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BUSINESS REGULATORY FRAMEWORK

INDIAN CONTRACT ACT 1872

Indian Contract Act frames and validates the contracts or agreements between various parties. Contract Act is one of the central laws that regulate and oversee all the business wherever there is a case of a deal or an agreement. The following section will tell us what a contract is.

We will see how the Indian Contract Act, 1872 defines a contract. We will also define the terms as per the Act and see what that means. In these topics, we will decipher all the vivid aspects of the Contract Act. Let us begin by understanding the concept of a contract.

Contract Act

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that 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 we need to define and explain these two pivots in the definition of a contract.

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".

Now that we know how the Act defines the term "agreement", there may be some ambiguity in the definition of the term promise.

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, we need to initiate some steps:

i. The definition requires a person to whom a certain proposal is made.
ii. The person (parties) in step one has to be in a position to fully understand all the aspects of a proposal.
iii. "signifies his assent thereto" – means that the person in point one accepts or agrees with the proposal after having fully understood it.
iv. Once the "person" accepts the proposal, the status of the "proposal" changes to "accepted proposal".
v. "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, we can represent the above information below:

Agreement = Offer + Acceptance.

Enforceable By Law

Now let us try to understand this aspect of the definition as is present in the Act. Suppose you agree to sell a bike for 30,000 bucks with a friend. Can you have a contract for this?

Well if you follow the steps in the previous section, you will argue that 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.

Thus we can say that for 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 we can summarize it as

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

So What Is A Contract?

Now we can define a contract and more importantly, understand what is "Not" a contract. A contract is an accepted proposal (agreement) that is fully understood by the law and is legally defined or enforceable by 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.

Difference Between Agreement And Contract

Let us see how a contract and agreement are different from each other. This will help you summarize and make a map of all the important concepts that you have understood.

Contract	**Agreement**
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.
A contract is only legally enforceable.	An agreement must be socially acceptable. It may or may not be enforceable by the law.
A contract has to create some legal obligation.	An agreement doesn't create any legal obligations.
All contracts are also agreements.	An agreement may or may not be a contract.

Essentials of a Valid Contract

A contract that is not a valid contract will have many problems for the parties involved. For this reason, we must be fully aware of the various elements of a valid contract. In other words, here we shall ponder on all the ramifications of the definition of the contract as provided by The Indian Contract Act, 1872.

The Indian Contract Act, 1872 itself defines and lists the Essentials of a Contract either directly or through interpretation through various judgments of the Indian judiciary. Section 10 of the contract enumerates certain points that are essential for valid contracts like Free consent, Competency Of the parties, Lawful consideration, etc.

Other than these there are some we can interpret from the context of the contract which is also essential Let us see.

1] Two Parties

So you decide to sell your car to yourself! Let us say to avoid tax or some other sinister purpose. Will that be possible? Can you have a contract with yourself? The answer is no, unfortunately. You can't get into a contract with yourself.

A Valid Contract must involve at least two parties identified by the contact. One of these parties will make the proposal and the other is the party that shall eventually accept it. Both the parties must have either what is known as a legal existence e.g. companies, schools, organizations, etc. or must be natural persons.

For Example: In the case State of Gujarat vs Ramanlal S & Co. – A business partnership was dissolved and assets were distributed among the partners as per the settlement. However, all transactions that fall under a contract are liable for taxation by the office of the State Sales Tax Officer. However, the court held that this transaction was not a sale

because the parties involved were business partners and thus joint owners. For a sale, we need a buyer (party one) and a seller (party two) which must be different people.

2] Intent Of Legal Obligations

The parties that are subject to a contract must have clear intentions of creating a legal relationship between them. What this means is those agreements that are not enforceable by the law e.g. social or domestic agreements between relatives or neighbors are not enforceable in a court of law and thus any such agreement can't become a valid contract.

3] Case Specific Contracts

Some contracts have special conditions that if not observed would render them invalid or void. For example, the Contract of Insurance is not a valid contract unless it is in the written form.

Similarly, in the case of contracts like contracts for immovable properties, registration of contract is necessary under the law for these to be valid.

4] Certainty of Meaning

Consider this statement "I agree to pay Mr. X a desirable amount for his house at so and so location". Is this a valid contract even if all the parties agree to this term? Of course, it can't be as "desirable amount" is not well defined and has no certainty of meaning. Thus we say that a valid contract must have certainty of Meaning.

5] Possibility Of Performance Of an Agreement

Suppose two people decide to get into an agreement where a person A agrees to bring back the person B's dead relative back to life. Even when

all the parties agree and all other conditions of a contract are satisfied, this is not valid because bringing someone back from the dead is an impossible task. Thus the agreement is not possible to be enforced and the contract is not valid.

6] Free Consent

Consent is crucial for an agreement and thus for a valid contract. If two people reach a similar agreement in the same sense, they are said to consent to the promise. However, for a valid contract, we must have free consent which means that the two parties must have reached consent without either of them being influenced, coerced, misrepresented or tricked into it. In other words, we say that if the consent of either of the parties is vitiated knowingly or by mistake, the contract between the parties is no longer valid.

7] Competency Of the Parties

Section 11 of the Indian Contract Act, 1872 is:

"Who are competent to contract — Every person is competent to contract who is (1) of the age of majority according to the law to which he is subject, and who is (2) of sound mind and is (3) not disqualified from contracting by any law to which he is subject."

Let us see these qualifications in detail:

i. refers to the fact that the person must be at least 18 years old or more.

ii. means that the party or the person should be able to fully understand the terms or promises of the contract at the time of the formulation of the contract.

iii. states that the party should not be disqualified by any other legal ramifications. For example, if the person is a convict, a foreign sovereign, or an alien enemy, etc., they may not enter into a contract.

8] Consideration

Quid Pro Quo means 'something in return' which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable "consideration".

For example, if you decide to sell your watch for Rs. 500 to your friend, then your promise to give the rights to the watch to your friend is a consideration for your friend. Also, your friend's promise to pay Rs. 500 is a consideration for you.

9] Lawful Consideration

In Section 23 of the Act, the unlawful considerations are defined as all those which:

i. it is forbidden by law.
ii. is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent.
iii. involves or implies, injury to the person or property of another
iv. the Court regards it as immoral or opposed to public policy

These conditions will render the agreement illegal.

Types of Contract – Based on Performance

There are various types of contract, one such type are contacts based on their performance. The basis for this type is whether the contract is performed or still to be performed. Accordingly, the two types are known as executed contracts and executory contracts. Let us learn more.

Executed Contracts

A contract between two or more parties is said to be executed when the act or forbearance promised in the contract has been performed by one, both or all parties. Basically, it means that whatever the contract stipulated, has been carried out. Thus the contract has been executed.

