

<b>CHAPTER</b>	<b>Indian Contract Act, 1872</b>
<b>1</b>	

### **Concept No. 1. Basic Terms**

**Contract** = Agreement + Enforceability at law

**Agreement** = Offer + Acceptance

**Contract** is an agreement between 2 or more parties which is enforceable by law. So contract means an agreement which is enforceable by law.

**Agreement** means every promise & every set of promises forming consideration for each other. The main essence of an agreement is meeting of the minds which mean consent of both the parties in the same name.

Law does not cover social agreements into contract because they are of no legal consequence.

**For example:** If A invites B for dinner & B does not come, there is no legal consequence, so we can say that, in the initial elements of a contract:

1. Offer & acceptance.
2. Intention should be to create legal relationship which is present business transaction.
3. The consideration should be lawful.
4. The parties should be competent to contract which means they are major and of sound mind.
5. The consent should be free and genuine.
6. The object should be lawful.
7. The agreement should not be declared void.
8. The work should be capable of performance physically as well as legally.
9. All the legal formalities like stamp paper, registration, etc. if required should be completed.

### **Concept No. 2. Classification of Contracts**

#### **1. According to validity**

- (i) **Valid:** Valid contracts are those which have all the essential elements of a contract.
- (ii) **Void:** Void contracts are those contracts which frequently become unenforceable.

(iii) **Voidable:** Voidable contracts are those which can be enforced at the option of one party but not at the option of other party.

**2. According to formation**

- (i) Express contracts    (ii) Quasi contracts    (iii) Implied contracts
- (iv) E-commerce contracts

Express means written or spoken.

Implied means which can be inferred from the circumstances and the conduct of parties.

Quasi contract means a contract which is not intentionally entered but is based on the grounds of equality.

E-commerce contract is the contract through internet.

**3. Classification according to performance**

- (i) Executed contracts – already done.
- (ii) Executory contracts – being done.

**Concept No. 3. Offer & Acceptance**

**Offer** means when one person signifies to another person his willingness to do or not to do something with a view to obtain the assent for that act or not doing that act.

Following are the three characteristics of offer:

(a) Expansion of willingness. (b) To do or not to do something (c) To obtain the assent of another person

**Concept No. 4. Legal Rules as to Offer**

1. An offer may be expressive or implied.
2. An offer must give rise to legal consequences
3. Term of offer must be certain.
4. Invitation to an offer is not an offer e.g. - newspaper advertisement or a display in the showroom is an invitation to an offer.
5. Offer may be specific or general.
6. Offer should be communicated to the offeree.
7. An offer should not contain any term (condition) the non-compliance of which results in acceptance.
8. An offer can be made subject to any terms and conditions.
9. Two identical offers cannot make a contract.

**Concept No. 5. Revocation of Offer**

1. An offer lapses after reasonable time.
2. An offer lapses by rejection.
3. If an offer is not accepted according to the mode prescribed or not accepted in a reasonable manner, the offer will lapse.
4. If the offerer or offeree dies or becomes insane before acceptance.
5. It is revoked by non-fulfillment of a condition.

6. If subsequently the event becomes illegal then the offer lapses.

**Concept No. 6. Acceptance**

A proposal, when accepted becomes a promise. It can be defined as the approval given by the person to whom the offer was made. It is like showing a match to gunpowder which cannot be reversed.

**Concept No. 7. Legal Rules for Valid Acceptance**

1. It can be given by a person to whom the offer was made.
2. It should be absolute and on qualified.
3. It should be expressed in some reasonable manner. (by telephone or by post)
4. It should be communicated by the acceptor within a reasonable time.
5. It should be given after the offer is made.

**Concept No. 8. Consideration**

**Meaning**

Consideration means something for something. If a person promises to do something he must be compensated. It is something for which a promise is purchased.

**Concept No. 9. Consideration**

When at the desire of promisor the promisee or any other person does or abstains from doing any act such as abstinence (not doing) is known as consideration.

**Concept No. 10. Basic Features of Consideration**

It must move at the desire of promisor.

It may move from the promisee or any other person. It means a stranger to consideration can give. In other words we can say a stranger to a contract cannot be. But, it has got some exceptions:

- (a) Family settlements
- (b) Where a trust is created
- (c) Where the defendant himself is the agent of third party.

In case of agency, principles can be although the agreement is done by agent.

Consideration must be something of value, which means it may or may not be adequate.

**Concept No. 11. “No Consideration, No Contract” Give its Exception**

Generally, no contract is there if there is no consideration because law does not recognize promises which are made rashly or without consideration, but, in some cases these contracts can be binding also.

1. Natural love & affection
2. Compensation for past services

3. Agreement to pay a time barred debt. Allowed if it is in writing.
4. Gift
5. Agency
6. Contribution to charity.

### **Concept No. 12. Capacity to Contract of Parties**

A person can contract only if he is competent to contract. He should be major and of a sound mind and should not be disqualified under any law.

In other words we can say the following are incompetent to contract:

1. Minors
2. Person of unsound mind
3. Disqualified persons.

**Minors:** A person who is under 18 years is a minor. But, in some cases below 21 years is also a minor. (Where property is with the court of wards).

### **Concept No. 13. Minor's Agreements**

The law relating to minor's agreements is as follows:

1. An agreement with a minor is absolutely void right from the beginning because the court protects them as they are not able to decide what is good and what is bad for them.
2. The contracts in which the minor gets the benefit are valid.
3. Minor cannot ratify the contracts on attaining majority.
4. The rule of estoppel does not apply to a minor.
5. A minor is always liable for necessities, but only his estate is liable. It is not personally liable.
6. Specific performance does not apply to a minor because only his estate is liable.
7. A minor can always be a partner only for benefits.
8. A minor can be an agent but will not be personally liable.
9. Minor can never be declared insolvent.
10. If a minor and major jointly enter into a contract only the major will be liable for the whole.
11. A minor cannot be a shareholder.
12. Minor's parents are not liable for minor's agreements.
13. A minor is liable for any civil wrong.

### **Concept No. 14. Person of Unsound Mind**

A person is of sound mind when he is capable of understanding and forming a rational judgment about the contract. So, a person who is not capable of the above is called a person of unsound mind.

### **Concept No. 15. Disqualified Persons (Book)**

1. **Alien Enemy:** An alien can be a friend or an enemy. Contract with alien enemy is totally void.

2. **Insolvent:** An insolvent cannot enter into a contract because his property rights are with the official receiver.
3. **Convicts:** A convict during his imprisonment cannot make a contract. He may make the contract when he is on "Ticket of Leave".
4. **Foreign Diplomats:** They can make contracts but cannot be sued.
5. **Lunatics:** Mentally deranged person because of some strain or other personal experience.
6. **Idiots:** A person who has completely lost his mental powers.
7. **Drunkards:** A person when drunk, is not capable of forming a rational judgement.

#### **Concept No. 16. Other Essential Elements of a Contract**

**Consent** means when two or more persons agree on the same thing in the same sense. The consent is said to be free when it is not vitiated by:

1. Coercion
2. Undue influence
3. Misrepresentation
4. Fraud
5. Mistake

#### **Concept No. 17. Coercion**

1. It is committing or threatening to commit, any act which is forbidden by law.
2. It is unlawful detaining or threatening to detain any property.
3. With the intention of forcing the person to enter into an agreement.
4. This is called coercion.

