**Void agreement is an agreement which is not enforceable by Law – void – ab – inito.**

(1) Agreement by or with person’s incompetent to contract [10, 11]

(2) Agreement entered into through a mutual mistake [20]

(3) Object or consideration – unlawful [23]

(4) Consideration or object partially, unlawful [24]

(5) Without consideration [25]

(6) Restraint of marriage [26]

(7) Restraint of trade [27]

(8) Legal proceeding [28]

(9) Consideration identified [29]

(10) Wagering agreement [30]

(11) Impossible agreement [56]

(12) An agreement to enter into an agreement in the future.

**Agreement in Restraint of marriage [26]**

Every agreement in restraint of marriage of any person other than a minor, is void, Any

restraint of marriage whether total or partial is opposed to public policy.

Ex. A promised to marry else except Mr. B, and in default pay her a sum of Rs.1,00,000. A

married someone else and B sued A for recovery of the sum. Held, the contract was in

restraint of marriage, and as such void.

Ex. The consideration under a Sale Deed was for marriage expenses of a minor girl aged 12.

Held the sale was a void transaction being opposed to public policy.

Ex. Two co-widows – agreement – is one of them remarried – she shout forfeit her eight to

her share in the deceased husband’s property was not void because no restraint was

imposed upon either of the two widows from remarrying.

Ex. Wife to divorce herself and to claim maintenance from the husband on his marrying a

second wife was not void because no restraint was impose upon husband from marrying

a second wife.

**Agreement in Restrain of trade [27]**

Every agreement by which anyone is restrained from exercised a Lawful profession, trade

or business of any kind is void .

**Burden for Proof :-**

Party supporting the contract:- must show that the restraint is reasonably necessary to protect

public interest. Party challenging the contract:- restraints is injurious to the public.

Ex. : In Patna, 29 out of 30 manufacturers of combs agreed with R to supply combs only to

him and not to anyone else. Under the agreements R was free to reject the goods if he

found no market for them. Held, the agreement amounted to restraint of trade and void.

**Exception to Sec. 27**

**(1) Sale of goodwill**: - Seller of goodwill of a business may agree with the buyer to restrain

from carrying on business.

 (a) Must relate to same business

 (b) Restriction shall apply within specified Local limits.

 (c) Restriction shall apply within a reasonable time period

 (d) The specified local limits – depends on nature of business.

**Partnership act**

(a) Restriction on existing partner [11(2)]

- Not carry on business other than business of the firm till he is partner.

(b) Restriction on outgoing partner [36]

- Not carry on a similar business after retirement

- Local limits + specified period – local limit – nature of business

(c) Sec. 54: Upon or in anticipation of dissolution of Firm. Partners may agree that some or all

of them will not carry on business similar to that of the Firm within specified periods or local

limits.

(d) Sec. 55(2) : Partner may agree with due buyers of Goodwill, not to use the Firm name or

carry on Firm’s business or solicit clients of the Firm.

(e) Sec. 55(3): Upon sale of Firm’s Goodwill, a partner may agree that he will not carry on any

business similar to Firm’s within specified periods or local limits.

**Exception under judicial interpretations :-**

**(a) Trade combination.**

- Traders may from associations among them to regulate the business or to fix

prices.

- Such agreement like opening and closing of business venture, licensing of

traders, supervision and control of dealers, etc. are valid even if they are in

restraint of trade.

- But, a Combination that tends to create monopoly; or when two enter into an

agreement to avoid competition, they are against public policy and hence void.

(**b) Sale dealing agreement**: - Agreements to deal in the products of a single manufacturer

or to sell the whole produce to a single dealer are valid if their terms are reasonable.

**(c) Service agreement.**

**- Agreement:** Employers may enter into agreements with employees –

(i) not to engage in other work during the tenure of his employment; or

(ii) not to engage in similar work after his termination.

**- During Employment**: The first restraint is always valid, e.g. doctors may be paid

non practicing allowances to avoid practicing when they are employed in a

hospital.

**- After termination of service**: The second restraint is valid only is it is to protect

the trade interests or the employer. It may be imposed to prevent the outgoing employee from using trade secrets he had learnt during his tenure, to the detriment of his previous employer.

**- Valid Agreements** : Requiring employees to serve the organization for a few

years after training leaving; or execution of a bond requiring employees leaving

the organization to pay compensation to the employer are valid.

**- Use of Personal Skills**: The employer cannot prevent the employees from using

his personal skills and knowledge to his benefit; e.g. an employer cannot restrain

an employee to act in theatre plays or in perforating an art.

**Agreement in Restraint of legal proceedings [28]**

⇒ Agreement restricting enforcement of rights:

- An agreement by which any party is restricted absolutely from enforcing his legal rights

under any contract is void.

- Agreements Limiting period of limitation:- An agreement which limits the time within

which an action way be brought is void.

- A partial restrain is not void, eg.

Ex. 1: A clause in a contract that any dispute arising between the parties shall be subject to

jurisdiction of a court at a particular place only, is valid.

Ex. 2: An agreement is not void merely because if provides that any dispute arising between two

or prove person shall be referred to arbitration.

- That has arises.

- Which may arise

- Which has already arisen

Ex. 3: An agreement not to go in appeal to higher court against the judgment of a lower court

not amount to restart of legal proceeding.

