

SHORT NOTES

INDIAN CONTRACT ACT 1872

CHAPTER 1- NATURE OF CONTRACTS

Date of Applicability	1st Sep. 1872. Applicable all over India.
Definitions	
Contract Sec 2(h)	an agreement which is enforceable by law.
Agreement Sec 2(e)	Every promise and every set of promises, forming consideration for each other.
Promise	A proposal when accepted becomes a promise.
Enforceability of an agreement	<ol style="list-style-type: none"> 1. An agreement is said to be enforceable by law if it creates some legal obligation. 2. In commercial or business agreements the usual presumption is that the parties intend to create legal relations. 3. In case of social or domestic agreement, the usual presumption is that the parties do not intend to create legal relations. <p>(Balfour v. Balfour)</p> <p>So, we can say all contracts are agreement but all agreement are not contracts.</p>
Essential elements of a valid contract Sec 10	<ol style="list-style-type: none"> 1. Offer and Acceptance 2. Mutual consent of the parties (must agree upon the same thing and in the same sense) 3. Intention to create legal obligations. 4. Made with free consent of the parties. 5. Parties must be capable of entering into a contract. 6. Lawful Object and consideration. 7. Must not have been expressly declared to be void 8. Meaning of agreement must be certain. 9. Performance must not be impossible.
Types of contracts	
Express contract	if the terms of contract are made in words spoken or written at the time of formation of contract
Implied contract	where both the offer & acceptance are made otherwise than in words i.e. by acts or conduct of the parties. Tacit Contract is a type of Implied contract. Ex- ATM, Fall of hammer
Valid contract	when all the essential elements are present is called Valid Contract
Voidable contract	an agreement, which is enforceable by law at the option of one or more of the parties, but not at the option of other or others
Void agreement	an agreement not enforceable by law
Void contract	a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
Unenforceable contract	a contract it is that which cannot be enforced in the court of law because of some technical defect.
Quasi contract	a person shall not be allowed to retain unjust benefit at expense of another. The parties do not enter quasi contract intentionally, it is created by law.
Executed contract	where both the parties have completely performed their share of obligation
Executory contract	remains to be carried into effect where one or both the parties have yet to perform their obligations
Unilateral contract	only one party has to fulfill his obligation at the time of formation of

	contract, the other party having fulfilled his obligation at the time contract comes into existence.
Bilateral Contract	contract in which obligations on the part of both the parties to the contract are outstanding at the time of formation of the contract
E-Contracts	a contract is entered into by two or more parties using electronics means, such as e-mails
Other Provision	<ul style="list-style-type: none"> ➤ An agreement which is expressly or impliedly prohibited or forbidden by law is an illegal agreement ➤ Collateral agreement to illegal agreement is also illegal and void ➤ If the main agreement is void but not illegal, its collateral agreement will not be affected at all

CHAPTER 2 OFFER AND ACCEPTANCE

Offer Sec 2(a)	when one person signifies to another his willingness to do or abstain from doing anything, with a view to obtain the assent of the other, to such act or abstinence.
Legal rules for a valid offer	<ul style="list-style-type: none"> ➤ The offer must be communicated to the other party: (Lalman Shukla v. Gauri Dutt) ➤ The terms of an offer must be definite, clear and certain. ➤ The offer must be capable of creating legal relationship ➤ The offer must be distinguished from an invitation to receive offer Types of Invitation to offer- (1) Catalogue or Price list (2) Menu cards of restaurant (3) Price tags (4) Advertisement of sale (5) Prospectus (6) Time Table of railway or bus etc. ➤ Offer must be distinguished from an answer to a question or Casual Enquiry (Harvey vs. Facie) ➤ An offer may be to do something or not to do something. ➤ Offer must be made with a view to obtaining the assent of the other party ➤ An offer may be conditional ➤ The offer should not contain a term the noncompliance of which would amount acceptance.
Types of Offers	
Express Offer	may be made by express words, spoken/written
Implied offer	an offer implied from the conduct of the Parties
Specific offer	Offer is made to a specific person
General offer	General offer is made to world at large. It can be accepted by anyone who fulfills the terms of offer. (Carlil v/s Carbolic smoke ball company)
Cross Offer	When two persons make similar offers to each other, without having knowledge of each other's offer
Counter Offer	when the offeree offers to conditional acceptance of the offer subject to modifications and variations in the terms of original offer. Counter offer amounts to rejection of the original offer
Standing Offer	An offer which is open for acceptance over a period of time. This is also known as continuing or open offer. Eg-Tender

Acceptance Sec 2(b)	when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.
Legal rules for a valid acceptance	<ul style="list-style-type: none"> ➤ Acceptance must be communicated (Brogden vs. Metropolitan Railway Co.) ➤ Acceptance can be given only by the person to whom offer is made (except general offer). (Boulton vs. Jones) ➤ A valid contract arises only if the acceptance is absolute and unqualified. An acceptance with a variation is no acceptance. It is simply a counter offer ➤ Acceptance must be in the mode prescribed ➤ Acceptance must be given within the time prescribed or within a reasonable time ➤ A valid contract can arise only when the acceptance is given before the offer has lapsed or withdrawn. ➤ Acceptance cannot be presumed from silence (Felthouse vs. Bindley) ➤ If the offeree has in any previous conduct indicated that his silence is the evidence of acceptance, then silence can be treated as acceptance
Communication of Offer, Acceptance & Revocation	
Communication of offer	<p>Is complete when it comes to the knowledge of the person to whom it is made.</p> <p>Example- 'A' proposes by letter, to sell a house to 'B' for Rs. 80,000. The letter is posted on 6th. The letter reaches 'B' on 8th. The communication of offer is complete, when 'B', the offeree receives the letter i.e. on 8th.</p>
Communication of an acceptance	<p>Is complete:</p> <ul style="list-style-type: none"> • as against the proposer- when it is put in a course of transmission to him so as to make it out of his power. (Letter of acceptance posted) • as against the acceptor- when the letter of acceptance is received by the proposer. <p>Example- B accepts A's proposal by a letter sent by post on 9th. The letter reaches 'A' on 11th. As against 'A', communication of acceptance is complete when letter is posted i.e. on 9th and as against B when letter is received by A i.e. on 11th.</p>
Revocation of offer	at any time before the communication of its acceptance is complete as against the proposer, and not afterwards.
Revocation of acceptance	at any time before the communication of the acceptance is complete as against the acceptor but not afterwards.
Other Rules	<ul style="list-style-type: none"> ➤ Communication of acceptance by telephone is complete when the acceptance is received or heard by offeror ➤ Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly. (Mukul Datta vs. Indian Airlines)

CHAPTER 3 CONSIDERATION

Definition Sec 2(d)	When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promisor.
Essentials of A Valid Consideration	<ul style="list-style-type: none"> ➤ The consideration must move at the desire of the promisor. Voluntary consideration or consideration at the instance of a third party is not a valid consideration. ➤ It need not benefit the promisor himself ➤ The consideration must be lawful ➤ The consideration must be real the not illusory ➤ The consideration must be of some value in the eyes of law ➤ The performance of an existing obligation is no consideration ➤ The consideration need not be adequate. An inadequate consideration does not render a contract void. ➤ The consideration may be furnished by the promisee or any other person. [Chinnaya vs Ramaya] ➤ A consideration may be an act 'to do' or not to do' something ie., it may be positive or negative.
Types of Consideration	
Past consideration	the consideration for a promise given by a party before the promise is made.
Present Consideration	When the promisor receives consideration simultaneously with his promise
Future Consideration	When the consideration for a promise is rendered in future
Privity of contract	
Meaning	<ul style="list-style-type: none"> ➤ As per privity of contract, only parties to contracts may sue and be sued. ➤ A stranger to a contract cannot sue, only a person who is a party to contract can sue on it.
Exceptions	
Trust	if there is a contract between settler and trustee for benefit of beneficiary then beneficiary can sue
Family Settlement	Family member can sue even he is not a party of family settlement
Marriage expenses	Member of HUF can sue for marriage expenses even he is not a party to contract.
Acknowledgement	If one of the parties to a contract acknowledges the payment to a third party as an agent, then it will be a binding contract.
Assignment	The assignee can enforce the contract even he is not a party to contract.
Covenant running with the land	Purchaser of land is bound by certain duties affecting land.
Agency	Contract entered into through an agent is binding on principal
No Consideration, No Contract – Exceptions (Section 25)	
Natural love and affection	Requirement – a. Written & Registered. b. made on account of natural love and affection. c . between parties standing in a near relation of

