

## UNIT-3

### ELEMENTS OF CONTRACT

#### A.OFFER

- **Meaning and Definition of Offer.**
- **Essentials/Rules/Elements of offer.**
- **Revocation of Offer.**

#### Meaning of offer:

Any activity or understanding of two persons begins with some proposal from one person to another. This proposal in turn will be understood as 'offer' or An offer is a proposal by one person to another to enter into legally binding agreement with him.

The term proposal and offer are considered synonymous and are used interchangeably. The word 'proposal' is used under Indian Law, whereas the same is used as 'offer' under English law.

#### Definition of Offer:

According to the Indian Contract Act 1872, section 2(a) "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is set to make a proposal".

For ex: A says to B will you buy my car for Rs.500000.

#### How an offer is made?

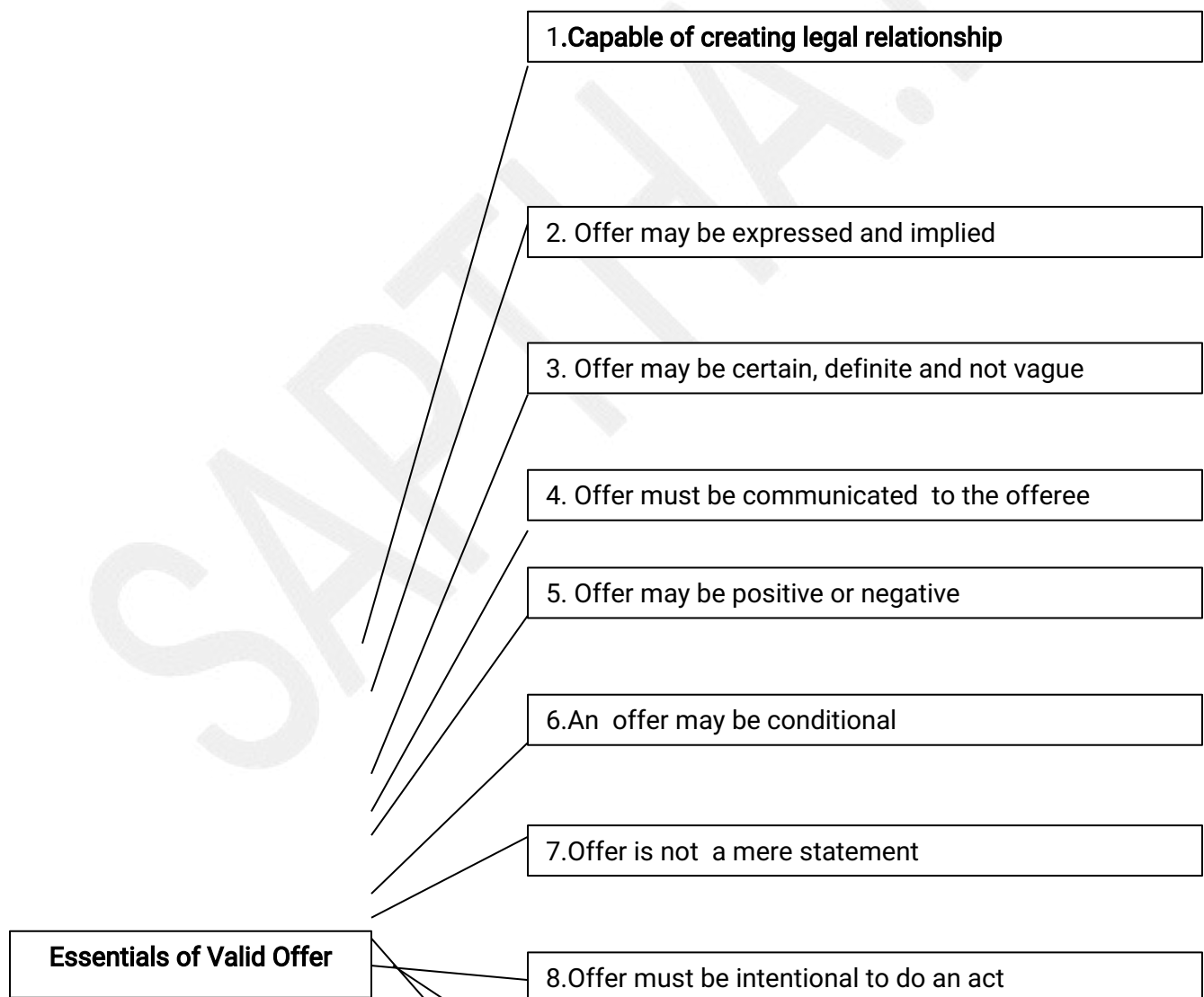
An offer can be made by expression of words spoken or written which is called as

"Express offer". "Will you buy my business at Mumbai for 5 crores?" or when 'A' advertises in a newspaper, offering Rs.5,000 to anyone who returns his lost

documents, these are express offer.

An offer may also be implied from the conduct of the parties or the circumstances of the case. This is referred to as “implied offer”. Thus, when a company runs a cab on a particular route, there is an implied offer by the company to carry passengers for a certain fare. The acceptance of the offer completes as soon as passenger boards the cab. An offer may be made to a specific person or general public.

### Essentials of valid Offer/Rules for valid offer/elements of offer



9. Offer should not be a cross offer

10. offer through printed document

➤ **Capable of creating legal relationship:**

offer must be such that it should create legal relationship. An offeror must intend to create legal bindings and legal relationships. Not all offers will create legal bindings like social invitation, even if it is accepted and does not create legal relationship, as it is not intended. Offer made on social or personal grounds and domestic nature are not considered as valid offer.

**For ex for social invitation:** A invite the B for dinner and the invitation is accepted by B, The obligation of A is to prepare the dinner and the obligation of B is to attend the dinner. These obligation are purely social obligation and they don't create a legally enforceable agreement.

**For ex for Personal grounds : [Case: Balfour Vs Balfour]**

A husband promised to pay maintenance allowance every month to his wife, as long as they remain separate. When the husband failed to perform his promise, she filed a case against him, to recover the amount. Held, she could not recover it as it is an agreement of domestic nature and parties did not intend to create legal relations.

- **Offer may be express or implied:** There is no legal rule that how it must be made. It can be express, which means mere by a word of mouth. In express offer is one in which the terms of an offer is expressly agreed upon between the parties, it may be oral or in writing. Implied through understanding And which is inferred from the conduct of the parties or by the circumstance of the case. The Indian Contract Act, 1872 does not state any specification regarding the mode of making contract. Hence, it may be express or implied.
- **Offer must be certain, definite and not vague:** Terms of offer must be definite, certain, unambiguous and clear or not loose and vague. Both offeror and offeree should be clear about the legal consequences arising

out of contract. Any vague offer does not convey or communicate what it exactly means.

**Taylor Vs portington (1855):** A offered to take a house on lease for three years at £284 per annum if the house was repaired and drawing rooms were handsomely decorated according to present style. It was held that, the offer was too vague to result in a contractual relationship because the term 'present style' may mean one thing to A and another to B. Hence here the agreement is void.

**For ex:** A offer to sell his car to B for Rs.60000 or 70000. This offer cannot be accepted as it is not clear.

- **Offer must be communication to the offeree:** offer cannot be made by a person to himself. It must be always be communicated to the offeree. "No communication, No offer", i.e., if there is no communication of an offer, there is no acceptance resulting in the contract.

**Case :1.Lalman Shukal Vs Gauri Dutt(1913):** A sent his servant B to trace his missing nephew. A in the meantime announced a reward for providing information about the missing boy. B in ignorance of the announcement traced the boy and informed A. B later on came to know of the reward and he claimed it. Held- the claim was dismissed, since he cannot be held to accept an offer of which he is unaware.

**Case:2: (Fitch Vs snedakar,(1868))**S sent his servant F to trace his lost dog. When the servant had left, S announced a reward of Rs.500 to any one who traced the dog. F found the dog and brought to home, without knowing the reward. When F came to know about the reward, he brought an action against S to recover the same. His suit was dismissed on the ground that he could not accept the offer, unless he had the knowledge of if. Held F could not claim the reward.

- **Offer must be made with a view to obtaining the acceptance or assent of the other party:** the offer to do or not to do something should have the focus of getting assent from the other party and it is not an offer when it is made merely with a view to disclosing the intention of making an offer.
- **An offer may be positive or negative:** A positive offer is an offer to do something. A negative offer is, on the other hand, is an offer not to do something or abstain from doing something and both are accepted.

- **An offer may be conditional:** A valid offer can also be conditional. Such offers are offer that can be accepted only subject to those conditions. A conditional offer lapses when the condition is not accepted. In this, a conditional offer by the management of a company to the trade union to pay a certain amount lapses when condition is not accepted.

