UNIT- 8

THE INDIAN CONTRACT SYSTEM

STRUCTURE

8.1 INTRODUCTION

Every day we enter into contracts. Taking a seat in a bus amounts to entering into a contract. Putting a coin in the slot of a weighing machine, have been amount to enter into a contract. When we go to a restaurant and take snacks, we have entered into a contract. In such cases, we do not even realise that we are making a contract. In the case of people engaged in trade, commerce and industry, they carry on business by entering into contracts. The law relating to contracts is to be found in the Indian Contract Act, 1872.

The law of contracts differs from other branches of law in a very important respect. It does not lay down so many precise rights and duties which the law will protect and enforce; it contains rather a number of limiting principles, subject to which the parties may create rights and duties for themselves, and the law will uphold those rights and duties. Thus, we can say that the parties to a contract, in a sense make the law for themselves. So long as they do not transgress some legal prohibition, they can frame any rules they like in regard to the subject matter of their contract and the law will give effect to their contract.

8.2 OBJECTIVES

After reading this unit you are able to understand the following:

- What is a contract
- Essential elements of making a valid contract
- Classification of contracts
- How to make Offer/Proposal
- What is making an acceptance legal
- Communication of offer and acceptance
- Consideration
- Performance of a contract
- How one can discharge from the obligation of a Contract
- Different types of contracts

8.3 SUBJECT

8.3.1 A CONTRACT

Section 2(h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law. Section 2(e) defines agreement as “every promise and every set of promises forming consideration for each other.” Section 2(b) defines promise in these words: “When the 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.” From the above definition of promise, it is obvious that an agreement is an accepted proposal. The two elements of an agreement are:

(i) offer or a proposal; and

(ii) an acceptance of that offer or proposal

All agreements are not contracts. Only those agreements which are enforceable at law are contracts. The Contract Act is the law of those agreements which create obligations, and in case of a breach of a promise by one party to the agreement, the other has a legal remedy.Thus, a contract consists of two elements: (i) an agreement; and (ii) legal obligation, i.e., it should be enforceable at law. There are some agreements which are not enforceable in a law court. Such agreements do not give rise to contractual obligations and are not contracts.

Examples: A gives a promise to his son to give him a pocket allowance of Rupees one hundred every month. In case A fails or refuses to give his son the promised amount, his son has no remedy against A.

In the above examples promises are not enforceable at law as there was no intention to create legal obligations. Such agreements are social agreements which do not give rise to legal consequences. This shows that an agreement is a broader term than a contract. Therefore, a contract is an agreement but an agreement is not necessarily a contract. All legal obligations are not contractual in nature. A legal obligation having its source in an agreement only will give rise to a contract.

Example: A agrees to sell his motor bicycle to B for Rs. 5,000. The agreement gives rise to a legal obligation on the part of A to deliver the motor bicycle to B and on the part of B to pay Rs. 5,000 to A. The agreement is a contract. If A does not deliver the motor bicycle, then B can go to a court of law and file a suit against A for non-performance of the promise on the part of A. On the other hand, if A has already given the delivery of the motor bicycle and B refuses to make the payment of price, A can go to the court of law and file a suit against B for non-performance of promise.

Similarly, agreements to do an unlawful, immoral or illegal act, for example, smuggling or murdering a person, cannot be enforceable at law. Besides, certain agreements have been specifically declared void or unenforceable under the Indian Contract Act. For instance, an agreement to bet (Wagering agreement),[1] an agreement in restraint of trade[2],an agreement to do an impossible act[3].

An obligation which does not have its origin in an agreement does not give rise to a contract. Some of such obligations are,

1. Torts or civil wrongs;

2. Quasi-contract;

3. Judgements of courts, i.e., Contracts of Records;

4. Relationship between husband and wife, trustee and beneficiary, i.e., status obligations.

[1]S. 30 of The Indian Contract Act
[2]S. 27 of The Indian Contract Act
[3]S. 56of The Indian Contract Act

These obligations are not contractual in nature, but are enforceable in a court of law. Salmond has rightly observed: “The law of Contracts is not the whole law of agreements nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations which have, their source in agreements.”

Law of Contracts creates rights in *personam* as distinguished from rights in *rem*. Rights in *rem* are generally in regard to some property as for instance to recover land in an action of ejectment. Such rights are available against the whole world. Rights in *personam* are against or in respect of a specific person and not against the world at large. Examples:

(1) A owns a plot of land. He has a right to have quiet possession and enjoyment of the same. In other words every member of the public is under obligation not to disturb his quiet possession and enjoyment. This right of A against the whole world is known as right *in rem*.

(2) A is indebted to B for Rs. 100. It is the right of B to recover the amount from A. This right of B against A is known as right *in personam*. It may be noted that no one else (except B) has a right to recover the amount from A.

The law of contracts is concerned with rights in *personam* only and not with rights in *rem.*

8.3.2 ESSENTIAL ELEMENTS OF A CONTRACT

The two elements of a contract are: (1) an agreement; (2) legal obligation. Section 10 of the Act provides for some more elements which are essential in order to constitute a valid contract. It reads as follows: “All agreements are contracts if they are made by free consent of parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.” Thus, the essential elements of a valid contract can be summed up as follows 1. Agreement. 2. Intention to create legal relationship. 3. Free and genuine consent. 4. Parties competent to contract. 5. Lawful consideration. 6. Lawful object. 7. Agreements not declared void or illegal 8. Certainty of meaning. 9. Possibility of performance. 10. Necessary Legal Formalities. These essential elements are explained briefly.

8.3.2.1 AGREEMENT

To constitute a contract there must be an agreement. An agreement is composed of two elements—offer and acceptance. The party making the offer is known as the offeror, the party to whom the offer is made is known as the offeree. Thus, there are essentially to be two parties to an agreement. They both must be thinking of the same thing in the same sense. In other words, there must be *consensus-ad-idem.* Thus, where ‘A’ who owns 2 cars x and y wishes to sell car ‘x’ for Rs. 30,000. ‘B’, an acquaintance of ‘A’ does not know that ‘A’ owns car ‘x’ also. He thinks that ‘A’ owns only car ‘y’ and is offering to sell the same for the stated price. He gives his acceptance to buy the same. There is no contract because the contracting parties have not agreed on the same thing at the same time, ‘A’ offering to sell his car ‘x’ and ‘B’ agreeing to buy car ‘y’. There is no *consensus-ad-idem.*

8.3.2.2 INTENTION TO CREATE LEGAL RELATIONSHIP

There should be an intention on the part of the parties to the agreement to create a legal relationship. An agreement of a purely social or domestic nature is not a contract. Example: A husband agreed to pay £30 to his wife every month while he was abroad. As he failed to pay the promised amount, his wife sued him for the recovery of the amount. Held: She could not recover as it was a social agreement and the parties did not intend to create any legal relations[4]. However, even in the case of agreements of purely social or domestic nature, there may be intention of the parties to create legal obligations. In that case, the social agreement is intended to have legal consequences and, therefore, becomes a contract. In commercial and business agreements the law will presume that the parties entering into agreement intend those agreements to have legal consequences. However, this presumption may be negative by express terms to the contrary. Similarly, in the case of agreements of purely domestic and social nature, the presumption is that they do not give rise to legal consequences. However, this presumption is rebuttable by giving evidence to the contrary, i.e., by showing that the intention of the parties was to create legal obligations.

Examples:

(1) There was an agreement between Rose Company and Crompton Company, where of the former were appointed selling agents in North America for the latter. One of the clauses included in the agreement was: "This arrangement is not... a formal or legal agreement and shall not be subject to legal jurisdiction in the law courts". Held that: This agreement was not a legally binding contract as the parties intended not to have legal consequences[5].

(2) An agreement contained a clause that it "shall not give rise to any legal relationships, or be legally enforceable, but binding in honour only". Held: The agreement did not give rise to legal relations and, therefore, was not a contract.[6]

8.3.2.3 FREE AND GENUINE CONSENT

The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be obtained by misrepresentation, fraud, undue influence, coercion or mistake. If the consent is obtained by any of these flaws, then the contract is not valid.

8.3.2.4 PARTIES COMPETENT TO CONTRACT

The parties to a contract should be competent to enter into a contract. According to Section 11, every person is competent to contract if he (i) is of the age of majority, (ii) is of sound mind, and (iii) is not disqualified from contracting by any law to which he is subject. Thus, there may be a flaw in capacity of parties to the contract. The flaw in capacity may be due to minority, lunacy, idiocy, drunkenness or status. If a party to a contract suffers from any of these flaws, the contract is unenforceable except in certain exceptional circumstances.

8.3.2.5 LAWFUL CONSIDERATION

[4]*Balfour v. Balfour (1919)2 K.B.571*
[5]*Rose and Frank Co. v. J.R. Crompton and Bros. Ltd. (1925) A.C. 445*
[6]*Jones v. Vernon's Pools Ltd. (1938) 2 All E.R. 626*

The agreement must be supported by consideration on both sides. Each party to the agreement must give or promise something and receive something or a promise in return. Consideration is the price for which the promise of the other is sought. However, this price need not be in terms of money. In case the promise is not supported by consideration, the promise will be *nudum pactum* and is not enforceable at law. Moreover, the consideration must be real and lawful.