#### **Concept No. 18. Is Threat to Commit Suicide is Coercion?**

An attempt to commit suicide or a threat to commit suicide is definitely coercion because if anybody enters into the agreement because of this threat and he is not forbidden by law, then everybody will start doing like this is saying "I have not done it, because after committing suicide the person is out of the reach of the law". So, threat is also prohibited by the court.

#### **Concept No. 19. Undue Influence**

Undue influence means when one party is in a position to dominate the will of the other and he was that position to get an unfair advantage. A person is deemed to be dominating the will in the following cases:

1. Apparent authority  
Police officer & two accused, master & servant
2. Fiduciary authority  
Father & son, Doctor & patient, Teacher & student

3. Where mental capacity is effected by age, illness, etc.

In case of contracts with undue influence, it is voidable at the option of party whose comment is caused by undue influence.

Lack of judgement or lack of knowledge are not sufficient reasons for undue influence but if a money lender charge very high rate of interest (really high) then it can be undue influence. But charging more prices by a trader is never an undue influence.

#### **Concept No. 20. Difference Between Coercion & Undue Influence**

<b>Coercion</b>	<b>Undue Influence</b>
It is a threat of an offence forbidden by law.	It is a moral influence by a person who is in a position to dominate.
It is physical	It is moral.
Intention to enter into agreement.	Intention is to obtain an unfair advantage.
Criminal	Non-criminal.

#### **Concept No. 21. Misrepresentation**

A representation means statement of fact made by one party to the other relating to some essential matter of the contract. If it is wrong then it can be misrepresentation (unintentional) and fraud (intentional).

#### **Misrepresentation**

1. A positive aversion.
2. Innocently (without knowledge of its true or false nature)
3. Any breach of duty without any intention to take any advantage.
4. Which results in entering into an agreement
5. Made with an intention that it should be acted upon.
6. The other party has acted on it and suffered some loss.
7. It must be made before the conclusion of contract.

#### **Effect of Misrepresentation**

The person affected may:

1. Avoid the contract or
2. Accept the contract with the condition that the loss shall be made good.

#### **Concept No. 22. When the Right of Rescission (Avoid) is Lost?**

The person loses his right to rescind (avoid) the contract if:

1. On becoming aware of the misrepresentation, he takes the benefit or he affirms (say yes) to the contract.
2. If it is not possible to rescind the contract.

3. If third party rights have come in between.

**Concept No. 23. Fraud**

It is a representation which is:

1. False
2. Made intentionally
3. Without belief in its truth
4. Frequently, without caring whether it is true or false.
5. A promise made without any intention of performing it.
6. Any other act fitted to deceive.

The main difference between fraud & misrepresentation is as intention

Fraud	Misrepresentation
In fraud there is an intention to deceive.	In misrepresentation there is not such intention.

**Concept No. 24. Explanation to the above Points**

The representation should be made without caring for whether it is true or false.

**e.g.:** A company issued a prospectus by giving the information. That there is unbounded wealth existing in a particular mining area, without caring for or having any information, so this is fraud.

The promise must be made without any intention of fulfilling the promise.

**e.g.:** If a person promises to bring some treasure by magic, it is a promise which can not be fulfilled, so it is a fraud.

**Concept No. 25. Distinction Between Fraud & Misrepresentation**

Fraud	Misrepresentation
1. Intention to deceive	No intention to deceive
2. The person (does not) believe what he is telling is true.	The person believes that what he is telling is true.
3. Damages can be claimed.	No damages can be claimed.
4. If there is a fraud the contract can be avoided.	If the suffering party can do cover the truth, contract is not avoidable.

**Concept No. 26. Mistake**

It is defined as a wrong belief about something there can be two types of mistakes:

1. Mistake of law
2. Mistake of fact.

### **Mistake of Law can be:**

1. **Of the country:** Ignorance of law of the country is not an excuse. So nobody can say that he shall be pardoned if he does not know the law of the country.
2. **Of foreign country:** If a person does not know the law of a foreign country, the contract is void and it is treated as mistake of fact.

### **Mistake of fact:** Can be two types:

1. Bilateral mistake
2. Unilateral mistake.

**Bilateral mistake** is when both the parties make a mistake. So the essential characteristic of bilateral mistake are:

Mistake is mutual

It is related to a matter which is very essential to the contract.

**Unilateral mistake:** When one of the party is mistake then the contract is not voidable, but there are two exceptions to this:

1. **Identify of the person:** If X wants to enter contract with Y then Z cannot accept the offer by saying that he is Y.
2. **Nature of contract:** If a person enters into a contract which is different from what was intended by inducement (force) of the 3<sup>rd</sup> part of then he can avoid the contract.

An old woman was forced to sign some papers which were described as Rent Agreements, but in fact, they were Sale-Deed of the property. Held, the old woman can set aside the contract because the contract was different from what she was told.

### **Concept No. 27. Legality of Object**

Law recognises only those contracts where object is lawful. An object will be unlawful in the following cases:

1. **It is forbidden by law:** Anything which is prohibited by any law is unlawful.  
**For eg.** If A promises to B that I will get you a government job for ₹ 50,000, the consideration is void because the object is unlawful.
2. **If permitted it will be against the law:** It is possible that a particular act is not prohibited but if it is permitted it will be against the law.  
**For eg.** Giving loan to a person for marriage is not illegal, but if it is given to a minor for marriage, it will defeat the provision of child marriage act.
3. **If it is fraudulent:** If the object of an agreement is to defraud others, it is unlawful.
4. **If it gives an injury to the person or the property of a person:** Any act where any person is assaulted or his property is broken or put to fire these acts are unlawful.
5. **If the court regards it as immoral:** Any act which is regarded as immoral is unlawful.



**For e.g.** Giving money to a lady for getting divorce from her husband and then marrying the money lender in an immoral act.

6. **If the court regards it as against the public policy:** Public policy is a very vague term. There is no of public policy. The main aim of public policy is to act that no person commits an act which is against the interest of public, society, country.

Following agreements have been held to be against the public policy:

- (i) **Trading with alien enemy:** Any trading with the enemy country is against the public policy because it will boost up the economy of that country. Such agreements are unlawful unless they are made with the permission of court.
- (ii) **Agreements which interfere with the course of justice:** If there is any agreement which influence a judge to decide a particular case in favour of one party is unlawful and against the public policy.
- (iii) **Agreements for stifling criminal prosecution:** Any person who has committed a crime must be punished. So, if a person enters into an agreement whereby he drops a prosecution case (criminal) against B if he gives him some money. It will be unlawful because compromise in a criminal case is illegal.
- (iv) **Maintenance and Champerty:** Maintenance means where one person promises to the other to give money for fighting a case against a 3<sup>rd</sup> party whereby he has not legal interest in that case.  
Champerty means where one person unites the other in a court case (financial or otherwise) where the both will share the proceeds of the case.  
Both, these agreements are unlawful but these have some exceptions:  
Giving money for maintenance or champerty is valid.  
Providing professional services by way of maintenance is valid. *For eg.* If in an agreement 80% of the money goes to the person who provided professional services are not valid to it is reasonable.
- (v) **Trafficking in public officer (Bribe):** It is not allowed as it is against the public policy.
- (vi) **Agreement creating an interest opposed to the duty:** If a person promises to pay money, if he helps his brother to desert the army, it's unlawful.
- (vii) **Agreement restraining public liberty:** If any agreement restrict the freedom of a person, it is void and illegal.
- (viii) **Agreements interfering with parental duties:** If any is against the right of guardianship, then it will be an illegal agreement.