**Case: Thomson Vs LMS Railway Company 1930**, according to this case Mr.A a traveler takes for a railway journey. On the front of the ticket, it was printed as "for condition see back". One of the conditions was that the Railway Company would not be liable for the personal injuries to the passengers. 'A' traveler was injured by a railway accident and sued for the injury. It was held that the travelers were bound by the conditions and could not recover any damages. In this case, the LMS railway company is not bound to pay any of the compensation due to the accidents.

- **An offer should not contain a term, the non compliance of which would amount to acceptance:** while making the offer, it should not presumed to be accepted, one cannot say while making the offer that if the offer is not accepted before a certain date, it will be presumed to have been accepted. Thus, an offeror cannot say that if acceptance is not communicated up to a certain date, the offer would be presumed to have been accepted. If the offeree does not reply, there is no contract, as no obligation to reply can be imposed on to him on the ground of justice.
- **Offer is not a mere statement:** A mere statement without any intention is not an offer. An invitation or an answer to a question and a statement of price list does not constitute a valid offer ie., a price lists, window displays, tenders, invitation by a company to public to subscribe to its shares, railway displays, sign boards, hoarding and so on are not an offer.
- **Offer must be intentional to do an act:** an offer without intention of the offeror to commit something is not an offer. That is offeror may not be

serious in his expression and the offer is made just like that, but it does not constitute a valid offer.

- **Offer should not be a cross offer:** Cross offer does not constitute a valid offer as here two persons make identical offer. The court does not approve that one person's offer is an offer and another person offer is not an offer.
- **Offer through printed contracts:** an offer through printed matter for the special purpose formulates a valid offer/contract.

Example: Life Insurance Corporation of India, Indian Railways, nationalized banks, credit co operative societies and so on.

- **Offer may be specific or general.**  
Specific offer is an offer, which is made to a definite person or a group of persons. Such offers can be accepted by only those persons to whom the offer is made.  
[Case: Boulton V Johns]  
General offer is made to the public in general and hence any one can accept and do the desired act.  
[Case: Lal Man Shukla V Gouri Dult]

### **TYPES OF OFFER**

Various types of offers are as follows

1. **Express offer:** when an offer is communicated by words, spoken or written, then it is termed as an express offer. It can also be communicated through advertisement telephone, messenger or telegram.
2. **Implied offer:** an offer communicated by conduct or act is an implied offer. When a person goes to a consultant for an advice his conduct implies an offer to pay the usual fee to the consultant.
3. **Specific offer:** an offer made to a specific or definite person or class of persons is known as specific offer.

4. **General offer**: an offer made to the world of “public at large” is known as general offer. It can be accepted by any member of the public. According to Salmond, it is to be referred as “offer at large”. An offer of reward for some information, made to the public at large through a public advertisement is an example of general offer.

This case is referred to both general offer and implied offer

1. **Positive offer**: When an offer is to do something focused, then the offer is said to be positive i.e., an offer is to act or intention to do some act certainly.
2. **Negative offer**: when an offer with the intention to not to do or abstain from doing something, this offer is known as negative offer.
3. **Definite offer**: if a tender(quotation) is submitted for goods or services in specified quality, the tender offer is known as a definite tender or offer.
4. **Standing offer**: it is also known as ‘open’ of “continuing” offer or tender. When a concern required large quantities of goods or services from time to time, it is accepted by the supplier over a definite period and prices such tender or offer is called as standing offer.
5. **Cross offer**: when two parties make identical offers to each other, in ignorance of each other’s offer, such offers are known as cross offers. They shall not constitute acceptance of one’s offer by the other.

Example: A wrote to B on 28<sup>th</sup> dec 2005, offering to sell 1,000 tons of irons at Rs.7,000 per ton. On the same day B wrote to A offering to buy 1,000 tonnes of iron Rs.7,000 per ton. The two letters crossed in post and neither of them knew anything about the offer to the other. B contended that there was a good contract. It was held that B was not bound as a result of the simultaneous offers, each being made in ignorance of the other

6. **Counter offer:** A counter offer is a rejection of original offer, it is a new offer which needs acceptance by the original promisor before a contract is made.

In case of Hyde Vs Wrench; an offer to sell a form for £1,000 was rejected by the plaintiff, who offered £950 for it. This was turned down by the offeror and then the plaintiff agreed to pay £1,000. It was held that the defendant was not bound by any such acceptance as the original offer was conditionally accepted.

### **REVOCAION OF OFFER**

Revocation means 'Cancellation'. Revocation of offer here is withdrawal of offer by the offeror. An offer can be revoked at any time before the communication of acceptance is complete against the offeror but not afterwards. It means it can be revoked at any time before the offeree posts the letter of acceptance.

**According to section 5 of the Indian contract Act** "A proposal may be revoked at any time before the communication of its acceptance as against the proposer".

Section 6 of the Act gives the following conditions for the revocation of offer

1. **Revocation by communication of notice:** an offer may be revoked by the offeror by giving notice of the revocation to the other party before it is accepted. Notice of revocation will take effect only when it comes to the knowledge of the offeree.
2. **Revocation by non fulfillment of conditions:** an offer lapses or gets cancelled when an acceptor fail to fulfill a condition precedent to the acceptance of the offer. Example: A offers to sell a motor van to B on a condition that B pays a certain amount before a certain date. If B fails to pay the required amount within given time, then the offer stands cancelled.
3. **Revocation by the death or insanity of the offeror or offeree:** when either of the party i.e., offeror or offeree dies or become insane before the offer is accepted, then the offer gets cancelled.



4. **Revocation by rejection:** when the offeree disagrees or rejects the offer made by the offeror the offer is cancelled or revoked. Rejection of an offer is effective only when it comes to the knowledge to the offeror .

Rejection takes place:

- a. When the offeree communicates his rejection of the offer to the offeror
- b. When the offeree makes a counter offer.

5. **Revocation by failure to accept in the mode prescribed:** an offer must be accepted according to the mode prescribed. In absence of the mode prescribed then it should be on a reasonable or usual mode.

6. **Revocation by subsequent illegality:** an offer lapses, if it becomes illegal after it is made and before it is accepted. Thus, where an offer is made to sell 100 bags of rice for Rs.25,000 and before it is accepted, a law prohibiting the sale of rice by the private individual is enacted. So, here the offer comes to an end.

7. **Revocation by laps of times:**

An offer can be cancelled when the time given is crossed.i.e.,if the time is prescribed by the offeror for the acceptance of the offeree, if offeree fails to given his consent within that time limit then automatically the offer gets cancelled.

### **B. ACCEPTANCE**

- **Meaning and Definitions of Acceptance.**
- **Essentials/Rules/Elements of Valid Acceptance.**
- **Communication of Offer and Acceptance**

### **MEANING OF ACCEPTANCE**

Acceptance is an expression given by the offeree of his willingness to be bound by the terms of an offer. Acceptance occurs when an offeree agrees to be mutually bound to the term of the contract by giving consideration or something of value like money, to seal the deal.

Example: A offer to sell his vehicle for Rs.5 lakhs, B accepts the offers to purchase the vehicle for the same amount. This is acceptance.

### **DEFINITION OF ACCEPTANCE**

- According to Indian Contract act, 1872, "Acceptance is the expression of assent by the person to whom the offer is made. To constitute a valid acceptance, the assent must be communicated to the offeror. Acceptance may be express conduct or may be in implied circumstance."
- According to the section 2(b) of the Indian Contract 1872 acceptance is defined as "when the person to whom the proposal is made signifies his assent thereto, the proposal is to be accepted. A proposal when accepted becomes a promise".

### **ESSENTIALS/RULES/ELEMENTS OF VALID ACCEPTANCE**

Offer and Acceptance are the Back-bone of the contract. The acceptance of an offer is the very essence of a contract. For the validity and legal effectiveness the following are the essentials conditions of an acceptance.:

1. **Acceptance for an offer must be absolute and unconditional**
2. **Acceptance may be express or implied:**
3. **Acceptance must be communicated to the offeror**
4. **Acceptance must be in response to offer**
5. **Acceptance must be made within a reasonable time**
6. **Acceptance must be in the prescribed manner or a reasonable mode**
7. **The acceptance must be made by the offeree**

8. The acceptor must be aware of the proposal at the time of the offer
9. Acceptance must be made before the offer lapses or revoked
10. Acceptance cannot be made through silence
11. A mental acceptance is ineffectual
12. Acceptance can be made for the renewal of rejected offers:

1. **Acceptance for an offer must be absolute and unconditional:** section 7(1) of the Indian contract act 1872 says “The acceptance must be absolute and unqualified” that is absolute or in full and unqualified or unconditional. A qualified and conditional acceptance amount to a counter offer and rejection of the original offer. Any alteration or variation, in the terms of the offer will make the acceptance invalid.