8.3.2.6 LAWFUL OBJECT

The object of the agreement must be lawful and not one which the law disapproves.

8.3.2.7 AGREEMENTS NOT DECLARED ILLEGAL OR VOID

There are certain agreements which have been expressly declared illegal or void by the law. In such cases, even if the agreement possesses all the elements of a valid agreement, the agreement will not be enforceable at law

8.3.2.8 CERTAINTY OF MEANING

The meaning of the agreement must be certain or capable of being made certain otherwise the agreement will not be enforceable at law. For instance, A agrees to sell 10 metres of cloth. There is nothing whatever to show what type of cloth was intended. The agreement is not enforceable for want of certainty of meaning. If, on the other hand, the special description of the cloth is expressly stated, say Terrycot (80: 20), the agreement would be enforceable as there is no uncertainly as to its meaning. However, an agreement to agree is not a concluded contract[7].

8.3.2.9 POSSIBILITY OF PERFORMANCE

The terms of the agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced. For instance, A agrees with B to discover treasure by magic. The agreement cannot be enforced.

8.3.2.10 NECESSARY LEGAL FORMALITIES

A contract may be oral or in writing. If, however, a particular type of contract is required by law to be in writing, it must comply with the necessary formalities as to writing, registration and attestation, if necessary. If these legal formalities are not carried out, then the contract is not enforceable at law.

8.3.3 CLASSIFICATION OF CONTRACTS

Contracts may be classified in terms of their (1) validity or enforceability, (2) mode of formation, or (3) performance.

[7]*Punit Beriwala v. Suva Sanyal AIR 1998 Cal. 44*

8.3.3.1 CLASSIFICATION ACCORDING TO VALIDITY OR ENFORCEABILITY

Contracts may be classified according to their validity as (i) valid, (ii) voidable, (iii) void contracts or agreements, (iv) illegal, or (v) unenforceable.

A contract to constitute a valid contract must have all the essential elements discussed earlier. If one or more of these elements is/are missing, the contract is voidable, void, illegal or unenforceable.

As per Section 2 (i) avoidable contract is one which may be repudiated at the will of one of the parties, but until it is so repudiated it remains valid and binding. It is affected by a flaw (e.g., simple misrepresentation, fraud, coercion, undue influence), and the presence of anyone of these defects enables the party aggrieved to take steps to repudiate the contract. It shows that the consent of the party who has the discretion to repudiate it was not free.

Example: A, a man enfeebled by disease or age, is induced by B's influence over him as his medical attendant to agree to pay B an unreasonable sum for his professional services. B employs undue influence. A's consent is not free; he can take steps to set the contract aside.

An agreement which is not enforceable by either of the parties to it is void [Section 2(i)]. Such an agreement is without any legal effect ab initio (from the very beginning). Under the law, an agreement with a minor is void (Section 11).[8]A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Section 2(i)].

Examples:

(1) A and B contract to marry each other. Before the lime fixed for the marriage, A goes mad. The contract becomes void.

(2) A contracts to take indigo for B to a foreign port. A's government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared. In the above two examples, the contracts were valid at the time of formation. They became void afterwards.

[8]Other instances of void agreements are:
(a) Agreements entered into through a mutual mistake of fact between the parties (Section 20).
(b) Agreements, the object or consideration of which is unlawful (Section 23).
(c) Agreements, part of the consideration or object of which unlawful (Section 21) is.
(d) Agreements made without consideration (Section 25).
(e) Agreements in restraint of marriage (Section 26).
(f) Agreements in restraint or trade (Section 27).
(g) Agreements in restraint of legal proceedings (Section 28).
(h) Uncertain agreements (Section 29).
(i) Wagering agreements (Section 30).
(j) Impossible agreements (Section 56).
(k) An agreement to enter into an agreement in the future

In example (1) the contract became void by subsequent impossibility. In example (2) the contract became void by subsequent illegality.[9]

It is misnomer to use 'a void contract' as originally entered into. In fact, in that case there is no contract at all. It may be called a void agreement. However, a contract originally valid may become void later.

An illegal agreement is one the consideration or object of which (1) is forbidden by law; or (2) defeats the provisions of any law; or (3) is fraudulent; or (4) involves or implies injury to the person or property of another; or (5) the court regards it as immoral, or opposed to public policy.

Examples: 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 illegal.

Every agreement of which the object or consideration is unlawful is not only void as between immediate parties but also taints the collateral transactions with illegality. In Bombay, the wagering agreements have been declared unlawful by statute.

Example: A bets with B in Bombay and loses; makes a request to C for a loan, who pays B in settlement of A's losses. C cannot recover from A because this is money paid "under" or "in respect of a wagering transaction which is illegal in Bombay.

An unenforceable contract is neither void nor voidable, but it cannot be enforced in the court because it lacks some item of evidence such as writing, registration or stamping. For instance, an agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under-stamped. In such a case, if the stamp is required merely for revenue purposes, as in the case of a receipt for payment of cash, the required stamp may be affixed on payment of penalty and the defect is then cured and the contract becomes enforceable. If, however, the technical defect cannot be cured the contract remains unenforceable, e.g., in the case of an unstamped bill of exchange or promissory note.

Contracts which must be in writing. The following must be in writing, a requirement laid down by statute in each case:

(a) A negotiable instrument, such as a bill of exchange, cheque, promissory note (The Negotiable Instruments Act, 1881).

(b) A Memorandum and Articles of Association of a company, an application for shares in a company; an application for transfer of shares in a company (The Companies Act, 1956).

(c) A promise to pay a time-barred debt (Section 25 of the Indian Contract Act, 1872)

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[9]Other examples of contracts becoming void are:
(a) A contingent contract to do or not to do anything if an uncertain future event happens becomes void if the event becomes impossible (Section 32).
(b) A contract voidable at the option of the promisee, becomes void when the promisee exercises his option by avoiding the contract. (Sections 19; 19A)

(d) A lease, gift, sale or mortgage of immovable property (The Transfer of Property Act, 1882).

Some of the contracts and documents evidencing contracts are, in addition to be in writing, required to be registered also. These are:

1. Documents coming within the purview of Section 17 of the Registration Act, 1908.

2. Transfer of immovable property under the Transfer of Property Act, 1882.

3. Contracts without consideration but made on account of natural love and affection between parties standing in a near relation to each other (Section 25, The Indian Contract Act, 1872).

4. Memorandum of Association, and Articles of Association of a Company, Mortgages and Charges (The Companies Act, 1956)

8.3.3.2 CLASSIFICATION ACCORDING TO MODE OF FORMATION

There are different modes of formation of a contract. The terms of a contract may be stated in words (written or spoken). This is an express contract. Also the terms of a contract may be inferred from the conduct of the parties or from the circumstances of the case. This is an implied contract (Section 9).

Example: If A enters into a bus for going to his destination and takes a seat, the law will imply a contract from the very nature of the circumstances, and the commuter will be obliged to pay for the journey. We have seen that the essence of a valid contract is that it is based on agreement of the parties. Sometimes, however, obligations are created by law (regardless of agreement) whereby an obligation is imposed on a party and an action is allowed to be brought by another party. These obligations are known as quasi-contracts. The Indian Contract Act, 1872 (Chapter V Sections 68–72) describes them as “certain relations resembling those created by contract”.

Examples:

(1) A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B’s property.

(2) A supplies the wife and children of B, a minor, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B’s property.

8.3.3.3 CLASSIFICATION ACCORDING TO PERFORMANCE

Another method of classifying contracts is in terms of the extent to which they have been performed. Accordingly, contracts are: (1) executed, and (2) executory or (1) unilateral, and (2) bilateral.

An executed contract is one wholly performed. Nothing remains to be done in terms of the contract. Example: A contracts to buy a bicycle from B for cash. A pays cash. B delivers the bicycle.

An executory contract is one which is wholly unperformed, or in which there remains something further to be done. Example: On June 1, A agrees to buy a bicycle from B. The contract is to be performed on June 15.

The executory contract becomes an executed one when completely performed. For instance, in the above example, if both A and B perform their obligations on June 15, the contract becomes executed. However, if in terms of the contract performance of promise by one party is to precede performance by another party then the contract is still executory, though it has been performed by one party. Example: On June 1, A agrees to buy a bicycle from B. B has to deliver the bicycle on June 15 and A has to pay price on July 1. B delivers the bicycle on June 15. The contract is executory as something remains to be done in terms of the contract.

A Unilateral Contract is one wherein at the time the contract is concluded there is an obligation to perform on the part of one party only. Example: A makes payment for bus fare for his journey from Bombay to Pune. He has performed his promise. It is now for the transport company to perform the promise. A Bilateral Contract is one wherein there is an obligation on the part of both to do or to refrain from doing a particular thing. In this sense, bilateral contracts are similar to executory contracts.