- (ix) **Marriage brokerage agreements:** Any agreement where one person promises to get somebody married for monetary consideration is void.
- (x) **Agreements to defraud the creditors** is void.
- (xi) **Agreement in restraint of trade:** Any agreement whereby a person is restrained to do or not to do a particular profession or vocation is against the public policy and so it is void. There are some exceptions to this rule:
  - (a) If the goods is sold for a business then we cannot carry that business.
  - (b) In case of partnership if a partner purchase the G/W then that partner can do the same business but others cannot.

### **Concept No. 28. Void Agreements**

**Agreements**, the meaning of which is uncertain.

All, those agreements whose meaning is uncertain are void. The meaning can be uncertain with respect to:

1. Quantity;
2. Quality;
3. Price;
4. Anything.

### **Concept No. 29. Wagering Agreement**

A wagering agreement is an agreement between two parties whereby one party promises to other to pay money or money's worth on the happening of any uncertain future event. It's consideration is that the other party will pay if the event does not happen.

### **Concept No. 30. Essentials of Wagering Agreement**

1. Promise to pay money or money's worth.
2. The event must be uncertain.
3. Each party must stand to loose or win.
4. There should be no control over the event.
5. No party should have any other interest in the event.

The following transactions are not wagering agreements:

1. Reneweared competition
2. Puzzle games (picture puzzle, etc).
3. Share market transactions where shares are actually delivered.
4. Insurance contracts.

### **Concept No. 31. Effects of Wagering Agreement**

These are void. There can be no court action for recovering the money. If any person has deposited money he cannot recover it.

### **Concept No. 32. Void Contracts**

1. A contract can become void if in the future anything happens which makes it void.
2. If in a voidable contract, the other party (who's consent is not free) repudiates the contract.
3. A contingent contract to do or not to do something on the happening of an event will become void if that event becomes impossible.

**Concept No. 33. Restitution (Reinstatement)**

It means compensating the other party for the benefit which we have taken. In other words it is called restoration. It is based upon the principle that nobody should become rich at the expense of other.

**Eg:** A contracts to sing for B for ₹ 1,000. It is paid in advance. A is ill and cannot sing so the money is compensated back to B.

**Concept No. 34. Offer to Perform (Tender)**

Sometimes the promisor offer to perform his obligation at a proper time and a proper place, but the promisee does not accept. This is called 'tender' as attempted performance.

**Concept No. 35. Characteristic of Valid Tender**

1. It should be unconditional.
2. It must be of the whole quantity contracted for or the whole obligation. Any deviation (plus (+) or minus (-) will not amount to valid tender.
3. It should be made by a person who is in a position to perform the promise.
4. Should be made at a proper time and a proper place.
5. It should be made to a proper person.
6. It should be made in a proper form.
7. A reasonable opportunity should be given to inspect the goods.

**Concept No. 36. Contracts should not be Performed**

1. Which become impossible?
2. Where a new contract is made (novation).
3. Where a person, at whose option it was voidable, repudiates it.
4. When it is illegal.
5. When the promisee refuses to give reasonable facilities to the promisor to perform his promise.
6. When promisee gives more time to the promisor.

**Concept No. 37. Who Should Perform the Contract?**

1. **Promisor himself:** If the contract is of a personal nature or involve personal skill or personal confidence, it should be performed by promisor himself.
2. **By the agent:** Where personal consideration is not the main foundation of the contract, it may be performed by the agent.

3. **Legal representative:** If the contract was not of a personal nature and the promisor dies then it has to be performed by legal representation. Unless a different intention is clearly made in the contract.
4. **Third person's:** If the promisee accepts the contract from third person then he cannot afterward say that promisor shall again do it for him.

### **Concept No. 38. Devolution of Joint Liabilities & Rights**

Devolution means passing from one person to another. If more than one person promise to do something it is called joint promise. If any of them dies his legal representative should from truth the serving promisor. If they do not discharge their obligation on their own then between 43 lays down 3 rules.

1. Anyone promisor can be compelled to perform the promise in totality. This means that the liability of promisor is joint and several.
2. A joint promisor who has been compelled to perform the promise can claim contribution from others.
3. If a loan occurs from default in contribution the remaining promisors will bear that loss in equal proportion.

### **Concept No. 39. Devaluation of Joint Rights**

When a person has made promise to more than one person then they are known as joint promises. Any of the joint promisee can claim performance. If any of them die then his legal representative can join with the other surviving promiser.

### **Concept No. 40. Reciprocal Promises**

Promises which are the consideration for each other are called the reciprocal promises. They can be:

**Mutual & independent:** Under this kind both the parties should perform the promise whether or not other party has performed the promise or not.

**Conditional & dependent:** In this one party performance depends on the other parties performance.

**Mutual & concurrent:** Under this kind both parties has to fulfill there promise side by side.

**For example:** Cash sales.

### **Concept No. 41. Appropriation of Payments**

When a debtor has to pay several debts to a creditor then on payment he has the choice to joint, otherwise the creditor has the choice. If both do not make a choice then rule of clay ton to is case will apply which says that debts will be allowed in chronological order (date wise).

When the debtor intimates, creditor should follow that intervention.

When the debtor does not intimate and the circumstances do not indicate to any

particular payment, then payment shall be applied first towards interest and then towards debt. But if the debt is disputed, it cannot be applied towards disputed debt. If nobody intimates, debts are satisfied in chronological order as per the rule in Clayton case.

### **Concept No. 42. Assignment of Contracts**

**Assignment of obligation:** Assignment means transferring of rights and liabilities. It can be done by:

1. Act of parties
2. Operation of law.

#### **Act of parties**

- (i) Those contracts which involve personal skill and abilities cannot be assigned.
- (ii) A promisor cannot assign his liabilities or obligation because no promisee can be compelled to accept the performance from a 3<sup>rd</sup> party.  
But if the party who has to accept the performance gives his consent that I will accept the performance from a 3<sup>rd</sup> party then he must accept.

#### **Operation of Law**

- (i) By death
- (ii) By insolvency

### **Concept No. 43. Assignment of Contractual Rights**

1. The right and benefit which do not involve personal skill can be assigned subject to the condition that the original parties will be subject to equities.
2. An actionable claim (cheque, bill of exchange, etc) can be assigned if it is in writing and complete in all respect.

### **Concept No. 44. Discharge of Contract**

**Discharge** means termination of the contract rights and liabilities. It can be done in six ways:

#### **1. By performance**

- (i) Actual
- (ii) (Attempted (tender))

#### **2. By agreement or consent**

- (i) by express consent
- (ii) by implied consent
  - (a) Novation (New Contract)
  - (b) Rescission (Some or all terms cancelled)
  - (c) Alteration (Terms altered by mutual)
  - (d) Remission (Accepting less than what is due)
  - (e) Waiver (Abandonment of Rights)
  - (f) Merger (Inferior right merge into a superior right)

#### **3. By impossibility of performance**

- (i) Known to the parties (void)
- (ii) Unknown to the parties (eg.- ship sunk)
- (iii) Supervening impossibility (eg.- Pakistan post contractual)

4. **By lapse of time:** Reasonable time

5. **By operation of law**

- (i) Death (Person skill contract comes to an end. Other can be fulfilled)
- (ii) Merger (Inferior into superior– Rent and purchase)
- (iii) Insolvency
- (iv) Unauthorised alteration in the terms of contract
- (v) When rights and liabilities merge in the same person.  
B/P of a party received by him back as B/R

6. **By breach of contract**

- (i) Actual breach
- (ii) Anticipatory breach.

