

* 16. Indian Contract Act *

* Chapter 16 *

* Contract Law *

- Law of contract is governed by Indian contract Act, 1872.
- This law came into force on 1st September, 1872. It has prospective effect.

* Offer Section 2(a)

"A person is said to make proposal when he signifies to another his willingness to do or not to obtain from doing anything with intent of taking assent of other person."

- Elements — There should be at least two parties are involved.
 - Offer may be for positive or negative act.
 - Willingness must be expressed to obtain assent of other party.

Imp

• Rules of valid offer.

- i] The offer must be clear, definite, complete and final.
- ii] Offer must be communicated to offeree.
- iii] Offer must be different from invitation to offer.

- iv] offer may be made by expressing words or oral or written or it may be implied.
- v] offer must be capable to create legal relationship.
- vi] offer may be general or specific.
- vii] offer may be conditional.
- viii] It should not contain term of non-compliance or which would amount to acceptance.

* Case law :- Carlil Vs. Carbolic Smoke Ball Company

Facts - A medical company advertised that their new miracle drug, a ~~sem~~-smoke ball, would cure peoples flu. It laid down that if anyone who used the drug as per printed directions caught influenza will be paid £100.

- Mrs. Carlil used the smoke balls as per ~~director~~ intrustion and caught influenza.
- When sued, Carbolic agrued the advertisement was not to be taken as serious, legally binding offer.
- It was merely an invitation to treat, and a gimmick.

Decision :- • The court held that it would appear to a reasonable man that carbolic had made a serious offer.

- It was further held that she was entitled to recover the reward as she has accepted the offer by complying the terms of the offer.

* Who can accept offer?

1) Specific offer — Specific offer can be accepted by only such person to whom offer is made.

2) General offer — General offer can be accepted by any person from the public who have fulfilled the terms of offer.

* Types of offer

1) General offer :-

- General offer means an offer made to the public at large & can accepted by anyone from the general public.
- It is not necessary for offeree to be known to the offeror.

2) Specific offer :-

- Specific offer means an offer made to definite persons or group or group of persons.
- It can be accepted only by the person to whom offer is made.

3) Cross offer :-

- When two persons make identical offers to each other, in ignorance of each other's offer, it is called a cross offer.
- A cross offer does not lead to an agreement as both are offers and there is no acceptance.

4) Counter offer :-

- When the offeree instead of accepting the offer made to him straightway, imposes conditions which have the effect of modifying or varying the offer, he is said to have made a counter offer.
- Counter offers amounts to rejection of original offer.
- This types of offer permits a person to decline a previous offer & allows further negotiations.

5) Standing Offer / Open / Continuing offer :-

- standing offer, open or continuing offer means an offer is allowed to remain open for acceptance over a period of time is known as a standing offer, open or continuing offer.

* Acceptance

Section 2(b) :- A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise.

* Modes of Accepting offer -

i] Express Acceptance - Acceptance which is made by oral or written communication.

ii] Implied Acceptance - Acceptance which is made by the conduct of the parties.

* Rules of Valid Acceptance :-

i] Absolute & Unqualified - Acceptance must be absolute and unqualified. Acceptance is valid only when it is absolute and unqualified or unconditional.

ii] Communication :- The offer must be communicated to the offeror. Acceptance is complete only when it is communicated to offeror. A mere mental determination of acceptance is not an acceptance.

iii] Time limit :- Acceptance should be done within prescribed / specified time. If there is no time specified then within reasonable time, or before the offer lapses.

iv] Acceptance before the Lapse of offer :- Acceptance should be communicated before the offer lapses, or terminates, or is revoked by the offeror. There can be no acceptance of a revoked offer.

v] Mere silence is not acceptance :- Mental acceptance, failure to answer or silence is not acceptance, as it is not communicated. Mere silence does not amount to acceptance.

vi] Acceptance to offeror only :- The acceptance should be communicated to the offeror only, in order to be effective.

vii] Acceptance by offeree :- Acceptance should be communicated by the offeree or by an authorised person to make it effective.

* Agreement [Section 2(e)]

- Every promise and every set of promises, forming the consideration for each other is an agreement.
- There must to be two or more persons to make an agreement. One person can't enter into agreement with himself.
- The meeting of the minds is called consensus-ad-idem. It means both the parties must agree about the subject matter of the same sense and at the same time.

* Contract [Section 2(h)]

- An agreement enforceable by law is a contract.
- Only those agreements which can be enforced by law becomes a contract.

* Essentials of Valid Contract -

- 1) Correct and proper offer and acceptance.
- 2) Intention to create legal relationship.
- 3) The agreement must be certain or capable of being certain.
- 4) There must be lawful object and consideration.
- 5) There must be legal capacity of parties.

- 6) There should be free consent.
- 7) The contract shall not be declared void by law.
- 8) There should be legal formalities between parties.

