

Contract Law

* Indian contract Act, 1872.

Offer {Section 2(a)} — When one person signifies to another his willingness to do or to not do anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

- A person who give an offer called offeror | Proposer.
- A person who receives an offer called offeree | proposee

* Kinds of offer.

(1) General offer :- In general offer, the offer are made to public at large and may be accepted by any one. Ticket are one such example of general offer.
ex:- participation in lottery, purchasing the ticket of performance etc...

(2) specific / particular offer :- The offer is made and addressed to a certain person only. it can only be accepted by person to whom it has been made or its authorized person.

ex:- A offers to sell his car to B on a consideration of Rs. 100000/- This is a type of particular offer

(3) cross offer :- When two parties gives offer to each other. even when two offers were made with similar terms and no offer was accepted, there can be no concluded contract.

④ opening / continuing / standing offer :- where a person offers to another to supply specific goods upto a stated quantity or in any quantity which may be required, at a certain rate, during a fixed period he makes a standing offer.

ex :- A tender was floated to obtain new coffee beans by a company.

⑤ counter offer :- when a person to whom the offer is made does not accept the offer, he counter the condition - this is called counter offer.

⑥ Contract over the telephone :- contract over the telephone are regarded the same in principle as those negotiated by the parties in actual presence of each other. Contract over the telephone can be a valid contract. It is imp. that the acceptance must be audible, heard and understood by the offeror. (Kanhayalal vs. Dineshwar Chandra)

* RULES GOVERNING OFFERS

(a) An offer must be clear, definite, complete and final. It must not be vague.

(b) An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree.

(c) The communication of an offer may be made by express words - oral or written or it may be implied by conduct.

(d) Offer must be general
specific.

• General offer can be accepted by anyone. Case law

* (Carroll vs. Carbolic Smoke Ball Company) proof

The company offered by advertisement a reward of 100 to anyone who contracted influenza after using their smoke ball. Mrs. Carroll used smoke balls but was attacked by influenza.

She claimed the reward and it was held that she could recover the reward as general offer can be accepted by anyone.

↓ The condition is that the claimant must have prior knowledge of the reward.

* (Haribhoyam Lal vs. Harichand Lal) 1925 Case law

In this case same rule was applied.

In this case a young boy ran away from his father's home. The father issued a pamphlet offering a reward of 500 to anybody who would bring the boy home.

The plaintiff saw the boy in a railway station and sent a telegram to the boy's father.

It was held that the handbill was an offer open to the world at large and was capable to acceptance by any person who fulfilled the conditions contained in the offer.

The plaintiff performed the conditions and was entitled to the reward offered.

- ① invitation to offer
- ② offer
- ③ Acceptance / Rejection or prospectus

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Lapse of offer. [Section 5]

~~Prescribed~~

- I It is not accepted within the specified time.
- II It is not accepted in the prescribed mode.
- III the offeree rejects it by distinct refusal to accept.
- IV either the offeror or the offeree dies before acceptance.
- V the acceptor fails to fulfill a condition precedent to an acceptance.
- VI the offeree makes a counter offer.

Revocation of offer by the offeror.

An offer may be revoked by the offeror at any time before acceptance.

Mode of revocation.

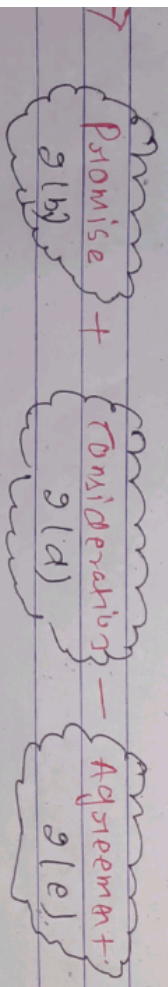
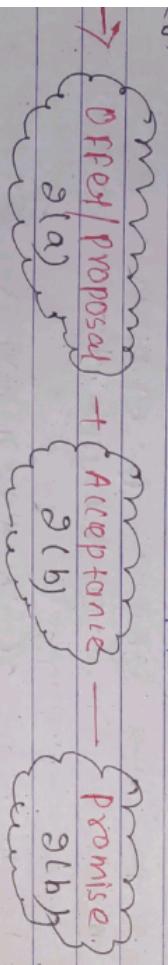
- ① by the communication of notice of revocation by the proposer to other party.
- ② by the lapse of the prescribed time.
- ③ by the failure of the acceptor to fulfill a condition precedent to acceptance.
- ④ by the death or insanity of the proposer.

