

TOP THE SEMESTER

by

ADV. MOHIT TANWR

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STATUE STATION

DELVE INTO THE INTRICACIES OF LAW WITH OUR METICULOUSLY CURATED STUDY MATERIAL. THIS MODULE OFFERS A SEAMLESS LEARNING EXPERIENCE, ALLOWING YOU TO GRASP COMPLEX SUBJECTS EFFORTLESSLY.

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UNIT 1

FORMATION OF CONTRACT

1.1 MEANING, NATURE AND SCOPE OF CONTRACT

TThe Indian Contract Act, 1872 is a comprehensive statute that governs contractual relationships in India. It covers a wide range of aspects related to contracts, such as their formation, validity, performance, and breach. This Act lays down the legal principles that form the basis of all contractual relationships in the country. It is important to understand the meaning, nature, and scope of contracts under this Act to gain a comprehensive understanding of this vital area of law.

Meaning of Contract:

According to Section 2(h) of the Indian Contract Act, 1872, a contract is defined as an agreement enforceable by law. This definition emphasizes two essential components: an agreement and its enforceability by law.

An agreement refers to a mutual understanding between two or more parties, where one party makes a proposal, and the other party accepts it. A proposal is defined under Section 2(a) as a declaration of willingness to do or abstain from doing something with the intention of

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obtaining the assent of the other party. Acceptance, as per Section 2(b), is the act of assenting to the proposal.

Enforceability by law implies that the agreement should be legally binding and should satisfy all the legal requirements laid down in the Act. If an agreement does not meet these requirements, it will not be considered a contract.

Nature of Contract:

The Indian Contract Act, 1872, lays down the following essential elements that constitute a valid contract:

- 1. Offer and Acceptance:** There must be a lawful offer made by one party and a lawful acceptance of that offer by the other party. The acceptance should be absolute and unqualified.
- 2. Legal Relationship:** The parties must intend to create a legal relationship. Agreements that are of a social or domestic nature are not considered contracts.
- 3. Lawful Consideration:** Consideration is the price or value that each party brings to the contract. It could be in the form of money, goods, services, or a promise to do or not to do something. According to Section 2(d), consideration must be lawful.
- 4. Capacity of Parties:** The parties to the contract must be competent to contract. As per Section 11,

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a person is competent to contract if they are of sound mind, not disqualified from contracting by any law, and have attained the age of majority.

- 5. Free Consent:** The consent of the parties to the contract must be free and genuine. Consent is not considered free if it is obtained through coercion, undue influence, fraud, misrepresentation, or mistake, as per Sections 13-22.
- 6. Lawful Object:** The object of the agreement should be lawful, meaning it should not be forbidden by law, fraudulent, immoral, or against public policy.
- 7. Certainty and Possibility of Performance:** The terms of the contract must be certain and not vague or ambiguous. Additionally, the performance of the contract should be possible.
- 8. Not Expressly Declared Void:** The contract should not be declared void by any law in force in India.

Scope of Contract:

The scope of contracts under the Indian Contract Act, 1872, is vast and encompasses various types of contractual relationships. Some of these include:

- 1. Simple Contracts:** These are contracts that are not required to be in writing or under seal. They

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can be oral or written and are formed by offer and acceptance.

- 2. Implied Contracts:** Implied contracts are those where the terms are not explicitly agreed upon but are inferred from the conduct of the parties or the circumstances of the case.
- 3. Quasi-Contracts:** Quasi-contracts are not actual contracts, but they are legal obligations that arise in the absence of a contract. These obligations are imposed by law to prevent unjust enrichment. For example, if a person mistakenly pays money to another person, the latter is legally obliged to return the money under the principle of quasi-contract.

Landmark Judgements:

- 1. Carlill v Carbolic Smoke Ball Co. (1893) 1 QB 256:** This English case is often cited in Indian courts for its clear explanation of offer and acceptance. The Carbolic Smoke Ball Company had advertised that it would pay £100 to anyone who used their product and still contracted influenza. The plaintiff used the product as directed but still contracted influenza, and subsequently sued the company for the £100. The court held that the advertisement constituted a valid offer, and the plaintiff's use of the product was a valid acceptance, resulting in a legally binding contract.

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2. **Mohori Bibee v. Dharmodas Ghose (1903) 30 IA 114:** This landmark judgment by the Privy Council held that a minor's contract is void and not merely voidable. In this case, a minor had mortgaged his property in favor of a money lender. The court held that the contract was void as the minor was not competent to contract under Section 11 of the Indian Contract Act, 1872.
3. **Chitty on Contracts (Indian Contract Act, 1872):** In this authoritative commentary on contract law, the author cites several examples to illustrate the concept of an offer. For instance, if A says to B, "I offer to sell you my car for ₹5,00,000," this constitutes a valid offer. If B replies, "I accept your offer, but I will pay ₹4,50,000," this is a counter-offer and not an acceptance, as it does not meet the requirement of being absolute and unqualified.
4. **K.M. Nanavati v. State of Maharashtra AIR 1962 SC 605:** This case illustrates the concept of free consent. In this case, the accused, a naval officer, entered into an agreement with the victim, a businessman, to have the latter killed in exchange for money. The court held that the agreement was not a contract, as the consent of the parties was not free; it was obtained through coercion and fear.

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Illustrations:

1. A offers to sell his watch to B for ₹2,000. B accepts the offer and promises to pay the amount. This constitutes a valid contract, as there is an offer, acceptance, intention to create a legal relationship, lawful consideration, and capacity of the parties.
2. A, a minor, enters into a contract to buy a mobile phone from B, an adult. The contract is void because A is not competent to contract, as per Section 11 of the Indian Contract Act, 1872.
3. A offers to sell his car to B for ₹5,00,000 if B agrees to marry C. B refuses the offer. This agreement does not constitute a contract, as the object is not lawful.
4. A agrees to paint B's house for ₹50,000. However, A later discovers that B's house is already painted, making it impossible to perform the contract. In this case, the contract is void because of the impossibility of performance.

from status to contract. In this phase, legal relationships became increasingly based on voluntary agreements between individuals, and legal rules became more formalized, written, and secular. The emergence of contract law and individual rights marked a shift towards

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a more rational and organized legal system, reflecting the increasing complexity of social and economic life.



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1.2 OFFER / PROPOSAL: DEFINITION, COMMUNICATION, REVOCATION, GENERAL/ SPECIFIC OFFER

An offer, also known as a proposal, is a crucial component of a contract. It sets the foundation for the formation of a valid contract. Understanding the definition, communication, and revocation of offers is vital for grasping the concept of contract formation under the Indian Contract Act, 1872.

Definition of Offer/Proposal:

According to Section 2(a) of the Indian Contract Act, 1872, a proposal (offer) is defined as "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal." In simple terms, an offer is a declaration of willingness made by one party (the offeror) to another party (the offeree) to enter into a contract under specific terms.

An offer can be:

1. **Express:** An offer is express when it is communicated in words, either spoken or written.
2. **Implied:** An offer is implied when it is inferred from the conduct of the parties or the circumstances of the case.

Communication of Offer:

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The communication of an offer is a crucial step in forming a valid contract. As per Section 3 of the Indian Contract Act, 1872, an offer is considered communicated when it comes to the knowledge of the offeree. The communication can be made directly by the offeror or through an authorized agent. The offer is deemed complete when the offeree receives and understands the terms of the offer.

Revocation of Offer:

An offer can be revoked or withdrawn by the offeror before it is accepted by the offeree. Section 5 of the Indian Contract Act, 1872, lays down the conditions for the revocation of an offer:

1. **By communication of the revocation to the offeree:** The offeror must communicate their intention to revoke the offer to the offeree before the latter has accepted it. The revocation becomes effective once the offeree receives the communication.
2. **By lapse of time:** An offer can be revoked by the lapse of the time prescribed in the offer or, if no time is specified, by the lapse of a reasonable time. What constitutes a reasonable time depends on the specific circumstances of each case.
3. **By failure to fulfill a condition precedent:** If the offer is subject to a condition precedent, and the offeree fails to fulfill the condition within the

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specified or reasonable time, the offer stands revoked.

4. **By the death or insanity of the offeror:** If the offeror dies or becomes insane before the offer is accepted, the offer is revoked, provided the offeree is aware of the death or insanity.
5. **By the non-acceptance of the offer according to the prescribed mode or a reasonable mode:** If the offeror prescribes a specific mode of acceptance and the offeree does not accept the offer in that mode, the offeror can revoke the offer.

It is essential to note that the revocation of an offer must be communicated to the offeree. According to Section 4 of the Indian Contract Act, 1872, the revocation is complete as against the offeror when it is communicated to the offeree and as against the offeree when they receive the communication.

In the context of contracts, it is essential to understand the distinctions between general offers, specific offers, and invitations to treat. These concepts play a critical role in determining whether a valid contract has been formed. This topic will delve into the differences between these three types of proposals and provide examples for each to help clarify their respective roles in contract formation under the Indian Contract Act, 1872.

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General Offer:

A general offer is an offer made to the public at large, rather than a specific individual or group. The person making the offer (offeror) is willing to enter into a contract with any person who accepts the offer and fulfills the specified conditions. General offers can be made through advertisements, public notices, or announcements.

Example: A company advertises a reward of ₹10,000 to anyone who finds and returns their lost dog. This is a general offer, as it is made to the public at large, and any person who meets the conditions will be entitled to the reward.

Specific Offer:

A specific offer is an offer made to a particular person or group of persons, rather than the public at large. The offeror intends to enter into a contract with only the person or persons to whom the offer is addressed, and acceptance of the offer can only be made by those persons.

Example: A sends a letter to B, offering to sell his car for ₹5,00,000. This is a specific offer, as it is made exclusively to B.

Landmark Judgements:

1. **Payne v. Cave (1789) 3 TR 148:** This case highlights the principle that an offer can be

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revoked before acceptance. The defendant made the highest bid at an auction but withdrew it before the auctioneer's hammer fell. The court held that the defendant had the right to withdraw his bid before acceptance.

2. Ramsgate Victoria Hotel Co. v Montefiore (1866) LR 1 Ex 109:

This case illustrates the concept of lapse of time in revoking an offer. The defendant applied for shares in a company, but the company allotted the shares after a significant delay. The defendant refused to accept the shares, and the court held that the offer had lapsed due to the unreasonable delay.

3. Byrne v Van Tienhoven (1880) 5 CPD 344:

This case emphasizes the importance of communication in revoking an offer. The defendant mailed a revocation of their offer to the plaintiff, but the plaintiff had already posted their acceptance before receiving the revocation. The court held that the revocation was ineffective because it had not been communicated to the plaintiff before they accepted the offer.

4. Dickinson v Dodds (1876) 2 Ch D 463:

In this case, the court held that an offer could be revoked indirectly if the offeree becomes aware of the offeror's actions that are inconsistent with the offer. The defendant offered to sell a property to the plaintiff but later agreed to sell it to another person. The plaintiff learned about this through a

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third party and attempted to accept the original offer, but the court ruled that the offer had already been revoked.

Illustrations:

1. A sends a letter to B, offering to sell his car for ₹5,00,000. B receives the letter and reads the terms of the offer. This is an example of communication of an express offer.
2. A enters a shop and picks up a product with a price tag. The display of the product with the price tag is an implied offer by the shopkeeper to sell the product at that price.
3. A offers to sell his house to B, and B promises to respond within a week. After six days, A sends a message to B, stating that he is no longer willing to sell the house. In this case, A has effectively revoked the offer before B's acceptance.
4. A offers to sell his motorcycle to B if B agrees to purchase it within two days. B does not respond within the specified time. In this case, the offer is revoked due to the lapse of time.

The concepts of offer, communication, and revocation are fundamental to the formation of contracts under the Indian Contract Act, 1872. Understanding these concepts, along with landmark judgments and illustrations, helps to establish a solid foundation for the study of contract law in India. By grasping the nuances of

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offers and their revocation, students can better comprehend the intricacies of contractual relationships and the legal implications of various contractual scenarios.



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1.3 INVITATION TO TREAT

An invitation to treat is not an offer but a preliminary communication that invites others to make an offer. It is a means of eliciting offers from potential buyers or sellers. Invitations to treat are often seen in advertisements for the sale of goods, auction notices, and product displays in stores. They are meant to initiate negotiations, and a contract is only formed when an offer arising from the invitation is accepted.

Example: A shopkeeper displays various items for sale with price tags in his store. This is an invitation to treat, as the shopkeeper is inviting customers to make offers to buy the products at the displayed prices.

Landmark Judgements:

1. *Carlill v Carbolic Smoke Ball Co.* (1893) 1 QB 256: This English case, often cited in Indian courts, involved a general offer. The Carbolic Smoke Ball Company advertised a reward of £100 to anyone who used their product and still contracted influenza. The court held that the advertisement constituted a valid general offer, and the plaintiff's use of the product and subsequent contraction of influenza constituted acceptance, resulting in a legally binding contract.
2. *Pharmaceutical Society of Great Britain v Boots Cash Chemists* (1953) 1 QB 401: This case

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distinguished between an offer and an invitation to treat in the context of a self-service store. The court held that the display of goods on the shelves with price tags was an invitation to treat, and the contract was formed only when the customer presented the goods at the cash register and the cashier accepted the offer.

3. *Harvey v Facey* (1893) AC 552: In this case, the court distinguished between an offer and an invitation to treat. The plaintiff sent a telegram to the defendant, inquiring whether the defendant would sell a property and what the lowest price would be. The defendant replied with the lowest price but did not state a willingness to sell. The court held that the defendant's response was merely an invitation to treat, not an offer, and no contract was formed.
4. *Fisher v Bell* (1961) 1 QB 394: This case involved the distinction between an offer and an invitation to treat in the context of displaying goods for sale. The defendant, a shopkeeper, displayed a flick knife with a price tag in his store window. The court held that the display was an invitation to treat and not an offer, and therefore, the defendant was not guilty of the offense of offering for sale a prohibited weapon.

Illustrations:

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1. A company advertises a job opening in a newspaper, inviting applications from interested candidates. This is an invitation to treat, as the company is inviting potential applicants to make offers by submitting their applications.
2. A homeowner puts up a sign in their front yard, stating, "House for sale: ₹75,00,000." This is an invitation to treat, as the homeowner is inviting potential buyers to make offers for the property.
3. A car dealership displays various vehicles in its showroom, along with their prices. This is an invitation to treat, as the dealership is inviting potential customers to make offers to purchase the vehicles at the displayed prices.
4. A store runs a promotion where the first 100 customers to arrive on a specific day will receive a 50% discount on their purchase. This is a general offer, as it is made to the public at large, and any person who fulfills the conditions (being among the first 100 customers) will be entitled to the discount.
5. A sends an email to B, offering to provide consulting services for B's business at an hourly rate of ₹2,000. This is a specific offer, as it is made exclusively to B.
6. A restaurant displays a menu with various dishes and their prices. This is an invitation to treat, as

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the restaurant is inviting customers to make offers to purchase the dishes at the displayed prices. The contract is formed when the customer places an order, and the restaurant accepts it.



