



Contract I and Specific Relief Act

Llb 3 years (Karnataka State Law University)

Indian Contract Act 1872

Q-What is contract? What are the essential elements of a contract?

Q-when does an agreement become a contract?

Q-all contracts are agreements, but all agreements are not contracts. Discussed.

*A contract is **an agreement which gives rise to obligations** which are recognized by law. Thus, the course of dealings between the contracting parties would be governed by stipulations contained in the agreement which is enforceable if it is not repugnant to law of the land.*

Anson- *A contract is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of the other or others.*

Fredrick Pollock- *Every agreement and promises enforceable by law is a contract.*

Salmond- *Contract is an agreement, creating and defining obligations between the parties.*

Section 2(h) of Indian Contract Act 1872 defines-

An agreement enforceable by law is a contract.

Section 10 of Indian Contract Act 1872 defines-

An agreement is a contract when it made for some consideration, between parties who are competent, with their free consent and for a lawful object.

The analysis of above definitions- A contract is an agreement the object of which is to create an obligation i.e. a duty enforceable by law. For example – if there is an agreement between A and B that A will make a furniture for B, and B will pay a Rs 1,000/ to A, the agreement is a contract.

Section 10 defines a valid contract-

1. All agreements are contract which are made by the-
2. Free consent of parties.
3. Competent to contract.
4. A lawful consideration.
5. With a lawful object.

Thus every contract is an agreement, but every agreement is not a contract. An agreement becomes a contract when it fulfills the following conditions:

1. Consideration.
2. Competent parties to contract.
3. Free consent.
4. Lawful object.

There are some agreements which literally satisfy the requirements of a contract, such as proposal, acceptance, consideration etc. but which do not catch its spirit and they are not enforced because it does not sound to be reasonable to do so.

Constituent Element of Agreement:

1. **Several parties-** *There must be two or more parties to initiate a contract. Where one who has to discharge the obligation and the other entitled to enforce the obligations. For example- A borrowed money from a joint account in which A & B are the owner. Here the obligation was not enforceable since A was both the creditor and debtor.*
2. **Obligation-** *Obligation is the prime constituent, where one person agrees to do or obtains from doing a definite act or acts. It is the bond of legal necessity which binds together two or more parties. It is also necessary the obligation must be definite acts, otherwise there may be uncertainty or indefiniteness about the obligations, and it may be possible that if one has to be under an obligation to do or abstain from doing acts for all the time, it would similar like slavery.*

3. **Identity of Mind**- Both parties must be agreed on the subject matter at the same time and at the same manner.
4. **Mutual Communication**-Law does not go into the mind of the contracting parties but recognizes what is expressed in writing. Till such time there is complete understanding on the terms and there is communications in this respect, there can be no agreement in law.
5. **Legal Relationship**- it is also most important there must be some legal relationship than the social relationship.

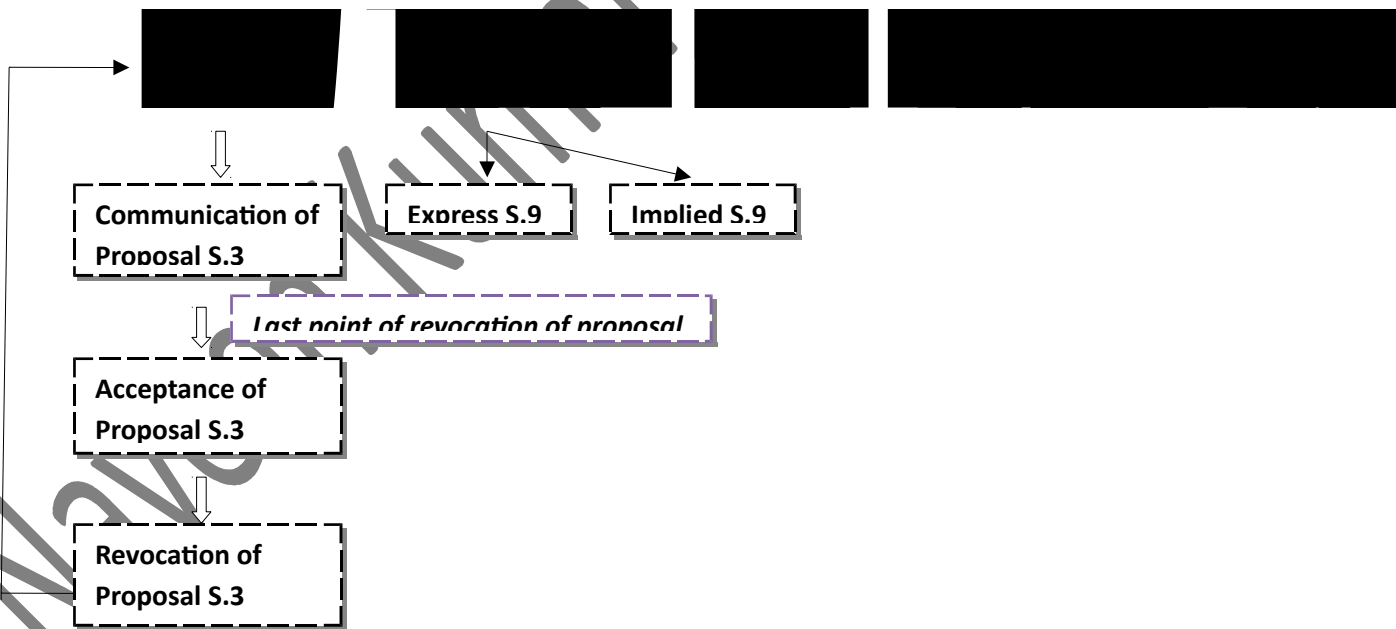
For example- if A offers to B for go to movie or invite for lunch and B did not fulfill this the B would not amount to breach of any legal contract.

