person who is vulnerable or dependent on someone else. It occurs when an individual is able to persuade another's decision due to the relationship between the parties.

Definition of 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 over the other.

A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of

the other. Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.

Illustration

James, an old man suffering from cancer, is induced by Daniel, his doctor, to pay a huge amount for his treatment. James transfers the money to Daniel's account. Here, Daniel employs undue influence.

Lakshmi Amma Vs T. Narayana[3]

In this case, a person was suffering from a number of ailments, which confined him to a nursing home. There he made a deed gifting all his properties to one of his sons to the exclusion of others. The court held that the gift was caused by undue influence voidable.

Fraud under the Indian Contracts Act

Section 17 of the Indian Contract Act, includes to essentials to prove that an act is a fraud;

A person should make a false statement having the knowledge that the facts are false.

There should be a wrongful intention to deceive the other party.

Illustration

'A' sells, by auction, to 'B', a horse which 'A' knows to be unsound. 'A' says nothing about the horse's unsoundness. This is not fraud in 'A'.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not a fraud.

In English law 'fraud' was defined in the very well-known case of "Derry v. Peek"[4]

"Fraud is proved when it is shown that a false representation is being made-

Knowingly

Without belief in its truth

Recklessly careless whether it be true or false.

Facts of the Case: Derry v. peek

The Plymouth, the Development and District Tramways company issued a prospectus stating that the company had permission to use steam trams, which would replace their horse-powered trams. In fact, the company had no such permission because the right to use steam power was subject to the Board of Trade's consent. The company applied, honestly believing that they would get permission because it was a mere formality. In reality, after the prospectus was issued, permission was refused and the company ended up in liquidation.

Led by Sir Henry Peek, shareholders who had purchased their stakes in the company on the faith of the states sued the directors in misrepresentation.

Judgment in Derry v. Peek

The House of Lords held that the shareholders' action failed because it was not proved that the director lacked an honest belief in what they had said.[4] Lord Herschell,

however, pointed out that although unreasonableness of the grounds of belief is not deceitful, it is evidence from which deceit may be inferred. There are many cases,

"where the fact that an alleged belief was destitute of all reasonable foundation would suffice of itself to convince the court that it was not really entertained and that the representation was a fraudulent one."

Active Concealment in Contracts

Active concealment can cause a contract to be invalid or result in liability to the concealing party, it includes hiding information from the other party by concealment intentionally.

EX- A husband persuaded his illiterate wife to sign certain documents telling her that by them he was going to mortgage her two lands to secure his indebtedness and in fact mortgaged four lands belonging to her. This was an act done with the intention of deceiving her.

Mere Silence is not Fraud

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.

A party is under no obligation to disclose all material facts unless there exists a duty to speak or when silence amounts to fraud, or when half-truths are uttered or when there is a change of circumstances.

Ex- when 'A' agrees to sell a horse to 'B' and 'A' knows that horse is not mentally stable and 'B' does not ask then in that instance, 'A' cannot be made liable as there was no duty to speak.

Keates v Lord Cadogan

A let his house to B which he knew was in ruinous condition. He also knew that the house is going to be occupied by B immediately. A didn't disclose the condition of the house to B. It was held that he had committed no fraud.

When Silence is Fraud

When there is a Duty to Speak

Where silence is deceptive

Change of circumstances

Half-truths

Case Laws

(1) A.L Mustaneer Establishment v. Varuna Overseas Pvt. Ltd.[5] In this case, it was held that Fraud is a facet of dishonesty, fraud in connection with letters of credit.

(2)Ratan lal Ahluwalia v. Jai Janider Parsad– Under common law, fraud will not only render the contract voidable at the option of the party whose consent is obtained but will also give rise to an action for damages in respect of deceit.

Misrepresentation under the Indian Contracts Act

Misrepresentation means misstatement of a fact material to the contract.

Misrepresentation is defined in Section 18 of The Indian Contract Act. A misrepresentation is an untrue or false statement of law or fact made by one party, which induces the other party to enter into an agreement or contract.

Misrepresentation is false statements of truth that affect another party's decision related to a contract.

Misrepresentation can void a contract and in some cases allow the other party to seek damages.

Misrepresentation is a basis for contract breach for transactions, no matter the size.

Misrepresentation applies only to statements of facts, not to opinions or predictions.

Types of Misrepresentation

There are three types of misrepresentation present in the contract:

Fraudulent Misrepresentation– Fraudulent misrepresentation is where a false representation has been made knowingly, or without belief in its truth, or recklessly as to its truth. The injured party can seek to void to contract and recover damages from the defendant.

Negligent Misrepresentation- Negligent misrepresentation under the misrepresentation act befalls where a declaration is made by one contracting party to another negligently or without reasonable grounds for believing its truth. The remedy for negligent misrepresentation is contract rescission and possibly damages.

Innocent Misrepresentation- Misrepresentation made completely without fault can be described as an innocent misrepresentation. The remedy in this situation is usually rescission or cancellation of the contract.

Difference Between Fraud and Misrepresentation

S. No	Fraud	Misrepresentation
1	Fraud is more or less an intentional wrong.	Misrepresentation may be quite innocent.
2	Fraud means willful misrepresentation of a material facts.	Misrepresentation means a bonafide representation which is false.
3	Fraud id done to deceive the other	Misrepresentation is not done to deceive the

	party.	other party.
4	Fraud is defined in Sec 17	Misrepresentation is defined in sec 18
5	In fraud, the aggrieved party can claim damages for any loss sustained.	Misrepresentation, the aggrieved party cannot claim damages for any loss sustained.

Damages under Sec 75 Indian Contract Act

SEC 75- Party rightfully rescinding contract entitled to compensation- A person who rightfully rescinds a contract is entitled to compensation for any damage which has been sustained through the non-fulfilment of the contract.

Raharman Prodhan v. State of West Bengal

A work order for repairing the bank of the river was issued directing the work to be completed within 45 days. The alignment was given after 10 months which turned out to be wrong. Correct alignment was given subsequently when a substantial portion of the work had already been done. The work already done was not taken into account. The wrong alignment became the cause of washing away by devastating floods. The plaintiff's claim for compensation for the work already done was taken to be established.

Illustration- A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rs for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract**.**

Mistake under the Indian Contracts Act

Mistake is not defined in the Indian Contract Act. Sections 20, 21 and 22 deal with the concept of mistake. A mistake is said to occur when parties intend to do one thing by error to do something. Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Case Law- Phillips v. Brooks Ltd.- In this case, it was held that a person is deemed to contract with the person in front of them unless they can substantially prove that they instead of them intended to deal with another person.

Illustration- A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods were lost. Neither party was aware of these facts. The agreement is void.

Section 20 will come into play:

When both parties to an agreement are mistaken

Their mistake is as to matter of fact

The fact about which they are mistaken is essential to the agreement.

Section 21 Effect of mistake of law

A contract is not voidable because it was caused by a mistake as to any law in force in India, but a mistake as to a law not in force in India has the same effect as a mistake of fact.

Grant v. Borg– In this case, the person was not knowing the clauses of the Immigration Act 1971, for staying beyond the time by the leave. Here, he cannot apply for defence under the mistake of law.

Section 22

Contract caused by mistake of one party as to matter of fact- A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact.

The State of Maharastra v. Mayer Hans George– In this case, A is an officer of the court and he is ordered to arrest Y. A arrests Z by mistake, as he believes Z is Y. Here, A can take the basis of bona fide intention as a defence in the mistake.

Effect on Contracts Influenced by Any Factor Vitiating Free Consent

Coercion

Coercion means forcing an individual to enter into a contract. When intimidation or threats are used under pressure to gain the party's consent, i.e. it is not free consent.

Effect of Coercion

Coercion can make the contract voidable. This means the contract is voidable at the option of the party whose consent was not free. So the aggravated party will decide whether to perform the contract or void the contract.

Undue Influence

It states that when the relations between the two parties are such that one party is in a position to dominate the other party.

Effect of Undue Influence

If the consent is not free due to undue influence, the contract becomes voidable at the option of the aggravated party. And the burden of proof will be on the dominant party to prove the absence of influence.

Fraud

It means deceit by one of the parties i.e. when one party makes a false statement knowingly.

Effect

The contract arising from fraud is a null contract.

The misled party has the right to withdraw from the contract.

Due to the fraudulent agreement, the party is responsible for recovering the damages.

Misrepresentation

It means the truth is misrepresented. It is also when a party makes a representation that is false, inaccurate, incorrect etc.

Effect

If misrepresentation is identified, the contract can be declared void. If the party that has suffered as a result of the misrepresentation when entering into a contract may choose to terminate the contract, rescind the contract within the reasonable time under the specific relief act 1963.

Mistake

It is a misunderstanding between the parties entering into a contract as to a material fact.

Effect

A mutual mistake will only affect the validity of the contract if the mistake is so fundamental that it nullifies the contract. If the mistake goes to the heart of the contract, the contract will be rendered void.

Legality of Object and Consideration

For a contract to be a valid contract two things are absolutely essential – lawful object and lawful consideration. So the Indian Contract Act gives us the parameters that make

up such lawful consideration and objects of a contract. Let us take a look at the legality of object and consideration of a contract.

Lawful Consideration and Lawful Object

Section 23 of the Indian Contract Act clearly states that the consideration and/or object of a contract

are considered lawful consideration and/or object unless they are

- specifically forbidden by law
- of such a nature that they would defeat the purpose of the law
- are fraudulent
- involve injury to any other person or property
- the courts regard them as immoral
- Are opposed to public policy.

So lawful consideration and/or lawful object cannot contain any of the above. Let us take a more in detail look at each of them.

1] Forbidden by Law

When the object of a contract or the consideration of a contract is prohibited by law, then they are not lawful consideration or object anymore. They then become unlawful in nature. And so such a contract cannot be valid anymore.

Unlawful consideration of object includes acts that are specifically punishable by the law. This also includes those that the appropriate authorities prohibit via rules and regulations.

But if the rules made by such authorities are not in tandem with the law than these will not apply.

Example:- A received a license from the Forest Department to cut the grass of a certain area. The authorities at the department told him he cannot pass on such interest to another person. But the Forest Act has no such statute. So A sold his interest to B and the contract was held as valid.

2] Consideration or Object Defeats the Provision of the Law

This means if the contract is trying to defeat the intention of the law. If the courts find that the real intention of the parties to the agreement is to defeat the provisions of the law, it will put aside the said contract.

Example: A and B enter into an agreement, where A is the debtor, that B will not plead limitation.

This, however, is done to defeat the intention of the Limitation Act, and so the courts can rule the contract as void due to unlawful object.

3] Fraudulent Consideration or Object

Lawful consideration or object can never be fraudulent. Agreements entered into containing unlawful fraudulent consideration or objects are void by nature.

Example:-A decides to sell goods to B and smuggle them outside the country. This is a fraudulent transaction as so it is void. Now B cannot recover the money under the law if A does not deliver on his promise.

4] Defeats any Rules in Effect

If the consideration or the object is against any rules in effect in the country for the time being, then they will not be lawful consideration or objects. And so the contract thus formed will not be valid.

5] When they involve Injury to another Person or Property

In legal terms, an injury means to a criminal and harmful wrong done to another person. So if the object or the consideration of the contract does harm to another person or property, this will amount to unlawful consideration.

Example:- a contract to publish a book that is a violation of another person's copyright would be void. This is because the consideration here is unlawful and injures another person's property, i.e. his copyright.

6] When Consideration is Immoral

If the object or the consideration is regarded by the court as immoral, then such object and consideration are immoral.

Example:- A lent money to B to obtain a divorce from her husband C. It was agreed once B obtains the divorce A would marry her. But the court passed the judgment that A cannot recover money from B since the contract is void on account of unlawful consideration.

7] Consideration is opposed to Public Policy

For the good of the community, certain contracts are restricted in the name of public policy. If that was the case it would curtail individual freedom of people to enter into contracts. So for the purpose of lawful consideration and object public policy is used in a limited scope.

Some agreements that are opposed to public policy are

- Trading with the Enemy
- Stifling Prosecution
- Maintenance and Champerty
- An Agreement to Traffic in Public Offices
- Agreements to create Monopolies

 An agreement to brokerage marriage for rewards

 Interfering with the Courts: An agreement whose object is to induce a judicial or state officials to act corruptly and interfere with legal proceedings.

Contingent Contracts

Contracts are of different types. Since people can get into various kinds of agreement for performance or non-performance of certain acts. One way of understanding contracts is by dividing them into two types: Absolute and Contingent.

Contingent Contracts

An absolute contract is one where the promisor performs the contract without any condition. Contingent contracts, on the other hand, are the ones where the promisor performs his obligation only when certain conditions are met.

Contracts of insurance, indemnity or guarantee, have one thing in common – they create an obligation on the promisor if an event which is collateral to the contract does or does not happen.

For example, in a life insurance contract, the insurer pays a certain amount if the insured dies under certain conditions. The insurer is not called into action until the event of the death of the insured happens. This is a contingent contract.

Under Section 31 of the Indian Contract Act, 1872, contingent contracts are defined as follows: “If two or more parties enter into a contract to do or not do something, if an event which is collateral to the contract does or does not happen, then it is a contingent contract.”

Example: Peter is a private insurer and enters into a contract with John for fire insurance of John’s house. According to the terms, Peter agrees to pay John an amount

of Rs 5 lakh if his house is burnt against an annual premium of Rs 5,000. This is a contingent contract.

Here, the burning of the house is neither a performance promised as a part of the contract nor a consideration. Peter's liability arises only when the collateral event occurs.

Essentials of Contingent Contracts

1] Depends on happening or non-happening of a certain event

The contract is contingent on the happening or the non-happening of a certain event. These said events can be precedent or subsequent, this will not matter. Say for example Peter promises to pay John Rs 5,000 if the Rajdhani Express reaches Delhi on time. This is a contingent event.

2] The event is collateral to the contract

It is important that the event is not a part of the contract. It cannot be the performance promised or a consideration for a promise.

Peter enters into a contract with John and promises to deliver 5 television sets to him. John promises to pay him Rs 75,000 upon delivery. This is NOT a contingent contract since John's obligation depends on the event which is a part of the contract (delivery of TV sets) and not a collateral event.

Peter enters into a contract with John and promises to deliver 5 television sets to him if Brazil wins the FIFA World Cup provided John pays him Rs 25,000 before the World Cup kicks-off. This is a contingent contract since Peter's obligation arises only when Brazil wins the Cup which is a collateral event.

3] The event should not be a mere will of the promisor

The event cannot be a wish of the promisor. Say for example Peter promises to pay John Rs 5,000 if Argentina wins the FIFA World Cup provided he wants to. This is NOT a contingent contract. Actually, this is not a contract at all.

Peter promises to pay John Rs 50,000 if he leaves Mumbai for Dubai on August 30, 2018. This is a contingent contract. Going to Dubai can be within John's will but is not merely his will.

4] The event should be uncertain

If the event is sure to happen, then the contract is due to be performed. This is not a contingent contract. The event should be uncertain.

Peter promises to pay John Rs 500 if it rains in Mumbai in the month of July 2018. This is not a contingent contract because in July rains are almost a certainty in Mumbai.

Enforcement of Contingent Contracts

Sections 32 – 36 of the Indian Contract Act, 1872, list certain rules for the enforcement of a contingent contract.

Rule # 1 – Contracts Contingent on the happening of an Event

A contingent contract might be based on the happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event happens. However, the contract cannot be enforced by law unless the event takes place. If the happening of the event becomes impossible, then the contingent contract is void. This rule is specified in Section 32 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if he can marry Julia, the prettiest girl in the neighborhood. This is a contingent contract. Unfortunately, Julia dies in a car accident. Since the happening of the event is no longer possible, the contract is void.

Rule # 2 – Contracts Contingent on an Event not happening

A contingent contract might be based on the non-happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event does not happen. However, the contract cannot be enforced by law unless happening of the event becomes impossible. If the event takes place, then the contingent contract is void. This rule is specified in Section 33 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if the ship named Titanic which leaves on a dangerous mission does not return. This is a contingent contract. This contract is enforceable by law if the ship sinks making its return impossible. On the other hand, if the ship returns, then the contract is void.

Rule # 3 – Contracts contingent on the conduct of a living person who does something to make the event or conduct as impossible of happening

Section 34 of the Indian Contract Act, 1872 states that if a contract is a contingent upon how a person will act at a future time, then the event is considered impossible when the person does anything which makes it impossible for the event to happen.

Peter promises to pay John Rs 5,000 if he marries Julia. However, Julia marries Oliver. Julia's act thus renders the event of John marrying her impossible. (A divorce is still possible though but the happening of the event is considered impossible.)

Rule # 4 – Contracts Contingent on an Event happening within a Specific Time

There can be a contingent contract wherein a party promises to do or not do something if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time lapses. It is also void if before the time fixed, the

happening of the event becomes impossible. This rule is specified in Section 35 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 5,000 if the ship named Titanic which leaves on a dangerous mission returns before June 01, 2019. This contract is enforceable by law if the ship returns within the fixed time. On the other hand, if the ship sinks, then the contract is void.

Rule # 5 – Contracts Contingent on an Event not happening within a Specific Time

Contingent contracts might be based on the non-happening of an uncertain future event within a fixed time. In such cases, the promisor is liable to do or not do something if the event does not happen within the said time. The contract can be enforced by law if the fixed time has expired and the event has not happened before the expiry of the time. Also, if it becomes certain that the event will not happen before the time has expired, then it can be enforced by law. This rule is specified in Section 35 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 5,000 if the ship named Titanic which leaves on a dangerous mission does not return before June 01, 2019. This contract is enforceable by law if the ship does not return within the fixed time. Also, if the ship sinks or is burnt, the contract is enforced by law since the return is not possible.

Rule # 6 – Contracts Contingent on an Impossible Event

If a contingent contract is based on the happening or non-happening of an impossible event, then such a contract is void. This is regardless of the fact if the parties to the contract are aware of the impossibility or not. This rule is specified in Section 36 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if the sun rises in the west the next morning. This contract is void since the happening of the event is impossible.