Acceptance {Section 2(b)}

When a person to whom the Proposal is made signifies his assent thereto, the Proposal is said to be accepted.
A Proposal when accepted becomes a promise [Sec. 2(b)]

Rules Governing Acceptance

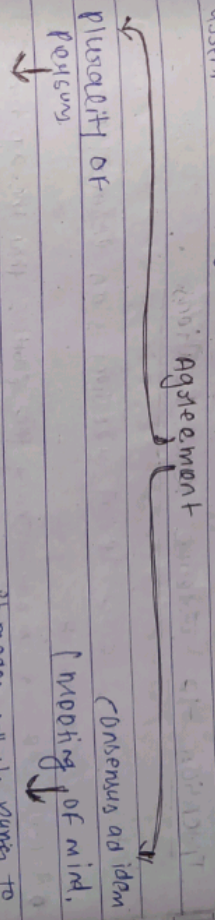
- (a) Acceptance may be express (by words spoken or written) or implied.
- (b) Acceptance must be in prescribed and proper manner
- (c) Acceptance must be unqualified and absolute.
- (d) A lapsed offer operates as a rejection of the offer and cause it to lapse.
- (e) Mere silence can never be treated as a Acceptance
- (f) Acceptance must be given within a reasonable time and before the lapse of its stipulated.
- (g) Acceptance must be accepted in the prescribed manner.



Agreement {Section 2(e)}

As per section 2(e) of the Indian Contract Act "every promise and every set of promises, forming consideration for each other" is an agreement.

An agreement therefore, comes into existence when one party makes a proposal or offer to the other party and that other party and that other party signifies his assent thereto.



These must be two or more persons to make an agreement because one person cannot enter into an agreement.

Rights and Obligations

Where parties have made a binding contract, they have created rights and obligations to themselves. The contractual rights and obligations are correlative.

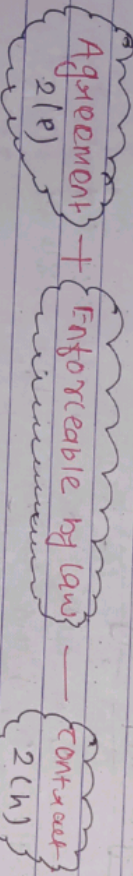
Agreement which are not contracts

Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts. which are:-

- (a) Agreements relating to social matters.
- (b) Domestic arrangements between husband and wife. (Balfour vs. Balfour)

Intention to create legal relations.

- Intention to create legal relations is an essential element of a valid contract.
- It must be an intention among the parties that the agreement should be attacked by legal consequences and create legal obligations.
- If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. As such they are not contracts.



Contract [Section 9(h)]

According to Section 9(h) of Contract Act 1872, contract means "an agreement which is enforceable by law".

Enforceability is almost a requirement for a valid contract. Agreement and enforceability is essential.

* All agreement is not a contract but all contract is an agreement.

Essential elements of a valid contract [Section 10]

- The essential elements of a valid contract are:-
 - (i) An intention to create legal relations
 - (ii) The agreement is supported by a lawful consideration
 - (iii) Genuine consent between the parties. (consensus ad idem)
 - (iv) The terms of a contract is certain
 - (v) The object and consideration of the contract is legal and is not opposed to public policy
 - (vi) The agreement is capable of being performed. i.e. it is not impossible of being performed.
- There should be consensus ad idem.
- To form a valid contract there must be:-
- a) An Agreement
 - b) Supported by Lawful Consideration
 - c) Made for lawful Object

Plan Consideration. {Section 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 something, such act or abstinence or promise is called a consideration for the promise."
* (Chitrie vs. Misa)

- As per Section 25 of the Indian Contract Act, 1872
- An agreement made without consideration is void
- consideration should be in any way
- consideration means **quid pro quo** (something in return)

Rules Governing Consideration

- 1) Consideration must be clear, real and not vague, indefinite and illusory
 - consideration must be **pro bono**
- 2) Consideration need not be adequate
- 3) Consideration must be lawful
- 4) every contract must be supported by valuable consideration
- 5) Consideration may be an act of abstinence or promise
- 6) consideration must be something more than that which promisee is already bound to do

Essentials of Valid Consideration

- 1) Consideration must move at the desire of the promisor
- 2) Consideration must move at the desire of the promisor

2) Consideration may move from the promisee or any other person.

3) Consideration can be given and discharging even a discharge to contract can give consideration.

4) Consideration may be furnished by a stranger under Indian law.

* (Chimaya vs. Ramaya) (over)

Types of Consideration

1. Present consideration (executed consideration)

2. Present consideration is something which is already due. It's done in response to some promise by the promisee. Example = cash sales.

3. Past Consideration

Past consideration is something that which took place and is complete before the promise is made.