**An agreement the meaning of which is not certain (Sec 29):**

1. An agreement is called an uncertain agreement when the meaning of that agreement is

not certain or capable of being certain. Such agreements are declared void u/s 29.

**2. Areas of uncertainty**: Uncertainty may relate to –

(a) Subject Matter of Contract; or

(b) Terms of contract.

**(a) Subject Matter**: There may be uncertainty as regards – (i) existence; (ii) quantity

(iii) quality; (iv) price; or (v) title to the subject matter.

**(b) Terms of Contract**: There may be uncertainty as regards – (i) existence (ii)

quality; (iv) price; or (v) title and other terms in the contract.

**Example:**

1. A says to B “I shall sell my house; will you buy?” A says, “Yes, I shall buy”. Due to

uncertainty of price, the agreement is void and unenforceable. There is binding contract.

2. A agreed to pay a certain sum, when he was able to pay. Held, the agreement was void

for uncertainty.

3. D agrees to sell his white horse, for Rs.5,000 or Rs.10,000.

**WAGERING AGREEMENT [30] :-**

An agreement between two persons under which money or money’s worth is payable by one

person to another on the happen or non happening of a future uncertain event is called a

wagering agreement.

- X promise to pay Rs. 1000 to Y if it is rained on a particular day, and Y promise to pay

Rs.1000 to X if it did not.

**- Wagering agreement is promise to give money or money’s worth upon the**

**determination of uncertain event.- Sir Willian Anson.**

**Essential elements of wagering agreements**

(1) The must be a promise to pay money or money’s worth

(2) Performance of a promise must depend upon determination of uncertain event. It

might have already happened but the parties are not aware about it.

(3) Mutual chancels of Gains or Loss.

(4) Neither party to have control over the events

(5) Neither party should have any other interest in event.

(6) One party is to win and one party is to lose.

Ex. 1:- Agreement to settle the difference between the contract price and market price of certain

goods or shares on a particular day.

Ex. 2: A lottery is wagering agreement. Therefore, an agreement to buy and sell lottery tickets

is a wagering agreement. Section 294 – A of the Indian Penal Code declares that drawing

of lottery is an offence. However, the government may authorize lotteries. The persons

authorized to conduct lotteries are exempt from the punishment. But, the lotteries still

remain a wagering transaction.

Ex. 3: However, if the crossword puzzle prizes depend upon sameness of the competitor’s

solution with a previously prepared solution kept with the organizer or newspaper editor,

is a lottery and, therefore, a wagering transaction.

Ex. 4: However, when any transaction in any commodity or in shares with an intention of

paying or getting difference in price, the agreement is a wager.

**Agreement not held as wagers:-**

⇒ Prize in terms of Prize competition Act, 1955 not exceeding Rs.1000 is not wagering

agreement.

⇒ Horse race [500] – An agreement to contribute a plate or prize.

⇒ Contract of insurance utmost in good faith eg. Favour in public policy.

⇒ Share market transaction A commercial transaction should always be distinguished

from a pure speculative transaction. A commercial transaction is done with an intention

of delivery of goods (commodity or security) and payment of price. Therefore, it is not

wagering agreement.

⇒ Crossword competition involving skill for its solution. If skill plays an important role in

the result of a competition and prize depend upon the result, the competition is not

Involve applications of skill and prizes are awarded to the participants on the basis of

merit of their solutions and not on chance. Therefore, such competitions are valid and

are not wagers.

⇒ Athletic Competitions also fall in the category of games of skill. Therefore, these are

also not wagers.

Example: A and B, two wrestlers, agreed to enter into a wrestling contest in Ahmedabad on a

certain day. They further agreed that a party failing to appear on the fixed day was to forfeit

Rs.500 and the winning party will receive a sum of Rs.1,000. Held, it was not a wagering

agreement.

⇒ Contribution to chit fund is not wager – contributions made by the members are

refunded by draw of lots.

**Effects of wagering agreements:-**

⇒ Agreement is void.

⇒ No suit can be filled for any recovery of the amount won on any wager.

⇒ It is not illegal. Any agreement collateral to wagering agreement is valid.

⇒ However, it is illegal in state of Maharashtra and Gujarat.

**Contingent contract’**

A ‘contingent contract’ is a contract, to do or not to do something. If some event, collateral to

such contract does or does not happen

⇒ A contract to pay B Rs.10,000 if B house is burnt.

⇒ A promise to pay B Rs.1,00,000 if a certain, ship does not return within a year.

**Essential features of a contingent contract :-**

(a) It is a contract to do or not to do something

(b) Dependent on happening or non happening of an event

(c) Such on event is a collateral event (i.e. it is collateral) to the contract i.e. the event

must not depend upon the mere will of party.

(d) The event is uncertain



CONTINGENT CONTRACT

**(1) Contracts contingent upon the happing of an event enforced – such event has**

**happened [32]**

Void – such event because impossible [happening of such event]

Ex.:- A contract to pay B a sum of money when B marries e dies without being married to B

contract – void

**(2) Non happening of a future event:- [33]**

Enforced :- when the happening of such events becomes impossible.

Void:- such event has happened.

Ex.:- A agrees to pay B sum of money if a certain ship does not return. This ship is sunk. The

contract can be enforced when the ship sinks.

**(3) Happening of an event within a specified time [35]**

Enforce :- when such event has happened within the specific time.