	each other.
Past voluntary services	A promise to pay for past voluntary services is binding even there is no consideration.
Gift	The gift actually made is valid even though it is made without consideration
Agency	Consideration is not required for the creation of an agency
Promise for charity	If liability created on faith of promisor then promisor is liable to pay otherwise not.
Time barred debt	Requirements– a. written b. signed by debtor or his agent
Bailment.	No consideration is required to effect the contract of bailment.

CHAPTER 4 - CAPACITY OF PARTIES

Introduction	A person is not competent to contract under if he is a Minor or Unsound mind or Disqualified by any Law.
Minor	
Age of minority	Person who is under 18 years of age is minor. When guardian is appointed by a court, he attains majority at the age of 21 years.
Minor agreements	<ul style="list-style-type: none"> ➤ An agreement with or by a minor is void ab initio. (Mohribibi vs dharmodas ghosh) ➤ Any agreement which is of some benefit to the minor is valid ➤ Minor cannot ratify his agreement after attaining the age of majority means agreement with minor is void and cannot be made valid by later acceptance. ➤ If a minor by misrepresenting his age, induced the other party to contract with him, he cannot be sued for fraud. So, we can say minor can always plead minority. ➤ Minor cannot enter into a contract of partnership, he may with the consent of all the partners, be admitted to the benefits of partnership. ➤ Minor cannot be adjudged insolvent. ➤ Minor can be an Agent. ➤ Minor cannot be a principal. ➤ The parents of a minor are not liable for agreements made by a minor. The parents can be held liable only when the child is contracting as an agent for the parents. ➤ A contract entered in to by a guardian on behalf of minor and for the benefit of the minor is binding on him. However, the guardian cannot sell immovable property on behalf of the minor without the permission of the court. ➤ A minor is liable for the necessities supplied to him or his dependents. He is not personally liable, only his property is liable. Food, cloth, education, shelter are some examples of necessities. Property of minor is liable for reimbursement for supply of such items as well as loans for the same

Persons of Unsound Mind	<ul style="list-style-type: none"> ➤ Lunatics: - He can enter into contracts during the period when he is of sound mind. ➤ Idiots: - An agreement of an idiot, like that of a minor is VOID. ➤ Drunken / Intoxicated Persons- His position is similar to that of a lunatic. <p>The soundness of mind is required only at the time of making a contract. A person who is usually of unsound mind may also enter into contract, when he is of sound mind.</p>
Disqualified Persons	Alien Enemies, Foreign sovereigns and ambassadors, Convicts, Insolvents, Joint stock company & corporation incorporated under a special Act
<u>CHAPTER - 5 FREE CONSENT</u>	
Coercion Sec 15	
Definition	<p>Consent is said to be caused by coercion when it is obtained by:</p> <ul style="list-style-type: none"> ➤ Committing or threatening to commit any act forbidden by Indian Penal Code. ➤ Unlawful detaining or threatening to detain any property. <p>Eg.1 X threatens to shoot Y if he does not lend him Rs.5000 and Y lends the money.</p> <p>2. A threatens to Kill B's son if he does not sell his house to him.</p>
Effects	<ul style="list-style-type: none"> ➤ The Contract is VOIDABLE, at the option of the party whose consent was obtained by coercion. ➤ The aggrieved party must restore any benefit received under the contract. ➤ The burden of proof, that coercion was used lies on the party who wants to set aside the contract on the plea of coercion. ➤ Threat to commit suicide amounts to coercion.
Undue influence Sec 16	
Definition	<p>A contract is said to be induced by undue influence where,</p> <ul style="list-style-type: none"> ➤ the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other. ➤ he uses the position to obtain the unfair advantage over the other.
Effects	<ul style="list-style-type: none"> ➤ Contract is voidable at the option of the party whose consent was so obtained. ➤ Restore of the benefit received by the party entitled to avoid the contract.
Burden of proof	Burden of proof that the contract was not induced by undue influence lies on the person who was in a position to dominate the will of the other.
Fraud Sec 17	
Definition	Fraud means and includes any of the following acts committed by a party committed by a party to a contract or with his connivance, or by

	<p>his agent, with the intention to deceive or to induce another party thereto or his agent, to enter into the contract:</p> <ul style="list-style-type: none"> ➤ The suggestion that a fact is true when it is not true by one who does not believe it to be true. ➤ The active concealment of a fact by a person who has knowledge or belief of the fact. ➤ A promise made without any intention of performing it. ➤ Any other act fitted to deceive. ➤ Any such act or omission as the law specially declares to be fraudulent.
Effect of Fraud	<ul style="list-style-type: none"> ➤ Contract being voidable at aggrieved party's option. ➤ Restore of benefits. ➤ The aggrieved party can also sue for damages, if any. <p>Note- The right to avoid contract is not available where the aggrieved party has ability to discover the truth by ordinary diligence or means.</p>
Can silence be Fraudulent?	Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.
Exception to the rule	<p>a) Where there is a duty to speak-</p> <ul style="list-style-type: none"> ➤ Fiduciary relationship- (Relation based on trust like parent-child, doctor - patient etc) ➤ Contract of Insurance ➤ Contract for sale of immovable property ➤ Allotment of shares ➤ Contract of marriage ➤ Contracts of family settlement <p>b) Where the silent is equivalent to speech</p> <p>Eg. B says to A - "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.</p>
Misrepresentation Sec 18	
Definition	<ul style="list-style-type: none"> ➤ Misrepresentation means a representation when wrongly made either innocently ➤ Misrepresentation is a false statement which the person who is making it honestly believes it to be true or which he does not know to be false. ➤ It also includes non-disclosure of material facts without any intention to deceive the other party.
Effects	<ul style="list-style-type: none"> ➤ The contract as voidable at the option of aggrieved party or he may insist that the contract be performed in actual position. ➤ Restore of Benefits.
Mistake Sec 20, 21 and 22	
Definition	Mistake may be defined as an erroneous belief concerning something. It may be of two kinds: 1) Mistake of law 2) Mistake of fact
1. Mistake of Law- Mistake of law may be of two types: -	
a. Mistake of law of	Everyone is deemed to be conversant with the law of his country,

land	therefore it does not give right to parties to avoid the contract.
b. Mistake of foreign law	Mistake of foreign law stands on the same footing as the 'mistake of fact'. Here, the agreement is void.
2. Mistake of fact may be two types: -	
a. Bilateral Mistake	<p>Where the parties to an agreement misunderstood each other and are at cross-purposes, there is a bilateral mistake. In case of bilateral mistake of essential fact, the agreement is void ab inito.</p> <p>Bilateral Mistake have 2 types-</p> <p>Mistake as to subject matter – mistake as to quality, quantity, identity, title or price of subject matter</p> <p>Mistake as to possibility of performance- Physical or Legal impossibility</p>
b. Unilateral Mistake	<p>Where only one of the contracting parties is mistaken as to a matter of fact, the mistake is a unilateral mistake. In case of unilateral mistake, a contract remains valid.</p> <p>In case of mistake as to identity of a person or character of a written document the contract is absolutely void.</p>