An important corollary can be deduced from the distinction between Executed and Executory Contracts and between Unilateral and Bilateral contracts. It is that a contract is a contract from the time it is made and not from the time its performance is due. The performance of the contract can be made at the time when the contract is made or it can be postponed also. See examples above under Executory Contract.

8.3.3.4 CLASSIFICATION OF CONTRACTS IN THE ENGLISH LAW

In English Law, contracts are classified into (a) Formal Contracts and (b) Simple Contracts.

Formal contracts are those whose validity or legal force is based upon form alone. Formal Contracts can be either (a) contracts of record or (b) contracts under seal or by (deed or speciality contracts. No consideration is necessary in the case of Formal Contracts. Such contracts do not find any place under Indian Law as consideration is necessary under Section 25 (of course there are some exceptions to the principle that a contract without consideration is void).

Contracts of Record are not contracts in the real sense as the *consensus-ad-idem* is lacking. They are only obligations imposed by the court upon a party to do or refrain from doing something. A Contract of Record is either (i) a judgement of a court or (ii) recognizance. An obligation imposed by the judgement of a court and entered upon its records is often called a Contract of Record.

Example: A is indebted to B for Rs. 500 under a contract, A fails to pay. B sues A and gets a judgement in his favour. The previous right of B to obtain Rs. 500 from A is replaced by the judgement in his favour and execution may be levied upon A to enforce payment, if need be.

A **Recognizance** is a written acknowledgement to the crown by a criminal that on default by him to appear in the court or to keep peace or to be of good conduct, he is bound to pay to the crown a certain sum of money. This is also an obligation imposed upon him by the court.

A contract with the following characteristics is known as a contract under seal or by deed or a contract of speciality; (i) It is in writing, (ii) It is signed, (iii) It is sealed, and (iv) It is delivered by the parties to the contract. These contracts are used in English Law for various transactions such as conveyances of land, a lease of property for more than three years, contracts made by corporations,
contracts made without consideration. Under the Indian Contract Act also, a speciality contract is recognised if the following conditions are satisfied: (1) the contract must be in writing (2) it must be registered according to the law of registration of documents, (3) it must be between parties standing in near relation to each other, and (4) it should proceed out of natural love and affection between the parties (Section 25 of the Indian Contract Act, 1872).

All contracts other than the formal contracts are called simple or parol contracts. They may be made: (i) orally, (ii) in writing, or (iii) implied by conduct.

8.3.4 OFFER AND ACCEPTANCE

8.3.4.1 OFFER/PROPOSAL

A proposal is defined as "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act orabstinence, he is said to make a proposal." [Section 2 (a)]. An offer is synonymous with proposal. The offeror or proposer expresses his willingness "to do" or "not to do" (i.e., abstain from doing) something with a view to obtain acceptance of the other party to such act or abstinence. Thus, there may be "positive" or "negative" acts which the proposer is willing to do.
Examples:
(1) A offers to sell his book to B. A is making an offer to do something, i.e., to sell his book. It is a positive act on the part of the proposer.

(2) A offers not to file a suit against B, if the latter pays A the amount of Rs. 200 outstanding. Here the act ofA is a negative one, i.e., he is offering to abstain from filing a suit.

8.3.4.1.1 HOW AN OFFER IS MADE

An offer can be made by (a) any act or (b) omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it to the other (Section 3). An offer can be made by an act in the following ways:

(a) by words (whether written or oral). The written offer can be made by letters, telegrams, telex messages, advertisements, etc. The oral offer can be made either in person or over telephone.

(b) by conduct. The offer may be made by positive acts or signs so that the person acting or making signs means to say or convey. However silence of a party can in no case amount to offer by conduct.

An offer can also be made by a party by omission (to do something). This includes such conduct or forbearance on one's part that the other person takes it as his willingness or assent. An offer implied from the conduct of the parties or from the circumstances of the case is known as implied offer.

Examples:
(1) A proposes, by letter, to sell a house to B at a certain price. This is an offer by an act by written words (i.e., letter). This is also an express offer.

(2) A owns a motor boat for taking people from Bombay to Goa. The boat is in the waters at the Gateway of India. This is an offer by conduct to take passengers from Bombay to Goa. He need not speak or call the passengers. The very fact that his motor boat is in the waters near Gateway of India signifies his willingness to do an act with a view to obtaining the assent of the other. This is an example of an implied offer.

(3) A offers not to file a suit against B, if the latter pays A the amount of Rs. 200 outstanding. This is an offer by abstinence or omission to do something.

8.3.4.1.2 SPECIFIC AND GENERAL OFFER

An offer can be made either:

1. to a definite person or a group of persons, or 2. to the public at large.

The first mode of making offer is known as specific offer and the second is known as a general offer. In case of the specific offer, it may be accepted by that person or group of persons to whom the same has been made. The general offer may be accepted by any one by complying with the terms of the offer. The celebrated case of Carlill v. Carbolic Smoke Ball Co., (1813) 1 Q.B. 256 is an excellent example of a general offer.

Example: In Carbolic Smoke Ball Co.'s case (supra), the patent-medicine company advertised that it would give a reward of £100 to anyone who contracted influenza after using the smoke balls of the company for a certain period according to the printed directions. Mrs. Carlill purchased the advertised smoke ball and contracted influenza in spite of using the smoke ball according to the printed instructions. She claimed the reward of £100. The claim was resisted by the company on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. She filed a suit for the recovery of the reward. It is held that, 'She could recover the reward as she had accepted the offer by complying with the terms of the offer. The general offer creates for the offeror liability in favour of any person who happens to fulfil the conditions of the offer. It is not at all necessary for the offeree to be known to the offeror at the time when the offer is made. He may be a stranger, but by complying with the conditions of the offer, he is deemed to have accepted the offer.

8.3.4.1.3 ESSENTIAL REQUIREMENTS OF A VALID OFFER

An offer must have certain essentials in order to constitute it a valid offer. These are: **A**. **The offer must be made with a view to obtain acceptance** [Section 2(a)]. **B**. **The offer must be made with the intention of creating legal relations**.[10]

C. **The terms of offer must be definite, unambiguous and certain or capable of being made certain** (Section 29).

The terms of the offer must not be loose, vague or ambiguous.

Examples: A offers to sell to B "a hundred quintals of oil". There is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.

D. **An offer must be distinguished from** (a) a mere declaration of intention or (b) an invitation to offer or to treat.

Offer vis-a-vis declaration of intention to offer

A person may make a statement without any intention of creating a binding obligation. It may amount to a mere declaration of intention and not to a proposal. Example: A father wrote to his would-be son-in-law that his daughter would have a share of what he would leave at the time of his death. At the time of death, the son-in-law staked his claim in the property left by the deceased. Held: The son-in-law's claim must fail as there was no offer from his father-in-law creating a binding obligation. It was just a declaration of intention and nothing more[11].

Offer vis-a-vis invitation to offer

An offer must be distinguished from invitation to offer. A prospectus issued by a college for admission to various courses is not an offer. It is only an invitation to offer. A prospective student by filling up an application form attached to the prospectus is making the offer. An auctioneer, at the time of auction, invites offers from the would-be-bidders. He is not making a proposal. A display of goods with a price on them in a shop window is construed an invitation to offer and not an offer to sell.

Example: In a departmental store, there is a self-service. The customers picking up articles and take them to the cashier's desk to pay. The customer's action in picking up particular goods is an offer to buy. As soon as the cashier accepts the payment a contract is entered into[12].

Likewise, prospectus issued by a company for subscription of its shares by the members of the public, the price lists, catalogues and quotations are mere invitations to offer.

On the basis of the above, we may say that an offer is the final expression of willingness by the offeror to be bound by his offer should the other party choose to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to

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[10]*Balfour v. Balfour (1919) 2 K.B. 571*

[11]Re Ficus (1900) 1. Ch. 331

[12]*Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. (1953) 1 Q.B. 401*

negotiate, he does not make an offer, he only invites the other party to make an offer on those terms. This is perhaps the basic distinction between an offer and an invitation to offer. In Harvey v. Facie, the plaintiffs (Harvey) telegraphed to the defendants (Facie), writing: "Will you sell us Bumper Hall Pen?[13] Telegraph lowest cash price." The defendants replied also by a telegram, "Lowest price for Bumper Hall Pen £900". The plaintiffs immediately sent their last telegram stating: "We agree to buy Bumper Hall Pen for £900 asked by you". The defendants refused to sell the plot of land (Bumper Hall Pen) at that price. The plaintiff's contention that by quoting their minimum price in response to the inquiry, the defendants had made an offer to sell at that price, was turned down by the Judicial Committee. Their Lordship pointed out that in their first telegram, the plaintiffs had asked two questions, first as to the willingness to sell and second, as to the lowest price. They reserved their answer as to the willingness to sell. Thus, they had made no offer. The last telegram of the plaintiffs was an offer to buy, but that was never accepted by the defendants.