**Neale Vs Meerret(1930)** M offered to sell a piece of land to N at £280. N accepted and enclosed £80 with a promise to pay the balance by monthly installments of £50 each. It was held, there is no contract between M and N, as the acceptance was not absolute.

2. **Acceptance may be express or implied:** when an acceptance is express in words, spoken or written i.e., by word of mouth, by post, by telephone, telegram or through messenger through electronic mode or through any other means, it is express acceptance.

When the acceptance is given by conduct, it is implied acceptance, when an acceptance is to be inferred from the circumstances of the case or from the conduct of the parties it is referred to implied acceptances.

In the case of **V. Rao Vs A.Rao(1916)** A widow promised to settle some immovable property to her niece if the niece stayed with her in her residence. Thus, the niece stayed with the widow in her residence till the death of the widow. It was held that the niece was entitled to the property.

- 3. Acceptance must be communicated to the offeror:** the acceptance must be communicated to the offeror through some means. Instead if the offeree remains silent and does nothing to show that he has accepted the offer, then no contract is formed. The acceptor should signify his intention to accept. Thus where a person accepts an offer but fails to post the letter of acceptance, it is no acceptance.

In case of **Broghen Vs metropolitan Railway Company(1877)** A draft agreement relating to the supply of coal was sent to the manager of a Railway company for his acceptance. The manager wrote the word 'approved' and put the draft in the drawer of his table intending to send it to the company's solicitor for a formal contract to be drawn up between the parties. By oversight the document remained in the drawer. It was held that there is no contract. The acceptor need not to communicate his acceptance in respect of implied offer.

- 4. Acceptance must be in response to offer:** there can be no acceptance without an offer. Acceptance cannot be made before an offer.
- 5. Acceptance must be made within a reasonable time:** a valid acceptance shall be communicated within the reasonable time allowed by the offeror. When there is no mention of time by the offeror then it can be made within a reasonable time. What is reasonable time is a question of fact depending on a particular circumstance. Acceptance may be made at any time till the offer is valid otherwise such acceptance is invalid.
- 6. Acceptance must be in the prescribed manner or a reasonable mode:** where the offeror prescribes mode of acceptance then the acceptor should adopt the same mode. Section 7(2) states that if the acceptance is not made in the manner prescribed, the proposer may within a reasonable time after the acceptance is communicated to him, insist that the acceptance must be made in the manner prescribed. Otherwise the acceptance can be made through other reasonable manner in which it is communicated to the offeror.

**Surendra Nath Vs Kedarnath AIR(1936)** an offer was made in the following terms “I intend to sell my house for Rs.1,00,000, if you are willing to have it, then write to ‘A’ at his address”. Instead of writing to A, the purchaser sent an agent to A and agreed to purchase the same. It was held that the seller was bound by the acceptance and there was no violation of section 7, when the purchaser, instead of writing to the particular person, met him personally to communicate his acceptance.

7. **The acceptance must be made by the offeree:** an offer can be accepted only by the person or persons to whom it is made. A valid contract arises only if its acceptance is communicated by a person who has the authority to accept. If it is communicated by an unauthorized person, it is not valid acceptance.

**Powel Vs Lee (1908)** A applied for the post of a Head master in a school. He was selected by the appointing authorities. But the decision of his appointment was not communicated to him. One of the members of the appointing committee informed him of his appointment. But the member was not authorized to communicate the decision and he had communicated the decision in an individual capacity. Subsequently, the appointing authority cancelled his selection. A brought a legal action for the breach of contract. His action was rejected by the court and it was observed that “there must be notice of acceptances from the contracting party. Information from an unauthorized person insufficient and it is considered as over hearing from behind the door”.

8. **The acceptor must be aware of the proposal at the time of the offer**

Acceptance is made when the offer is created. When an acceptor is not aware of existence of the offer and conveys his acceptance, then there is no valid contract. There must be knowledge of the offer before anyone could consent to it. An act done out of ignorance of the offer for a reward cannot be called an acceptance. Another example is Lalman Shukla Vs Gauri Dutt(1913)

9. **Acceptance must be made before the offer lapses or revoked:** acceptance must be made when the offer is in force. Due to the various reasons an offer may be lapsed or revoked, but the acceptance has to be communicated before the lapse or revoke of an offer.

10. **Acceptance cannot be made through silence:** silence is not a mode of acceptance. No contract is formed if the offeree remains silent and does nothing to show that he has acceptance the offer. Silence is not always accepted. Generally speaking, the person to whom the offer is made need not reply. But his silence cannot be regarded as an acceptance of the proposal.

For example: if A expresses to B that if “I don’t hear from you by next Monday, I shall presume that you have bought the goods”. Here there is no contract and silence is not acceptance.

11. **A mental acceptance is ineffectual:** no acceptance can be made by mind without expression or implied. Such acceptance is not valid or not ineffective.

12. **Acceptance can be made for the renewal of rejected offers:** the acceptor can give his acceptance for the rejected offer, if the same is reviewed.

### ➤ **REVOCAION OF ACCEPTANCE**

According to sec 5 of the Indian contract act1872, acceptance may be

revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Revocation of acceptance amounts to withdrawal of the acceptance to a proposal by the offeree himself.

1. The acceptance can be revoked by the failure of the acceptor to fulfill a condition precedent to the contract.
2. By death or insanity of the proposer
3. When it is not in a reasonable time and manner
4. The acceptance can be revoked by the rejection of the offer

It can be revoked by supervening impossibility

### ➤ COMMUNICATION OF OFFER AND ACCEPTANCE

#### COMMUNICATION OF OFFER

Communication of offer is complete as soon as it comes to the knowledge of the person to whom it is made.

Examples:

A and B are sitting together. A offers his scooter for Rs.5,000 to B. the moment the offer reaches the ears of B, the offer of A is complete.

A of Agra by a letter of offer to M of Mumbai offers his scooter for Rs.5,000 on 9<sup>th</sup> jan. This letter reaches M at Mumbai is complete on 11<sup>th</sup> jan.

Thus, in the case of an offer of a promise for an act, if the offeree does the act in ignorance of the offer, he is not entitled to the benefit of the promise. It is for this reason that a person who does an act, for which a reward is offered, in ignorance of the offer, cannot claim the reward.

#### COMMUNICATION OF ACCEPTANCE

Acceptance must be communicated to the proposer in order to make a contract valid. There are several rules regarding the dealing with the communication of acceptance that are necessary. It depends upon the construction of the contract,

the acceptance may not have to come until the announcement of the performance of the conditions in the offer but nevertheless the acceptance must be communicated.

### C.CAPACITY OF PARTIES

- **Meaning and Definition**
- **Classification**
- **Rules relating Minor's Agreement**
- **Incompetence arising out of status**

#### Meaning :

Capacity to contract means competence of the parties to enter into a valid contract (i.e. legal ability of a person to enter into valid contract). To constitute a valid agreement and contract, the parties must be competent to contract. If one of the parties is not competent the contract shall become void in the eyes of law.

#### Definition:

Section 10 of the Indian Contract Act requires the parties to be competent to make a valid contract.

Section 12 of the contract Act deals with the competency of parties and provides that " every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

From Sec.11 of the Act, one can draw the conclusion that the following are the persons who are not capable to enter into a contract:

- i) Minor
- ii) Persons of unsound Mind
  - a) Idiot b)Insane/lunacy c)Drunkard d)Old Person
- iii) Persons Qualified by any law to which they are subject,they are:
  - a) A married women b)Insolvent c)Alien enemies d)A convict(who is



imprisoned)

e)Foreign sovereigns and ambassadors f)Corporations g)Professionals.

### 1. Minor

#### Meaning

A minor is a person who has not attained the age of majority. For the purposes of entering

into contract "the age of majority" is 18 years.

#### Definition

According to the Indian Majority Act, 1875 sec 3, a minor is one who has not completed his or her 18<sup>th</sup> year of age. A person attains majority on completing his 18<sup>th</sup> year in India.

In following cases, a person becomes major on the completion of 21 years:

1. Where a guardian of a minor's property has been appointed under the Guardians and Wards Act 1890 and
2. Where the superintendence of minor's property is assumed by a court of wards.

#### Law /Rules related to contract with minor/Exception

The law protects a minor in all aspects. Because minor has an immature mind and cannot think what is good or bad to him. Minor is considered as an infant. Hence in practice the protection is granted by the court of law.