Initialization of a Contract

Q- Define proposal. Explain its different legal rules with the help of cases.(2008)

Q-write a note Carlill Vs Carbolic Smoke Ball Co. and the principle laid down in this case.

Q-Balfour vs Balfour.



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Proposal and its acceptance is the universally acknowledged process for the making of an agreement. **The proposal is the starting point.**

A proposal is a **declaration** by the proposer **of his intention to be bound by an obligation** if the offeree fulfill certain conditions. It means an offer is an **expression of willingness to contract on certain terms**, made with the intention that it shall become binding as soon as it is accepted by the person whom it is addressed.

In other word an offer is **an intimation by word or conduct**, of **willingness to enter into a legally binding contract**, and which in its terms expressly or impliedly indicates that is to become binding on the offer or as soon as it has been accepted.

S.2(a) -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.

Analysis the Section 2(a) -

The first part of the definition of **proposal** lays emphasis upon the requirement that the willingness to make a proposal should be **signified**. **To signify means to indicate or declare**. in the traditional language of the law of contract, it means that the proposal should be communicated to other party. The process of making a proposal is completed by the act of communicating it to the other party.

For making proposal there must be offer and its acceptance. The person who makes the offer is called the proposer or offeror , and the other person to whom the proposal is made is called as offeree or propose or promise. **Section 2(c) - the person making the proposal is called a promisor, and the person accepting the proposal is called the promise.**

Constituent of Proposal

Following are the requisites of a valid offer-

1. **Purposer or Offerer-** proposer is the initiator of an agreement by way of proposal. According to Section 2(a), proposer's has two purposes-
 - I. An expression of the offeror's willingness to do or abstain from doing something.
 - II. Make a proposal to obtaining the assent of the offeree to the proposed act or abstinence.
2. **Intention-** Intention is not defined in Indian Contract Act 1872. But the offer initiated with the intention of offeror. But Section 2(a) defines the similar word of intention

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which is **Willingness**. The proposal must be made with willingness to do business on the proposed terms and conditions. Willingness shows that intention to be bound by the proposal when accepted is an integral part of the concept of agreement. The party who offers must know the legal consequences of the offer. An offer or its acceptance should be made with the intention of creating legal relations. The test of intention is objective not subjective. The intentions of the parties is naturally to be known the terms of the agreement and the surrounding circumstances.

Intention is the primary requisite of a valid offer, which later turns into a agreement, and creates legal relations between the parties.

Balfour vs Balfour

Brief Fact-

W and H were husband and wife. H was employed in Shri Lanka. Both went to England for leave. There W became ill and was compelled to stay in England. After completion leave H was to go to Shri Lanka. Before going to Shri Lanka H promised to W to send 30 Ponds per month. Initial few months he do so but after that he stop sending the money. W went to court for the probable expense of maintenance.

Judgment- *The court rejected the claim.*

Principle- *it is not the contract when two parties agree to take a walk together or where there is an offer and acceptance of hospitality. **Second the parties was not intended that they shall be attended by legal consequences***

3. **Legal consequences-** *an offer must be intended to create legal relations and must be capable of creating legal relations. Offer is the first step of the agreement. When an agreement is enforceable by law it becomes the contract. Offer is the starting point of a contract, it must be the capacity of legal binding.*
4. **Assent of other party-** *The proposal must be made with a view to obtaining assent of the other party. Contract requires the **consensus ad idem (consent at the same time).***
5. **Term-** *the terms of the contract must be certain and defined. There should be no ambiguity in the terms and conditions of the offer.*
6. **Offer must be address-** *An offer may be addressed either to an individual or to a group of persons, or to the world at large, and it may be made expressly or by conduct.*

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For example-

A offer to sell his house and gives an advertisement in the newspaper given the particular of the house, it is the general offer.

A offer to sell his house to B for Rs 5000/- this is the specific offer.

Carlill Vs Carbolic Smoke Ball Co

Brief Facts- *Carbolic smoke ball co, offered by advertisement to pay £ 100 to any one who suffered by influenza after having used the ball according to printed direction. It was added that £ 1000 deposited in the Alliance Bank showing our sincerity in the matter.*

The plaintiff used the smoke ball according to the direction but she nevertheless subsequently suffered from influenza. She was held liable to entailed for the amount.

But the co refused to give the amount to Carlill, by saying that-

- *There was no intention to enter into a legal relation as it was simply a puffing advertisement.*
- *It was not made for one person in particular, and the plaintiff had not expressed his intention to accept it.*

Judgment- *it was the general offer, and the sanity of the contract was amount deposited in the bank.*

7. Words or Conduct- *An offer may be express by word of mouth or by writing, or it may even be made by conduct. An offer made by **conduct** called the **implied offer**. An offer which is expressed by **word or spoken** is called the **express offer**.*

8. Communication- *offer must be communicated to the offeree.*

Acceptance Section 3

Q-Discuss the legal rule regarding a valid acceptance.(2009),(2007).

Acceptance to an offer is like putting a light match to a train of gun powder. Explain the statement with the help of decided cases.

A- **Acceptance is a final and unqualified expression of assent to the terms of an offer.** The objective test of agreement applies to an acceptance no less than to an offer. On this test, a mere acknowledgement of an offer would not be an acceptance. If a contract is to be made, the intention of the offeree to accept must be expressed without leaving room for doubt as to the fact of acceptance, or as to the coincidence of the terms of the acceptance with those of the offer.

Section 2(b)- when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

Thus acceptance is the assent given to a proposal, and it has the effect of converting the proposal into promise.

COMMUNICATION OF ACCEPTANCE.