CHAPTER 6 LEGALITY OF OBJECT & CONSIDERATION

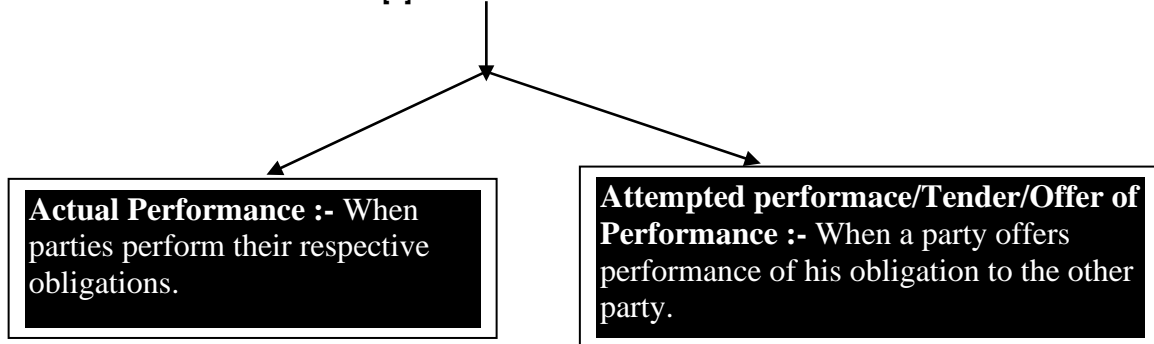
Cases of unlawful object and consideration Sec 23	<p>Every agreement of which the object or consideration is unlawful is void.</p> <ul style="list-style-type: none"> ➤ If the consideration or object for a promise is such as is forbidden by law, the agreement is void. ➤ If agreement is of such a nature that, if permitted, it would defeat the provisions of any law, such an agreement is void. ➤ An agreement whose object or consideration is to defraud others, is unlawful and hence void. ➤ If an agreement involves or implies injury to the person or property of another, such an agreement is unlawful and void. ➤ An agreement, whose object or consideration is immoral, is illegal and therefore void. 'Immoral' & 'Sexual immorality'. Interference with marital relations.
Agreement which are opposed to public policy	
Trading with an alien enemy	Agreement with an alien enemy is Void.
Interfering with the course of justice	An agreement the object of which is to interfere with the course of justice E.g.-An agreement to influence a judge to induce him to decide the case in a party's favor.
Agreement for stifling criminal prosecution	Any agreement which seeks to prevent the prosecution of a guilty party is opposed to public and is void. e.g.-Where A promises B to drop a prosecution which he was instituted against B for robbery, and B promises to restore the value of the thing taken, the agreement is void.
Maintenance & Champerty	<p>Maintenance" is an agreement to give assistance, financial or otherwise to another to enable him to bring or defend legal proceedings.</p> <p>e.g.- A' offers to pay 'B' Rs. 2,000 if 'B' will sue C. A's motive is to annoy</p> <p>This agreement between 'A' & 'B' is maintenance agreement.</p>

	<p>“Champerty” is an agreement whereby one party is to assist another to bring an action for recovering money or property and is to share in the proceeds of the action.</p> <p>e.g.- A agrees to pay expenses if B sues C, and B agrees to give ‘A’ ½ of any proceeds received by ‘B’ as a result of the said suit. This is a champerty agreement.</p>
Traffic in public offices	Agreements for sale or transfer of public offices or for appointments to public offices or agreement to procure public title like ‘padma vibhushan’ in consideration of money are illegal. E.g.- A promises to obtain for B an employment in the public service. and B promises to pay Rs. 1,000 to A. the agreement is void
Agreement crating an interest opposed to duty	An agreement which tends to create a conflict between interest and duty is illegal and void e.g.- An agreement by an agent with a third party whereby he would be enabled to make secret profits is illegal and void.
Marriage Brokerage agreements	An agreement to negotiate marriage for reward is illegal and void. e.g- When a ‘Purohit’ was promised Rs. 200 in consideration of procuring a wife for the defendant, the agreement was held invalid and the money could not be recovered.
If the object or consideration is partially unlawful Sec 24	<ul style="list-style-type: none"> ➤ When an agreement contains several distinct promises to do things legal and also other things illegal. ➤ If legal part can be separated from the illegal part, the legal part is a Valid contract and the illegal part is void agreement. ➤ If legal part cannot be separated from the illegal part, the whole agreement is illegal and void.
Void Agreements	
Restraint of marriage	Every agreement in restraint of the marriage of any person, other than a minor, is void.
Agreement in restraint of trade	<p>Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> ➤ Sale of goodwill – The seller of business can be restrained from carrying on a similar business, within specified local limits or reasonable time. ➤ Partners agreement-In many cases an agreement in restraint of trade among the partners (Existing or retiring or at dissolution) is valid. ➤ Trade Combinations – An agreement, the primary object of which is to regulate business and not to restraint it, is valid. But if an agreement attempts to create a monopoly, it would be void. ➤ Negative stipulations in service agreements- An agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else, is not restrain of profession and is valid.
Agreements in restraint of legal proceedings	<ul style="list-style-type: none"> ➤ Every agreement by which any party thereto is restricted absolutely from enforcing his legal rights is void. ➤ Every agreement which limits the time within which he may thus enforce is rights is void.

	<p>Exceptions-</p> <ul style="list-style-type: none"> ➤ agreement that any dispute shall be referred to arbitration, is valid. ➤ agreement “not to file an appeal” in a higher court, is valid. ➤ agreement to select one of the two courts, which are equally competent to try the suit, is valid.
Uncertainty	Agreements, the meaning of which is not certain are void.
Wagering Agreements	<p>Essentials:</p> <ul style="list-style-type: none"> ➤ Literally the word ‘wager’ means ‘a bet’. ➤ wagering agreements are nothing but ordinary betting agreements. ➤ There must be a promise to pay money or money’s worth. ➤ The event must be an uncertain one. If one of the parties has the event in his own hands, the transaction not wager. ➤ Each party must stand to win or lose under the terms of agreement. ➤ No party should have a proprietary interest in the event. <p>Special Transactions</p> <p>a. Horse Race-Agreement to pay a price Rs.500 or more to the winner of horse race not held as wager.</p> <p>b. Lotteries- (a) Unauthorized -void and also illegal under section 294A of the Indian Penal Code (b) Authorized by the Govt.-void but not illegal under section 294A of the Indian Penal Code</p> <p>c. Speculative transactions- (a) if based on fair transaction and genuine intention-Generally valid (b) if based on gambling purpose (transact by payment or receipt of the difference in price)- Void</p> <p>d. Crossword Puzzles- (a)where prizes depend upon a chance or luck-Void (b) where prizes depend upon skill and intelligence-Valid</p> <p>e. Collateral transactions- Though a wagering contract is Void, transactions collateral to wagering transactions may be Valid(not affected).</p>
Impossibility	a. Agreements Contingent on impossible event or to do impossible act is void.