E.The offer must be communicated to the offeree. An offer must be communicated to the offeree before it can be accepted. This is true of specific as well as general offer.

Example: G sent S, his servant, to trace his missing nephew. Subsequently, G announced a reward for information relating to the boy. S, traced the boy in ignorance of the announcement regarding reward and informed G. Later, when S came to know of the reward, he claimed it. Held, he was not entitled to the reward on the ground that he could not accept the offer unless he had knowledge of it[14]. **F. The offer must not contain a term the non-compliance** of which may be assumed to amount to acceptance. Thus, the offeror cannot say that if the offeree does not accept the offer within two days, the offer would be deemed to have been accepted.

Example tells B 'I offer to sell my dog to you for Rs. 45. If you do not send in your reply, I shall assume that you have accepted my offer'. The offer is not a valid one.

G. A tender is an offer as it is in response to an invitation to offer. Tenders commonly arise where, for example, a hospital invites offers to supply eatables or medicines. The persons filling up the tenders are giving offers. However, a tender may be either: (a) specific or definite; where the offer is to supply a definite quantity of goods, or (b) standing; where the offer is to supply goods periodically or in accordance with the requirements of the offeree.

In the case of a definite tender, the suppliers submit their offers for the supply of specified goods and services. The offeree may accept any tender (generally the lowest one). This will result in a contract.

Example: A invites tenders for the supply of 10 quintals of sugar. B, C, and D submit their tenders. B's tender is accepted. The contract is formed immediately the tender is accepted.

In the case of standing offers, the offeror gives an open offer whereby he offers to supply goods or services as required by the offeree. A separate acceptance is made each time an order is placed. Thus, there are as many contracts as are the acts of acceptance.

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[13]Bumper Hall Pen' was the name of the real estate.
[14]*Lalman Shukla v. Gauri Dutt, II, A.L.J. 489*

Example: The G.N. Railway Co. invited tenders for the supply of stores. W made a tender and the terms of the tender were as follows: "To supply the company for 12 months with such quantities of specified articles as the company may order from time to time.The company accepted the tender and placed the orders. W executed the orders as placed from time to time but later refused to execute a particular order. Held: W was bound to supply goods within the terms of the tender[15].

The Supreme Court of India in this regard has observed: As soon as an order was placed a contract arose and until then there was no contract. Also each separate order and acceptance constituted a different and distinct contract[16].

It is to be noted that if the offeree gives no order or fails to order the full quantity of goods set out in a tender there is no breach of contract.

Revocation or Withdrawal of a tender: A tenderer can withdraw his tender before its final acceptance by a work or supply order. This right of withdrawal shall not be affected even if there is a clause in the tender restricting his right to withdraw. A tender will, however, be irrevocable where the tenderer has, on some consideration, promised not to withdraw it or where there is a statutory prohibition against withdrawal[17].

8.3.4.2 SPECIAL TERMS IN A CONTRACT

The special terms, forming part of the offer, must be duly brought to the notice of the offeree at the time the offer is made. If it is not done, then there is no valid offer and if offer is accepted, and the contract is formed, the offeree is not bound by the special terms which were not brought to his notice. The terms may be brought to his notice either: (a) by drawing his attention to them specifically, or (b) by inferring that a man of ordinary prudence could find them by exercising ordinary intelligence.

(a) the examples of the first case are where certain conditions are written on the back of a ticket for a journey or deposit of luggage in a cloak room and the words. "For conditions see back" are printed on the face of it. In such a case, the person buying the ticket is bound by whatever conditions are written on the back of the ticket whether he has read them or not.

Examples:

(1) A lady, L, the owner of a cafe, agreed to purchase a machine and signed the agreement without reading its terms. There was an exemption clause excluding liability of the seller under certain circumstances. The machine proved faulty and she purported to terminate the contract. Held: That she could not do so, as the exemption clause protected the seller from the liability[18].

(2) T purchased a railway ticket, on the face of which the words: "For conditions see back" were written. One of the conditions excluded liability for injury, however caused. T was

[15]*Great Northern Railway v. Witham (1873) L.R. 9 C.P. 16*
[16]*Chatturbhuj Vithaldas v. Moreshover Parashram AIR 1954 SC 326*
[17]*The Secretary of State for India v. Bhaskar Krishnaji Samani AIR 1925 Bom 485*
[18]*L'Estrange v. Grancob Ltd. (1934) 2 R.B. 394*

illiterate and could not read. She was injured and sued for damages. It is held, that the railway company had properly communicated the conditions to her who had constructive notice of the conditions whether she read them or not. The company was not bound to pay any damages[19].

(b) The same rule holds good even where the conditions forming part of the offer are printed in a language not understood by the acceptor provided his attention has been drawn to them in a reasonable manner. In such a situation, it is his duty to ask for the translation, of the conditions and if he does not do so, he will be presumed to have a constructive notice of the terms of the conditions[20].
If conditions limiting or defining the rights of the acceptor are not brought to his notice, then they will not become part of the offer and he is not bound by them. Example: A passenger was travelling with luggage from Dublin to Whitehaven on a ticket, on the back of which there was a term which exempted the shipping company from liability for the loss of luggage. He never looked at the back of the ticket and there was nothing on the face of it to draw his attention to the terms on its back. He lost his luggage and sued for damages. Held: He was entitled to damages as he was not bound by something which was not communicated to him[21].

Also, if the conditions are contained in a document which is delivered after the contract is complete, then the offeree is not bound by them. Such a document is considered a non-contractual document as it is not supposed to contain the conditions of the contract. For instance, if a tourist driving into Mussoorie, receives a ticket upon paying toll-tax, he might reasonably assume that the object of the ticket was that by producing it he might be free from paying toll at some other toll-tax barrier, and might put in his pocket without reading the same. The ticket is just a receipt or a voucher.

Example: C hired a chair from the Municipal Council in order to sit on the beach. He paid the rent and received a ticket from an attendant. On the back of the ticket, there was a clause exempting the Council "for any accident or damage arising from hire of chairs." C sustained personal injuries as the chair broke down while he was sitting therein. He sued for damages[22]. Held: That the Council was liable

From the illustrations given it may be concluded that whether the offeree will be bound by the special conditions or not will depend on whether or not he had or could have had notice by exercising ordinary diligence. Detailed observations with respect to printed conditions on a receipt were made by the Bombay High Court in*R.S. Deboov. M. V. Hindlekar, AIR 1995 Bom.68*. These observations are:

1. Terms and conditions printed on the reverse of a receipt issued by the owner of the laundry or any other bailee do not necessarily form part of the contract of bailment in the absence of the signature of the bailor (customer) on the document relied upon. The onus is on the bailee

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[19]Thompson v. LM. And L. Rly. (1930) 1 KB. 417

[20]*Mackillingan v. Campagine de Massangeres Maritimes (1897) 6 Cal. 227 J*
[21]*Henderson v. Stevenson (1875) 2 H.L.S.C. 470*
[22]*Chapleton v. Barry U.D.C. (1940) 1 K.B. 532*

to prove that the attention of the bailor was drawn to the special conditions before contract was concluded and the bailor had consented to them as contractual terms.

2. It cannot be just assumed that the printed conditions appearing on the reverse of the receipt automatically become contractual terms or part of the contract of bailment.
3. In certain situations, the receipt cannot be considered as a contractual document as such, it is a mere acknowledgement of entrustment of certain articles.

8.3.4.3 CROSS OFFERS

Where two parties make identical offers to each other, in ignorance of each other's offer, the offers are known as cross-offers and neither of the two can be called an acceptance of the other and, therefore, there is no contract.

Example H wrote to T offering to sell him 800 tons of iron at 69s. Per ton. On the same day T wrote to H offering to buy 800 tons at 69s. Their letters crossed in the post. T contended that there was a good contract. Held: that there was no contract[23].

8.3.4.4 TERMINATION OR LAPSE OF AN OFFER

An offer is made with a view to obtain assent thereto. As soon as the offer is accepted it becomes a contract. But before it is accepted, it may lapse, or may be revoked. Also, the offeree may reject the offer. In these cases, the offer will come to an end.

(1) The offer lapses after stipulated or reasonable time. [Section 6(2)] The offer must be accepted by the offeree within the time mentioned in the offer and if no time is mentioned, then within a reasonable time. What is a reasonable time is a question of fact and would depend upon the circumstances of each case.

Example: M offered to purchase shares in a company by writing a letter on June 8. The company allotted the shares on 23rd November. M refused the shares. Held: That the offer lapsed as it was not accepted within a reasonable time[24].

(2) An offer lapses by the death or insanity of the offerer or the offeree before acceptance. Section 6(4) provides that a proposal is revoked by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. Therefore, if the acceptance is made in ignorance of the death, or insanity of offerer, there would be a valid contract. Similarly, in the case of the death of offeree before acceptance, the offer is terminated.

(3) An offer terminates when rejected by the offeree.

(4) An offer terminates when revoked by the offerer before acceptance.