1. Acceptance by external manifestation or overt act-

The definition clearly requires that the assent should be signified. It may be signified or expressed by an act or omission by which the party accepting intends to communicate his assent or which has the effect of communicating it.

An agreement does not result from a mere state of mind. Intent to accept an offer or even a mental resolve to accept an offer does not give rise to a contract. There must be some external manifestation of that intent by speech, writing or other act.

Brogden Vs metropolitan Railway Co.

B was supply the coal to a railway company without any formal agreement. B suggested that a formal agreement should be drawn up. The agent of both parties met and draft an agreement. There were some blank which sent to B's approval. The agent of the company put that agreement in the draw's of B, and it kept there. B kept up his supply

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of coals but on the new terms. A dispute having arisen B refused to be bound by the agreement.

The conduct of the company's agent in keeping the agreement in his drawer was an evidence of the fact that he had mentally accepted it. But had not express his mental determination and retention of the agreement was not a sufficient acceptance.

It was held that- when the course of dealing was accepted and acted upon in the supply of coal it means the acceptance is there.

- 2. Acceptance by Conduct-** *Conduct is an action in terms of the offer. All cases of general offers, which are a kind of unilateral contract demand some act in return for the promise to pay. Section 8 provides that Performance of all conditions of a proposal of the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal.*

Hindustan Cooperative Insurance Company Vs Shyan Sunder-

Brief Fact- *After an oral understanding to insure and the completion of medical examination and , the company informed the proposer that if he submitted the proposal form and half yearly premium, his proposal would be accepted.*

The proposer submitted the proposal form and the half yearly premium cheque.

The company encash the cheque but not replied to him.

Calcutta High Court held that- *Mere mental assent to an offer does not conclude a contract. The offeror may however, indicate the mode of communicating acceptance either expressly or by implication. The encash of premium cheque shows the act of acceptance.*

- 3. Communication to offeror himself-** *Acceptance must be communicated to the offeror himself. A communication to any other person is as ineffectual as if no communications has been made.*

Felthouse V Bindley- *court held that-acceptance of an offer made should be communicated to the offeror himself or to the person he has authorized to receive the acceptance. A communication to a stranger, will not do*

4. **Communication to acceptor himself-** *The communication of acceptance should be from a person who has the authority to accept it. Information received by a unauthorized person is ineffective.*
5. **When Communication of Acceptance not necessary-** *In case of general offer to public at large, acceptance is not necessary.*

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Judgment- *it was the general offer, and the sanity of the contract was amount deposited in the bank.*

6. **Mode of Communication –Acceptance must be in a prescribed Manner-** *Acceptance has to be made in a manner prescribed or indicated by the offeror. An acceptance given in any other manner may not be effective, particularly where the offeror clearly insists that the acceptance shall be made in the prescribed manner.*
7. **Acceptance must be absolute-** *the acceptance must be absolute or unqualified, there should be no conditions attached to it.*
8. **Provisional acceptance-** *Some time an acceptance made subject to final approval, this kind of acceptance is provisional acceptance, which does not bind either party until the final approval is given.*

Revocation of Acceptance

A/c to English law an acceptance once made is irrevocable.

Anson- *acceptance is to offer what a lighted match is to a train of gunpowder. Both do something which cannot be undone.*

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In Indian law- once the offer is made, acceptance is generally revocable, before it reaches to the offeree.

Revocation-

Mode of revocation Section 6-

- 1. Communication of notice of revocation by the proposer to the other party.**
- 2. Laps of time prescribed in such proposal, if time is not prescribed then the laps of the reasonable time, with out the communication of acceptance.**
- 3. Failure of the acceptor to fulfill the agreement conditions.**
- 4. Death or insanity of the proposer, which comes to the knowledge of acceptor before the acceptance of proposal.**

Consideration

Define and discuss the term consideration under Indian law. Are there any exceptions of the general rule that an agreement made without consideration (2009).

Without consideration a contract is void explain (2008).

A - Anything given or promised or forborne by promissory in exchange for the promise or undertaking of another in a lawful agreement.

Consideration means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee.

Blackstone- consideration is the recompense (repay) given by the party contracting to the other.

in other word is the price of the promise.

Pollock - consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.

Patterson- consideration means something which is of some value in the eye of law. It may be some benefit to the plaintiff or some deterrent to the defendant.

Calcutta high court- consideration is the price of a promise, a return or quid pro quo, something of value received by the promisee as inducement of the promise.

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Consideration is not be confounded with motive. Consideration means something which is

Section 2(d)- when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Illustrations-

1. A promises, for no consideration, to give to B Rs. 1000. This is a void agreement.
2. A, finds B's purse and give it to him. B promise to give A Rs 50. This is a valid contract.

Kind of Consideration-

1. **Adequate**-fair and reasonable under the circumstances of the agreement. It refers where there was a fair bargain involving an exchange of equal value.

Explanation- an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

2. **Sufficient**-whether the consideration is legally sufficient to enforce a promise.

Consideration in Indian law.

Section 10- defines a lawful consideration is the essential ingredients of a valid contract.

Further Section 25- An agreement without consideration is void unless-

1. **It is in writing or registered**- it is express in writing or registered under the law for the time being in force for the registration of and is made on account of natural love and affection between parties standing in a near relation to each other.

Illustrations

A, for natural love and affection, promises to give his son, B, Rs 1000. A puts his promise to B into writing and registers it. This is a contract.

2. **Promise to compensate for something done**-it is **a promise to compensate**, wholly or in part, a **person has already voluntarily done something for the promisor**, or something **which the promisor was legally compellable to do**
3. **A promise to pay a debt barred by limitation law**- it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the law of limitation of suit.