CHAPTER 7 PERFORMANCE OF CONTRACT

[A] TYPES OF PERFORMANCE: Sec 37



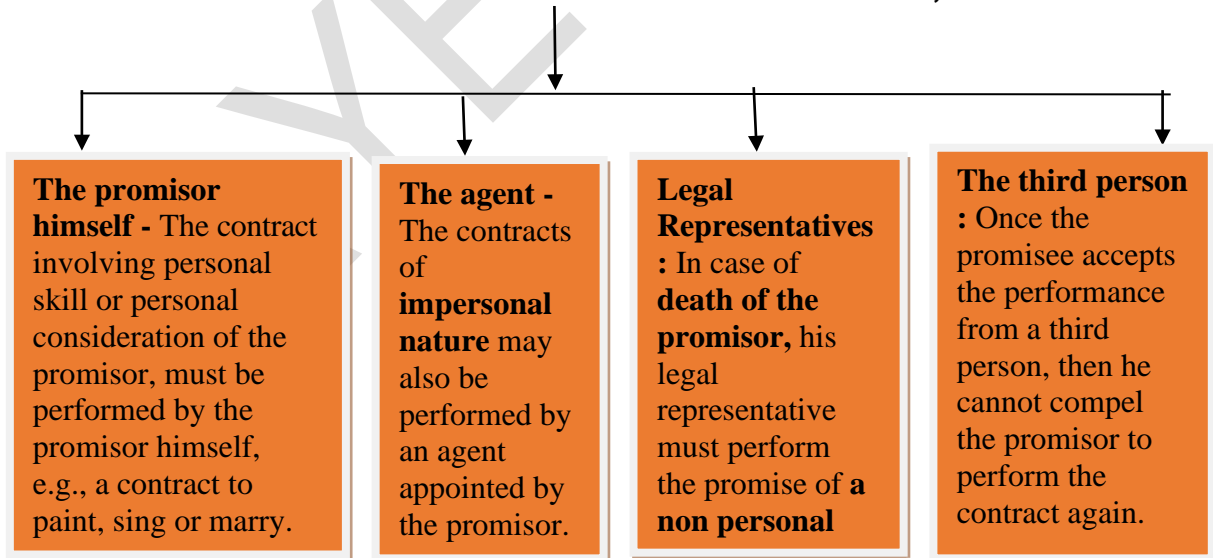
[B] EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE BY PROMISEE: Sec38

The promisor is discharged from his liability. Moreover, the promisor shall not be responsible for non performance of the contract.

[C] EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE :Sec 39

When a party to a contract has refused to perform or has disabled himself from performing his entire promise then other party may terminate the contract

[D] BY WHOM CONTRACT MAY BE PERFORMED : Sec 40,41 and 42

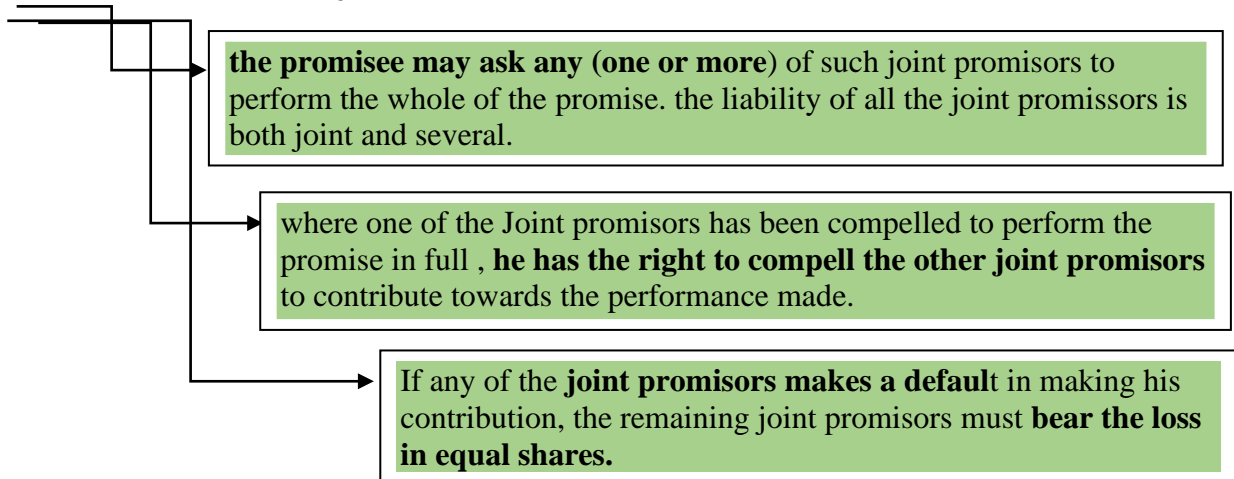


[F] **Joint Promisors : Sec 42** When two or more persons have made a joint promise, **all such persons must jointly fulfil the promise.**

If any of them dies - his legal representatives must, jointly with the surviving promisors, fulfil the promise.

If all of them die - the legal representatives of all of them must fulfil the promise jointly.

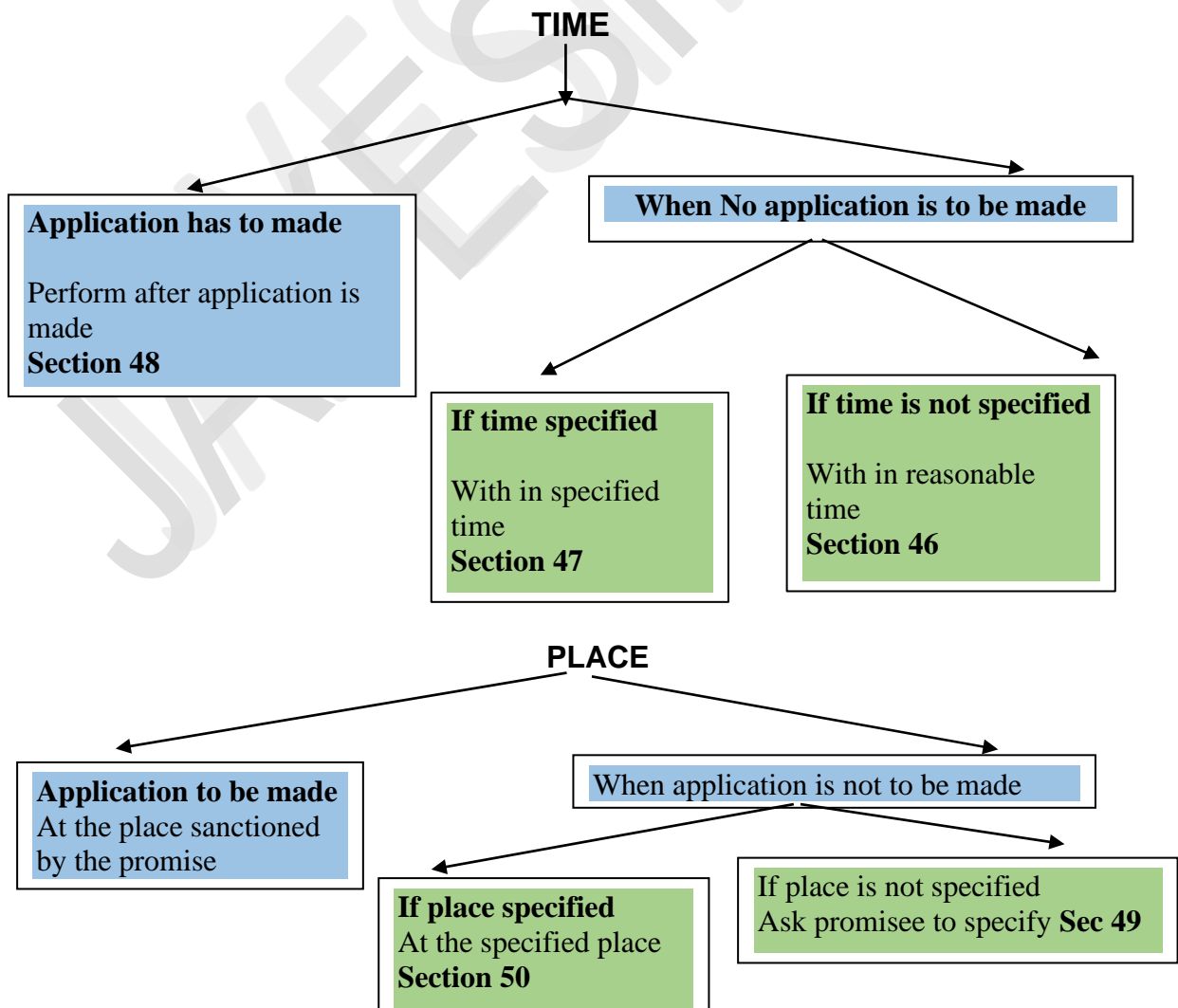
Rules related with joint Promises Sec 43 and 44



[G] Joint Promisees :

1. In the cases where a person made a promise to 2 or more persons jointly, **all the promisee jointly can demand** for performance.
2. **After the death** of any of them with **the representatives** of such deceased person jointly with the survivor or survivors
3. After the **death of the last survivor**, with the representatives of all jointly. One of the joint promises cannot sue for.