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1.4 ACCEPTANCE: DEFINITION, COMMUNICATION, REVOCATION

Acceptance is a key element in the formation of a contract. It signifies the assent of the offeree to the terms of the offer. Understanding the definition, communication, and revocation of acceptance is essential for comprehending the process of contract formation under the Indian Contract Act, 1872.

Definition of Acceptance:

According to Section 2(b) of the Indian Contract Act, 1872, acceptance is defined as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted." In simpler terms, acceptance occurs when the offeree agrees to the terms of the offer made by the offeror, resulting in the formation of a legally binding contract.

Acceptance can be:

1. **Express:** Acceptance is express when it is communicated in words, either spoken or written.
2. **Implied:** Acceptance is implied when it is inferred from the conduct of the offeree or the circumstances of the case.

Communication of Acceptance:

The communication of acceptance is vital in forming a valid contract. As per Section 4 of the Indian Contract

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Act, 1872, an acceptance is considered communicated when it comes to the knowledge of the offeror. The communication can be made directly by the offeree or through an authorized agent. The acceptance is deemed complete when the offeror receives and understands the acceptance.

Revocation of Acceptance:

Just as an offer can be revoked before acceptance, acceptance can also be revoked before it is communicated to the offeror. Section 5 of the Indian Contract Act, 1872, states that an acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterward. In other words, once the acceptance is effectively communicated to the offeror, it cannot be revoked.

Landmark Judgements:

1. **Adams v Lindsell (1818) 106 ER 250:** This case highlights the importance of communication in the acceptance of an offer. The defendants sent a letter offering to sell wool to the plaintiffs, but the letter was delayed in the mail. The plaintiffs accepted the offer upon receiving the letter, and the defendants argued that the delay in communication meant that no contract was formed. The court held that the contract was valid, as acceptance was complete when the

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plaintiffs posted their acceptance letter, even though it was delayed in reaching the defendants.

2. **Entores Ltd v Miles Far East Corp (1955) 2 QB 327:** This case addressed the issue of communication of acceptance in modern methods of communication, such as telex. The court held that acceptance is complete when it is received by the offeror, and the offeree must ensure that the acceptance is brought to the offeror's attention.

Illustrations:

1. A sends a letter to B, offering to sell his car for ₹5,00,000. B sends a letter back to A, agreeing to buy the car at the offered price. This is an example of express acceptance.
2. A offers to sell his bicycle to B for ₹10,000. B takes the bicycle and hands A ₹10,000 without saying anything. This is an example of implied acceptance.

A emails B, offering to provide web design services at an hourly rate of ₹1,500. B replies, agreeing to the terms. Before A reads the email, B sends another email revoking the acceptance. In this case, B's revocation is valid, as the acceptance had not been communicated to A.

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1.4 ACCEPTANCE: POSTAL RULE OF COMMUNICATION, INSTANTANEOUS COMMUNICATION, TENDERS/ AUCTIONS

The rules governing the communication of acceptance are crucial for determining when and if a contract is formed. This topic will discuss the postal rule of communication, instantaneous communication, and the acceptance of offers in the context of tenders and auctions.

Postal Rule of Communication:

The postal rule is a legal principle that establishes when acceptance is considered complete in the context of postal communication. According to the postal rule, acceptance is deemed complete as soon as the offeree places the acceptance letter in the mailbox, even if it is delayed, lost, or destroyed in transit. This rule helps to determine the precise moment a contract is formed when acceptance is sent by post.

However, the postal rule may not apply if the offeror explicitly states that acceptance must be received to be effective, or if the offeree uses an unauthorized or unreasonable method of communication.

Instantaneous Communication:

In the era of modern technology, instantaneous communication methods such as telephone, fax, email,

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and text messages have become prevalent in contractual dealings. Unlike postal communication, acceptance via instantaneous communication is considered complete when it is received by the offeror.

In the case of Entores Ltd v Miles Far East Corp (1955) 2 QB 327, the court held that for instantaneous communication, the acceptance must be received and brought to the attention of the offeror. This means that the offeree must ensure that the acceptance is communicated effectively and received by the offeror for a contract to be formed.

Tenders/Auctions:

In the context of tenders and auctions, the rules of acceptance differ from standard offers and contracts.

1. **Tenders:** A tender is an invitation to make offers. When a party invites tenders for a specific job or service, they are inviting potential contractors to submit their bids. The party inviting tenders may choose to accept or reject any of the bids. In this case, the contract is formed when the party inviting tenders communicates the acceptance of a particular bid.
2. **Auctions:** Auctions are also invitations to make offers. The auctioneer invites bids from potential buyers, and each bid is considered an offer. The contract is formed when the auctioneer accepts a bid by striking the hammer or declaring the item

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sold. If the auction is subject to a reserve price and the highest bid does not meet the reserve, the auctioneer is not obligated to accept the highest bid.



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Landmark Judgements:

- 1. Entores Ltd v Miles Far East Corp (1955) 2 QB 327:** This case established the rule for acceptance in the context of instantaneous communication methods, such as telex. The court held that acceptance is complete when it is received by the offeror, and the offeree must ensure that the acceptance is brought to the offeror's attention.
- 2. Harris v Nickerson (1873) LR 8 QB 286:** In this case, the court held that an advertisement for an auction is merely an invitation to treat and not a binding offer. The plaintiff traveled to attend the auction based on the advertisement, but the items were withdrawn from the sale. The court ruled that the advertisement was not a contractual offer, and the plaintiff could not recover damages for the breach of contract.

Illustrations:

1. A sends an email to B, offering to sell a piece of furniture for ₹20,000. B replies, accepting the offer. The contract is formed when A receives and reads B's email, according to the rule for instantaneous communication.
2. A company invites tenders for the construction of a new office building. Several contractors submit their bids. The company reviews the bids and

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communicates their acceptance of one of the contractor's bids. The contract is formed when the acceptance is communicated to the selected contractor.

A painting is put up for auction with a reserve price of ₹1,00,000. Bidders place their bids, with the highest bid being ₹90,000. The auctioneer is not obligated to accept the highest bid, as it did not meet the reserve price.

1.5 EFFECT OF VOID, VOIDABLE, VALID, ILLEGAL, UNLAWFUL AGREEMENTS

Understanding the differences between void, voidable, valid, illegal, and unlawful agreements is crucial for determining the enforceability and effects of various contractual relationships under the Indian Contract Act, 1872.

1. Void Agreements:

A void agreement is one that is unenforceable from the beginning and has no legal consequences. According to Section 2(g) of the Indian Contract Act, 1872, a void agreement is defined as "an agreement not enforceable by law." Void agreements may result from mistakes, impossibility of performance, or agreements made against public policy.

Effect: A void agreement has no legal effect, and the parties are not bound by the terms of the agreement. No rights or obligations arise from a void agreement, and any

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transactions completed under the agreement are considered invalid.

2. Voidable Agreements:

A voidable agreement is one that is valid and enforceable, but one of the parties has the option to rescind or affirm the agreement due to certain defects, such as misrepresentation, fraud, coercion, or undue influence. According to Section 2(i) of the Indian Contract Act, 1872, a voidable contract is defined as "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."

Effect: A voidable agreement remains valid and enforceable until the affected party chooses to rescind it. If the affected party rescinds the agreement, it becomes void from the moment of rescission. If the affected party affirms the agreement, it continues as a valid contract.

3. Valid Agreements:

A valid agreement is one that meets all the essential requirements for a legally binding contract under the Indian Contract Act, 1872. It must have a lawful offer, lawful acceptance, consideration, free consent, lawful object, and certainty of terms. A valid agreement is

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enforceable by law and creates rights and obligations for the parties involved.

Effect: A valid agreement creates legally binding obligations for the parties. If one party breaches the agreement, the other party may seek remedies under the law, such as damages or specific performance.

4. Illegal Agreements:

An illegal agreement is one that involves an unlawful object, such as an agreement to commit a crime or engage in fraudulent activities. Section 23 of the Indian Contract Act, 1872, states that an agreement is illegal if it is forbidden by law, defeats the provisions of any law, is fraudulent, involves injury to a person or property, or is considered immoral or against public policy.

Effect: Illegal agreements are unenforceable by law and have no legal consequences. The parties to an illegal agreement cannot seek any remedies under the law, as the agreement is considered void ab initio (from the beginning).

5. Unlawful Agreements:

Unlawful agreements are similar to illegal agreements in that they involve an unlawful object or purpose. However, the term "unlawful" has a broader scope, encompassing agreements that are not necessarily illegal but are

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considered contrary to public policy, morality, or social welfare.

Effect: Like illegal agreements, unlawful agreements are unenforceable and void. The parties involved cannot seek remedies under the law, and any transactions completed under the agreement are considered invalid.

Landmark Judgements:

- 1. Mohori Bibee v Dharmodas Ghose (1903) 30 IA 114:** This case involved a contract entered into by a minor. The court held that the agreement was void ab initio because a minor lacks the capacity to contract. This decision clarified that contracts entered into by minors are void under the Indian Contract Act, 1872.
- 2. Raffles v Wichelhaus (1864) 2 H&C 906:** In this case, the court dealt with a contract based on a mutual mistake. Both parties believed they were contracting for the same thing, but due to a misunderstanding, they were referring to different subjects. The court held that the agreement was void, as there was no consensus ad idem (meeting of the minds).
- 3. Chikkam Ammiraju v Chikkam Seshamma (1917) 44 IA 185:** This case involved an agreement entered into under coercion. The court held that the agreement was voidable at the

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option of the affected party, as it was induced by coercion under the Indian Contract Act, 1872.

Illustrations:

1. A agrees to sell B a stolen car. This is an illegal agreement, as it involves the sale of stolen property, which is forbidden by law. The agreement is unenforceable, and the parties cannot seek remedies under the law.
2. A enters into a contract with B, who is a minor. The contract is void, as minors lack the capacity to contract under the Indian Contract Act, 1872. Neither party can enforce the terms of the contract, and any transactions completed under the agreement are considered invalid.
3. A agrees to sell B a plot of land. Later, it is discovered that the plot of land does not exist. This agreement is void due to the impossibility of performance, as the subject matter of the contract does not exist.

A enters into a contract with B under the threat of physical harm. The contract is voidable at A's option, as it was induced by coercion. A can choose to either rescind the contract, rendering it void, or affirm the contract, allowing it to continue as a valid agreement.

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1.6 STANDARD FORM OF CONTRACT

A standard form of contract, also known as a boilerplate contract or an adhesion contract, is a pre-drafted contract template that is used repeatedly by a party in transactions with numerous other parties. The party offering the standard form of contract typically has greater bargaining power, and the terms are usually non-negotiable. These contracts are common in various industries, such as insurance, finance, telecommunications, and online services.

Advantages of Standard Form Contracts:

- 1. Efficiency:** Standard form contracts save time and resources by eliminating the need to negotiate and draft individual contracts for each transaction. This efficiency benefits both the party offering the contract and the party accepting it.
- 2. Consistency:** Standard form contracts promote consistency in business transactions, as the terms and conditions remain the same for each transaction. This consistency can help reduce misunderstandings and disputes between parties.
- 3. Ease of Use:** Standard form contracts are easy to use and understand, particularly for non-experts. They often contain clear and concise language that simplifies the contractual process for both parties.

Disadvantages of Standard Form Contracts:

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- 1. Imbalance of Power:** Standard form contracts tend to favor the party offering the contract, as the terms are usually non-negotiable and may disproportionately benefit the offeror. This imbalance of power can result in unfair or one-sided agreements.
- 2. Lack of Customization:** Standard form contracts may not address the unique needs or circumstances of each transaction. Parties may find it challenging to adapt the standard terms to their specific requirements, which could lead to disputes or dissatisfaction.
- 3. Unconscionability:** In some cases, standard form contracts may contain unconscionable terms that are unfair or oppressive to the weaker party. Courts may deem such contracts or specific clauses unenforceable if they are deemed to be unconscionable.

Legal Position in India:

In India, standard form contracts are generally enforceable, provided they meet the essential requirements of a valid contract under the Indian Contract Act, 1872. However, Indian courts may intervene to protect the weaker party if the terms of the contract are found to be unconscionable, unfair, or in violation of public policy.

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The doctrine of unconscionability has been recognized by Indian courts in various cases. The courts examine whether the terms of the standard form contract are so unfair or one-sided that they shock the conscience of the court. If a court finds a clause or the entire contract to be unconscionable, it may refuse to enforce it.

Landmark Judgements:

- 1. Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly (1986) 3 SCC 156:** In this case, the Supreme Court of India held that a standard form contract containing an unconscionable term, which gave the employer the right to terminate the employee without notice or cause, was opposed to public policy and unenforceable.
- 2. LIC of India v. Consumer Education & Research Centre (1995) 5 SCC 482:** In this case, the Supreme Court of India recognized the doctrine of unconscionability and held that any term in a standard form contract that is found to be unreasonable, unjust, or unfair could be struck down as being opposed to public policy.

Illustrations:

- 1.** A mobile service provider offers a standard form contract to customers for its services. The contract contains a clause that allows the service provider

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to change the terms and conditions unilaterally without notice. If a customer finds this clause to be unconscionable, they may challenge it in court, and the court may find it unenforceable.

A bank offers a standard form loan agreement to borrowers. The contract contains a clause stating that the bank can unilaterally increase the interest rate without prior notice to the borrower. A borrower may find this term to be unfair and seek judicial intervention. The court may strike down the clause as unconscionable if it deems it to be unreasonable or unjust.

1.7 ONLINE CONTRACT

Online contracts, also known as electronic contracts or e-contracts, are agreements entered into between parties using electronic means, such as email, online forms, or electronic signatures. With the growth of e-commerce and digital technology, online contracts have become increasingly common in various sectors, including business, finance, and consumer transactions.

Formation of Online Contracts:

Online contracts are formed in a similar manner to traditional paper-based contracts. The essential elements of a valid contract under the Indian Contract Act, 1872, such as offer, acceptance, consideration, and free consent, must be present for an online contract to be valid and enforceable.

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- 1. Offer:** The offeror makes an offer through an online platform, such as a website, app, or email. The offer may be in the form of a product listing, service description, or terms and conditions.
- 2. Acceptance:** The offeree accepts the offer by performing a specific act, such as clicking an "accept" button, completing an online form, or sending a confirmation email.
- 3. Consideration:** The parties exchange consideration, usually in the form of money or services. This exchange often takes place through electronic means, such as online payment gateways or digital wallets.

Legal Framework in India:

The Information Technology Act, 2000 (IT Act) governs online contracts in India. The IT Act provides legal recognition to electronic records and electronic signatures, making online contracts valid and enforceable under the Indian Contract Act, 1872. Key provisions of the IT Act related to online contracts include:

- 1. Section 10A:** This section provides that contracts formed through electronic means shall not be deemed unenforceable solely because they are in electronic form.
- 2. Section 4:** This section states that electronic records can satisfy the requirement of a written document under any law.

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- 3. Section 5:** This section recognizes the legal validity of electronic signatures, provided they meet the requirements specified in the IT Act.