Void :- When the happening of such event because impossible before the expiry of

specified time.

 When such event has not happened within specified time.

A promise to pay B sum of money if a certain ship return within a Year.

Enforce :- ship returns within the year .

Void :- If the ship is burnt within the year / not come within the year.

**(4) Non – happening of an event within a fixed time [35]**

Enforce :- When the happening of such event because impossible before the expiry of

specified time.

⇒ When such event has not happened within the specified .

Void:- When such event has happened within the specified period.

**(5) Future conduct of a living person. [34]**

Enforced:- When such person acts in the manner as desired in the contract.

Void :- When such person does anything which makes the desired future conduct of such

person – impossible – dependent upon certain contingency.

- A agrees to pay B a sum of money if B marries C . C married D. The marriage of B to C

must now considered impossible, although it is possible that D may die any that C may

afterwards marry B.

**(6) Impossible events [36]**

- Such an agreement can not be enforced since it is void whether the impossibility of the

event was known to the parties or not is immaterial.

• A agrees to pay B Rs.1,000 if two parallel straight lines should enclose a space.

Agreements are void.

• A agrees to pay B Rs.1,000 if B will marry A’s daughter C and C was dead at the time

of the agreement. Agreement is void.



**PERFORMANCE**

**Sec 37:-** That 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

contract Act, or of any other law.

**Performance: - Two types**

**1. Actual performance** – actually performed – liability of such a party comes to an end.

**2. Attempted performance or tender of performance refusal to accept offer of**

**performance by promise [38]**

Promisor is not responsible for non performance and they can sue the promisee for breach of

**contract –** nor he (promisor) thereby lose his rights under the contract.

**A.** Tender or offer of performance to be valid must satisfy the following conditions:-

**(i)** It must be unconditional

**Ex :-** ‘X’ offers to ‘Y’ the principal amount of the loan. This is not a valid tender

since the whole amount of principal and interest is not offered.

**(ii)** It must be made at a proper time and place.

**Ex:-** If the promisor wants to deliver the goods at 1 am. This is not a valid tender

unless it was so agreed;

**(iii)** Reasonable opportunity to examine goods.

**Ex:-** Delivery of something to the promise by the promisor promise must have

reasonable opportunity of inspection.

**(iv)** It must be for the whole obligation :- goods and amount.

**Ex:-** ‘X’ a debtor, offer’s to pay ‘Y’ the debt due in installments and tenders the

first installment. This is not a valid tender minor deviation – not invalid [Behari

lal v ram gulam]

**(v)** It must be made to the promise or his duty authorized agent.

**Ex:-** It must be person who is willing to person his part of performance.

**(vi)** In case of payment of money, tender must be of the exact amount due and it must

be in the legal tender.

**Types of Tender**

􀂙 **Tender of goods and services**

When a promisor offers to delivery of goods or service to the promise, it is said to be

tender of goods or services, if promisee does not accept a valid tender, **It has the**

**following effects:**

(i) The promisor is **not responsible** for non – performance of the contract.

(ii) The promisor is **discharged from his obligation** under the contract. Therefore,

he need not offer again.

(iii) **He does not lose his right** under the contract. Therefore, he can sue the promise.

􀂙 **Tender of money**

Tender of money is an offer to make payment. In case a valid tender of money is not

accepted, it will have **the following effects**:

(i) The offeror is not discharged from his obligation to pay the amount.

(ii) The offeror is discharged from his liability for **payment of interest** from the date

of the tender of money.

**Effect of refusal of party to perform promise Wholly Sec 39.**

Promisor – Refuse – Promise – wholly

Promisee can put – can end of the contract or – he can continue the contract if he

has given his consent either by words or – by conducts in its continuance.

**Result –** claim damages. [compensation]

**Ex:-**

1. Promisee – stranger can’t demand performance of the contract.

2. Legal Representative – legal representative can demand Exception performance.

- contrary intention appears from the contract

- contract is of a personal nature.

***3.*** Third party – ***Exception to “stranger to a contract”***

**Who can demand performance?**

**Person by whom promise is to be performed Sec 40.**

*[who will perform the contract ]*

**1. Promisor himself :-** include personal skill, taste or art work.

**Ex:-** ‘A’ promises to paint a picture for ‘B’ as this promise involves personal skill of ‘A’. If

must be performed by ‘A’.

**2. Promisor or agent :-** [does not involves personal skill]

**3. Legal Representative [does not involve personal skill and taste]**

**4. Third person [Sec 41] :-** Acceptance of promise from the third party:-

If the promisor accepts performance of a contract by a third party, he can’t after wards

enforce the performance against the promisor although the promisor had neither

authorized not ratified the act of the third party.

[In other meaning once the promise accepts the performe from a third person, he cannot

compel the promisor the perform the contract again]

**Performance of Joint Promises:-**

Two or more person make a promise

􀂾 **Performed by all the joint promisor [42]**

􀂾 All the joint promisor – liable

􀂾 Thus in India the liability of joint promisors is joint as well as several.

*In England, however the liability of the joint promisors is only joint and not several and*

*accordingly all the joint promisors must be sued jointly.*

􀂾 **Liability of joint promisor [43]**

**1. Liability –** joint as well as several [unless express A + B + C 900 D. D may compel

either A, B or C or any of two of them or all of them.