[H] TIME AND PLACE FOR PERFORMANCE OF THE PROMISE :



[I] RECIPROCAL PROMISES : Sec 51 to 58

[a] MEANING :

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

[b] KINDS OF RECIPROCAL PROMISES :

1. When reciprocal promises to be simultaneously performed - **no promisor need perform his promise** unless the promisee is ready and willing to perform his reciprocal promise. **Sec 51**

2. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract - they **shall be performed in that order.** **Sec 52**

3. In reciprocal promises one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented;
and
he is entitled to compensation from the other party for any loss he may sustain in consequence of the non- performance of the contract. **Sec 53**

4. If the promisor who has to perform his promise first, fails to perform it, he cannot claim performance of the other's promise, and is also liable for compensation for his non- performance. **Sec 54**

5. When a party to a contract promises to do certain thing at or before the specified time, and fails to do the contract, **becomes voidable at the option of the promisee**, if the intention of the parties was that time should be of essence of the contract. **Sec 55**

How to find out – “time is essence or not”?

for delivery of goods	time is essential
Payment	may not be essential
sale of goods like gold, silver, shares	time of delivery is of the essence of the contract
repayment of the mortgage money	can not be regarded as an essential condition
contract to sell land	time of completion is not strictly enforced

If time is not essential , the contract **does not become voidable** but the promisee is entitled to compensation from the promisor.

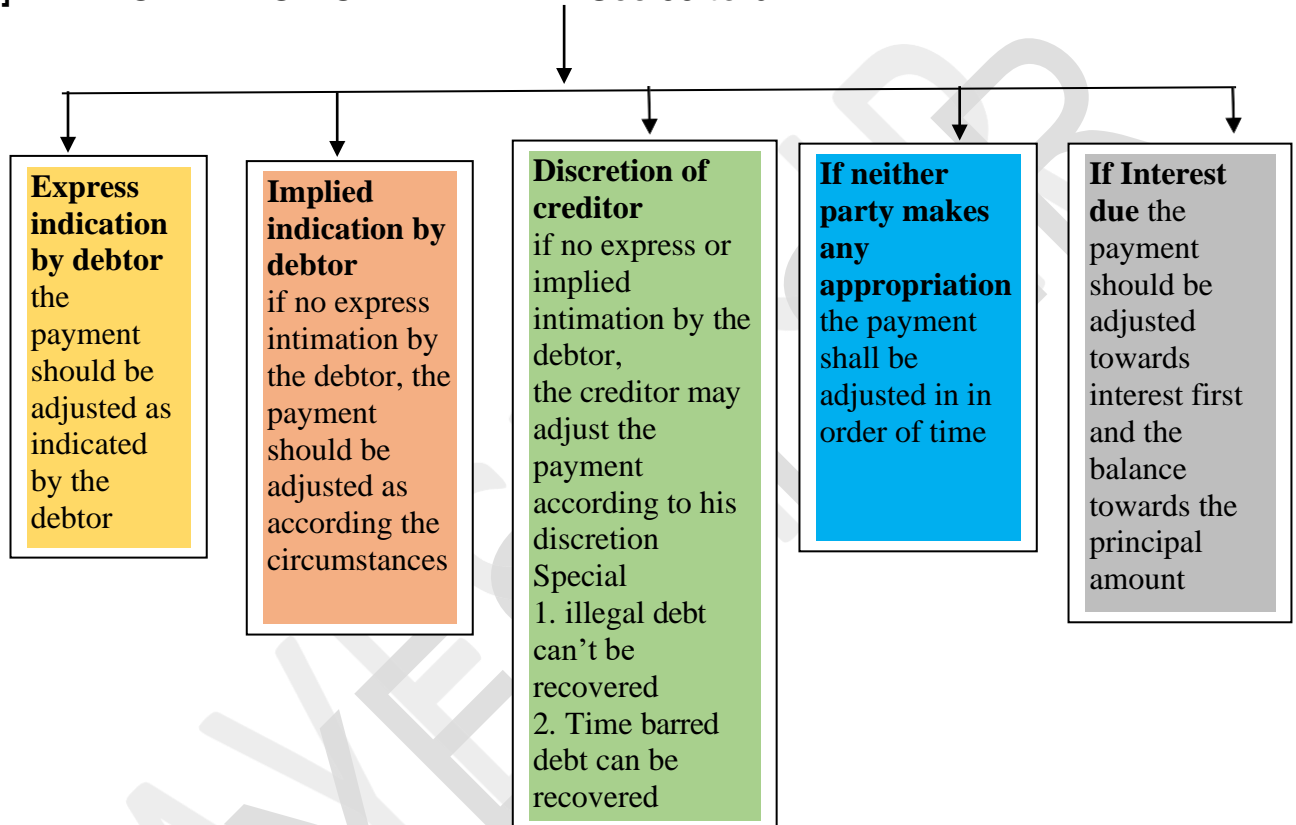
Even where **time is not essential** it must be **performed within a reasonable time**; otherwise it becomes voidable at the option of the promisee.

6. An agreement to do an act impossible in itself is void. **Sec 56**

7. Where there is reciprocal promise to do things legal and also other things illegal, and the legal part can be separated from the illegal part. **The legal part is a contract and the illegal part is void agreement. Sec 57**

8. In the case of an **alternative promise**, one branch of which is legal and other illegal, the legal branch alone can be enforced. **Sec 58**

[J] APPROPRIATION OF PAYMENT : Sec 59 to 61



[K] SUCCESSION & ASSIGNMENT

SUCCESSION : When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, devolve on the legal heir. Suppose, a legal heir succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life- time. But the liability of legal heir will be limited to the extent of the property inherited by him.

ASSIGNMENT : Where the party to a contract transfers his rights, titles or interest in a contract, to some other persons or persons, he is said to have assigned the contract.

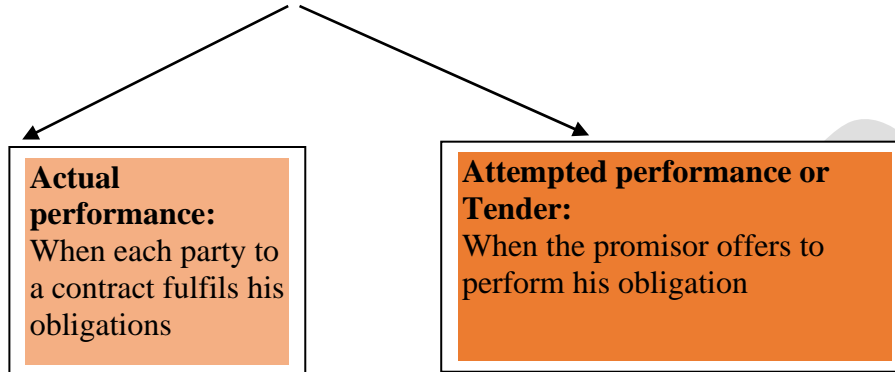
only the rights and not the obligations under the contract can be assigned.