Distinction between Contingent Contracts and Wagering Contract

Factors	Contingent Contracts	Wagering Contract
Meaning	It is a contract to do or not to do something with reference to a collateral event happening or not happening.	It is a promise to give money or money's worth with reference to an uncertain event happening or not happening.
Reciprocal promises	It may not contain reciprocal promises.	It consists of reciprocal promises.
Uncertain event	The event is collateral.	The uncertain event is the core factor
Nature of contract	Contingent contract may not be wagering in nature.	A wagering agreement is essentially contingent in nature.
Interest of parties	Contracting parties has interest in the subject matter in a contingent contract.	The contracting parties have no interest in the subject matter.
Mutuality of loss and gain	Contingent contract is not based on the doctrine of mutuality of loss and gain.	A wagering contract is a game, losing and gaining alone matters.
Effect of contract	Contingent contract is valid.	A wagering agreement is void.

Void Contract|

What Is a Void Contract?

A void contract is not lawfully binding; hence, it cannot be enforced. It also means that either of the parties involved in the contract cannot sue the other for violating the contract.

Such contracts can be void for many reasons – the most common ones being one party being forced to sign the contract or any other illegal activities.

Elements of a Void Contract

If all or either of the following elements are present in a contract, it will be considered null or void:

Both parties have not mutually agreed to the terms and conditions of the contract for it to be valid. This means that there should be an offer to do something by one party and acceptance of the offer by the other party.

There is no consideration in the contract. A consideration is required for a contract to be valid. Consideration means the amount or price paid by the party accepting the offer to the party who offers to do something.

The terms and conditions laid by both parties are not complete, vague or ambiguous.

The parties to the contract are incompetent to enter into contracts under the law or do not have the capacity to make informed decisions.

Both parties are under a mistake regarding an essential fact laid down in the contract.

Different Types of Void Contracts

Depending on the reasons, void contracts can be of multiple types. Here are some:

Ab initio

Ab initio contracts are void from the beginning. This type of contract usually occurs in the case of fraud and duress.

Unenforceable

This type of contract includes terms and conditions that cannot be legally enforced. An unenforceable contract usually occurs when the contract includes an invalid clause.

Voidable

A voidable contract can be cancelled by either of the parties involved. This type of contract usually occurs as a result of misunderstanding or misinterpretation. Till the contract is cancelled by a party, it will be valid.

Initially Voidable

An initially voidable contract exists when either of the parties is threatened, deceived, or forced into signing it. However, the party can choose to proceed with the contract regardless of the compulsion.

Reasons for Void Contracts

There can be multiple reasons for a contract to be void. These reasons can be factual or legal. Here are some of them:

Uncertainty

This is one of the most common causes for a contract to be void. Uncertainty mostly occurs due to the language used by the individual who drafted the contract. This can happen when clauses such as ‘agreement to agree’ are present or when the parties decide to make certain arrangements at a later date.

Mistake or Misunderstanding

In this case, a common or mutual mistake or misunderstanding is made by both parties regarding an essential fact or subject matter of the contract. This is usually an innocent reason but can make a contract null. Incorrect and hidden information is the most common reason for such void contracts.

Lacking Capacity

This can occur if either of the parties involved is incapable of entering into a contract. This individual can be a minor or have an unsound mind, making them ineligible to make a decision. For instance, if one of the parties is an infant or minor or has an unsound mind, the contract does not hold any value and is considered void.

Public Policy

A contract will be void if the clauses or terms of the agreement oppose public policies. An example of this would be when an employer makes their employee sign a contract that forbids them from joining an employee union.

Unlawful Object

If the contract contains an unlawful object, an object forbidden by law, or involves/implies injury to another person or property, such contract will be void. To illustrate, an unlawful object may be a contact between people to do robbery and share money.

Restraining Marriage or Trade

A contract restricting the marriage of one person with another person or restraining a person from carrying a trade, business or profession is a void contract.

Impossible Act

A contract which provides to do an impossible act is void. It will also be void when it becomes impossible to do an act stated in the contract due to the occurrence of an event beyond the control of the party. To illustrate, a painter enters into a contract to give paintings to a person for a certain amount. But, if the painter dies before completing the painting, the contract will be void.

Void Contract Example

There are multiple scenarios and reasons, legal and non-legal, that can result in a contract being void.

Here are some examples to clarify the concept:

Example 1

Suppose, you are going to release your album, and you agreed on a 50-50 profit split with your producer. While signing the contract, you had been drinking at the bar. Considering the circumstances, the contract will be void or null as you were under the influence of alcohol while signing the contract.

Example 2

Another example of a void contract would be if it involves illegal substances. Suppose Party A and Party B are entering into a dealership agreement that involves drugs or narcotic substances. This contract will be null or void as it involves illegal substances; therefore, there will be no legal enforcement.

Example 3

Suppose you are signing an agreement to sell your car to an individual. You have set a selling price, but the purchasing party wants to bargain. Now, if the buyer threatens to harm you if you do not sell your car at his price, the agreement will be void as there is involvement of force.

Unit II

Performance of Contract Meaning of Performance, Offer to Perform, Devolution of Joint liabilities & Rights, Time and Place of Performance, Reciprocal Promises, Assignment of Contracts - Remedies for Breach of contract - Termination and Discharge of Contract - Quasi Contract.

Meaning of Performance

In the context of contract law, the term "performance" refers to the fulfillment of obligations or promises as specified in a contract. When two or more parties enter into a contract, they agree to certain terms and conditions, and each party is obligated to perform certain actions or provide certain goods or services.

The performance of a contract involves both parties meeting their respective responsibilities within the agreed-upon timeframe and according to the specified terms. Performance can take various forms depending on the nature of the contract, such as delivering goods, providing services, making payments, or fulfilling any other agreed-upon actions.

Performance is a crucial aspect of contract law, and the success or failure of a contract often hinges on the satisfactory completion of obligations by all parties involved. If a party fails to perform as specified in the contract, it may be considered a breach of contract, leading to legal consequences such as damages, termination of the contract, or other remedies as outlined in the contract or under applicable laws.

It's essential for all parties entering into a contract to clearly define the terms and conditions, including the specific actions or deliverables expected from each party, to avoid misunderstandings and disputes regarding performance. Clear and well-drafted contracts help ensure that both parties understand their obligations, reducing the likelihood of disagreements and legal issues.

Offer to Perform

An "offer to perform" in the context of contract law refers to a party expressing their readiness and willingness to fulfill their contractual obligations. When one party extends an offer to perform, they are signaling their intention to carry out the agreed-upon actions, deliver goods, or provide services as outlined in the contract.

This offer to perform is a crucial element in the contract performance process. It typically occurs when one party believes it is time to fulfill their part of the bargain according to the terms and conditions of the contract. The offer to perform serves as notice to the other party that the fulfilling party is ready and able to carry out their obligations.

For example, if a contract involves the sale of goods, the seller may send an offer to perform by notifying the buyer that the goods are ready for delivery. Similarly, in a service contract, the service provider might communicate their readiness to start providing the agreed-upon services.

The offer to perform is an important step in maintaining transparency and facilitating smooth contract execution. It allows both parties to stay informed about the progress of the contractual relationship and provides an opportunity for any issues or concerns to be addressed before, during, or after performance. If the other party accepts the offer to perform, it signifies mutual agreement and cooperation in fulfilling the terms of the contract. If disputes arise, the offer to perform can also be relevant evidence in legal proceedings to determine whether a party acted in accordance with the contract.

Devolution of Joint liabilities & Rights

Devolution of joint liabilities and rights refers to the process by which the obligations and entitlements shared by multiple parties are transferred or distributed when a change in circumstances occurs. This change could be due to events such as the death of a party, withdrawal from an agreement, or the assignment of interests. Let's delve into the details:

Devolution of Joint Liabilities:

1. **Death or Withdrawal:**
    - **Death:** If one of the parties to a joint liability dies, the remaining parties may become individually responsible for the entire obligation. However, the deceased party's estate may still be liable for their share of the debt.
    - **Withdrawal:** If a party withdraws from a joint obligation (e.g., partnership or joint venture), the remaining parties may need to renegotiate the terms with the creditor or fulfill the entire obligation themselves.
2. **Assignment:**
    - **Partial Assignment:** If one party assigns their share of the joint liability to another party, the assignee may assume the assigned party's responsibilities. However, the original party may still be liable unless there is a release or novation agreement with the creditor.

Devolution of Joint Rights:

1. **Death or Withdrawal:**
    - **Death:** In the case of joint ownership or rights, the death of one party may lead to the devolution of their share to the surviving parties, often in accordance with applicable laws or the terms of the agreement.
    - **Withdrawal:** If a party withdraws from a joint venture or partnership, their share of the joint rights may devolve to the remaining parties, subject to the terms of the agreement.
2. **Assignment:**
    - **Partial Assignment:** Similar to joint liabilities, joint rights can devolve through assignment. If a party assigns its share of the joint rights, the

assignee may acquire the assigned party's benefits and entitlements, subject to any restrictions in the original agreement.

Legal Implications:

- **Contractual Agreements:** The specific terms of the contract or agreement between the parties will dictate how joint liabilities and rights devolve. Clear provisions should be included to address potential scenarios and ensure a smooth transition.
- **Legal Status:** Devolution may have legal consequences, and parties should be aware of their ongoing obligations or benefits even after a change in the composition of the group.

In summary, devolution in the context of joint liabilities and rights involves the redistribution or transfer of responsibilities and entitlements among parties, and the process is guided by legal frameworks and the terms set forth in the original agreements. Parties should be proactive in addressing potential scenarios and drafting comprehensive agreements to govern devolution effectively.

Time and Place of Performance

Rules Regarding Time and Place of Performance of Contract

1) When no application is to be made by the promisee and no time is specified – Section 46

In situations where there is no time period specified for the performance of the contract and the promisor has to perform the contract without any request by the promisee, in such a case the promisor must perform the contract within a “reasonable time”.

Here reasonable time means a fair amount of time that is required to do something conveniently and as soon as the circumstances permit. Hence here time is not important since a specified date for completion is not mentioned but this does not mean

that the promisee does not have the right to have the contract performed by the promisor.

Also, the term reasonable time depends on the facts and circumstances of the case and will also depend on the nature of the transaction.

Illustration

Srishti takes a loan of Rs 10,000 from Shivani and says that she will return it to her when she receives her next salary. Here the reasonable time for performance of the contract is after Srishti receives her next salary.

2) When time and place of performance is specified but no application is to be made by the promisee- Section 47

When the terms of the contract say that the promisor has to perform the contract without any request by the promisee, on the place specified by the promisee and on the exact date specified by him.

In case no specific time is mentioned then the promisor should deliver the goods during the usual hours of business.

Illustration

Ankita promised to deliver goods to Ira on an advance payment of Rs 10,000. Ira made the payment and asked Ankita to deliver the goods on 13th of the same month at her office at Tis Hazari. Since the time is not specified, she should deliver it between 10 am and 5 pm, assuming those are the regular court timings.

If Ankita attempts delivery after the business hours, then Ira has the right to not accept the goods and ask Ankita to deliver again during business hours.

3) When Performance is to be made on a proper place and time but an application is to be made by the promisee to the promisor for its performance- Section 48

When the terms of the contract say that a performance of a contract has to be made on a particular day but the promisor will only do so when the promisee makes an application to the promisor on that specific day for performance. Hence, here since it is specifically mentioned in the contract that the promisee has to request the promisor for performance on that specific day, he must do so at the proper place and during the usual business hours as specified by him.

Illustration

Manu agrees to supply Nishant 50 cartons of alcohol on 3rd November at his office. As per terms of the contract, Nishant would have to request Manu for performance. Thus on the due date and within usual business hours, Nishant should request Manu regarding a time and place for the supply of goods.

4) Where no place is fixed and no application has to be made to the promisor by the promisee- Section 49

When the terms of the contract does not specify the place where the goods have to be delivered and that no request has to be made by the promisee for the performance of a contract, in such a situation it is the duty of the promisor to request the promisee of a place reasonable to both where the goods can be delivered and then accordingly perform the contract.

The place for the performance of goods implies both the delivery and payment of goods.

Illustration

Sheela entered into a contract for supplying 100 cartons of Gram Flour to Anu on 5th September at a specific price. On the due date of performance, Sheela must apply or request Anu for determining a reasonable place and also make the payment at the same place.

5) When the performance has to be made in the time and manner as specified by the promisee- Section 50

A contract can also exist in which the promisor agrees to perform the contract in a manner and at a place and time prescribed by the promisee.

Illustration

Prankur's son is in the hospital and needs money for his son's operation. Harshil owes money to Prankur and agrees to repay him in at any place or time decided by Prankur. In this case, Prankur has the liberty to ask for the performance of the promise in any manner and at any place or time suited to him.

The consequence of Failure to perform the contract at a fixed time when the time is essential

Section 55 of the Indian Contract Act,1872 deals with the effect of failure to perform the contract at a fixed time when the time is essential.

If an act is not done within the stipulated time, the contract becomes voidable at the option of the promisee provided the Intention of the parties was that time should be of the essence of the contract.

Thus whether time was the essence of the contract depends on the intention of the parties and also on the nature of the contract.

In Bhudra Chand v. Betts(1915) the defendant promised to deliver an elephant to the plaintiff for the capture of a wild elephant as a part of Kheda Operations. The contract provided that the elephant would be delivered on the 1st of October, 1910, but the defendant obtained an extension of the time till 6th Oct and yet did not deliver the elephant till 11th. The plaintiff refused to accept the elephant and sued for damages for the breach. It was held that the plaintiff was entitled to recover damages since it was proved that time was the essence of the contract since the defendant had tried to obtain an extension of time.

This section says that if it was not the intention of parties to make time of the essence of the contract, the contract does not become voidable by the failure to perform the contract on or before the specified time but the promisee is entitled to claim compensation for any loss caused by the default

Finally, the section goes on to say that if time is intended to be of the essence by the parties but performance is accepted on some other time other than the time agreed, compensation cannot be claimed by the promisee unless he gives such a notice to the promisor.

In the case of State of Kerala v. M.A Mathai(2007), it was held that if there are any delays in the performance of reciprocal obligations by an employer, the contractor gets the right to avoid the contract but if he does not avoid the contract and accepts the belated performance, he cannot claim compensation for any loss sustained to him due to delay in performance, unless he gives a notice of the same to the delaying party.

The intention of the parties

In Indian law, the question of whether the time is of the essence of the contract or not is determined by the intention of the parties.

The intention of the parties can be determined from:

(a) The express words used in the contract

(b) The nature of the contract itself

(c) The nature of the property which forms the subject matter of the contract

(d) The surrounding circumstances

It has been held in the case of China Cotton Exporters v. Beharilal Ramcharan Cotton Mills Ltd (1961) that in commercial contracts time is ordinarily of the essence of the contract.

Thus It is ordinarily presumed that except in commercial contracts, time is not of the essence in other contracts. This presumption can be rebutted by showing the intention of the parties.

For example, Time is presumed not to be of the essence in contracts relating to immovable property, but of the essence in contracts of renewal of leases.

In M/S Citadel Fine Pharmaceuticals vs M/S Ramaniyam Real Estates Pvt. Ltd. and Ors. (2011), It was held that time was the essence of the contract which was specifically mentioned in clause 10 and the consequences of non-completion are mentioned in clause 9. So, from the express terms of the contract and the commercial nature of the transaction and the surrounding circumstances make it clear that the parties intended time to be of the essence of the contract.

However, merely specifying the time at which the contract has to be performed does not make time the essence of the contract. In order to determine this the terms and conditions of the agreement should be read carefully. If the contract in its terms provides that time is the essence of the contract, but other terms of the agreement show that the parties did not intend time to be of the essence, the court has held that time is not of the essence.

For Example, in the Case of Hind Construction Contractors v. State of Maharashtra (1979) the Appellant entered into a contract with the respondent on July 2, 1955, for some construction work with the condition that the contract should be completed within 12 months from the commencement of the work. The Appellant could not complete the work within the stipulated time and the Respondent canceled the contract with effect from August 16, 1956. The Appellant contended that time was not of the essence and further on account of several difficulties, such as excessive rains, lack of proper road

and means of approach to the site, the completion was delayed. The Supreme Court, in deciding that time was not of the essence in relied on two clauses in the contract –

1. First, there was a power to grant an extension of time on reasonable grounds by the respondent on an application by the appellant. Even though the appellant made an application for extension, the respondent revoked the contract which was wrong.

2. Second, there was a provision to recover penalty/compensation from the appellant at specified rates during the time the work remains unfinished.

These two provisions, as per the court, exclude the inference that time was intended to be of the essence of the contract.

Time can be made essence by Notice

When time is not of the essence in a contract, it can be made so by giving notice to the promisor. The notice must contain clearly that it wants to make time as the essence of the contract and the necessary implications if it is not adhered to. The promisor can also be intimated through the notice that default in the compliance with the terms will lead to the cancellation of the contract. The party serving the notice must himself be bound by it.

Extension of time

Since one party to the contract cannot unilaterally vary the terms of the contract, he also cannot extend the time without the consent of the other party through an agreement, Therefore, time for performance can be extended only by an agreement arrived at between the promisor and promisee. Thus if one party requests the other party for extension of time but the other party does not communicate his acceptance, the time cannot be extended in such a case.

As to provisions of law relating to time as the essence of contracts is that what matters most in such cases is the intention of the contracting parties. The intention can either be expressed in the contract or can be inferred by the nature of the transaction. If in the terms and condition of the contracts the parties have no intention that time should be of the essence of the contract does not become voidable by the failure to do such thing at or before the specified time but the promise is entitled to compensation from the promisor for any loss occasioned to him by such failure .when the time is the essence of the contract, non performance of the contract in time would frustrate the purpose which the parties have in mind and therefore if in such a case, there is a delay in the performance by one party, the other party has a right to avoid the contract.

Reciprocal Promises

Reciprocal promises which form are a part of the consideration.