**Actual breach:** It can take place:

1. When performance is due
2. During the performance of contract.
  - (i) **Express:** When he say by his word or refuses to do the work.
  - (ii) **Implied:** When a party during the performance makes the contract as impossible then the other party is discharged.

**Anticipatory breach:** When a party tells in advance that he will not complete the work it is called anticipatory breach. It can be done in any of the fall ways:

1. By expressly (written or words spoken) telling the other party.
2. By doing some act which make the performance impossible (*Ex-* A promises to marry B but marries C. It is now impossible for A to marry B).

**Concept No. 45. Unit: 5 Remedies for Breach of Contract**

There are five kinds of remedies:

1. Rescission
2. Damages
3. Quantum Meruit
4. Specific performance
5. Injunction

**Concept No. 46. Rescission**

If a contract is broken by one party the other party can refuse further performance. In that case, he will not perform his obligation at all.

**Court will give rescission if:**

1. Contract is voidable
2. Contract is unlawful.

**Court will not grant rescission if:**

1. The party has impliedly or expressly ratified the contract.
2. Where 3<sup>rd</sup> party rights have come in between.
3. Where only a part of contract is required to be rescinded. It cannot be bifurcated from the other part.
4. Where the parties cannot be restored to their original positions.  
**For e.g.:** If goods are consumed or 3<sup>rd</sup> party right have come in between.

#### **Concept 47. Damages**

Damages are the monetary compensation which are allowed by the court so as to put the injured person in the same position (Monetarily Law) as he would have been. This is called Doctrine of Restitution. This is based upon the famous case *Hadley vs Baxandle*. In this case a person machine was broken and he asked Mr. B to get it repaired. But he did not tell him that in case of delay there will be loss of profit. Somehow the repair of machine got delayed. The court held that the repairer is not responsible for the loss of profit because he had not been told about that. In case this person had told B that for delay, he will incur loss, B must compensate.

#### **Damages are of different kinds:**

1. Ordinary damages
2. Special damages
3. Exemplary damages
4. Nominal damages
5. For reputation damages
6. For discomfort damages

**Ordinary damages** are the damages which we appox. to the real loss. These damages are natural and direct.

**For eg.:** If a person promised to deliver the thing costing ₹ 500 and he was not able to give the thing and repurchase the thing for ₹ 550 so he must pay ₹ 50 as damages.

**Special damages** are those damages which may be recovered as the probable result of the breach of contract. These are agreed in advance. They can be claimed only if we have told the other party about the special circumstances.

**Exemplary damages** are those damages which are given by way of compensation as punishment. These are not allowed in India except in two cases:

- (i) Breach of promise to marry.
- (ii) Dishonour of a cheque by a bank even after having money in an account.

**Nominal damages** are those damages which are given just to acknowledge the fact that a particular person has won the case.

**Damage for loss of reputation** are generally not recoverable except in case of dishonor of a cheque.

**Damages for inconvenience and discomfort** are also recoverable.

**Concept No. 48. Mitigation of Damages (Minimisation of Loss)**

It is the duty of the injured party to take all reasonable steps to mitigate the loss. He cannot claim the compensation which could have been avoided, had he been no careful.

**Concept No. 49. Difficulty of Assessment**

One cannot say that it is difficult to assess the damages so we are unable to pay. Court should try there best to estimate the loss and provide the other person a compensation.

**Concept No. 50. Liquidated Damages and Penalty**

Liquidated damages are a genuine pre-estimate of the probable loss which might occur as a breach of contract. Penalty is something which is disproportionate to the actual loss. It is fixed in terrorism, to make the other party so much frightened so that he should not even thing of making a breach of contract.

**For e.g.:** If somebody does not pay the amount on a due date, it is OK to charge interest from that date on a market sale of interest. But if we charge 50% interest per year it is in the nature of penalty which will not be allowed by the Court.

**Concept No. 51. Quantum Meruit**

It means as much as is earned. One should pay for what one gets (next chapter).

**Specific Performance**

In some cases damages are not an adequate remedy. In those cases court can ask for specific performance of the contract. But it will not be granted where:

1. Damages are an adequate remedy.
2. Contracts are revocable.
3. Contract to marry.
4. Where the contract is made by the Co. and the Co. has exceeded its powers.

**Concept No. 52. Injunction**

If a party is doing something which he has promised not to do, the court can restrain him from doing what he promised not to do. This is called injunction.

**CONTINGENT AND SPECIAL CONTRACTS**

**Concept No. 53. Contingent Contracts**

A contract will be:

1. Absolute contract
2. Contingent contract.

Absolute contract is a contract where promiser binds himself to perform the promise without any condition.

A contingent contract is a contract to do or not to do something if some event does or does not happen. So, there are 5 essential characteristics of a contingent contract:

1. It depends upon the happening or non-happening of a future event.
2. This event is uncertain.



3. The event must be collateral (additional) which means it is incidental to the contract.  
**For eg:** If the supply of goods depends on the arrival of a particular ship, railway, etc. & that particular conveyance does not arrive then this contract is a contingent contract.

**Concept No. 54. Difference Between Wagering Agreement & Contingent Contract**

Wagering agreement	Contingent contract
1. It contains reciprocal promises.	It may not contain reciprocal promises.
2. It is of a contingent nature.	It may not be of a wagering nature.
3. Void.	Valid.
4. Future event is the main factor.	Future event is collateral factor.
5. Parties have no interest in the subject matter.	It is not so in contingent contract.

These are really not contracts but they are just like the contracts. A person may receive a benefit to which another person is better entitled. The law requires that such other person should be compensated for that. These relationships are known as quasi contracts. These are based on the law of restitution.

**Concept No. 55. Kinds of Quasi Contracts**

1. **Supply of necessities:** If a person who is incapable of entering into a contract (minor), if he has to support somebody then he must reimburse the person supplying the goods, out of his property.  
**For eg.:** Minor case.
2. **Payment by an interested person:** If a person who makes a payment which another is bound to pay, he has to be remembered by the other person if:
  - (i) The payment was bonafide.
  - (ii) It should not be a voluntary one.
  - (iii) The other party was legally bound to pay.**For e.g.:** If a tenant pays for a notice in the absence of landlord, the landlord must compensate.
3. **Obligation to pay for non-gratuitous act:** If a person does something for somebody and he does not do gratuitously, then the latter must compensate him.  
**For e.g.:** Fire in a house. B saved on his own, no compensation.
4. **Responsibility of finder of goods:** A person who finds good of another has to take care of the goods as a man of ordinary prudence would do and try to trace the owner. If he does not then he will be guilty of wrongful conversion.  
**For e.g.:** If a person picks up a diamond on the floor of somebody's shop. He should hand it over to the owner of the shop till its true owner is found. Despite

all the advert, if the true owner is not located then that person (who has found the diamond) is the real owner and not the shopkeeper.

The finder of the goods can sell these goods in the following cases:

1. When the goods are of perisiable nature.
2. If the owner cannot be found out despite best efforts.
3. If the owner is found but he refuses to pay the lawful charges.
4. Where the lawful charges are more than  $2/3^{\text{rd}}$  of the value of the things found.