**2.** Where a joint promisor has been compelled to perform the whole promise, be may

compel every other joint promisor to contribute equally with himself to the performance

of the promise (unless a contrary intention appears from the contract).

C – 9000 – D A + B – C

3000 3000

**3.** If any one of the joint promisors make default in such contribution, the remaining joint

promisors must bear the loss arising from such default in equal shares

A + B + C – 9000 (A) – Insolvent

B + C = 4500 + 4500 = 9000

**Sec 44:- *Release of one joint promisor*** :- where one of the joint promisors is released other joint

promisors shall continue to be liable.

*[In English law if one joint promisor – discharge then all the joint promisors discharge]*

***Sec 45:- Rights to claim performance of joint [Devolution of joint rights]***

**1.** During their joint lives – all the joint promisors .

**2.** After the death of any of them – The representative of such deceased promise jointly

with the surging promise

**3.** With the representatives of all jointly.

**Ex:-** ‘A’ in consideration of Rs 50,000 lent to him by ‘B’ and ‘ C’ promises ‘B’ and ‘C’

jointly to replace them that sum with interest on a day specifies.

- ‘B’ dies. The right to claim performance rests with ‘B’ representatives jointly with ‘c’

during ‘C’ life.

- And after ‘C’s death with the representatives of ‘B’ and ‘C’ jointly .

**Time place and manner of performance [46 – 50]**

􀂾 Time of performance is not specified + promisor agreed to perform without, a demand

from the promise the performance must be made within a reasonable time. Reasonable

time – in each particulars case – a **question of fact.**

**2. Time specified but hour not mentioned [47].**

Time of performance specified + promisor agreed to perform without application by the

promisee

􀂾 Performance must perform on the day fixed during the usual business hours and at the

place at which the promise ought to be performed.

**3. Where Time is fixed and application to be made [48]**

􀂾 Proper place and within the usual hour of business

􀂾 Promisee to apply for performance

**4. Performance of promise where no place is specified and no application is to be made by**

**the promise [49]**

􀂾 It is the duty of the promisor to apply to the promise to appoint a reasonable place for the

performance and perform it at such appointed place.

**5. Performance in manner or at time prescribed or sanctioned by promise [50]**

􀂾 In such prescribed manner and

􀂾 Prescribed time

Ex:- ‘A’ desires ‘B’ who owes him Rs 10,000 to send him a promissory note for Rs 10,000

by Post. The debt is discharged as soon as ‘B’ puts into the post a letter containing the

promissory note duly addressed to ‘A’.

**Performance of reciprocal promises**

**Reciprocal Promise :-** Promises which form the consideration or part of consideration for each

other as called reciprocal promises.

**1. Mutual and Independent:-** Such promises all to be performed by each party independently

without waiting for the other party to perform his promise can’t excuse himself on the

ground of non-performance by the default party.

**2. Mutual and Dependent:-** Sue damage . The performance of promise by one party depended

on the prior performance of the promise by other party.

[The party at fault becomes liable to pay compensation to the other party may sustain by the

non performance of the contract – **[54]**

**3. Mutual and concurrent: -** when reciprocal promises are to be performed simultaneously a

promisor need not perform his part unless the promise is ready and willing to perform **[51]**

**Order of performance of reciprocal promises [52]**

􀂾 Where the order in which reciprocal promises one to be performed is expressly fixed by

the contract – they must be performed in that order.

􀂾 Order is not expressly fixed – nature of transaction requires

Ex :- ‘A’ and ‘B’ contract that ‘A’ shall build a house for ‘B’ at a fixed price ‘A’ promise

to build the house must be performed before its promise to pay for it.

**Sec 53 :-** One party preventing – voidable at the option of the other party so prevented.

- Compensation for loss

**Sec 54 :-** Legal and illegal

**Legal – valid, illegal – void**

**Sec 58:-** alternative promise, one branch being illegal legal branch alone can be enforced.

A – B – 1000 rupees

Deliver – rice + smuggled goods

**Time as the essence of the contract (Sec 55):-**

Where time is essence – the concerned parties must perform their respective promises within the

specified time.

**Time are fact :-** time is specified for the performance of the contract is not by itself sufficient to

prove that time is essence of the contract.

- Intention of the parties.

**Time is generally considered to be the essence of the contract :-**

(a) where the parties have expressly agreed to treat as the essence of the contract.

(b) Delay operates as an injury to the party and

(c) Nature and necessities of the contracts requires it to be performs within the specified

time.

- Delivery of the goods – considered – essence of the contract payment of the price

– No

***[However in case of sale and purchase of an immoral property, the time is***

***presumed to not the essence of the contract]***

***Time is essence of the contract*** – party tails to perform

- In time – the contract becomes **voidable** at the option the other party.

***Time is not essence*** – only claim damages for delay in performance

**Assignment of contract :-** (a) by – operation of law

- Death

- Insolvency

(b) By an act of parties

**Rules regarding assignment**

(a) The liabilities or obligations under a contract can’t be assigned

(b) The rights and benefits under a contract which not of a personal nature can be assigned.

***(c) An actionable claim can always be assigned***

**Appropriation of Payments :- [ Sec 59 – 61]**

􀂾 **Appropriation means application of payments –** The question of appropriation of

payments arises when a debtor owes several debts to the same creditor and make a

payment that is not sufficient to discharge the whole indebtness.