Landmark Judgements:

- 1. Trimex International FZE Ltd. v. Vedanta Aluminium Limited (2010) 3 SCC 1:** In this case, the Supreme Court of India held that contracts formed through electronic means, such as email exchanges, are valid and enforceable under the Indian Contract Act, 1872, and the IT Act, 2000.
- 2. SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra, CS(OS) No. 1279/2001 (Delhi High Court):** In this case, the Delhi High Court recognized that email communication could constitute a valid offer and acceptance, leading to the formation of a legally binding contract.

Illustrations:

1. A consumer visits an e-commerce website and selects a product to purchase. The consumer clicks the "buy now" button, enters their payment information, and submits the order. An online contract is formed between the consumer and the

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e-commerce platform, governed by the terms and conditions specified on the website.

A freelance graphic designer agrees to create a logo for a client. The parties exchange emails discussing the project's scope, price, and timeline. Once they reach an agreement, they confirm the terms via email. This email exchange constitutes a valid and enforceable online contract.



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UNIT 2

CONSIDERATION AND CAPACITY

2.1 CONSIDERATION DEFINITION, KINDS, ESSENTIALS

Definition:

Section 2(d) of the Indian Contract Act, 1872, defines consideration as follows:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

Kinds of Consideration:

1. **Executory Consideration:** When both parties to a contract promise to perform their respective obligations in the future, the consideration is said to be executory. For example, A agrees to deliver goods to B in a month, and B promises to pay for the goods upon delivery.
2. **Executed Consideration:** When one party has already performed their obligation, and the other party promises to perform in the future, the consideration is executed. For example, A finds

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B's lost wallet and returns it. B then promises to pay A a reward for finding the wallet.

- Past Consideration:** When one party has voluntarily performed their obligation in the past, and the other party subsequently promises to compensate them for their performance, the consideration is past. Although past consideration is generally not valid under English law, it is recognized as valid under the Indian Contract Act, 1872, provided it was done at the promisor's request. For example, A provides consulting services to B at B's request. Later, B promises to pay A a fee for the services.

Essentials of Consideration:

- At the desire of the promisor:** The consideration must be furnished at the request or desire of the promisor. If the act or abstinence is done without the promisor's request, it will not constitute valid consideration.
- Something of value:** Consideration must have some value in the eyes of the law. It may be in the form of money, goods, services, or even a promise to do or not do something.
- Mutuality of obligation:** Both parties must provide consideration for the contract to be valid. A contract where only one party provides

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consideration is considered a gratuitous promise and is generally unenforceable.

4. **Consideration need not be adequate:** The consideration provided by one party does not need to be of equal value to the consideration provided by the other party. The law does not concern itself with the adequacy of consideration, as long as it has some value.
5. **Consideration must be legal:** The consideration must not involve any illegal act, be against public policy, or be immoral. If the consideration is unlawful or immoral, the contract will be void.
6. **Consideration may be present, past, or future:** As mentioned earlier, consideration can be classified into three types based on its timing—executory, executed, and past consideration. All three types are valid under the Indian Contract Act, 1872, provided they meet the other requirements.

2.1 PRIVACY OF CONTRACT, PRIVACY OF CONSIDERATION

The concepts of privity of contract and privity of consideration are essential principles in contract law, which deal with the relationship between parties to a contract and the rights and obligations that arise from it.

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Privity of Contract:

Privity of contract is a legal doctrine that states that only the parties to a contract are bound by its terms and can enforce or be held liable for the performance or non-performance of the contract. In other words, a person who is not a party to a contract (a third party) cannot sue or be sued for the benefits or obligations arising from the contract.

The rationale behind this principle is to ensure that contractual rights and obligations remain within the control of the parties who have entered into the agreement and negotiated its terms. This principle helps maintain the sanctity of contracts and ensures that parties are not unduly burdened by the claims of third parties.

Exceptions to the Privity of Contract:

Although the privity of contract is a general principle, there are certain exceptions in Indian contract law where third parties can enforce or be held liable for a contract:

- 1. Trust:** When a contract is entered into for the benefit of a third party, and the third party is named as the beneficiary, the beneficiary may enforce the contract as if they were a party to it.
- 2. Family Arrangements:** In certain family arrangements, such as partition, marriage, or inheritance, third parties may be allowed to

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enforce the contract if it affects their rights or interests.

- 3. Agency:** In an agency relationship, the agent is allowed to enforce the contract on behalf of their principal, even though the agent is not a party to the contract.
- 4. Covenants Running with Land:** In contracts relating to land or property, certain rights and obligations may be enforceable by or against third parties if they are intended to run with the land.

Privity of Consideration:

Privity of consideration refers to the principle that only the parties who have provided consideration to each other can enforce the contract. This principle is closely related to privity of contract, as it emphasizes the importance of mutual exchange between the parties to a contract.

In Indian contract law, the requirement of privity of consideration is less strict compared to other common law jurisdictions like England. Section 2(d) of the Indian Contract Act, 1872, states that consideration may be provided by the promisee or any other person. This means that even if a third party provides consideration, the contract can still be enforceable.

For example, A promises B to deliver goods, and C, a third party, pays the price for the goods on B's behalf. In this case, despite C not being a party to the contract, the

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contract between A and B is still valid and enforceable, as the consideration has been provided by C at the desire of the promisor (A).

Landmark Judgements:

- 1. Dunlop Pneumatic Tyre Company Ltd. v. Selfridge and Company Ltd. (1915) AC 847:**
This English case, although not a part of Indian jurisprudence, is often cited in discussions on privity of contract. In this case, Dunlop, a tire manufacturer, sold tires to a distributor with an agreement that the distributor would not sell the tires below a certain price. The distributor then sold the tires to Selfridge, who agreed to abide by the same price restriction. When Selfridge sold the tires below the agreed price, Dunlop sued Selfridge for breach of contract. The court held that Dunlop could not enforce the contract against Selfridge, as they were not a party to the contract between the distributor and Selfridge, establishing the privity of contract doctrine.
- 2. M.C. Chacko v. State Bank of Travancore, AIR 1969 SC 504:** In this Indian Supreme Court case, the court upheld the privity of contract doctrine, stating that a person who is not a party to a contract cannot sue on the contract, nor can they be sued under it.
- 3. Beswada Sambayya v. Gangavaram Venkatanarasimharaju, AIR 1937 Mad 70:**

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In this case, the Madras High Court held that a person who is not a party to a contract but provides consideration for the contract can still enforce the contract. This case illustrates the relaxed requirement of privity of consideration in Indian contract law.

Illustrations:

1. A contracts with B to paint B's house for a sum of money. C, B's neighbor, is not a party to the contract. If A fails to paint the house, C cannot sue A for breach of contract, as there is no privity of contract between A and C.
2. A agrees to sell a car to B, and B promises to pay the price in installments. C, B's friend, promises to pay the installments on behalf of B. If B breaches the contract by refusing to accept the car, A can sue B, even though the consideration (payment) is provided by C. This is because Indian contract law does not require strict privity of consideration.
3. A property owner (A) enters into a contract with a builder (B) to construct a building. The contract states that any subsequent purchaser of the building will be bound by the contract's terms. C, a third party, purchases the building from A. In

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this case, C can be held liable for the terms of the contract between A and B, as the covenant runs with the land, which is an exception to the privity of contract doctrine.

2.2 CAPACITY TO ENTER INTO A CONTRACT

Capacity refers to a person's legal ability to enter into a binding contract. Under the Indian Contract Act, 1872, certain individuals or entities are deemed to lack the capacity to enter into contracts or may have limited capacity. This is to protect those who may not have the ability to fully comprehend the implications of entering into a contract or to safeguard public policy and interests.

Parties with Limited or No Capacity:

- 1. Minors:** Section 11 of the Indian Contract Act, 1872, states that a minor, i.e., a person who has not attained the age of 18, is not competent to contract. Any contract entered into by a minor is void-ab-initio, meaning it is unenforceable from the beginning. However, a minor can enter into contracts for necessities, which are goods or services essential for their basic needs. In such cases, the minor is only liable to pay a reasonable price for the necessities.

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2. **Persons of Unsound Mind:** According to Section 12 of the Indian Contract Act, 1872, a person is considered to be of unsound mind if they are incapable of understanding the contract's terms or forming a rational judgment concerning its effect on their interests. A contract entered into by a person of unsound mind is void if the other party knew or should have known about the person's mental incapacity.
3. **Disqualified Persons:** Certain persons may be disqualified from entering into contracts by specific laws. For example, an insolvent person may be disqualified from entering into a contract by the provisions of the Insolvency and Bankruptcy Code, 2016. Similarly, a company may be prohibited from entering into a contract that is beyond the scope of its Memorandum of Association.
4. **Alien Enemies:** During wartime, citizens of enemy countries are considered "alien enemies" and are not permitted to enter into contracts with Indian citizens. Any such contract would be void, as it would violate public policy.
5. **Foreign Sovereigns and Diplomats:** Foreign sovereigns and diplomats enjoy certain immunities under international law and cannot be sued in Indian courts unless they explicitly waive their immunity. As a result, they may have limited capacity to enter into contracts in India.

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- 6. Convicts:** A person who is convicted of a crime and is serving a sentence may have limited capacity to enter into a contract, as their freedom is restricted during their imprisonment.

Illustrations:

1. A, a 16-year-old, enters into a contract to purchase a mobile phone. This contract is void, as A is a minor and lacks the legal capacity to enter into the contract.
2. B, who suffers from a mental illness that prevents her from understanding the implications of her actions, enters into a contract to sell her property. If the other party was aware of B's mental incapacity, the contract would be void.
3. C, an alien enemy, enters into a contract with D, an Indian citizen, during wartime. The contract would be void, as alien enemies lack the capacity to enter into contracts with Indian citizens during wartime.

Landmark Judgements:

1. **Mohori Bibee v. Dharmodas Ghose, (1903) 30 IA 114:** In this landmark case, the Privy Council held that a contract entered into by a minor is void-ab-initio, meaning it is unenforceable from the outset. In this case, Dharmodas Ghose, a minor, had mortgaged his property to secure a loan. The lender, Brahma

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Dutta, sued to enforce the mortgage. The Privy Council ruled that the contract was void, as Dharmodas Ghose was a minor at the time of entering into the agreement.

2. Chikham Amiraju v. Chikham Seshamma, (1912) 15 BOMLR 640: In this case, the Madras High Court held that a contract entered into by a person of unsound mind is void if the other party knew or should have known about the person's mental incapacity. In this case, the court ruled that the contract was void, as the plaintiff knew about the defendant's mental incapacity.

3. Roberts v. Gray, (1913) 1 KB 520: In this English case, the court held that a contract for the benefit of a minor can be enforced by the minor, even though they lack the capacity to enter into contracts. The court ruled that the contract, which involved a young billiards player being paid to participate in a series of exhibition matches, could be enforced by the minor, as it was for his benefit.

Illustrations:

1. A, a 17-year-old, enters into a contract with B to purchase a motorcycle. The contract is void-ab-initio, as A is a minor and lacks the legal capacity to enter into the contract. However, if A enters into a contract for purchasing necessities such as food or clothing, the contract would be

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enforceable, and A would be liable to pay a reasonable price for the necessities.

2. C, who is of unsound mind, enters into a contract to sell her house to D. If D knew or ought to have known about C's mental incapacity, the contract would be void. However, if D was unaware of C's mental incapacity and had no reason to know about it, the contract may still be valid.
3. E, an insolvent person, enters into a contract with F to purchase goods on credit. If the Insolvency and Bankruptcy Code, 2016, disqualifies E from entering into contracts, the contract would be void due to E's legal incapacity.

2.3 MINOR'S POSITION

In the Indian legal system, a minor is a person who has not attained the age of 18 years. Minors hold a unique position in contract law, as they lack the legal capacity to enter into contracts. The Indian Contract Act, 1872, contains provisions that govern the position of minors in contracts to protect their interests and ensure that they are not exploited or taken advantage of due to their inexperience and lack of understanding.

Minor's Incapacity to Contract:

Section 11 of the Indian Contract Act, 1872, states that minors are not competent to contract. As a result, any

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contract entered into by a minor is void-ab-initio (unenforceable from the beginning). This rule has been established by the landmark case *Mohori Bibee v. Dharmodas Ghose* (1903), where the Privy Council held that a mortgage contract entered into by a minor was void.

Contracts for Necessities:

Although minors cannot enter into contracts, they can still enter into contracts for necessities. Necessities are goods or services essential for a minor's basic needs, such as food, clothing, shelter, or education. In such cases, the minor is only liable to pay a reasonable price for the necessities. The doctrine of necessities is based on the principle of fairness and seeks to ensure that minors are not left without essential goods or services due to their incapacity to contract.

Beneficial Contracts:

Contracts that are clearly beneficial to the minor, such as contracts of employment, insurance, or apprenticeship, may be enforced by the minor. These contracts are considered exceptions to the general rule that minors cannot enter into contracts. However, it is important to note that the contract must be unequivocally beneficial to the minor, with no possibility of burden or detriment.

Ratification of Contracts:

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A minor cannot ratify a contract upon attaining the age of majority. This means that a contract entered into by a minor remains void even after the minor becomes an adult. If the parties wish to enter into a valid contract after the minor attains the age of majority, they must enter into a new contract.

Restitution:

In certain cases, a minor who has received benefits under a void contract may be required to make restitution to the extent possible without causing undue hardship to the minor. The principle of restitution seeks to prevent unjust enrichment and ensure fairness between the parties.

Illustrations:

1. A, a 16-year-old, enters into a contract to purchase a smartphone. The contract is void, as A is a minor and lacks the capacity to contract.
2. B, a 17-year-old, enters into a contract for the purchase of necessary clothing. B is liable to pay a reasonable price for the clothing, as the contract is for necessities.
3. C, a 15-year-old, enters into a contract of apprenticeship that is clearly beneficial to her. The contract is enforceable, as it is a beneficial contract.

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2.4 NATURE/EFFECT OF MINOR'S AGREEMENT

Nature of Minor Agreements:

- 1. Void-ab-initio:** Agreements entered into by a minor are considered void-ab-initio, meaning they are unenforceable from the beginning. This rule stems from the landmark case *Mohori Bibee v. Dharmodas Ghose (1903)*, where the Privy Council held that a mortgage contract entered into by a minor was void.
- 2. No Ratification:** A minor cannot ratify an agreement upon attaining the age of majority. This means that a minor's agreement remains void even after the minor becomes an adult. If the parties wish to enter into a valid agreement after the minor attains the age of majority, they must enter into a new agreement.
- 3. Exceptions:** While most agreements entered into by minors are void, there are some exceptions, such as contracts for necessities and beneficial contracts. As mentioned earlier, minors can enter into contracts for necessities, such as food, clothing, shelter, or education. Similarly, minors can enter into beneficial contracts, such as employment, insurance, or apprenticeship agreements, provided that the contract is unequivocally beneficial to the minor.