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[23]*Tinn v. Hoffman & Co. (1873) 29 L.T. Exa. 271*

[24]*Ramsgate Victoria Hotel Co. v. Montefiore (1860) L.R.I. Ex. 109*

(5) An offer terminates by not being accepted in the mode prescribed, or if no mode is prescribed, in some usual and reasonable manner.

(6) A conditional offer terminates when the condition is not accepted by the offeree.

Example: A proposes to B "I can sell my house to you for Rs. 12,000 provided you lease out your land to me." If B refuses to lease out the land, the offer would be terminated.

(7) Counter offer. An offer terminates by counter-offer by the offeree. When in place of accepting the terms of an offer as they are, the offeree accepts the same subject to certain condition or qualification, he is said to make a counter-offer. The following have been held to be counter-offers:

(i) Where an offer to purchase a house with a condition that possession shall be given on a particular day was accepted varying the date for possession [Routledge v. Grant (1828) 130 E.R. 920]

(ii) An offer to buy a property was accepted upon a condition that the buyer signed an agreement which contained special terms as to payment of deposit, making out title completion date, the agreement having been returned unsigned by the buyer [Jones v. Daniel (1894) 2 Ch. 332].

(iii) An offer to sell rice was accepted with an endorsement on the sold and bought notethat yellow and wet grain will not be accepted [*All Shain v. Moothia Chetty, 2 BomL.R. 556*].

(iv) Where an acceptance of a proposal for insurance was accepted in all its terms subject to the condition that there shall be no assurance till the first premium was paid [*Sir Mohamed Yusuf v. S. of S. for India 22 Bom. L.R. 872*]

8.3.5 COMMUNICATION OF OFFER AND ACCEPTANCE

8.3.5.1 COMMUNICATION OF OFFER

In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made". Therefore knowledge of communication is of relevance. Knowledge of the offer would materialize when the offer is given in writing or made by word of mouth or by some other conduct. This can be explained by an example. Where 'A' makes a proposal to 'B' by post to sell his house for 5 lakhs and if the letter containing the offer is posted on 10thMarch and if that letter reaches 'B' on 12thMarch the offer is said to have been communicated on 12thMarch when B received the letter. Thus it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

8.3.5.2 COMMUNICATION OF ACCEPTANCE

Section 3of the Act prescribes in general terms two modes of communication namely, (a) by any act and (b) by omission, intending thereby to, to communicate to the other or which has the effect of communicating it to the other.

Communication by act would include any expression of words whether written or oral. Written words will include letters, telegrams, faxes, emails and even advertisements. Communication can also be by 'omission' to do any or something. Such omission is conveyed by a conduct or by forbearance on the part of one person to convey his willingness or assent. However silence would not be treated as communication by 'omission 'Where a resolution passed by a bank to sell land to 'A' remained uncommunicated to 'A', it was held that there was no communication and hence no contract[25].

When communication of acceptance is complete

In terms of Section 4 of the Act, it is complete,(i)As against the proposer, when it is put in course of transmission to him so as to be out of the power of the acceptor to withdraw the same;(ii)As against the acceptor, when it comes to the knowledge of the proposer.

Example: If 'B' accepts, A's proposal and sends his acceptance by post on 14th, the communication of acceptance as against 'A' is complete on 14th, when the letter is posted. As against 'B' acceptance will be complete, when the letter reaches 'A'. Here 'A' the proposer will be bound by B's acceptance, even if the letter of acceptance is delayed in post or lost in transit. The golden rule is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance.

8.3.6 CONSIDERATION

Section 2 (d) of the Indian Contract Act, 1872defines consideration as '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 abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

8.3.6.1 LEGAL REQUIREMENTS REGARDING CONSIDERATION

(i)Consideration must move at the desire of the promisor: Consideration must move at the desire of the promisor, either from the promisee or some other third party.

(ii) Consideration can flow either from the promisee or any other person: The consideration can legitimately move from a third party is an accepted principle of law in India though not in England.

(iii)Executed and Executory consideration: Where consideration consists of performance, it is called "executed" consideration. Where it consists only of a promise, it is executory.

(iv) Past consideration: The plaintiff rendered services to the defendant at his desire during his minority. He also continued to render the same services after the dependant attained majority. It was held to be good consideration for a subsequent express promise by the defendant to pay an annuity to the plaintiff but it was admitted that if the services had not been rendered at the desire of the defendant it would be hit by section 25 of the Act.[26]

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[25]Central Bank Yeotmal vs Vyankatesh (1949) A. Nag. 286

[26]*Sindia Vs Abraham (1985)Z. Bom 755*

(v)Adequacy of Consideration: Consideration need not necessarily be of the same values as of the promise for which it is exchanged.

(vi) Performance of what one is legally bound to perform: The performance of an act by a person what he is legally bound to perform, the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence such a contract is void for want of consideration.

(vii) Consideration must not be unlawful, immoral, or opposed to public policy.

8.3.6.2 VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

(i) On account of natural love and affection: It is important that parties should be of near relation like husband and wife to get this exemption (*Rajlukhee Devee Vs Bhootnath*).

(ii)Compensation paid for past voluntary services: A promise to compensate wholly or in part for past voluntary services rendered by someone does not require consideration for being enforced.

(iii)Promise to pay debts barred by limitation.

(iv) Creation of Agency: Interm of section 185 of the Act, no consideration is necessary to create an agency.

(v)In case of completed gifts, no consideration is necessary. This is clear from the Explanation (1) to section 25 of the Act which provides that "nothing in this Section shall affect the validity as between donor and donee of any gift actually made.

8.3.7 PERFORMANCE OF A CONTRACT

In a contract where there are two parties, each one has to perform his part and demands the other to perform. Not only the promisor has a primary duty to perform, even the representative in the event of death of a promisor, is bound by the promise to perform, unless a contrary intention appears from the contract (Section 37).

The promise under a contract can be performed by any one of the following:

(1) **Promisor himself:** Invariably the promise has to be performed by the promisor where the contracts are entered into for performance of personal skills, or diligence or personal confidence, it becomes absolutely necessary that the promisor performs it himself.
(2) **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative can employ a competent person to perform it.
(3) **Representatives:** Generally upon the death of promisor, the legal representatives of the deceased are bound by the promise unless it is a promise for performance involving personal skill or ability of the promisor. However the liability of the legal representative is limited to the value of property inherited by him from the promisor.
(4) **Third Person:** The question here is whether a total stranger to a contract who is identified as a third person can perform a promise. Where a promisee accepts performance from a third party he cannot afterwards enforce it against the promisor. Such a performance,

where accepted by the promisor has the effect of discharging the promisor though he has neither authorized nor ratified the act of the third party.

(5) Joint promisors: Where two or more persons jointly promise, the promise must be performed jointly unless a contrary intention appears from the contract. Where one of the joint promisors dies, the legal representative of the deceased along with the other joint promisor(s) is bound to perform the contract. Where all the joint promisors die, the legal representatives of all of them are bound to perform the promise.

8.3.7.1 EFFECTS OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE

In any promise, the promisor should act first by offering performance also known as 'tender'. In terms of section 38 of the Act, where the promisee has not accepted the offer or tender of performance by the promisor then the promisor is not responsible for non-performance. In this case the promisor does not also lose his rights under a contract.

The related legal principles were settled in the famous English case *Start up vs.Macdonald*[27] thus "The law considers a party who has entered into a contract to deliver goods or pay money to another as having substantially performed it, if he has tendered the goods or money to the party to whom the delivery or payment was to be made, provided only that the tender has been made under such circumstances that the party to whom, it has been made, has had a reasonable opportunity of examining the goods or the money tendered in order to ascertain that the thing tendered is really what that it is purported to be"

Where a party to a contract has refused to perform the promise he has made or had disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless his acquiescence in the continuance of the contract has been conveyed either by words or by deeds [conduct] [Section 39].It has been held by the Privy Council in *Muralidhar Chatterjee vs. International Film Company*[28],that when a promisee puts an end to a contract being rightly entitled to do so, it shall be deemed as if he has rescinded a voidable contract. In view of Section 64 of the Act, the promisee, in the events of his putting an end to the contract, is bound to return all the benefits received under the contract and in turn is entitled for compensation for all damages sustained by him for breach of contract by the promise,

8.3.7.2 TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

Sections 46 to 50 of the Act deal with this issue of "Time and place" for performance of a promise. Following are the rules of performance where the promisee has not applied for performance. **Where no time is specified for performance of a promise**, it must be performed within a reasonable time. What is reasonable time would depend on the facts and circumstances of each case [section 46]. **Where a promise is to be performed on a specified date but no time is mentioned,** then it can be performed any time on that day but during business hours only.

[27]1843 6 Man. & G. 593, 610

[28]47 Cal.W.N.407

A promisee may refuse to accept delivery (of goods), if it is delivered after business hours. For example, if the promisor wishes to deliver goods at a time which is beyond business hours, the promisee can refuse.