**1. Appropriation of Payments**

Sometimes, a debtor owes several distinct debts to the same creditor and he makes a

payment which is insufficient to satisfy all the debts. In such a case, a question arises as

to which particular debt the payment is to be appropriated. Section 59 to 61 of the Act

lay down following rules as to appropriation of payments which provide an answer to

this question.

⇒ **Appropriation as per express instructions**

Every debtor who owes several debts to a creditor has a right to instruct his creditor

to which particular debt, the payment is to be appropriated or adjusted. Therefore,

where the debtor expressly states that the payment is to be applied to the discharge

of a particular debt, the payment must be applied accordingly.

**Example :** A owes B three distinct debts of Rs.2,000, 3,000 and 5,000. A sends

Rs.5,000 and instructs B that the payment should be appropriated against the third

debt. He is bound to appropriate the payment against the third debt only.

**2. Application of payment where debt to be discharge is not indicated [60]**

If section 60 is attracted, the creditor shall have the discretion to apply such payment for

any lawful debt which is due to him from the person making the payment.

**Example:** A owes to B, among other debts, the sum of Rs.520. B writes to A and

demands payment of this sum. A sends to B Rs.520. This payment is to be applied to the

discharge of the debt of which B had demanded payment.

**3. Application of payment where neither party appropriates [61]**

The payment shall be applied in discharge of the debts in order of time whether they are

or are not based by the limitation Act 1963, if the debt are of equal standing (i.e. payable

on the same date) the payment shall be applied in discharge of each of these debt

proportionately.

􀂾 *First interest then principle*

􀂾 *Director of payer not receiver.*

􀂾 *Right primary of the debtor*

**[whatever is paid, paid according to the intention of paying it]**

**DISCHARGE OF A CONTRACT**

Discharge of a contract means termination of contractual relation between the parties to a

contract in other words a contract is discharged when the rights and obligations created by it are

extinguished (i.e. comes to an end).



**Discharge by performance**

fulfillment of obligations by a party to the contract within the time and in the manner prescribed

in the contract.

**(a) Actual performance –** no party remains liable under the contract. Both the

parties performed.

**(b) Attempted performance or tender.:-** Promisor offers to perform his obligation

under the contract but the promise refuses to accept the performance. It is called

as attempted performance or tender of performance

􀂾 But the contract is not discharged.

**Discharge by mutual agreement**

**(a) Novation [Sec 62] –** Novation means substitution of a new contract in the place

of the original contract new contract entered into in consideration of discharge of

the old contract. The new contract may be.

􀂾 Between the same parties (by change in the terms and condition)

􀂾 Between different parties (the term and condition remains same or changed)

**Following conditions are satisfied :-**

**(1)** All the parties **must consent** to novation

**(2)** The novation must take place before the breach of original contract.

**(3)** The new contract must be valid and enforceable.

**Example:**

o A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage

of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same

parties)

o A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C

that B shall henceforth accept C as his Debtor instead of A for the same amount.

Old debt of A is discharged, and a new debt from C to B is contracted. (Among

different parties)

**(b) Rescission [62]:-** Rescission means cancellation of the contract by any party or all

the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1st

oct his go down and Y promises to par for goods on 1st Nov. X does not supply the

goods. Y may rescind the contract.

**(c) Alteration [62] :-** Alteration means a change in one or more of the terms of a

contracts with mutual consent of parties the parties of new contracts remains the

same.

**Ex:-** X Promises to sell and delivers 100 bales of cotton on 1st oct. and Y promises to

pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall

be delivered in five equal installments at is godown . Here original contract has been

discharged and a new contract has come into effect.

**(d) Remission [63]:-** Remission means accepting a lesser consideration than agreed in

the contract. No consideration is necessary for remission. Remission takes place

when a Promisee-

***(a)*** *dispense with (wholly or part) the performance of a promise made to him.*

***(b)*** *Extends the time for performance due by the promisors*

***(c)*** *Accept a lesser sum instead of sum due under the contract*

***(d)*** *Accept any other consideration that agreed in the contract*

􀂾 A promise to paint a pictured for B. B after words for him to do so. A is no longer

bound to perform the promise.

**(e) Waiver:-** Intentional relinquishment of a night under the contract.

**(f) Merger :**- conversion of an inferior right into a superior right is called as merger.

(Inferior right end)



**Discharge by operation of law**

(a) **Death :-** involving the personal skill or ability, knowledge of the deceased party one

discharged automatically. In other contract the rights and liability passed to legal represent.

**Example :** A promises to perform a dance in B’s theatre. A dies. The contract comes to an

end.

(b) **Insolvency:**- when a person is declared insolvent. He is discharged from his liability up to

the date of insolvency.

**Example:** A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire

which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract

is discharged.

(c) **By unauthorized material alteration –** without the approval of other party – comes to an

end – nature of contract substance or legal effect.

**Example :** A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as

Rs.50,000. A is liable to pay only Rs.5,000.

***(d)* Merger:** When an inferior right accruing to a party in a contract mergers into a superior

right accruing to the same party, ***then the contract conferring inferior right is discharged.***

**Example:** A took a land on lease from B. Subsequently, A purchases that land. A becomes

owner of the land and ownership rights being superior to rights of a lessee, the earlier

contract of lease stands terminated.