Conclusion- *Thus consideration shall be something which not only parties regard but the can regarded as having some value. Consideration must be real and not illusory, whether adequate or not, adequacy being a matter purely for the contracting parties to decide and to agree upon.*

Capacity of contract

Mohoribibi vs Dharmodas Ghosh

A- *Section 11 defines- every person is competent to contract who is of the age of majority according to 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.*

Thus the following persons are incompetent to contract:

1. *Minors.*
2. *Persons of unsound mind.*
3. *Persons disqualified by law to which they are subject.*

1. Minors-

2. **Age of Majority-** *The age of majority is generally 18 years, except when a guardian of a minor's person or property has been appointed by the court, in which case it is 21. The age of the person is determined by the law to which they are subject.*
3. **Nature of Minor's Agreement-** *Section 10 defines that the parties to contract must be competent Section 11 declares that a minor is not competent. But neither section makes it clear whether, if a minor enters into an agreement, it would be voidable at his option or altogether void.*

Mohori Bibi Vs Dhurmodas Ghosh case solve this controversy.

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It is essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of this act. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant.

Thus a minor agreement is absolutely void.

A rule to providing the immunity to minor for the contract liability is- A child may show poor judgment in making a particular contract, and it is a protection against his own ignorance and immaturity- not merely fraudulent manipulation by others. The general presumption that every man is the best judge of his own interests is suspended in the case of children.

4. **Effects of Minor's Agreement-** *A minor's agreement is void. If there is no contract there is no contractual obligation of either side.*
- I. **No Estoppels against minor-** *the policy of the law of contract is to protect the minors from contractual liabilities. If a minor by misrepresentation his age induces another to contract with him, he will not be liable for such Estoppels.*
 - II. **No liability in contract or in Tort arising out of Contract-** *the minor's agreement is, of course, in principle devoid of all legal effects. A minor is in law incapable of giving consent, and, there being consent there could be no change in the character. Calcutta High Court refuse to hold minor's liable in tort for money lent on a bond. The court said- if the tort is directly connected with the contract and is the means of effecting it and is a parcel of the same transaction, the minor is not liable in tort. Thus where a minors borrowed a mare for riding only, he was held liable when he lent her to one of his friends who jumped and killed.*
 - III. **Doctrine of Restitution-** *if a infant obtains property or goods by misrepresenting his age, he can be compelled to restore it, but only as long as the same is traceable in his possession. This is known as the equitable doctrine of restitution. Where the infant sold the goods or convert it , he cannot be made to repay the value of the goods, because that would amount to enforcing a void contract. Again the doctrine of restitution is not applied where the infant has obtained cash instead of goods.*
 - IV. **Contract of Marriage-** *A contract for the marriage of a minor is also prima facie for his or her benefit. The contract of marriage could be enforced against*

the other contracting party at the instance of the minor it cannot be enforced against the minor.

- V. **Ratification-** *A person can not on attaining the majority ratify an agreement made at the time of his infancy. It is necessary at the time of majority a fresh agreement should be made.*

2. Person of Unsound Mind

In English law a person of unsound mind is competent although he may avoid the contract, if he satisfies the court that he was incapable of understanding the contract and other party knew it. If he makes a contract while drunk, he may, when sober, elect to avoid the contract or to affirm it.

While in Indian law it is absolutely void a contract with the person of unsound mind. It is the position of a drunken person in also the same.

Free consent-

According to section 10 Free Consent is the essential requirements of a contract. Section 14 defines the Free consent-

Consent is said to be free when is not caused by-

1. **Coercion- S 15.**
2. **Undue influence-S.16**
3. **Fraud-S17**
4. **Misrepresentation- S18**
5. **Mistake-S19**

Section 2(i) says that – an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

It means there must be minimum two parties who provides their free consent for a contract, when a contract which is enforceable at the option of any of only one of the parties, namely the party whose consent was not free, it is a voidable contract.

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Section 15- Coercion- coercion is the committing or threatening to commit, any act forbidden by the IPC or the unlawful detaining, or threatening to detain any property, to prejudice or any person whatever, with the intention of causing any person to enter into an contract.

Explanation- It is immaterial whether the IPC is or is not force in the place where the coercion is employed.

Illustration-

A on board an English Ship on the high sea, causes B to enter into an agreement by an act amounting to criminal intimidation under the IPC.

Techniques of causing coercion-

Coercion is said to be caused by coercion when it is obtained by pressure exerted by either of the following techniques-

1. Committing or threatening to commit any act which is forbidden by IPC.
2. Unlawful threatening or threatening to detain any property.

Madras High Court provide their view- that **Threat of Suicide** a Hindu induced his wife and son to execute a release in favor of his brother in respect of certain properties which they claimed as their own, is amount to coercion under section 15 of this act.

Detention of Property-

Deference between Indian and English Law on Coercion-

What Indian law call coercion English law defines it Duress or Menace.

Duress is said to consist in actual or threatened violence or imprisonment of the one party or any one else on his behalf to get the advantage.

But coercion defines S.15 is much more wider and includes the unlawful detention of property also.

Undue influence-

It happens when one party is at the dominate position.

Contract with one whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

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Ability to dominate will of other

Some time the parties of a contract are so related to each other and one of them are in a position to dominate.

Allahabad High Court- In Mannu singh V Umadat Pandey held that

The plaintiff induced his devotee, to gift him the whole of his property to secure benefits to his soul in the next world. Such a consent is said to be undue influence. No reasonable man transfer his full property to any one else. This is clearly show the case of undue influence.

Where there is active trust and confidence between the parties or the parties are not on equal footing, the one party would be in a dominate position.