* Classification of Contract

1) On basis of Creation -

- Expressed contract :- It is expressed by words spoken or written.
- Implied contract :- It is done by other than words or written means conduct.
- Tacit Contract :- Contract made by conduct of parties. It is sub-category of Implied contract.
Eg. obtaining cash from ATM, Sale by fall of hammer in Auction.
- Quasi Contract :- Obligation by law. Ex:- finder of goods.
- E-contract :- It is by means of internet. There is offer and acceptance.

2] On basis of Validity :-

- Valid Contract (Sec 11) :- Which is enforceable by law.
- Void Contract . Sec. 2(g) :- Which is not enforceable by from starting.
- Voidable Contract . Sec. 2(j) :- Which enforceable in the option of aggrieved party.
- Illegal agreement :- Which is prohibited by law, and punishable in nature.
- Un-enforceable contract :- Which has technical defects.

3] On basis of Execution :-

- Executed Contract :- When both parties fulfilled their obligation.
- Executory contract :- When both parties not fulfilled their obligation.
- Partly executed or executory :- When one party has fulfilled their obligation.

4] On basis of Liability

- Bilateral contract - When both parties agree to perform contract.
- Unilateral Contract - Where only one party promises to perform contract.

Note

Void Contract is hybrid of void agreement & Contract.

- The void contract which becomes invalid due to some changes is called as void contract.
- Every present void contract is valid in past, but every present valid contract is not void in future.
- An un-enforceable contract can be made enforceable after correcting defects.



Consideration :- Section 2(d)

When at the desire of promisor, the promisor or any other person

- has done or abstained from doing something,
- does or abstains from doing something,
- promises to do or to abstain from doing something,

such act or abstinence is called as consideration for a promise.

* Rules of Valid consideration -

- i] Consideration must be at the desire of promisor
- ii] Consideration may move or come from promisee or any other person.
- iii] Consideration should be real not illusory.
- iv] Consideration may be present, past or future.
- v] Consideration should be of some value. It may or may not be adequate.
- vi] Consideration must be something more than what you are already bound to do.
- vii] Consideration must be legal. It should not be oppose to public policy.
- viii] Consideration may be positive or negative.

ix] Consideration should be for every contract

maxim :- Nudo pacto non oritur action, it means "No consideration, No contract."

* Following are exceptions to rule - No consideration, no contract.

- Natural love and affection

Sec. 25 (1) :- Agreement must be result of natural love and affection, it should be in written form. It should be registered. There must be immediate relation between both parties.

- Promise to pay past voluntary service

Sec. 25 (2) :- If it is a promise to compensate or pay to a person who has already done something voluntarily to promisor, then it is a valid consideration.

- Promise to pay Time Barred Debt

Sec. 25 (3) :- Promise to pay whole or part debt which is barred by limitation Act only if → it is in writing
→ Signed by both parties.

- Completed Gifts

Sec. 25 :- This rule does not apply to completed gifts which are given & accepted. Promise to gift is not valid.

- Agency :-
Section. 185 :- There is no consideration is required to create agency.

- Gratuitous Bailment :-
Sec. 148 :- Consideration does not affects valid bailment of goods. It is called as Gratuitous Bailment.

* Doctrine of privity of Contract :-

- Third party between a contract can give consideration but cannot sue.
- It simply means stranger to a contract cannot sue.
- Only those contract parties who involved in contract can sue.

Exeptions -

- 1) Beneficiary of Trust.
- 2) In case of family settlement - person to whom benefit agreement has made, can file suit.
- 3) In case of assignment - Assignee can enforce contract.
- 4) Estoppel by Acknowledgement of liability - The person who becomes agent of third party by acknowledgement

can be sued by such third party?

5) Agency Contract :- Principal may enforce contract enforced into by his agent.

6) official receiver :- In case of insolvency

* Capacity to contract :-

Eligible persons

- Major
- Sound mind
- person not disqualified by law.

Ineligible persons

- Minor
- Unsound mind
- person disqualified by law.

i) Minor.

Indian majority Act - Age of majority.

18 years

21 years

Generally

- If property of minor is under supervision of court
- If any guardian is appointed by law

Agreements with Minor -

- Void - ab - initio :- Void from very beginning.
- No Ratification :- Act done during minority, cannot be ratified by minor on obtaining majority.
- Rule of estoppel :- Not applicable even in false restitution representation.
- No ~~restitution~~ :- Restitution means recovering of something to its proper / true owner. Minor can't be directed to return benefit under a void agreement.
- False representation of age by Minor :- In this case, minor will have to restore back the property or money which he has acquired under a void agreement. Property / money traceable in his possession but minor is not personally liable.
- No specific performance :-
- Minor can be :- Beneficiary - Agent as principle can made liable.
- Partnership of Minor :- Minor can't be partner in a partnership firm. However he can admitted for benefit with consent of all partners.
- Minor can't be adjudicated as insolvent :- Minor can't be adjudicated as insolvent as he can't enter into contract.