Let us see an example of an executed contract. Alex goes to the local coffee shop and buys a cup of coffee. The barista sells her the coffee in exchange for the cash payment. So it can be said that this is an executed contract. Both parties have done their part of what the contract stipulates.

In most executed contracts the promises are made and then immediately completed. The buying of goods and/or services usually falls under this category. There is no confusion about the date of execution of the contract since in most cases it is instantaneous.

Executory Contracts

In an executory contract, the consideration is either the promise of performance or an obligation. In such contracts, the consideration can only be performed sometime in the future, hence the name executory contract. Here the promises of consideration simply cannot be performed immediately.

The best example of an executory contract is that of a lease. All the conditions of a lease cannot be fulfilled immediately. They are performed over time. Similarly, say Alex decides to tutor some students in Physics. They pay her Rs 2500/- at the start of the month. But here the contract isn’t executed since Alex has to still carry out her promise. So such a contract is an executory contract.

Now even in executory contracts, there are two types, namely unilateral and bilateral contracts. Let us take a look at both times.

Unilateral Contracts

As the name suggests these are one-sided contracts. It usually comes into existence when only one party makes a promise, which is open and available to anyone who wishes to or can fulfil the said promise. The contract will only be fulfilled once someone fulfils the promise.

Let us see an example. Alex lost his bag pack on the metro. So he decided to announce a reward of Rs 1000/- to anyone who finds and returns his bag with all its contents. Here the is only one party to the contract, namely Alex. If someone finds and returns his bag he is obligated to pay the reward. This is a unilateral contract.

Bilateral Contracts

By contrast, a bilateral contract is one that has two parties. It is a traditional type of contract most commonly known and occurring. Here both parties agree to the terms of the agreement and thus enter into a contract. Hence it is also known as a reciprocal contract

In bilateral contracts, both parties have usually agreed to a time frame to carry out the said contract. Say for example the contract of sale of a house. The buyer pays a down payment and agrees to pay the balance at a future date. The seller gives possession of the house to the buyer and agrees to deliver the title against the specified sale price. This is a bilateral contract.

Types of Contracts – Based on Validity

Now that you know what a contract is, can you identify the various Types of Contracts? Proper knowledge of the types of contracts is essential as it will allow you to decide the legal ramifications of an agreement. Here we will see the different Types of Contracts classified as per their validity.

Types of Contracts On The Basis Of Validity

Chapter 2 of the Indian Contract Act, 1872 discusses the voidable contracts and void agreements. On the basis of validity or enforceability, we have five different types of contracts as given below.

Valid Contracts

The Valid Contract as discussed in the topic on "Essentials of a Contract" is an agreement that is legally binding and enforceable. It must qualify all the essentials of a contract.

Void Contract Or Agreement

The section 2(j) of the Act defines a void contract as "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". This makes all those contracts that are not enforceable by a court of law as void.

We have already stated examples of these kinds of contracts in the "Essentials of a Contract".

Example: A agrees to pay B a sum of Rs 10,000 after 5 years against a loan of Rs. 8,000. A dies of natural causes in 4 years. The contract is no longer valid and becomes void due to the non-enforceability of the agreed terms.

Voidable Contract

These types of Contracts are defined in section 2(i) of the Act: “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.” This may seem difficult to wrap your head around but consider the following example:

Suppose a person A agrees to pay a sum of Rs. 10,0000 to a person B for an antique chair. This contract would be valid, the only problem is that person B is a minor and can’t legally enter a contract.

So this contract is a valid contract from the point of view of A and a “voidable” contract from the point of view of B. As and when B becomes a major, he may or may not agree to the terms. Thus this is a voidable contract.

A voidable contract is a Valid Contract. In a voidable contract, at least one of the parties has to be bound to the terms of the contract. For example, person A in the above example.

The other party is not bound and may choose to repudiate or accept the terms of the contract. If they so choose to repudiate the contract, the contract becomes void. Otherwise, a voidable contract is a valid contract.

Illegal Contract

An agreement that leads to one or all the parties breaking a law or not conforming to the norms of the society is deemed to be illegal by the court. A contract opposed to public policy is also illegal.

Several examples may be cited to illustrate an illegal contract. For example, A agrees to sell narcotics to B. Although this contract has all the essential elements of a valid contract, it is still illegal.

The illegal contracts are deemed as void and not enforceable by law. As section 2(g) of the Act states: “An agreement not enforceable by law is said to be void.”

Thus we can say that all illegal contracts are void but the reverse is not true. Both the void contracts and illegal contracts can’t be enforceable by law. Illegal contracts are actually void ab initio (from the start or the beginning).

Also because of the criminal aspects of the illegal contracts, they are punishable under law. All the parties that are found to have agreed on an illegal promise are prosecuted in a court of law.

Unenforceable Contracts

Unenforceable contracts are rendered unenforceable by law due to some technical. The contract can’t be enforced against any of the two parties.

For example, A agrees to sell to B 100kgs of rice for 10,000/-. But there was a huge flood in the states and all the rice crops were destroyed. Now, this contract is unenforceable and can not be enforced against either party.

Solved Examples on Types of Contracts

Q1: List the main differences between a void and a voidable contract?

Answer: The following table will illustrate the major differences between a void and a voidable contract.

Void Contract	Voidable Contract
"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".	"An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract."
A contract becomes void if either it lacks the essential elements, the law changes drastically or the terms of the contract change such that it is no longer possible to enforce the contract in a court of law.	A contract becomes a voidable contract when at least one of the parties reserves its consent or the consent of one of the parties was not free at the time of the formation of the contract.
Void contracts can't be fulfilled.	The validity and enforceability of the voidable contract depend on the choice of the unbound party. If the unbound party decides to repudiate the contract it becomes void.
This type of contract can't grant any rights or considerations to any of the involved parties.	The right to rescind a voidable contract is retained by the unbound party.

Types of Contract – Based on Formation

While getting into a contract various aspects are to be taken into consideration. Like if the contract has to be in written form, it must be an Express Contract. Similar to the express contract, we have four other types of contracts based on the formation of the contract. Let us learn more!

Types of Contract – Based on Formation

In the essentials of a contract, we saw some important aspects of an agreement as well as a contract. We also saw that some contracts are void contracts if certain aspects are missing from them. For example, a contract for a lease is void if it is not registered.

Such conditions allow us to classify contracts on the basis of the terms or conditions under which the agreements or contracts come into existence. On the basis of the formation of a contract, there are four types of contracts. They are listed below.

Express Contract

The Section 9 of the Act defines what is meant by the term express: “Promises, express and implied —In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.”

This means that if a proposal or a promise is expressed by listing the terms in words – in writing or orally is said to be an Express Contract as long as it gets acceptance from the other party.

The terms of the Express Contract are clearly stated either orally or in writing. So the main aspect of the Express Contract is that the terms of the contract are expressed clearly. For example, consider the following:

A person A sends a text from his phone to person B, proposing to sell their bike for a cost of Rs. 10,000/-. The person B calls the first person and agrees to the terms of the promise.