Real or Apparent Authority-

A person in authority is definitely able to dominate the will of the person over other who is a real or apparently authority like an Income Tax officer in relation to an assesses, a magistrate or a police officer in relation to a accused. And also a person who is not a real or apparently authority but with a show or color of authority.

Every relation of trust and confidence is a fiduciary relation.

Mental Distress

A person is suffering from mental distress, can also be undue influence by other party.

Urgent Need of Money no distress-

Statutory compulsion no distress-

Contract with Pardanashin Woman.

A contract with pardanashin woman is presumed to have been induced by undue influence. She can avoid the contract unless the other party proves that it was her intelligent and voluntary act.

Misrepresentation S.18

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A contract the consent to which is induced by misrepresentation is voidable at the option of the deceived party. **misrepresentation means misstatement of a fact material to the contract.**

Ingredient of Misrepresentation-

- **Unwarranted (unnecessary Statement) Statement-**
- **Breach of Duty.**
- **Inducing mistake about the subject matter.**

Unwarranted Statement- *when a person positively asserts that a fact is true when his information does not necessary it to be so, he believe it to be true.*

Breach of Duty- *any breach of duty which brings an advantage to the person committing it by misleading the other to his prejudice is a misrepresentation.*

Inducing mistake about the subject matter.- *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 is also misrepresentation.*

Mistake S.19- *where the mistake does not consent, but only misleads the parties*

Illustration- *A agrees to buy from B a certain horse. it turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact the agreement is void.*

Ingredient of Section –

- **Both parties are in a mistake in a agreement.**
- **Mistake is the matter of fact.**
- **Fact about which they are mistaken are essential for agreement.**

Fraud under contract-

Intentional misrepresentation of fact, speaking broadly is called the Fraud.

Ingredient of Section 17- Fraud- *where willfully gives answer which are untrue to obtain the assent of other.*

1. **There should be a suggestion of fact which is not true.**

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2. Active concealment of a fact. (knowingly)
3. Promise without intention to fulfill.
4. Any other form of deceive.
5. Act or omission which is declare by law fraudulent.

Explanation- mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless-

- the circumstances of case are such that,
- it is the duty of the person keeping silence to speak,
- or unless his silence equaling to speak.

Illustration-

A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about horse's unsoundness. This is not fraud.

B says to A- if you do not deny it, I shall assume the horse is sound. A says nothing. Here A silence is equitant to speak.

Basis	Fraud	Misrepresentation
Nature	<i>Intentional wrong</i>	<i>Quite innocent.</i>
Knowledge	<i>Person making it does not believe it is true.</i>	<i>Person making it believe it true.</i>

Stander form of contract-

Q-What is the stander form of contract?

Q-what are the protective devices in the ICA-1872.

Q- What is the Contract of Adhesion or no choice of Contract? And what are its essentials.

Q-what is compulsory contract?

A-The world is dynamic and it is changing very fast, and the law of contract is facing problems in new and wide dimensions. For example Life Insurance of India, Railways they are making thousand of insurance and issuing ticket and carriage every days. It is very difficult for an individual to freely bargain such a massive organization, the contract terms and conditions are Indian Contract Act 1872

printed on the ticket or on the policy documents, which restrict and often exclude liability under the contract of such organization. Therefore an individual simply bind to accept the terms and conditions which is printed whether he likes it or not.

The law of contract provide certain protective devices against the possibility of exploitation of an individual. Following are some of the modes of protection which have been evolved by the court.

1. **Reasonable notice-** it is the duty of the person delivering a document to give a adequate notice to the offeree of the printed terms and conditions. Where this is not done, the acceptor will not be bound by the terms.
2. **Notice should be contemporaneous with contract-** Notice of the terms and condition should be given before or at the time of offer, subsequent notification will need amount to a modification and will attract the new contract unless he has assented thereto-
Illustration- A book a room in a hotel and paid the rent in advance, when they went up to occupy the room there were a notice saying that- the hotel will not liable for any article stolen unless handed to the manager for safe custody.
In this case hotel will held liable in case of steal any article of A, because the notice was a part of the agreement.
3. **Theory of fundamental breach-** another protective device is the doctrine of fundamental breach. It is a method of controlling unreasonable consequences of wide and sweeping exemption or limitation clauses. Even where adequate notice of terms and conditions has been given.
Core of contract- every contract contain a core or fundamental obligation which must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of the contract, even though there is a exemption clause.
4. **Rule of strict construction-** construction means the interpretation of applicable terms and conditions. Exemption or limitation clauses are construed strictly where a clause is so widely expressed as to highly unreasonable. Any ambiguity in the mode of expressing an exemption clause or limitation clause is resolved in favor of weaker party.
5. **Liability in tort-** even where an exemption clause is exhaustive enough to exclude all kind of liability under the contract. It may not exclude liability in tort.
Illustration- A hired a cycle from B. B agreed to maintain the cycle in good working condition. There was a limitation clause saying- nothing in this agreement shall render the owner liable for any personal injuries. While the A was riding the cycle he got enquired.
It was held that though there is a clause exempted the defendant, but he is liable due to the negligent form their liability.

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6. **Unreasonable terms-** *If any terms of a contract intervene the public policy.*

Illustration- *A has given his coat for laundry, on the receipt it was written that- the customer would be entitled to claim only 15% of market value in case of article lost. It was held by the court that, it is the duty of the laundry to perform the process properly and to return the article safe and intact, though there is a limitation clause, which is not applicable here.*

7. **Exemption clause and third party (doctrine of Privity).** *A stranger cannot sue. The basic principle of the law of contract is that a contract is a contract only between the parties to it and not third party either enjoy any rights or suffer any liability under it. The principle evolved is if any third party is not affected by the terms of a contract so also a third party cannot claim the advantage of them.*

Q- What is continental contract?