#### **5. Mistake or coercion**

If a person gets anything by mistake or under coercion, he must pay it back to the person from whom he has got it.

**For eg.:** If A pay money to B by mistake whereas actually it was due to C then B must refund the money to A. But C cannot recover money from B.

#### **Concept No. 56. Quantum Meruit (as Much as Earned)**

If a person has done some work and the remaining part becomes impossible or if some event happens to make the remaining part impossible, then the party who has performed some work must get compensation for what he has done. This is called the claim on a/c of Quantum Meruit.

The claims under Quantum Meruit arise only when the original comes to an end in the following cases:

1. When an agreement is discovered to be void, then one can claim for the part of work done already.  
**For e.g.:** Minor supplying goods.
2. Where something is done without any intention of doing it gratuitously (social work).  
**For e.g.:** If there is a fire in A's home and B saves the goods without any intention of doing it gratuitously then he must be compensated.
3. When there is an express contract to pay for the services.  
**For e.g.:** If A say to B that you do this thing for me and I will pay you reasonably then he must pay.
4. If the contract is divisible then you must pay for that part which has been completed.
5. If the contract is indivisible and is completely done but badly then the person should pay for the whole contract minus (-) any deduction for the bad work.

### **CONTRACT OF INDEMNITY AND GUARANTEE**

#### **Concept No. 57. Contract of Indemnity**

A contract, by which one party promises to save the other from loss caused to him by the conduct of the promisor, or of any other person, is called indemnity [section124]. It is a type of contingent contract.

**Indemnifier (promisor):** The person who promises to make good the loss.

**Indemnified (Indemnity holder):** The person whose loss is to be made good.

<b>Right of Indemnity holder when sued [section 125]</b>	
Indemnity holder is entitled to recover :	All damages which may be compelled to pay in any suit in any matter to which indemnity applies. All sums paid as compromise to such suit.

**Concept No. 58. Contract of Guarantee**

<b>Contract of Guarantee</b>	
<b>[Section 126].</b>	It is a contract to perform the promise, or discharge the liability, of a third person in case of his default”
<b>Surety</b>	“Is person who gives the guarantee” [section 126].
<b>Principal Debtor</b>	Person if or whose default guarantee is given sec. 126.
<b>Creditor</b>	The person to whom guarantee is given section 126.

<b>Essentials elements of a Contract of Guarantee</b>	
All essential element of a valid contract except principal debtor can be minor.	
Anything done, or any promise made, for the benefit of the debtor, may be sufficient consideration to the surety for giving the guarantee” [section 127].	

There must be concurrence between creditors, principal debtor and surety.
Primary liability is on principal debtor (but if principal debtor is minor then surety is liable) and surety is liable on the default of principal debtor.
There is implied contract between debtor and surety that principal debtor will indemnify to the surety, if in the event of his default the surety has paid something but not for any sum which surety has paid wrongfully. Sec 145.

**Concept No. 59. Distinction between Indemnity and Guarantee**

<b>Contract of Indemnity</b>	<b>Contract of Guarantee</b>
Two parties – Indemnifier and Indemnified. One contract- between Indemnifier and Indemnified.  Indemnifier liability is primary and independent. No such request as in case of contract of indemnity. There is no existing liability; it arises on happening of contingent event.  Indemnifier cannot recover the loss from any one.	Three parties- principal debtor, creditor and the surety. Three contract- namely- principal debtor & creditor, surety & creditor and surety & principal debtor. Primary liable of principal debtors and surety’s liability is collateral or secondary. Surety will act on the request on the principal debtor. In this liability is already subsists (i.e. existing debts) for which guarantee is given. Surety can sue to principal and recover the amount paid by him.

<b>Kind of Guarantee</b>	
Retrospective guarantee	Guarantee for past transactions
Prospective guarantee	Guarantee for future transactions
Specific guarantee	Guarantee for single transaction
Continuing guarantee	Guarantee for series of transactions

**Concept No. 60. Nature of Surety’s Liability**

The liability of surety is co-extensive with that of principal debtor sec 128. Therefore the surety is liable for what the principal debtor is liable. Even contract between creditor and debtor is void then surety is liable. Surety is liable even when principal debtor is not liable. Surety’s liability arises immediately on default by the principal debtor. Discharge of the principal debtor by operation of law does not discharge the surety.

**For example:** if claim is time barred.

**Concept No. 61. Continuing Guarantee**

1. It is a guarantee that extends to a series of transactions section 129.

2. The liability of surety is for all the transactions.
3. Continuing guarantee may be revoked by surety by notice S- 130.
4. The death of surety operates as revocation of a continuing guarantee, as regards future transaction S-131 even if creditor has no notice of death.

<b>Right of surety</b>	
<b>Against principal debtor</b>	<ol style="list-style-type: none"> <li>1. <b>Right of subrogation:</b> section 140, he will stand in the shoes of the creditor.</li> <li>2. <b>Right to indemnity:</b> section 145.</li> </ol>
<b>Against creditor</b>	<ol style="list-style-type: none"> <li>3. <b>Right to claim security:</b> A surety is entitled to benefit of security with creditor section 141</li> <li>4. <b>Right of setoff:</b> surety may have the benefit of setoff against the creditor.</li> </ol>
<b>Right of surety against co-sureties</b>	<ol style="list-style-type: none"> <li>5. Equal contribution between co-sureties</li> <li>6. When two or more persons are co-sureties for the same debt, co-sureties are liable to pay each and equal share of the whole debts [section 146].</li> </ol>

**Concept No. 62. Discharge of Surety**

**By Revocation:** The surety, by giving notice to the creditor, may revoke, continuing guarantee, for future transactions [section 130],

1. Specific guarantee cannot be revoked.
2. A continuing guarantee is revoked by death of surety, section 131
3. By substituting a new contract in place of old contract, discharge surety's liability under original contract of guarantee [section 62].

**Concept No. 63. By Conduct of the Creditor**

1. "Any variation made without the surety's consent, in the contract between debtors and creditor, discharge the surety" [section 133].
2. The surety is discharged by any contract between debtor and the creditor, by which debtor is released [section 134].
3. The surety is discharged by any contract between creditor and debtor, by which the creditor makes a composition with debtor section 135.
4. When creditors losses any security given to him. Section 141.

**By invalidation of contract of guarantee:** "Any guarantee, which is obtained by misrepresentation by creditor is invalid"[section 142].

1. Any guarantee, which the creditor has obtained by concealment of material circumstances [section 143].

**Concept No. 64. Unit – 8 Bailment and Pledge**

**Contract of Bailment**

<b>Meaning</b>	Bailment is delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned according to the directions of the person delivering them sec 148.
<b>Parties</b>	The person delivering goods is called the "bailor". Person to whom they are delivered is called the "bailee". Sec 148
<b>Essential characteristics of bailment</b>	<ol style="list-style-type: none"> <li>1. Same goods to be returned but form of goods may be changed. E.g. when cloth is stitched by tailor.</li> <li>2. Deposit of money in a bank is not bailment as money returned is not of the identical currency notes.</li> </ol>
<b>Examples</b>	Placing an ornament in a bank locker is not bailment. It is just a contract of hiring a bank locker. The ornaments remain in possession of the owner, though kept in the bank. As the key to the locker is always with the hirer of the locker.