Rules relating to minors Agreement

1. An agreement with a minor is void-ad-initio
2. Minor can be a promisee or Beneficiary.
3. No Ratification

4. No restitution
5. No estoppel against a minor
6. Liability for torts
7. Not specific performance Except in certain cases
8. Minor cannot be a partner
9. Minor cannot be an insolvent
10. Minor cannot be a surety
11. Joint contract by minor and adult
12. Minor as a share holder
13. Minor can be an agent
14. Minor can be beneficiary
15. Minor and position of his parents
16. Minor Liable for Necessaries.

**1. An agreement with a minor is void-ad-initio:**

Section 10 of the Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not competent. But neither section makes it clear whether the contract entered into by a minor is void or voidable.

**The Privy Council affirmed this view most emphatically in the case of**

**Moharibibi Vs. Dharmadas Ghose (1903)**

In this case minor mortgaged his house for Rs.20, 000 out of which the lender had paid the minor only Rs.8, 000. The minor then filed a suit for setting aside the mortgage. The lender asked for the refund of the advance. The Privy Council pointed out that as the minor's contract was absolutely void no question of refunding money could arise in these circumstances. So money advanced to the minor cannot be recovered.

**2. Minor can be a promisee or Beneficiary:**

If a contract is beneficial to a minor it can be enforced by him. There is no

restriction on a minor from being a beneficiary, for example, being a payee or a promise in a contract.

Where an agreement for the benefit of minor, it can be enforced by the minor. The reason is that the law intends to protect the rights of a minor. Therefore, if a minor has performed his part of obligation, but the other party fails to perform his obligation, the minor can sue the third party.

### Case: **Sharafat Ali Vs Noor Mohammed**

In this case M aged 17 years agreed to purchase second hand scooter for Rs.10, 000 from S and M paid Rs.1000 as advance and agreed to pay the balance in the next day. On the next day S refuses to sell his scooter and offered to refund the advance on the ground that you are minor. Then M filed a case against S. Court declared that S couldn't avoid the contract because minor is standing in the contract as a beneficiary or promise.

### 3. **No Ratification**

Ratification refers to something related before. Ratification means acceptance of a transaction already done or validation of those contracts that are termed as void when they are entered into. An agreement with minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent to authorize an act cannot give it validity by ratifying it.

**Example:** A minor borrowed a sum of money executing a simple bond for it, and after attaining majority executed a second bond in respect of the original loan and interest. It was held that suit upon the second bond was not maintainable.

### 4. **No restitution:**

Restitution refers resorting of a thing to its owner. Here a minor need not be compensated for a benefit obtained under a void agreement. Under section 64 and 65 of the contract Act, the obligation of persons who has received advantages should be compensated such advance once the contract is void. This is applicable only in respect of competent parties to contract and not the minor.

EX: A minor sold a shop to B, the consideration was paid to A, but the sale deed not be registered as A was a minor. B filed a case against the minor A, to recover the consideration paid by him. It was held that agreement is void and A need to

pay back the consideration received to B.

### **5. No estoppel against a minor:**

Where a minor by misrepresenting his age has induced the other party to enter into a contract with him, he cannot be made liable on the contract.

The rule of estoppel does not apply to a minor i.e. minor is not stopped from pleading his infancy in order to avoid a contract, even if he has entered into an agreement by falsely representing that he was of full age.

The other person cannot claim that the minor shall be bound by his false representation because he can plead his minority.

Example: S a minor fraudulently representing himself to be a full age induced L to lend Rs.500. Later S refuses to repay it and L filed a suit against S. The court declared that the rule of estoppel does not apply to a minor and minor can plead his minority. So S is not liable to repay the amount of loan.

### **6. Minor Liable for Necessaries.**

Minor is liable for necessaries supplied or necessary services rendered to him or his minor dependents. For such contract he cannot be held liable personally. His property alone will be liable.

### **7. Liability for torts**

A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only he was held liable when he lent the horse to one of his friends who jumped and killed the horse.

### **8. Minor cannot be a partner**

Basic principles of partnership is agreement but minor being incompetent to contract cannot be a partner in a partnership firm, but under section 30 of the Indian partnership act, he can be admitted to the benefits of partnerships. Since minor is incapable of entering into contract, he can be admitted as a partner of a firm for benefits only and not for any liabilities.

### 9. Minor cannot be an insolvent

A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.

### 10. Minor cannot be a surety

In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party. As a minor is considered as an incapable person for contracting a transaction, he cannot act as a surety and he is not liable to pay or compensate anything under a contract.

### 11. Joint contract by minor and adult

In such a case, the adult will be liable on the contract and not the minor.

In *Sain Das v/s Ram Chand*, where there was a joint purchase by two purchasers, one of them was minor, it was held that the vendor could enforce the contract against the major purchaser and not the minor.

### 12. Minor as a share holder

A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

### 13. Minor can be an agent

A minor can act as an agent. He will not be liable to his principal for his act. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

### 14. Minor cannot bind parent or guardian: In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for

necessaries. The parents will be held liable only when the child is acting as an agent for parents.

15. **Not specific performance Except in certain cases:** A minor's contract being absolutely void, there can be no question of the specific performance of such a contract. A guardian of a minor cannot bind the minor by an agreement for the purchase of immovable property., so the minor cannot ask for the specific performance of the contract which the guardian had no power to enter into.

## 2. **PERSONS OF UNSOUND MIND**

### **Meaning of Persons of unsound mind:**

Unsound mind persons are those who are not capable of understanding the nature and the terms of the contract and who are not able to form a rational judgement. Following persons are considered to be the persons of unsound mind:

- a. Idiots
  - b. Lunatics
  - c. Drunken persons
  - d. old persons
- 
- a. **Idiots /Idiocy:** Generally he is considered as incapable of entering into contract.His mental status is such that even ordinary matters cannot be understand and judged by him,because of lack of development of his mind.The agreement with idiots is void.
  - b. **Lunatics or Lunacy:** Insanity or lunacy appers in a person who is totally out of control.It is a disease which occur in the brain.Such person cannot use his reasoning power due to some mental strain or disease.If his mind becomes sound due to cure of disease.
  - c. **Drunkness:** Drunkness is another reason for incapable and it temporary incapability till a man is under the effect of intoxication creating impotence of minds.
  - d. **Old person:** Many a time persons who are very old will lose the memory and become weak.Such persons mind memory may decay due to his old age.

### 3. Persons disqualified from contracting by any other law OR Incompetence arising out of status.

- a) A married women
- b) Insolvent
- c) Alien enemies
- d) A convict(who is imprisoned)
- e) Foreign sovereigns and ambassadors
- f) Corporations
- g) Professionals.

- a) **A married women**:A women as an individual is competent enough to enter into a contract.Law has not made any distinction regarding contractual capacity of men and women. In respect of a property belong to women she hold absolute authority over it and enter the contract but married women cannot enter into contract in respect of her husband property.
- b) **Insolvent**: According to the law a person who is declared insolvent is not a person.All the property of such person ceased by his creditor of his property vests in the hands of the receiver or official assignee.
- c) **Alien enemies**:Alien means persons who are not belonging to country or citizen of any country.Generally an alien enter into the contract bur during the period war alien cannot enter inti the contract.
- d) **A convict**:A convict is a man who is imprisoned.A convict while undergoing imprisonment is incapable of entering into a acontract.But incapability stands cancelled when once period of sentence or imprisoned expires.
- e. **Foreign sovereigns and ambassadors**: Foreign sovereign and accredited representatives of a foreign state or ambassadors enjoy special privilege that they cannot be sued in our courts and then enforce these contract in our courts.In india under section 86 of the civil prcedure code,in order to sue rulers of foreign states,ambassadors and envoys,previous sanction of the central

Govt,duly certified by the secretary to the government is mandatory.

- f. **Corporations**:The contractual capacity of corporate bodies is restricted by the statues governing them. They cannot enter into contracts which are beginning their object and power.
- g. **Professionals**:In England ,doctors are not permitted to enter into contracts pertaining to their profession or to sue their fees or be sued.

### E. FREE CONSENT

- Meaning and Definition of free consent
- Meaning and Definition Coercion:
- Meaning and Definition Undue Influence
- Meaning and Definition Misrepresentation
- Meaning and Definition Fraude
- Meaning and Defintion Mistake



### **MEANING OF FREE CONSENT**

The term free consent refers to meeting of free and fresh minds of two parties of an agreement when two parties take and understand, purpose, subject matter and terms and conditions of the agreement in the same sense it is free consent. An agreement which is made freely it because a valid contract due to presence of free consent of both the parties. Free consent means to agree without coercion without being forced or threatened.