* The English law is that past consideration is no consideration. 319

3. Future Consideration (Exercutory Consideration)

A consideration is said to be future exercutory to be done in future. A future consideration is always a promise to do or for bear or suffer at a future date.

When consideration Not necessary. (Exception)

The general rule is that an agreement made without consideration is void, but Section 25 of the Indian Contract Act 1872 lays down certain exceptions which make a promise without consideration is valid & binding.

1) when it is made out of Natural love and affection.

- It is expressed in writing.

- It is recognized under the law.

- It is made on a ground of natural love and affection.

- It is between parties standing in near relation to each other.

Ex: Husband-wife, BF-WF, family members.

2) Promise to Compensate for Voluntary Consideration.

- The service should have been done voluntarily.

- The service should have been done for the promisee.

All tortious love and affection, promises to give his son Rs. 10,000. A promisor's promise to give his son Rs. 10,000. A promisor's promise to give his son Rs. 10,000. This is a contract. 319

The service rendered must also be legal.

3) Promise to pay time barred debt.

A promise by a debtor to pay a time barred debt is also a valid contract.

But the promise must be in writing. 319

4) Creation of Agency.

No consideration is necessary to create an agency.

Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.

5) Completed gift.

Gift one made cannot be rescinded on the ground of absence of consideration.

6) Validity of Contract.

Stranger to a contract cannot sue.

Case Law: (Dunlop Pneumatic Tyre Co. vs. New Garage & Motor Cycles Ltd.)



Contract Statutory Promise can be Enforced

A Statutory Promise is a commitment made with the expectation of receiving something in return, generally not legally enforceable due to the law of consideration or a mutual exchange of value.
ex: Quasimodo

* Case: Kedar Nath vs. Gorie Mohan

Terms must be certain

Where the terms of a contract agreement are too vague, the contract will fail for uncertainty. Hence, the terms must be definite or capable of being made definite without further agreement of the parties.

Thus, a contract is always based upon:-

- (i) Agreement (consensus ad idem) or linguistic agreement or offer
- (ii) An intent to create legal obligations.
- (iii) Consideration.

Void Agreement Section 2(g)

Void Agreement is an agreement which is not enforceable by law. Void Agreement is also known as Void-ab-initio. (void from very beginning)

eg, minor, unsound mind, insolvent.

- Agreement by or with a minor or a person of unsound mind or a person disqualified by law.
- An agreement in violation of trade.
- An agreement in violation of marriage.
- An agreement by way of wager
- An agreement to do an act impossible in itself.

Voidable Contract Section 2(i)

A contract which is enforceable by one or more parties but not by other or others.
In short, it is a contract which is enforceable by aggrieved party / suffering party.

Illegal Agreement

An illegal agreement is an unlawful agreement. The law prohibits agreement made with unlawful object or consideration.

Capacity to contract (Flaw in capacity and person)

- (i) Minors
- (ii) Lunatics
- (iii) persons disqualified from contracting by any law to which they are subject.

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* Minor's Contract

- A minor is a person, male or female, who has not completed the age of 18 yrs.
- * (Mohori Bibi vs. Dharmodas Ghose) - no person is competent to enter into a contract who is not of the age of majority.
- If the minor has obtained any benefit, such as money on a mortgage he cannot be asked to repay, nor can his mortgage property be made liable to pay.
- Since the contract is void ab initio it cannot be ratified by the minor on attaining the age of majority.
- An agreement by a minor being void, the court will never direct specific performance of the contract.
- Since a minor is never personally liable, he cannot be adjudicated as an insolvent.
- A minor can be an agent but he cannot be a principal.
- However, it has been held that an agreement for service entered into by a father on behalf of his daughter who is a minor is not enforceable at law.

* Lunatics Agreement.

- A person of unsound mind is a lunatic. That is to say for the purpose of making contract, a person is of unsound mind.
- If at the time when he makes the contract, he is incapable of understanding it and of forming rational judgment as to its effects upon his interests.
- A person of unsound mind cannot enter into a contract.
- A lunatic's agreement is therefore void.
- But for necessities supplied to a lunatic or to any member of his family, the lunatic's estate, if any, will be liable. There is no personal liability incurred by the lunatic.

Other persons qualified and disqualified from contracting.

qualified

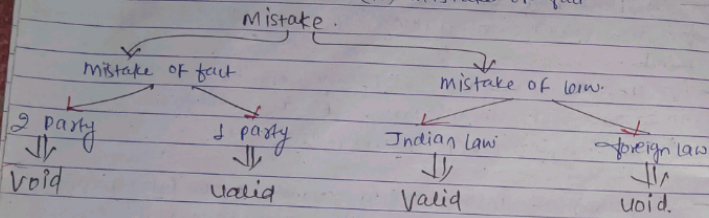
- corporations.
- Professionals person
- Married women

disqualified

- Alien enemies.
- foreign sovereigns and Ambassadors

Mistake (Section 20 and 21)

Mistakes are of two kinds (i) mistake of law
(ii) mistake of fact.