As regards the place of performance, **where no place is fixed for the performance of a promise**, it is the duty of the promisor to ask the promisee to fix a reasonable place. No distinction is made between an obligation to pay money and an obligation to deliver goods or discharge any other obligation. But generally the promise must be performed or goods must be delivered at the usual place of business.

Where the promisor has not undertaken to perform the promisee without an application by the promise and the promise is to be performed on a certain day, it is the duty of the promisee to apply for performance at a proper place and within usual hours of business.

The above are subject to the position that promisor can perform any promise at any place, in any manner, at any time which the promisee prescribes or sanctions.

8.3.7.3 EFFECTS OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL

Section 55 of the Act regulates the position of performance of contract where time is of essential. In terms of this Section, where it is understood between parties that time is an essential element, and where one party is unable to perform his part of the promise either in fullor in part within the time specified, then the contract is voidable at the option of the party either in full or in part to the extent of non-performance of the contract within the time. In these cases the contract is not voidable if time is not of essence of the contract, but the promisee is entitled for compensation for loss if any suffered on account of such failure.

8.3.7.4 IMPOSSIBILITY OF PERFORMANCE

According to Section 56 of the Act "An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, (by reason of some event which the promisor could not prevent,) unlawful, becomes void when the act becomes impossible or unlawful.

Where one person has promised to do something which he knew, or with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor, must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise"

A contract is discharged by impossibility of its performance. Impossibility may be of two types:

(i) Initial Impossibility- existed at the time of making the agreement.

(ii) Subsequent or supervening impossibility- arises after formation of contract.

The contract becomes void when the performance of the contract becomes impossible.

Doctrine of Frustration: The idea of "supervening impossibility" is referred to as 'doctrine of frustration' in U.K. In order to decide whether a contract has been frustrated, it is necessary

to consider the "intention of parties as are implied from the terms of contract". However in India the 'doctrine of frustration' is not applicable.

Impossibility of performance must be considered only in term of section 56 of the Act. Section 56 covers only 'supervening impossibility and not implied terms'. This view was upheld by Supreme Court in *Satyabrata Ghose vs Mugneeram Bangur A.I.R.(1954) S. C. 44* and *Alopi Prasad vs Union of India A.R. 1960 S.C.588* In *Satyabrat Ghosh vs Mugneeram Bangur & Co. A.I.R 1954 S.C.44,* Calcutta High court held in a context of impossibility of performance that "having regard to the actual existence of war condition, the extent of the work involved and total absence of any definite period of time agreed to the parties, the contract could not be treated as falling under impossibility of performance. In the given case the plaintiff had agreed to purchase immediately after outbreak of war a plot of land. This plot of land was part of a scheme undertaken by the defendant who had agreed to sell after completing construction of drains, roads etc. However the said plot of land was requisitioned for war purpose. The defendant thereupon wrote to plaintiff asking him to take back the earnest money deposit, thinking that the contract cannot be performed as it has become impossible of being performed. The plaintiff brought a suit against the defendant that he was entitled for conveyance of the plot of land under condition specified in the contract. It was held that the requisition order did not make the performance impossible.

8.3.7.5 CONTRACT, WHICH NEED NOT BE PERFORMED

A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Act. These circumstances are (i) novation, (ii) rescission,(iii) alteration and (iv) remission.

Section 62 of the Act provides that "if the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed".

(a)Effect of novation: Novation means substitution. Where a given contract is substituted by a new contract it is novation. The old contract, on novation ceases.

This can be illustrated as follows - A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b)Effect of rescission: In case of rescission, the old contract is cancelled and no new contract comes in its place.

Difference between novation and rescission: While novation involves rescission, there is no novation in rescission. Both in novation and rescission the contract is discharged by mutual agreement. In both cases parties enter into a new contract to come out of the old coThe new agreement is the consideration for rescission.

(**c)Effect of alteration:** Where the contract is altered, the original contract is rescinded. Hence the old one need not be performed whereas the new one has to be performed. There are remission of performance in alteration. Remission means waiver. Section 63 of the Act deals with remission. It provides that "every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit". Example: where 'A' owes 'B' a

sum of `1 lakh, 'B' may accept a part of it in full and final settlement of the due or waive his entire claim.

It should be noted that novation, rescission or alteration cannot take place without consideration but in case of part or complete rescission no consideration is required. The promisee can dispense with performance without consideration and without a new agreement

8.3.7.6 RESTORATION OF BENEFIT UNDER A VOIDABLE CONTRACT

Certain contracts referred to in Sections 19, 19A, 39, 51, 54 & 55 are voidable. The question for consideration is what the effect of recession of contract by that person at whose option the contract is voidable. The following are the effects of such an action-

(i)The other party need not perform the promise

(ii) Any benefit received by the person rescinding it must restore it to the person from whom it was received.

A voidable contract which is voidable either at its inception or subsequently comes to an end when it is avoided by the party at whose option it is avoided. In such a case, not only the contract need not be performed there is also restoration of benefit.

(a) the injured party on account of non-performance of the contract is entitled to recover compensation for damages suffered and

(b) benefits received must be restored.

In *Murlidhar vs. International Film Co. A.I.R 1943 P.C. 34*, the plaintiff having wrongfully repudiated the contract, the defendants rescinded it u/s 39 of the Act.

The plaintiff brought a suit to recover `4000/- paid to the defendant. Held defendant was bound to restore the amount after setting off such damages.

8.3.7.7 OBLIGATIONS OF PERSON WHO HAS RECEIVED ADVANTAGE UNDER VOID AGREEMENT OR ONE BECOMING VOID

In terms of section 65 of the Act, where (a) an agreement is discovered to be void or (b) a contract becomes void, any person who received an advantage must

(a) restore it or(b)pay compensation for damages in order to put the position prior to contract.

In *Dhuramsey vs. Ahgmedhai (1893) 23 Bom 15*, the plaintiff hired a godown from the defendant for 12 months and paid the advance in full. After about seven months the godown was destroyed by fire, without any fault on the part of plaintiff. When the plaintiff claimed refund of the advance, it was upheld that he was entitled to recover the rent for the unexpired term.

Any benefit received which is ancillary to main contract need not be returned. For example, the deposit paid for a transaction of sale of house between parties, need not be returned just because the sale transaction could not take place. This was on the ground that the deposit is only a security and not part of main contract.

8.3.8 DISCHARGE OF A CONTRACT

Contract may be discharged in eight ways as discuss hereunder.

(a)Discharge by performance: Discharge by performance will take place when there is eitheractual performance or attempted performance. In actual performance, discharge takes place when parties to the contract fulfil their obligations within time and in the manner prescribed.In attempted performance the promisor offers to perform his part but the promisee refuses to accept his part. This is also known as tender.

(b)Discharge by mutual agreement: Discharge also takes place where there is substitution [novation] rescission, alteration and remission. In all these cases old contract need not be performed.

(c)Discharge by impossibility of performance: A situation of impossibility may have existed at the time of entering into the contract or it may have transpired subsequently (also known as supervening impossibility). Impossibility can arise when

(i) there is an unforeseen change in law.

(ii) destruction of subject matter.

(iii) Non-existence or non-occurrence of a state of thing to facilitate happening of the agreement.

(iv) personal incapacity of the promisor.

(v) declaration of war

(d)Discharge by lapse of time: Performance of contract has to be done within certain prescribed time. In other words it should be performed before it is barred by law of limitation. In such a case there was no remedy for the promisee. For example, where then the debt is barred by law of limitation.

(e)Discharge by operation of law: Where the promisor dies or goes insolvent there is a discharge by operation of law.

(f)Discharge by breach of contract: Where there is a default by one party from performing his part of contract on due date then there is breach of contract. Breach of contract can be actual breach or anticipatory breach.

- **Actual Breach**-Failure/refusal of any one party to perform his contractual obligations under the contract when it is due. Here the contract is voidable.
- **Anticipatory breach of contract**- Where the promisor refuses to perform his obligation even before the specified time for performance and signifies his unwillingness, then there is an anticipatory breach. Here the aggrieved party may immediately treat the contract voidable or wait till the time when the performance is due.
- Aggrieved party has following remedies on the breach of contract-Rescission of the contract, suit for damages, suit for quantum merit, specific performance and for injunction
- Rescission- Cancellation of a contract by the consent of all parties/ by aggrieved party.
- Damages- Monetary compensation payable to the injured party for the loss due to breach of contract by the defaulted party.
- Liquidated Damages-Pre-estimated amount of damages that are mentioned in a contract and are paid on the breach of contract.

- Penalty-Amount specified in contract which is high and disproportionate from the amount of damages in the event of its breach. This amount is paid as of punishment to avoid the breach of contract.

Leading case on this point is Hochester vs.De La Tour[29]. In this case defendant had engaged the services of plaintiff as his attendant for a tour of the continent from June 1st on a fee of £10 per month for three months. However defendant changed his mind before June 1st and informed the plaintiff that his services are not required. This is thus a case of anticipatory breach of contract. It was held in this case that plaintiff could put an end to the contract even before the due date viz. 1st June and he need not wait for the date meant for performance of the promise. The principle of anticipatory breach was well summed up in Frost vs. Knight[30]. In the above case it was held that promisee could wait till the due date of performance also before he puts an end to the contract. In such a case the amount of damages will vary depending on the circumstances.