- Minor can be shareholder :- A minor can be shareholder of fully paid up shares only. Through transfer, if he applies for registration of transfer through guardian.
Minor can become shareholder of Company if shares are gifted to him. That shares will be held by guardian until minor becomes major.
- Minor in tort :- If tort arises out of any contract minor will not be liable as it is indirect way of enforcing void agreement.
- Minor is competent to execute negotiable instruments :- Minor is not liable on ~~perimary~~ primary note executed by him.
- Parent's will not liable :- Minor's parents will not be liable for a contract formed by minor when minor as acted as agent of parents then parents are liable.
- If a contract is formed by parents / guardian / manager on behalf of minor for his benefit then contract is valid.
- Minor can always plead minority even in case of frauds.
- Minor's property liable for necessities.
 - Minor's property is liable for the supply of necessities & not the minor.
 - Loan taken to obtain necessities is recoverable by lender.

- What constitutes necessities it depends on case.
- An item will not be considered as necessary, if a person has already sufficient supply of things of some kind.
- property → inherited.

ii) Person of unsound mind

- Idiot : person who lost all of his mental power. It is permanent.
- Lunatic : person who suffers from intervals of sanity & insanity, its temporary.
- Drunken/Intoxicated : This situation is like lunatic as he can't think emotionally at those time of drunk or toxic.
- Law preassumes that every person is sound mind.
- Idiots can never ever enter into contract, but lunatic or drunken persons can enter into contract.

iii) Person disqualified by law :-

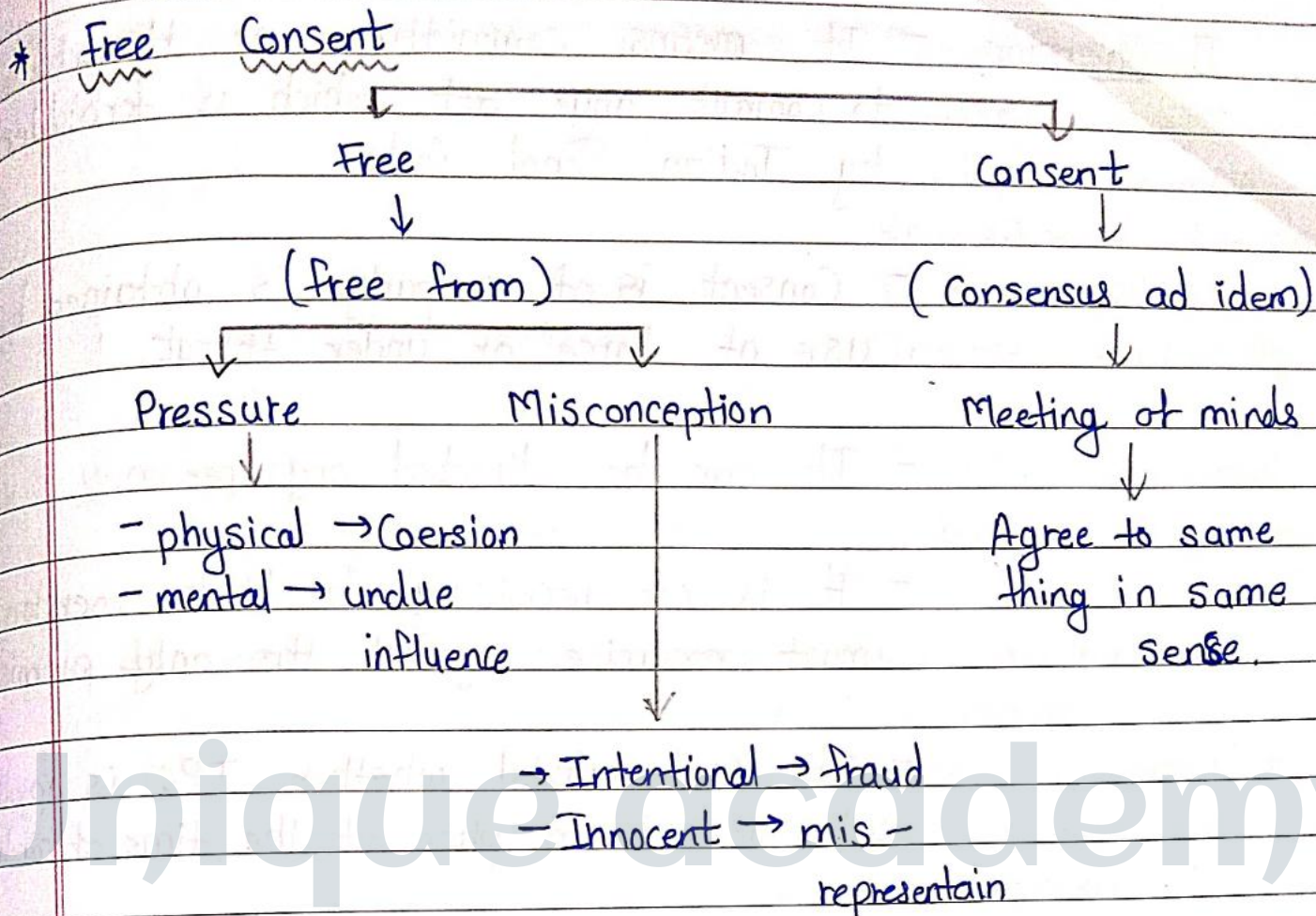
- Alien enemy :- It means any foreign citizen of country at war with India.
 - During war → cannot contract with foreign citizen and can't be sued.
 - Before war → If such contract is against public policy then it will be cancelled

→ If such contract is not against public policy then it will be suspended during war & then revived after war.