A can fulfil his promise even if B does not give him the pokemon cards i.e- the absence of Pokemon cards does not make the performance of his promise impossible. The same goes for B. Thus while the acts are binding, they are mutually exclusive and are thus independent of each other.

However, if the contract states the acts must be done in a certain order then that clause should be upheld.

In Mrs Saradamani Kandappan vs. Mrs S. Rajalakshmi and Ors, Sadarmani was paying for a piece of land to Rajalakshmi in instalments. Before the payment of the last instalment, Sadarmani wanted to see the title document Rajalakshmi failed to show it and Saradamani thus did not pay the last instalment.

Thus, Rajalakshmi terminated the contract. Sadarmani moved to the court and argued that failure to show the title document was the reason she could not pay the last instalment. The court ruled that these two promises (the promise to show the title

document and the promise to pay for the last document) were exclusive as Sadarmani could pay the last instalment without showing the title document. Thus, Sadarmani should have paid the last instalment.

Conditional

This is when the performance is dependent upon the prior performance of the other party. If the first party fails to perform his promise, then it will be impossible for the second party to perform his side of the contract.

Suppose the contract if A promises to give money to B, if B promises to buys Maggi for A. If A defaults, i.e- he fails to pay B, then it will be impossible for B to hold up his side of the contract as he won't be able to buy the Maggi if A does not pay him. Thus, this type of contract is considered a conditional contract.

In M/s Shanti Builders vs. CIBA Industrial Workers' Co-Operative Housing Society Ltd., the defendant, CIBA alleged that they suffered losses as Shanti builders did not do their work on time. On the other hand, Shanti builders contested they were not given plots of land (as per payment for construction). Since this plot of land was not given to them, they were not able to complete construction.

The court held in favour of Shanti Builders and stated that if the nature of the transaction states that certain promises must be performed first before others, then that order must be followed. They also stated that in regards to conditional promises, the first party can not ask for the performance of the second party without performing their act first.

Concurrent

Here, parties promise to do acts that have to be performed simultaneously. A party will be exempted from doing their promise if the other party is not ready or willing to do their promise. Here 'readiness' means financial abilities and 'willingness' is perceived through the action of the party.

For example, P is supplying coats to R. P will only supply the coats if R financially can and is willing to, and R will only pay if P is willing to and has the goods.

In J.P. Builders vs. A. Ramadas Rao, the court stated the definitions of readiness and willingness.

Rules Regarding Performance of Reciprocal Promises

Section 51– Simultaneous Performance

If the other party is not ready or willing to perform their promise, then the other party does not need to perform their side of the promise.

Thus, if Ashok and Navya are in a contract, Ashok need not pay for the goods unless Navya is willing and ready. Similarly, Navya need not give the goods unless Ashok is willing and ready.

In Pushkarnarayan S. Maheshwari vs Kubrabai Gulamali, it was held that the burden of proof is on the Plaintiff to prove that he performed or remained ready and willing to perform the contract.

Section 52– A sequence of Performance

If the contract calls for an order in which the acts promised should be performed, then the acts should be performed in that order. Otherwise, the sequence of the order is determined by the nature of the promises.

For example, if B cannot build a road he promised to build without providing material, then A's promised act should be performed first, then B's.

Section 53– One party preventing the other to perform their promise

If one party prevents, or makes it impossible for the other party to perform their job, then the affected party has the option of voiding the contract. They also have the option of asking for compensations for the damages.

For example, Ashok is willing to supply coats to Navya, but on the day of delivery, Navya does not show up or locks Ashok in his shop; then Ashok can void the contract or collect compensation.

Section 54– Reciprocal and dependent promises

When the nature of the promise is conditional, the first party (the party who has to perform in order for the other party to perform) can not ask the other party to perform their promise, if they do not perform first.

The second party can also ask for compensation if they face damages due to the non-performance of the first party.

For example, Aaryan is a carpenter and Sara provides wood. They have a contract that Sara will provide wood to Aaryan and then he will make a table for her. If Sara refuses to provide the wood, then she can not expect Aaryan to make the table. If Aaryan faces any loss due to the fact Sara failed to provide wood, then he can ask for compensation.

Section 55– Failure to perform in stipulated time

If performing an act in a specific time frame is essential to the contract, and the promisor fails to do so, then the aggrieved party or the promisee can either void the contract and ask for compensation for losses.

If time is not essential to the contract then the promisee can not void the contract, he can also ask for compensation of losses that were suffered due to the delay.

In M/S Citadel Fine Pharmaceuticals vs M/S Ramaniyam Real Estates Pvt. Ltd. and Ors. (2011), it was stated that the intentions of the parties expressed in the contract are imperative to signal whether the time is of the essence when the nature of the transaction does not make it very clear.

Section 56– Impossible or unlawful act

If the promisor promises to do something which is impossible to do, then the contract is void. This section, thus, deals with the 'Doctrine of Frustration'.

The conditions that should be satisfied in order to invoke this section are –

The cause should not be a result of a default of the parties.

The cause must be unforeseeable and inevitable.

The cause must render the entire contract impossible to do.

There are two scenarios which are illustrated below-

Initial impossibility

This is when the promisor and promisee enter into a contract to do any act which they both know is impossible to do then the contract is void.

If the promisor promises to do an act that he knows can not be done, then he is liable to pay compensation for the losses suffered by the promisee due to his incapability to perform the act.

Thus, Ashok promises to supply Navya a coat made of bear fur. Navya wishes to wear this coat for a television interview. But, Ashok is aware that it is impossible for him to supply a bear coat to her in this season, but he still promises to sell her one and enters into a contract with her. In this situation, Navya can void the contract and can ask compensation for the losses she suffered.

Subsequent Impossibility

At the time of making the contract, the act might have been possible and lawful, but later on, it became impossible to do due to some reasons. In this case, the contract becomes void when the act becomes impossible to do.

Taking from the previous example, at the time that Ashok enters the contract, he will be able to provide a coat made of bear fur to Navya. But after he enters the contract, the Government puts a ban on the supply of products made of bear fur. Now Ashok can not supply Navya with the coat she wanted. Thus, the contract becomes void when the Government passes the law.

Section 57– Reciprocal promises or legal and illegal acts

The parties may have entered the contract to do legal acts. But after the contract was established, under specific conditions, they agreed to do illegal acts. In this case, the previous legal acts are valid and the preceding illegal acts are held void.

For example, Ashok promises to supply coats to Navya. Navya then promises to sell such coats on the black market for more profits. Here Ashok's promise to supply coats to Navya is valid but Navy's promise to sell such coats on the black market is invalid.

Section 58– Alternative promise of legal and illegal acts

Parties may promise to do legal acts that branch off into illegal acts.

For example, Preeti promises to pay back her loan to Rohit. But this loan shall be paid with black money. Thus, while Preeti's promises to pay back the loan is valid, the promise to pay with black money is invalid.

Assignment of Contract

1) Introduction

Assignment of contract means the transfer of contractual rights and liabilities under the contract to a third party with or without the concurrence of the other party to the contract. It is effected under Transfer of Property Act, 1882. It requires a written document duly signed. defective title of the instrument affects the assignee. Negotiable instruments are also actionable claims, and hence can be assigned.

2) Meaning of assignment of contract -

The expression assignment literally means 'transfer'. According to Section 130 of the Transfer of Property Act, every actionable claim can be transferred by means of a separate instrument in writing duly stamped and signed by the transferor. It may take place by Act of the parties and By operation of law.

a) Act of the parties - This is subject to the following rules

(1) Contracts involving personal skill or ability or other personal qualifications cannot be assigned.

(2) A promisor cannot assign his liabilities or obligations under a contract.

(3) The rights and benefits under a contract may be assigned if the obligation under the contract is not of a personal nature.

(4) An actionable claim can always be assigned but the assignment to be complete and effectual must be effected by an instrument in writing. Notice of such assignment must also be given to the debtor.

b) By operation of law -

This takes place in the following two cases:

Death - Upon the death of the Party to a contract his rights and liabilities under the contract (except in the case of contracts requiring personal skill or services) devolve upon his heirs and legal representatives.

Insolvency - In case of a person, his rights and liabilities incurred previous to adjudication pass to the Official Receiver or Assignee, as the case may be.

When Assignments will not be enforced

An assignment of a contract will not be enforced in the following situations.

The contract prohibits assignment.

Contract language, typically referred to as an anti-assignment clause, can prohibit (and "void") any assignments

The assignment materially alters what's expected under the contract. If the assignment affects the performance due under the contract, decreases the value or return anticipated, or increases the risks for the other party to the contract (the party who is not assigning contractual rights), courts are unlikely to enforce the arrangement. For instance, if Tom's local, organic dairy assigned the contract to a factory farm dairy, this would be considered a material alteration.

The assignment violates the law or public policy. Some laws limit or prohibit assignments. For example, many states prohibit the assignment of future wages by an employee, and the federal government prohibits the assignment of certain claims against the government. Other assignments, though not prohibited by a statute, may violate public policy. For example, personal injury claims cannot be assigned because doing so may encourage litigation.

Remedies for Breach of Contract and Types of Damages

A Legally binding Agreement

In other words, a Contract is an Agreement, the purpose of which is to create a Bond. Thus, when a Contract allows a person to force another person to do something or to avoid doing something, it is called a Contract.

What is a Breach of Contract?

A Contract may be terminated or broken when one of the parties fails or refuses to fulfil his or her obligations, or his or her promise under the Contract. Therefore, it can be said

that when a binding Agreement is not honoured by one or more parties for not fulfilling his promise, the Agreement may be terminated.

Introduction

The parties to the Contract are Legally required to perform their duties respectively, so naturally, the law does not deal with violations of any party. Therefore, once one party violates an Agreement, the law provides for three other Remedies. He may want to find out:

Ongoing loss injuries, or

The law of some practice, or

Instruction.

The laws relating to civil proceedings are governed by the Contracts Act, while the rules relating to orders and certain functions are governed by the Special Benefit Act, 1963.

Remedies for Contract Violations

If a promise or Agreement is broken by any parties involved it is a Breach of Contract. Therefore if one of the parties does not comply with the terms of the Agreement or does not fulfil its obligations under the terms of the Contract, that is a Breach of Contract.

There are several Remedies for Contract Breach available from the Victim.

Contract Reduction

If one of the Contractors does not fulfil his or her obligations, then the other party may withdraw the Contract and deny the performance of his or her obligations.

In terms of section 65 of the Indian Contract Act, a company that rescinds a Contract must repay any benefits received under the specified Agreement. And section 75 states that the entity withdrawing a Contract is entitled to claim damages and/or compensation for such Recession.

Sue for Damages

Section 73 makes it clear that the Victim as someone who has broken a promise may claim compensation for loss or damages incurred in the normal course of business.

Such damages will not be paid if the loss is not natural in nature, i.e. not in the normal course of business. There are two types of damage in terms of the Act,

Discontinued Damage: Sometimes Contract parties will agree to the amount payable in the event of a Breach. These are known as liquidated damages.

Unintended Injury: Here the amount payable for Breach of Contract is assessed by the courts and any other relevant authorities.

Sue for Specific Performance

This means that the offending party will have to do its job Contractually. In some cases, the courts may insist that the party enter into an Agreement

Injunction

An order is basically the same as the law of a particular operation but of the opposite Contract. An order is a court order that prohibits a person from committing an act.

So the court may issue an injunction suspending the Contractor from doing something he has promised not to do. In a restraining order, the court suspends the action and by order, will suspend the continuation of the illegal act.

Quantum Meruit

Quantum meruit means "earned money". Sometimes when one part of a Contract is prevented from completing its Contract performance by another, it may require quantum suitability.

So he should be paid a fair wage for part of the Contract he has made. This could be the reward for the work he did or the amount of work he did.

Parties to a Contract area are unit duty-bounded to perform their guarantees. However, things arise wherever one among the parties to a Contract could break the Contract by refusing to perform his promise. This can be what's referred to as the Breach of Contract. Once one party commits a Breach of Contract, presently the opposite party is entitled to the subsequent Remedies. When one among the party commits a Breach of the Contract, the opposite party becomes entitled to any of the subsequent reliefs:

Rescission of the Contract

Damages for the loss suffered

Suit for the precise performance

Suit upon quantum meruit

Suit for the injunction

Rescission of the Contract

When one among the parties commits a Breach of Contract, another party shall additionally treat the Contract as void or cancel. Once the Contract is cancelled, the affected party is mechanically discharged from all the commitments beneath the Contract. Section 64 of the Act provides that the party cancel the Contract if he has received any profit under it from the opposite party; restore such profit to the person from whom it had been received. Further, the one that truly cancels the Contract is entitled to compensation for any loss that he faced from the non-fulfilment of the Contract.

Damages for the Loss Suffered

The term “Damages” means that financial compensation collectable by the defaulting party to the affected party for the loss suffered by him once the Contract was broken. Therefore, the aggrieved party could bring associate action for damages against the

party who are guilty of the Breach of Contract. The party is guilty of the Breach and is vulnerable to pay damages to the aggrieved party.

Types of Damages

Normal Damages or General Damages

Damages that arise within the normal course of events from the Breach of Contract are referred to as normal damages.

Special Damages

Special damages are those damages that are collectable for the loss arising on account of some special or uncommon circumstances. That is, they undue the natural and probable consequences of the Breach of the Contract.

Exemplary or Vindictive Damages

These damages are awarded against the party who has committed a Breach of the Contract with the thing of gruelling the fallible as a defaulting party and to compensate the aggrieved party. Generally, these damages are awarded just in case of action on loss

Nominal Damages

These damages are in little quantity. They're awarded merely to acknowledge the correctness of the party to say damages for the Breach of the Contract. Sometimes, the damages aren't associated with an adequate remedy for Breach of the Contract. In such cases, the Court could, at the suit of the party not in Breach, direct the party in Breach to hold out his promise as per the terms of the Contract. This can be referred to as the precise performance of the Contract.

Example: A united to sell associate previous stamp of the pre-independence amount to 8 for Rs.500. However, afterwards refused to sell it. During this case, B may file a suit against A for the precise performance of the Contract and therefore the Court could order A to sell the stamp to B as united.

Some of the Cases Wherever the Court Could Direct the Execution Area Unit as Follow

Once the act is done, compensation in cash, for its non-performance, couldn't afford adequate relief.

However, Execution shall not be granted in the following cases

Wherever the damages are associate adequate relief,

Wherever the Contract is calculable.

Wherever the Contract involves personal nature.

Wherever the Courts cannot supervise the effecting of the Contract.

Wherever the Contract isn't truthful and simple.

Suit upon Quantum Meruit

In a literal sense, the expression “Quantum Meruit” means that, “as very much like attained “. In an exceedingly Legal sense, it means that payment is in proportion to the work done. This principle provides for the payment of compensation under certain circumstances, to someone who has offered the products or services to the opposite party under a Contract, which couldn't be performed under certain circumstances.

Cases for Claim on Quantum Meruit

Wherever the work, that has been done and accepted under Contract, is afterwards discovered to be void – Here the party has affected a part of the Contract will truly the quantity for the work he has done. And therefore the party that accepts and reaps the profit under Contract, should create compensation to the opposite party.

Wherever one party abandons or refuses to perform the entire Contract. Here the compensation for the work done could also be recovered supporting quantum meruit.

Wherever one thing is finished with non-intention to try and do gratuitously. In such cases, the opposite person is certain to create the payment if he accepts such services or merchandise, or enjoys their profit.

Wherever the Contract is cleavable and therefore the party has enjoyed the advantages of the work done – In such cases, the halfway in default could sue on quantum meruit if the opposite party has enjoyed the advantages of the part performance.

Suit for Injunction

The term" Injunction" could also be outlined as an associate order of the Court instructing someone to refrain from doing a little act that has been the subject-matter of the Contract. wherever a celebration has secured to not do one thing and he will it, and thereby commits a Breach of Contract, the aggrieved party could ask for the protection of the Court beneath sure circumstances and procure associate injunction.

Example: A narrowed to sing solely at B's theatre and obscurity else for an exact amount. Afterwards, A created a Contract with C to sing at C's theatre and refused to sing at B's theatre. The Court refused to order a selected performance as a result of the Contract was private however granted an associate injunction against A to restrain him from singing anyplace else.

Discharge by Performance

Performing means doing all those things which are required by a contract. Discharge of performance occurs when the parties to the contract fulfill their obligations set out under the contract within the specified time and in the manner prescribed. In such a case, parties are discharged and contracts come to an end. But if only one of the party performs, he alone is discharged. Such a party gets the right of action against the other party who is guilty.

Discharge of Performance may be:

Actual Performance

Attempted Performance

Actual Performance

When both the parties perform their performance, then the contract is said to be discharged. Performance should be complete and precise according to the terms of the agreement. Majority of the contracts are discharged by performance in this manner.

Attempted Performance

Attempted performance is only an offer to perform the obligation under the contract. When the promisor agrees to perform the contract but the promisee refuses to accept the performance, then in such case, it is termed as discharge of contract by attempted performance or tender.

Discharge by Agreement or Consent

Novation

The term novation means the substitution of the new contract by the original one. The new agreement may be with the same parties or with the new parties. For a contract to be valid and effective, the consent of all the parties including the new one if any is

necessary. Moreover, the second party must be capable of enforcement of law, the consideration for which is the exchange of promise not to carry out the original contract.

Alteration

This refers to change in one or more terms of a contract with the consent of all the parties entered in the contract. Alteration leads to formation of new contracts but the parties to it remain the same.

Remission

This means the acceptance by the promisee of a lesser sum than what was mentioned in the contract, or a lesser fulfillment of the promise made.

According to the section 63, every promise may:

May remit or give up with it

Extend the performance time

Accept any other satisfaction rather than performance

Recession

The term recession refers to cancellation of all or some of the material terms of the contract. If the parties entered into the contract, mutually agreed to do so, then in such case the respective contractual agreement of the parties gets terminated.

Waiver

The term waiver means abandonment of rights. When one party deliberately abandons his right under the contract, the other party is released of his obligations, else binding upon it.