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Effects of Minor Agreements:

- 1. No Liability:** Since minor agreements are void-ab-initio, minors cannot be held liable for breach of contract. This protects minors from being exploited or taken advantage of due to their inexperience and lack of understanding.
- 2. Restitution:** In certain cases, a minor who has received benefits under a void agreement may be required to make restitution to the extent possible without causing undue hardship to the minor. The principle of restitution seeks to prevent unjust enrichment and ensure fairness between the parties.
- 3. Recovery of Property:** If a minor has transferred property under a void agreement, the minor may be able to recover the property. However, if the property has been transferred to a bona fide purchaser for value, the minor may not be able to recover it.
- 4. Estoppel:** A minor is not estopped from pleading their minority as a defense to a claim under a void agreement. This means that a minor can always assert their minority to avoid liability under a void agreement, even if they misrepresented their age when entering into the agreement.

Illustrations:

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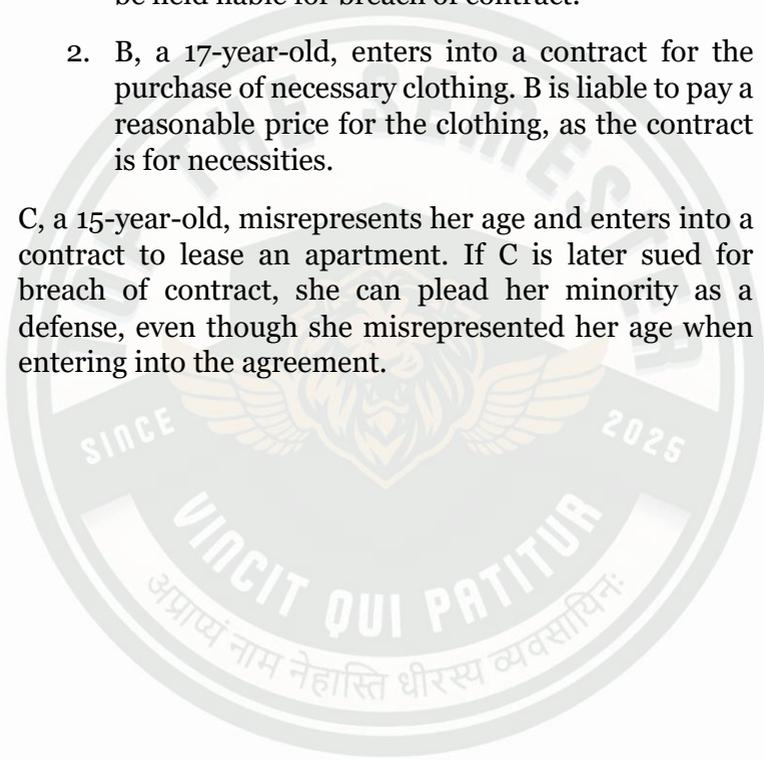
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1. A, a 16-year-old, enters into a contract to purchase a car. The contract is void-ab-initio, as A is a minor and lacks the capacity to contract. A cannot be held liable for breach of contract.
2. B, a 17-year-old, enters into a contract for the purchase of necessary clothing. B is liable to pay a reasonable price for the clothing, as the contract is for necessities.

C, a 15-year-old, misrepresents her age and enters into a contract to lease an apartment. If C is later sued for breach of contract, she can plead her minority as a defense, even though she misrepresented her age when entering into the agreement.



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UNIT 3

VALIDITY. DISCHARGE AND PERFORMANCE OF CONTRACT

3.1 FREE CONSENT

Free consent is an essential element of a valid contract under the Indian Contract Act, 1872. It refers to the unambiguous and voluntary agreement between the parties to the terms and conditions of the contract. A contract is considered to be formed with free consent when both parties understand and agree to the terms without any coercion, undue influence, fraud, misrepresentation, or mistake.

Section 13 and 14 of the Indian Contract Act, 1872, define consent and free consent:

1. **Consent:** According to Section 13, "two or more persons are said to consent when they agree upon the same thing in the same sense."
2. **Free Consent:** According to Section 14, "consent is said to be free when it is not caused by (1) coercion, as defined in Section 15; or (2) undue influence, as defined in Section 16; or (3) fraud, as defined in Section 17; or (4) misrepresentation, as

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defined in Section 18; or (5) mistake, subject to the provisions of Sections 20, 21, and 22."

Factors Affecting Free Consent:

- 1. Coercion (Section 15):** Coercion involves the use of force, threats, or intimidation to compel a person to enter into a contract against their will. A contract entered into under coercion is voidable at the option of the party whose consent was obtained through coercion.
- 2. Undue Influence (Section 16):** Undue influence occurs when one party takes advantage of their position of power or influence over another party to obtain their consent to a contract. A contract entered into under undue influence is voidable at the option of the party whose consent was obtained through undue influence.
- 3. Fraud (Section 17):** Fraud involves the use of deceit, false statements, or misrepresentations to induce another party to enter into a contract. A contract entered into through fraud is voidable at the option of the defrauded party.
- 4. Misrepresentation (Section 18):** Misrepresentation refers to the unintentional provision of false or misleading information by one party to another, causing the other party to

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enter into a contract. A contract entered into based on misrepresentation is voidable at the option of the party whose consent was obtained through misrepresentation.

- 5. Mistake (Sections 20, 21, and 22):** A mistake refers to an erroneous belief or understanding by one or both parties concerning the terms or subject matter of the contract. A mistake can be bilateral (both parties are mistaken) or unilateral (only one party is mistaken). The effect of a mistake on the validity of a contract depends on the nature of the mistake and the specific provisions of the Indian Contract Act, 1872.

Effect of Absence of Free Consent:

When free consent is absent, the contract may be considered void or voidable, depending on the circumstances:

- 1. Void Contracts:** If the absence of free consent is due to a mutual mistake of fact, the contract may be deemed void.
- 2. Voidable Contracts:** If the absence of free consent is due to coercion, undue influence, fraud, or misrepresentation, the contract is voidable at the option of the aggrieved party.

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The Indian Contract Act, 1872, provides specific provisions to address situations where free consent is lacking, helping to maintain fairness and justice between the contracting parties.



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3.2 COERCION UNDUE INFLUENCE **MISREPRESENTATION**

Coercion, undue influence, and misrepresentation are factors that vitiate free consent under the Indian Contract Act, 1872. When any of these factors are present, a contract may be voidable at the option of the aggrieved party. This section will discuss each factor in detail, with landmark judgments to illustrate the concepts.

1. Coercion (Section 15):

Coercion is the use of force, threats, or intimidation to compel a person to enter into a contract against their will. Section 15 of the Act defines coercion as "committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

Landmark Judgment: Ranganayakamma v. Alwar Setti (1889)

In this case, a widow was forced to adopt a boy by threatening to commit suicide if she did not comply. The court held that the threat of suicide amounted to coercion, and the adoption was set aside.

2. Undue Influence (Section 16):

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Undue influence occurs when one party takes advantage of their position of power or influence over another party to obtain their consent to a contract. Section 16 of the Act defines undue influence as a situation where the relations between the parties are such that one party is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

Landmark Judgment: Mannu Singh v. Umadat Pande (1890)

In this case, a mortgage was executed in favor of a priest by his disciple. The court held that the relationship between the parties was such that the priest was in a position to dominate the disciple's will, and the mortgage was set aside on the ground of undue influence.

3. Misrepresentation (Section 18):

Misrepresentation refers to the unintentional provision of false or misleading information by one party to another, causing the other party to enter into a contract. Section 18 of the Act outlines three types of misrepresentation:

- a. A positive assertion made by one party that is not warranted by the information they possess.
- b. Any breach of duty that leads to an erroneous opinion by another party.

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- c. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Landmark Judgment: Derry v. Peek (1889) - English Case, followed in India

In this case, the directors of a company issued a prospectus stating that the company had permission to use steam power for its trams. However, the permission was subject to the approval of the Board of Trade, which was later denied. The plaintiff purchased shares based on the prospectus and sued for misrepresentation. The court held that the directors honestly believed they would receive permission and were not guilty of fraud, but their statement was a misrepresentation.

3.2 FRAUD, MISTAKE

Fraud and mistake are factors that vitiate free consent and affect the validity of contracts under the Indian Contract Act, 1872. This section will discuss each factor in detail, with examples to illustrate the concepts.

1. Fraud (Section 17):

Fraud involves the use of deceit, false statements, or misrepresentations to induce another party to enter into a contract. Section 17 of the Act defines fraud as any of the following acts committed by a party to a contract or with their connivance, or by their agent, with the intent to deceive another party or to induce them to enter into the contract:

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- a. The suggestion, as a fact, of that which is not true by one who does not believe it to be true.
- b. The active concealment of a fact by one having knowledge or belief of the fact.
- c. A promise made without any intention of performing it.
- d. Any other act fitted to deceive.
- e. Any such act or omission as the law specifically declares to be fraudulent.

A contract entered into through fraud is voidable at the option of the defrauded party.

Landmark Judgment: Shrikant Shivram Katamble v. Monesh Constructions (2011)

In this case, the plaintiff purchased a flat from the defendant based on the representation that the construction of the building had obtained all the necessary permissions. Later, it was discovered that the building was constructed without proper permissions, and the plaintiff sued for fraud. The court held that the defendant's misrepresentation constituted fraud, and the plaintiff was entitled to rescind the contract.

2. Mistake (Sections 20, 21, and 22):

A mistake refers to an erroneous belief or understanding by one or both parties concerning the terms or subject

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matter of the contract. Mistakes can be classified into two categories:

Bilateral (Mutual) Mistake (Section 20): A bilateral mistake occurs when both parties to the contract are under a mistake concerning the same essential fact. In such cases, the contract is considered void. For example, if both parties mistakenly believe they are contracting for different goods, the contract would be void.

Unilateral Mistake (Sections 21 and 22): A unilateral mistake occurs when only one party is under a mistake concerning the terms or subject matter of the contract. Generally, a unilateral mistake does not render a contract void, except in cases where the other party was aware of the mistake and did not rectify it, or where the mistake concerns the identity of the contracting party.

Landmark Judgment: Raffles v. Wichelhaus (1864) - English Case, followed in India

In this case, the parties agreed to a contract for the sale of goods to be delivered by a ship named "Peerless." However, there were two ships named "Peerless" sailing from the same port. Each party was under the impression that they were contracting for goods on a different "Peerless" ship. The court held that the contract was void due to the bilateral mistake concerning the identity of the ship.

3.3 UNLAWFUL CONSIDERATION AND OBJECT

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Unlawful consideration and unlawful object are factors that can render a contract void under the Indian Contract Act, 1872. A contract with unlawful consideration or an unlawful object is considered void and unenforceable by law. This section will discuss the concept of unlawful consideration and unlawful object, with examples to illustrate the concepts.

1. Unlawful Consideration (Section 23):

Section 23 of the Act states that consideration is unlawful if:

- a) It is forbidden by law.
- b) It is of such a nature that, if permitted, it would defeat the provisions of any law.
- c) It is fraudulent.
- d) It involves or implies injury to the person or property of another.
- e) The court regards it as immoral or opposed to public policy.

If the consideration for a contract is unlawful, the contract is considered void.

Example: A contract to supply smuggled goods would be void due to unlawful consideration, as the act of smuggling is forbidden by law.

2. Unlawful Object (Section 23):

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The object of a contract is considered unlawful if:

- a) It is forbidden by law.
- b) It is of such a nature that, if permitted, it would defeat the provisions of any law.
- c) It is fraudulent.
- d) It involves or implies injury to the person or property of another.
- e) The court regards it as immoral or opposed to public policy.

If the object of a contract is unlawful, the contract is considered void.

Example: A contract to bribe a public official would be void due to an unlawful object, as bribery is forbidden by law.

Landmark Judgment: Gherulal Parakh v. Mahadeodas Maiya (1959)

In this case, the parties entered into a partnership agreement to carry on speculative transactions in forward trading, which was against public policy. The Supreme Court held that the object of the partnership agreement was unlawful, and therefore, the contract was void.

Unlawful consideration and unlawful object are factors that render a contract void under the Indian Contract Act, 1872. Parties must ensure that the consideration and

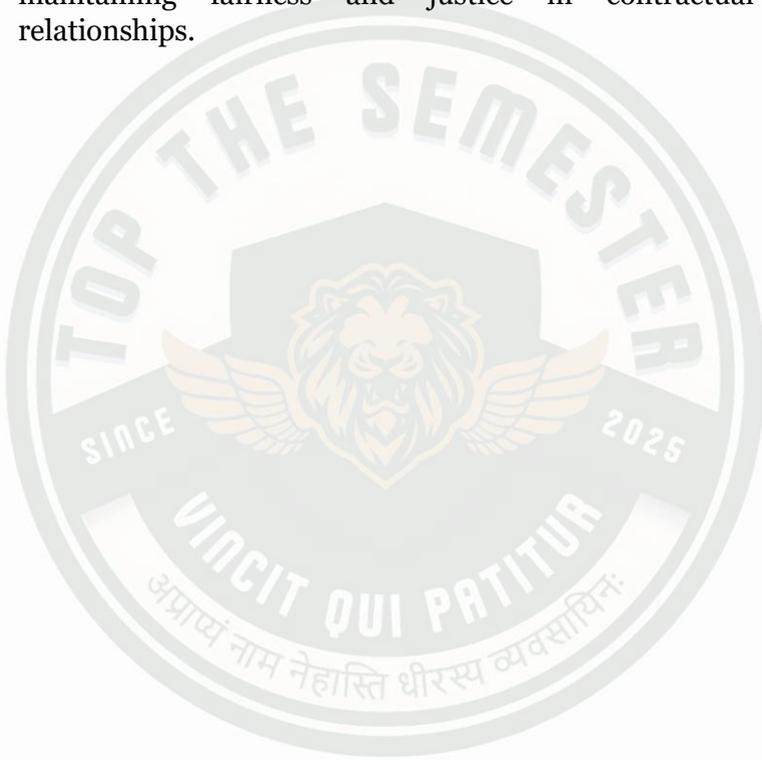
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object of their contracts are lawful to avoid entering into unenforceable agreements. Understanding the concept of unlawful consideration and unlawful object is crucial to maintaining fairness and justice in contractual relationships.



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3.4 DISCHARGE OF CONTRACTS

The discharge of a contract refers to the termination of the contractual obligations of the parties involved. A contract can be discharged in various ways, either by the performance of the contract or by other means, such as agreement, impossibility, lapse of time, and operation of law. This section will discuss the different ways a contract can be discharged under the Indian Contract Act, 1872.

1. Discharge by Performance (Sections 37 to 40):

The most common method of discharging a contract is by performance, where the parties fulfill their respective obligations under the contract. Section 37 of the Act states that the parties to a contract must either perform or offer to perform their respective promises unless the performance is dispensed with or excused under the provisions of the Act or any other law.

Partial performance of a contract (Section 38) can also discharge the contract if the parties accept the performance in part, subject to their agreement.

2. Discharge by Agreement (Sections 62 and 63):

A contract can be discharged by mutual agreement between the parties, either by substituting a new contract (novation) or by canceling or altering the original

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contract. Sections 62 and 63 of the Act outline the process for discharging a contract by agreement.

3. Discharge by Impossibility (Sections 56 and 66):

A contract can be discharged if its performance becomes impossible or unlawful due to events beyond the control of the parties. Section 56 of the Act states that a contract becomes void when its performance becomes impossible or unlawful, and the parties are relieved of their obligations. If a party has received any advantage under the contract, they must restore it or make compensation to the other party, as per Section 66.