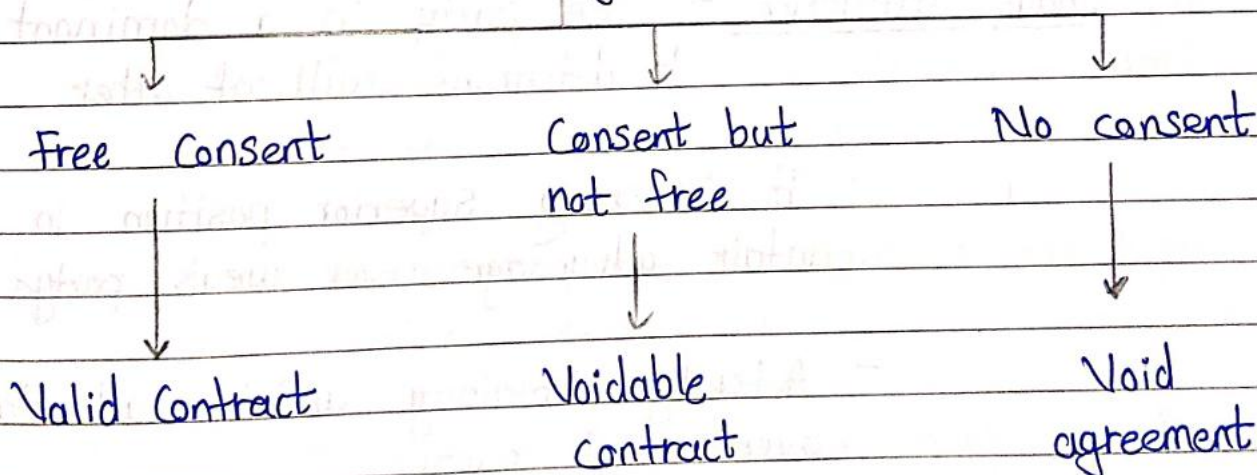
- **Convict** :- Convict can enter into contract after completion of imprisonment or when on suit is of civil nature.
- **Insolvent** :- Insolvent person's official receiver can enter into contract or he can himself enter into contract after discharge of insolvency.
- **foreign diplomate, Ambassador & representatives of States.**
- **Company** :- Company can't enter into regarding object beyond it's MoA & as also for purpose of which only natural persons can enter.
- **Married women** :- She can't make contract for her husband's property, but she can do it for her property.

* Voidable Contract.

— When contract is enforceable by one party or more party but not by other or others i.e. enforceable by aggrieved party it is a voidable contract.



Validity.



Note

Coersion
undue influence
fraud
Misrepresentation

} Contract is voidable.

Page 20

i] Coersion - It means committing or threatening to commit any act which is forbidden by Indian Penal Code.

- Consent of a party is obtained by use of force or under threat.

- It can be directed any person.

- It is not necessary that coercion must exercise against the only promisor.

- It is immaterial whether IPC is applicable or not in place at the time of contract.

- Threat to commit suicide / file a suit on false charge will amount to coercion.

ii] Undue Influence - One party in a dominant position to determine will of other.

- It is using superior position to obtain unfair advantage over weak party.

- Actually obtaining unfair advantage over weak party.

- The relation between parties should be near one it should not be strange.

- Dominating positions, Parent — child,
Master — Servant,
Teacher — students,
Religious Guru — Disciple,
Doctor — patient,
Trustee — Beneficiary

iii] Fraud — It means a intentional false statement given with intention to deceive other party?

It simply means — intentional false statement,
— or Active concealment,
— or intentional non-performance,
— or fraudulent act or omission,
— to deceive other party?

Effect → The contract under fraud is voidable contract at option to aggrieved party.

→ Aggrieved party has right to cancel or rescind the contract.

→ Aggrieved party has right to insist on specific performance.

→ Aggrieved party has right to claim the damages.

→ Whether ~~is~~ Silence is a fraud?

It is
not fraud

It is fraud

When silence
is equivalent
to speech

When it is duty
of a person to
speak

(insurance, marriage,
family arrangements,
prospective)

→ Silence will amount to fraud in following cases.

- Contract of Utmost good faith.
- Contract of Partnership.
- Contract of Guarantee.
- Parties are in fiduciary relationship.
- Statutory duty.
- Latent Defects.
- Changes in facts.

iv) Misrepresentation - Only parties to the contract shall be involved.

- The party thinks that he makes representation but in actual it is false.