→ Mistake must be mutual or bilateral. It must be on the part of both parties.

- (a) Mistake as to existence of the subject matter
- (b) Mistake as to identity of the subject matter
- (c) mistake as to quantity of the subject matter
- (d) Mistake as to quality of the subject matter or promise.

Unilateral Mistake as to Nature of the Contract

- (i) the blindness, illiteracy or senility of the person signing or
- (ii) a trick or fraudulent misrepresentation as to the nature of the document
- (iii) the identity is of material importance to the contract

willful misrepresentation or fraud (Section 17)

fraud is an untrue statement made knowingly or without belief in its truth or recklessly carelessly, whether it be true or false with the intent to deceive.

The chief ingredients of a fraud are:-

- (i) a false representation or assertion
- (ii) of fact
- (iii) made with the intention that it should be acted upon
- (iv) to deceive anyone. contracts are voidable

mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless silence is in itself equivalent to speech or where it is the duty of the person to speak out. uberrimae fidei = (contracts requiring utmost good faith)

Contracts uberrimae fidei are:-

These are contracts in which the law imposes a special duty to act with the utmost good faith, i.e., to disclose all material information.

- (1) contract of insurance.
- (2) company prospectus.
- (3) contract for the sale of land.
- (4) contracts of family arrangements.
As failure to disclose an info. will render the contract voidable at the option of the other party.

[Sri vishay Contract Act 1930]

COERCION (Section 15)

The committing or threatening to commit any act that is forbidden by Indian Penal Code or unlawful detaining or threatening to detain, any property to the prejudice of or any person whatsoever with the intention of causing any person to enter into an agreement is called as Coercion or Undue Influence.

Undue Influence (Section 16)

Where one party is in a dominant position to dominate the will of another, induce the other person to enter into contract resulting in a Voidable Contract.

Voidable Contract

doctor - patient
teacher - student

minor - guardian
teacher - beneficiary
seller - buyer

employer - employee
husband wife

* All illegal agreements are Void Agreement but void agreement are not illegal agreement.

Misrepresentation (Section 18)

A misrepresentation is a false statement that induces someone to enter into a contract. Misrepresentation may be innocent or fraudulent. Damages are claimed

In case of fraud and compensation is given is case of misrepresentation.

— Contracts are voidable by misrepresentation.

Transaction with Pardanashin women.

A contract with a pardanashin women is presumed to have been induced by undue influence.

She can avoid the contract unless the other party can show that it was her intelligent and voluntary act.

There is no proper statutory definition of the term Pardanashin women

legality of object.

Illegal Agreement — Void Always.

Section 23, of the Indian Contract Act 1872 provides that the consideration or object of an agreement is lawful unless it is:-

- lawful unless it is forbidden by law.
- it is of such nature that if permitted it would defeat the provisions of law
- is fraudulent.
- involves or implies injury to the person or property of another
- the court regards it an immoral or opposed to public policy.

Every agreement of which the object or consideration is unlawful is void.

Consequences of illegal Agreement

- (i) An illegal agreement is entirely void.
- (ii) Void from the very beginning - void ab initio.
- (iii) Ex turpi causa non oritur action from an evil cause no action arise.
- (iv) if it not separate then whole contract is void and if it's separate then one is valid and one is void.
- (v) collateral to an illegal agreement is also ~~trainted~~ ^{trainted} with illegality.

Exception to General rule of no recovery of money or property

- (i) where the transferee is not in pari delicto equally guilty with the defendant i.e., the transferee.
- (ii) if the plaintiff can frame a cause of action entirely dependent of the contract.
- (iii) where a substantial part of the illegal transaction has not been carried out and the plaintiff is truly and genuinely dependant.

Void Contract {Section 2(j)}

Void contract is a contract which ceases to be enforceable by law.
Example - that was enforceable by law but due to circumstances it is not enforceable.

Agreements void as being opposed to public policy

- (i) Agreement in restraint of parental rights.
- (ii) Agreement in restraint of marriage.
- (iii) Marriage brokerage or brokerage Agreement.
- (iv) Agreement restraint of personal freedom are void.
- (v) Agreement in restraint of trade.