CHAPTER 8 DISCHARGE AND BREACH OF CONTRACT

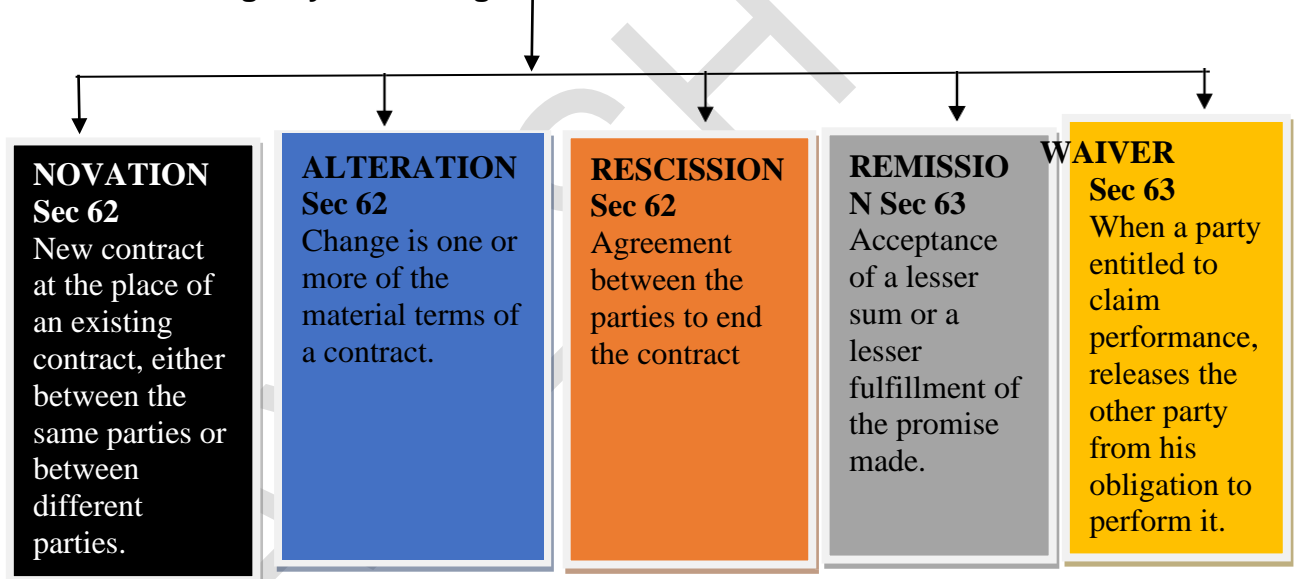
DISCHARGE OF CONTRACT :

When the rights & obligation arising out of a contract are extinguished, the contract is said to be discharged.

[1] Discharge by performance :

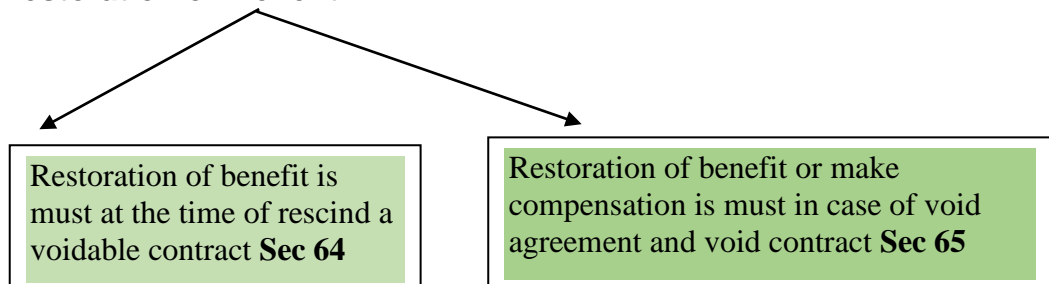


[2] Discharge by mutual agreement: Sec 62-67



Some other provisions :

1. Restoration of Benefit

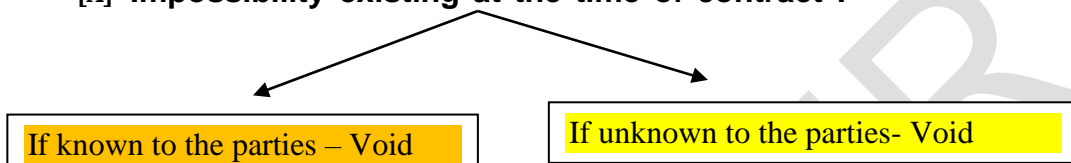


2. Rescission must be communicated to the other party in the **same manner as a proposal is communicated**. Similarly, a rescission may be revoked in the same manner as a proposal is revoked. **Sec 66**

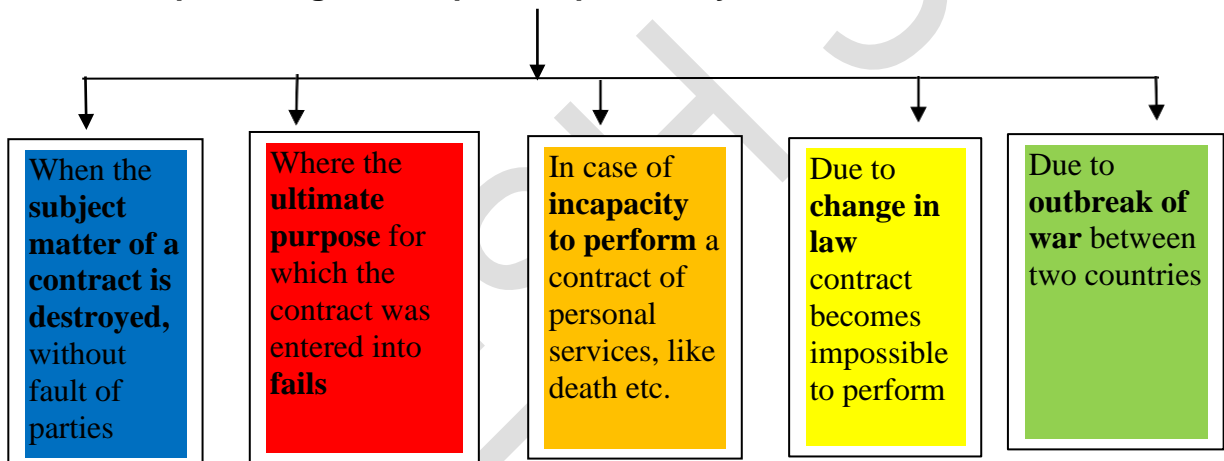
3. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused to any non performance caused thereby. **Sec 67**

[3] **Discharge by impossibility of performance : Sec 56**

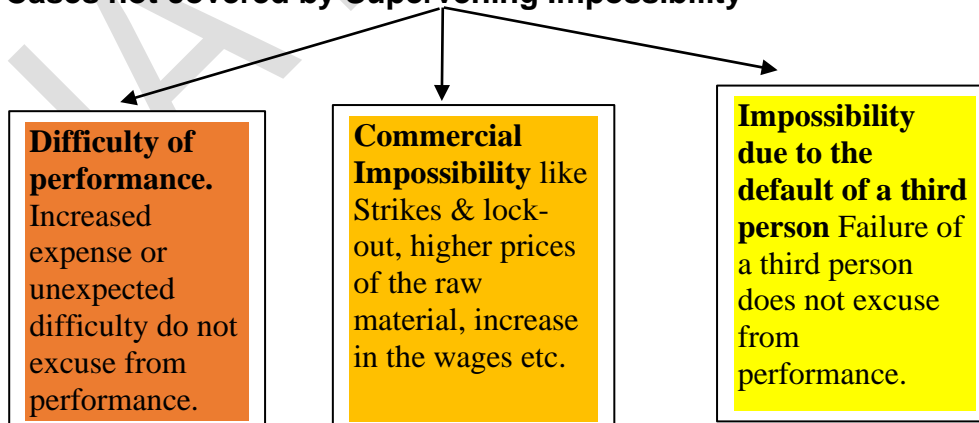
[A] **Impossibility existing at the time of contract :**