Q- Mode of discharge of contract?

A-After formation of contract, the next step is the fulfillment of the object of the contract which has in mind in the parties of contract. Performance is not only way in which a contract is discharged.

A contract can be discharged in the following ways-

1. **By performance S.31 to 67.**
2. **By impossibility of performance S.56.-- Frustration**
3. **By Agreement S.62 to 67.**
4. **By breach.**

S.31 Defines Contingent contract- **A contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.**

Conditional Contract- *it is a sort of conditional contract and the condition is of uncertain nature. A contract which is subject to a certain or an absolute type of condition cannot be regarded as a contingent contract.*

Illustrations-

- *A contracts to pay B Rs 10,000 if B's house is burnt. This is a contingent contract.*
- *A contract to pay a sum of money on the expiry of time or on the death of a person is not a contingent contract.*

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Reason of second contract is not a contingent contract is **events are of certain nature**. The time or person will defiantly expire and the money will become payable. Therefore all type of insurance contract is a contingent contract.

Contingency to be collateral to contract

The section emphasizes that the contingency contemplated by the contract must be collateral to the contract. It means that a contract has already arisen or subsisting contract is there, but its performance cannot be demanded unless the contemplated event happens or does not happen.

Such contract has to be distinguished from a proposal which does not result in a contract unless the conditions first fulfilled.

Illustration-

- A offer to pay a sum of money on the discovery of a missing dog is not a contract. It becomes a contract only when the dog is searched out and then it is no more contingent.
- A contract to pay a sum of money on a lost of ship is a contingent contract. A contract is already there and is not to arise on loss, but the performance can be demanded only on the loss of the ship.

Contingency depending upon the will of a person

A contract is no more contingent when the happening or non happening of the contingency depend upon on the will of the party.

Illustration-

- A contract to give a sum of money on the marriage of B, it is not a contingent contract, because the marriage depend on the will of B.

In Secretary of State for India v/s A J Arathoon- Madras High Court held that-

The contingency was not fulfilled and therefore there is no question of any action for breach of contract.

The position would be different where the good have already been supplied and the only thing that the contract says is that buyer shall pay when he is in a position to pay. This is not a contingent contract. The liability to pay has already arisen.

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Contingency to be condition precedent

Generally the condition which is collateral to the performance of a contract is a conditional precedent, that is, it has to be satisfied first and then performance can be demanded.

Illustration

- A applied for a share in a company subject to be his appointment in the company, in **Khawaza Bux v/s Mirza Mohd Isamil**- court held that – share could not be allotted him without first making his appointment in the company.

Section 32- enforcement of contracts contingent on an event happening-

This section laid down two principles-

1. **Contract cannot be enforced unless the uncertain event happen-**
2. **If the uncertain event become impossible the contract become void.**

Illustrations-

- A makes a contract with B to sale a horse at a specific price, if C, to whom the horse has been offered , refuses to buy him. The contract cannot be enforced unless C refused to buy the horse.
- A contracts to B a sum of money when B marries C. C dies without being married to B. the contract becomes void.

The same principles laid down in **Anjali Das v/s Bidyut Sarkar** by the court.

Section 34- Event linked with human conduct-

Section 34 defines that when the event for which parties are waiting is linked with the future conduct of a person, where the contract is enforceable when a certain person act in a certain way, and he acted in other way and by his conduct the event become impossible.

Illustration- A agrees to pay a sum of money to B, if B marriage to C. C married D. the Marriage of B to C now become impossible.

In Frost v/s Knight – A promised to marry with B on the death of his father. While the father of B's still alive. A married with C. court held that it had become impossible that A marry with B and the contract become void.

Section 35- Contract become void, which are happening of specified event within fixed time.

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If a specified certain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happen, or before the time fixed has expired.

Illustration-

- A promises to pay B a sum of money if a certain ships returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship burned within the year.

Impossibility of performance S.56.—Frustration

Q-A contract to do an act which afterwards becomes impossible or unlawful becomes void. Discuss. (2009).

What is frustration of contract? Discuss the effect of frustration of contract.

Discussed the doctrine of impossibility of performance of a contract. Refer to decided cases(2008)

In contract law, **impossibility** is an excuse for the nonperformance of duties under a contract, based on a change in circumstances (or the discovery of preexisting circumstances), the nonoccurrence of which was an underlying assumption of the contract, that makes performance of the contract literally impossible. For such a defense to be raised, performance must not merely be difficult or unexpectedly costly for one party; there must be no way for it to actually be accomplished.

Under the doctrine of frustration a contract may be discharged if after its formation events occur making its performance impossible or illegal, and in certain analogous situations.

Section 56 defines two ways of impossibility of performance-

- **Initial impossibility.- agreement to do an act impossible in itself is void.** For example to discover a treasure by magic, being impossible of performance is void
- **Subsequent impossibility-** some time the performance of a contract is quite possible when it made, but subsequent circumstances make it impossible or unlawful. For example – A made an agreement to B certain item, but after word Government make any law against that article.

Either the case the contract become void.

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Doctrine of Frustration-

In Taylor v/s Caldwell- *court held that -rule is only applicable when the contract is positive and absolute, and not subject to any condition either expresses or implied.*

In the above case the contract had become physically impossible because of the disappearance of the subject matter. But the principle is not confined to physical impossibilities. It extends also to cases where the performance of the contract is physically possible, but the object the parties have in mind has failed to materialize.