Discharge by Impossibility of Performance

If it is impossible for any of the parties entered in the contract to perform their obligations, then the impossibility of performance of contract leads to discharge of contract. If the impossibility of performing the contract exists from the start, then it is termed as impossibility by ab-initio.

However, impossibility of performing the contract may also arise later due to:

An unforeseen change in the law

Destruction of subject-matter of the contract

Non-existence or Non-occurrence of a particular state of things.

Outbreak of War

Example:

John enters into the contract with this friend Tom to marry his sister within 6 months. Howbere, John met with an accident and became insane. This impossibility of performance leads to discharge of contract.

Discharge of Contract by a Lapse of a Time

According to The Limitation Act, 1963, there is a specific time period for the performance of a contract. If the promisor failed to perform his duties and the promisee failed to take action within this specified period, then the promisee in such a case cannot be deprived of his remedy through law. Here, the contract is said to be discharged due to the lapse of time. For example: John takes a loan from one of his friends and agrees to pay him installments every month for the next five years. However, he does not pay even a single installment. His friend calls him several times but then gets busy and takes no action. After three years, he approaches the court to help him recover his money. However, the court rejects his complaint because he has crossed the time-limit of three years to recover his debts.

Discharge of Contract By Operation of Law

A contract can be discharged by the operation of law in the following circumstance:

Unauthorized Material Alteration of Written Document: A party can discharge the contract i.e from his side if the other party changes the terms such as price or quantity of contract without taking any permission from the former.

By Insolvency

By Death

Discharge by Breach of Contract

A contract is obliged to perform according to its terms. But when a promisor fails to perform a contract according to the terms of the contract, then he is said to have committed a breach of contract. The breach of contract is of two types

Actual Breach

Anticipated Breach

Actual Breach: Actual breach of contract refers to failure to perform the obligation when the performance is due. For example, if a seller fails to deliver the goods by the appointed time, or the goods are delivered but not upto the mark in terms of quality or quantity specified in the contract.

Anticipatory Breach: Anticipatory Breach, also known as Breach by Contradiction, takes place when one party before the arrival of the fixed date for performance states that it cannot or will not able to perform material part of the contractual obligation on the specified date or it aims to perform the contract in a way that is inconsistent with the deeds specified in the contract at the initiation.

In short, discharge of contract refers to a situation when there is a need to terminate the contractual obligations.

What is contract termination?

Contract termination is the process of ending a contract before the obligations within it have been fulfilled by all parties. This means that one or more parties have made the decision to conclude the contract earlier than they had originally agreed when drafting and signing it.

If a contract is terminated, all parties will be freed from their responsibilities and obligations. This is also known as discharging a contract.

Common reasons for the termination of a contract

When entering into a contract, you might not be giving too much thought to it ending prematurely. But it happens. In fact, there are a few common reasons to terminate a contract.

Few examples are given below.

1. A breach of contract has occurred

One of the most common reasons for contract termination is when one of the parties to the contract has breached the contract. This happens when a party has failed to fulfill their obligations or has acted in a way that was inconsistent with the rules set out by the contract or agreement.

When this happens, the non-breaching party is entitled to terminate the contract and free themselves from their obligations within it.

Importantly, this doesn't mean that the breaching party can escape the contract scot-free. The party that breached the contract may still be required to pay damages or compensate the counterparty for the losses they suffered as a result of their breach. It just gives the other party the opportunity to end the contractual relationship earlier than originally agreed.

2. Performance of the contract is impossible

Parties will also be forced to terminate a contract if the performance of that contract has become impossible since it was agreed. This happens when a supervening event occurs which makes fulfilling the obligations in the contract impossible, or illegal.

Imagine, for example, A contract is entered. The obligations within this contract were perfectly legal when the contract was drafted and signed. However, after it became effective, a law was introduced which meant the obligations that the parties had to fulfill became illegal.

To avoid landing themselves in hot water with the law, the parties could choose to terminate the contract and get rid of these responsibilities altogether. This is different from a breach of contract since the parties are left with no choice but not to perform their contractual duties.

3. All parties would prefer for the contract to end

It's also possible to terminate a contract simply because the parties aren't receiving value from it and wish for it to end early as a result. This can also happen if the parties find it difficult to work together.

However, all parties to the contract must come to a mutual agreement that they want the contract to be terminated in this case.

This is something that happens with employment contracts, for example. If an employer and an employee both agree that a job isn't working out or is a bad fit, they can agree to end it. This can happen even if they're employed under a fixed-term contract that hasn't ended yet.

Terminating a contract in this way ensures that both parties can do what's best for them without being penalized for this.

Types of contract termination

Interestingly, the reason behind the decision to terminate a contract can determine how the contract termination happens. Broadly speaking, there are two types of contract termination: termination for cause and termination for convenience. Let's explore these together now.

1. Termination for cause

Termination for cause occurs when a party's actions or inactions cause the contract to break down. This could be because they've failed or refused to perform their contractual obligations and breached the contract, for example.

Most contracts will include a termination for cause clause that describes when one party will be able to terminate the contract without the explicit consent of the other.

2. Termination for convenience

Termination for convenience, on the other hand, enables parties to terminate the contract without needing to prove blame or breach. This type of contract termination is used to end relationships more amicably and exit contracts that no longer benefit either of the parties involved.

Importantly, if parties wish to terminate the contract for convenience, they usually have to have included a clause within the contract itself that allows for this.

For example, some contracts contain a clause that says that a contract can be terminated at any point so long as the 30-day notice period has been met. This means that parties can end the contract without any cause.

3. Deliver the termination notice

Once drafted, deliver the termination of contract notice. Most contracts will describe exactly how this notice should be served and who it needs to be served to.

Quasi Contract

Quasi contract is another name for a contract implied in law, which acts as a remedy for a dispute between two parties that don't have a contract. A quasi contract is a legal obligation—not a traditional contract—which is decided by a judge for one party to compensate the other. Thus, a quasi contract is a retroactive judgment to correct a circumstance in which one party acquires something at the expense of the other.

These arrangements may be imposed when goods or services are accepted by a party even though they might not have been requested. The acceptance then creates an expectation of payment for the providing party.

Purpose

Quasi contracts outline the obligation of one party to a second when the first receives a benefit or property from the second. A person might knowingly or unknowingly give something of value to another without an agreement being made. It is assumed that a reasonable person would pay for it, give it back, or otherwise compensate the giver upon receiving the item or service.

Quasi contracts are awarded as a remedy to a giver to keep them from being taken advantage of and keep others from being unjustly enriched.

Legality

Because the agreement is constructed in a court of law, it is legally enforceable, so neither party has to agree to it.

3.

The purpose of the quasi contract is to render a fair outcome in a situation where one party has an advantage over another. The defendant—the party who acquired the property—must pay restitution to the plaintiff—the wronged party—to cover the value of the item.

Requirements

Certain aspects must be in place for a judge to issue a quasi contract:

One party, the plaintiff, must have experienced a loss as a result of a transfer.

The defendant must have or acknowledged receipt of and retained the item of value, but made no effort or offer to pay for it.

The plaintiff must then demonstrate through burden of proof why the defendant receive an unjust enrichment.

The item or service cannot have been given as a gift.

The defendant must have been given a choice to accept or deny the benefit.

Quasi Contract vs. Contract

Quasi Contract	Contract
Only Implied in Law	Can Be Express or Implied
Ordered by a Judge	Initiated by Party Agreement
No Contract Exists	A Legal Contract Exists

Quasi Contract

Only Implied in Law: Implied in law means that a payment obligation is created by law, in this case, a judge who renders a remedy.

Ordered by a Judge:

Quasi contracts are ordered by a judge because contracts implied in law are not covered under contract law.

No Contract Exists: Quasi contracts are not contracts; they are remedies for disputes between parties that are the result of one party receiving an unjust enrichment.

Contract

Can Be Express or Implied: There are generally two types of contracts, express and implied. An express contract is one where terms are laid out and both parties agree to abide by the terms. An implied contract is one where mutual assent is given for an exchange, but there are no explicit terms.

Initiated by Party Agreement:

The parties involved in an exchange agree to the exchange.

A Legal Contract Exists: Express and implied contracts are legally recognizable and enforceable.

Types of Quasi Contract

The types of quasi contract are outlined in sections 68 thru 72 of the Contract Act of 1872, as follows:

Section 68: A person who is incapable of making contracts is provided with the supplies by a third party on behalf of the incapable person or anyone he is legally obligated to support. Third parties can recover the price of the supplier from the property of the unable person.

Section 69:

A person who makes a payment on behalf of another party is obligated to pay the money according to law. Therefore, the person who made the payment is entitled to reimbursement from the other party.

Section 70:

When a person does something lawfully for another person, or delivers something without intending to do the same gratuitously, the receiving party is obliged to compensate the former party.

Section 71: A person who finds goods that belong to another party and takes ownership of them has the same responsibility as a bailee.

Section 72: Someone who has been paid or delivered under coercion or mistakenly must repay or return the money.

Advantages and Disadvantages of Quasi Contracts

Advantages of using a quasi contract include the fact that these legal instruments are typically based on the unjust enrichment principle. This prevents one party from gaining an undue advantage over another. Thus, it is a safeguard for innocent victims of wrongful acts and a legal alternative to compensation for damages, ensuring that the one who provides services or goods gets compensated for the same. In order to comply with quasi contracts, all parties involved are obliged to follow them, as they are created by court order.

There are also some drawbacks or limitations. Those who received benefits negligently, unnecessarily, and by miscount will not be held liable. Although a person can be liable under a quasi contract, he cannot be charged more than the amount he has received under the contract. Thus, there is no provision available for the recovery of more amount than that which has been received by the plaintiff - if the plaintiff obtains only part of the services/goods that he contracted for originally, he cannot claim a compensation as the whole amount is not recovered.

If there's an express agreement between the parties, plaintiffs have to give up all profits. Though a quasi contract is a legal remedy that provides protection from unjust enrichment of the beneficiaries of the services or goods, a plaintiff can get relief only if he can prove that he has suffered losses due to the breach of the contractual obligations of the defendant.

Quasi Contract Pros and Cons

Pros

Prevents one party from unfairly benefitting at the expense of another

Court order is legally binding

Cons

Not suitable in all cases

Amount cannot include additional damages

What Are Quasi Contracts?

A quasi contract is also known as an "implied contract," in which a defendant is ordered to pay restitution to the plaintiff, or a constructive contract, meaning a contract that is put into existence when no such contract between the parties exists.

What Is a Quasi Contract in Simple Words?

A quasi contract is an obligation between two parties created by a court order rather than an agreement between the parties to prevent enrichment.

What Is a Quasi Contract Example?

An example might be if Person A offers to pay Person B to help them move to a new apartment, and agrees to pay the $100 for the help. The agreement is verbal and not a formal contract. Person B commits to the job, turns down a different job, and shows up on the required day to help with the move. But when Person B shows up, Person A tells them that they are not needed after all and that the job is canceled. Person B files a civil suit to have the missing money paid and a quasi contract might be instituted, if the judge agrees that money is owed.

With a quasi contract, a defendant is required to behave as if there was a legal contract with the plaintiff. It is designed so that one party is not unjustly enriched at the expense of the other. Unjust enrichment is when someone benefits unfairly, either due to circumstance or the other party's misfortune. A quasi contract is rendered by a judge, as a settlement, after the fact, when a formal contract otherwise did not exist.

Unit III

Contract of Indemnity and Guarantee Contract of Indemnity and Contract of Guarantee - Extent of Surety's Liability, Kinds of Guarantee, Rights of Surety, Discharge of Surety

Contract of Indemnity and Guarantee

Contract of Indemnity and Contract of Guarantee

The contract of indemnity is the contract where one person compensates for the loss of the other. Contract of guarantee is a contract between three people where the third person intervenes to pay the debt if the debtor is at default in paying back.

The term 'indemnity' simply means to make good thc loss 01. to compensate the party who has suffered some loss. The term 'contract of indemnity' is defined in Section 124 of the Indian Contract Act as follows, "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the: conduct of any other person, is called a contract of indemnity."

The person who promises to compensate for the loss is called the "indemnifier" and the person to whom this promise is made: or whose loss is to be made good is known as "indemnity-holder" or "indemnified". For example, A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of money. This is a contract of indemnity, here A is the indemnifier and B is the indemnified.

The above definition restricts the scope of contracts of indemnity as it covers only the losses caused by the conduct of the promisor himself or by the conduct of any other person. If a strict view is taken of this definition, it will exclude the losses caused by accidents. In that case insurance contracts should not fall within the purview of contracts of indemnity. But the fact is that all contracts of insurance (except life insurance) are also contracts of indemnity. The intention of law makers had never been to exclude insurance contracts from the purview of contracts of indemnity. That is why

English definition states "a promise to save another harmless from loss caused as a result of a transaction entered into at the instance of the promisor". This definition includes a promise to make good the loss arising from any cause whatsoever e.g. fire, perils of sea, accidents etc. When a person expressly promises to compensate the other from loss, it is termed as express indemnity. The contract of indemnity is said to be implied when it is to be inferred from the conduct of the parties or from the circumstances of the case. Even Section 69 of the Contract Act (discussed in Unit 8) implies a duty to indemnity in case a person who is ' interested in the payment of money which another is bound by law to pay, has paid the amount. Similarly, in an auction salk there is an implied contract of indemnity between the auctioneer and the person who asks him to sell goods.

For example, A, an auctioneer, sold certain goods on the instructions of B. Later on, it is discovered that the goods belonged to C and not B. So, C recovered damages from A for selling the goods belonging to him. Here A is entitled to recover the compensation from B.

In this case there was an implied promise to compensate the auctioneer for any loss which he may suffer on account of the defective title of B.

Contract of indemnity is a special type of contract, therefore, to enforce such contracts it is necessary that all the essentials of a valid contract must be present. In case any one of the essential is missing, the contract cannot be enforced. Thus if the object or consideration of an indemnity agreement is unlawful, it cannot be enforced. For example, A asks B to beat C, promising to indemnify him against the consequences this cannot be enforced.

Suppose B beats C and is fined Ks. 500, B cannot claim this amount from A, because the object of the agreement is unlawful.

RIGHTS OF INDEMNITY HOLDER

In pursuance of Section 125 of the Act the indemnity-holder may recover from the indemnifier (promisor), the following amounts, provided the acts within the scope of his authority :

1) He is entitled to recover all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applied.

2) He is entitled to recover from the indemnifier all costs which he had paid in bringing or defending any suit in respect of contracts of indemnity. In bringing or defending the suit the indemnity-holder must not contravene the orders of the indemnifier and he must act in the same way as a prudent man would have acted under similar circumstances in his own case.

3) He is entitled to recover from the indemnifier, all the amount which he had paid under the terms of the compromise of such suit. However, it is essential that the compromise must not be contrary to the orders of the indemnifier and in compromising the suit, he must act as a prudent man. This right is also available to the indemnity-holder when he paid any amount under any compromise entered by him and authorised by the indemnifier.

Contract of Guarantee

The object of contract of guarantee is to enable a person to obtain an employment, a loan or goods on credit.

According to Section 126 of the Indian Contract Act, 'A contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called 'the principal debtor'; and the person to

whom the guarantee is given is called ‘the creditor'. A guarantee may be either ora1.m written.

For example, if A, and his friend B enter a trader's shop, and A asks the trader, "supply the articles required by B, and if B does not pay you , A will pay

It is a contract of guarantee. The primary liability to pay is that of B but if he fails to pay, A becomes liable to pay. On the other hand, if A says to the trader, "let him (B) have the goods, I will see you are paid", the contract is not a contract of guarantee.

From the above-mentioned definition of guarantee, in a contract of guarantee, there are three parties known as creditor, principal debtor and surety.

A contract of guarantee is formed when all the three agree. Let us take an example, A and B enter in a shop, and A orders to deliver certain goods to B on credit, The shopkeeper says "I can give goods on credit provided A gives the guarantee for the payment". A promises to guarantee the payment. In this example, B is the principal debtor, A is the surety and the shopkeeper is the creditor and the contract is a contract of guarantee.

In such a situation A would be regarded as the principal debtor and he will become personally liable to pay. Thus, the incapacity of the principal debtor does not affect the Validity of a contract of guarantee. The requirement is that the creditor and the surety must be competent to contract.

If a contract of guarantee should have all the essentials of a contract then what is the consideration between surety and the principal debtor?

It is not necessary that there should be direct consideration between the surety and the

creditor i.e., the surety need not be benefited. It is sufficient (for the purposes of consideration) that something is being done or some promise is made for the benefit of principal debtor. It is presumed that the consideration received by principal debtor is the sufficient consideration for the surety.

Provision of Section 127, which says: Anything done, or any promise made for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

On examining the definition of contract of guarantee, as there are three parties, there . are three contracts as well. One contract is between the creditor and the principal debtor, out of which the guaranteed debt arises. Second contract is between the surety and the principal debtor which implies that the principal debtor shall indemnify the surety, if the principal debtor fails to pay and the surety is asked to pay. The third contract is between the surety and the creditor by which surety undertakes (guarantees) to pay the principal debtor's liabilities (debt) if the principal debtor fails to pay.

For a valid contract of guarantee, it is essential that there must be an existing debt or a promise whose performance is guaranteed. In case there is no such debt or promise, there can be no. valid guarantee. In fact, a contract of guarantee pre-supposes the existence of a Liability enforceable by law. For example, A gives the guarantee to B for the payment of a time-barred debt due from C. This is not a valid contract of guarantee because the primary liability between B and C is not enforceable bylaw. In case A pays the amount, he cannot recover it from C.

An interesting aspect of the contract of guarantee is that though it is not a contract of absolute good faith and therefore, it is not necessary for the principal debtor or the creditor to disclose all the material facts to the surety before he enters into a contract. However, the facts which are likely to affect the surety's decision must be truly represented to him.

Section 142 of the Act provides that arty guarantee which has been obtained by means of misrepresentation made by the creditor. or with his knowledge and assent, concerning a material part of the transaction, is invalid. Not only there should be no misrepresentation but it is also essential that the guarantee must not be obtained by concealing some facts.