<b>Rights &amp; Duties of Parties</b>	
<b>Duties of Bailor</b>	<ol style="list-style-type: none"> <li>1. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, he is responsible for damage arising to the bailee directly from such faults [Section 150].</li> <li>2. To indemnify bailee for loss in case of premature termination of gratuitous bailment [Section 159].</li> <li>3. To indemnify the bailee for loss, which the bailee may sustain because bailor was not entitled to make bailment or to receive back the goods [Sec-164].</li> </ol> <p>The bailor is bound to accept the goods after expiry of bailment.</p>
<b>Rights of Bailor</b>	<ol style="list-style-type: none"> <li>1. The bailor can enforce all the duties of bailee, as his rights.</li> <li>2. Terminate the contract of bailment if bailee does any act inconsistent with terms of bailment [Section 153].</li> <li>3. In gratuitous bailment, bailor can demand back of goods before the specified time or purpose, however, bailor has to pay any compensation for loss caused to bailee [Section 159].</li> <li>4. To claim increase or profit which may accrued from the goods Section 163.</li> <li>5. Bailor and bailee both have right to bring suit against third person, who does them any injury [Section 180].</li> </ol>
<b>Duties of Bailee</b>	<ol style="list-style-type: none"> <li>1. To take reasonable care of goods bailed [Section 151].</li> <li>2. Not to make unauthorized used of goods bailed otherwise he is liable to make compensation to the bailor [section 154].</li> <li>3. Not to mix with own goods.</li> </ol>

	<ol style="list-style-type: none"> <li>4. To return the goods without demand, as soon as purpose of bailment accomplished [Section 160].</li> <li>5. bailee is bound to return any accretion or profit that may have accrued from the goods bailed [Section 163].</li> <li>6. Not to setup adverse title.</li> </ol>
<b>Rights of the bailee</b>	<ol style="list-style-type: none"> <li>1. The bailee can enforce all the duties of the bailor, as his rights.</li> <li>2. If several joint owners of goods bailed then, the bailee may deliver them back to joint owner [Section 165].</li> <li>3. If the bailor has no title to the goods, and the bailee in good faith, deliver the goods to the bailor, the bailee is not responsible to the true owner [Section 166].</li> <li>4. In such case, third party may apply to court to stop delivery of goods to bailor and to decide title to the goods [Sec 167].</li> <li>5. Right to take action against third party who wrongfully deprives the use or possession of goods [Section 180].</li> <li>6. Where the bailee has rendered any service involving labour or skill in respect of goods, he has a right to retain such goods until he receive lawful charges in respect of services [Sec 170].</li> </ol>

**Concept No. 65. Termination of Bailment**

1. A contract of bailment is terminated under the following circumstances.
2. When bailment is for a specific period it terminated after expiry of period.
3. When bailment is for specific purpose it terminates when purpose is accomplished.
4. The bailor can terminate bailment if the bailee does any act with regard to the goods, inconsistent with conditions of the bailment Sec 153.
5. A gratuitous bailment is terminated by the death either party Sec 162.
6. The bailor can also terminate a gratuitous bailment before the specified time. However if any loss is caused to the bailee because of this then bailor is liable to indemnify the bailee for such loss Sec 159.
7. A contract of bailment is terminated when the subject matter is destroyed.

**Concept No. 66. Contract of Pledge**

<b>Meaning</b>	Pledge is a special kind of bailment. "The Bailment of goods as security for payment of a debt is called pledge" Sec 172.
<b>Parties</b>	Bailor is in this case Pawnor and bailee is called Pawnee Sec 172.
<b>Distinction between Bailment and Pledge</b>	Pledge is the bailment of goods for security whereas bailment can be for any purpose For example- for safe custody, repair etc.

	<p>Pawnee has right to sell if pawnor makes defaults in repaying the debts but bailee has no right to sell the goods.</p> <p>Pledgee cannot use the goods but bailee can use the goods if contract of bailment so provided.</p>
<b>Rights of Pawnee</b>	<p>Pawnee can retain the goods pledged till the recovery of principal amount, interest and all expenses incurred for preservation of the goods pledged [Section 173].</p> <p>When Pawnee lends money to the same Pawnor after date of pledge, it is presumed that right of retainer over the pledged goods extends to subsequent advances also Sec 174.</p> <p>Pawnee is entitled to receive from Pawnor extraordinary expenses incurred for preservation of goods pledged Sec 175.</p> <p>When Pawnor makes defaults, Pawnee may bring a suit against the Pawnor and retain the goods as a security Sec 176. or</p> <p>When Pawnor makes default Pawnee may sell the goods pledged after giving the Pawnor reasonable notice of the sale Sec 176.</p>
<b>Pledged by Non-owner</b>	<p>General rule is that only owner can pledge but in the following cases even a non-owner can also create valid pledge.</p>
<b>Pledge by mercantile agent</b>	<p>Where a mercantile agent is in possession of goods any pledge made by him shall be as valid.</p> <p>Pledge by a person having the goods under a voidable contract is valid [Section 178A].</p> <p>When a person pledges goods in which he has limited interest, the pledge is valid to the extent of that interest [Section 179]. For example- a finder of goods can pledge goods to the extent of interest.</p> <p>One of the several co-owners of the goods in possession thereof with the assent of the other co-owners can make valid pledge.</p>

**Concept No. 67. Unit – 9 Agency**

<b>Agent</b>	“An agent is a person employed to do act for another, or to represent another in dealing with third person”[section 182].
<b>Principal</b>	person for whom such act is done is called principal sec 182



<b>Features of agency</b>	<ol style="list-style-type: none"> <li>1. Relationship between a principal and his agent is that the latter can render the former answerable to a third party by his act.</li> <li>2. The contract done by the agent will have same consequence if the contacts made by the principal himself [section 226].</li> <li>3. A person who has contractual capacity (i.e. major and sound mind person) can employ an agent [section 183].</li> <li>4. Any person may become an agent [section 184].</li> <li>5. No consideration is necessary to create agency sec 185.</li> </ol>
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### Concept No. 68. Modes of Creation of Agency Relationship

**Express agreement:** An authority is said to be express when it is given by words sec 187.

**By implied agreement:** An authority is said to be implied when it is to be inferred from the circumstances of the case sec 187.

**Agency by estoppels:** When principal induced third party to believe that a person acting is his agent then principal is stopped from denying that person is not his agent.

**Agency by holding out:** Agency by holding out is a branch of estoppel. In this case, a prior positive act on the part of the principal is required to establish agency by holding out.

**By necessity:** An agency in necessity is also a part of implied authority. In certain circumstances, the law confers an authority on one person to act as agent for another without requiring the consent of that another.

**By ratification:** Where one person on behalf of another, but without his knowledge or prior authority does acts, if such another person subsequently, accepts or ratifies the acts, it is called agency by ratification [section 196].

### Concept No. 69. Rules Regarding Ratification

1. It may be express or implied [section 197].
2. It must be done for whole transaction. sec 199.
3. It must be done by the person for whom act was done.
4. It must be done by a person who was competent to enter into contract.
5. The person who was in existence at the time when act was done can ratify.
6. It must be done with in the reasonable time.
7. Illegal act cannot be ratified.
8. Ratification may be made of an act done by agent in excess of his authority.
9. Ratification must be communicated to the third person.

### Concept No. 70. By Operation of Law

Sometimes agency relationship also arises because of operation of law. For instance the promoters are treated as agent of the company. As per section 18 of the

Partnership Act, 1932, “a partner is the agent of the firm for the purpose of the business of the firm”.