The rules relating to compensation were enunciated in detail in Hadley vs. Baxendale[31].In this case, the mill of the plaintiff had to be stopped because of broken crank shaft. The plaintiff sent the crank shaft as a pattern for manufacturing a new one. Till the arrival of the new crank shaft, the mill could not be resumed. Hence mill incurred losses. However this position was not properly conveyed to the defendant, the carrier. There were some delay on the part of the defendant in delivering the crank shaft to the manufacturer which in turn delayed the reopening of the mill. As a result of this, there were losses to the mill. The defendant claimed compensation for loss in profit of the mill. However this was not accepted by court on the ground the plaintiff did not explain to defendant that delay in delivering the crank shaft would delay resumption of the mill and this would result in losses to the plaintiff. Madras High Court in *Madras Railway Company vs. Govind Ram, Mad. 176*upheld the same principle as above.

(g)A promisee may remit the performance of the promise by the promisor. Here there is a discharge. Similarly the promisee may accept some other satisfaction. Then again there is a discharge on the ground of accord and satisfaction.

(h)When a promisee neglects or refuses to afford the promisor reasonable facilities or opportunities for performance, promisor is excused by such neglect or refusal.

8.3.9 CONTINGENT CONTRACT

In terms of Section 31 of the Act contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen. Contracts of indemnity and contracts of insurance fall under this category.

For instance if 'A' contracts to pay 'B' `100000/- if B's house is destroyed by fire then it is a contingent contract.

Essentials of a contingent contract:

[29](1853) 2E & B 678
[30](1872) LR 7 Ex.111
[31](1854) 9 Ex. 341

(a)The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
(b)The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
(c)The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
For example if 'A' promises to pay 'B' `10000/- if 'A' left for Delhi from Mumbai on a particular day, it is a contingent contract because though 'A's leaving for Delhi is his own will, it cannot happen only at his will.
The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34 and 36 of the Act.
Contract of indemnity, guarantee and insurance are contingent contracts, even LIC to a certain extent is contingent contract. All wagering agreements are basically contingent agreements but all the contingent contracts are not wagering agreements.

8.3.10 QUASI– CONTRACTS

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts as they create same obligations as in the case of regular contract.Quasi contracts are based on principles of equity, justice and good conscience. Salient features of quasi contracts are:
(a)In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
b)Secondly, it does not arise from any agreement of the parties concerned, but it imposed by the law; and
(c)Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.
There are five circumstances which are identified by the Act as quasi contracts:
(a)Claim for necessaries supplied to persons incapable of contracting; For example: if 'A' supplies necessaries of life to 'B' a lunatic or to his wife or child whom 'B' is liable to protect and maintain, then 'A' can claim the price from the property of 'B'. For such claim to be valid 'A' should prove the supplies were to the actual requirements of 'B' and his dependents. No claim for supplies of luxury articles can be made. If 'B' has no property 'A' obviously cannot make his claim. **(b) Right to recover money paid for another person;** In a case the plaintiff agreed to purchase certain mills and to save it from being sold to outsiders paid certain arrears of municipal dues. Here the payment made by the plaintiff was held to be recoverable as he had interest in the property as prospective buyer.
(c) Obligation of person enjoying benefits of non-gratuitous act: It can be illustrated by a case law where 'K' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the meantime government went on appeal. The appeal was decided in favour of the government and'K' was directed to return the salary paid to him during the period of reinstatement.[32]

[32]*Shyam Lal vs. State of U.P. A.I.R (1968) 130*

(d)Responsibility of finder of goods: In terms of section 71 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.Thus a finder of lost goods has:
(i) to take proper care of the property as men of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found
Where 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the week end. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.

(e) Liability for money paid or thing delivered by mistake or by coercion:
In terms of Section 72 of the Act, "a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable[33].
In a case where 'T' was traveling without ticket in a tram car and on checking he was asked to pay `5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him. The suit was decreed in his favour.[34]
In all the above cases the contractual liability arose without any agreement between the parties.

8.3.11 CONTRACT OF INDEMNITY

In terms of Section 124 of the Act, 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or the conduct of any person is called a "contract of indemnity". This is also a known as typical form of contingent contract.

There are two parties in this form of contract. The party who promises to indemnify save the other party from loss is known as 'indemnifier', whereas the party who is promised to be saved against the loss is known as 'indemnified'. For example: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of `5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

In a contract of indemnity, the promisee i.e., indemnity- holder acting within the scope of his authority is entitled to recover from the promisori.e., indemnifier the following rights:
(a)all damages which he may be compelled to pay in any suit
(b)all costs which he may have been compelled to pay in bringing/ defending the suit and
(c)all sums which he may have paid under the terms of any compromise of suits
It may be understood that the rights contemplated under section125 are not exhaustive. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off.

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[33]*Shivprasad vs Sirish Chandra A.I.R. 1949 P.C. 297*
[34]*Trikamdas vs. Bombay Municipal Corporation A.I.R.1954*

8.3.12 CONTRACT OF GUARANTEE

A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default (Section 126).

There are three parties in a contract of guarantee. Surety- person who gives the guarantee, Principal debtor- person in respect of whose default the guarantee is given, Creditor- person to whom the guarantee is given.

Any guarantee given may be oral or written. For example,

(1) where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee.

(2)X and Y go into a car showroom where X says to the dealer to supply latest model of zen to Y. In case of his failure to pay, he will be paying for it. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.

The principle of implied promise to indemnify surety (one who gives guarantee) is contained in Section 145 of the Act which provides that 'in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee but no sum which he has wrongfully paid.

The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.

What constitutes consideration in a case of guarantee is an important issue and is laid down in Section 127 of the Act. As per Section 127 of the Act "anything done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.

For example, 'A' had advanced money to 'B' on a bond hypothecating B's property stating that C is the surety for any balance that might remain due after realization of B's property. C was not a party to the bond. He, however signed a separate surety bond two days subsequent to the advance of the money. It was held that the subsequent surety bond was void for want of consideration[35].

8.3.13 BAILMENT

Bailment etymologically means 'handing over' or 'change of possession'. As per Section 148 of the Act, bailment is an act whereby goods are delivered by one person to another for some purpose, on a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person who delivers the goods is the bailor and the person to whom the goods are delivered is the bailee. For example, where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

The essential characteristics of bailment are,

(a) Bailment is based upon a contract. Sometimes it could be implied by law as it happens in the case of finder of lost goo

[35]*Nanak Ram vs. Mehinlal 1877, I Allahabad 487*

(b) Bailment is only for moveable goods and never for immovable goods or money.
(c) In bailment possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.
(d)In bailment bailor continues to be the owner of goods as there is no change of ownership.
(e) Bailee is obliged to return the goods physically to the bailor. The bailee cannot deliver some other goods, even not those of higher value.

Different forms of Bailment:

Following are the popular forms of bailment:
(1) Delivery of goods by one person to another to be held for the bailor's use.
(2) Goods given to a friend for his own use without any charge
(3) Hiring of goods
(4) Delivering goods to a creditor to serve as security for a loan.
(5) Delivering goods for repair with or without remuneration.
(6) Delivering goods for carriage

8.3.14 PLEDGE

Pledge is a variety or specie of bailment. It is bailment of goods as security for payment of debt or performance of a promise. The person who pledges [or bails] is known as pledge or or also as pawnor, the bailee is known as pledgee or also as pawnee. In pledge, there is no change in ownership of the property. Under exceptional circumstances, the pledgee has a right to sell the property pledged. Section 172 to 182 of the Indian Contract Act, 1872 deal specifically with the bailment of pledge. For example: A lends a money to B in lieu of a jewellery deposited by B as security to A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and the A is a pawnee.

Essentials of contract of pledge:

- There must be bailment for security for payment of debt/ performance of a promise.
- Goods must be the subject matter of the contract of pledge the goods pledged must be in existence.
- There must be a delivery of goods from pawnor to pawn.

8.3.15 AGENCY

The Indian Contract Act, 1872 does not define the word 'Agency'. However the word 'Agent' is defined as "a person employed to do any act for another or to represent another in dealings with third persons". The third person for whom the act is done or is so represented is called "Principal".(Section 182)

The Rule of Agency is based on the maxim "*Quit facit per alium, facit per se*:" i.e., he who acts through an agent is himself acting.

Salient features of agency: Following are the four salient features of agency-

(i)Basis: The basic essence of 'agency' is that the principal is bound by the acts of the agent and is answerable to third parties.

(ii)Consideration not necessary: Unlike other regular contracts, a contract of agency does not need consideration. In other words, the relationship between the 'principal' and 'agent' need not be supported by consideration.

(iii)Capacity to employ an agent: A person who is competent to contract alone can employ an agent. In other words, a person in order to act as principal must be a major and of sound mind.