Thus the doctrine of Frustration comes into play in two types of situation-

- 1. Performance is physically cut off.**
- 2. Object of contract has failed.**

In Satyabrata Ghose v/s Mugneeram Bangur & Co- **SC held that Section 56 applied in both of the situations.**

Specific Ground for Frustration

- 1. Destruct of Subject Matter-** *the doctrine of impossibility applies with full force" where the actual and specific subject matter of the contract has ceased to exist".*
Taylor v/s Caldwell is the best example of this class, where, a promise to let out a music hall was held to have frustrated on the destruction of the hall.

In Howell v/s Coupland- *the defendant contracted to sell a specified quantity of potatoes to be grown on his farm, but failed to supply them as the crop was destroyed by a disease.*

- 2. Change of Circumstances-** *where the circumstances arise which makes the performance of the contract impossible in the manner and at the time contemplated.*
In Mehra v/s Ram Chand om Prakash- *Punjab high court held that . if that be the case, the change of circumstances not having been brought about by the fault of either party, the courts will not enforce the contract.*

- 3. Non occurrence of Contemplated Event-** *sometimes the performance of a contract remains entirely possible, but owing to the non occurrence of an event contemplated by both parties as the reason for the contract, the value of the performance is destroyed. In*

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krell v/s Henry is an apt illustrating. There, contract to hire a room to review a proposed coronation procession was held to have frustrated when the procession was postponed.

4. **Death or incapacity of party-** when a party to a contract excused from the performance due to death or incapacity of performance. It was held in **Robinson v/s Davison-** where a contract has been made for a pianist but due to illness she could not perform.
5. **Government, Administrative or Legislative Intervention-** A contract will be dissolve when legislative or administrative intervention has so directly operated upon the fulfillment of the contract for a specific work.
But where there such **intervention is of a Temporary Nature, will not affect the performance of the contract.**
In Satyabrata Ghose V/s Mugneeram Bangur & Co. SC, held the same.
6. **Intervention of War-** the intervention of war is also effect the performance of the contract.
7. **Application of Lease-** application of lease also consider the non performance of contract. But **SC in Raja Dhruv Dev Chand v/s Raja Harmohinder Singh held that Section 56 of this Act is not applicable when the rights and obligations of the parties arise under a transfer of property under a lease.**

Effects of Frustration-

it is well settled that if and when there is frustration the dissolution of the contract occurs automatically. It does not depend, as does rescission of a contract, on the ground of repudiation or breach, or on the choice or election of either party.

1. **Frustration should not be self induced-** in order to attract the principle that a party is not entitled to rely on his own act in not fulfilling a condition subsequent and thereby bringing a contract to an end.
2. **Frustration operates Automatically-** it must be operates automatically to discharge the contract irrespective of the individuals concerned, their temperaments and failing, their interest and circumstances.
3. **Adjustment of Rights-** the rights of the parties are adjusted under Section 65 which laid down the principle of **restoration of advantage obtain by other party under void agreement.**

Illustration-

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A pays B 1000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1000 rupees.

4. **Quantum Meruit Claim-** *claim under the well known English law doctrine of quantum meruit have been allowed by the courts under this section. The SC observed in **state of Madras v/s Dunkerley & Co.** that a claim for quantum meruit is a claim for damages for breach of contract. The value of the material used or supplied is a factor which furnishes a basis for assessing the amount of compensation. The claim is not for price of goods sold and delivered but for damages. That is also the position under Section 65. In another case -Alopi Prasad v/s UOI reasonable compensation was awarded on the implication of a contract. It will not displace an express stipulation on the point.*

In a subsequent case SC explained that requirements of the claim. The original contract must be so discharged by the opposite party that the plaintiff is entitled to treat himself as free from the obligation of further performance and he must have elected to do so. The remedy is not available to the party who breaks the contract even though he might have partly performed it.

The remedy is restitutory, it is a recompense for the value of the work done by the plaintiff in order to restore him to the position which he would have been in if the contract had never been entered into. In this respect it is different from a claim for damages which is a compensatory remedy. The court accordingly did not allow the claim of a contractor for extra payment on the ground that he had to procure the raw material from a remote location.

In state of Rajasthan V/s Associated Stone Industries- it is not as if Section 65 works in one direction only. If one party to the contract is asked to disgorge the advantage received by him under a void contract, the other party may ask him to restore the advantage received by him. The restoration of the advantage and the payment of compensation have necessarily to be mutual.

Become Void- *Section 65 also covers the subsequent void contract, means when the contract made it was lawful subsequently become void or impossible. Any benefit which has been passed under the contract from one party to other must be restored. This is subject to the expenses which have already been incurred by the other party in the performance of the contract.*

Q- define the specific feature of Specific Relief Act 1963.

Q-Mentioned the various remedies provided in specific relief Act 1963.

A- Introduction to the outline of the Act.

A large number of remedial aspects of law have been taken care of by the Specific Relief Act of 1963. This act is a replacement of the earlier Act of 1877. A mere declaration of rights and duties is not sufficient to give protection to life and property. Enumeration of rights and duties must be supplemented by legal devices which can help the individual to enforce his rights. Every person who is injured in the social process must have a social redress. Only then it will be possible to say that human societies have been so organized as to assure that wherever there is a wrong there must be a remedy. This is the mission of this Act.

Generally, remedies are also provided by the branch of substantive law which defines rights and duties for its own purposes. The law of contract provides the remedy for breach of contract. The law of torts similarly provides for recovery of damages in several cases of tortious wrongs.

Substantive laws however can never afford to be exhaustive in terms of their remedies and reliefs. Such act does not confer any rights in itself. It only provides a specific relief so as to remedy the violation of a legal rights.

Act not Exhaustive

Though the Act widens the sphere of the civil court, its preamble shows that the act is not exhaustive of all kinds of specific reliefs. The Act is not restricted to specific performance of contracts as the statute governs powers of the court in granting specific reliefs in a variety of fields. Even so the Act does not cover all specific reliefs conceivable.