#### **Concept No. 71. Duties of an Agent**

1. To conduct business in accordance with directions given by principal or
2. In the absence of direction, according to the customs.
3. If agent acts otherwise, he must compensate the principal for loss suffered or if he has made any profit, he must give it to the principal sec 211.
4. To work with reasonable care, skill and diligence
5. To render proper accounts to his principal on demand [section 213].
6. To communicate with his principal and seek his instructions sec 214.
7. Not to deal on his own account, but if he wants to do so, he must disclose all the material facts to his principal and obtain his consent.
8. Not to make any secret profit out of the agency business.
9. To remit to principal all the sums received in the principal's account sec 218.

#### **Concept No. 72. Right of an Agent**

1. To retain money for expenses and remuneration [section 217].
2. The agent is bound to remit the balance amount to his principal [section 218].
3. To received the agreed remuneration
4. Right of lien on principal's goods, papers and other property sec 221.
5. An agent has right to be indemnified by the principal against all lawful acts done in exercising of the authority conferred sec 222.
6. An agent has right to be indemnified by the principal against consequences of acts done in good faith that caused injury to third person [section 223].
7. To claim compensation for injury because of principal's neglect sec 225.

**Duties of Principal:** Agent's rights are the principal duties.

**Rights of Principal:** Principal can enforce agent duties as his rights.

#### **Concept No. 73. When Agent is Personally Liable**

Agent is not personally liable. General rule is that only principal can enforce and can be held liable on, a contract enforced into by the agent sec 230

In the following cases, agent is personally liable – sec 230

1. When agent acts for sale or purchase of goods for a principal resident abroad i.e. foreign principal [section 230].
2. Where agent does not disclose the identity of his principal [section 230].
3. Where the principal is disclosed but cannot be sued for example foreign sovereign, ambassador etc. [section 230].
4. When principal is undisclosed [section 231]. When he signs a contract in his own name without disclosing that he is acting as an agent.
5. When agent exceeds his authority / breach of warranty of his authority.
6. When he receives or pays money by mistake/fraud.

7. When agent authority is coupled with interest. He can sue or be sued only to the extent of his interest in subject matter.
8. Where the trade usage or custom makes agent personally liable.

**Sub-Agent:** "A sub-agent is a person employed by and acting under the control of the, original agent in the business of agency"[section 191].

#### **Concept No. 74. Delegation of Authority**

The general rule is that an agent cannot lawfully employ another to perform acts, which he has expressly or impliedly undertaken to perform personally [section 190]. 'Delegatus non-protest delegare' is a maxim that means delegate cannot further delegate.

In the following cases an agent can appoint sub-agent:

1. There is a custom of trade to that effect [section 190].
2. Nature of the agency is such that when sub-agent is necessary [section 190].
3. Where the principal is aware of the intention of the agent.
4. Where emergencies arise rendering appointment of a sub-agent necessary.
5. When principal permits appointment of a sub-agent.

#### **Concept No. 75. Legal Relationship Between Principal and Sub-Agent and Agent**

1. **If sub-agent properly appointed:** [section 192]  
Principal is bound to third party for the act of sub-agent.  
"The agent is responsible to the principal for the acts of sub-agent".  
"Sub-agent is responsible for his act to the agent, but not to the principal".
2. **If sub-agent is not properly appointed:** [section 193]  
The agent is responsible to the principal and third party.  
The principal is not responsible for the act of sub-agent.  
Sub-agent is not responsible to the principal.

#### **Concept No. 76. Termination of Agency**

##### **By the act of parties:**

1. By an agreement
2. "By the principal revoking his authority" [section 201].

The principal can revoke the authority "at any time before the authority has been exercised so as to bind the principal" [section 203].

"The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regard such acts

When agency is for fixed period, the principal must make compensation to the agent, for premature revocation of agency [section 205].

Reasonable notice of revocation must be given; otherwise the damage thereby resulting to the agent must be made good by the principal [section 206].

Revocation may be expressed or implied [section 207].

The termination of the authority of an agent does not take effect:

As regards the agent, before it becomes known to him, or  
As regards third persons, before it becomes known to them [section 208].

**Concept No. 77. By Operation of Law**

By the business of the agency being completed [section 201].  
By death or insanity of either the principal or agent [section 201].  
By expiration of period fixed by the agency whether the purpose of the agency has been accomplished or not.  
By performing of contract of agency.  
By the destruction of the subject matter.  
By principal becoming an alien enemy.  
Where principal or agent is a company, by its dissolution.  
Termination of agent's authority causes the termination of authority of all the sub-agents appointed by him [section 210].

**GLOSSARY**

**Agreement:** Every promise and every set of promises, forming the consideration for each other, is an agreement.

**Consensus ad idem:** Meeting of the minds; that is common consent required for a binding contract.

**Promisor:** A person to whom a promise has been made.

**Promisee:** One who makes a promise.

**Offeror:** Person that present something to somebody for acceptance or rejection.

**Offeree:** A person to whom an offer is made.

**Acceptance:** An express act or implication by conduct that manifest assent to the terms of an offer in manner invited or required by the offer so that binding contract is formed.

**Standing Offers:** Agreement under which a vendor allows buyer to purchase specified goods or services to a predetermined price for a certain period on an 'as and when' requirement basis.

**Consideration:** 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 promise to do or to abstain from doing, something such act or abstinence or promise is called consideration for the promise. Consideration means *quid pro quo* i.e. something in return.

**Donor:** A person or entity making a gift or donation.

**Donee:** A person or organization which receives a gift.

**Privity of contract:** Legal doctrine that a contract confers right and impose liabilities only on its contracting parties. They and of any third-party, can sue each other (or be sued) under the terms of the contracts.

**Void Agreement:** An agreement not enforceable by law is said to be void.

**Voidable Contract:** 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.

**Illegal Agreement:** An agreement having no legal effects as between the immediate parties. Further, transactions collateral to it also become tainted with illegality and are, therefore, not enforceable.

**Coercion:** The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.

**Fraud:** Untrue statement made knowingly or without belief in its truth or recklessly, carelessly, with the intent to deceive.

**Alien Enemies:** A foreign born citizen or subject of a nation or power that is hostile territory.

**Ultra Vires:** Beyond the scope, power, authority.

**Ignorantia juris non-excusat:** Ignorance of law excuses no one.

**Ubberrimae fidel:** Of utmost good faith.

**Ex turpi cause non-oritur action:** No action arises from an illegal or immoral cause.

**Pari delicto:** Equally guilty

**Restitution:** The act of restoring to the rightful owner something that has been taken away, lost, or surrendered.

**Contingent Contract:** A Contract to do or not to do something, if some event, collateral to such Contract does or does not happen.

**Quasi-Contracts:** A situation in which there is an obligation as if there was a contract, although the technical requirements of a contract have not been fulfilled.

**Quantum meruit:** As much as earned or reasonable remuneration.

**Novation:** The substitution of a new contract for an old one. The new agreement extinguishes the rights and obligation that were in effect under the old agreement.

**Rescission:** The abrogation of a contract, effective from its inception, thereby restoring the parties to the position they would have occupied if no contract had ever been formed.

**Waiver:** The voluntary surrender of a known right; conduct supporting an inference that a particular right has been relinquished. A waiver is essentially a unilateral act of one person that results in the surrender of legal right.