### **DEFINITION OF FREE CONSENT**

According to section 13, consent is defined as “two or more persons are said to consent when they agree upon the same thing in the same sense”. In English law, this is called **‘consensus –ad-idem’**

### **Elements of free consent**

The following are the elements which affects the free consent

1. Coercion(Sec 15)
2. Undue influence (Sec 16)
3. Fraud(Sec 17)
4. Misrepresentation(Sec 18)
5. Mistake

#### **1. Coercion**

#### **Meaning of Coercion:**

Coercion means forcibly compelling a person to enter into a contract. Coercion is threat or force used by one party against the other for making him to enter into an agreement.

### **Definition of Coercion:**

As per section 15 of the Act Coercion is defined as “coercion is the committing or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement”.

From the above section the following are the analysis or elements for coercion

- a. The committing of any act forbidden by the IPC (Indian Penal Code) or
- b. The threatening to commit any act forbidden by IPC or
- c. The unlawful detaining of any property or
- d. Threatening to detain a property wrongfully

E.g..P threats to shoot Q if he does not let out his house to P and Q agrees to do so. The agreement has been brought about by Coercion.

## **2. UNDUE INFLUENCE**

### **Meaning of Undue Influence:**

“A contract is said to be induced by “undue influence” where the relation subsisting between the parties are such that one of the party is in a position to dominate the will of the other and uses that position to obtain an unfair advantages over the other.” OR The term undue influence means the unfair use of one’s superior power in order to obtain the consent of a person who is a weaker position.

### **Definition of Undue Influence:**

From section 16, it is understood that sometimes the parties to an agreement are so relates to each other that one party is in a position to dominate the will if the other. As a result of which other party is compelled to into an agreement against his will as a result of “undue influence”. Undue influence is moral coercion as opposed to physical coercion mentioned in section 15

### 3. MISREPRESENTATION

#### MEANING OF MISREPRESENTATION

Misrepresentation means false representation made innocently with an honest belief as to its truth by a party without any intention to deceive the other party. OR Misrepresentation is a wrong statement of the fact made by one party without any intention to deceive the other party. The party who makes the false statement does not know that it is wrong and he honestly believes that it is true.

#### DEFINITION OF MISREPRESENTATION

As per section 18 of the act, it is defined as "misrepresentation" means and includes;

- (i) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.
- (ii) Any breach of duty which without any intent to deceive, gains an advantage to the person committing it or anyone claiming under him, by misleading another to his prejudice or the prejudice of any one claiming under him.
- (iii) Causing however innocently a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

### 4. FRAUD

#### MEANING OF FRAUD

Fraud refers to the act of deceiving or cheating. The term fraud includes all acts committed by a person with an intention to deceive another person. Fraud is the willful representation made by a party to a contract with the intent to deceive the other party to induce such party to enter into a contract.

#### DEFINITION OF FRAUD

According to the Indian Contract Act, 1872 under section 17, fraud is defined as, "fraud means and includes any of the following acts committed by a party to a contract or with his connivance (disregard) or by his agent, with intent to deceive another party there to his agent or to induce him to enter into a contract"

### 5. MISTAKE

#### **Meaning of Mistake:**

Mistake may be defined as “an erroneous belief concerning something”. Mistake may also be termed as an incorrect belief which leads one party to mis-understand the other. It means that parties intending to do one thing have by intentional error done something else. An agreement is valid as a contract only when the parties agree upon the same thing in the same sense.

Section 20, 21 and 22 of the contract act deals with the legal effect of mistake without defining the term;

Sec 20 lays down that, “where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void”.

Sec 21 lays down that “A contract is not voidable because it was caused by a mistake as to any law in force in India. But mistake as to a law not in force in India has the same effect as a mistake of fact”

Sec 22 states that, “A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact”.

### **F. LAWFUL OBJECTIVES**

#### ➤ **Meaning**

#### ➤ **Definition**

#### **Meaning of Lawful Objectives:**

The object for which the agreement has been entered must not be illegal or immoral or opposed to public policy. It means the object of the agreement must be lawful.

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The object of the agreement is said to be lawful if:

- It is not forbidden by law; or
- It did not defeat the provisions of any law; or
- It is not fraudulent; or
- It did not involves injury to the person or property of another; or
- The court did not regards it as immoral or opposed to public policy.

### Definition of lawful objectives:

Lawful objective can be broadly defined as within the bounds of the law.If the object of the contract is illegal by statute or common law, the contract will be void and unenforceable in the court.

According to section 23 of the Indian contract Act, An agreement of which the objects or consideration in unlawful is void.

### **G.PUBLIC POLICY**

- **Meaning of public policy**
- **Agreement opposed to public policy.**

### MEANING OF PUBLIC POLICY

Public policy is the means by which a government maintains order or addresses the needs of its citizens through actions defined by its constitution. If this definition sounds vague or confusing, it's likely because a public policy is generally not a tangible thing but rather is a term used to describe a collection of laws, mandates or regulations established through a political process.

### AGREEMENT OPPOSED TO PUBLIC POLICY

- **Agreements trading with enemy:** An agreement made with an alien enemy in time of war, if it helps or aids the economy of the enemy country will be opposed to public policy and so unlawful. The contracts which have been entered into before the outbreak of war are either suspended or dissolved.
- **Agreements interfering with course of justice:**Use of improper influence of any kind on the judges or officers of justice is unlawful.

- **Agreements in restraints of legal proceedings:** Under Section 23, “if a party to an agreement is restricted absolutely from enforcing his rights or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or it limits the time within which he may thus enforce his rights, is void.”
- **Agreements for stifling prosecution:** It is a fundamental principle that ‘one who has committed a crime, must be punished’. Therefore, an agreement stifling prosecution is void, being opposed to public policy.
- **Agreements of maintenance and champerty:** Under the English Law agreements of maintenance and champerty are void being opposed to public policy. The former means the financial or otherwise to defend when one has no legal interest in the subject matter, while champerty is a bargain when one party helps the other in recovering the property and sharing the proceeds of the action.
- **Agreements to oust the jurisdiction of courts:** An agreement to deprive the courts of their jurisdiction, which they otherwise have, is opposed to public policy.
- **Agreements varying periods of limitation:** Agreements curtailing or extending the periods of limitation prescribed by the Law of Limitation are void as their subject is to defeat the provisions of law.
- **Traffic in public offices and titles:** Agreements for sale or transfer of public offices and titles for monetary consideration are opposed to public policy and, therefore, void. If they are allowed at will, they will amount to inefficiency and corruption in public life.
- **Agreements to influence elections to public office:** Agreements with voters to procure their votes for monetary consideration or with the third persons to influence voters are void being opposed to public policy.
- **Agreements to create interest opposed to duty:** An agreement to do something which is against the professional duty is opposed to public policy and void.
- **Agreements to create monopolies:** Since monopoly is opposed to public

policy, an agreement to create a monopoly is void.

- **Agreements to restrain parental rights:** An agreement to barter away the right of guardianship of parties to his/her minor child is void, being opposed to public policy.
- **Agreements restraining personal freedom:** Agreements unduly restraining personal freedom of the parties are opposed to public policy and, therefore, void.
- **Agreements restraining marriage:** An agreement to restrain marriage of any person, other than a minor, is void under Section 26 and also opposed to public policy.
- **Marriage brokerage agreements:** Marriage brokerage is the sum of money agreed upon by a party for procuring the marriage of person. Such agreements are void being opposed to public policy, e.g. an agreements to sell a girl.

### H.WAGERING AND CONTINGENT CONTRACT

- **Meaning**
- **Difference Between Wagering and Contingent Contract**

#### WAGERING

A wager is an agreement between two parties by which one party promises to pay money or money's worth on the happening of some uncertain event, in consideration of the other party's promise to pay if the event does not happen.

For Ex: wagering agreement A and B enter into an agreement in which A agrees to pay B Rs.200 if it rains on Monday and if it does not rain B will pay Rs.200 to A.

Essentials of Wagering agreement

- There must be promise to pay money and money worth.
- The event must be uncertain.
- There must be 2 parties
- Each party must stand to Win or lose.
- No control over the Event.

#### CONTINGENT CONTRACT

Section 31 of the contract act defines a contingent contract as follows: A contingent contract is a contract to do or not to do something of some event, collateral to such contract, does not happen

Illustration: A contract to pay B Rs. 60,000 if B's house is burnt. This is a contingent contract. A contingent contract is a conditional contract in nature. When the performance of a contract becomes due only after the happening or



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non happening of some uncertain event, such a contract is known as a contingent contract.