Wagering Agreements

The official meaning of the word 'wager' is a bet. Wagering agreements are nothing but ordinary betting agreements.
Sns. 302 & 303 except number, wagers agreement are void.
on number wagering agreements have been declared illegal by the Act, 1865.

When contract becomes void

- An agreement not enforceable by law is void ab initio (Section 2(j)).
- A contract which ceases to be enforceable (Section 2(k)) becomes void when it ceases to be enforceable.
- A contract becomes void by reason of subsequent illegality.

Restitution

When a contract becomes void, it is not to be performed by either party. But if any party has received any benefit under such a contract from the other party he must restore it or make compensation for it to the other party.

Ex - A agrees to sell to B after 6 months a certain quantity of gold and silverware. B. 500 as advance. Soon after the agreement, silverware sale of golds are prohibited by law. The contract becomes void and A must restore the sum of Rs. 500 to B.

- The minor cannot be asked to restore the benefit.

Quasi - contract

Quasi contract is a contract where obligation is imposed by law.

A Quasi contract shall not be allowed to enrich a person who shall not be allowed to enrich himself unjustly at the expense of another. Section 70 it is not a contract of any.

The following types of quasi contracts have been dealt within the Indian Contract Act :-

- Necessaries (Sec. 68)
- Suit for money had and received (Sec. 69 and 72)
- Quantum meruit
- Obligation of a finder of goods (Sec. 71)
- Obligation of person enjoying benefit of non gratuitous act. (Sec. 70).

a) Necessaries

Contract by minor and persons of unsound mind are valid. However, Sec. 68 of the Indian Contract Act provides that their estates are liable to reimburse the trader, who supplies them with necessities of life.

b) Quantum meruit

The expression "Quantum meruit" literally means "as much as earned" or "reasonable remuneration".

It is used where a person claims reasonable remuneration for the services rendered by him when there was no express promise to pay the definite remuneration.

Thus the law implies reasonable compensation for the services rendered by a party if there are circumstances showing that there are to be paid for.

The claim on a quantum meruit arises when one party abandons the contract, or accepts the work done by another under a void contract.

(c) Obligation of finder of lost goods - The liability of a finder of goods belonging to someone else is that of a bailee.

This means that he must take as much care of the goods as a man of ordinary prudence would take of his own goods of the same.

Discharge of termination of contracts

A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.

Contract may be discharged or terminated by any of the following modes :-

1. Performance of contract.

- (i) Mutual consent or Agreement.
- (ii) lapse of time
- (iii) operation of law
- (iv) impossibility of performance
- (v) breach of contract

1. Performance of contract (Sec. 37).

Sec 37 of the Act provides that fulfillment of obligation under a contract, encompassing the execution of services or making payments.

Terms of performance

To be a valid tender must fulfill the following conditions:

- It must be unconditional.
- It must be made at a proper time & place
- Reasonable opportunity.
- By whom contract must be performed.
- The promisor or his representative may employ a competent person to perform it.

Assignment

The promisee may assign rights and benefits of contract if the assignee will entitled to demand performance by the promisor. But the assignment to be complete and effectual, must be made by an instrument in writing. An obligation ~~can~~ liability ~~of~~ a contract cannot be assigned.

2. Discharge by Mutual Agreement or Consent (Sec 62 & 63)

(i) Substitution - when a new contract is substituted for existing contract either b/w the same parties or b/w different parties, the consideration, mutually being that discharge the old contract.

(ii) Alteration - change in one or more of the material terms of a contract.

(iii) Rescission - by agreement b/w the parties at any time before it is discharged by performance or in some other way.

(iv) Remission - acceptance of a lesser sum than what was contracted for or a lesser fulfillment of the promise made.

(v) Waiver - giving up a right or claim voluntarily. If a person has a legal right under a contract but decides not to enforce it, it is called a waiver.

3. Discharge by lapse of time

When a debtor has failed to repay the loan on the stipulated date, the creditor must file the suit against him within 3 yrs of the default.

If the limitation period of 3 yrs expires and he takes no action he will be barred from his remedy and the other party is discharged of his liability to perform.

4. Discharge by operation of the law

- By merger.
- By insolvency.
- By the unauthorised alteration of terms of written doc.
- Discharge by impossibility, ~~of frustration~~ ^{or frustration}.
- ~~or frustration~~ ^{or frustration}.
- (Sahyabara case vs. Munguram).

Case in which there is no supervening impossibility.

- (a) Difficulty of performance
- (b) Commercial impossibilities don't discharge the contract
- (c) strikes, diseases and civil disturbances.

A contract which is entered into performs something that is clearly impossible is void.

Impossibility - permanent nature

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5. Discharge by breach

When the promisor neither performs his contract nor does the tender performance is rejected, there is breach of contract.