**5. Rights and liabilities vest in the same person**: Where the rights and liabilities under a

Contract vest in the same person, the contract is discharged.

**Example:** A Bill of Exchange which was accepted by A, reaches A’s hands after being

negotiated and endorsed through 4 other parties. The contract is discharged.

**Discharge by Lapse of time**

Where a party fails to take action against the other party within the time prescribe under the

**limitation Act, 1963**. All his rights to come end. Recover a debt – **3 Years** recover an

immovable property – **12 years**

**Discharge by Breach of contract**

Failure of a party to perform his part of contract

**(a) Anticipatory Breach of contract :-** Anticipatory breach of contract occurs when the

part declares his intention of not performing the contract before the performance is due .

**(i) Express repudiation: -** 5 agrees to supply B 100 tunes of specified category of

iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to

B.

**(ii) Party disables himself: -** Implied by conduct.

**Ex.:-** 5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car

to T.

**(b) Actual Breach of contract :-** If party fails or neglects or refuses to perform his

obligation on the due date of performance or during performance. It is called as actual

breach.

**During performance – party has performed a part of the contact.**

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it ) is

discharged from his obligation and get rights to proceed against the party at fault. The various

remedial available to an aggrieved party.

**Discharge by Impossibility performance**

***(a) Effect of Initial Impossibility***

***(b) Effect of supervening. Impossibility***

**(a) Initial Impossibility – at the time of making contract**

􀂾 Both parties know – put life into deed body – void .

􀂾 Both don’t know – void.

􀂾 One know – compensate to other party

**(b) Effect of super vanity Impossibility:-**

􀂾 Where an act becomes impossible after the contract is made – void

􀂾 Becomes unlawful, beyond the control of promisor – void

􀂾 Promisor alone knows about the Impossibility – compensate loss.

􀂾 When an agreement is discovered to be void or where a contract becomes void

**Cases when a contract is discharged on the group of super vent Impossible**

(a) Distraction of subject matter - Failure of the ultimate purpose of contract – king

coronate process.

(b) Death of personal Incapacity

(c) Declaration of war

(d) change of Law Example

(e) Non existence or Non occurrence of a particular state of thing necessary for performance.

**No Super Impossibility – does not become void**

􀂾 Difficulty of performance

􀂾 Commercial Impossibility

􀂾 Default of a third party

􀂾 Strikes, knockout and civil disturbance.

􀂾 Partial Impossibility – coronation of king and to sailing around the lake by boat.

**REMEDIES FOR THE BREACH OF CONTRACT**

Remedy means course of action available to an aggrieved party when other party breaches the

contract.



**RESCISSION OF CONTRACT – SEC 39**

⇒ It means right to party to cancel contract.

⇒ In case of breach of contract, other party may rescind contract.

**Effect of Rescission of Contract**

⇒ Aggrieved party is not required to perform his part of obligation under contract.

⇒ Aggrieved party claims compensation for any loss.

⇒ Party is liable to restore benefit, if any.

**When can Court Grant Rescind Contract?**

**Court can rescind the contract in the following situation:**

⇒ Contract is voidable.

⇒ Contract is unlawful.

**SUIT FOR DAMAGES**

⇒ It means monetary compensation allowed for loss.

⇒ Purpose is to compensate aggrieved party and ***not to punish party as fault.***

⇒ In India, rules relating to damages are based on English judgment of ***Hadley vs***

***Baxendale.***

The facts of case were – H’s mill was stopped due to the breakdown of the shaft. He delivered

the shaft to common carrier to repair it and agree to pay certain sum of repair it and agree to pay

certain sum of money for doing this work. H has informed to B that delay would result into loss

of profit. B delivered the shaft after reasonable time after repair. H filed suit for loss of profit. It

was held that B is not liable for loss of profit. The court laid down rule that damage can be

recovered if party has breach of contract.

**KINDS OF DAMAGES**

**The following are the different kinds of damages:**

⇒ **Ordinary damages**

These are the damages which are payable for the loss arising naturally and directly as

result of breach of contract. It is also known as proximate damage or natural damage.

⇒ **Special damages**

These are damages which are payable for loss arising due to some special circumstances.

It can be recovered only if special circumstances which result in special loss in case of

breach of contract and party have notice of such damage.

**Example:** A sends sample of his products for exhibition to an agent of a railway

company for carriage to “New Delhi” for an exhibition. The consignment note stated:

“Must be at New Delhi, Monday Certain.” Due to negligence of the company, the goods

reached only after the exhibition was over. Held, the company was liable for the loss

caused by late arrival of the products because the company’s agent was aware of the

special circumstances.

⇒ **Exemplary or punitive or vindictive damages**

These damages are allowed not to compensate party ***but as mean of punishment*** to

defaulting party. The court may award these damages in the case of:

• Breach of contract to marry – loss based on mental injury.

• Wrongful dishonor of cheque – smaller amount, larger the damage.

⇒ **Nominal damages**

Where party suffers no loss, the court may allow nominal damages simply to establish

that party has proved his case and won. Nominal damage is very small in amount.

⇒ **Damages for inconvenience**

If party has suffered physical inconvenience, discomfort for mental agony as result of

breach of contract, party can recover the damage for such inconvenience.