Section 143 provides that any guarantee which the creditor has obtained by means of keeping silence to material circumstances is invalid. For example, A employs B as clerk to collect money for him. B fails to account for some of his receipts, and A, in consequence, calls upon him (B) to furnish security for his duly accounting.-C gives the guarantee for B's duly accounting. A did not inform C about B's previous conduct. B, afterwards, makes default. Here the guarantee given by C is invalid because it was obtained by concealment of facts by A.

From this discussion, let us summarise the essential features of a contract of guarantee as follows :

i) Existence of a debt, for which some person other than the surety should be primarily liable.

ii) Consideration, but it is not necessary that the surety should be benefited.

iii) All the essentials of a valid contract should be present.

iv) Creditor and surety must be competent i.e., principal debtor need not be Competent to contract.

v) Surety's liability is dependent on principal debtor's default.

vi) Guarantee must not be obtained by misrepresentation.

vii) Guarantee must not be obtained by concealment of material facts.

DISTINCTION BETWEEN CONTRACT OF lndemnlty and Guarantee

INDEMNITY AND CONTRACT OF GUARANTE

Following are the main points of difference between a contract of indemnity and a contract of guarantee. .

i) In a contract of indemnity there are only two parties i.e., indemnifier and the indemnified while in n contract of guarantee there are three parties principal debtor, creditor and the surety.

ii) In a contract of indemnity there is only one,contract, whereas in a contract of guarantee, there are three contracts.

iii) In a contract of indemnity the indemnifier undertakes to save the indemnified from any loss caused to him by the conduct of indemnifier himself or the conduct of any other person, while in a contract of guarantee, the surety undertakes for the payment of debts of principal debtor, if the principal debtor fails to pay it.

iv) In a contract of indemnity, the liability of indemnifier is primary and independent, while in a contract of guarantee the liability of surety is secondary i.e., it arises only on the default of principal debtor. The primary liability is that of the principal debtor.

v) In a contract of indemnity, indemnifier's liability arises only on the happening of a contingency, while in a contract of guarantee there is an existing duty or debt, the performance of which is guaranteed by the surety.

vi) In a contract of indemnity, indemnifier acts independently without any request of the debtor or the third party, while in a contract of guarantee the surety guarantees at the request of principal debtor.

vii) In a contract of guarantee, if the principal debtor fails to pay and the surety discharge his debt, the surety can proceed against the principal debtor in his own right, while in a contract of indemnity, the indemnifier cannot sue the third party in his own name unless there is an assignment in indemnifier's favour. If there is no such assignment, the indemnifier must bring the suit in the name of indemnified.

Extent of Surety's Liabilities

A contract of guarantee is a legally binding agreement between a surety, a principal debtor, and a creditor. The surety agrees to undertake the responsibility of the debtor's obligations to the creditor in the event that the debtor defaults on the contract. In other words, the surety serves as a backup for the debtor in case the debtor is unable to fulfill the contract's terms. The surety's liability in a contract of guarantee is a crucial component, and this essay aims to explain the nature and extent of the surety's liability.

The nature of the surety's liability in a contract of guarantee is that it is secondary to the principal debtor's liability. The surety's obligation only arises after the debtor defaults, and the creditor demands payment from the surety. Until then, the surety has no obligation to perform. This means that the creditor must first attempt to recover the debt from the principal debtor before seeking payment from the surety. In other words, the creditor can only demand payment from the surety after exhausting all possible remedies against the principal debtor.

Furthermore, the extent of the surety's liability in a contract of guarantee is determined by the terms of the contract itself. The surety's liability may be limited or unlimited, depending on the agreement between the parties. If the contract specifies a specific amount or a limited time for the surety's liability, the surety is only liable for that amount or during that time. This means that the surety's obligation is discharged once the agreed amount of time has passed.

On the other hand, if the contract does not specify the extent of the surety's liability, the surety's liability is unlimited. In this case, the surety is liable for the full amount owed by the principal debtor, along with any interest and other charges that may have accrued. This means that the creditor can recover the full amount from the surety, and the surety cannot argue that their liability should be limited.

Moreover, the surety's liability in a contract of guarantee is joint and several with the principal debtor. This means that the creditor can seek payment from both the principal debtor and the surety for the same debt. In other words, the creditor can demand payment from either the principal debtor or the surety, or both. The surety is also entitled to recover from the principal debtor any amount paid to the creditor to discharge their obligation as a surety.

It is important to note that the surety's liability is a strict liability. This means that the surety is liable to the creditor regardless of any unforeseen circumstances that may have caused the debtor's default. For example, if the debtor was unable to fulfill their obligation due to unforeseen circumstances such as illness or natural disasters, the surety is still liable to pay the debt to the creditor.

The nature and extent of the surety's liability in a contract of the guarantee are determined by the terms of the contract. The surety's liability is secondary to the principal debtor's liability and is joint and several with the principal debtor. The surety's liability may be limited or unlimited, depending on the agreement between the parties. However, the surety's liability is a strict liability, and the surety is obligated to pay the debt to the creditor regardless of any unforeseen circumstances that may have caused the debtor's default.

Kinds of Guarantee - Contract of Indemnity and Guarantee

Kinds of Guarantee in a Contract of Indemnity:

Specific Indemnity:

Explanation: A specific indemnity is a guarantee that covers a particular loss or liability arising from a specific event or transaction. It is narrow in scope and is limited to the circumstances expressly mentioned in the contract.

Example: A person agrees to indemnify a seller against any losses arising from a defective product sold during a specified transaction.

Continuing Guarantee:

Explanation: In a continuing guarantee, the guarantor undertakes to indemnify the promisee for a series of transactions over an extended period. It provides ongoing protection against future losses or liabilities.

Example: A bank issues a continuing guarantee to a business, assuring payment for any overdrafts on the business account up to a specified limit for a certain duration.

Kinds of Guarantee in a Contract of Guarantee:

Specific Guarantee:

Explanation: Similar to specific indemnity, a specific guarantee is limited to a particular transaction or debt. It covers a single contract or obligation, and the guarantor's liability is restricted to that specific context.

Example: A person provides a specific guarantee for the repayment of a loan taken by their friend for the purchase of a specific item.

Continuing Guarantee:

Explanation: A continuing guarantee in a contract of guarantee extends beyond a single transaction, covering a series of transactions or obligations. The guarantor's liability persists over time until the guarantee is revoked or terminated.

Example: An individual guarantees the repayment of all loans taken by their sibling from a bank over the course of a year.

Performance Guarantee (Surety Bond):

Explanation: A performance guarantee, often in the form of a surety bond, assures the fulfillment of contractual obligations.

If the principal party fails to perform as agreed, the guarantor steps in to fulfill the obligation

Example: A contractor provides a performance guarantee to a client, ensuring that the construction project will be completed according to the terms of the contract.

Financial Guarantee:

Explanation: A financial guarantee is commonly associated with financial transactions and ensures payment in case of default by the debtor. It is often used in lending and credit arrangements.

Example: A parent company issues a financial guarantee for a subsidiary's loan, promising to cover the debt if the subsidiary cannot meet its repayment obligations.

Understanding these various kinds of guarantees is crucial for drafting clear and effective contracts. Parties should carefully define the scope, duration, and terms of the guarantee to avoid ambiguity and ensure that all parties involved are aware of their rights and obligations.

The extent of a surety's liability refers to the maximum financial responsibility that the surety (guarantor) assumes in the event that the principal debtor fails to fulfill their obligations as outlined in a contract. Surety ship is a contractual relationship where one party (the surety) guarantees the performance or payment of another party's obligations (the principal debtor) to a third party (the obligee).

The extent of the surety's liability is typically defined in the surety ship agreement or bond. Here are common ways in which the extent of surety's liability is determined:

Limited or Fixed Amount:

The surety's liability may be explicitly limited to a fixed or maximum amount, often specified in the surety bond or agreement. This amount represents the maximum exposure of the surety in the event of the principal's default.

Specific Timeframe:

The surety's liability may be time-limited, meaning that it is only effective for a specific period. Once the specified time elapses, the surety is no longer responsible for the obligations of the principal.

Specific Obligations:

The surety's liability may be limited to certain obligations or events outlined in the contract. For example, the surety may only be responsible for the completion of a construction project up to a certain stage or for specific types of default by the principal.

Joint and Several Liability:

In some cases, the surety may assume joint and several liability with the principal debtor, meaning that the surety can be held fully responsible for the entire obligation if the principal fails to perform. This type of liability is common in commercial transactions and can increase the surety's exposure.

Percentage of Completion:

In construction contracts, the surety's liability may be tied to the percentage of completion of the project. As the project progresses, the surety's liability decreases proportionally

Modification through Agreement:

The extent of surety's liability can be modified by mutual agreement between the parties involved. If the parties agree to changes in the contract or suretyship agreement, it can impact the surety's obligations.

It's crucial for all parties involved to clearly understand and define the extent of the surety's liability in the contractual documents. This clarity helps prevent misunderstandings, sets expectations, and provides a basis for legal enforcement if the

principal debtor defaults on their obligations. Parties may also seek legal advice to ensure that the surety ship agreement complies with relevant laws and regulations.

Kinds of Guarantee

Guarantees can take various forms depending on the nature of the contractual arrangement and the specific obligations being secured. Here are some common kinds of guarantees:

Specific Guarantee:

A specific guarantee is limited to a particular transaction or obligation. It provides assurance for a specific event or debt and is not meant to cover a broader range of obligations.

Continuing Guarantee:

A continuing guarantee extends over a series of transactions or a period, providing ongoing assurance for multiple obligations. This type of guarantee remains in force until it is revoked or terminated.

Performance Guarantee (Surety Bond):

A performance guarantee, often in the form of a surety bond, ensures that a party fulfills its contractual obligations. If the principal party fails to perform, the guarantor (surety) steps in to fulfill the obligation.

Financial Guarantee:

A financial guarantee is often related to financial transactions, assuring payment in case of default by the debtor. It is commonly used in lending and credit arrangements.

Secured Guarantee:

In a secured guarantee, the guarantor provides collateral or security to back the guarantee. This collateral can be seized if the guarantor fails to fulfill the obligations outlined in the guarantee.

Unsecured Guarantee:An unsecured guarantee does not involve collateral. The guarantor relies solely on their commitment to fulfill the obligations in the guarantee, and there is no specific asset pledged as security.

Corporate Guarantee:

A corporate guarantee is provided by one company on behalf of another. It is often used in business transactions to strengthen the creditworthiness of one of the parties.

Personal Guarantee:

A personal guarantee is provided by an individual, often a company director or business owner, personally committing to fulfill the obligations of the contract. Personal assets may be at risk in case of default.

Joint and Several Guarantee:

In a joint and several guarantee, multiple guarantors are jointly responsible for the entire obligation. Each guarantor can be held fully liable for the entire debt if the primary obligor defaults.

Parent Company Guarantee:

A parent company guarantee is given by a parent company to guarantee the obligations of its subsidiary. It is commonly used to enhance the creditworthiness of the subsidiary in commercial transactions.

Completion Guarantee:

A completion guarantee is often used in the entertainment industry. It assures that a project will be completed, and financial backers will be reimbursed if the project is not finished.

Understanding the specific type of guarantee used in a contract is essential for all parties involved. The terms and conditions of the guarantee should be clearly defined in the contract to avoid misunderstandings and disputes.

Rights of Surety

A surety, often referred to as a guarantor, is an individual or entity that agrees to be responsible for another party's debts, obligations, or performance under a contract if that party, known as the principal debtor, fails to fulfill its obligations. The rights of a surety are essential protections that help balance the increased risk and responsibility taken on by the surety. The specific rights of a surety may vary based on jurisdiction and the terms of the surety agreement, but some common rights include:

Subrogation:

Definition: Subrogation allows the surety, after fulfilling its obligations, to step into the shoes of the creditor and pursue any rights or remedies the creditor had against the principal debtor.

Example: If the surety pays off a debt on behalf of the principal, it can seek repayment from the principal debtor.

Reimbursement:

Definition: The right to reimbursement allows the surety to recover from the principal debtor any amounts paid on their behalf. This ensures that the surety is not left bearing the financial burden without recourse.

Example: After paying a debt, the surety has the right to demand repayment from the principal debtor.

Exoneration:

Definition: Exoneration refers to the right of the surety to compel the principal debtor to perform its obligations, relieving the surety of its responsibilities under the guarantee.

Example: The surety may insist that the principal fulfill its contractual duties rather than the surety having to step in.

Settlement and Release:

Definition: The surety may have the right to negotiate settlements with the creditor on behalf of the principal debtor, and once a settlement is reached, the surety's liability may be reduced or discharged.

Example: The surety may negotiate a reduced payment with the creditor in exchange for prompt settlement.

Access to Security:

Definition: If the surety provided security for the obligation, such as collateral, the surety may have the right to access or seize that security to recover the amounts paid on behalf of the principal debtor.

Example: If the surety pays off a defaulted loan, it may have the right to seize and sell the collateral provided by the principal debtor.

Notice of Default:

Definition: The surety typically has the right to receive notice from the creditor when the principal debtor is in default. This allows the surety to take corrective action or negotiate with the principal debtor.

Example: The creditor must inform the surety when the principal debtor fails to meet its obligations.

Control of Litigation:

Definition: The surety may have the right to control or participate in any legal proceedings against the principal debtor, ensuring that the surety's interests are protected.

Example: The surety may have the right to hire legal representation or direct the defense strategy in a lawsuit against the principal debtor.

It's crucial for the surety to understand and assert these rights effectively to minimize its exposure and ensure fair treatment in the event of the principal debtor's default. The specific rights can be outlined in the surety agreement or may be governed by applicable laws.

Discharge of Surety

The discharge of a surety refers to the release or termination of the surety's obligations under a contract of guarantee or suretyship. There are several ways in which a surety can be discharged from its responsibilities, either through the actions of the parties involved or by operation of law.

Here are common methods of discharging a surety:

Performance by the Principal Debtor:

If the principal debtor fulfills its obligations according to the terms of the contract, the surety is automatically discharged. The surety's role is to step in only when the principal debtor fails to perform.

Expiration of the Surety ship Agreement:

The surety ship agreement may have a specified term or expiration date. Once this period ends, the surety is discharged from its obligations unless the agreement is renewed or extended.

**Mutual Agreement:

The parties involved may mutually agree to discharge the surety. This typically requires a written agreement that acknowledges the discharge and releases the surety from its obligations.

**Release by the Creditor:

The creditor, who is the party receiving the benefit of the surety's guarantee, may release the surety from its obligations. This release is often granted when the creditor is satisfied with the principal debtor's performance or if there is a negotiated settlement.

**Material Alteration of the Contract:

If there is a material alteration to the original contract without the surety's consent, the surety may be discharged. Material changes can include modifications to the terms or scope of the agreement.

**Bankruptcy or Insolvency:

The surety may be discharged if either the principal debtor or the surety itself becomes bankrupt or insolvent. Bankruptcy laws can affect the enforceability of suretyship agreements.

**Death or Incapacity:

If the surety dies or becomes legally incapacitated, the suretyship agreement may be discharged. The legal representative of the deceased or incapacitated surety may need to address any outstanding obligations.

**Illegality or Impossibility of Performance:

If the performance of the principal debtor becomes illegal or impossible due to changes in law or unforeseen circumstances, the surety may be discharged from its obligations.

**Statute of Limitations:

The statute of limitations may apply, limiting the time during which the creditor can enforce the surety's obligations. Once the statute of limitations expires, the surety may be discharged.

It's important to note that the specific conditions for the discharge of a surety can vary based on jurisdiction and the terms of the suretyship agreement.

Unit IV

Bailment and Pledge Bailment and Pledge – Bailment – Concept – Essentials - Classification of Bailments, Duties and Rights of Bailor and Bailee – Law of Pledge – Meaning – Essentials of Valid Pledge, Pledge and Lien, Rights of Pawner and Pawnee.

Bailment

Bailment is defined in Section 148 of the Indian Contract Act, 1872 as, "A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them." The person who delivers the goods is called the 'Bailor' and the person who receives the goods for the specific purpose is called the 'Bailee'. It is a special type of contract which is covered under Chapter IX (Sections 148-171) of the Indian Contract Act, 1872.

Essentials features of a contract of bailment

A valid contract

As mentioned above, bailment is a special type of contract. Hence, all the essential elements of a valid contract must be present in it. The essential elements such as offer, consideration, contractual capacity, intention, etc. must be a part of the bailment. Without the presence of these essential elements , the contract cannot be enforceable in a court of law. However, out of these, a contract of bailment can be valid without consideration.

There are two types of bailment.

Gratuitous Bailment: Bailment without any consideration.

Non-Gratuitous Bailment: Bailment with consideration.

Delivery of possession

The most essential element of a contract of bailment is the delivery of goods from one person to another. As per Section 149 of the Act, “the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.”

The delivery of the goods can be actual as well as constructive. Actual delivery means the goods are physically delivered by the bailor in the possession of bailee. Constructive delivery means that the goods are not expressly delivered but a few actions imply that the bailee is given the possession of the goods. It is important to note that the actual transfer of possession is necessary for bailment. Only giving the custody of the goods to a person does not make him the bailee.

Delivery upon contract

As mentioned above, the delivery of the goods from the bailor to the bailee must be after a contract is created between both the parties. The contract should have the details of the transfer of the goods and its return. However, the contract can either be “expressly signed by the parties” or “implied by the parties.

Exception: Lost goods found

When lost goods are found by a third party, they act as the bailee of such goods.

Duties of the finder:

To keep the goods safe.

Not use these goods for personal use.

Take adequate efforts to find the real owner of the goods.

Make sure that the goods are delivered to its real owner once found.

Rights of the finder:

To be compensated for the expenses and trouble taken to keep the goods safe and find the owner. (Section 168)

To sell the goods if:

The goods are of perishing nature.

The owner could not be found.

However, the proceeds from the sale must be transferred to the owner/bailor of the goods. (Section 169)

Purpose

There must be a specific purpose for which the goods are transferred from the bailor to the bailee. As per Section 153 & 154, the contract of bailment might be terminated if the bailee acts inconsistently or makes unauthorised use of the goods. Specific purpose is very important and the parties should abide by the contract.