The breach of contract may be:-

- (1) Actual breach - (and the contract claim the damages, Hochstetel vs. Jela tour).
- (2) Anticipatory breach - (1) Cancel the contract and claim the damages

- (2) Suit till the date of particular contract.

* If there is any seat between two countries,

then any type of contract which is made before war, then the contract become void.

Law law - (Avery vs. Bowden) Wars like Russia vs. Britain.

Remedies for breach of contract

- (I) Rescind the contract and refuse further performance of the contract
- (II) Sue for damages
- (III) Sue for specific performance

IV) Use for an injunction to restrain the breach of a Negative term.

3.1 Injunction means to restrict someone from doing a Particular Act.
Use on Quantum meruit (on market earned).

It Liquidated damages.

Case \Rightarrow where the contracting parties agree in advance the amount payable in the event of breach, the sum payable is called liquidated damages.
Liquidated damages is always pre-decided.
Unliquidated damages

\Rightarrow where the amount of compensation claimed for a breach of contract is left to be assessed by the court - damages claimed are called unliquidated damages.

On short, unliquidated damages are not fixed in advance and are decided by a court based on the actual loss suffered.

Liquidated damages are pre-agreed amounts written in a contract that one party must pay if they break the contract.

These are the following kinds of unliquidated.

1) Ordinary Damages / General Damages
are the compensation awarded for the altogether caused by a breach of contract. These damages aim to put the injured party in the same position they would have been in if the contract had been fulfilled.

2) Special Damages
Special damages are compensation for losses that do not automatically arise from a breach of contract but occur due to special circumstances known to both parties at the time of the contract.

3) Exemplary Damages.

\Rightarrow the court may award such damages viz -
(a) Breach of promise to marry
(b) wrongful dishonour of a customer's cheque by the banker

4) Nominal Damages

\Rightarrow Nominal damages consist of a small token amount eg. a rupee or even 50 paise, 50 paise, 1 Rs, 5 Rs

Specific performance

3.1

Specific performance is a legal remedy where a court orders a party to fulfill their contractual obligations instead of paying damages. It is used when monetary compensation is not enough to fix the harm caused by the breach.

Specific performance will not be ordered:-

- (a) where monetary compensation is an adequate remedy
- (b) where the court cannot supervise the execution of the contract, e.g., building contract
- (c) where the contract is for personal service
- (d) where one party is a minor

Injunction

An injunction is a legal order from a court that stops someone from doing something or forces them to do something to prevent harm. It is often used in cases where money alone cannot fix the problem.

(Case) - Lumley vs. Wagner

Contract of indemnity and guarantee (Section 124 to 127)

Meaning of Indemnity

A contract of indemnity is a legal agreement where one party (the indemnifier) promises to compensate the other party (the indemnitee) for any loss or damage suffered due to a specific event.

Key features:- (1) Two parties:- The indemnifier (who promises to pay) and the indemnitee (who receives the payment).

(2) Promise to compensate:- The indemnifier agrees to cover losses from a particular situation.

(3) Loss must occur:- The indemnity applies only if the indemnitee suffers a loss.

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Meaning of contract of guarantee

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety, the person whom the guarantee is given is called the principal debtor and the person to whom the guarantee is given is called the creditor.

Distinction b/w Indemnity and Guarantee

Indemnity	Guarantee
<p>A contract where one party promises to compensate the other for loss suffered.</p> <p>It involves two parties; Indemnifier, and Indemnified.</p> <p>The Indemnifier has Primary liability, they are responsible for compensating the loss.</p> <p>Liability arises only when loss occurs.</p> <p>It is an independent contract b/w two parties.</p> <p>To compensate for loss or damage suffered.</p>	<p>A contract where one party (guarantor) assures the condition that a third party will fulfill an obligation, or they will do so if the third party fails.</p> <p>It involves three parties; Surety, Principal debtor, and creditor.</p> <p>The guarantor has Secondary liability, they step in only if the principal debtor fails to pay.</p> <p>A pre-existing debt or obligation of the principal debtor must exist.</p> <p>It is a collateral contract that depends on the default of the principal debtor.</p> <p>To provide security for a debt or obligation.</p>

Event of Surety's liability.

The liability of the surety is co-extensive with that of the principal debtor unless the contract otherwise provides.

A creditor is not bound to proceed against the principal debtor. He can sue the surety without suing the principal debtor. He can sue the surety without payment of the debt as soon as the debtor has made default in payment of the debt. The surety is immediately liable.

Kinds of Guarantee.

1) Specific Guarantee:- A specific guarantee is given for a single debt and comes to an end when the debt guaranteed has been paid.