4. Discharge by Lapse of Time (Section 46):

A contract can be discharged if it is not performed within a reasonable time or the time specified in the contract. If a party fails to perform their obligation within the prescribed time, the other party can treat the contract as discharged.

5. Discharge by Operation of Law:

A contract can be discharged by operation of law in cases such as the death of a party (in contracts of personal nature), insolvency of a party, merger, and statutory provisions that affect the validity of the contract.

Landmark Judgment: Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)

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In this case, the appellant entered into an agreement to buy land from the respondent. However, due to wartime requisition of the land, the respondent was unable to deliver the land to the appellant. The Supreme Court held that the contract was discharged due to impossibility of performance as the requisition made it impossible for the respondent to fulfill their obligations under the contract.

Landmark Judgment

1. **Taylor v. Caldwell (1863) - English Case, followed in India**

In this case, the plaintiff rented a music hall from the defendant for a series of concerts. However, before the concerts could take place, the music hall was destroyed by fire. The court held that the contract was discharged due to impossibility of performance, as the subject matter of the contract no longer existed.

Illustration: A catering company enters into a contract to provide food for an event at a specific venue. Before the event takes place, the venue is closed down by local authorities due to safety concerns. The contract would be discharged due to impossibility of performance, as the catering company cannot fulfill its obligations under the contract.

2. **Naihati Jute Mills Ltd. v. Khyaliram Jagannath (1968)**

In this case, the plaintiff contracted with the defendant to supply jute at a fixed price. However, due to a significant

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increase in jute prices, the defendant failed to deliver the goods. The court held that the contract was not discharged due to impossibility of performance, as the change in price did not render the performance of the contract impossible.

Illustration: A construction company enters into a contract to build a house for a homeowner at a fixed price. During the construction process, the price of construction materials increases significantly. The contract is not discharged due to impossibility of performance, as the construction company is still able to complete the project, albeit at a higher cost.

3. Hirji Mulji v. Cheong Yue Steamship Co. Ltd. (1926)

In this case, a ship was chartered to transport goods, but it was detained by the British government before the goods could be loaded. The court held that the contract was discharged due to frustration, as the detention of the ship by the government rendered the performance of the contract impossible.

Illustration: A transportation company enters into a contract to deliver goods from one city to another. Before the goods can be transported, the government imposes a travel ban due to a public health emergency. The contract would be discharged due to frustration, as the transportation company cannot fulfill its obligations under the contract.

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4. **Krell v. Henry (1903) - English Case, followed in India**

In this case, the plaintiff rented out a room to the defendant to watch the coronation procession of King Edward VII. However, the coronation was postponed due to the King's illness, and the defendant refused to pay the rent. The court held that the contract was discharged due to frustration, as the purpose of the contract was frustrated by the postponement of the coronation.

Illustration

A person rents a hotel room specifically to watch a fireworks display from the room's balcony. However, the fireworks display is canceled due to bad weather. The contract would be discharged due to frustration, as the purpose of renting the hotel room was frustrated by the cancellation of the fireworks display.

Understanding the different methods of discharging contracts is crucial for parties to determine when their contractual obligations have been fulfilled or terminated, and to ensure fairness and justice in contractual relationships.

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3.5 PERFORMANCE, IMPOSSIBILITY OF PERFORMANCE AND FRUSTRATION

The performance of a contract is the fulfillment of the contractual obligations by the parties involved. Sometimes, however, the performance of a contract may become impossible or the purpose of the contract may be frustrated due to unforeseen circumstances. This section will discuss the concepts of performance, impossibility of performance, and frustration of contract under the Indian Contract Act, 1872.

1. Performance of Contract (Sections 37 to 40):

A contract is said to be performed when the parties involved fulfill their respective obligations under the contract. Section 37 of the Act states that the parties to a contract must either perform or offer to perform their respective promises unless the performance is dispensed with or excused under the provisions of the Act or any other law.

The performance of a contract can be actual (Section 38) or attempted (Section 39). Actual performance occurs when the parties fully perform their contractual obligations. Attempted performance, also known as "tender of performance," occurs when a party is ready and willing to perform their part of the contract but is prevented from doing so by the other party's refusal to accept the performance.

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2. Impossibility of Performance (Section 56):

Section 56 of the Indian Contract Act, 1872, states that a contract becomes void when its performance becomes impossible or unlawful due to events beyond the control of the parties. This can occur either at the time of entering into the contract (initial impossibility) or after the contract has been entered into (subsequent impossibility). In both cases, the parties are relieved of their obligations under the contract.

3. Frustration of Contract:

Frustration of contract is a concept derived from common law and is closely related to the doctrine of impossibility. Frustration occurs when the purpose of the contract is defeated or rendered impossible due to unforeseen events, making the performance of the contract pointless. In such cases, the contract is considered frustrated, and the parties are relieved of their obligations under the contract.

Landmark Judgment

Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)

In this case, the appellant entered into an agreement to buy land from the respondent. However, due to wartime requisition of the land, the respondent was unable to deliver the land to the appellant. The Supreme Court held that the contract was discharged due to impossibility of

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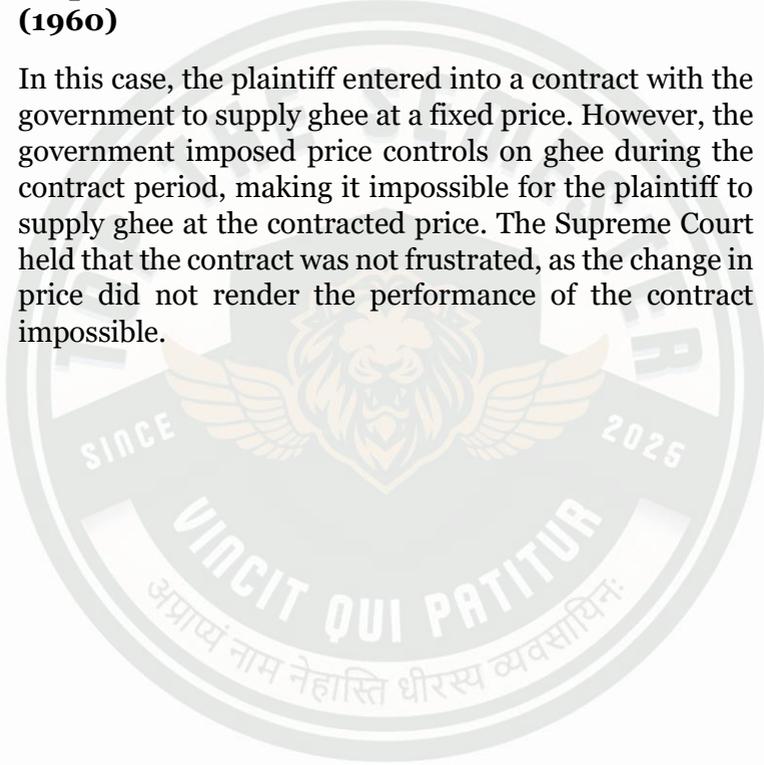
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performance as the requisition made it impossible for the respondent to fulfill their obligations under the contract.

Alopi Parshad & Sons Ltd. v. Union of India (1960)

In this case, the plaintiff entered into a contract with the government to supply ghee at a fixed price. However, the government imposed price controls on ghee during the contract period, making it impossible for the plaintiff to supply ghee at the contracted price. The Supreme Court held that the contract was not frustrated, as the change in price did not render the performance of the contract impossible.



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Landmark Judgement

1. **Raja Dhruv Dev Chand v. Raja Harmohinder Singh (1968)**

In this case, two parties entered into an agreement for the exchange of timber. However, a new law was enacted that prohibited the cutting of trees on the land where the timber was located. The Supreme Court held that the contract was discharged due to supervening impossibility as a result of the change in law, which made the performance of the contract impossible.

Illustration: A brewery enters into a contract to supply a specific type of beer to a restaurant. However, the government subsequently bans the production and sale of that type of beer. The contract would be discharged due to supervening impossibility as the brewery can no longer legally produce and supply the beer.

2. **Shipton, Anderson & Co. v. Weil Brothers & Co. (1914) - English Case, followed in India**

In this case, the defendants agreed to sell cotton to the plaintiffs, to be shipped from a specific port. However, due to the outbreak of World War I, the port was closed, making it impossible to ship the cotton. The court held that the contract was frustrated, as the purpose of the contract was defeated by the closure of the port.

Illustration: A travel agency enters into a contract with a client to arrange a trip to a specific destination.

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However, the destination is subsequently closed to tourists due to an outbreak of a contagious disease. The contract would be frustrated, as the purpose of the contract is defeated by the closure of the destination.

Frustration of Contract vis-a-vis Supervening Impossibility:

Frustration of contract and supervening impossibility are related concepts, as both involve the discharge of a contract due to unforeseen events that render the performance of the contract impossible or pointless. However, there are some differences between the two concepts:

- Frustration of contract focuses on the defeat of the purpose or objective of the contract due to unforeseen events, whereas supervening impossibility focuses on the impossibility of performing the contractual obligations.
- Frustration of contract is a broader concept that encompasses supervening impossibility. While supervening impossibility deals specifically with cases where the performance of the contract becomes impossible, frustration of contract can apply in situations where the performance of the contract is still possible, but the purpose of the contract has been defeated, rendering the performance pointless.

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3.6 BREACH: ANTICIPATORY AND PRESENT

Breach of contract occurs when a party to a contract fails to fulfill their obligations as agreed upon in the contract. Breach of contract can be classified into two types: anticipatory breach and present breach. This section will discuss both types of breach and their consequences under the Indian Contract Act, 1872.

1. Anticipatory Breach of Contract:

Anticipatory breach of contract, also known as "anticipatory repudiation," occurs when a party to the contract either explicitly refuses to perform their obligations or demonstrates through their actions that they will not be able to perform their obligations when they are due. In such cases, the innocent party has the option to either treat the contract as discharged and claim damages immediately or wait until the due date of performance to see if the breaching party will perform.

Sections 39 and 53 of the Indian Contract Act, 1872, are relevant to anticipatory breach of contract. Section 39 states that when a party to a contract has refused to perform or disabled themselves from performing their promise in its entirety, the innocent party may put an end to the contract. Section 53 deals with the loss or damage caused to the innocent party by the breach and the party's right to claim compensation.

Landmark Judgment:

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Hochster v. De La Tour (1853) - English Case, followed in India

In this case, the defendant hired the plaintiff as a courier for a trip to Europe, with the contract to begin on a future date. However, before the start date, the defendant informed the plaintiff that his services would no longer be required. The court held that the defendant's actions constituted an anticipatory breach of contract, and the plaintiff was entitled to claim damages immediately.

Frost v. Knight (1872) - English Case, followed in India

In this case, the defendant promised to marry the plaintiff upon the death of his father. However, before his father's death, the defendant married someone else. The court held that the defendant's actions constituted an anticipatory breach of contract, and the plaintiff was entitled to claim damages.

Illustration: A software development company enters into a contract to develop a custom software application for a client, with delivery due in six months. Three months into the project, the development company informs the client that they will not be able to complete the project. This would constitute an anticipatory breach of contract, and the client could choose to claim damages immediately or wait until the six-month deadline to see if the development company will perform.

2. Present Breach of Contract:

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Present breach of contract occurs when a party fails to fulfill their contractual obligations at the time they are due. In such cases, the innocent party can claim damages for the breach and, depending on the nature of the breach, may also have the option to either treat the contract as discharged or affirm the contract and continue with the performance.

Sections 37, 38, and 73 to 75 of the Indian Contract Act, 1872, are relevant to present breach of contract. Section 37 deals with the obligation of parties to perform or offer to perform their promises. Section 38 states that when a party has performed their promise, the other party must also fulfill their obligations. Sections 73 to 75 deal with compensation for loss or damage caused by a breach of contract and the innocent party's right to claim damages.

Landmark Judgment:

Banwari Lal v. Chando Devi (1993)

In this case, the plaintiff agreed to sell a property to the defendant, with the payment due on a specific date. The defendant failed to make the payment on the due date, and the plaintiff filed a suit for breach of contract. The court held that the defendant's failure to make the payment constituted a present breach of contract, and the plaintiff was entitled to claim damages.

Murlidhar Chatterjee v. International Film Co. Ltd. (AIR 1943 Cal 245)

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In this case, the plaintiff, a film actor, entered into a contract with the defendant, a film company, to act in a film. The defendant failed to provide the plaintiff with the agreed-upon work, and the plaintiff filed a suit for breach of contract. The court held that the defendant's failure to provide work constituted a present breach of contract, and the plaintiff was entitled to claim damages.

Illustration: A contractor enters into a contract to complete a construction project for a homeowner within a specified period. The contractor fails to complete the project within the agreed-upon timeline. This would constitute a present breach of contract, and the homeowner could claim damages and decide whether to treat the contract as discharged or affirm the contract and allow the contractor to continue working on the project.

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UNIT 4

REMEDIES AND QUASI-CONTRACTS

4.1 BREACH UNDER INDIAN CONTRACT ACT, 1872

A breach of contract occurs when a party to a contract fails to perform their contractual obligations. The Indian Contract Act, 1872, provides remedies and consequences for breach of contract. This section will discuss the different types of breach under the Indian Contract Act, 1872, and the remedies available to the aggrieved party.

Types of Breach under the Indian Contract Act, 1872:

1. **Actual Breach:** This occurs when a party fails to perform their contractual obligations at the time they are due. It is also known as a present breach of contract.
2. **Anticipatory Breach:** This occurs when a party either explicitly refuses to perform their obligations or demonstrates through their actions that they will not be able to perform their obligations when they are due. It is also known as anticipatory repudiation.

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Remedies for Breach under the Indian Contract Act, 1872:

1. **Rescission of Contract (Section 39):** The aggrieved party can rescind the contract when the other party has refused to perform or disabled themselves from performing their promise in its entirety. In such cases, the aggrieved party can treat the contract as discharged and claim damages.
2. **Suit for Damages (Sections 73 to 75):** The aggrieved party can claim compensation for the loss or damage caused due to the breach of contract. Damages can be classified into:
 - a. **Ordinary Damages:** These are damages that naturally arise from the breach and are reasonably foreseeable by the parties at the time of contracting.
 - b. **Special Damages:** These are damages that arise due to special circumstances known to the parties at the time of contracting.
 - c. **Nominal Damages:** These are small sums awarded when there is a breach of contract, but no actual loss has been suffered by the aggrieved party.
 - d. **Liquidated Damages:** These are damages agreed upon by the parties at the time of contracting to be paid in case of a breach.

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- 3. Suit for Specific Performance (Section 58 of the Specific Relief Act, 1963):** In certain cases, the aggrieved party can seek specific performance of the contract when damages would not be an adequate remedy. This remedy is usually granted in cases involving unique goods or services.
- 4. Suit for Injunction (Section 38 of the Specific Relief Act, 1963):** In some cases, the aggrieved party can seek an injunction to prevent the breaching party from committing a further breach of contract.
- 5. Suit for Quantum Meruit (Section 65 and 70):** When a party has partly performed the contract before the breach, they can claim compensation for the work done or services rendered on a quantum meruit basis (i.e., as much as they deserve).