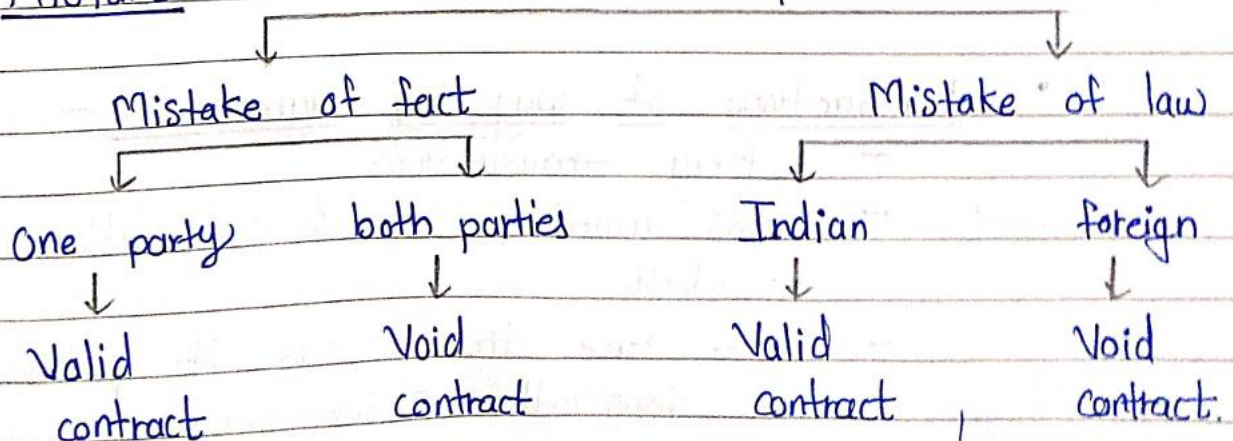
- Misrepresentation is done innocently & not to deceive other party.

- Other party acted as per contract unknown of mis-representation.

- Contract becomes voidable at the option to aggrieved party.

- Contract is valid when after misrepresentation where a party make misrepresentation, but the other party is not in fact, misled by such misrepresentation then contract can't be avoided by other party.

v) Mistake :- Mistake of parties



* Wagering Agreements :-

- Payment of money or its worth



on happening or a non-happening of some uncertain event.

- There are equal chances of gain/loss

→ No interest of parties in such events,

→ No control of parties,

→ Each party must stand to win or lose,

→ The intention to bet at the timing of making such agreements,

→ Promise must be conditional on a event of happening or non-happening.

• Transactions of wagering, but not actual wagering agreement -

- Contract of Insurance

- Chit fund

- Games of skill & athletic competition based on skill.

- Share market transactions

• Transactions of wagering agreements -

- Lottery transactions

- Cross word puzzles & competition based on skill.

- Horse race transactions if price amount is less than ₹500

- Speculative transactions, where parties have intention to settle the difference between contract price & market price of certain goods or shares on specific day.

- Effects
 - Expressly it is void in India.
 - It is illegal in Maharashtra & Gujarat.
 - Money deposited with a person to be paid to winning party, winner can't recover legally.
 - And on the other hand, the loser can recover his deposit from stakeholder.
 - If stakeholder pay the money to winner, the loser can't recover it from him.

• Effect on Collateral transaction

- Not void therefore it is valid from & enforceable by law.
- Broker can recover his brokerage.
- In case of authorised lottery it is valid.
- In case of unauthorized lottery it is void.

* Contingent Contract -

- A contract which is depends on happening or non-happening of collectral events.
-
- performance of original contract only if collectral even happen or may not be happen.

• Essentials :-

- i) Performance of original contract must be conditional. It should be depend on happening or non - happening of collateral event.
- ii) Collateral event must be uncertain.
- iii) Independent : collateral event must not form consideration of contract.

• Rules :-

- 1) It should be depend on happening of collateral event. It should be enforced after happening of event. When event doesn't happens or becomes impossible then contract will become void.
- 2) It can be depend on non-happening of collateral event. It is enforced when event doesn't happen or becomes impossible. When that event happens it becomes void.
- 3) It can be depend on happening of collateral event within fixed time. It can be enforced after happening of event within fixed time. When event doesn't happen or becomes impossible within fixed time it will become void.
- 4) It should be depend on non-happening of collateral event within fixed time. It can be

enforced when event doesn't happen and becomes impossible within fixed time. When collateral event happens within fixed time, then contract becomes void.

* Quasi Contract -

- It is based on "nemo debet locupletari ex aliena Jactura" it means unjust enrichment of one person at the cost of another.
- There is a obligation created by law known as 'Quasi - contractual obligations'.
- It is not a real contract in real sense as essential elements of contract are missing.
- It is not a contract but is alike or contract.
- It gives 'right in personam' & 'right in rem'.
- It doesn't arise from any agreement of parties.
- It is imposed by law to prevent unjust enrichment.

• Causes :-

- ↳ Supply of necessities to person who is incompetent to contract;

- Supplier is entitled to recover money from property of incompetent person.
- Incompetent person can't be held liable personally.