This is an Express Contract as the terms have been stated clearly in oral as well as written form. Note that the communications could be entirely oral or written.

Implied Contracts

The second part of section 9 of the Act defines what is meant by an implied contract: “In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.”

Going by the definition we can say that a contract in which the terms of the agreement are not expressed in written or oral form is an implied contract. Let us see an example to understand this.

For example, you board a rickshaw and the driver starts to drive. You tell the driver the address where he has to drop you. The driver stops and you pay him.

As you can see this is a contract but did you and the driver express any of the terms in written and oral form? No, the intent was implied by your conduct and thus there was an implied contract.

Quasi-Contract

They are not contracts in the sense that no agreements are made between any of the parties. In fact, there is no contract prior to some court order. Let us first see an example and then we will get a clear idea of what we mean by Quasi-Contract.

For example, a bank mistakenly transfers a large amount of money into your account. Now there is no written or oral or any sort of agreement between you and the bank but the money doesn’t belong to you.

You will have to return the money even if you don’t want to. The bank will approach the court and the court will issue an order to return the money, which is becoming a quasi-contract.

So here we see that a quasi-contract is not agreed upon by the two parties but it comes into existence by a court order. It is thus enforced by the law which also creates it. Most of the times the quasi-contract is created to stop any of the parties from taking unfair advantage of the other.

Consider this example. You have a yard and you commission a person to build a small door for your car. You come home one day to find out that the mansion has made a big door which is very expensive. At the same time very good for the value of your property. Now, what would happen if you both approach the court?

The courts usually enforce what is known as the "Quantum Merit" which means "as much as is deserved." Since the work was done also increased the value of your property, it would be immoral if the worker doesn't get paid for the extra work and materials. The payment might be lesser than the normal cost but the quantum merit will apply. This is a quasi-contract.

E-Contract

When a contract is formed by the use of electronic devices and means, it is called an electronic contract or an e-contract. The electronic means and devices may include emails, tests, telephones, digital signatures etc. They are also known as the Cyber contracts, the EDI contracts or the Electronic Data Interchange contracts. The terms of the contract are listed by electronic means or implied by the actions of the users.

Proposal or Offer

The whole process of entering into a contract starts with a proposal or an offer made by one party to another. To enter into an agreement such a proposal must be accepted. Let us take a look at the definition and classification of an offer and the essentials of a valid offer.

Proposal or Offer: Definition

According to the Indian Contract Act 1872, proposal is defined in Section 2 (a) as "when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."

Let us look at some features or essentials of such an offer

- The person making the offer/proposal is known as the "promisor" or the "offeror". And the person who may accept such an offer will be the "promisee" or the "acceptor".
- The offeror will have to express his willingness to do or abstain from doing an act. Only willingness is not enough. Or simply a desire to do/not do something will not constitute an offer.
- An offer can be positive or negative. It can be a promise to do some act, and can also be a promise to abstain (not do) some act/service. Both are valid offers.

Classification of Offer

There can be many types of offers based on their nature, timing, intention, etc. Let us take a look at the classifications of offers.

General Offer

A general offer is one that is made to the public at large. It is not made any specified parties. So any member of the public can accept the offer and be entitled to the rewards/consideration. Say for example you put out a reward for solving a puzzle. So if any member of the public can accept the offer and be entitled to the reward if he finishes the act (solves the puzzle.)

Specific Offer

A specific offer, on the other hand, is only made to specific parties, and so only they can accept the said offer or proposal. They are also sometimes known as special offers. Like for example, A offers to sell his horse to B for Rs 5000/-. Then only B can accept such an offer because it is specific to him.

Cross Offer

In certain circumstances, two parties can make a cross offer. This means both make an identical offer to each other at the exact same time. However, such a cross offer will not amount to acceptance of the offer in either case.

For example, both A and B send letters to each other offering to sell and buy A's horse for Rs 5000/-. This is a cross offer, but it will be considered as acceptable for either of them.

Counter Offer

There may be times when a promise will only accept parts of an offer, and change certain terms of the offer. This will be a qualified acceptance. He will want changes or modifications in the terms of the original offer. This is known as a counteroffer. A counteroffer amounts to a rejection of the original offer.

Essentials of a Valid Offer

Here are some of the few essentials that make the offer valid.

1] Offer must create Legal Relations

The offer must lead to a contract that creates legal relations and legal consequences in case of non-performance. So a social contract which does not create legal relations will not be a valid offer. Say for example *a dinner invitation extended by A to B is not a valid offer.*

2] Offer must be Clear, not Vague

The terms of the offer or proposal should be very clear and definite. If the terms are vague or unclear, it will not amount to a valid offer. Take for example the following offer – *A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.*

3] Offer must be Communicated to the Offeree

For a proposal to be completed it must be clearly communicated to the offeree. No offeree can accept the proposal without knowledge of the offer. The famous case study regarding this is *Lalman Shukla v. Gauri Dutt*. It makes clear that acceptance in ignorance of the proposal does not amount to acceptance.

4] Offer may be Conditional

While acceptance cannot be conditional, an offer might be conditional. The offeror can make the offer subject to any terms or conditions he deems necessary. So A can offer to sell goods to B if he makes half the payment in advance. Now B can accept these conditions or make a counteroffer.

5] Offer cannot contain a Negative Condition

The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer. Hence it cannot say that if acceptance is not communicated by a certain time it will be considered as accepted. Example: *A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted*. This is not a valid offer.

6] Offer can be Specific or General

As we saw earlier the offer can be to one or more specific parties. Or the offer could be to the public in general.

7] Offer may be Expressed or Implied

The offeror can make an offer through words or even by his conduct. An offer which is made via words, whether such words are written or spoken (oral contract) we call it an express contract. And when an offer is made through the conduct and the actions of the offeror it is an implied contract.

Acceptance

It is often said that acceptance is to an offer what a lighted match is to a barrel of gunpowder. For a successful contract, there must be a valid offer followed by the offer being accepted. Let us learn more about the essentials of a valid acceptance.

Acceptance: Definition

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise."

So as the definition states, when the offeree to whom the proposal is made, unconditionally accepts the offer it will amount to acceptance. After such an offer is accepted the offer becomes a promise.

Say for example A offers to buy B's car for rupees two lacs and B accepts such an offer. Now, this has become a promise.

When the proposal is accepted and it becomes a proposal it also becomes irrevocable. An offer does not create any legal obligations, but after the offer is accepted it becomes a promise. And a promise is irrevocable because it creates legal obligations between parties. An offer can be revoked before it is accepted. But once acceptance is communicated it cannot be revoked or withdrawn.

What are the Essentials of a Contract?