Landmark Judgments:

Hadley v. Baxendale (1854) - English Case, followed in India

In this case, the plaintiff's mill was shut down due to a broken crankshaft. The defendant, a carrier, was hired to deliver the crankshaft to an engineer for repair, with the understanding that the delivery would be made quickly. The defendant failed to deliver the crankshaft on time, causing the plaintiff to lose profits. The court held that

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the defendant was not liable for the lost profits, as they were not reasonably foreseeable at the time of contracting.

Jalaluddin v. Radha Kishan (AIR 1960 SC 1150)

In this case, the plaintiff entered into an agreement with the defendant to sell a property. The defendant failed to pay the agreed consideration within the stipulated time. The court held that the defendant had committed a breach of contract, and the plaintiff was entitled to claim damages for the loss suffered due to the breach.

Satyabrata Ghose v. Mugneeram Bangur & Co. (AIR 1954 SC 44)

This case dealt with the doctrine of frustration of contract. The plaintiff entered into a contract with the defendant for the development of a piece of land. However, the land was requisitioned by the government during World War II, making it impossible for the plaintiff to perform the contract. The court held that the contract was frustrated, and the parties were discharged from their obligations under the contract.

Fateh Chand v. Balkishan Das (AIR 1963 SC 1405)

In this case, the plaintiff agreed to sell a property to the defendant. The parties agreed that if the defendant failed to pay the purchase price within the stipulated time, the plaintiff could forfeit a specified amount as liquidated

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damages. The defendant failed to pay the purchase price on time, and the plaintiff sought to forfeit the amount. The court held that the amount of liquidated damages was excessive and reduced it to a reasonable amount.

Illustrations:

A enters into a contract with B to supply 100 units of a particular product within a month. B fails to supply the products within the agreed time. This constitutes a breach of contract, and A can claim damages from B for the loss suffered due to the breach.

A contracts with B to organize an outdoor event at a specific location. Due to unforeseen circumstances, the government prohibits the use of the location for events. This constitutes frustration of the contract, and both parties are discharged from their obligations under the contract.

A contracts with B to construct a building within six months. The contract specifies that if B fails to complete the construction on time, A can claim a large sum as liquidated damages. If B fails to complete the construction on time, the court may reduce the amount of liquidated damages to a reasonable sum if it finds the agreed amount to be excessive.

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4.2 REMEDIES - DAMAGES (KINDS & QUANTUM MERUIT)

When a breach of contract occurs, the aggrieved party is entitled to claim remedies to compensate for the loss suffered due to the breach. One of the primary remedies available is damages. This section will discuss the different kinds of damages and the concept of quantum meruit under the Indian Contract Act, 1872.

Kinds of Damages:

- 1. Ordinary (General) Damages:** These are damages that naturally arise from the breach of contract and are reasonably foreseeable by the parties at the time of contracting. The aim of ordinary damages is to compensate the aggrieved party for the loss suffered and place them in the position they would have been in had the contract been performed.
- 2. Special Damages:** These are damages that arise due to special circumstances that were known to both parties at the time of contracting. Special damages are awarded to compensate the aggrieved party for losses arising from these special circumstances and must be explicitly claimed in the lawsuit.
- 3. Nominal Damages:** These are small sums awarded when there is a breach of contract, but the aggrieved party has suffered no actual loss or

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the loss is negligible. Nominal damages serve to acknowledge the breach and the aggrieved party's right to compensation.

- 4. Liquidated Damages:** These are damages agreed upon by the parties at the time of contracting to be paid in the event of a breach. Liquidated damages serve to provide certainty to the parties and avoid disputes over the amount of damages to be awarded. However, if the agreed-upon amount is considered excessive or penal, the court may reduce it to a reasonable sum.
- 5. Exemplary or Punitive Damages:** Exemplary or punitive damages are rare in breach of contract cases under Indian law. They are usually awarded to punish the defendant for their wrongful conduct and deter others from committing similar breaches. Exemplary damages are more commonly awarded in tort cases, such as defamation, malicious prosecution, or false imprisonment.

Quantum Meruit:

Quantum meruit, which means "as much as is deserved," is a claim for reasonable compensation for work done or services rendered by a party when there is no express contract or when the contract has become void. Under Sections 65 and 70 of the Indian Contract Act, 1872, a party may claim quantum meruit in the following situations:

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1. When a contract becomes void: If a contract becomes void due to impossibility of performance or frustration, and a party has already performed a part of the contract, they can claim compensation on a quantum meruit basis for the work done.
2. When there is no express contract: If a party performs work or renders services for another person, and there is no express contract, but the services are accepted, the performing party can claim compensation on a quantum meruit basis.
3. When a contract is divisible: If a contract can be divided into separate parts, and one party has performed their part of the contract, but the other party fails to perform their part, the performing party can claim compensation on a quantum meruit basis for the part they have performed.

Landmark Judgment

1. **Hadley v. Baxendale (1854) - English Case, followed in India**

In this case, the plaintiff's mill was shut down due to a broken crankshaft. The defendant, a carrier, was hired to deliver the crankshaft to an engineer for repair, with the understanding that the delivery would be made quickly. The defendant failed to deliver the crankshaft on time, causing the plaintiff to lose profits. The court held that the defendant was not liable for the lost profits, as they

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were not reasonably foreseeable at the time of contracting. This case established the rule for determining ordinary (general) damages.

2. Ruxley Electronics and Construction Ltd. v. Forsyth (1995) - English Case, followed in India

In this case, the plaintiff contracted to build a swimming pool with a specified depth for the defendant. The pool was constructed shallower than specified, but there was no actual loss in value or utility. The court awarded nominal damages to the defendant, as there was a breach of contract but no actual loss.

3. Fateh Chand v. Balkishan Das (AIR 1963 SC 1405)

In this case, the plaintiff agreed to sell a property to the defendant. The parties agreed that if the defendant failed to pay the purchase price within the stipulated time, the plaintiff could forfeit a specified amount as liquidated damages. The defendant failed to pay the purchase price on time, and the plaintiff sought to forfeit the amount. The court held that the amount of liquidated damages was excessive and reduced it to a reasonable amount.

4. Planche v. Colburn (1831) - English Case, followed in India

In this case, the plaintiff, an author, was engaged by the defendant to write a book. The defendant canceled the project after the plaintiff had completed a part of the

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work. The court held that the plaintiff could claim compensation on a quantum meruit basis for the work done.

Illustration

- a. A, a software developer, is contracted by B to develop a custom software application. A completes a significant part of the project, but B cancels the project before completion. A can claim compensation on a quantum meruit basis for the work done.
- b. A enters into a contract with B to supply 100 units of a product within a month. B fails to supply the products within the agreed time, causing A to lose profits. A can claim ordinary (general) damages for the loss of profits, as they were reasonably foreseeable at the time of contracting.
- c. A contracts with B to paint a house with a specific brand of paint. B uses a different brand of paint that is of similar quality and price. A can claim nominal damages, as there is a breach of contract but no actual loss.
- d. A contracts with B to construct a building within six months. The contract specifies that if B fails to complete the construction on time, A can claim a large sum as liquidated damages. If B fails to complete the construction on time, the court may reduce the amount of liquidated damages to a

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reasonable sum if it finds the agreed amount to be excessive.



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4.3 QUASI CONTRACT

Quasi contracts, also known as "contracts implied in law," are not actual contracts but rather legal obligations imposed by the court to prevent unjust enrichment. Quasi contracts are not based on the mutual agreement of the parties, as in the case of a true contract, but rather on the principle of equity and justice. Under the Indian Contract Act, 1872, Sections 68 to 72 deal with the concept of quasi contracts.

Situations Giving Rise to Quasi Contracts:

- 1. Supply of Necessaries (Section 68):** If a person, who is legally incapable of entering into a contract (such as a minor or a person of unsound mind), receives necessary goods or services from another person, the latter can claim reimbursement for the cost of the goods or services from the property of the incapable person. The claim is not based on a valid contract but on the principle that the incapable person should not be unjustly enriched at the expense of the person providing the necessaries.
- 2. Payment by an Interested Person (Section 69):** If a person pays a debt on behalf of another person that is legally recoverable and is interested in making the payment (i.e., they would suffer loss if the payment were not made), they can claim reimbursement from the person who was legally bound to pay the debt.

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3. **Obligation to Pay for Non-Gratuitous Acts (Section 70):** If a person lawfully does something for another person, or delivers something to them, without intending to do so gratuitously (i.e., without expecting compensation), and the other person enjoys the benefit of the act or thing, the latter is bound to compensate the former for the act or thing.
4. **Responsibility for Finder of Goods (Section 71):** If a person finds goods that belong to another person and takes them into their custody, they are subject to the same responsibility as a bailee (i.e., a person entrusted with the goods of another). The finder of the goods must take reasonable care of them and return them to the owner if possible. If the owner is not found, the finder may be entitled to compensation for their expenses and trouble.
5. **Liability for Money Paid by Mistake or Coercion (Section 72):** If a person receives money from another person by mistake or under coercion, they are bound to repay the money to the person who paid it. This obligation arises from the principle that the recipient should not be unjustly enriched at the expense of the payer.

Illustration :

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- a. A mistakenly pays an extra amount to B for the goods purchased. B is obliged to return the extra amount paid as a quasi-contractual obligation.
- b. A supplies food to B, a minor, who is living independently. A can claim the cost of the food from B's property as a quasi-contractual obligation.
- c. A, a co-owner of a property, pays the entire property tax to prevent the property from being seized by the authorities. A can claim reimbursement from the other co-owners as a quasi-contractual obligation.
- d. A, a carrier, mistakenly carries the goods of B to their destination, believing the goods to be those of C. If B accepts and benefits from the carriage of the goods, B is obliged to pay A for the service as a quasi-contractual obligation.
- e. A finds a valuable item that belongs to B and takes care of it until B can be located. A is entitled to be compensated for any expenses incurred in caring for the item as a quasi-contractual obligation.

Landmark Judgment:

1. **State of West Bengal v. B.K. Mondal & Sons** (AIR 1962 SC 779)

In this case, the defendant constructed a road for the plaintiff, a state government, without a formal contract.

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The plaintiff used and benefited from the road. The Supreme Court held that the plaintiff was liable to pay the defendant for the work done under a quasi-contractual obligation. The court emphasized that when a person lawfully does something for another person and the latter enjoys the benefit of the act, the latter is bound to compensate the former for the act, even if there is no formal contract between them.

2. Gopal Gas Service v. Indian Oil Corporation (1986)

In this case, the defendant, Indian Oil Corporation, mistakenly paid a higher commission to the plaintiff, a gas distributor, for three years. When the defendant discovered the mistake, it sought to recover the excess payment. The court held that the plaintiff was obliged to return the excess payment under a quasi-contractual obligation, as the plaintiff was unjustly enriched at the expense of the defendant.

3. Mulamchand v. State of Madhya Pradesh (AIR 1968 SC 1218)

In this case, the plaintiff supplied goods to the defendant, a state government, without a valid contract. The defendant accepted and used the goods. The court held that the defendant was liable to pay the plaintiff for the goods supplied under a quasi-contractual obligation. The court reiterated that when a person delivers something to another person without intending to do so gratuitously,

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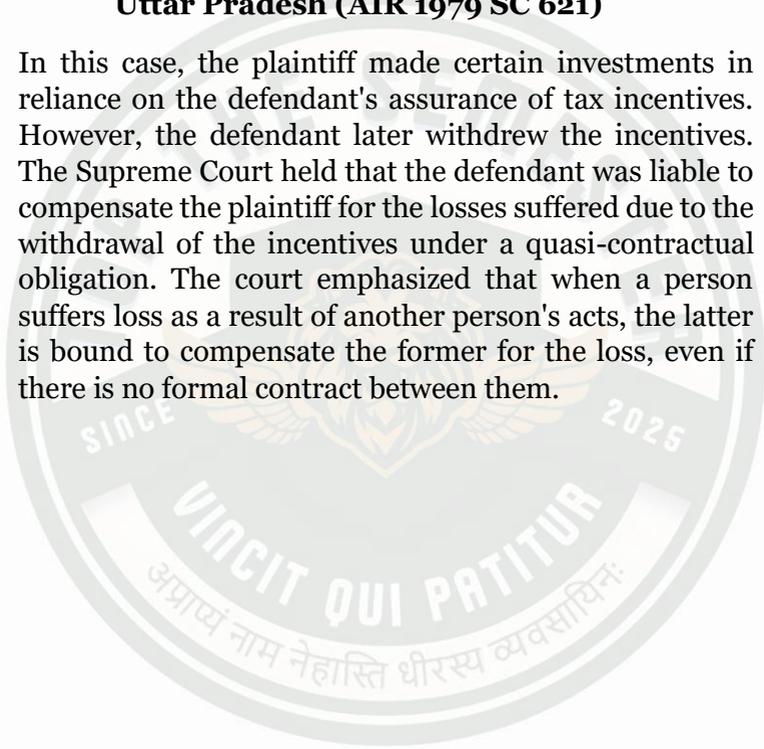
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and the other person enjoys the benefit of the thing, the latter is bound to compensate the former for the thing.

4. **Motilal Padampat Sugar Mills v. State of Uttar Pradesh (AIR 1979 SC 621)**

In this case, the plaintiff made certain investments in reliance on the defendant's assurance of tax incentives. However, the defendant later withdrew the incentives. The Supreme Court held that the defendant was liable to compensate the plaintiff for the losses suffered due to the withdrawal of the incentives under a quasi-contractual obligation. The court emphasized that when a person suffers loss as a result of another person's acts, the latter is bound to compensate the former for the loss, even if there is no formal contract between them.



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REQUIRED CASE READINGS

CASE BRIEFS AND ANALYSIS

1. **CARLILL V. CARBOLIC SMOKE BALL CO. (1893) ALL ER REP. 127**
2. **PHARMACEUTICAL SOCIETY OF GREAT BRITAIN V. BOOTS CASH CHEMIST (SOUTHERN) LTD. (1952) 2 ALL ER REP. 456**
3. **BALFOUR V. BALFOUR (1918-19) ALL ER 860 (CA)**
4. **LALMAN SHUKLA V. GAURI DATT(1913) XL ALJR 489 (ALL.)**
5. **BHAGWANDAS GOVERDHANDAS KEDIA V. M/S. GIRDHARILAL PARSHOTTAM DAS & CO. AIR 1966 SC 543.**
6. **HARVEY V. FACEY (1893) AC 552.**
7. **FELTHOUSE V. BINDLEY (1862) 11 CB 869.**
8. **KEDARNATH BHATTACHARJI V. GORIE MAHOMED (1886) 7 I.D. 64 (CAL.)**
9. **MOHORI BIBEE V. DHARMODAS GHOSE (1903) 30 I.A. 114**
10. **KHAN GUL V. LAKHA SINGH, AIR 1928 LAH. 609**

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1.

CARLILL V. CARBOLIC SMOKE BALL CO.