2) Right to recover money paid to another person :

- Payment is done by a person on behalf of another person.
- Payment shouldn't be voluntary.

3) Non-gratuitous Act :

Person who has done non-gratuitous act can recover money if following conditions are satisfied -

- Act done or goods delivered must be lawful.
- Person enjoyed benefit.

4) Finder of goods :

The duties of a person who is finder of goods -

- To take care of goods properly.
- To take reasonable steps to find true owner of goods.
- If goods are of perishing nature, then finder of goods can sell the goods.

- Can get re-imbursement for lawful expenses paid for above duties.

5) Payment of money or delivery of goods by mistake or under coercion.

* Discharge of Contracts :-

Modes of discharge of contract -

→ Permanence

→ Performance of Contract :-

- Actual performance : When promisor has fulfilled his obligation with in time & in prescribed manner.
- Attempted performance : When promisor offer to perform his obligation but promisee refuses to accept.
- Effect of 'refusal promisor to perform promise'
 - promisee may cancel the contract or continue the contract.
 - If promisee decide to continue, he can't end it later.
 - In both cases, promisee can claim damages for breach.
 - Only promisee can demand performance even if promise is made for benefit of 3rd person.

• Who should perform Contract :

- Promisor only : Contract involving personal skills or personal consideration.
Such contract comes to an end at death of party.

- Agent : Contracts not involving personal skill or consideration.
Only during lifetime of promisor.

- Legal Representative : Contract not involving personal skill or consideration.
Only if party dies before performance of contract.

- Third party : Only if party accept.

2) Impossibility of performance

i) Initial Impossibility :- Void ab initio

- Impossibility, may or may not be known to parties.
- But if at time of contract, only promisor knows about impossibility, or should have known with ordinary diligence promisee is entitled to claim compensation.

ii) Supervening Impossibility :-

- It means performance of promise become

impossible or illegal by occurrence of unexpected event. That event or reasons are given below :

- Accidental destruction of subject matter without of party.
- Non-existence or non-occurrence of thing that is responsible for performance.
- Incapacity to perform contract.
- Change of law.
- Out break of war.

iii] Non-applicability of supervening Impossibility (contract $\rightarrow$ void)

- Difficulty in performance because it has become more expensive or less profitable.
- Commercial hardships.
- Impossibility due to conduct of third person.
- Impossibility induced by party himself.
- Strikes, lock-out and civil disturbances.
- Failure of one of the several objects.

3) Lapse of time

- Contract is voidable at the option of promise in the contract where time is essential.
- Contract can't be avoided when time is not essential.

4) By Mutual Consent

i] Novation :- It is a substituting of existing contract by new contract with 100% consent.

- When terms & conditions of contract changes and parties are same then it is discharge of original contract.
- When term & conditions are same but, parties are same then it is also discharge of original contract.

ii] Alteration - It is changing of Term and conditions of original contract with mutual consent of parties.

iii] Recession - It is a canceling of contract with 100% mutual consent of parties.

iv] Remission - It is a lesser acceptance that the terms of contract.

v] Klaiver - When parties waives the rights / giving up on rights then contract discharges.

5) By Breach of Contract

Contract discharges by breach of contract

There are two types of breach

↓
Anticipatory
breach

↓
It is a failure of one party to fulfill its obligation before due date or during due date.

↓
Remedies

Case &
damages

wait

↓
Actual
breach

↓
It is failure of one party to fulfill its obligation on due date

↓
Remedies

Case

damages

*

Remedies

i] Rescission of contract : Aggrieved party may rescind or cancel the contract if obligation of his is absolved, and he is entitled to claim damages.

ii] Suit for specific performance : Aggrieved party can suit for specific performance if damages are not adequate.

iii] Suit for injunction : Stay order or injunction order means negating the term of contract.

iv) Suit for Quantum meruit :

- Claim for proportionate work done by non-faulty party.
- It is not applicable in case of -
 - Indivisible contract
 - Breach is due fault of person claiming compensation.
 - gratuitous work.

v) Suit for Damages : It is money compensation for loss suffered.

- Ordinary : It is payable for loss arising due to naturally & directly breach.
- Special : It is payable for loss arising due to special or unusual circumstances.
- Nominal : These are damages which are very small in amount. It is awarded to protect right of aggrieved party to claim damage. It is awarded when party has not suffered any loss due to breach.
- Vindictive : It is awarded only in two cases. When breach of promise to marry, it is injury to his/her feelings. When wrongful dishonour of cheque made by banker.

- Pre-fixed : The amount decided by the parties as compensation during formation of contract, in case of breach. It may be either -

- Liquidated damage (Reasonable estimation of likely loss in case of breach)

- Penalty (The amount fixed as the damages payable)

* Contract of Indemnity & Guarantee

- Definition : A contract of indemnity is a contract where one party saves another party from loss caused to him by conduct of promisor himself, or by conduct of any other person.

- forms : Indemnity Contract
Indemnity clause in regular contract.