Return of goods

After the purpose for which the goods were bailed is complete, the bailee will have to return the goods to the bailor. The method and the way of return will be as per the contract or bailor's wish. As mentioned in Section 160, "It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand,

as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished."

Duties of the bailor and the bailee

Duties of the bailor:

To disclose faults in goods

It is the bailor's responsibility to inform the bailee of all the faults in the goods. If the bailor fails to do so, he is liable to the bailee for any loss caused by that fault.

For example: 'X' took a car from 'Y' to go for a vacation. 'Y' was aware that the brakes weren't working properly. However, he didn't inform 'X' about it. 'X' is involved in an accident due to the failure of brakes. 'Y' will be liable for all the losses 'X' faced in this accident.

To cover necessary and extraordinary expenses

The bailor has to pay the bailee all the necessary and extraordinary expenses incurred by the bailee to safeguard the goods bailed.

For example: 'A' gave his cat to his friend 'B' when he had to travel for work. 'A' will have to pay the expenses incurred in the cat's daily necessities such as food, shelter, etc. 'A' will also have to pay any extraordinary expense like doctor's bill, daycare, etc. if it was necessary to keep the cat safe.

To indemnify the bailee of all the losses

The bailor has to indemnify any loss incurred by the bailee if the bailor asks for his goods before the agreed time in the contract as per Section 159 of the Indian Contract Act. As per Section 164, the bailee can also claim losses from the bailor if the bailor intentionally bails goods with a defective title.

To collect the bailed goods

The bailor must collect his goods once the time for which the goods were bailed is expired. If the bailor fails to collect the goods on the expiry of the bailment period, he will be liable to pay for any losses incurred by the bailee.

For example: 'X' bailed his dog with 'Y' for a week, and returned after 10 days to get his dog back. 'X' will be liable to pay 'Y', the expenses incurred for the safekeeping of the dog for those 3 extra days.

Duties of the bailee:

To take proper care of the goods

As per Section 151 of the Indian Contract Act, 1872, "In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his goods of the same bulk, quantity and value as the goods bailed." However, in Section 152, it is stated that "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151."

For example: 'A' bailed his vehicle with 'B' for one week. If due to negligence of 'B', 'A's vehicle is damaged, 'B' will be liable to compensate for the same. However, if the vehicle is damaged due to some act of god such as an earthquake or a flood, 'B' will not be liable for such loss.

To use the goods for authorised purpose only

It is the bailee's responsibility to use the goods only for the authorised purpose under a contract. If it is found that the goods are used for unauthorised purposes, the entire contract can be declared void by the bailor. As per Section 154, "If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them."

Some examples:

(a) 'A' lends a horse to 'B' for his own riding only. 'B' allows 'C', a member of his family, to ride the horse. 'C' rides with care, but the horse accidentally falls and is injured. 'B' is liable to make compensation to 'A' for the injury caused to the horse.

(b) 'A' hires a horse in Calcutta from 'B' expressly to march to Banaras. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to 'B' for the injury caused to the horse.

To keep the bailed goods separate

All the goods bailed should be kept separately and safely by the bailee as it ensures the safe return of the goods. However, there are a few provisions related to the mixing of bailed goods.

Section 155: If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Section 156: If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Section 157: If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

To return any profits arised from the goods

If during the course of bailment, any profit has arisen from the bailed goods, the same should be transferred to the bailor by the bailee.

Example: 'A' bails his cow with 'B' for a period of 7 days. The cow gives milk daily. 'B' sold this milk during the period of bailment. The profit earned by 'B' during the sale of milk must be returned to 'A' while returning the goods.

To return the goods

The bailee must return the goods to the bailor once the purpose of the bailment is accomplished or the term of the contract expires. This return must be as per the bailor's discretion.

Rights of the bailor and the bailee

Rights of the bailor:

To be compensated against unauthorised use

If the bailee uses the goods for a purpose that isn't authorised under the contract, he should be liable for any damage that arises from such use.

For example: 'X' bailed his vehicle to 'Y' for one month. In the contract, it was agreed that 'Y' can use the vehicle for his personal use. However, 'Y' let his brother 'Z' drive the vehicle, and 'Z' crashed the vehicle. Now, 'Y' will be liable for the damage done to the vehicle.

To terminate the contract

As per Section 153 of the Act, "A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment."

Illustration: 'A' lets 'B', for hire, a horse for his own riding. 'B' drives the horse in his carriage. This is, at the option of 'A', a termination of the bailment.

To receive any profits arised from the goods

The bailor is entitled to any profit that arises from the goods when they are bailed. If the bailee refuses to pay such profits to the bailor, he may take appropriate action against the bailee to recover such an amount.

To get the goods returned on expiry of contract

The bailor has a right to receive the bailed goods upon expiry of contract. However, in case of a gratuitous bailment, the bailor can redeem the goods before the expiry of the contract. In any such situation, if the bailee incurs loss due to early return of the goods, the bailor is liable for the same.

Rights of the bailee:

To receive compensation

The bailee is entitled to receive compensation for losses suffered due to any defect in the goods. In case of gratuitous bailment, if the bailor asks for the goods to be returned before the expiry of contract and the bailee suffers loss because of this return, he can claim for compensation against those losses from the bailor.

To receive expenses incurred

The bailor has to pay the bailee all the expenses incurred for the caretaking of the goods bailed. The bailee is also entitled to receive any extraordinary expenses spent by him during the term of bailment of the goods.

To stop delivery of goods

The bailee is given the right to stop the delivery of goods if the bailee is of the knowledge that the bailor doesn't have a title over the goods. The bailee can also stop the same if any third party claims their title over the goods.

To lien the bailed goods

A lien is a legal right against the assets that are used as collateral to satisfy the debt. The bailee has been given the right to lien the bailed goods if the bailor has withheld any compensation or payment that he is liable to do.

Different types of lien are:

Particular lien:

As per Section 170 of the Indian Contract Act, 1872, "Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them."

For example: "A"delivers a rough diamond to "B", a jeweller, to be cut and polished, which is accordingly done. "B" is entitled to retain the stone till he is paid for the services he has rendered.

General lien:

As per Section 171 of the Indian Contract Act, 1872, "Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

For example: “A” borrows Rs. 1000 from the bank without security. Later he takes one more loan of Rs 5000 from the same bank against a security of gold. “A” pays back Rs. 5000 but yet has not paid Rs 1000. So the bank can retain gold (general balance of the account) for the previous loan.

Relevant case laws

Kaliaperumal Pillai v. Visalakshmi, AIR 1937 Mad 32

Facts of the case

In this case, the plaintiff hired the defendant to make new jewellery for her. Her old jewels had to be melted and the gold obtained from that was to be used to make this new jewellery. Every evening, the defendant would return the half-made jewellery to the plaintiff. Plaintiff would lock that jewellery in her box and leave it in the defendant’s room. However, the Plaintiff took the key to that box. One night, the jewels were stolen. The defendant was held liable by the plaintiff as he was the bailor of the goods.

Issues involved in the case

If the delivery was legally valid as bailment under Section 149 of the Indian Contract Act, 1872?

Judgement of the Court

It was held that the respondent was not liable as he did not have legal possession of the goods while they were stolen. The relationship was of bailment between both the parties but it ended as soon as the plaintiff locked the goods in the box and took the keys with herself. Merely leaving the box at the defendant’s house does not constitute bailment.

Atul Mehra v. Bank of Maharashtra, 2002

Facts of the case

In this case, the plaintiff had hired a locker in the respondent's Bank on 15th January, 1986. The strong room in the bank was broken into by miscreants and the contents of the locker were stolen. The plaintiff claimed that jewellery worth Rs. 4,26,160 was deposited in the locker. On 9th January, 1989, an FIR was filled. The plaintiff pointed out that this loss was due to negligence and misconduct of the respondent. Also, it was alleged that the strong room was not made of adequate material and could be easily broken into.

Issues involved in the case

Whether the loss suffered was due to misconduct and negligence of the respondent?

Whether the respondent has a contractual liability to repay the losses?

Would the relationship between the plaintiff and the respondent fall within the purview of bailment as defined in Section 148 of the Indian Contract Act, 1872?

Judgement of the Court

It was held that exclusive possession of the goods is sine qua non(extremely essential) in the case of bailment. Therefore, mere hiring of a locker would not constitute bailment. It was also stated that reasonable care and damages come into question when the bailee is made aware of the contents of the locker and exclusive possession of the same is given to the bailee. Here, neither was done, and hence, the judgement was in the favour of the respondent(bank).

Taj Mahal Hotel v. United India Insurance Ltd., 2019

Facts of the case

In this case, on 01st August, 1998, a Maruti Suzuki Zen was parked in the respondent's hotel and the owner gave his car for the valet parking service. When the owner returned to get his car back, he learned that his car was stolen. A complaint against the thief was lodged but the car was nowhere to be found. Respondent hotel's valet parking service

had stated that 'parking of vehicles was at the owner's own risk inside and outside the hotel premises and in case of theft, loss or damage the hotel will not be liable.' The plaintiff company paid a sum of Rs 2,80,000 to the car owner in order to settle the insurance claimed by him. The plaintiff company sued the respondent hotel for negligence.

Issues involved in the case

Whether this was a case of bailment?

Was the hotel liable for negligence under the law of bailment?

Was the car owner eligible for compensation due to the absence of consideration between both parties?

Judgement of the Court

It was held by the supreme court that the theft of the car was a result of the respondent's negligence and the respondent would be liable. The supreme court stated that the respondent cannot exclude its liability for negligence towards the vehicle parked in the respondent's parking. The consideration, in this case, would be free parking to the customer for using the respondent's services. It can be inferred that if the general rule of bailment is applied, the bailee(hotel) will be liable if there is a loss of goods(vehicle) due to its negligence.

New India Assurance Co. Ltd v. The Delhi Development Authority, 1991

Facts of the case

In this case, the defendant owns and runs a truck parking centre known as Idle Truck Parking Centre in Delhi. The owner of a truck had parked his truck at Idle Truck Parking Centre on 8th June, 1987. A receipt was issued for Rs 3 for the safekeeping of the truck for 24 hours. The truck owner had insured his truck with the plaintiff in this case. On the night of 8th June, the truck was stolen from the parking centre. The owner raised a

claim with the plaintiff which was settled for Rs 2,91,500. The plaintiff now sued the defendant to recover that amount as the loss of the truck was due to negligence of the owner. The defendant claimed that they were not liable as the possession was not transferred to them as the driver of the truck slept inside the truck that night.

Issues involved in the case

Was the vehicle's possession transferred to the defendant?

Is the defendant liable for the loss of the plaintiff?

Judgement of the Court

It was held that the defendant was liable to pay the plaintiff. The essential element here was the transfer of possession. The possession was said to be transferred when the plaintiff issued a receipt for safe-keeping of the vehicle for the said night. For the contracted period, the defendant should have shown reasonable care towards the vehicle which failed to do so.

Tilendra Nath Mahanta v. United Bank Of India And Ors., 2001

Facts of the case

In this case, the petitioner was a retired school teacher. He had opened a Savings A/C at Naharkatia Branch of the United Bank of India(respondent) and had a few Fixed Deposits in that bank. His son was a clerk at the same bank. The petitioner also had a joint account with his son in the bank. It was found that the son was involved in a few fraudulent transactions. To recover the losses, the respondent froze the joint account. Along with that, the respondent also froze the petitioner's savings A/C and stopped the returns on the FDRs. The respondent claimed that as per Section 171 of the Indian Contract Act, 1872 the respondent had a lien over the petitioner's savings A/C and his deposits in the bank.

Issue involved in the case

Whether the Respondent has a lien over the FDR's and the accounts of the person whose joint account is under investigation?

Judgement of the Court

It was held that the respondent could not freeze the accounts of the petitioner and hold his FDRs as a lien. It was stated that the money deposited in the banks is a loan to the bank by the depositors. The money returned to the depositor is never the same. Also, it was held that 'money' does not account as a good under bailment.

Contract of pledge

Contract of pledge is a subset of a contract of bailment. Here, the goods bailed are kept as a security for a debt or a performance of a promise. Pledge is defined in Section 172 of the Indian Contract Act,1872 as "The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawnor'. The bailee is called 'pawnee'." It is covered under Chapter IX (Section 172-Section 181) of the Indian Contract Act, 1872.

Essential features of a contract of pledge

A valid contract

Similar to the contract of bailment, all the basic essentials of a valid contract should be present in a contract of pledge. Without these elements, the contract will be void and won't be enforceable in a court of law.

Delivery of possession

It is necessary that the possession of goods be delivered from the pawnor to the pawnee. As mentioned in the definition, pledge is a bailment and this is an essential element of bailment. The delivery can be either actual or constructive. However, there might be exceptions where the possession remains with the pawnor.

Ownership cannot be transferred

In the case of pledge, mere possession of the goods is transferred to the pawnee. The pawnor of the goods is still the owner. The pawnee has possession of the goods but has limited interest in the goods.

Security against debt

The goods must be pledged as security against an outstanding debt of the pawnor. This outstanding debt can also be a promise for specific performance.

Return of goods on repayment

Once the debtor the specific performance against which goods are pledged as security is repaid or completed, the goods must be returned to the pawnor in the manner specified by him.

Duties of the pawnor and the pawnee

Duties of the pawnor:

To compensate expenses

The pawnor has the responsibility to compensate the pawnee for all the ordinary and extraordinary expenses made by the pawnee in order to ensure the well-being of the pledged goods.

To repay the entire amount due along with interest

The pawnor has to repay the amount which is due to the pawnee. This amount is the total of the principal amount as well as any interest accrued on that amount during the course of the contract.

To disclose all the faults in the goods

The pawnor before entering into a contract has to disclose all the faults in the goods to the pawnee. If the pawnee incurs any loss later due to those faults, the pawnor will be liable for those.

Duties of the pawnee:

To take reasonable care of the goods

It is the pawnee's responsibility to take care of the goods that are pledged. The care taken by the pawnee must be just, fair and reasonable. It should be as the pawnee took care of his personal belongings. If due to negligence of the pawnee, the goods are damaged, he will be liable to compensate the pawnor.

For example: If 'A' pledges his watch with 'B' for a sum of Rs. 100. Then 'B' must take reasonable care of A's watch as if it is B's own watch. The condition of the watch should not deteriorate or be worse than at the time when it was pledged.

To use the goods only for authorised purpose

The pawnee can use the goods pledged if only it is authorised by the pawnor. If the goods are used for any purpose that is not authorised, the pawnee will have to compensate the pawnor against the same.

For example: 'A' pledges his car with 'B'. 'A' authorises 'B' to use the car for his personal use. 'B' allows his cousin 'C' to drive the car and the car then gets damaged. 'B' will have to compensate 'A' for the damages

To return the goods

As per the contract, once the amount against which the goods are pledged is repaid, the goods must be returned to the pawnor. This return must be as mentioned in the contract or as per the pawnor's directions.

To return any profits arised from the goods

If at any time during the contract, the pawnee earns profit from the pledged goods, the same shall be returned to the pawnor during the termination of the contract.

Example: 'X' pledged his property with 'Y'. The property was given on rent to 'Z'. The rent received on the property must be returned to 'X'.

To keep the goods separate

It is the pawnee's duty to keep the pledged goods separate from his own goods. If he mixes the pledged goods, all expenses to separate them will be borne by the pawnee. If separating is not possible, the pawnee will be liable for all the damages.

Rights of the pawnor and the pawnee

Rights of the pawnor:

To redeem the goods

As per Section 177 of the Act, "If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them, but he must, in that case, pay, in addition, any expenses which have arisen from his default."

For example: 'A' gave his watch to 'B' as a security against INR 800 that is due. They agreed that the amount should be repaid within 1 month. If 'A' fails to do so, he can redeem his watch even after the expiry of the contract given that 'B' has not yet sold the watch. However, if 'B' had to incur any expenses to safekeep that watch, the same will have to be paid by 'A'.

Once the pawnor pays back the amount due along with the interest to the pawnee, he has the right to get the goods back. After clearing the entire due against which the goods were held as security, the pawnee cannot retain the pledged goods.

Rights of the pawnee:

To retain the goods

The pawnee has the right to retain the goods until the amount owed by the pawnor is paid in full or the promise is completely performed. This amount includes the expenses incurred by the pawnee as well as any interest accrued on that amount. This is mentioned in Section 173 of the Act.

For example: 'A' pledged his house with a bank for a loan of INR 2,50,000. The interest on the same was INR 10,000. The bank can retain the pledged house until 'A' repays the entire amount along with the interest i.e. INR 2,60,000.

As per Section 174,"The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.'"

To get compensation for extraordinary expenses

It is implied that the pawnor will be liable to pay for all the necessary expenses needed for the safekeeping of the goods. As per Section 175, if any extraordinary expenses arise, the pawnor will only be liable for the same as well. However, the pawnee cannot retain the goods for non-payment of such expenses.

To sell the goods

As mentioned in Section 176, “If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.” It is important to note that the pawnor must be given proper and enough notice before selling the goods. It is further mentioned, “If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.”

For example: ‘X’ pledged his watch with ‘Y’ as security against INR 10,000. ‘X’ defaulted the payment even after enough notices. ‘Y’ went to sell his watch. If the watch is sold above INR 10,000, the surplus amount must be returned to ‘Y’. However, if the watch is sold for less, ‘X’ will still be liable for the difference.

Relevant case laws

Lallan Prasad v. Rahmat Ali and Anr., 1996

Facts of the case

In this case, the plaintiff advanced INR 20,000 to the defendant against a promissory note and a receipt. An agreement was signed by both the parties where the defendant agreed to pledge his aeroscapes as collateral against his debt. As per their agreement, the defendant had to deliver the aeroscapes to the appellant and the goods would remain in his custody.

The plaintiff filed a lawsuit claiming that the above-mentioned goods were never delivered to be in his custody and therefore, this agreement cannot be considered as a contract of pledge. He claimed that he was entitled to recover the amount loaned by him.