[B] **Supervening/ Subsequent impossibility/ Frustration :**



Cases not covered by Supervening Impossibility-



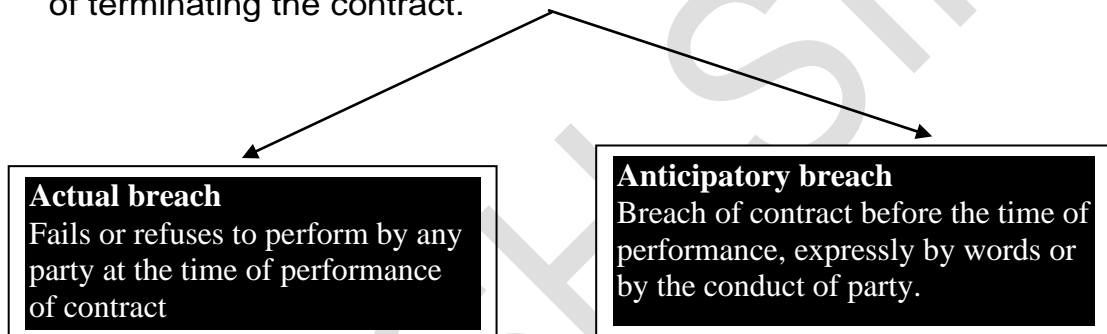
[4] **Discharge by lapse of time:** As a matter of fact, the contracts must be performed within the period of limitation, as specified by the Limitation Act, 1963.

If the contract is not performed and the aggrieved party does not enforce his rights within the limitation period (like 3 years), then he is debarred from enforcing the contract.

[5] Discharge by operation of law:

- (1) By death
- (2) By insolvency
- (3) By **unauthorized alteration** in the terms and conditions of the contract.
- (4) **Merger**- An inferior right contract merges in to superior right contract, the former stands discharged automatically.

[6] Discharge by breach of contract : Breach of contract also has the affect of terminating the contract.



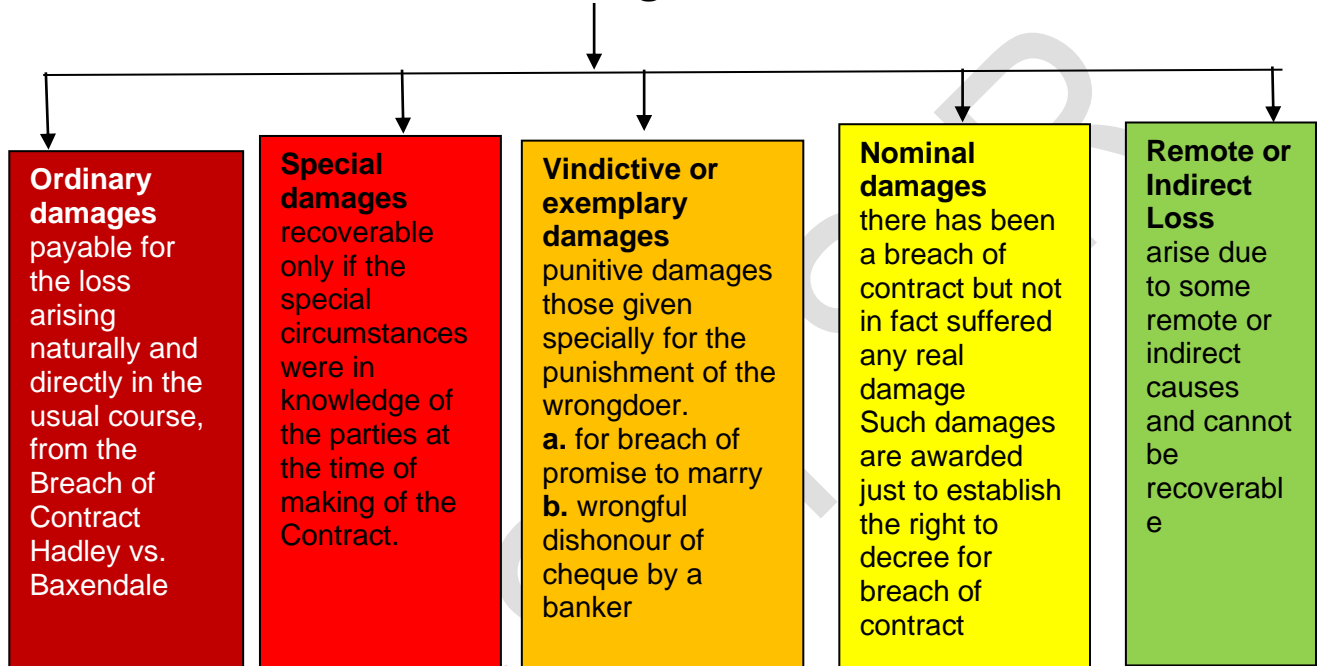
Effect of an anticipatory breach

1. May either **treat the contract as rescinded** and sue the other party for damages.
2. May elect not to rescind but to treat the contract as **still operative** and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

CHAPTER 9 REMEDIES ON BREACH OF CONTRACT

Rescission of contract: When a contract is broken by one party, the other party may treat the contract as rescinded and is entitled to compensation for any damages that he might have suffered.

Suit for Damages : Sec 73



Damages agreed upon in advance:- Sec 74

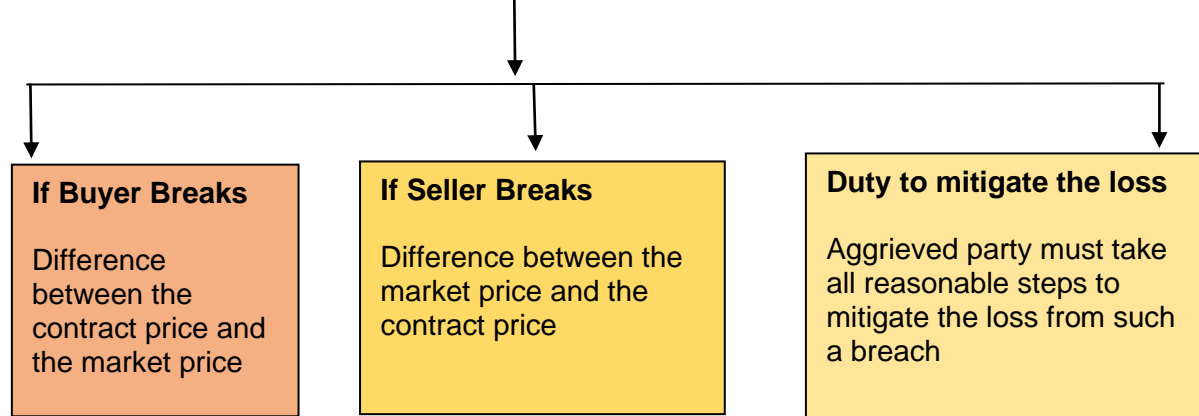
Liquidated damages : a fair and genuine pre- estimated amount of damages