- Essentials :

- All essentials of valid contract.
- Loss to one party.
- Indemnity by promisor.
- It may be expressed or implied.
- Reasons for loss.

- Insurance Contract : Insurance contract are also specific category of Indemnity contract. But, all Indemnity contracts are not Insurance contracts.
- Liability occurrence point : Liability does not exist at the time of entering into contract. It remains embedded in the contract & is triggered on the occurrence of loss.
- Rights of Indemnity holder : Promisee entitled to recover
 - All damage paid regarding suit connected to matter of indemnity.
 - All costs which he may have been compelled to pay in bringing / defending the suit.
 - All sums which he may have paid under the terms of any compromise of suit.
 - Can claim liability incurred if it is absolute.

Contract of Guarantee

- Defination : It is contract to perform the promise made or discharge the liability, of a third person in case of default. It is guarantee is a promise to pay a debt and by a third person in case the debtor does not pays.

• Essentials :

- All the essentials of valid contract.
- Even if debt is incompetent, the guarantee is valid. But if surety is incompetent to contract the guarantee is void.
- Principle debt : There shall be someone liable as principle debtor & surety undertakes to be liable on his behalf.

No principle Debt = No valid guarantee

- Contract must be conditional : The liability of surety is secondary & conditional & arises only if the default of principle debtor.
- No misrepresentation : Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.
- Guarantee can be either oral or written.
- Joining other co-surety : Guarantee by surety is not valid if condition is imposed by jointly as co-surety. Such other person cannot join as surety.

• Types

- Specific : Guarantee given to specific / single transaction.
- Continuing : Extended to a series of transactions.

• Continuing Guarantee

- The surety may agree to become liable for series of transactions of continuous nature.
- The surety may fix a limit upon which the guarantee shall remain effective as a time period during which the guarantee shall remain effective.
- The surety may impose certain conditions upon which the guarantee shall remain effective as a time period during which the guarantee shall remain effective.
- The surety may impose certain conditions in the contract or guarantee. Until, those conditions are met, the surety shall not be liable.

• Discharge of Surety

Liability of surety is discharged under following circumstances :

- By giving revocation notice of continuing guarantee.
- Revocation of continuing guarantee by death of surety.
- discharge of principal debtor.
- By variance in terms of contract.

- When the creditor compounds with principle debtor by giving time to or agree not to sue principle debtor

- By creditor's act or omission impairing surety's eventual remedy.

• Rights of Surety

I Against Principal Debtor

- Right of subrogation : If debt is paid by surety then he is entitled to all the rights which the creditor could claim against principal debtor.

- Right of Indemnity : It is implied right that surety is entitled to claim from the principle debt all the sums, which he has rightfully paid. He can't recover such sums, which he has paid wrongfully.

II Against Creditor

- Right to claim securities : The surety can claim all the security which the creditor at the time of giving guarantee. If securities is discharged to the extent of value of the securities so returned.

- Right of set off : Any amount recoverable by principle debtor or surety may be claimed as deduction.

III Against Co-Sureties.

- Right to contribution equally between all co-sureties, unless otherwise provided.
- Right to share benefit of securities between all co-sureties if any security is received by one co-surety.

* Contract of Bailment

- Definition : Bailment is a transaction under which goods are delivered by one person to another person for some purpose, upon a contract that they can be returned or disposed after the purpose is accomplished.
- There are two parties involved, 'Bailor' who delivers goods 'Bailee' to whom goods are delivered.
- Contract of bailment is expressed or implied.
- No consideration is necessary to create a valid contract.
- When there is no obligation to return the identical article, either in its original or in an altered form, there is no contract of bailment.

- If a person, already in possession of goods of other contracts to hold them as a bailee, he thereby becomes the bailee & the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

• Examples of bailment

- Giving a cloth piece to tailor for sniching a shirt.
- Borrowing a book from liabrany.
- seifure of goods by customs authorities.

• Examples which are not bailment

- Servant of master who is in custody of goods of the master does not become a bailee.
- Deposited ornaments in a bank locker is not bailment because ornaments are kept in a locker whose keys are still with owner & not with the bank.

• Essentials of valid contract of bailment

- Contract,
- Delivery,
- Goods,
- Purpose of delivery
- Return on disposal of goods.

• Modes of Delivery :-

- Actual delivery : Transfer of physical possession of goods from one person to another
- Symbolic delivery : It means doing of any act which has the effect of putting goods in possession of another.
- Constructive delivery : The custody of goods is not transferred but only an acknowledgment is made. Third party will start holding back goods on behalf of bailor.

• Classification of goods bailment

- Gratuitous : It is bailment where any charge is involved.
- Non-gratuitous : It is bailment for some charge or reward.

• Types of Bailment

- Voluntary : It is outcome of express contract between parties.
- Involuntary : Found in case of finder of goods.

goods sent to wrong place or excess quantity ordered or bailee dies and the subject of bailment comes into hands of bailee's heirs.

* Pledge :

- Meaning :- It is a bailment of goods as a security for payment of debt or performance of promise.