Rules regarding Valid Acceptance

1] Acceptance can only be given to whom the offer was made

In the case of a specific proposal or offer, it can only be accepted by the person it was made to. No third person without the knowledge of the offeree can accept the offer.

Let us take the example of the case study of Boulton v. Jones. Boulton bought Brocklehurst's business but Brocklehurst did not inform all his creditors about the same. Jones, a creditor of Brocklehurst placed an order with him. Boulton accepted and supplied the goods. Jones refused to pay since he had debts to settle with Brocklehurst. It was held that since the offer was never made to Boulton, he cannot accept the offer and there is no contract.

When the proposal is a general offer, then anyone with knowledge of the offer can accept it.

What are the Legal Rules Regarding Consideration?

2] It has to be absolute and unqualified

Acceptance must be unconditional and absolute. There cannot be conditional acceptance, that would amount to a counteroffer which nullifies the original offer. Let us see an example. A offers to sell his cycle to B for 2000/-. B says he accepts if A will sell it for 1500/-. This does not amount to the offer being accepted, it will count as a counteroffer.

Also, it must be expressed in a prescribed manner. If no such prescribed manner is described then it must be expressed in the normal and

reasonable manner, i.e. as it would be in the normal course of business. Implied acceptance can also be given through some conduct, act, etc.

However, the law does not allow silence to be a form of acceptance. So the offeror cannot say if no answer is received the offer will be deemed as accepted.

3] Acceptance must be communicated

For a proposal to become a contract, the acceptance of such a proposal must be communicated to the promisor. The communication must occur in the prescribed form, or any such form in the normal course of business if no specific form has been prescribed.

Further, when the offeree accepts the proposal, he must have known that an offer was made. He cannot communicate acceptance without knowledge of the offer.

So when A offers to supply B with goods, and B is agreeable to all the terms. He writes a letter to accept the offer but forgets to post the letter. So since the acceptance is not communicated, it is not valid.

Know more about the Types of Contract – Based on Performance?

4] It must be in the prescribed mode

Acceptance of the offer must be in the prescribed manner that is demanded by the offeror. If no such manner is prescribed, it must be in a reasonable manner that would be employed in the normal course of business.

But if the offeror does not insist on the manner after the offer has been accepted in another manner, it will be presumed he has consented to such acceptance.

So A offers to sell his farm to B for ten lakhs. He asks B to communicate his answer via post. B e-mails A accepting his offer. Now A can ask B to send the answer through the prescribed manner. But if A fails to do so, it means he has accepted the acceptance of B and a promise is made.

5] Implied Acceptance

Section 8 of the Indian Contract Act 1872, provides that acceptance by conduct or actions of the promisee is acceptable. So if a person performs certain actions that communicate that he has accepted the offer, such implied acceptance is permissible. So if A agrees to buy from B 100 bales of hay for 1000/- and B sends over the goods, his actions will imply he has accepted the offer.

Doctrine of Privity of Contract

The Indian Contract Act clearly states that there cannot be a stranger to a contract. What does this exactly mean? And are there any exceptions? This is explained through the Doctrine of Privity of a Contract. Let us see.

Doctrine of Privity of Contract

The Indian Contract Act. 1872, allows the ‘Consideration‘ for an agreement to proceed from a third-party. However, a stranger (third-party) to consideration is different from a stranger to a contract. The law does not allow a stranger to file a suit on the contract. This right is available only to a person who is a party to the contract and is called Doctrine of Privity of Contract.

Let’s understand this with the help of an example:

- Peter has borrowed some money from John.
- Peter owns a property and decides to sell it to Arjun.
- Arjun promises to pay John on behalf of Peter.

However, if Arjun fails to pay, then John cannot sue since Arjun is a stranger to the contract. It is important to note that the Doctrine of Privity has exceptions which allow a stranger to enforce a claim as given below.

Exceptions to the Doctrine of Privity of Contract

A stranger or a person who is not a party to a contract can sue on a contract in the following cases:

1. Trust
2. Family Settlement
3. Assignment of a Contract
4. Acknowledgement or Estoppel
5. A covenant running with the land
6. Contract through an agent

Essentials of a Contract

Let’s look at each of them in details:

Trust

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract.

Arjun's father had an illegitimate son, Ravi. Before he died, he put Arjun in possession of his estate with a condition that Arjun would pay Ravi an amount of Rs 500,000 and transfer half of the estate in Ravi's name, once he becomes 21 years old.

After attaining that age when Ravi didn't receive the money and asked Arjun about it, he denied giving him his share. Ravi filed a suit for recovery. The Court held that a trust was formed with Ravi as the beneficiary for a certain amount and share of the estate. Hence, Ravi had the right to sue upon the contract between Arjun and his father, even though he was not a party to it.

Family Settlement

If a contract is made under a family arrangement to benefit a stranger (person not a party to the contract), then the stranger can sue in his own right as a beneficiary of the contract.

Peter promised Nancy's father that he would marry Nancy else would pay Rs 50,000 as damages. Eventually, he married someone else, thereby breaching the contract. Nancy filed a case against Peter which was held by the Court since the contract was a family arrangement with Nancy as the beneficiary.

Ritika was living in a Hindu Undivided Family (HUF). The family had made a provision for her marriage. Eventually, the family went through a partition and Ritika filed a suit to claim her marriage expenses. The Court held the case because Ritika was the beneficiary of the provision despite being a stranger to the contract.

What is a Contract?

Assignment of a Contract

If a contract is made for the benefit of a person, then he can sue upon the contract even though he is not a party to the agreement. It is important to note here that nominees of a life insurance policy do not have this right.

Acknowledgment or Estoppel

If a contract requires that a party pays a certain amount to a third-party and he/she acknowledges it, then it becomes a binding obligation for the party to pay the third-party. The acknowledgment can also be implied.

Peter gives Rs 1,000 to John to pay Arjun. John acknowledges the receipt of funds to be paid to Arjun. However, he fails to pay him. Arjun can sue John for recovery of the amount.

Rita sold her house to Seema. A real estate broker, Pankaj, facilitated the deal. Out of the sale price, Pankaj was to be paid Rs 25,000 as his professional charges. Seema promised to pay Pankaj the amount before taking possession of the property. She made three payments of Rs 5,000 each and then stopped paying him. Pankaj filed a suit against Seema which was held by the Court because Seema had acknowledged her liability by conduct.

A Covenant Running with the Land

When a person purchases a piece of land with the notice that the owner of the land will be bound by all duties and liabilities affecting the land, then he can sue upon a contract between the previous land-owner and a settler even if he was not a party to the contract.

Peter owned a piece of land which he sold to John under a covenant that a certain part of the land will be maintained as a public park. John abided by the covenant and eventually sold the land to Arjun. Though Arjun was aware of the covenant, he built a house in the specific plot. When Peter came to know of it, he filed a suit against Arjun. Although Arjun denied liability since he was not a party to the contract, the Court held him responsible for violating the covenant.