### Essentials of contingent contract

- There must be a valid Contract
- The event must be uncertain
- The event linked with human conduct

### Difference between wagering and contingent contract

Wagering contract	Contingent contract
1. A wager is a promise to pay money or money's worth on the happening or non happening of an uncertain event	1. A contingent contract has been defined as a contract to do or not to do something; if some event collateral to such contract does or does not happen. A contingent contract is wider in scope
2. A contingent contract need not necessarily be a wager. Thus we can say that all wagering agreement are contingent but all contingent contracts are not wager	2. A contingent contract thus includes a wager. In other words a wagering agreement is a contingent agreement (contract)
3. In case of a wagering agreement promise must be mutual.  <u>Example</u> in wagering agreement A agrees to pay B Rs.20 if it rains on Monday and if it does not rain B will pay Rs.20 to A. in the above example there is mutuality of agreement but this mutuality of promise is not necessary in	3. In a contingent contract mutual promise are not necessary. <u>Example</u> A promises B to pay Rs.1,000 if a ship does not return. Here A is making a promise to pay but B is not making a similar promise to pay A. thus there is no mutuality of promises in a contingent

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case of a contingent contract	contract
4. In a wagering agreement there is no independent interest apart from the money to be won or lost. <u>Example</u> A promises to pay Rs.100 to B if it rains on Monday. It is a wagering agreement as A has no independent interest	4. In a contingent contract there is an independent interest. Example A gets his house insured. It is a contingent contract as A has independent interest in this case
5. In a wagering agreement determination of an uncertain event is the main condition of the contract	5. In a contingent contract determination of an uncertain event is not the sole condition
6. A wagering agreement is void/illegal	6. A contingent contract is valid

### VARIOUS MODES OF DISCHARGING OF CONTRACT

#### **Meaning of discharge of contract:**

Discharge of contract means termination of contractual relationship between the parties to a contract. The contract is said to be discharged when the parties to a contract are no more liable under the contract i.e., the rights and obligations of the parties comes to an end.

#### **Modes of Discharge of contract:**

1. Discharge by performance
2. Discharge by agreement
3. Discharge by impossibility of performance

4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract

### I. DISCHARGE BY AGREEMENT

Section 62 provides “If the parties to a contract agree to substitute a new contract for it, or rescind or alter it, the original contract need not be performed”

As per section 63 of the act “Every person who accepts a proposal 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 he thinks fit. This section also provides the modes of discharging the contract through Remission and Waiver”.

**Novation:** Novation refers to the substitution of a new contract for the existing one, either between the same parties or between different parties and the consideration for the new contract is the discharge of the old contract.

**Rescission :** The word rescission refers to cancellation. While novation results in a new contract in the place of the old one, rescission results in the cancellation of the original contract. Rescission result in the dissolution of the contract while novation result in replacement of the contract

**Alteration:** Alteration refers to a change to one or more of the material terms of the contract. A contract may be discharged by alteration also. Alteration may be both material and immaterial. In case of the alteration, there is no change of parties to the contract but change of terms of the contract. Alteration is made with the consent terms of the contract. Alteration made with the consent of all the parties and results in the discharge of the original contract

**Remission:** Under the sec 63 of the contract act, remission has been explained under the title as ‘promise may dispense with or remit performance or promise’ – which gives us every promise 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 he thinks fit”

**Waiver** : Waiver refers to the abandonment of a right which a person entitled to. In other sense, waiver means abandoning the right or waving of a legal right.

**Merger**: Merger is combining two things. Merger takes place when an inferior right accruing to the contract mergers into a superior right. Again on this the inferior right vanishes and not required to be enforced

**Accord and satisfaction**:The term 'accord' may be defined as the promise to accept less amount than what is due under the contract. Satisfaction refers to the payment or fulfillment of the lesser's obligation. These two are used in English Law, which have no relevance under the Indian law. Under English law, the old contract is discharged when the accord is followed by satisfaction.

### II. DISCHARGE BY PERFORMANCE

According to Section 37 of the Contract Act, "The parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of the Act or any other law. Promises bind the representatives of the promisors in case of the death of such provisions before performance unless any contrary intention appears from the contract.

The contract is said to be discharged when parties to a contract, perform their respective obligations, which they have agreed to do. That means when the parties to contract fulfill their obligations arising out of the contract within the time and in the manner prescribed, the contract is said to have been discharged by Performance.

### III. DISCHARGE BY BREACH

It is also another mode of discharging the contract. Here, when a party to contract fails to perform his obligation, he is said to have committed breach of contract. a breach of contract discharges the aggrieved party from performing his obligations. The breach of contract may either be

- i. Actual breach of contract
- ii. Anticipatory breach of contract

- i. **Actual Breach of Contract** may take place in two different situations i.e.
  - a. **At a time, when performance is actually due:** In this situation, if a party to a contract fails to perform his obligation at the specified time, he is liable for its breach.
  - b. **Breach during the performance:** It occurs when one party fails or refuses to perform the obligation under the contract during the performance of the contract. Such a situation is likely to happen in case of contracts on installment of delivery of goods or constructions of building and payments by installment and so on. Refusal of performance may be express or implied. Here, the aggrieved party can repudiate the contract and sue the other party for damages due to breach of contract.
- ii. **Anticipating Breach of contract:** When a party to a contract has refused or repudiated or renounced to perform his obligation, before the time fixed for performance is known as Anticipating Breach of contract.

Under Section 39 of the Indian Contract Act, it is laid down as when a party to a contract,

- a. Has refused to perform or
- b. Disabled himself from performing the contract,
- c. In its entirety, the promises may put an end to the contract,
- d. Unless he had signified by words or conduct, his acquiescence in its continuance.

#### IV. DISCHARGE BY OPERATION OF LAW

Discharge by operation is another mode of discharge of the obligation of the contract

The following are the circumstances

### a. Unauthorized Material alteration

If a party to a contract effects any material alterations in a written document or contract without the consent of the other party, then the contract has been done with unauthorized material alterations, which is void.

### b. Insolvency

Under insolvency, the contract is discharged by the insolvency of one the parties to it and when court passes an 'order of discharge'.

### c. Merger

It takes place when there is acceptance of a higher security in the place the lower. In other words when a contract with an inferior right give place to another contract with a superior right, the original contract gets discharged by its merger in the latter.

### d. Death

Death of the promisor results in termination of the contract in case involving of personal skill and ability. Excepting the skills and ability of the contracting party's death, the other cases, the rights and liabilities of the deceased person passes on the legal representatives.

## V. DISCHARGE BY IMPOSSIBILITY (SEC. 56)

Impossibility is another situation the discharging a contract. A contract is discharged if its performance becomes impossible. Impossibility may arise on the face of two contract or may exit unknown to the parties at the time of making contract, or it may also arise subsequently after the contract is made

Hence the impossibility of performance may be

a. Initial impossibility

b. Subsequent impossibility

### a. Initial impossibility

As per Sec. 56 of the Contract Act, under first paragraph it is said that “An agreement to do an act impossible in itself is void.” Here the word “impossible in itself” obviously means to something which is inherently impossible for performance.

If an agreement become void-ab-intio due to impossibility, the question of discharges of the contract does not arise since there is no contract to be discharged or terminated.

### b. Subsequent impossibility

A contracting party who is capable of performing the contract at the time of entering into it, turn to be incapable due to some reasons, which are beyond the control of the parties are known as **supervening** or subsequent impossibility.

#### i. Destruction of the Subject-matter

Subject matter is one of the essentials to form a valid contract. When the subject-matter of contract, subsequent to its formation, is destroyed, without the fault of promisor or promisee, then the contract gets discharged.

#### ii. Unanticipated change of circumstances

It is another type of situation for subsequent impossibility, in the case of change of circumstances which has affected the performance of the contract to such an extent as to make it virtually impossible

#### iii. Death or in capacity of the promisor

A contract may be impossible when a promise is made physically incapable of performance by reason of death or incapacity of a person shoes continued life and health are necessary for the performance of the contract. Such impossibility discharges the promisor’s liability.

#### iv. Change of Law

All agreements turn into contracts when they are lawful. Whereas contracts which are lawful when made but become unlawful later by reason of change in law, becomes impossible to perform. Impossibility created by law is a valid excuse for non performance.

**v. Declaration of war**

When two parties entered in to a contract the contract was valid for performance, but the same contract shall get discharged, if the war declared between the two countries. However, such a contract may have the opportunity of reviving and may be enforced at the end of the war, which is left to parties discretion.

**vi. Failure of pre-condition**

This refers to a situation where there is a non-existence or non-occurring of a particular state of things.