Issue involved in the case

Whether pledged goods were delivered in the plaintiff's custody?

Was the plaintiff entitled to any compensation as he claimed that there was no contract of pledge since the goods were not delivered?

Judgement of the Court

The judgement was in the favour of the defendant. It was held by the Supreme Court that the pledged goods were delivered to the plaintiff. This meant that this agreement did ripen into a contract of pledge. The Court also stated that the plaintiff was not entitled to any compensation on his stance that the goods were never pledged to him.

The Morvi Mercantile Bank Ltd. And Anr. v. Union of India, 1965

Facts of the case

In this case, a firm operating in Mumbai entrusted their goods worth INR 35,500 to Railways for its delivery to Delhi. The firm got their receipt for these goods from the Railways. In order to get an advance of INR 20,000 from the plaintiff, the firm pledged these receipts as collateral for the same.

The goods were lost by the railways and they offered to compensate with certain parcels to the plaintiff. The plaintiff rejected this and claimed that those weren't the goods that were pledged to them. The plaintiff, hence, sued the railways to recover INR 35,500 against the value of goods pledged to them including the damages.

Issues involved in the case

Whether railway receipts can be considered as valid goods under contract of pledge?

Whether the plaintiff was the pawnee of the goods or the documents of the good's title?

Whether the plaintiff could sue for the entire value of the goods or only what was advanced by him?

Judgement of the Court

The Supreme Court of India ruled in favour of the plaintiff. It was held that railway receipts can be valid as goods under a contract of pledge. It was also held that the plaintiff was the pawnee of the goods and not merely its documents of title. It was stated that since the pawnee in a contract of pledge has the authority as the owner of the goods, the plaintiff will be allowed to sue for the entire value of the goods and not just the amount he has advanced.

K. M. Hidayathulla v. the Bank of India, 2001

Facts of the case

In this case, on 10th December, 1993, the petitioner pledged certain gold jewels with the respondent. These jewels were pledged against a certain amount. The petitioner failed to repay the amount within the agreed time. The bank held an auction for the jewels on 20th May, 1997 to recover the debt. The petitioner claimed that as per Section 176, the bank had the right to either file a suit against him for recovery or sell the jewels via an auction after giving reasonable notice to the petitioner, however, it must have taken place within the prescribed time for filing the suit.

Issues involved in the case

Whether any such condition was mentioned in Section 176 of the Act?

Whether the pawnee could auction the goods after the prescribed period?

Judgement of the Court

The judgement passed by the Madras High Court was in the favour of the bank. It was held that the bank had two remedies; either to file a suit for recovering the debt or selling the goods after reasonable notices to the pawnor. It was found that there was no connection between the two remedies. Merely because the period for filing a suit had passed, it did not mean that the other alternatives could not be used. It was held that if the pawnee resorted to any alternate course of sale, the prescribed period should be extended for the same.

Difference between a contract of bailment and pledge

Contracts of bailment and pledge are special types of contracts that are regulated under the Indian Contract Act, 1872.

Contract of Bailment	Point of difference	Contract of Pledge
When certain goods are transferred from one party to another for a specific purpose, it is called a contract of bailment.	Meaning	When certain goods are transferred from one party to another as a security against a debt, it is called a contract of pledge.
It is covered under Sections 148-171 of the Indian Contract Act, 1872.	Provisions	It is covered under Sections 172-179 of the Indian Contract Act, 1872.
The sole purpose for bailing the goods is for the safe custody of the goods or repairs, at most times.	Purpose	The sole purpose to enter into a contract of pledge is for security against a debt.
The party which bails the goods is known as the 'bailor' and the party with whom the goods are bailed is known as the 'bailee'.	Parties	The party which pledges their goods is known as the 'pawnor' or the 'pledger' and the party which receives the goods is known as the 'pawnee' or the 'pledgee'.
The presence of consideration in a contract of bailment is mandatory.	Consideration	The presence of consideration in a contract of pledge is mandatory.
The goods cannot be sold by the bailee in such contracts.	Right to sell	The goods may be sold by the pawnee or the pledgee.
The goods can be used by the bailee only for specific purposes known to both the parties or not otherwise.	Right to use	The goods cannot be used by the pawnee or the pledgee.

Unit V

Sale of Goods Act 1930: Definition of Contract of Sale – Formation - Essentials of Contract of Sale - Conditions and Warranties - Transfer of Property – Contracts involving Sea Routes - Sale by Non owners - Rights and duties of buyer - Rights of an Unpaid Seller

According to the provision of Section 4(1) of the Sale of Goods Act, 1930, a Contract of Sale of Goods is “A contract where the seller transfers or agrees to transfer the property in goods to the buyer for a price.” A contract of sale can also be established between one part-owner and another. Sales of Goods Act, 1930 also specifies that a contract of sale may be either absolute or conditional.

According to the provisions of Section 4(3) of the Sale of Goods Act, 1930; Sale means “Where under a contract of sale, the property in the goods is immediately transferred at the time of making the contract from the seller to the buyer, the contract is called a sale.” It refers to an Absolute Sale.

According to the provisions of Section 4(3) of the Sale of Goods Act, 1930 “An agreement to sell is when the transfer of the property in the goods is agreed to take place at a future time, or it is to take place with subject to fulfillment of some condition.”

The Sale of Goods Act, 1930, is an Indian legislation that governs the sale of goods and the rights and duties of buyers and sellers in India. The Act aims to provide protection to both buyers and sellers by establishing rules related to the sale of goods. Below is a detailed overview of the key provisions of the Sale of Goods Act, 1930:

Key Provisions of the Sale of Goods Act, 1930:

Contract of Sale (Sections 4-6):

A contract of sale is defined as a contract where one party (seller) transfers or agrees to transfer the ownership of goods to another party (buyer) for a price.

Goods (Section 2(7)):

The term "goods" includes all kinds of movable property other than actionable claims and money. It encompasses both existing and future goods.

Conditions and Warranties (Sections 12-17):

The Act distinguishes between conditions (essential terms of the contract) and warranties (ancillary terms). Breach of a condition allows the injured party to treat the contract as void, while a breach of warranty gives rise to a claim for damages.

Implied Conditions and Warranties (Sections 14-17):

The Act implies certain conditions and warranties into every contract of sale, unless expressly excluded. For example, there is an implied condition that the seller has the right to sell the goods, and an implied warranty that the goods shall be free from any charge or encumbrance in favor of third parties.

Transfer of Property (Sections 18-30):

The Act outlines the rules for the transfer of property from the seller to the buyer. The property in the goods is transferred at the time agreed upon in the contract, or, if no time is fixed, immediately when the contract is made.

Performance of the Contract (Sections 31-36):

The seller and the buyer each have certain duties to perform under the contract. The seller is obligated to deliver the goods, and the buyer is obligated to accept and pay for them in accordance with the terms of the contract.

Rights of Unpaid Seller (Sections 45-59):

If the buyer fails to pay for the goods, the unpaid seller retains certain rights, such as the right to withhold delivery, the right to stop goods in transit, and the right to resell the goods.

Rights and Duties of Buyer (Sections 60-76):

The Act defines the rights and duties of the buyer, including the right to reject goods, the right to specific performance, and the duty to accept and pay for the goods.

Remedies for Breach of Contract (Sections 73-74):

In case of a breach of contract, the injured party may seek remedies such as damages or specific performance.

Sale by Auction (Sections 64-69):

The Act contains specific provisions governing sales by auction, including the manner in which the auction should be conducted and the rights and duties of the seller and the bidders.

Important Concepts:

Sale and Agreement to Sell:

The Act recognizes a distinction between a sale and an agreement to sell. A sale is a completed transaction, while an agreement to sell contemplates a future sale upon the occurrence of certain conditions.

Conditions for a Valid Sale:

For a sale to be valid, there must be an agreement to sell, the goods must be ascertained, and the price must be money.

Void and Voidable Contracts:

The Act specifies conditions under which a contract of sale may be considered void or voidable.

Unascertained Goods:

The Act provides rules for dealing with unascertained goods, allowing for their identification at a later stage.

Rights and Liabilities of Seller and Buyer in a Chain of Sales:

The Act addresses the rights and liabilities of sellers and buyers in a chain of sales where goods move from the manufacturer to distributors and retailers.

The Sale of Goods Act, 1930, continues to be an important piece of legislation in India, providing a legal framework for the sale of goods and protecting the rights of both buyers and sellers. It has been amended over the years to adapt to changing commercial practices and legal requirements. Parties involved in the sale of goods transactions in India should be familiar with the provisions of this Act to ensure compliance and protect their interests.

Essentials of a Contract of Sale

1. Two Parties: There must be at least two parties to constitute a valid contract of sale, where the seller and the buyer must be different persons. In a contract of sale, one person can't hold the identity of both the seller and the buyer and in no condition shall sell his goods to himself.

2. Contract of Movable Goods: The subject matter of the contract of sale must be a movable property. Goods can either be existing goods, owned or possessed by the seller, or future goods. For immovable goods, provisions of the Transfer of Property Act are to be followed.

3. Contract for a Price: A price is the consideration that is being paid in exchange for the goods. Price in money should be paid or promised in a contract of sale. The price can't be in kind in full. However, there is no restriction under the act for consideration being partly in money and partly in kind.

4. Transfer of Goods: Under a valid contract of sale, the transfer of property in goods from the seller to the buyer must necessarily take place. The goods that are to be transacted are required to be clearly defined and mentioned in the sale contract as per the act.

5. Offer and Acceptance: The contract of sale is made by an offer to buy or sell goods for a price by one of the parties; either buyer or seller, and the acceptance of such offer by the other party. A contract of sale can be either absolute or conditional.

6. Elements of a Valid Contract shall be Present: Under a sale contract all other essential elements of a valid contract shall be present; i.e., free consent of buyer and seller, competency of buyer and seller, legality of subject matter, etc.

For example, Vipin enquires with Raghav about purchasing 100 kg of tomatoes. Raghav stated the price of tomatoes at the rate of ₹15 per kg. Vipin enters into a contract with Raghav to purchase 100 kg of tomatoes at a price ₹15 per kg. Both agreed to the price and quantity. According to the contract, the tomatoes shall be delivered by Raghav to the warehouse of Vipin located in Rampur.

Here, the contract is between two parties Raghav and Vipin. Both are two different parties.

The offer is given by one party and acceptance is given by the other.

The contract is for a movable good; i.e., tomatoes in this case.

Contract is made for a price; i.e., ₹15 per kg in this case.

Transfer of goods will take place as goods will be delivered from the place of Raghav to Vipin's warehouse.

The above example is a valid contract of sale between Raghav and Vipin, as it fulfills all the essentials of a Contract of Sale.

The Sale of Goods Act, which exists in various forms in different jurisdictions, including the United Kingdom and India, provides a legal framework for the sale of goods and governs the rights and obligations of buyers and sellers. The formation of a contract under the Sale of Goods Act involves several key elements. While specific provisions may vary, the general principles are as follows:

Key Elements in the Formation of a Contract of Sale:

Offer and Acceptance:

Like any contract, a contract of sale begins with an offer made by one party (the seller) and an acceptance of that offer by the other party (the buyer). The offer may be explicit or implied, and acceptance creates a binding agreement.

Intention to Create Legal Relations:

The parties must have the intention to create legal relations. This means that they must intend for the agreement to be legally binding and enforceable.

Capacity to Contract:

Both parties must have the legal capacity to enter into a contract. This typically involves being of sound mind and not being subject to any legal incapacity.

Goods:

The subject matter of the contract must be goods. Goods are defined broadly and can include any kind of movable property, except for money and certain legal rights.

Ascertainable Goods:

The goods being sold must be ascertainable from the contract. This means that the goods must be identifiable and distinguishable from other goods.

Price:

The contract must specify a price, or there must be a mechanism for determining the price. The price may be fixed, or it may be left to be determined in accordance with the contract.

Legal Formalities (if required):

In some cases, certain contracts of sale may be subject to specific legal formalities, such as written documentation. For example, some jurisdictions may require written evidence for the sale of certain types of goods, like real property.

Offer and Acceptance in Sale of Goods:

Offer by the Seller:

The seller makes an offer by displaying goods for sale, quoting a price, or any other action indicating a willingness to sell.

Acceptance by the Buyer:

The buyer accepts the offer by agreeing to purchase the goods at the specified price and under the terms outlined by the seller.

Communication of Acceptance:

Generally, acceptance must be communicated to the seller. Silence or mere contemplation is usually not considered acceptance.

Other Considerations:

Quotation and Tender:

A seller's quotation is usually an invitation to treat, not a binding offer. Tenders (offers to supply goods at a specified price) may be binding if they meet the necessary criteria.

Invitation to Treat:

Goods displayed for sale, in a shop window or an online store, are often considered invitations to treat rather than binding offers. The buyer's act of making a purchase constitutes an offer.

Special Rules for Auctions:

Auctions are often treated differently. The bid made by a buyer is considered an offer, and the acceptance occurs when the auctioneer accepts the highest bid.

The Sale of Goods Act provides a legal framework to ensure fairness and clarity in commercial transactions. Parties entering into contracts of sale should be aware of the specific provisions applicable in their jurisdiction and take care to meet the necessary legal requirements for a valid and enforceable contract.

A contract of sale is a legal agreement between a seller and a buyer for the transfer of ownership of goods in exchange for a price. To be legally valid and enforceable, a contract of sale must meet certain essentials. The essentials of a contract of sale can vary based on jurisdiction and specific legal frameworks, but the following are general elements that are often considered essential:

1. **Offer and Acceptance:**
    - There must be a clear offer by the seller to sell specific goods at a certain price, and the buyer must accept this offer to form a valid contract. The offer and acceptance can be communicated through words, conduct, or a combination of both.
2. **Intention to Create Legal Relations:**
    - Both parties must have the intention to enter into a legally binding contract. The agreement should not be of a social or domestic nature where legal intent is presumed to be absent.
3. **Competent Parties:**
    - Both the seller and the buyer must be legally competent to enter into a contract. They should be of sound mind, not minors, and not disqualified by law from entering into contracts.
4. **Legal Purpose:**
    - The purpose of the contract must be legal. The sale of goods involved should not violate any laws or public policy.
5. **Goods:**
    - The subject matter of the contract must be goods. Goods are defined as movable property, and they can be tangible (e.g., a car) or intangible (e.g.,

electricity). Real estate and certain other types of property are generally not considered goods.

6. **Ascertainable Goods:**

   - The goods being sold must be identifiable and capable of being ascertained from the contract. This means that the goods must be described in a manner that allows them to be distinguished from other goods.

7. **Agreement to Transfer Ownership:**

   - The contract must involve an agreement to transfer the ownership of the goods from the seller to the buyer. The transfer of ownership can occur immediately or at a future date as specified in the contract.

8. **Price:**

   - There must be a definite price or a method for determining the price. A valid contract of sale requires a consideration, usually in the form of money, but it could also be goods, services, or a combination thereof.

9. **Consideration:**

   - Consideration is the value exchanged between the parties. The buyer's promise to pay the price and the seller's promise to deliver the goods constitute mutual considerations.

10. **Capacity to Contract:**

    - Both parties must have the legal capacity to enter into a contract. This includes being of sound mind and not being disqualified by law from entering into contracts.

11. **Free Consent:**

- The consent of both parties must be free and not obtained through coercion, undue influence, fraud, misrepresentation, or mistake. Consent obtained under such conditions may render the contract voidable.

12. **Formalities (if required):**

- Some jurisdictions may impose specific formalities for certain types of contracts or sales. For example, contracts for the sale of real estate may require written documentation.

Meeting these essentials ensures that the contract of sale is valid, binding, and enforceable. It's important for parties to be aware of the legal requirements in their jurisdiction and to ensure that the contract is drafted clearly and accurately to reflect the agreement between the seller and the buyer.

Conditions and Warranties

In the context of contracts of sale, conditions and warranties are essential terms that define the rights and obligations of the parties involved. The Sale of Goods Act, 1930, in various jurisdictions, including India and the United Kingdom, distinguishes between these two terms. Here's an explanation of conditions and warranties:

Conditions:

1. **Definition:**

- Conditions are essential terms of a contract, the breach of which gives the innocent party the right to treat the contract as void.

2. **Nature:**

- Conditions go to the root of the contract, and their performance is considered vital for the contract's fulfillment.

3. **Rights of the Injured Party:**

- If a condition is breached, the injured party has the right to:
    - Reject the goods and treat the contract as void.
    - Sue for damages.
    - Affirm the contract but claim damages for the breach.

4. **Example:**
    - If a buyer purchases a car and specifies that it must have a functioning air conditioning system, the presence of a functional air conditioner is a condition. If the air conditioner is not working, the buyer can reject the car.

Warranties:

1. **Definition:**
    - Warranties are ancillary or subsidiary terms that are not central to the contract. Their breach does not give the injured party the right to repudiate the contract.
2. **Nature:**
    - Warranties are secondary or minor terms that relate to some aspect of the goods or services but are not considered fundamental to the contract.
3. **Rights of the Injured Party:**
    - If a warranty is breached, the injured party has the right to:
        - Sue for damages.
        - Affirm the contract but claim damages for the breach.
4. **Example:**

- In the same car purchase scenario, if the car has a minor scratch on the side that does not affect its functionality, it might be considered a warranty. The buyer cannot reject the car but can claim damages for the repair.

Importance of Distinguishing Between Conditions and Warranties:

1. **Impact on Remedies:**
    - Conditions give more significant rights to the injured party, including the right to treat the contract as void. Warranties, on the other hand, provide for damages but do not allow the injured party to repudiate the contract.
2. **Nature of Breach:**
    - Distinguishing between conditions and warranties depends on the nature of the breach. If the breach affects the core of the contract, it is likely a condition. If it is a minor breach that does not go to the root of the contract, it is likely a warranty.
3. **Time of Performance:**
    - Conditions are generally expected to be performed at the time of the contract's formation, while warranties may continue throughout the contract's duration.
4. **Statutory Framework:**
    - The Sale of Goods Act provides default rules regarding conditions and warranties, but parties can alter these rules through the terms of their contract.