**Guarantee:** One to whom a guaranty is made.

**Surety:** An individual who undertakes an obligation to pay a sum of money or to perform some study or promise for another in the event that person fails to act.

**Bailment:** A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

**Bailor:** A person who leaves goods in the custody of another, usually under a 'contract of bailment,' in which the custodian (bailee) is responsible for the safekeeping and return of the property.

**Bailee:** A person so called a custodian, with whom some article is left, usually pursuant to a contract, who is responsible for the safe return of the article to the owner when the contract is fulfilled.

**Pledge:** Pledge is special kind of bailment, where delivery of goods is for purpose of security for payment of a debt or performance of a promise.

**Pawnor:** The bailor in case of pledge is called the pawnor.

**Pawnee:** The bailee in case of pledge is called the pawnee.

**Agent:** One who agrees and is authorized to act on behalf of another, a principal, to legally bind an individual in particular business transaction with third parties pursuant to an agency relationship.

**Express Agency:** A consensual relationship created by contract or by law where one party, the principal, grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with third party. An agency relationship is fiduciary in nature, and the actions and words of an agent exchanged with a third party bind the principal.

**Implied Agency:** An agency relationship that arises out of the conduct of the parties and the impression they given to the world, rather than because of a written or oral agreement. It is extremely rare to have an implied agency in real estate because of the rule that real estate contracts must be in writing, so agency relationships regarding real estate must also be in writing.

**Sub-Agent:** A person appointed by an agent to perform some duty, or the whole of the business relating to his agency.

**Del credere Agent:** A mercantile agent who in consideration of extra remuneration

called del credere commission undertakes to indemnify his employer against loss arising from the failure of person with whom he contracts.

**Auctioneers:** A person authorized by law to sell the goods of others at public sale.

**Caveat emptor:** Let the buyers beware.

### Multiple Choice Questions

1. An agreement for Lawful consideration with free consent is:  
(a) Void (b) Valid  
(c) Voidable (d) Unlawful
2. When the consent of a party is obtained by coercion undue influence, fraud or misrepresentation, the contract is:  
(a) Voidable (b) Void  
(c) Illegal (d) Valid
3. Which of the following acts does not fall under the categories of fraud?  
(a) Intentional false statement of facts  
(b) Active concealment of facts  
(c) False statement in good faith  
(d) Promise made without intention to perform.
4. According to Indian law, A contract made by mistake is:  
(a) Void (b) Valid  
(c) Voidable (d) illegal
5. A mistake as to a law not in force in India has the same effect as:  
(a) Mistake of fact (b) Mistake of Indian law  
(c) Mistake of foreign law (d) Misrepresentation
6. Mr. Sanjay agrees to pay ₹40 lakhs to Mr. Ajay if Ajay procures an employment for Sanjay in Government department. This agreement is:  
(a) Void (b) Valid  
(c) Voidable (d) Contingent.
7. An agreement in restraint of marriage, i.e., which prevents a person from marrying, is:  
(a) Valid (b) Voidable  
(c) Void (d) Illegal
8. Anuj agrees to pay ₹ 10,000 to Manoj if a certain ship returns within a year. However, the ship sinks within the year. In this case, the contract becomes:  
(a) Valid (b) Void  
(c) Voidable (d) Illegal

9. Deepak, Ashwani and Tarun jointly promised to pay ₹ 90,000 to Pradeep. Deepak was compelled by Pradeep to pay the entire amount of ₹ 90,000. Here:
- (a) Deepak can file a suit against Pradeep for recovery of amount exceeding his share.
  - (b) Deepak is entitled to recover ₹ 30,000 each from Ashwani and Tarun
  - (c) On payment by Deepak, the contract is discharged and Ashwani and Tarun are also not liable to Deepak.
  - (d) Pradeep is not justified here, and is liable to refund the entire amount to Deepak
10. In special damages, damages:
- (a) Are not recoverable altogether
  - (b) Are illegal being punitive in nature
  - (c) Cannot be claimed as a matter of right
  - (d) Can be claimed as a matter of right.
11. Agreement the meaning of which is uncertain is:
- (a) Void.
  - (b) Valid.
  - (c) Voidable.
  - (d) Illegal.
12. Which of the following relationship raise presumption of positive influence?
- (a) Parent and Child
  - (b) Religious/ Spiritual Guru and disciple
  - (c) Guardian and Ward
  - (d) All of the above
13. Which of the following is false with respect to minor entering a contract?
- (a) An agreement with or by a minor is void ab initio.
  - (b) A minor can be a beneficiary of a contract.
  - (c) The contracts involving a minor as a beneficiary may be enforced at the option of the third party.
  - (d) A minor can not ratify a contract on attaining majority.
14. Which of the following agreements is/are valid?
- (a) Agreement in restraint of legal proceedings.
  - (b) Agreement to stifle prosecution.
  - (c) Agreement by an outgoing partner with his partners not to carry on any business within a specified period or within specified local limits.
  - (d) An agreement with a minor
15. Sonia contracts with Anshul to buy a necklace, believing it is made of pearls whereas in fact it is made of imitation pearls of no value. Anshul knows that Sonia is mistaken and takes no steps to correct the error. Now Sonia wants to cancel the contract on the basis of fraud. Which of the following statement is correct?
- (a) Sonia can cancel the contract alleging fraud.
  - (b) Sonia cannot cancel the contract.



- (c) Sonia can cancel the contract alleging undue influence.  
(d) Sonia can claim damages.
16. Ravi a popular singer enters into a contract with the manager of a theatre, to sing at the theatre two evenings a week for the next two months and the manager of the theatre agrees to pay him at the rate of ₹ 1,000 for each performance. From the sixth evening onwards, Ravi absents himself from the theatre. In this context, which of the following remedies is/are available to the manager of the theatre against Ravi?
- (a) He is at liberty to put an end to the contract.  
(b) He is entitled to compensation for the damages sustained by him through Ravi on his failure to sing from the sixth evening onwards.  
(c) He cannot put an end to the contract.  
(d) Both (a) and (b) above.
17. The Indian Contract Act, applies to the:
- (a) Whole of India excluding Jammu & Kashmir  
(b) Whole of India including Jammu & Kashmir  
(c) States notified by the Central Government from time to time.  
(d) None of the above.
18. The Indian Contract Act came into force on:
- (a) 15<sup>th</sup> September, 1872                      (b) 1<sup>st</sup> September, 1872  
(c) 1<sup>st</sup> October, 1872                              (d) 15<sup>th</sup> October, 1872.
19. "Every agreement and promise enforceable at law is a contract". This definition is given by:
- (a) Salmond    (b) Pollock  
(c) Halsbury    (d) Anson
20. Which of the following legal statement is incorrect?
- (a) An agreement enforceable by law is a contract [Section 2]  
(b) All agreements are contracts [Section 10]  
(c) A proposal when accepted becomes a promise [Section 2]  
(d) Every promise and every set of promise forming the consideration for each other, is an agreement [Section 2(e)]

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|---------|---------|---------|---------|
| 1. (b)  | 2. (a)  | 3. (c)  | 4. (b)  |
| 5. (a)  | 6. (a)  | 7. (c)  | 8. (b)  |
| 9. (b)  | 10. (c) | 11. (a) | 12. (d) |
| 13. (c) | 14. (c) | 15. (b) | 16. (d) |
| 17. (a) | 18. (b) | 19. (b) | 20. (b) |

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MY DIFFICULTIES : CONCEPTS AND MCQ

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