### **VI. DISCHARGE BY LAPSE OF TIME**

The another mode of discharging a contract is by lapse of time. The Indian Limitations Act has prescribed a period within which the existing rights can be enforced in courts of law. The main object of this act is to guide and assist the vigilant of ones own act but not those who sleep over their rights. The law fixes a specific period of performance and if no action is taken by the promisee in the court of Law within the specific time, he is debarred from enforcing the contract.

### **REMEDIES FOR BREACH OF CONTRACT**

Whenever there is breach of contract, the injured party is entitled to bring an action for damages. Following are the remedies available to the injured party in case of breach of contract:

**1. Suit for Rescission**

**2. Suit for Damages**

**3. Suit upon Quantum Meruit**



### 4. Suit for specific performance

### 5. Suit for Injunction

#### A. Filing a suit of Damages

The aggrieved party, usually like to get back their money and pain in form of claiming the damages. Damages refer to compensation in terms of money to aggrieved party for the loss or injury suffered by him.

In the breach of a contract, the other party earns certain rights including the right to claim damages or loss arising there from. The main aim of the 'damages' is compensation not punishment. The damages are to be awarded for the loss which naturally arose from the breach.

#### ➤ Ordinary or general or compensatory Damages

Ordinary damages are also termed as general or compensatory damages. These are the damages which arise in the usual course of things from such breach. Those damages which are awarded to compensate the injured party for the actual amount of loss suffered by him consequent upon the breach are known as general damages. These sort of damages are assessed on the basis of actual loss.

#### ➤ Special damages

A special damage arises in case of special circumstances. These damages cannot be recovered unless the special circumstances are brought to the other party. Special damages can be claimed by the aggrieved party along with the general damages, for the loss suffered under special circumstances. Special damages cannot be claimed as a matter of right.

#### ➤ Vindictive or exemplary damages

Vindictive or exemplary damages are damages awarded to punish the wrong doing or defaulting parties. In this case of damages the main purpose is to punish the defaulting party and not make them only to pay the compensation. Te vindictive damages are also known as punitive damages. Although the main contract is to compensate the injuries party for the loss suffered and to punish him. There are two exceptions to the rules

Breach of a contract to marry: in this case the amount of damage will depend upon the extend of injury to the party's feelings. One may be ruined, other may not mind so much.

Dishonor of a cheque by a banker when there are in sufficient funds to the credit of customer. In this case the rule of ascertain damages is, 'the smaller the cheque, greater the damages'. The actual amount of damages will differ according to the status of the party.

➤ **Nominal damages**

These types of damages are neither compensatory nor punishable. Nominal damages are warded only for the names sake.

### **B. Suit for cancellation or rescission**

Rescission or cancellation means setting aside the contract. The simple meaning of rescission means cancellation of the contract. When contract is breached by one party, then the other party may treat the contract as breach and refuse to perform his part of the contract, in other words putting an end to the contract.

The following circumstances where rescission may be granted

- Where the contract is voidable or terminated by the plaintiff
- Where the contract is unlawful for causes apparent on its face and defendant is more to blame than the plaintiff.

C. **Suit upon Quantum Meruit:** The phrase 'Quantum Meruit' means "payment in proportion to the amount of work done" or "reasonable value of work done". A person can, under certain circumstances, claim payment for work done or goods supplied without any contract or on account of breach of old contract.

D. **Suit for specific performance:** Specific performance means the actual carrying out of the contract as agreed. When damages are not an adequate remedy for breach of the contract, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is known as specific

performance of the contract.

- E. **Suit for Injunction**: Injunction is an order of a court restraining a person from doing a particular act. That is, it is an order of the court restraining a person from doing something, which he promised not to do. This type of order is generally issued in cases where the compensation in terms of money is not an adequate relief. Thus injunction is a preventive relief. It is appropriate in case of anticipatory breach of contract.

## UNIT-IV

### CONSUMER PROTECTION ACT (COPRA) 1986

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**Meaning of Consumer, Consumer dispute, complaint, complainant, Deficiency, service. Objectives and scope of the Act, Rights of consumer, consumer redressal agencies ,district Forum, state and national commission.**

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#### **Meaning of consumer:**

A consumer is a person, who buys or agrees to buy goods and services for a consideration for personal use that person is called consumer.

#### **Definition of consumer**

**According COPRA Act,1986 ,consumer means** any person Buys any goods for a consideration which has been paid or promised or partly paid under any system of deferred payment but does not include a person who obtains such goods for resale or for any commercial purpose.

#### **Rights of consumer under COPRA ACT, 1986**

The COPRA 1986 seeks to provide for protection of interest of the consumer in general. these are

1. Right to basic needs
2. Right to safety
3. Right to information
4. Right to choice/choose
5. Right to be heard
6. Right to redress
7. Right to consumer education
8. Right to a healthy environment.

#### 1. **Right to basic needs:**

Food ,shelter, clothing ,health care and education .

2. **Right to safety:**

Right to be protected against products,production processes and services which are hazardous to health and life.

For ex: Adulterated food is dangerous to life and weak cement is dangerous to life as well as property.

3. **Right to information:**

The consumer has been given the right to be informed by the producer about the quality, quantity, potency, standard,purity and price of goods so as to protect the consumer against unfair trade practice.

4. **Right to choice/choose**

The right to choose means the right to be assured. Wherever possible, access to a variety of goods and services at competitive prices. Fair and effective must be encouraged in order to provide consumers with the greatest range of choice among products and services at the lowest price.

5. **Right to be heard**

The right to be heard also includes the right to be assured that the consumer interest will receive due consideration at appropriate forums. The consumer disputes should be resolved in a fair and expeditious manner. The Consumer Protection Act, 1986 can forms to these measures.

6. **Right to redress**

The consumer has been given the right to seek redressal against unfair trade practices or their unscrupulous exploitation. The consumer should have some means of redress when goods fail to live up to their promise or indeed cause injury

7. **Right to consumer education**

The right to consumer education is an important right available to the consumers. Information about the consumer products in the market and for the proper

functioning of the legal system it is the necessary that the knowledge of the availability of a legal remedy should be so widely explained, advertised and circulated, so that people as a whole become conscious of their rights.

### **8. Right to a healthy environment:**

Right to have protection under mis-presentation over which he as an individual has no control, but nevertheless falls as a victim.

## **Objectives of COPRA**

### **1. To protect the interest of consumer**

The consumer protection bill,1986 seeks to provide for better protection of investments of consumer and that purpose, makes provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

### **2. Protection of rights of consumer:**

#### **Protection of rights of consumer such as**

- The right to be protected against marketing of goods which are hazardous to life and property.
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade Practices.
- Right to consumer education
- Right to seek redressal against unfair trade practice.

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- Right to be heard
  - Right to choose
3. **Consumer protection council:** The above objects are sought to be protected and promoted by consumer protection councils established at the central and state level.
  4. **To provide speedy simple redressal to consumer disputes.**

### **Meaning consumer dispute**

Section 2(1) (e) Consumer Dispute means a dispute where the person against whom a complaint has been made, denied or disputes the allegations contained in the complaint. Thus it is clear that if a person against to whom complaint is made agrees to the complaint, there is on '**consumer dispute**'.

### **Meaning of complaint**

Section 2(1) (c) **Complaint means any allegation in writing made by a complainant that,**

- a. An unfair trade practice or restrictive trade practice adopted by any trader burdening a consumer with loss or damage.
- b. Defective goods brought or agreed to be bought.
- c. Deficiency in service availed or agreed to be availed.
- d. Price charges in excess of fixed or displayed price.
- e. Hazardous good and services being offered for sale.

### **Who is complainant**

The complainant is defined in section 2(1) (b) and means.

- A consumer
- Any voluntary consumer association registered under the companies act,1956

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- The Central Government or any State Government
- One or more consumer where there are numerous consumers having the same interest.

### **Meaning of Defect under COPRA**

It means any fault, imperfection or shortcoming in the quality, quantity, potency, purity and standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods.

### **Meaning of Deficiency under COPRA**

This is given in the sec 2(1) (g) under this deficiency in relation to any service means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained under any law or has been undertaken by the opposite party to be performed under a contract or otherwise.

### **Meaning of Service under COPRA**

According to section 2(1)(o) of the Act, service means Service of any description which is made available to potential users, and the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy.

Service means service of any description which is made available to potential users and includes banking, financing, insurance, transport, processing, supply of electrical goods, board or lodging, housing construction, entertainment etc., But does not include the rendering of any service at Free of cost or under a contract of personal service .



### **CONSUMER REDRESSAL AGENCIES(15 MARKS)**

The consumer protection Act **under chapter III** explain about the consumer disputes redressal agencies. Section 9 of the Act gives the provision for establishment of consumer disputes redressal agencies.