(1893) ALL ER REP. 127

Facts in Brief

Carbolic Smoke Ball Co. advertised in various newspapers that they would offer £100 to anyone who contracted influenza after using their product (a smoke ball intended to prevent influenza) as directed, for two weeks. This was intended as a guarantee of the efficacy of their product. Mrs. Louisa Carlill purchased the smoke ball and used it as directed, but she contracted influenza. Her husband, on her behalf, claimed the £100 reward, but the company refused to pay. This led Mrs. Carlill to sue the company.

Issues

- a) Whether the advertisement constituted a binding offer.
- b) Whether the conditions stipulated in the advertisement were fulfilled by Mrs. Carlill.
- c) Whether a contract existed without the company being aware of the acceptance by Mrs. Carlill.

Arguments

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For the plaintiff (Mrs. Carlill):

Her counsel argued that the advertisement and the commitment to pay £100 were a clear offer of a unilateral contract (a promise in exchange for an act). The counsel contended that Mrs. Carlill had accepted the offer by fulfilling the conditions (buying the product and using it as directed), and therefore a binding contract existed.

For the defendant (Carbolic Smoke Ball Co.):

The company's counsel argued that the advertisement was a sales puff and could not be turned into a contract. They also contended that there could not be a contract without the intention to create legal relations and that a contract could not exist without their knowledge of its acceptance.

Held

The court ruled in favor of Mrs. Carlill. They held that:

- a) The advertisement was an offer of a unilateral contract to the entire world, and Mrs. Carlill had accepted this offer by performing the conditions mentioned in it (i.e., using the smoke ball as directed).
- b) Mrs. Carlill's use of the smoke ball constituted an implied acceptance of the contract, and it was unnecessary for her to communicate her acceptance to the company for the contract to be binding.

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- c) The offer indicated an intention to create legal relations because it was not a mere sales puff as there was a deposit of £1,000 in the bank to show the company's sincerity in the matter.

Legal principles with relevant sections:

The case established several key principles in Contract Law:

a) *Offer*: An offer can be made to the world at large and can be accepted by anyone who performs the conditions stipulated, thereby creating a contract. This refers to the concept of a unilateral contract.

b) *Acceptance*: It is not always necessary for acceptance to be communicated to the offeror. In the case of unilateral contracts, acceptance is performed by acting on the offeror's terms.

c) *Intention to Create Legal Relations*: An intention to create legal relations can be inferred from the actions of the parties involved. In this case, the company's deposit of £1,000 in the bank to pay potential claimants was evidence of their intention to be legally bound.

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In the context of Indian Law, the sections of the Indian Contract Act, 1872 that align with these principles are:

- Section 2(a) defines a proposal or an offer.
- Section 2(b) outlines acceptance of the proposal.
- Section 10 details what agreements are contracts.

Obiter dictum:

The obiter dictum in a case refers to an observation or remark made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. In *Carlill v. Carbolic Smoke Ball Co.*, the judges made a few significant remarks that have influenced how contract law has been interpreted:

- Lindley LJ mentioned that the contract was not a wagering contract because "the obtaining a policy of insurance is not a speculation".
- Bowen LJ observed that "The person who makes the offer shows by his language and from the nature of the transaction that he does not expect and does not require notice of the acceptance apart from notice of the performance".

Important para from judgement :

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An important paragraph from the judgment given by Lindley LJ is as follows:

"The defendants have contended that it was a bet. I do not think that is so. It is not a gaming or wagering contract. The obtaining a policy of insurance is not a bet... In my judgement, this first point fails, and this was an offer intended to be acted upon, and, when acted upon and the conditions performed, constituted a promise to pay."

Subsequent Impact :

The judgement had significant implications on the development of contract law, specifically regarding general offers, acceptance, and intention to form legal relations. It established a firm basis for understanding how unilateral contracts work. It also influenced the interpretation of similar contract disputes, not only in the UK but also in other common law jurisdictions, including India.

The ruling on acceptance not always needing to be communicated has particularly shaped contract law. Today, many transactions, especially online and digital ones, operate based on these principles – where acceptance of an offer is inferred from the performance of the conditions.

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**PHARMACEUTICAL SOCIETY OF GREAT
BRITAIN V. BOOTS CASH CHEMIST
(SOUTHERN) LTD. (1952) 2 ALL ER REP. 456**

(1893) ALL ER REP. 127

Facts in Brief

Boots Cash Chemists (Southern) Ltd. changed the layout of their store so that customers could select items from the shelves themselves, a self-service arrangement, which was quite innovative at the time. Among the items that were available for self-service were certain drugs which, under the Pharmacy and Poisons Act 1933, could only be sold under the supervision of a registered pharmacist.

The Pharmaceutical Society of Great Britain brought a legal action against Boots, arguing that the display of these drugs constituted an offer to sell, which was unlawful because the offer could be accepted by the customer (by taking the item to the counter) without the supervision of a pharmacist.

Issues

The main issue before the court was to determine when and where the contract of sale occurred in a self-service store. Specifically, the issue was whether the display of an item constituted an offer (as argued by the Pharmaceutical Society) or an invitation to treat (as argued by Boots).

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Arguments

For the plaintiff (Pharmaceutical Society of Great Britain):

They argued that the display of items on the shelf constituted an offer, which the customer accepted by picking up the item and taking it to the checkout counter. As such, this would be a violation of the Pharmacy and Poisons Act as the offer was being accepted without the supervision of a pharmacist.

For the defendant (Boots Cash Chemists):

They argued that the display of items was merely an invitation to treat. The customer, by picking up the item and taking it to the checkout, was making an offer to buy, which the cashier (a registered pharmacist) could then accept or reject. As such, the sale was being conducted under the supervision of a pharmacist, and there was no violation of the law.

Held

The court ruled in favor of Boots, holding that the display of goods was an invitation to treat, not an offer. The customer, by taking the item to the checkout counter, was making an offer to buy. This offer was either accepted or rejected at the cash register, which was supervised by a registered pharmacist, thereby complying with the Pharmacy and Poisons Act.

Legal principles with relevant sections:

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The case essentially revolved around two important principles in Contract Law:

a) *Offer vs Invitation to Treat*: The case clarified the distinction between an offer and an invitation to treat. It stated that the display of goods for sale, whether in a shop window or on the shelves of a self-service store, is ordinarily an invitation to treat. This allows the seller to refuse sale of the item (e.g., if it has already been sold or was mistakenly underpriced).

b) *Acceptance*: The court held that in the context of a self-service store, the customer makes an offer to purchase goods at the checkout counter, which the seller (through the cashier) can then accept or refuse.

Relevant sections from the Indian Contract Act, 1872, which draw similar principles are:

- Section 2(a) defines 'proposal' or 'offer'.
- Section 2(c) explains 'invitation to offer'.
- Section 2(b) outlines 'acceptance'.

Obiter dictum :

While there isn't a specific obiter dictum in this case, there are a few important remarks made by the judges that have been influential:

- Lord Justice Somervell noted, "The customer is physically unable either to consume or to carry away the substance displayed because it is only a

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sample and the customer can do no more than say he wants it... It is then for the chemist to accept that offer or not as he chooses."

Lord Justice Birkett remarked, "The contract is completed at the cash desk... and that the shopkeeper has a final opportunity of deciding whether or not he will serve the customer."

Important para from judgement :

A key paragraph from the judgement given by Lord Justice Somervell is as follows:

"In my judgment, in a case of this kind, the contract is made when the customer presents the goods at the cash desk, and the cashier accepts the offer, which until acceptance the customer is free to withdraw."

Subsequent Impact :

This landmark judgement has had a significant impact on how contract law is applied in the context of retail sales, specifically in self-service stores. It is now generally accepted in many common law jurisdictions, including India, that a display of goods is an invitation to treat, and that the customer makes an offer when they take the item to the cashier, who can accept or reject it.

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3.

BALFOUR V. BALFOUR

(1918-19) ALL ER 860 (CA)

Facts in Brief

Mr. and Mrs. Balfour were a married couple who lived in Ceylon (now Sri Lanka). When they came to England on vacation, Mrs. Balfour fell ill and was advised by a doctor to stay in England. Mr. Balfour had to return to Ceylon due to work. Before he left, he promised to send her £30 per month until she could come back to Ceylon. However, the relationship deteriorated, and Mr. Balfour stopped making the payments. Mrs. Balfour then sued him for breach of contract.

Issues

The primary issue was whether there was a legally enforceable contract between Mr. and Mrs. Balfour. Specifically, the court had to consider whether the agreement made between a husband and wife could be enforced as a contract.

Arguments

For the plaintiff (Mrs. Balfour):

Her counsel argued that there was a contract between the spouses as there was an offer from Mr. Balfour (to send £30 per month) and acceptance from Mrs. Balfour. This, they contended, constituted a binding agreement.

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For the defendant (Mr. Balfour):

The defense argued that agreements between spouses did not have legal force as they lacked the intention to create legal relations, which is a key requirement for the formation of a contract.

Held

The court ruled in favor of Mr. Balfour. The judgement emphasized the lack of intent to create legal relations in agreements between spouses. The court held that Mr. Balfour's promise was not legally enforceable because there was no contract. This was primarily due to the absence of intention to create legal relations, a necessary component for a contract.

Legal Principles with Relevant Sections

The case is centered around the following principle in Contract Law:

a) *Intention to Create Legal Relations*: The court determined that for an agreement to constitute a legally enforceable contract, there must be an intention to create legal relations. This principle was articulated in the context of domestic and social agreements, where the presumption is that such intention is absent.

In Indian law, this principle can be related to Section 10 of the Indian Contract Act, 1872, which explains what agreements are contracts. While the Act does not explicitly state the requirement of an intention to create

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legal relations, this element is inherent in the concept of a contract.

Obiter Dictum

The obiter dictum in a case refers to remarks or observations made by a judge that do not form a part of the necessary reasoning for the decision. In the *Balfour v. Balfour* case, Lord Justice Atkin made the following remark that would become very influential in later cases:

"The small courts of this country would have to be multiplied one hundred fold if these arrangements were held to result in legal obligations enforceable in a court of law."

Important Para from Judgement

A significant paragraph from the judgement by Lord Justice Atkin is as follows:

"The common law does not regulate the form of agreements between spouses. Their promises are not sealed with seals and sealing wax. The consideration for them is not measurable in money and they are not set forth in formal phrases... They are made in amity, grounded on domestic duty and affection, and the common law does not undertake to enforce the performance of such promises."

Subsequent Impact of the Judgement

This case has had a considerable impact on Contract Law, specifically in determining the existence of contracts in

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social and domestic settings. It established the principle that there is a presumption against an intention to create legal relations in domestic and social agreements.



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4.

LALMAN SHUKLA V. GAURI DATT

(1913) XL ALJR 489 (ALL.)

Facts in Brief

Gauri Datt, the defendant, had lost his nephew and sent his servant, Lalman Shukla, the plaintiff, to look for him. After Shukla had left, Datt announced that he would give a reward to anyone who found his nephew. Shukla found the boy and brought him back home, but he was unaware of the reward at the time. After learning about it, Shukla sued Datt to claim the reward.

Issues

The main issue in this case was whether Shukla was entitled to the reward, despite not having knowledge of the offer at the time he found the boy.

Arguments

For the plaintiff (Lalman Shukla):

Shukla argued that he was entitled to the reward because he found the boy and brought him back, fulfilling the conditions stated in the offer. He claimed that his lack of knowledge about the offer at the time he performed the task did not invalidate his claim.

For the defendant (Gauri Datt):

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Datt argued that Shukla was not entitled to the reward because he did not know about the offer when he found the boy. Therefore, he could not have accepted the offer, as acceptance must be made with knowledge and in response to the offer.

Held

The court ruled in favor of Datt, holding that Shukla was not entitled to the reward. The court reasoned that the act of finding the boy could not be construed as acceptance of the offer, as Shukla had no knowledge of the reward at the time. The acceptance of an offer must be made with knowledge of the offer and in response to it.

Legal Principles with Relevant Sections

The primary legal principles illustrated by this case are:

- a) *Knowledge of the Offer*: An offeree must have knowledge of the offer in order to accept it. Without knowledge of the offer, the actions of the offeree do not count as acceptance.
- b) *Communication of Acceptance*: An acceptance must be a conscious and direct response to the offer. It is not valid if it is given without knowledge of the offer.

Relevant sections from the Indian Contract Act, 1872, are:

- Section 2(a) defines 'proposal' or 'offer'.
- Section 2(b) outlines 'acceptance'.

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Obiter Dictum

This case does not specifically include an obiter dictum, which refers to a judge's incidental expression of opinion that is not essential to the decision and does not form part of the ratio decidendi (the court's reasoning for the decision). However, the principles elucidated in the judgement set a significant precedent for subsequent cases.

Important Para from Judgement

The exact wording of the judgement in this case is not readily available, but the core reasoning is encapsulated in the following concept:

"A person cannot accept an offer without having knowledge of it, as acceptance must be made with the intent to accept the offer."

Subsequent Impact of the Judgement

The case of Lalman Shukla v. Gauri Datt has been a significant milestone in contract law as it clarified that an offer must be known to the offeree at the time of acceptance. This case is frequently referred to in Indian jurisprudence and is regularly taught in law schools to illustrate this fundamental principle of contract law.

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**BHAGWANDAS GOVERDHANDAS KEDIA V.
M/S. GIRDHARILAL PARSHOTTAM DAS & CO**

AIR 1966 SC 543.

Facts in Brief

The respondents entered into a contract with the appellants by long-distance telephone. The offer was spoken by the respondent at Ahmedabad and the acceptance was spoken by the appellants at Khamgaon. However, the defendants sold the goods to a third party, after the letter of acceptance was posted but before it was received by the defendants. Alleging breach of the said contract, the respondents filed a suit at Ahmedabad.

Issues

1. Whether the suit as laid by the plaintiff is legally maintainable.
2. Whether the contract was formed at the place of offer or acceptance.
3. Whether the defendants were liable for damages for selling the goods to a third party after the acceptance of the offer but before its receipt.

Arguments

The appellants argued that the contract was formed at the place of acceptance, i.e., Khamgaon, and hence the Ahmedabad court did not have jurisdiction to try the suit. The respondents, on the other hand, contended that the

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contract was formed at the place of offer, i.e., Ahmedabad, and hence the suit was maintainable at Ahmedabad.

Held

The Supreme Court held that the defendants were liable for damages. The court found that the contract was formed at the place of acceptance, i.e., Khamgaon, and not at the place of offer. However, the court also held that the suit was maintainable at Ahmedabad as the defendants had committed a breach of contract by selling the goods to a third party after the acceptance of the offer but before its receipt. The court observed that the acceptance of an offer and intimation of that acceptance result in a contract, and the offeror is deemed to be making the offer continuously till the offer reaches the offeree.

Legal principles with relevant sections

The case primarily dealt with the principles of contract formation, specifically the communication of acceptance in the context of telephonic conversations. The court referred to Section 4 of the Indian Contract Act, 1872, which states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor (Page 18).