Understanding the distinction between conditions and warranties is crucial for both buyers and sellers as it determines the rights and remedies available in case of a breach. Careful drafting of contracts and clear identification of essential terms can help minimize disputes and ensure fair treatment in the event of a breach.

Transfer of Property

The transfer of property in the context of a contract of sale refers to the passing of ownership rights from the seller to the buyer. The Sale of Goods Act, 1930, in various jurisdictions, provides rules and regulations regarding the transfer of property in goods. Here are key aspects of the transfer of property:

Key Concepts and Rules:

1. **Goods Must Be Ascertained:**
    - Before the property can be transferred, the goods must be ascertained. Ascertainment refers to the identification and specification of the goods that are the subject of the contract.
2. **Unascertained Goods:**
    - If the goods are unascertained (e.g., a promise to sell the next shipment of goods), property cannot pass until the goods are ascertained.
3. **Specific or Ascertained Goods:**
    - In a contract for the sale of specific or ascertained goods, the property passes to the buyer when the parties intend it to pass. The intention is usually determined by the terms of the contract, including any express provisions or implied terms.
4. **Unconditional Contract:**

- If the contract is unconditional, the property passes to the buyer at the time the contract is made, irrespective of the time of payment or delivery.

5. **Conditions for Passing of Property:**
    - The passing of property is subject to conditions such as:
        - Payment of the price (if not fixed by the contract).
        - Performance of any condition precedent (if specified).
        - Intention of the parties.
6. **Future Goods:**
    - In the case of future goods (goods not yet in existence at the time of the contract), property does not pass until the goods come into existence, are ascertained, and conform to the contract.
7. **Sale on Approval or Sale or Return:**
    - If the goods are delivered on approval or on a sale or return basis, the property does not pass until the buyer accepts the goods.
8. **Risk and Property:**
    - The general rule is that risk follows the property. Once the property has passed to the buyer, the risk of loss or damage also passes to the buyer.

Example:

- **Scenario:**
    - A seller agrees to sell a specific painting to a buyer for a fixed price. The painting is already in existence and is identified in the contract.
- **Passing of Property:**

- If the contract is unconditional, the property in the painting may pass to the buyer at the time the contract is made. This means that the buyer becomes the owner of the painting, even if the delivery or payment is scheduled for a later date.

- **Conditions for Passing Property:**

  - The passing of property may be subject to conditions mentioned in the contract, such **as** the payment of the price. If the contract specifies that payment is to be made upon delivery, the property may pass at the time of delivery.

It's crucial for parties to clearly specify the terms for the transfer of property in the contract of sale to avoid misunderstandings and disputes.

Contracts involving Sea Routes

Contracts involving sea routes typically fall within the realm of maritime and shipping contracts. These contracts govern the transportation of goods or passengers by sea and involve various parties, including shipowners, charterers, carriers, shippers, and consignees. Several types of contracts are commonly associated with sea routes and maritime trade. Here are some key contracts in this context:

1. **Charter Party:**

   - A charter party is a fundamental contract in maritime law. It outlines the terms and conditions of the agreement between the shipowner (or charterer) and the party chartering the vessel. There are two main types:

     - **Time Charter:** The charterer hires the vessel for a specified period, and the shipowner provides the crew, fuel, and maintenance.

     - **Voyage Charter:** The ship is hired for a specific voyage or route.

2. **Bill of Lading:**

- A bill of lading is a document issued by the carrier (shipowner or operator) to the shipper, acknowledging the receipt of goods for shipment. It serves as a receipt, a document of title, and a contract of carriage. There are different types of bills of lading, including straight, order, and bearer bills.

3. **Affreightment Contracts:**

    - These are contracts for the carriage of goods by sea. They include agreements like:

        - **Contract of Affreightment (COA):** An agreement between a shipowner or operator and a cargo owner to transport a specified quantity of goods over a defined period.

        - **Liner Terms:** Standardized contracts used in liner shipping, specifying the terms and conditions of carriage.

4. **Bareboat Charter:**

    - In a bareboat charter, the shipowner leases the vessel to the charterer without crew or provisions. The charterer has control over the vessel, assuming responsibilities similar to ownership for the duration of the charter.

5. **Salvage Contracts:**

    - Salvage contracts involve the recovery of ships or goods in distress. Salvors are rewarded for their efforts in saving property from the perils of the sea. The salvage contract typically includes a salvage award.

6. **General Average:**

    - General average is a principle in maritime law where all parties involved in a sea venture proportionally share the losses resulting from voluntary sacrifices to save the voyage.

7. **Shipbuilding Contracts:**

    - These contracts govern the construction of ships. Shipbuilding contracts outline the specifications, delivery terms, and payment schedules for the construction of a vessel.

8. **Freight Forwarding Contracts:**

    - Freight forwarders arrange the transportation of goods, including by sea. Their contracts detail the terms of shipment, including pick-up, transportation, and delivery.

9. **Time and Voyage Charters:**

    - In addition to the charter party, specific types of charter parties, such as time charters and voyage charters, define the terms of the charter, including payment, delivery, and the route taken.

Contracts involving sea routes are subject to international maritime laws, including the Hague-Visby Rules and the Hamburg Rules, which govern the rights and obligations of parties in maritime trade.

Sale by Non owners

The sale of goods by non-owners refers to a situation where a person who is not the legal owner of the goods sells them to another party. In such cases, the person making the sale does not have the legal right to transfer ownership, but they may be in possession of the goods or have some other form of control over them. This scenario raises legal issues regarding the validity of the sale and the rights of the buyer. Here are some key points to consider:

1. **Void Title:**

    - When a non-owner sells goods, the buyer typically acquires "void title." Void title means that the buyer does not acquire legal ownership of the goods because the seller had no legal right to transfer ownership. However, the buyer may still have some rights against the seller.

2. **Good Faith Purchaser for Value:**

    - In some jurisdictions, a buyer who acquires goods in good faith, for value, and without knowledge of the seller's lack of ownership may have certain rights, even if the seller had no right to sell. The buyer may be able to claim a right to possession or recover the purchase price.

3. **Rights of the True Owner:**

    - The true owner of the goods retains the legal title, and they may have the right to reclaim the goods from the buyer who purchased from the non-owner. The true owner may also have legal remedies against the non-owner for wrongful sale or conversion of their property.

4. **Estoppel:**

    - In some cases, the true owner's conduct or statements may lead the buyer to believe that the non-owner has the authority to sell the goods. In such situations, the doctrine of estoppel may come into play, potentially affecting the rights of the true owner.

5. **Bona Fide Purchaser Without Notice:**

- In some legal systems, a bona fide purchaser without notice may have stronger rights. If the buyer had no reason to suspect that the seller lacked ownership, they may be afforded more protection.

6. **Sale by Mercantile Agent:**

- In certain situations, a mercantile agent may have the authority to sell goods even if they are not the legal owner. The Sale of Goods Act in some jurisdictions provides for the rights and obligations of buyers and sellers in such cases.

The general role is that only the owner of the goods can sell the goods. If the seller is not the owner of the goods, the buyer cannot become the true owner of those goods eventhough he has paid value for the goods. This protests the owner of the goods. The maxim 'nemo dat quoted non habet' means that no one can transfer a better title that he himself processes.

Example.

A sells car to which he is not owner to B who buys it for value andwithout notice that A, is not the owner. The true owner can recover it from B

EXCEPTIONS TO THE GENERAL RULE

(i)Sale by a mercantile agent (Section 27).

(ii)Sale by one of joint owner (Section 28)

(iii)Sale by a person in possession under a voidable contract.(Section 29).

(iv)Sale by one who has already sold the goods but continues in possession thereof(Section 30 (1)).

(v)Sale by buyer obtaining possession before the property in goods havevested in him (Section 30(2)).

3.EXPLANATION OF EXCEPTIONS TO THE GENERAL RULE

The following are the cases under which a non-owner of goods can sell the goods and the buyer become the true owner of those goods.

1. Person and the owner.

Where the owner of the goods by his words or conduct, or act or omission, causes the buyer to deliver that the seller has the authority to sell them, he cannot afterwards deny the seller's authority to sell. The buyer in such a case gets a better title than the seller. (Section 27 clause 1)

Example.

A sold his house in his presence to B. His father did not object. Later, hecannot deny his son's authority to sell. The sale is valid.

2. Sale by mercantile Agent.

When a mercantile agent is, with the consent of the owner, in possession of goods or documents of title to goods, any sale made by him, in the ordinary course of business shall be valid provided the buyer acts in good faith and without notice that the seller had no authority to sell. (Section 27).

Illustration for a sale by mercantile agent is deemed to be valid.(i)Possession must be with consent.(ii)Sale must have been made when acting in the ordinary course of business of a mercantile agent.

Illustration.

A is a manufacturing jeweler. B is a person whose business it is to travel about the contrary selling jewellery. A delivers certain articles of jewellery to B upon the terms that they should remain the property of A until sold or paid for B of pledges the jewllery with a pawn broker and moneylender. The pledge is valid B is a mercantile agent and as such has an sensible authority to pledge the jewellery

3. Joint owner.

When one of the joint owners, who is in possession of the goods by permission of his co-owner sells the goods, a by permission of his co-owner sells the goods, a buyer will get a good title to the goods provided the buyer buys them I good faith and without notice that the seller's title was defective at the time of contract. (Section 28).

Example.

A, B and C are joint owner of firm authority to gives the A for management of firm. Now A has valid authority to perform any further on behalf of B and C.4.

4. Person in possession in voidable contract.

When a person has obtained possession of the goods under a voidable contract and sells them before the contract has been cancelled, the buyer of such goods acquire a good title provided the buyer acts in good faith an without notice of the seller's defect of title. (Section 29).

Example.

A, by fraud buys a car from B, A sells the car to C before cancellation of contract by B, C gets a good title.

5. Seller is possession with sale.

When a person has sold goods but continues to be in possession of them of the documents of title thereto, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, he gets a good title to them although the property in the goods has passed to the first buyer. (Section 30(1)).

Example.

A sells cow to B, B leaves his cow with A, A fraudulently sells the cow to C. C gets a good title to cow.6.

6. Buyer in possession before sale

. Where the buyer obtains possession of the goods before the property in such goods has passed to him with the consent of the seller, he may sell, them to a third person and if such person obtains delivery of the goods in good faith and without notice of any lien of the original seller he will get a good title. (Section 30(2)

Example.

A agreed to buy a house if his advocate approved. A obtained possession of a car and sold it to B. But the advocate disapproved. It was held that the buyer has got a good title. (Marten vs Whale).

7.Unpaid seller.

Where an unpaid seller who has a right of lien or stoppage seller who has a right of lien or stoppage in transit results the goods, the buyer get a good title to the goods as against the original buyer in spite of the fact that no notice of resale has been given to the original buyer. (Section 54(3)).

8. Finder of lost goods.

A finder of the lost can also sell the goods under some circumstance and the buyer will get a good title. (Section 169)

9. Pledgee.

A pledge can also sell the goods under some circumstances. The buyer gets a goods title (Section 176).

Example.

A pledges his house to B and borrows Rs. 15 Lac. A does not paythe loan. B sells the house to C. C gets a good title.

10.Exceptions under other acts.

A non-owner can transfer a better title in the following cases also.(a)In case of insolvency of individuals and companies, the official receiver can convey a better title to the buyer.(b)In case of negotiable instruments, the holder in due course getsa better title than that of transferor.

Example.

A becomes insolvent. B, the official receiver of A sells some goodsof A to X X. X gets a good title to goods

It's important for buyers to exercise caution when dealing with sellers who may not be the legal owners of the goods. Conducting due diligence and ensuring that the seller has the legal right to transfer ownership can help prevent disputes and legal complications. Additionally, sellers should be aware of their legal obligations and refrain from selling goods for which they do not have proper ownership rights.

Rights and duties of buyer

The rights and duties of a buyer in a contract for the sale of goods are typically outlined in the Sale of Goods Act or similar legislation in various jurisdictions. These rights and duties help establish a fair and balanced framework for commercial transactions. Here is an overview:

Rights of the Buyer:

1. **Right to Goods of Merchantable Quality (Section 14):**
    - The buyer has the right to receive goods that are of merchantable quality. This means the goods should be fit for the ordinary purposes for which such goods are used, and they should be of a standard quality acceptable in the trade.
2. **Right to Goods Fit for a Specific Purpose (Section 15):**
    - If the buyer makes known to the seller a particular purpose for which the goods are required and relies on the seller's skill and judgment, the buyer has the right to expect that the goods are fit for that specific purpose.
3. **Right to Receive Goods Corresponding to the Description (Section 15):**
    - If the buyer purchases goods based on a description provided by the seller, the buyer has the right to receive goods that correspond to that description.
4. **Right to Obtain the Goods (Section 18):**
    - Unless otherwise agreed, the buyer has the right to obtain the goods at the seller's place of business.
5. **Right to Inspect the Goods (Section 34):**
    - The buyer has the right to inspect the goods before accepting them, unless the inspection is not possible due to the nature of the goods or the contract terms.
6. **Right to Reject Non-Conforming Goods (Section 35):**

- If the goods do not conform to the contract, the buyer has the right to reject them, provided the rejection is done within a reasonable time after delivery.

7. **Right to Recover Damages for Breach of Contract (Section 53):**

   - In case of a breach of contract by the seller, the buyer has the right to recover damages. Damages are meant to compensate the buyer for any loss suffered due to the seller's breach.

8. **Right to Specific Performance (Section 10):**

   - In certain circumstances, the buyer may have the right to seek specific performance of the contract, compelling the seller to deliver the agreed-upon goods.

Duties of the Buyer:

1. **Duty to Accept Delivery (Section 31):**

   - The buyer has a duty to accept delivery of the goods and pay the price as agreed.

2. **Duty to Pay the Price (Section 31):**

   - Unless otherwise agreed, the buyer has a duty to pay the price for the goods as specified in the contract.

3. **Duty to Inspect the Goods (Section 35):**

   - The buyer has a duty to inspect the goods within a reasonable time after delivery. Failure to inspect the goods may affect the buyer's ability to reject them later.

4. **Duty to Communicate Acceptance or Rejection (Section 37):**
    - If the buyer intends to reject the goods, they have a duty to communicate the rejection to the seller within a reasonable time.
5. **Duty to Mitigate Damages (Section 73):**
    - In the event of a breach by the seller, the buyer has a duty to take reasonable steps to mitigate or minimize the damages suffered.
6. **Duty to Cooperate in the Delivery Process (Section 30):**
    - The buyer has a duty to cooperate with the seller to enable the delivery of the goods.
7. **Duty to Pay Interest (Section 61):**
    - If the contract specifies a date for payment, the buyer has a duty to pay interest on the price if payment is not made by the due date.

Understanding these rights and duties is crucial for both buyers and sellers to ensure a smooth and fair transaction

Rights of an Unpaid Seller

The rights of an unpaid seller are outlined in the Sale of Goods Act or similar legislation in various jurisdictions. These rights are designed to protect the seller when the buyer fails to fulfill their payment obligations. The rights of an unpaid seller are generally contingent upon whether the seller has retained possession of the goods or has transferred them to the buyer. Here are the key rights of an unpaid seller:

Rights of an Unpaid Seller When Goods Are in Seller's Possession:

1. Right of Lien (Section 47):

- The unpaid seller has a right of lien over the goods for the price. This means the seller can retain possession of the goods until the buyer pays the full purchase price.

2. Stoppage of Goods in Transit (Section 50):

    - If the seller becomes aware that the buyer is insolvent and the goods are still in transit, the seller has the right to stop the goods and resume possession until payment is received.

3. Right of Re-Sale (Section 54):

    - If the seller retains the right of disposal, they have the right to re-sell the goods if the buyer defaults on payment. The seller can recover any shortfall in price from the original buyer and claim damages.

4. Right to Sue for Damages (Section 55):

    - The seller has the right to sue the buyer for damages for non-acceptance of the goods or breach of contract.

5. Right to Sue for the Price (Section 55):

    - The seller has the right to sue the buyer for the price of the goods, even if the property in the goods has not passed to the buyer.

Rights of an Unpaid Seller When Goods Are in Buyer's Possession:

1. Right to Sue for the Price (Section 55):

    - The seller can sue the buyer for the price of the goods, even if the property in the goods has not passed to the buyer.

2. Right to Sue for Damages (Section 56):
    - If the buyer wrongfully neglects or refuses to pay for the goods, the seller has the right to sue for damages for non-acceptance.
3. Right to Sue for Interest (Section 61):
    - If there is a stipulation for payment of interest in the contract, or if the contract is silent, the seller may sue for interest on the price.
4. Right to Recover Goods (Section 58):
    - If the seller has reserved the right of disposal and the buyer defaults on payment, the seller has the right to recover possession of the goods.
5. Right of Stoppage in Transit (Section 50):
    - If the seller becomes aware that the buyer is insolvent and the goods are still in transit, the seller has the right to stop the goods and resume possession until payment is received.
6. Right of Re-Sale (Section 54):
    - If the seller has not reserved the right of disposal and the buyer defaults on payment, the seller may re-sell the goods and claim damages from the buyer.

These rights are subject to the terms of the contract and the applicable provisions of the Sale of Goods Act or similar legislation. It's important for sellers to understand their rights in case of non-payment and to follow legal procedures to enforce those rights.

Summary

The Indian Contract Act of 1872 stands as a foundational legal framework that shapes the landscape of contractual relationships in India. With its origins dating back more than a century, the Act has provided a stable and adaptable structure for the formation, execution, and enforcement of contracts.

Over the years, judicial interpretations and amendments have contributed to its continued relevance, adapting to the changing socio-economic landscape. The Act addresses fundamental principles such as offer and acceptance, consideration, legality of object and consideration, capacity of parties, and the enforceability of agreements.

In conclusion, the Indian Contract Act of 1872 remains a cornerstone of contract law in India, offering a comprehensive guide to the rights and obligations of parties entering into agreements. It reflects the legal principles that underpin fair and just contractual relationships, contributing to the stability and development of commercial and personal transactions in the country.