**Section 9,provides that the following agencies are required to be established for the purpose of the act:**

- 1. The consumer disputes redressal Forum to be known as the 'District forum.**
- 2. A consumer Disputes redressal commission to be known as state commission.**
- 3. National consumer disputes redressal commission or national commission.**

#### **I. THE CONSUMER DISPUTES REDRESSAL FORUM OR 'DISTRICT FORUM.**

##### **1. Constitution:**

It is established by the state Government in each district by notification.

##### **2. Composition:**

It has a president and 2 members (one of whom must be a woman )

##### **3. Appointment:**

They are appointment made by state government On the advice or recommendation of selection committee of 3 persons.

The selection committee has a **chairman and 2 members** .

- **The chairman** -is the **president of the state commission** and
- **2 member**-One member is the **secretary in the law department** of the state and the another member is the **secretary in the consumer affair dept. of the state**.

#### 4. **Qualification:**

The president must be a **qualified judge of the district court** and the other members must have the ability and integrity and have a thorough **knowledge and experience in commerce, economics, accountancy, law, industry and public affair**.

#### 5. **Period of office:**

Every member of this forum must hold the office for a **period of 5 years** and there shall be no re-appointment.

#### 6. **Terms of service:**

The **salary and other terms and condition** of the member may be fixed by the **state government**.

#### 7. **Justification:**

**Section (11) its jurisdiction** is based on the amount compensation, amount of compensation claimed **is upto Rs.20 lakhs**.

#### 8. **Who shall give complaint (sec 12)**

- A consumer to whom such goods are sold or services rendered.
- Any voluntary consumer association registered under the companies act,1956.
- The Central Government or any State Government.

### 9. Power:

It has the power of civil court. It can issue one or more of the following orders.

- To replace the goods.
- To remove the defects in the goods and services.
- To repay the price.
- To pay compensation
- To discontinue UTP'S (Unfair trade practice)
- To stop the sale of hazardous goods.

### 10. Appeal (sec 15)

Any person aggrieved by the order of district forum can go for an appeal ,against such order in the state commission with 30 days from the date of the order.

### 11. Treatment of complaints (sec .13)

#### a. Complaints regarding goods

When the district forum receives a complaint about any goods, it will send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give replay within 30 days. It may be extended by another 15 days. when the complaint alleges a defects in the goods(If it can't be decided without lab test)

The district forum will receive a sample and fixed lab charges from the complainant and seal it. Then the sample so sealed may be sent to laboratory for a test along with lab charges. The laboratory must submit its report of the test within 45 days from the date of receiving the complaint.

After receiving the report from the laboratory the district forum shall send a copy of the report to the opposite party. If the opposite party dispute over the correctness of the reports, he must give writing his obligation to the district forum.

#### Issuing order :

The district forum shall issue an appropriate order after giving a reasonable opportunity of hearing both of the parties, it shall pass

appropriate order.

### **b. Complaints regarding service**

When the district forum receives a complaint about any service, it will send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give reply within 30 days.

It will examine the evidence given by both parties in support of their claim. And giving an opportunity of hearing both of the parties, it shall pass appropriate order.

## **II. A CONSUMER DISPUTES REDRESSAL COMMISSION OR STATE COMMISSION**

### **1. Constitution:**

It is established by the state Government in each state by notification.

### **2. Composition:**

It shall have a president and 2 members (one of whom must be a woman).

### **3. Appointment:**

They are appointed made by state government on the advice or recommendation of selection committee.

The **President is appointed in consultation with the chief justice of high court.**

The selection committee has a chairman and 2 members.

- **The chairman** - is the president of the state commission and
- **2 member** - One member is the secretary in the law department of the state and the another member is the secretary in the consumer affair dept. of the state.

### **4. Qualification:**

The president of the **state commission must be a qualified judge of the high**

**court and** he is appointed by the state Government and the other members must have integrity and have a thorough knowledge and experience in commerce, economics, accountancy, law, industry and public affair.

### 5. Period of office:

Every member of this forum must hold the office for a period of 5 years and there shall be no re-appointment.

### 6. Terms of service:

The salary and other terms and condition of the member may be fixed by the state government.

### 7. Justification:

Section (17) its jurisdiction is limited to extent of compensation value above 5lakhs and up to 1 crore and appeal against the order of any district forum in the state.

### 8. Who shall give complaint

- A consumer to whom such goods are sold or services rendered.
- Any voluntary consumer association registered under the companies act,1956.
- The Central Government or any State Government.

### 9. Power:

It has the power of civil court. It can issue one or more of the following orders.

- To replace the goods.
- To remove the defects in the goods and services.

- To repay the price.
- To pay compensation
- To discontinue UTP'S (Unfair trade practice)
- To stop the sale of hazardous goods.

### **10. Appeal (Sec.19)**

Any person aggrieved by the order of state commission within 30 days from the date of the order in the national commission.

### **11. Treatment of complaints (sec .13)**

#### **c. Complaints regarding goods**

When the state commission receives a complaint about any goods, it will send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give reply within 30 days. It may be extended by another 15 days when the complaint alleges a defect in the goods (If it can't be decided without lab test)

The state commission will receive a sample and fixed lab charges from the complainant and seal it. Then the sample so sealed may be sent to laboratory for a test along with lab charges. The laboratory must submit its report of the test within 45 days from the date of receiving the complaint.

After receiving the report from the laboratory the state commission shall send a copy of the report to the opposite party. If the opposite party disputes over the correctness of the reports, he must give writing his obligation to the district forum.

#### **Issuing order :**

The state commission shall issue an appropriate order after giving a reasonable opportunity of hearing both of the parties, it shall pass appropriate order.

#### **d. Complaints regarding service**

When the state commission receives a complaint about any service, it will

send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give reply within 30 days.

It will examine the evidence given by both parties in support of their claim. And giving an opportunity of hearing both of the parties, it shall pass appropriate order.

### III. NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION OR NATIONAL COMMISSION.

#### 1. Constitution:

It is established by the central Government by notification.

#### 2. Composition:

It has a president and 4 members (one of whom must be a woman )

#### 3. Appointment:

They are appointment made by central government On the advice or recommendation of selection committee.

The President is appointed in consultation with the chief justice of India

The selection committee has a chairman and 2 members .

- **The chairman** -is the is judge of the supreme court.
- **2 member**-One member is the secretary in the central law department of the india and the another member is the secretary in the central consumer affair dept of the GOI.

#### 4. Qualification:

The president must be a **judge of the supreme court** and the other members must have the ability and integrity and have a thorough knowledge and experience in commerce, economics, accountancy, law, industry and public affair.

#### 5. Period of office:

Every member of this forum must hold the office for a period of 5 years and there

shall be no re-appointment.

### **6. Terms of service:**

The salary and other terms and condition of the member may be fixed by the central government.

### **7. Justification:**

Section (21) its jurisdiction is limited to extent of compensation value above and 1 crore and appeal against the order of any state commission.

### **8. Who shall give complaint(sec 12)**

- A consumer to whom such goods are sold or services rendered.
- Any voluntary consumer association registered under the companies act,1956.
- The Central Government or any State Government.

### **9. Power:**

It has the power of civil court. It can issue one or more of the following orders.

- To replace the goods.
- To remove the defects in the goods and services.
- To repay the price.
- To pay compensation
- To discontinue UTP'S (Unfair trade practice)
- To stop the sale of hazardous goods.

### **10. Appeal(sec 19)**

It can be only in supreme court within 30 days from the date of the order.

### **11. Treatment of complaints (sec .13)**



e. **Complaints regarding goods**

When the national commission receives a complaint about any goods, it will send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give reply within 30 days. It may be extended by another 15 days when the complaint alleges a defect in the goods (if it can't be decided without lab test)

The national commission will receive a sample and fixed lab charges from the complainant and seal it. Then the sample so sealed may be sent to laboratory for a test along with lab charges. The laboratory must submit its report of the test within 45 days from the date of receiving the complaint.

After receiving the report from the laboratory the national commission shall send a copy of the report to the opposite party. If the opposite party disputes over the correctness of the reports, he must give writing his obligation to the national commission.

**Issuing order :**

The national commission shall issue an appropriate order after giving a reasonable opportunity of hearing both of the parties, it shall pass appropriate order.

f. **Complaints regarding service**

When the national commission receives a complaint about any service, it will send a copy of complaint to the opposite party mentioned in the complaint. The opposite party must give reply within 30 days.

It will examine the evidence given by both parties in support of their claim. And giving an opportunity of hearing both of the parties, it shall pass appropriate order.