2) Continuing Guarantee:- A continuing guarantee is one which extends to a series of transactions. The liability of surety in case of continuing guarantee extends to all the transactions contemplated until the revocation of the guarantee.

Revocation of continuing Guarantee.

- (i) By notice of revocation by the surety.
- (ii) By the death of the surety.

* Rights of Surety

June 95

(1) Rights against creditor -
 Surety is entitled to the benefit of any security held by the creditor. If the creditor releases the contract without consent the surety is released.

(2) Right against Principal debtor
 Surety steps into the creditor's shoes after paying the debt & surety can recover the amount paid from the principal debtor.

(3) Rights against co-sureties
 co-sureties share liability equally unless agreed otherwise. It is surety pays first, he is, since the other are from others.

Discharge of Surety

- (i) By notice of revocation
- (ii) By death of surety
- (iii) Variation in contract
- (iv) Creditor negligence
- (v) Full repayment of debt
- (vi) Expiry of guarantee

Contract of Bailment

Bailment is a contract in which the owner of goods (Bailor) delivers them to another person (Bailee) for a specific purpose, under the condition that the goods will be returned or disposed of as per the bailor's instructions after the purpose is fulfilled.

Bailment is a voluntary delivery of goods for a temporary purpose. The ownership of the goods remains with the bailor, the bailee getting only the possession.

Duties of Bailee

- (1) Reasonable care: Must take proper care of goods like a prudent person.
- (2) No unauthorized use: cannot use goods beyond the agreed purpose.
- (3) Return of goods: must return goods after purpose is fulfilled.
- (4) Return of profits: Accrues to the bailor. Must return any profit or increase in goods.
- (5) Not to mix goods: Must keep bailor's goods separate unless agreed otherwise.

3. Particular Lien :- A particular lien is one which available only against that property of which the lien and labour have been exercised. A bailor's lien is particular lien

General Lien :- A general lien is a right to detain any property belonging to the other and in the possession of the person trying to exercise the lien in respect of any payment lawfully due from him.

Duties of Bailor

- 1. Disclosure of Defects - must disclose the bailor of known defects in goods
- 2. Repair Necessary Expenses - must pay expenses of repairs which are for the bailor's benefit
- 3. Indemnity for Losses - must compensate the bailor for losses due to defective title
- 4. Acceptance of goods - must take back goods once the purpose is fulfilled.

Termination of Bailment

1. On completion of purpose of Bailment ends when the purpose is fulfilled.

On expiry of time of if a time period is fixed, bailment ends when it expires

2. Bailor's demand of Bailor can terminate bailment anytime if not for a fixed period

Unauthorized use :- Bailment ends if the bailor misuses the goods

3. Death of either party :- Bailment may end if the bailor or bailee dies (depending on the nature of the contract)

Transfer of Lost Goods

The bailor has a right to sell the property with diligence he takes the owner cannot claim responsibility

When found, he refuses to pay the lawful charges of the finder

1. If the thing is in danger of perishing or being injured or if its value is falling

* Pledge

Pledge or pawn is a contract whereby an article is deposited with a lender of money or promise as security for the repayment of a loan or performance of a promise.

The bailor or depositor is called the pawnor and the bailee or depositor the pawnee.

Since Pledge is a branch of bailment, the pawnor is bound to take reasonable care of the goods. Pledgee will

him

following are the essential ingredients of a pledge:-

- (i) The property pledged should be delivered to the pawnee.
- (ii) Delivery should be in pursuance of a contract.
- (iii) Delivery should be for the purpose of security.
- (iv) Delivery should be upon a condition of return.

Rights of the pawnor

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(a) - The pawnor has a right to sue and retain the pledged goods till his payments are made.

(b) - The pledgee is entitled to receive from the pledger extraordinary expenses incurred by him for the preservation of the goods pledged.

(c) Pawnor himself ~~the~~ sell the goods pledged, after giving reasonable notice to the pawnor, sue for the deficiency, if any, after the sale.

Rights of the pawnor

(1) He can file a suit for redemption of goods if depositing the money towards the sale, as it is not necessary that the money should be used for the purpose of the loan.

(2) Pledgee or he can sue for damages on the ground of conversion.

Pledge by Non-owners

(1) A mercantile agent

(2) Pledge by seller or buyer in possession of goods after sale.

(3) A seller, left in possession of goods sold, provided the owner, but pledge by him will be valid, provided the pawnor acted in good faith and had no notice of the

sale of goods to the buyer. Pawnor having limited interest.