(iv)Capacity to be an agent: A person in order to be an agent must also be competent to contract. In other words, he must also be a person who has attained majority and is of sound mind.

Mode of creation- Agency can be either expressed or implied. It also arises by subsequent ratificationor acceptance of the agent acts by the third person without the authority of the principal. Where a principal by his conduct or act causes a third person to believe that a certain person is his authorized agent, the agency is created by estoppel. The agency which is the result of principal's conduct as to the agent, there agency is said to be created by holding out. Agency by necessity comes into existence when certain circumstances compel a person to act as an agent for another without his express authority. It also arise by operation of law.

Undisclosed principal-Where agent not discloses the existence of his principal and the fact of his being agent of the principal, there the principal of such agent is known as undisclosed principal. Where agent discloses his representation to the principal but not discloses the principal's name, there the principal is known as unnamed principal.

Sub-agent-person appointed by the original agent in the business of agency under his direction and control and being responsible to the principal for acts of a sub-agent.

Substituted agent/Co-agent – person is named by the agent expressly or impliedly to act for the principal in the business of agency.

Irrevocable agency- agency which cannot be terminated by the principal.

8.4 SUMMARY

Every day we enter into contracts. Taking a seat in a bus amounts to entering into a contract. Putting a coin in the slot of a weighing machine, have been amount to enter into a contract. When we go to a restaurant and take snacks, we have entered into a contract. In such cases, we do not even realise that we are making a contract. In the case of people engaged in trade, commerce and industry, they carry on business by entering into contracts. The law relating to contracts is to be found in the Indian Contract Act, 1872.

Section 2(h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law. The two elements of an agreement are:

(i) offer or a proposal; and

(ii) an acceptance of that offer or proposal

Section 10 of the Act provides for some more elements which are essential in order to constitute a valid contract. Thus, the essential elements of a valid contract can be summed up as follows

1. Agreement. 2. Intention to create legal relationship. 3. Free and genuine consent. 4. Parties competent to contract. 5. Lawful consideration. 6. Lawful object. 7. Agreements not declared void or illegal 8. Certainty of meaning. 9. Possibility of performance. 10. Necessary Legal Formalities. An agreement is composed of two elements—offer and acceptance. The party making the offer is known as the offeror, the party to whom the offer is made is known as the offeree. The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be obtained by misrepresentation, fraud, undue influence, coercion or mistake. If the consent is obtained by any of these flaws, then the contract is not valid.

The parties to a contract should be competent to enter into a contract. According to Section 11, every person is competent to contract if he (i) is of the age of majority, (ii) is of sound mind, and (iii) is not disqualified from contracting by any law to which he is subject. The agreement must be supported by consideration on both sides. Consideration is the price for which the promise of the other is sought. The object of the agreement must be lawful and not one which the law disapproves.

There are certain agreements which have been expressly declared illegal or void by the law. The meaning of the agreement must be certain or capable of being made certain otherwise the agreement will not be enforceable at law. The terms of the agreement should be capable of performance. A contract may be oral or in writing. All necessary legal formalities must be done to form a valid contract.

Contracts may be classified in terms of their (1) validity or enforceability, (2) mode of formation, or (3) performance.

Contracts may be classified according to their validity as (i) valid, (ii) voidable, (iii) void contracts or agreements, (iv) illegal, or (v) unenforceable.

A contract to constitute a valid contract must have all the essential elements discussed earlier. As per Section 2 (i) a voidable contract is one which may be repudiated at the will of one of the parties, but until it is so repudiated it remains valid and binding. An agreement which is not enforceable by either of the parties to it is void [Section 2(i)]. An illegal agreement is one the consideration or object of which (1) is forbidden by law; or (2) defeats the provisions of any law; or (3) is fraudulent; or (4) involves or implies injury to the person or property of another; or (5) the court regards it as immoral, or opposed to public policy.

An unenforceable contract is neither void nor voidable, but it cannot be enforced in the court.

Another method of classifying contracts is in terms of the extent to which they have been performed. Accordingly, contracts are: (1) executed, and (2) executory or (1) unilateral, and (2) bilateral.

An executed contract is one wholly performed. An executory contract is one which is wholly unperformed, or in which there remains something further to be done. A Unilateral Contract is one wherein at the time the contract is concluded there is an obligation to perform on the part of one party only. A Bilateral Contract is one wherein there is an obligation on the part of both to do or to refrain from doing a particular thing.

In English Law, contracts are classified into (a) Formal Contracts and (b) Simple Contracts.

A proposal is defined as “when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.” [Section 2 (a)]. An offer can be made by an act in the following ways:

(a) by words (b) by conduct. An offer can also be made by a party by omission An offer can be made either:

1. to a definite person or a group of persons offer is known as specific offer to the public at large. is known as a general offer.

An offer must have certain essentials in order to constitute it a valid offer. These are: **A**. **The offer must be made with a view to obtain acceptance** [Section 2(a)]. **B**. **The offer must be made with the intention of creating legal relations**.

C. **The terms of offer must be definite, unambiguous and certain or capable of being made certain** (Section 29).

D. **An offer must be distinguished from** (a) a mere declaration of intention or (b) an invitation to offer or to treat.

E.The offer must be communicated to the offeree. **F. The offer must not contain a term the non-compliance** of which may be assumed to amount to acceptance. **G. A tender is an offer as it is in response to an invitation to offer**. The special terms, forming part of the offer, must be duly brought to the notice of the offeree at the time the offer is made. Where two parties make identical offers to each other, in ignorance of each other’s offer, the offers are known as cross-offers and neither of the two can be called an acceptance of the other and, therefore, there is no contract An offer is made with a view to obtain assent thereto. As soon as the offer is accepted it becomes a contract. But before it is accepted, it may lapse, or may be revoked. Also, the offeree may reject the offer. In these cases, the offer will come to an end.

8.5 GLOSSARY

1. *IN REM*- "against or about a thing," referring to a lawsuit or other legal action directed toward property, rather than toward a particular person.

2. *IN PERSONAM*- Latin phrase meaning "directed toward a particular person". In a lawsuit in which the case is against a specific individual,

3. *CONSENSUS-AD-IDEM*- meeting of the minds - when two parties to an agreement (contract) both have the same understanding of the terms of the agreement; also referred to as mutual agreement, mutual assent. It is a phrase in contract law used to describe the intentions of the parties

4. *NUDUM PACTUM* - a bare promise

8.6 SAQS

1. TICK THE RIGHT ANSWER:

(i)All agreement are necessarily a contract.

(a) True

(b) False

(ii)The obligation(s), which does not have its origin in an agreement does not give rise to a contract, is/are:

(a)Torts or civil wrongs;

(b) Quasi-contract;

(c) Judgements of courts, i.e., Contracts of Records;

(d) Relationship between husband and wife, trustee and beneficiary, i.e., status obligations.

(e) All of above

(iii) Law of Contracts creates rights in *personam* as distinguished from rights in *rem*.

(a) True

(b) False

(iv) An agreement of a purely social or domestic nature is not a contract.
(a) True

(b) False

(v) According to Section 11, every person is competent to contract if he,

(a) is of the age of majority

(b) is of sound mind

(c) is not disqualified from contracting by any law to which he is subject

(d) all of above

(vi) A, a man enfeebled by disease or age, is induced by B's influence over him as his medical attendant to agree to pay B an unreasonable sum for his professional services. This contract is,

(a) voidable

(b) void

(c) illegal

(d) unenforceable

(vii) A and B contract to marry each other. Before the lime fixed for the marriage, A goes mad. The contract becomes void. This contract is,

(a) voidable

(b) void

(c) illegal

(d) unenforceable.

(viii) An illegal agreement is one the consideration or object of which,

(a) is forbidden by law

(b) defeats the provisions of any law

(c) is fraudulent;

(d) involves or implies injury to the person or property of another

(e) the court regards it as immoral, or opposed to public policy

(f) all of above

(ix) A promises to obtain for B an employment in the public service, and B promises to pay Rs. 1,000 to A. This contract is,

(a) voidable

(b) void

(c) illegal

(d) unenforceable.

(e) valid

(x) Founder of a good has an obligation under quasi-contract.

(a) True

(b) false

8.7 REFERENCES

1. http://educonz.com/download/law_audit.pdf

2.www.icaiknowledgegateway.org/.../chapter1

3. The Indian Contract Act, 1872

4. Indian Contract Act, Pollock and Mulla

8.8 SUGGESTED READINGS

1. The Indian Contract Act, 1872

2. Indian Contract Act, Pollock and Mulla

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What do you understand by a contract? Right the conditions, to make it forceable in the court of law.

2. What are the essential elements of a contract?

3. How can one discharge from the obligation of a contract?

4. Explain the different types of contractual obligations.

5. How a valid offer is made?

6.What are the legal consequences of a wagering and contingent contracts?

8.10 ANSWER SAQS

1. (i) (b); (ii) (e); (iii) (a); (iv) (a); (v) (d); (vi) (a); (vii)(b); (viii) (f) ; (ix) (c) ; (x) (a);