**Example:** A photographer agreed to take photographs at a wedding ceremony but failed

to do so. The bride brought an action for the breach of contract. Held, she was entitled to

damages for her injured feelings.

⇒ **Liquidated damages and penalty**

Party may specify amount at the time of entering into contract. The amount so specified

may be (a) liquidated damage, or (b) penalty.

If specified sum represent, fair and genuine pre – estimate damages likely to result due to

breach, it is called ***liquidated damage.***

But if specified sum is ***disproportionate to the damages, it is called as penalty.***

As regard the payment of liquidated damages and penalty court can’t’ increase amount of

damages beyond the amount specified in the contract.

at the end of six months, with a stipulation that, in case of default, the interest shall be

payable at the rate of 75 per cent, from the date of default. This is a stipulation by way of

penalty, and B is only entitled to recover from A such compensation as the Court

considers reasonable.

⇒ **Forfeiture of security deposit**

Any clause in contract entitling the aggrieved party to forfeit security deposit in the

nature of penalty and court may award reasonable compensation.

⇒ **Payment of interest**

• It is permissible.

• If interest is in nature of penalty, court may grant relief.

• If ***no rate of interest is specified in contract*** party shall be liable to pay ***as per the***

***law in force or as per custom or usage of trade.***

⇒ **Cost of suit or decree**

The court has also discretion to award cost of suit for damages in addition to the

damages for breach of contract.

**Suit for Specific Performance**

It means, demanding an order from court that promise agreed in contract shall be carried out.

⇒ **When is specific performance allowed?**

• Where actual damages arising from breach is not measurable.

• Where monetary compensation is not adequate remedy.

⇒ **When specific performance is not allowed?**

• When damages are an adequate remedy.

• Where performance of contract requires numbers of minute details and therefore

not possible for court to supervise.

• Where contract is of personal in nature.

• Where contract made by company beyond its power. (ultra – vires)

• Where one party to contract is minor

• Where contract is inequitable to either party.

**Example** : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell

it. Here B can file suit against A for specific performance of the contract.

**Suit for Injunction**

⇒ It means stay order granted by court. ***This order prohibits a person to do particular act.***

⇒ Where there is breach of contract by one party and order, of specific performance is not

granted by court, injunction may be granted.

Example: Film actress agreed to act exclusively for W for a year and for no one else.

During the year she contracted to act for Z.

**QUASI CONTRACT**

***[Contracts implied in law or implied contract]***

It means a contract which lacks one or more of the essentials of a contract.

Quasi contract are declared by law as valid contracts on the basis of ***principles of equity*** i.e. *no*

*person shall be allowed to enrich himself at the expense of another the legal obligations of*

*parties remains same.*

**Nature of Quasi contracts:-**

**(a)** A quasi contract does not arise from any formal agreement but is imposed by law.

**(b)** Every quasi contract based upon the **principle of equity** and **good conscience.**

**(c)** A quasi contract is always a right to money and generally though not always to a

liquidated sum of money.

**(d)** A suit for its breach may be filed in the same way as in case of a complete contract.

**(e)** The right grouted to a party under a quasi contract is not available to him against the

whole world but against particular person(s) only.

**(f)** A suit for breach of a quasi contract may be filed in the same way as in case of an

ordinary contract

**(g)** Although there is no contract between the parties under a quasi contracts, yet they are put

in the same position as if he were a contract between them .

***Provisions relating to various quasi contracts are contained in section 68 to sec 72 of the***

***contract Act, 1872.***



**Sec. 68:** If a person, incapable of entering into a contract, or anyone whom he is legally

bound to support, is supplied by another person, with necessaries suited to his condition in life,

the person who has furnished such supplies is entitled to be reimbursed from the property of

such incapable person.

**1. Meaning of Necessaries:**

(a) Necessaries normally include articles required to maintain a particular person in

the state, degree and station in life in which he is.

(b) They are essentials to run a life.

(c) An item will not be considered necessary, if a person already has sufficient

supply of things of such kind.

(d) Necessaries include Services rendered to a person.

(e) What constitutes necessaries depends on the circumstances of each case.

**2. Only property liable**: **person not liable:**

(a) It is only the property (movable and immovable) of the incapable person they

shall be liable.

(b) He cannot be held liable personally.

(c) Where he doesn’t own any property, nothing shall be payable.

**3. Example: (**i) A supplies B, a lunatic, with necessaries suitable to his condition in life. A

is entitled to be reimbursed from B’s property. (ii) A who supplies the wife and children

of B, a lunatic, with necessaries suitable to their condition in life, is entitled to be

reimbursed from B’s Property.

**Payment By a person who is interested in a transaction [69]**

**Condition of section [69]**

**Sec. 69;** A person, who is interested in the payment of money and pays such money, which

another is bound by low to pay, is entitled to be reimbursed by the other.

(a) one party is legally bound to make a payment

(b) Some other persons make such payment

(c) The person making such payment is not legally bound to make such payment

(d) The person making such payment is interested in paying such amount

**Legal effect of sec 69.:-** If all the conditions of sec 69 are satisfy the person who is interested in

paying such amount shall be entitled to recover the payment made by him.

**Ex.:-** The goods belonging to A were wrongfully attached in order to realize arrears of

Government revenue due by G. A paid the amount to save the goods from sale at was held that

A was entitled to recover the amount from G.