The person who pledge → Pledger / Pawner

The person to whom goods are bailed → pledgee / Pawnee.

In case of Pledge no transfer of any interest in property takes place, but a special right to property is created in favour of pledgee, i.e., he has right to dispose of the property in certain circumstances.

• Essentials :-

- All essentials of bailment.
- There shall be bailment for securing against payment or performance of promise.
- Subject matter of pledge goods.
- Goods pledged for shall be in existence.
- There shall be delivery of goods from pledger to pledgee.

• Rights of Pawnee -

- Right to lien for non-payment or non-performance of promise and recovery of interest on debt.
- To receive extra-ordinary ^{expenses} ~~expression~~ ^{expenses} for preservation. However, no right of lien for non payment of extra ordinary ^{expenses} ~~expression~~ but can take action. ^{expenses}
- To sell goods, if case of default by pawnor
- Right to sue pawnor.
- Right to recover the defect during sale of goods in case of surplus then it shall paid to pawnor.

• Duties of Pawnee.

- Not to use goods without pawnor's authorization.
- Return the goods.
- To take reasonable care of goods.
- Not to mix goods with another goods.
- Return increases in goods.

- Rights of Pawner :-

- Right to redeem the goods pledged.
- Enforce pawner's duties.
- Receive increases in goods.
- To receive notice of sale.

- Duties of Pawner :-

- Pay the debt.
- Pay deficit in sale.
- Pay extra-ordinary expenses.
- Disclose fault in goods.
- Indemnity of the pawnee.

- Pledge by Non-owner

- Merchantile agent : Pledge by consent of owner in ordinary causes of business & pawnee good faith.
- Pledge by seller in possession of goods after sale
- Pledge by where pawner having limited interest the pledge will be valid to the extent of interest.
- Pledge by co-owner in possession under needs consent of other co-owner.
- Pledge by person in possession under a voidable contract. pledge is valid, if pledged is made before the contract is avoided by other party.

* Contract or Agency :

- Meaning :- It is the relationship between two persons where one person is employed by another to act on behalf of that later with the third person.

• Features :-

- No consideration is necessary to create agency.
- Capacity to employ an agent. Agent shall be major & sound mind.
- Capacity to become an agent : Any person even a minor & unsound mind.
- The basic essence of agency is that the principal is bound by acts of agent & answerable to third person.
- It is based on maxim "qui facit per alium facit per se" it means

• Modes of creation of Agency

1) Express Authority :- An authority is said to be express when it is given by words, spoken or written.

2) Implied Authority :- An authority is said to be implied when it is to be inferred from circumstances or case, conduct of parties & things spoken or written or in the ordinary course of dealing.

3) Agency by Estoppel :- When an agent has with out authority done acts or incurred obligations to 3rd party on behalf of principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third person to believe that such acts & obligations were with in the scope of the agents authority.

4) Necessity :- Sometime circumstances would compel a relation or agency would fall in place, this is often out of necessity. To constitute an agency by necessity, following conditions must be fulfilled - Agent in position of not being able to communicate with the principals.

- There must actual & definite commercial necessity for agent.
- Agent must be acted bonafide & for benefit of principal.
- Agent must have adopted most reasonable and practicable course of action.

5) Ratification :- If a person act on behalf of another person & the pretended agent acts without knowledge or consent of principal which is afterwards accepted by the principal then agency by ratification comes into existence.

The principal is bound by the act ratified by him as if such acts had been performed by his authority. Ratification before back to the

actual date of the act that ratified, and not from the date when it is ratified.

• Rights of Agent :-

- To retain money that supposed to handed over to principal against remuneration expense incurred, advances due to him.
- To receive remuneration.
- To lien on principal's goods, paper & other property until the remuneration due to him is paid.
- To claim compensation for injury caused because of the principal's neglect or want of skill.

• Duties of Agent :-

- To conduct the business in accordance with direction of principal.
- To work with reasonable diligence, care & skill.
- To render proper a/c to the principal on demand.
- Not to make secret profit out of his authority.
- To remit the sums received to principal.
- Not to use information obtained in the course of agency against the principal.

• When pr agent is personally liable ?

Generally, principal is liable for the acts of agent.

Exception :- when there is an express agreement for so.

- when there is custom or usage of trade.
- when agent does not disclose identity of principal.
- when agent acted for a non-existence principal.
- when agent acted beyond his authority.
- when agent acts for sale or purchase of goods for the principal resident abroad.

• Principle liability for act of Agent

- when agent act within scope of his authority.
- Principal is not liable where the agent exceeds his authority, but where that means isn't separable from total Act, but if separable then principle is liable upto the extent authority.
- Principle is bound by notice given to agent.
- Liability of principle by estoppel.
- Liability for misrepresentation or fraud by an agent in the course of business, authorized.

• Termination of Agent's Authority

- Revocation of authority by the principal.
- Renunciation of agency by agent.
- Completion of business of agency.
- Death or insanity of either party.
- Insolvency of principle.

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