Contract through an Agent

If a person enters into a contract through an agent, where the agent acts within the scope of his authority and in the name of the person (principal).

Agreements without Consideration

Consideration is an integral part of a contract. The rules of consideration state that it is essential to have consideration for a contract. But there are some specific exceptions to the "No consideration no contract" rule. Let us take a look.

Consideration

Can you make a legal agreement without consideration? No. As per Section 10 and Section 25 of the Indian Contract Act, 1872, consideration is essential in a valid contract. In simple words, no consideration no contract. Hence, you can enforce a contract only if there is a consideration.

While considerations are integral to a contract, the Indian Contract Act, 1872 has listed some exceptions whereby an agreement made without consideration will not be void.

Exceptions to the ‘No Consideration No Contract’ Rule

Section 25 also lists the exceptions under which the rule of no consideration no contract does not hold, as follows:

Natural Love and Affection

If an agreement is in writing and registered between two parties in close relation (like blood relatives or spouse), based on natural love and affection, then such an agreement is enforceable even without consideration.

Example, Peter and John are brothers. In his will, their father nominates Peter as the sole owner of his entire property after his death. John files a case against Peter to claim his right to the property but loses the case. Peter and John come to a mutual decision where Peter agrees to give half of the property to his brother and register a document regarding the same.

Eventually, Peter didn’t fulfil his promise and John filed a suit for recovery of his share in the property. The Court held that since the agreement was made based on natural love and affection, the no consideration no contract rule didn’t apply and John had the right to recover his share.

Past Voluntary Services

If a person has done a voluntary service in the past and the beneficiary promises to pay at a later date, then the contract is binding provided:

- The service was rendered voluntarily in the past
- It was rendered to the promisor

- The promisor was in existence when the voluntary service was done (especially important when the promisor is an organization)
- The promisor showed his willingness to compensate the voluntary service

Example, Peter finds Johns wallet on the road and returns it to him. John is happy to find his lost wallet and promises to pay Peter Rs 2,000. In this case, too, the no consideration no contract rule does not apply. This contract is a valid contract.

Promise to pay a Time-Barred Debt

If a person makes a promise in writing signed by him or his authorized agent about paying a time-barred debt, then it is valid despite there being no consideration. The promise can be made to pay the debt wholly or in part.

Example, Peter owes Rs 100,000 to John. He had borrowed the money 5 years ago. However, he never paid a single rupee back. He signs a written promise to pay Rs 50,000 to John as a final settlement of the loan. In this case, 'the no consideration no contract' rule does not apply either. This is a valid contract.

Creation of an Agency

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

Gifts

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

Bailment

Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to effect a contract of bailment.

Charity

If a person undertakes a liability on the promise of another to contribute to charity, then the contract is valid. In this case, the no consideration no contract rule does not apply.

Example, Peter is the trustee of his town's charity organization. He wants to build a small pond in the town to enhance greenery and offer the residents a good place to walk around in the evenings. He raises a charity fund where he appeals to people to come ahead and contribute to the cause. Many people come forward as subscribers the fund and agree to pay Peter their share of the amount once he enters into a contract for constructing the pond.

After raising half the amount, Peter hires contractors for building the pond. However, 10 people back out at the last moment. Peter files a suit against them for recovery. The Court ordered the 10 people to pay the amount to Peter since he had undertaken a liability based on their promise to pay. Even though there was no consideration, the contract was valid and enforceable by law.

Free Consent

In the Indian Contract Act, the definition of Consent is given in Section 13, which states that "it is when two or more persons agree upon the same

thing and in the same sense". So the two people must agree to something in the same sense as well. Let's say for example A agrees to sell his car to B. A owns three cars and wants to sell the Maruti. B thinks he is buying his Honda. Here A and B have not agreed upon the same thing in the same sense. Hence there is no consent and subsequently no contract.

Now Free Consent has been defined in Section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following,

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation
5. Mistake

Elements Vitiating Free Consent

Let us take a look at these elements individually that impair the free consent of either party.

1] Coercion (Section 15)

Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as

- committing or threatening to commit any act forbidden by the law in the IPC

- unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract

For example, A threatens to hurt B if he does not sell his house to A for 5 lakh rupees. Here even if B sells the house to A, it will not be a valid contract since B's consent was obtained by coercion.

Now the effect of coercion is that it makes 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 to void the contract. So in the above example, if B still wishes, the contract can go ahead.

Also, if any monies have been paid or goods delivered under coercion must be repaid or returned once the contract is void. And the burden of proof proving coercion will be on the party who wants to avoid the contract. So the aggravated party will have to prove the coercion, i.e. prove that his consent was not freely given.

Who Performs the Contract?

2] Undue Influence (Section 16)

Section 16 of the Act contains the definition of 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, and uses such influence to obtain an unfair advantage of the other party it will be undue influence.

The section also further describes how the person can abuse his authority in the following two ways,

- When a person holds real or even apparent authority over the other person. Or if he is in a fiduciary relationship with the other person

- He makes a contract with a person whose mental capacity is affected by age, illness or distress. The unsoundness of mind can be temporary or permanent

Say for example A sold his gold watch for only Rs 500/- to his teacher B after his teacher promised him good grades. Here the consent of A (adult) is not freely given, he was under the influence of his teacher.

Now undue influence to be evident the dominant party must have the objective to take advantage of the other party. If influence is wielded to benefit the other party it will not be undue influence. But if 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.

Legality of Object and Consideration

3] Fraud (Section 17)

Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.

So according to Section 17, a fraud is when a party convinces another to enter into an agreement by making statements that are

- suggesting a fact that is not true, and he does not believe it to be true
- the active concealment of facts
- a promise made without any intention of performing it
- any other such act fitted to deceive

Let us take a look at an example. A bought a horse from B. B claims the horse can be used on the farm. Turns out the horse is lame and A cannot use him on his farm. Here B knowingly deceived A and this will amount to fraud.

One factor to consider is that the aggravated party should suffer from some actual loss due to the fraud. There is no fraud without damages. Also, the false statement must be a fact, not an opinion. In the above example if B had said his horse is better than C's this would be an opinion, not a fact. And it would not amount to fraud.

Performance of Reciprocal Promise

4] Misrepresentation (Section 18)

Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true. Misrepresentation can be of three types

- A person makes a positive assertion believing it to be true
- Any breach of duty gives the person committing it an advantage by misleading another. But the breach of duty is without any intent to deceive
- when one party causes the other party to make a mistake as to the subject matter of the contract. But this is done innocently and not intentionally.

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.

Let us see an 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. Say for 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 object are void by nature. Say for 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. Say for 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 are regarded by the court as immoral, then such object and consideration are immoral. Say for 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 judgement 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, we restrict certain contracts in the name of public policy. But we do not use public policy in a wide sense in this matter. 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. We only focus on public policy under the law.