Penalty : highly disproportionate and unfair pre- estimated amount of damages

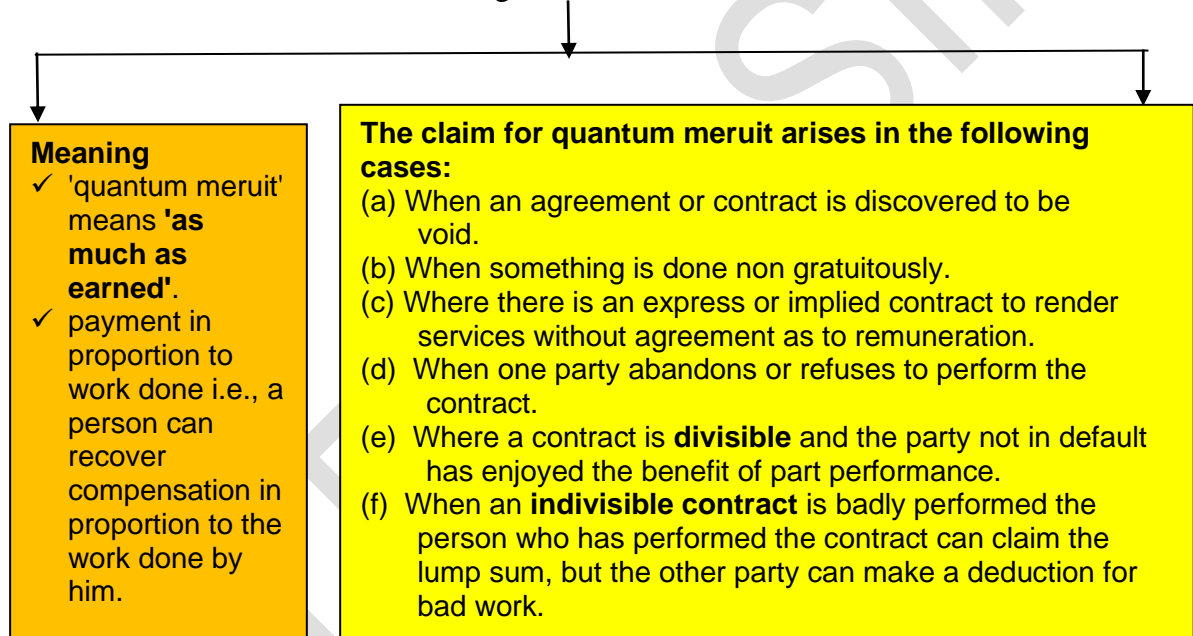
Reasonable compensation- The Courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract.
If the parties have fixed what the damages will be, the courts will never allow more. But the court may allow less.

Exception: Where any person gives any bond to the CG or SG for the performance of any public duty ,on breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

HOW TO CALCULATE DAMAGES :



Suit for Quantum Meruit



Suit for Specific Performance

- ✓ the actual carrying out the respective obligations by both the parties.
- ✓ Because sometimes, the damages are not an adequate remedy for breach of the contract.
- ✓ It is usually granted in contracts connected with land, buildings, rare articles and unique goods having some special value to the party.

Suit for Injunction

- An order of the courts restraining a person from doing something.
- It is, usually, issued in case where the compensation in terms of money is not an adequate relief.
- The injunction is a mode of securing the performance of the negative terms in the contract.

CHAPTER 10 CONTINGENT & QUASI CONTRACT

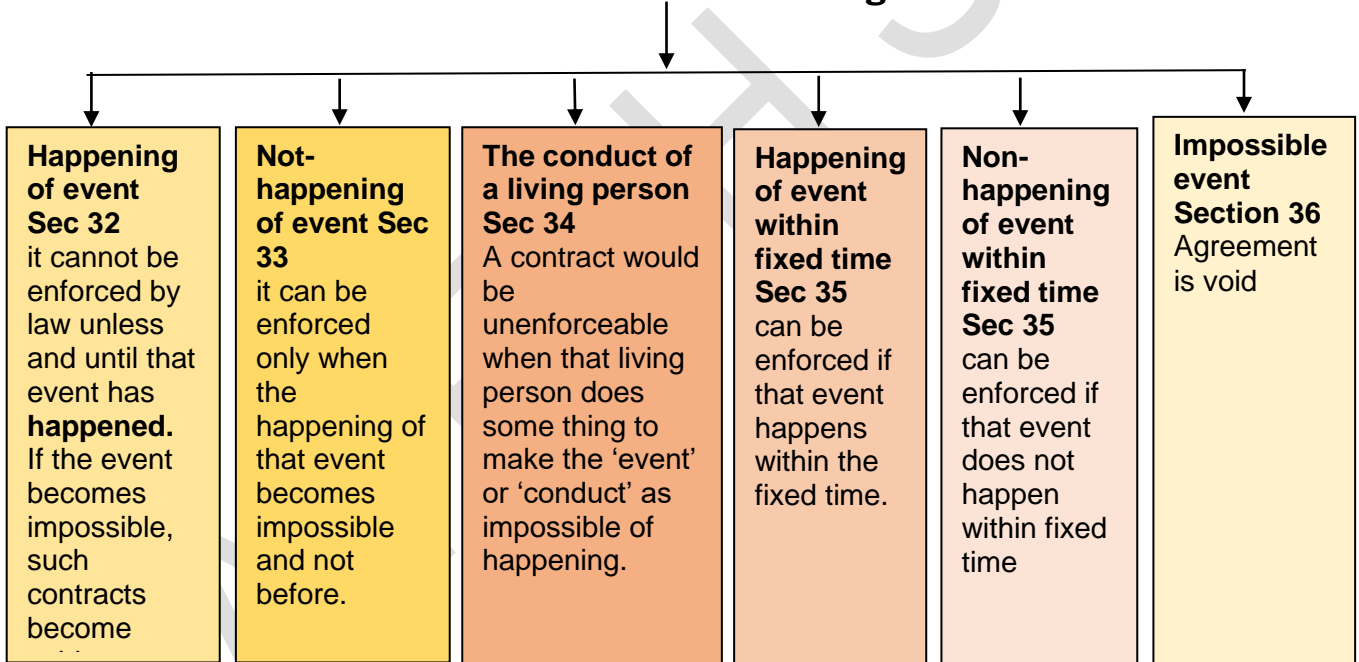
DEFINITION (Section 31) - contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen.

ESSENTIAL ELEMENTS

- a. it must fulfil the basic requirements of a valid contract.
- b. must depend upon the happening or non-happening of some future event.
- c. future event, upon which the performance of a contract depends, must be an uncertain event.
- d. the uncertain event must be independent or ancillary to the contract.

RULES

Enforcement of contracts contingent on



DIFFERENCE WAGERING AGREEMENT AND CONTINGENT CONTRACT

S.no	Wagering Agreement	Contingent Contract
1.	It is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	It is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
2.	the uncertain event is the sole determining factor	the event is only collateral.
3.	it is essentially of a contingent nature	it may not be of a wagering nature
4.	it is void agreement	It is valid contract
5.	parties have no other interest in the subject matter of the agreement	This is not so in case of a contingent contract

except the winning or losing of the amount

QUASI CONTRACT : (Sec. 68 to 72)

Meaning

- a. An obligation imposed by law upon a person for the benefit of another even in the absence of a contract.
- b. no man must grow rich out of another person's costs.
- c. these are based on the equitable principle that a person shall not be allowed to enrich himself at the expense of another.

Kinds of Quasi Contracts

1. Supply of necessities to incompetent persons Sec 68 person who has furnished necessities to incompetent persons is entitled to be reimbursed from the property of such incapable person.

2. Payment by an interested person Sec 69 A person who is interested in the payment of money which another is bound by law to pay and who, therefore, pays it, is entitled to be reimbursed by the other.

3. Non-Gratuitous' Acts Sec 70 Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefits thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

4. Finder of goods Sec 71 When, a person finds certain goods, belonging to some other person, the goods do not become the property of the finder.

Duties of finder-

- a. keep the goods with care
- b. trace the true owner and return the goods to him
- c. not appropriate to his own use

Rights of Finder-

- a. recover expenses incurred by him for preserving the goods or finding the true owner
- b. sell the goods in the following two situations only-
 - a) Perishing nature goods
 - b) His expenses amount to at least 2/3 of the value of goods.

5. Payment of money or delivery of goods by mistake or under coercion Sec 71 If a certain amount of money is paid or something is delivered to a person by mistake or under coercion, the person receiving the money or goods must repay or return the same.