**Obligation of person enjoying benefit of non-gratuitous act [70]**

**Conditions of section 70.**

Sec.70 : Where a person, lawfully does anything for another person, or delivers anything to him;

not intending to do so gratuitously, and such other person enjoys the benefits thereof, then he is

bound to make compensation to the other in respect of, or to restore the thing so done or

delivered.

(a) A person has lawfully done something for another person or delivered something to

another person.

(b) Such person must have acted ***voluntarily and non – gratuitously***.

(c) The other person has enjoyed the benefit of the act done for him or the thing delivered to

him.

**Legal effect of sec 70.**

􀂾 If the conditions of sec70 are satisfied, there will be quasi contract between the parties.

􀂾 Consequently, the party who has done something or delivered a thing shall be entitled to

recover its value from the person who obtained the benefit of the same.

**Ex.:-** A a trades man leaves goods at B’s house by mistake, B treat the goods as his own, He is

bound to pay A for them.

􀂾 A saves B’s property from fire. A is not entitled to compensation from B if the

circumstances show that be intended to act gratuitously.

**Finder of Goods [71]**

A person who finds goods belonging to another and takes them into custody, is subject to the

same responsibility as a **Bailee.**

A finder of goods has same rights and duties at that of **bailee.**

􀂾 Duty to take reasonable care of the goods

􀂾 Duty not to use the goods for his own purpose.

􀂾 Duty not to mix the goods with own goods

Right to recover expenses, reward, sell the goods

**Ex.:-** X a guest found a diamond ring at a birthday party of Y. X told Y and other guests about

it. He has performed his duty to find the own. If he is not able to find the owner he can retain the

ring as bales.

**Money paid under a mistake or conversion [72]**

Sec. 72: A person to whom money has been paid, or anything delivered by mistake or under

coercion, must repay or return it.

Conditions of **Sec. 72**

(a) A person has (i) paid money to another person or

(ii) Delivered something to another person

(b) Such person must have acted

􀂾 Under a mistake or under coercion.

**Legal effect –** quasi contract, recover its value from the person who obtained the benefit of

same.

Example: (i) A and B jointly owe Rs.1,000 to C.A alone pays the full amount to C and B not

knowing this fact, pays Rs.1,000 again to C.C is bound to repay the amount to B. (ii) A Railway

Company refuses to deliver certain goods to the Consignee except upon payment of an illegal

charge for carriage. The Consignee pays the sum charged in order to take delivery of goods. He

is entitled to recover so much of the charge as was illegally excessive.

(c) A + B . – 100 – A – 100, B – 100, B – return.

**Compensation for failure to discharge obligation created by quasi contract [73]**

When an obligation created by quasi contract is not discharged the injured party is entitled to

reline the same compensation from the party in default as if such person had, contracted to

discharge is and broken his contract.

**Quantum meruit: - [as much as is earned]**

**One party preventing the other:-** If a party prevents the other party from completing his

obligation under the contract the aggrieved party may claim payment on quantum merit for the

part of contract already performed by him.

**(a) In case of void agreement or contract that becomes**

􀂾 Any person who has received any advantage under such agreement or contract is bound

to restore if or to make compensation for it, to the person from who received it.

Ex.:(1)- A – B – 10000 – to marry c (A’s daughter) – C – death of the time of

performance of contract – B must repay A Rs 1000.

Ex.(2):- A – B decline 250 quince of rice before the 1st of May. A delivers 130 qu. Only

before that day and none after. B retains the 130 qu. after the first of May. He is bound to

pay A for them.

Ex(3):-A singer – two nights in every week during the next two month and B any ages to

pay her Rs 100 for each night’s performance on the sixth night, A willfully absent

perfect. B must pay a for the five night on which she had sung.

**(b) In case of Act preventing the completing of contract:-**

If a party does not complete the contract or prevents the other party to complete the contract the

aggrieved party can sue or quantum meruit.

Ex.c:- owner – P write a book to be published as series in his magazine. After a few

series were published the publication of the magazine was stopped. It was held that P

could claim payment on quantum meruit for the part already published.

**(c) In case of divisible contract :-**

(1) If the contract is divisible and

(2) If the party not at default has enjoyed benefit of the point performance.

(3) the contract is party performed

If the above condition an satisfied, the party at fault may claim on payment on quantum meruit

for the part of contract performed by him be con recover such proportion of the contract price as

the work done, by him bears to the work under the contracts.

**(d) In case of indivisible contract performed completely but Badly.**

􀂾 Contract is indivisible

􀂾 Lump sum consideration

􀂾 Completely performed

􀂾 Performed badly

The party at fault may recover the contract price (Lump sum price) less the deduction made for

done badly.

**Ex.:-** X agreed to decorate Y’s flat for a lump sum of Rs20,000. X did the complete work but Y

complained of faulty work man stop. It costs Y another Rs3000 to remedy the defect. X could

recover only Rs 17000 from Y.

**(e) In case of Non – gratuitous Act – Three condition**

(i) The thing must have been done or delivered lawfully.

(ii) The person who has done or delivered the thing must not have intended to do so gratuitously

And

(iii) The person from whom the act is done must have enjoyed the benefit of the act.

**Ex.:-** A, a tradesman leaves goods at B’s shop be mistake B treats the good as his own. He is

bound to pay A for them.