So let us look at some agreements that are opposed to public policy,

1. Trading with the Enemy: Entering into an agreement with a person from a country with whom India is at war, void be a void agreement. For example, a trader entering into a contract with a Pakistani national during the Kargil war.

2. Stifling Prosecution: This is a pervasion of the natural course of law, and such contracts are void. For example, A agrees to sell land to B if he does not participate in the criminal proceedings against him.
3. Maintainance and Champerty: Maintainance agreement is when a person promises to maintain a suit in which he has no real interest. And champerty is when a person agrees to assist another party in litigation for a portion of the damages or proceeds.
4. An Agreement to Traffic in Public Offices
5. Agreements to create Monopolies
6. An agreement to brokerage marriage for rewards
7. Interfering with the Courts: An agreement whose object is to induce a judicial or state officials to act corruptly and interfere with legal proceedings

Expressly Void Agreements

The Indian Contract Act 1872 defines a void agreement as "an agreement that is not enforceable by law". And there can be many times of void agreements, some of which we have covered in the previous articles. But the contract states certain agreements that are expressly declared as void agreements. Let us take a look.

1] Agreement in Restraint of Marriage

Any agreement that restrains the marriage of a major (adult) is a void agreement. This does not apply to minors. But if an adult agrees for some consideration not to marry, such an agreement is expressly a void agreement according to the contract act.

So A agrees that if B pays him 50,000/- he will not marry such an agreement is a void agreement.

2] Agreement in Restraint of Trade

An agreement by which any person is restrained from plying a trade or practising a legal profession or exercising a business of any kind is an expressly void agreement. Such an agreement violates the constitutional rights of a person.

However, there are a few exceptions to this rule. If a person sells his business along with the goodwill then the buyer can ask the seller to refrain from practising the same business at the local limits.

So if according to such an agreement as long as the buyer or his successor carry on such a business the agreement to restrain the trade of the seller will be valid.

Similarly, if an outgoing partner can enter into such a restraint of a trade agreement with the partnership firm. Also, a contract between partners not to carry out any competing business during the continuance of a partnership is also a valid contract.

One point to keep in mind regarding the above agreements is that the terms of such an agreement have to be reasonable. Such reasonable terms are not defined under the act but are to be judged according to each unique situation and circumstance.

Let us take for example the case of physician A who employs B as his assistant for three years. For this duration of three years, B agrees not to practice medicine anywhere else. This is a valid agreement even though it is in restraint of trade.

But say A a lawyer sells his legal practice to B along with the goodwill. And A agrees never to practice as a lawyer anywhere in the state for the next 20 years. This is not a valid agreement since the terms are completely unreasonable.

3] Agreement in Restraint of Legal Proceedings

An agreement that prevents one party from enforcing his legal rights under a contract through the legal process (of courts, arbitration, etc) then such an agreement is expressly void agreement.

However, there are exceptions like, if the agreement states that any dispute between parties will be referred to arbitration and the amount awarded in such arbitration will be final will be a valid contract.

Also if the parties agree that any dispute between them in the present or the future will be referred to arbitration, then such an agreement is also valid. But such a contract has to be in writing.

4] An Agreement Whose Meaning is Uncertain

An agreement whose meaning is uncertain cannot be a valid agreement, it is a void agreement. If the essential meaning of the contract is not assured, obviously the contract cannot go ahead. But if such uncertainty can be removed, then the contract becomes valid.

Say for example A agrees to sell to B 100 kg of fruit. This is a void contract since what type of fruit is not mentioned. But if A exclusively sells only oranges then the agreement would be valid because the meaning would now be certain.

5] Wagering Agreement

According to the Indian Contract Act, an agreement to wager is a void agreement. The basis of a wager is that the agreement depends on the happening or non-happening of an uncertain event. Here each side would either win or lose money depending on the outcome of such an uncertain event.

The essentials of a wagering agreement are as follows. If all elements are met then the agreement will be void.

- Must contain a promise to pay money or money's worth
- Is conditional on the happening or non-happening of a certain event
- The event must be uncertain. Neither party can have any control over it
- Must be the common intention to bet at the time of making the agreement
- Parties should have no other interest other than the stake of the bet

The following agreements are not considered wagering agreements,

i. Chit Fund
ii. Commercial Transactions, i.e Transactions of the Share MArket
iii. Athletic Competition and Competitions involving Skills
iv. Insurance Contracts

Who Performs the Contract?

There are at least two parties to a contract, a promisor, and a promisee. A promisee is a party to which a promise is made and a promisor is a party which performs the promise. Three sections of the Indian Contract Act, 1872 define who performs a contract – Section 40, 41, and 42. In this

article, let us take a look at the following sections to understand the concept of the performance of a contract better.

Section 40

Section 40 of the Indian Contract Act, 1872 states

If the nature of a contract indicates that either of the parties intended that the promise contained in the contract must be performed by the promisor himself

- then the promisor is obligated to perform the promise
- else the promise can be performed by the promisor or his representatives or an employed agent.

Let's look at some examples: Peter promises to pay Rs 50 to John. In this case, Peter can perform the promise himself by paying the money to John or can ask someone else to pay him. Also, if Peter dies before fulfilling his promise, then his representatives are required to perform the promise or employ someone to do the same.

We will take a look at another example. Peter is a singer and he promises to sing a song at John's wedding reception. In this case, the nature of the contract requires Peter to perform the promise himself. He cannot delegate it to someone. So, there are three possibilities for the performance of the promise. It can be done by the promisor, his representatives or his agent, depending on the nature of the contract.

Promisor Performs the Promise

If a contract indicates that the parties intended for the promisor to fulfil the promise himself, then the promisor is obligated to perform the promise. Usually, these include promises which involve personal skills,

experience, or expertise and are usually based on trust between the promisor and the promisee.

Example 2 cited above about Peter singing at John's wedding reception is a good example of a personal skill being required to perform the promise.

Learn Capacity to Contract here.

Agent Performs the Promise

If the contract does not require the personal consideration of the promisor, then the promisor can employ a competent person to perform the promise. Example 1 cited above is a good example of Peter employing an agent to pay Rs 50 to John.

Legal Representatives Perform the Promise

If the promisor dies before performing the promise, then the legal representatives become responsible for the same. If the promise involves the utilization of personal skills or expertise, then the consideration ceases with the death of the promisor.

However, in all other scenarios, the legal representatives are obligated to perform the promise unless the contract has a contrary intention specified. Also, the liability of the legal representatives is limited to the value of the property inherited by them.

Peter promises to pay John an amount of Rs 10,000 within one month of delivery of certain goods. John delivers the goods. However, Peter dies before he can pay the money to John. Now, it is his legal representative's responsibility to ensure that John receives the payment. The representative can pay himself or employ someone for the same.