Following are the network of relief allowed by the Act falls under the following outlines-

- 1. Recovery of Possession of Property-** *the very first chapter provides relief to those who have been dispossessed of their property.*
- 2. Specific performance of contracts-** *one of the important aspect of civil right is the fulfillment of the expectations created by a contract voluntarily made by the parties. Contract is not just an isolated transaction. It is often link in a chain of several contracts. A failure at one place can cause a serious dislocation of economic social life. the contract must be enforced. The only way the law of contract can enforce a contract is by awarding*

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compensation to the injured person. This important function is undertaken by the **Second Chapter of this Act**.

3. **Rectification and cancellation of Instruments and Rescission of Contract-** Many transactions are required by law to be in writing. A written transaction is an instrument. An instrument is the result of negotiations. Occasionally it happens that the instrument that emerges fails to express the intention of the parties. Its rectification may become necessary. **Chapter III** helps in this aspect.

Chapter IV deals with the category of documents which are afterwards discovered to be void or which becomes void. They ought to be cancelled.

Chapter V deals with a category of contract which, for one reason or another, such as for example, lacks of free consent are voidable at the option of the party whose consent was not free. He has right to have the contract rescinded.

4. **Preventive Relief-** there are cases which the nature of the contract does not admit of specific performance, nor are damages likely to serve any purpose. In such cases the court may have to restrain the party threatening breach, to the extent to which it is possible to do so. This type of remedy is known as preventive relief. It is granted by issuing an order, known as **injunction**, upon the party concerned directing to him not to do a particular act or asking him to perform a particular duty, known as **mandatory injunction**.
5. **Declaratory Relief-** occasionally it may happen that a person is entitled to some status or character or has a right in some property, but there are persons who are denying him the enjoyment of his right. He is allowed by **Chapter VI** of this Act. The court may issue a general declaration as to his entitlement to such rights.

Q-what are the contracts which cannot be specifically enforced? Explain with illustrations.

*A-The effect of the provisions in **Section 14** declared that following contract cannot be specifically enforced.*

1. **Where compensation is adequate**
2. **Contract involving personal Skill**
3. **Contracts of Determinable Nature**
4. **Contract requiring Constant supervision**

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1. **Where compensation is adequate-** *court will not order specific performance where the aggrieved party can be adequately compensated in terms of money.*

Illustration-

1. **A contract to sell, and B contract to buy, a lakh of rupees in 4% of loan from Center Government.**

In Meenashisundara v/s Rathnasami- it was held by the court that an ordinary contract to lend or borrow money whether with or without security is an example of a contract which cannot be specifically enforced.

2. **Contract involving personal Skill-** *it is not possible for the court to supervise the performance of a contract which deals with the personal qualifications of the promisor or is otherwise of volitional nature. Contract of employment, contract of personal services, contracts involving performance of artistic skill, is beyond the capacity of judicial process to enforce.*

Illustrations-

- A contracts to render personal services to B.
- A contracts to employ B on personal services.
- A, an author, contracts with B, a publisher, to complete a literary work. B cannot enforce specific performance of this contract.

In SB Dutt v/s University of Delhi- An employer may not be compelled to keep an employee in accordance with a contract of employment, in this Case the SC however, did not approve of an arbitrator's award reinstating a professor removed by the Delhi University.

3. **Contracts of Determinable Nature-** *Specific performance is not ordered to a contract which is in its nature determinable. No order of specific performance is likely to be passed when the contract is revocable at the option of the opposite party.*

Illustration-A and B contract to become partners in a certain business, the contract did not specify the duration of the proposed partnership.

4. **Contract requiring Constant supervision-** *A contract cannot be enforced where it involves the performance of a continuous duty which the court cannot supervise. For*

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example the obligation of a railway company to operate signals and to provide engine power.

Q-what is quasi contract?

A-there are many situations in which law as well as justice require that a certain person be required to conform to an obligation, although he has neither broken any contract nor committed any tort.

In other word- Quasi contract are exceptional kinds of contracts by which one party is bound to pay money in consideration of something done or suffer by the other party which are not based on actual promises.

Quasi Contract arises when one person has done something for another or paid money on his behalf to third party then the court comes forward on the round of equity saying that the person receiving the benefit must make compensation to the otherwise he would become rich on the expenses of the other

For example, a person in whose home certain goods have been left by mistake is bound to restore them. Such obligations are generally described, for want of a better or more appropriate name, as quasi-contractual obligations.

Provisions in English Law

English law note consider it as a contract because there is no intention to enter into one but as the results resemble those of a contract they are called the quasi contract. And also it is not implied contract as in an implied contract also there is intention to enter in to a contract.

Provisions of the Indian Contract Act-

*Chapter V of the Indian Contract Act deals with such situations under the heading of- **Certain relations resembling those created by contract.** The chapter avoids the word -quasi contract and in view of the clear statutory authorization the court in India are not hindered in allowing relief under the different section of Act by the theoretical considerations concerning quasi contract.*

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Rational

Theory of unjust Enrichment-

The theory on which quasi-contractual obligations are based is not yet finally settled. Lord Mansfield who is considered to be the real founder of such obligations, explained them on the principle that law as well as justice should try to prevent Unjust enrichment that is, enrichment of one person at the cost of another.

He propounded this theory in Moses v/s Macferlan

A liability of this kind is hard to classify. Partly it resembles liability under the law of tort in as much as it arises independently of any contract. Partly it resembles contract in as much as it is owed only to one party and not to person generally.

Thus it can be accounted for either under an implied contract or under natural justice and equity for the prevention of unjust enrichment.

Restoration of Theory of Unjust Enrichment-

Theory of implied in fact contract-