(4) Pledge where pawnor in possession

(5) Pledge by co-owner in possession under a voidable contract

(6) Pledge by person in possession

* Law of Agency

An agent is a person who is employed to bring his principal into contractual relations with third parties.

Creation of Agency

(1) Express Agency :- The contract of agency may be made orally or in writing. The usual form of written contract of agency is the power of Attorney, which gives him the authority to act on behalf of his principal in accordance with the terms and conditions therein.

(2) Implied Agency :- Implied Agency may arise by conduct, situation of parties or necessity or the case.

(1) Agency by Estoppel :- You commit that someone is your agent then afterwards you can't deny that he is not your agent.

(2) Wife as Agent :- If husband and wife live together the wife is presumed to have an implied authority to do her husband's agent for purchasing things like food, clothing and household items.

except:-
he had expressly instructed the woman not to supply goods on credit to his wife.

he had expressly forbidden the wife to purchase his credit
his wife was already sufficiently supplied with the articles in question
she was supplied with a sufficient allowance

(3) Agency of Necessity :- In certain circumstances, a person who has been entrusted with another's property, may have to enter unauthorised expenses to protect or preserve it. In such an agency is called an agency of necessity.

Agency by Statification :- (Agent or co-owner in the agent's behalf)

Duties of the Agent

An agent must act within the scope of authority and strictly follow the instructions of the principal.

He must do his work with reasonable skill and diligence.

He must disclose promptly and material information coming to his knowledge which is likely to influence the principal in the making of the contract.

He must not disclose confidential information entrusted to him by his principal.

He must not allow his interest to conflict with his duty.

The agent must keep true account and must be prepared on reasonable notice to render an account.

Termination of Agency

1. (a) By the ~~performance~~ ^{Privity} performance of the contract or
2. (b) By an agreement b/w the principal and the agent
3. (c) By expiration of the period fixed for the contract or agency.
4. (d) By the insolvency of the principal.
5. (e) By the destruction of the subject matter
6. (f) By revocation of authority by the principal
7. (g) By the termination of his authority by the agent
8. (h) By the death of the principal or the agent

Case Law

Maharashtra State Electricity Distribution Company Limited vs. Ratnaji Wac and Power Private Limited

In Maharashtra State Electricity Distribution Com Ltd. vs Ratnaji Wac and Power Pvt. Limited Supreme Court ruled that Maharashtra electricity (Appellant) must pay fixed charges under power purchase agreement. The issue was about non payment of charges due to gas shortage.

Central Electricity Regulatory Commission and Appellate Tribunal for Electricity ruled that Maharashtra electricity

should pay and SC Agreed. SC also stated that terms of contract should not be changed unless absolutely necessary and only in specific situation

Personal Liability of Agent to Third Party ^{Section 23}

1. Where the agent has agreed to be personally liable to the third party where an agent acts for a principal residing abroad
2. When the agent signs a negotiable instrument in his own name without making it clear that he is signing it only as agent
3. When an agent acts for a principal who cannot be sued (e.g. he is minor) the agent is personally liable. He is also liable for his ~~act~~ ^{act} committed in the course of agency

Meaning of Authority Coupled with Interest ^(Sec-202)

The phrase "authority coupled with interest" typically refers to a situation where a person or institution not only has the power or legitimate right to make decisions (authority) but also holds the principal laid down. In sec 202 applies only if the following conditions are fulfilled:-

(a) The interest of the agent should exist at the time of creation of agency and should not have arisen after the creation of agency.

(b) Authority given to the agent must be intended for the protection of the interest of agent.

(c) The interest of the agent in any subject matter must be substantial and not ordinary.

(d) The interest of the agent should be over and above his remuneration.

(5) when Agency is irrevocable

(i) where the authority of agency is one coupled with an interest even the death or insanity of the principal, does not terminate the authority.

(ii) when agent has incurred personal liability

(iii) when the authority has been partly exercised by the agent

when termination takes effect

Termination of an agency takes effect or is complete, as regards the agent when it becomes known to the agent.

If the principal revokes the agent's authority, the revocation will take effect when the agent comes to know or if

as regards the third parties, the termination takes effect when it comes to their knowledge.

E - Contract

As in every other contract, an electronic contract also requires the following necessary ingredients:-

An offer needs to be made

The offer needs to be accepted.

There has to be lawful consideration

There has to be an intention to create legal relations

The parties must be competent to contract

There must be free and genuine consent

The object of the contract must be lawful

Basic type of e-Contract

- ① Shrink wrap Agreements
- ② Clickwrap Agreement
- ③ Browserwrap Agreement
- ④ Scroll wrap Agreement
- ⑤ Sign in wrap Agreement

Law

The Digit

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