Section 41

If the promisee accepts the performance of a promise from a third person, then he cannot enforce it against the promisor at a later date. Hence, the performance of the promise by a third-party discharges the promisor of his obligations even if he has not authorized the third-party to perform the promise.

Peter promises to pay John an amount of Rs 10,000 for painting his house. John finishes the job but Peter is unable to pay him. Oliver, a common friend of Peter and John, offers Rs 6,000 to John on behalf of Peter, which he accepts. Eventually, John files a suit for recovery against Peter.

The Court holds that:

- John accepted Rs 6,000 from a third-person.
- Peter has not authorized the third-person.
- Hence, John's act has discharged Peter of his liability to pay the entire amount.
- John can only claim Rs 4,000 from Peter now.

Section 42

If the promisors agree to perform a promise together – joint promise – then they are jointly obligated to fulfil the promise, unless the contract specifies a contrary intention. Also, if any of the promisors die, then their legal representatives must fulfil the promise jointly with the surviving promisors. If all the promisors die, then the legal representatives of each of them must perform the promise jointly.

Peter, John, and Oliver jointly promise to pay Rs 9,00,000 to Rita. However, Peter dies before paying the money. In this case, Peter's representative – Jack, is now jointly responsible along with John and Oliver to pay Rita the amount.

Unfortunately, before Rita receives her money, all the three promisors, i.e. Peter, John, and Oliver die. In this case, Jack – Peter's representative, Tony – John's representative, and Sam – Oliver's representative must jointly pay the amount to Rita.

Discharge of a Contract

A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end. There are many ways in which a contract is discharged. In this article, we will look at various such scenarios.

1] Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

Since both the parties to the contract fulfil their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

1. Actual performance

2. Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance or tender.

2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Example: Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- An unforeseen change in the law
- Destruction of the subject-matter essential to the performance
- The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract

- A declaration of war

Example: Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

- an actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John's act of remission discharges the contract.

8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: Peter agrees to fix John's garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to

Peter (an empty floor). This discharges him of all obligations arising under the contract.

9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: Peter rents John's apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

Breach of Contract

Anticipatory Breach of Contract

As the name suggests, an anticipatory breach is a breach of contract before the time of performance. So, if a promisor denies to perform his promise and signifies his unwillingness before the time for performance, then it is an anticipatory breach of contract.

The promisor can convey his unwillingness either by:

- Expressing it in words (spoken or written)
- Implying it by his conduct

Let us look at an example. Peter enters into a contract with John on May 30, 2018. In the contract, Peter agrees to sell his house to John provided he receives a token amount of Rs 5,00,000 from John on or before June 30, 2018. However, on June 15, 2018, John informs Peter that he will not be able to provide the token amount on the said date, thereby expressing rejection of the contract.

Here is another example. Peter enters into a contract with John on June 01, 2018. As per the contract, Peter agrees to sell his guitar to John on June 10, 2018, for an amount of Rs 5,000. However, he sells this guitar to Oliver on June 07, 2018. Hence, it is an anticipatory breach of contract due to Peter's conduct.

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

When a promisor refuses to perform his promise leading to an anticipatory breach of contract, the promisee is excused from performance or from further performance of his obligations. Also, he can either:

- Treat the contract as cancelled and file a suit against the other party for damages arising from the breach. This suit can be filed immediately without waiting until the date of performance specified in the contract.

OR

- Choose not to cancel the contract but treat it as an operative and wait until the time of performance has passed before holding the other

party responsible for the damages caused due to non-performance. However, he will need to keep the contract alive for the benefit of all parties involved.

Actual Breach of Contract

While an anticipatory breach is before the time of performance, an actual breach of contract is on the scheduled time of performance of the contract. An actual breach of contract can be committed either:

1] At the time when the Performance of the Contract is Due

Peter enters into a contract with John promising to deliver 50 bags of cotton to him on June 30, 2018. However, on the scheduled day, he fails to deliver the same. This is an actual breach of contract. Also, this breach is at the time the performance of the contract is due.

2] During the Performance of the Contract

An actual breach of contract can also occur when one party fails to perform his obligation, during the performance of the contract. This refusal can be expressed in words or by action.

Suit for Damages

A contract is a legal promise to perform certain obligations. When a party breaks a promise, then the other parties to the contract might suffer losses due to non-performance of the obligation. The Indian Contract Act, 1872, has laid down some specific rules for filing a suit for damages in such cases. In this article, we will look at the various types of damages and the different scenarios under which a party can file a suit for compensation.

Compensation for Losses or Damages caused by a Breach of Contract

This section of the Indian Contract Act, 1872, lays down certain rules to determine the amount of compensation upon the breach of a contract. The ground rule is, on the breach of a contract, it is the entitlement of the suffering party to receive compensation from the party who breaks the contract for losses sustained due to the breach. Here are some rules:

- The suffering party can claim compensation for any loss arising naturally in the usual course of events.
- Even if the party knew that on the breach of the contract, they might suffer certain losses, he can claim compensation.
- Special damages, if any, can be claimed only if the suffering party has given notice about it earlier. Also, the party suffering a loss is expected to take reasonable steps to minimize it.
- The suffering party cannot claim compensation for indirect or remote losses/damages.

Also, while estimating the loss incurred, all the means which existed to remedy the inconvenience caused by the non-performance of the contract should be considered.

Example: Peter agrees to sell and deliver 50 kilograms of rice to John for Rs 5,000. The amount is to be paid on delivery. However, Peter fails to perform the promise. John buys 50 kilograms of rice from a neighbourhood trader for Rs 6,000. John can claim compensation from Peter. The compensation amount is the additional amount that John had to pay to procure the same quantity of rice of similar quality from the market. In this case, it is Rs 1,000.

Types of Damages

Sections 73-75 of the Indian Contract Act, 1872, define remedy by way of damages as the entitlement of the suffering party to recover

compensation for losses suffered due to non-performance of the contract. The damages can be of the following types:

1] Ordinary damages

On the breach of a contract, the suffering party may incur some damages arising naturally, in the usual course of events. Even if the suffering party knew about the likely damages if the contract was breached, he can claim compensation for such losses.

Peter agrees to sell and deliver 10 bags of potatoes to John for Rs 5,000 after two months. On the date of delivery, the price of potatoes increases and Peter refuses to perform his promise. John purchases 10 bags of potatoes for Rs 5,500. He can receive Rs 500 from Peter as ordinary damages arising directly from the breach.

2] Special Damages

A party to a contract might receive a notice of special circumstances affecting the contract. In such cases, if he breaches the contract, then he is liable for the ordinary damages plus the special damages.

Peter hired the services of John, a goods transporter, to deliver a machine to his factory urgently. He also informed John that his business has stopped for want of the machine. However, John delayed the delivery of the machine by an unreasonable amount of time. Peter missed out on a huge order since he didn’t have the machine with him.

In this case, Peter can claim compensation from John. The compensation amount will include the amount of profit he could have made by running his factory during the period of delay. However, he cannot claim the profits that he would have made if he got the contract since John was not made aware of the same.

3] Vindictive or Exemplary Damages

There are two scenarios for awarding vindictive or exemplary damages:

- Breach of a promise to marry because it causes injury to his/her feelings
- Wrongful dishonour of cheque by a banker because it causes loss of reputation and credibility.

In case of a wrongful dishonour of cheque from a businessman, the compensation will include exemplary damages even if he has not suffered any financial loss. However, a non-trader is not awarded heavy compensation unless the damages are alleged and proved as special damages.

Example: Peter is a farmer. He issues a cheque for procuring seeds for his next crop. He has sufficient funds in his account but the bank erroneously dishonours the cheque. Peter files a suit claiming compensation for damages to his reputation. The Court awards a nominal amount as damages since Peter is not a trader.

4] Nominal Damages

If a party to a contract files a suit for losses but proves that while there has been a breach of contract, he has not suffered any real losses, then compensation for nominal damages is awarded. This is done to establish the right to a decree for a breach of contract. Also, the amount can be as low as Re 1.

5] Damages for Deterioration caused by Delay

In cases where goods are being transported by a carrier and he delays the delivery of goods causing them to deteriorate, the affected party can file

a suit for damages for deterioration by the delay. Deterioration can mean physical damage to the goods and/or loss of a special opportunity for sale.

6] Pre-fixed damages

During the formation of a contract, the parties might stipulate payment of a certain amount as compensation upon the breach of the contract. This amount can be a reasonable estimate of the likely loss in case of a breach or a penalty.

Under Section 74 of the Indian Contract Act, 1872, it is specified that if an amount is mentioned in a contract as the sum to be paid in case of a breach, then the suffering party is entitled to reasonable compensation, not exceeding the amount specified.

Quasi Contract: Introduction

Can there be a contract without offer, acceptance, consideration, etc? Well, yes there can be such a contract based on social responsibility. We call such contracts quasi contract. Let us take a look.

Quasi Contract

The word ‘Quasi’ means pseudo. Hence, a Quasi contract is a pseudo-contract. When we talk about a valid contact we expect it to have certain elements like offer and acceptance, consideration, the capacity to contract, and free will. But there are other types of contracts as well.

There are cases where the law implies a promise and imposes obligations on one party while conferring rights to the other even when the basic elements of a contract are not present. These promises are not legal contracts, but the Court recognizes them as relations resembling a contract and enforces them like a contract.

These promises/ relations are Quasi contracts. These obligations can also arise due to different social relationships which we will look at in this article.

The core principles behind a Quasi Contract are justice, equity and good conscience. It is based on the maxim: "No man must grow rich out of another persons' loss."

Let's look at an example of a Quasi contract: Peter and Oliver enter a contract under which Peter agrees to deliver a basket of fruits at Oliver's residence and Oliver promises to pay Rs 1,500 after consuming all the fruits. However, Peter erroneously delivers a basket of fruits at John's residence instead of Oliver's. When John gets home he assumes that the fruit basket is a birthday gift and consumes them.

Although there is no contract between Peter and John, the Court treats this as a Quasi-contract and orders John to either return the basket of fruits or pay Peter.

Features of a Quasi Contract

1. It is usually a right to money and is generally (not always) to a liquated sum of money
2. The right is not an outcome of an agreement but is imposed by law.
3. The right is not available against everyone in the world but only against a specific person(s). Hence it resembles a contractual right.

Sections 68 – 72 of the Indian Contract Act, 1872 detail five circumstances under which a Quasi contract comes to exist. Remember, there is no real contract between the parties and the law imposes the contractual liability due to the peculiar circumstances.

Section 68 – Necessaries Supplied to Persons Incapable of Contracting

Imagine a person incapable of entering into a contract like a lunatic or a minor. If a person supplies necessaries suited to the condition in life of such a person, then he can get reimbursement from the property of the incapable person.

John is a lunatic. Peter supplies John with certain necessaries suited to his condition in life. However, John does not have the money or sanity and fails to pay Peter. This is termed as a Quasi contract and Peter is entitled to reimbursement from John's property.

However, to establish his claim, Peter needs to prove two things:

1. John is a lunatic
2. The goods supplied were necessary for John at the time they were sold/ delivered.

Section 69 – Payment by an Interested Person

If a person pays the money on someone else's behalf which the other person is bound by law to pay, then he is entitled to reimbursement by the other person.

Peter is a zamindar. He has leased his land to John, a farmer. However, Peter fails to pay the revenue due to the government. After sending notices and not receiving the payment, the government releases an advertisement for sale of the land (which is leased to John). According to the Revenue law, once the land is sold, John's lease agreement is annulled.

John does not want to let go of the land since he has worked hard on the land and it has started yielding good produce. In order to prevent the sale,

John pays the government the amount due from Peter. In this scenario, Peter is obligated to repay the said amount to John.

Section 70 – Obligation of Person enjoying the benefits of a Non-Gratuitous Act

Imagine a person lawfully doing something or delivering something to someone without the intention of doing so gratuitously and the other person enjoying the benefits of the act done or goods delivered. In such a case, the other person is liable to pay compensation to the former for the act, or goods received. This compensation can be in money or the other person can, if possible, restore the thing done or delivered.

However, the plaintiff must prove that:

- The act that is done or thing delivered was lawful
- He did not do so gratuitously
- The other person enjoyed the benefits

Section 71 – Responsibility of Finder of Goods

If a person finds goods that belong to someone else and takes them into his custody, then he has to adhere to the following responsibilities:

- Take care of the goods as a person of regular prudence
- No right to appropriate the goods
- Restore the goods to the owner (if found)

Peter owns a flower shop. Olivia visits him to buy a bouquet but forgets her purse in the shop. Unfortunately, there are no documents in the purse to help ascertain her identity. Peter leaves the purse on the checkout counter assuming that she would return to take it.

John, an assistant at Peter's shop finds the purse lying on the counter and puts it in a drawer without informing Peter. He finished his shift and goes home. When Olivia returns looking for her purse, Peter can't find it. He is liable for compensation since he did not take care of the purse which any prudent man would have done.

Section 72 – Money paid by Mistake or Under Coercion

If a person receives money or goods by mistake or under coercion, then he is liable to repay or return it.

Let us see an example. Peter misunderstands the terms of the lease and pays municipal tax erroneously. After he realizes his mistake, he approached the municipal authorities for reimbursement. He is entitled to be reimbursed since he had paid the money by mistake.

Similarly, money paid by coercion which includes oppression, extortion or any such means, is recoverable.