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Obiter dictum

The court made several observations that were not directly related to the decision but provided valuable insights. For instance, the court noted that it is possible today not only to speak on the telephone but also to record the spoken words on a tape, making it easy to prove that a particular conversation took place (Page 19). The court also observed that telephones now have television added to them, and the rule about lost letters of acceptance was made out of expediency because it was easier in commercial circles to prove the dispatch of the letters but very difficult to disprove a statement that the letter was not received (Page 20).

Important para from judgement

The court concluded that the contract was complete at Khamgaon, the place where the acceptance was spoken. The court stated, "Regard being had to the words of our statute I am compelled to hold that the contract was complete at Khamgaon. It may be pointed out that the same result obtains in the Conflict of laws as understood in America and quite a number of other countries such as Canada, France, etc. also apply the rule which I have enunciated above even though there is no compulsion of any statute. I have, therefore, less hesitation in propounding the view which I have attempted to set down here" (Page 20).

Subsequent Impact of the judgement

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The judgement in this case has had a significant impact on the understanding and interpretation of contract law, particularly in the context of telephonic conversations. It clarified the legal position regarding the completion of a contract in cases where the offer and acceptance are communicated over the phone. The court's decision that the contract is complete at the place where the acceptance is spoken has influenced subsequent rulings and is now a well-established principle in Indian contract law. The judgement also highlighted the need to adapt legal principles to technological advancements, such as the ability to record telephone conversations.

6.

HARVEY V. FACEY

(1893) AC 552.

Facts in Brief

In this case, the appellant, Harvey, sent a telegram to the respondent, Facey, who was in negotiation with the mayor and council of Kingston (Jamaica) for the sale of his property. The telegram was as follows: "Will you sell us Bumper Hall Pen? Telegraph lowest cash price." Facey responded via telegram, saying: "Lowest price for Bumper Hall Pen is £900."

Believing they had a valid contract, Harvey sought to enforce the sale of Bumper Hall Pen at the stated price of

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£900. When Facey refused to sell the property, Harvey brought an action against him for specific performance.

Issues

The main issue was whether Facey's telegram response constituted an offer that could form the basis of a contract.

Arguments

For the plaintiff (Harvey):

Harvey argued that Facey's telegram stating the price was an offer to sell, which Harvey had accepted by his conduct of treating the contract as binding.

For the defendant (Facey):

Facey countered that his telegram was merely a statement of the lowest price he would accept and not an offer to sell. Therefore, there was no offer and acceptance, and hence no contract.

Held

The court ruled in favour of Facey, holding that no contract existed. The Privy Council determined that Facey's telegram was not an offer but rather an answer to a question about the lowest price. Therefore, it could not be accepted to form a contract.

Legal Principles with Relevant Sections

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The core principles that underlie this case are:

a) *Definition of an Offer*: An offer must indicate a willingness to be bound once it is accepted. A mere statement of price does not constitute an offer.

b) *Acceptance and Formation of Contract*: A contract is formed when an offer is accepted. If there is no clear offer, there cannot be an acceptance, and hence, no contract can be formed.

These principles relate to Sections 2(a) and 2(b) of the Indian Contract Act, 1872.

Obiter Dictum

While the case doesn't contain a traditional obiter dictum, it does emphasize the critical principle that providing information isn't the same as making an offer. This has influenced subsequent cases where the distinction between an offer and a mere statement of fact or information has been in question.

Important Para from Judgement

An important part of the judgement reads:

"Their Lordships think that the judges of the courts below were right in holding that the answer of the respondent, 'Lowest price for Bumper Hall Pen £900,' was not an offer to sell it at that price, but a mere answer to the inquiry contained in the message of the appellants, and did not form an offer which, on acceptance, would bind the respondent to sell."

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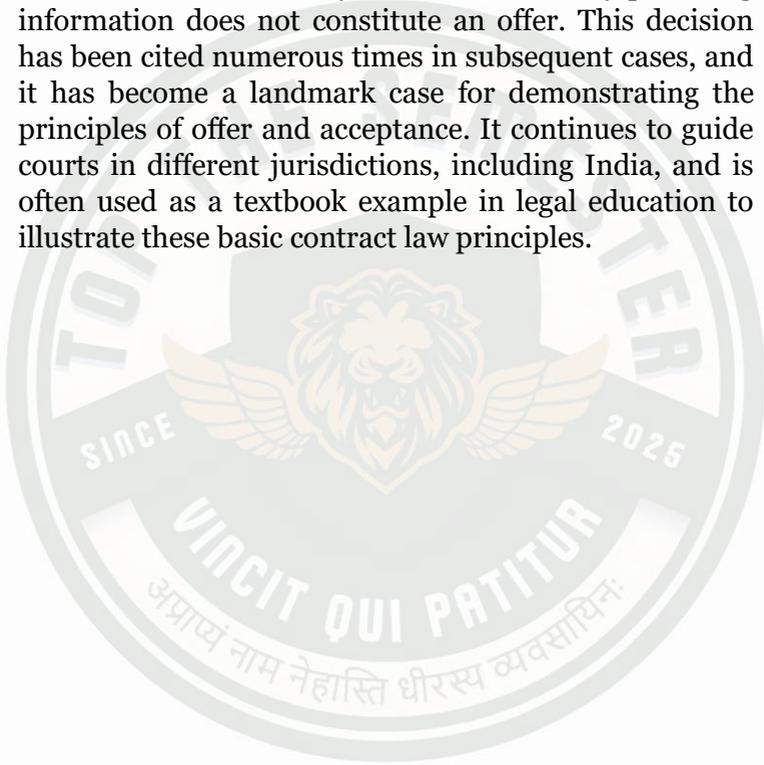
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Subsequent Impact of the Judgement

The case of Harvey v. Facey has had significant influence on contract law. It clearly defined that merely providing information does not constitute an offer. This decision has been cited numerous times in subsequent cases, and it has become a landmark case for demonstrating the principles of offer and acceptance. It continues to guide courts in different jurisdictions, including India, and is often used as a textbook example in legal education to illustrate these basic contract law principles.



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7.

FELTHOUSE V. BINDLEY

(1862) 11 CB 869.

Facts in Brief

The case involves two primary parties: Paul Felthouse, a London-based uncle, and John Felthouse, his nephew who resided in the countryside. Paul was interested in buying a horse from John. During their correspondence, Paul sent a letter stating that if he didn't hear otherwise, he would consider the horse his at £30. He received no reply from John.

John intended to sell the horse at an auction run by Bindley. However, he told Bindley not to sell the particular horse as he had already sold it to his uncle. Despite this, Bindley mistakenly sold the horse during the auction.

When Paul learned about the auction, he sued Bindley for conversion (unauthorized dealing with goods to the exclusion of the rights of the true owner).

Issues

The main issue in this case was whether a valid contract existed between Paul and John. Specifically, whether silence from John constituted acceptance of Paul's offer.

Arguments

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For the plaintiff (Paul Felthouse):

Paul argued that his letter constituted an offer, and John's silence and subsequent actions (informing Bindley not to sell the horse) indicated acceptance, thereby creating a valid contract.

For the defendant (Bindley):

Bindley contended that there was no contract because acceptance of the offer was not clearly communicated by John to Paul, and silence should not be taken as acceptance.

Held

The court held in favor of Bindley, deciding that there was no valid contract between Paul and John. The court reasoned that silence does not amount to acceptance, and acceptance must be communicated clearly. Thus, Bindley could not be held liable for conversion as the horse was not, in fact, Paul's property.

Legal Principles with Relevant Sections

The key legal principles derived from this case are:

- a) *Communication of Acceptance*: Acceptance of an offer must be communicated to the offeror to form a valid contract. Silence does not constitute acceptance.
- b) *Formation of Contract*: For a contract to be formed, there must be a clear offer and acceptance. Without communication of acceptance, no contract exists.

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These principles directly align with Sections 2(a) and 2(b) of the Indian Contract Act, 1872.

Obiter Dictum

While the case does not explicitly contain an obiter dictum, it emphasizes the vital principle that silence does not amount to acceptance. This has shaped subsequent cases where the validity of acceptance was questioned.

Important Para from Judgement

A central part of the judgement is the following:

"...There never was a completed agreement; there never was a promise by the uncle to buy and by the nephew to sell, and therefore the agreement is not binding."

Subsequent Impact of the Judgement

The judgement in *Felthouse v. Bindley* has played a significant role in shaping contract law, particularly with respect to the principles of offer and acceptance. The ruling emphasized that acceptance must be clearly communicated to form a valid contract, thereby influencing jurisprudence across multiple jurisdictions, including India.

The case is regularly referred to in legal cases and academic discussions around the formation of contracts and is a vital part of law curricula. Its emphasis on the clear communication of acceptance has guided the interpretation and application of contract law, ensuring the consistent and fair enforcement of agreements.

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8.

KEDARNATH BHATTACHARJI V. GORIE
MAHOMED

(1886) 7 I.D. 64 (CAL.)

Facts in Brief

The plaintiff, Kedarnath Bhattacharji, was a Municipal Commissioner of Howrah and one of the trustees of the Howrah Town Hall Fund. The trustees had planned to build a Town Hall in Howrah, provided they could raise the necessary funds. They started collecting subscriptions for this purpose. As the subscription list grew, the plans for the building also expanded, and the original cost of Rs. 26,000 swelled up to Rs. 40,000. The trustees, including the plaintiff, remained liable to the contractor for the entire cost, as the additions to the building were made with their sanction. The defendant, Gorie Mahomed, had subscribed Rs. 100 to the fund. The plaintiff sued to recover the amount of the subscription from the defendant.

Issues

1. Whether the suit as laid by the plaintiff is legally maintainable.
2. Whether the trustees are entitled to judgment based on the facts stated in the reference.

Arguments

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The plaintiff argued that as one of the persons who made himself liable under the contract to the contractor for the cost of the building, he should be able to sue, on behalf of himself and all those in the same interest with him, to recover the amount of the subscription from the defendant.

The defendant's arguments are not explicitly stated in the provided text, but it can be inferred that the defendant may have contested the enforceability of the subscription as a contract.

Held

The court held in favor of the plaintiff. The court found that the plaintiff could sue on behalf of himself and others jointly interested with him under the provisions of the Code of Civil Procedure. The court also found that the subscription constituted a valid contract. The subscribers were aware of the purpose of the subscription and knew that an obligation was being incurred to pay the contractor for the work. The court held that the subscription constituted a valid contract that could be enforced by the persons to whom the liability was incurred. The court answered both questions in the affirmative and ordered the Judge of the Small Cause Court to decree the suit for the amount claimed. The plaintiff was also awarded costs, including the costs of the hearing.

Legal Principles with Relevant Sections

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The legal principles that can be derived from this case revolve around the enforceability of contracts and the rights of parties to sue for their enforcement. The court relied on the provisions of the Code of Civil Procedure to determine that the plaintiff could sue on behalf of himself and others jointly interested with him. The court also found that the subscription constituted a valid contract. The subscribers were aware of the purpose of the subscription and knew that an obligation was being incurred to pay the contractor for the work. The court held that the subscription constituted a valid contract that could be enforced by the persons to whom the liability was incurred. The relevant sections of the Code of Civil Procedure are not explicitly mentioned in the provided text.

Obiter Dictum

The court made a general observation that there are many instances where subscriptions cannot be recovered. For instance, when a person subscribes to a charitable object, the amount of his subscription cannot be recovered from him because there is no consideration. This observation, while not directly related to the decision in the case, provides a broader context for understanding the court's reasoning.

Important Para from Judgement

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One of the most important paragraphs from the judgement is as follows:

"In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe my name. That is a perfectly valid contract and for good consideration; it contains all the essential elements of a contract which can be enforced in law by the persons to whom the liability is incurred. In our opinion, that is the case here, and therefore we think that both questions must be answered in the affirmative, because, as I have already said, we think that there is a contract for good consideration, which can be enforced by the proper party, and we think that the plaintiff can enforce it, because he can sue on behalf of himself and all persons in the same interest, and, therefore, we answer both questions in the affirmative, and we consider that the Judge of the Small Cause Court ought to decree the suit for the amount claimed, and we also think that the plaintiff ought to get his costs including the costs of this hearing."

Subsequent Impact of the Judgement

The judgement in *Kedarnath Bhattacharji v. Gorie Mahomed* set a precedent for the enforceability of contracts arising from subscriptions, particularly in the context of public works and fundraising. It clarified the legal position that a subscription can constitute a valid contract when the subscriber is aware of the purpose of the subscription and knows that an obligation is being

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incurred. This has implications for fundraising efforts, particularly for public works, where subscriptions are often used to raise funds. It also clarified the rights of parties to sue for the enforcement of such contracts. This judgement has likely influenced subsequent cases involving similar issues.



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9.

MOHORI BIBEE V. DHARMODAS GHOSE

(1903) 30 I.A. 114

Facts in Brief

The case involved a minor, Dharmodas Ghose, who owned a property and mortgaged it to Brahma Dutt, a money lender who was represented by his attorney, Kedar Nath. The attorney, on behalf of Brahma Dutt, gave a loan of Rs. 20,000 to Dharmodas Ghose, keeping his property as a security interest.

However, Dharmodas was a minor at the time of this transaction. His mother, Mohori Bibee, sued on his behalf to set aside the mortgage.

Issues

The primary issue in this case was whether a contract with a minor is valid and whether the minor could be asked to repay the money.

Arguments

For the plaintiff (Mohori Bibee and Dharmodas Ghose):

It was argued that Dharmodas was a minor at the time of the contract, which, according to the Indian Contract Act, 1872, makes the agreement null and void. Therefore, he should not be held liable for the mortgage, and the mortgage should be set aside.

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For the defendant (Brahmo Dutt):

It was contended that Dharmodas should repay the amount since he had fraudulently represented himself as of age at the time of contract. Even if the contract was void, Dharmodas should return the loan on the grounds of restitution.

Held

The Privy Council held that a contract with a minor is void ab initio (from the beginning), not merely voidable. Dharmodas, being a minor, was incapable of entering a contract under the Indian Contract Act, 1872. Thus, the mortgage was set aside. The council also ruled that there is no obligation on the minor (Dharmodas) to repay the money. The court held that a minor's contract cannot be validated by any means, even if the minor has misrepresented his age.

Legal Principles with Relevant Sections

The key legal principles derived from this case are:

- a) *Capacity to Contract*: Minors are incapable of entering into a contract, as per Section 11 of the Indian Contract Act, 1872. Any contract with a minor is void-ab-initio (from the beginning).
- b) *Restitution*: A minor is not required to repay any benefit received under a void contract, as per the common law doctrine of restitution.

Obiter Dictum

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In this case, the court remarked: "A minor's contract cannot be ratified by the minor on attaining majority." Although not directly related to the issue at hand, this remark clarified that a minor's contract remains void even if the minor intends to ratify it upon reaching the age of majority.

Important Para from Judgement

A significant part of the judgement is the following:

"The only question, therefore, in this case is whether such a suit as this is maintainable where both parties are in pari delicto [equally at fault]. It appears to their Lordships that it is not necessary to invoke the aid of Section 64 or Section 65 of the Contract Act, because they are of opinion that the minor's right to set aside his contract is in no case affected by the fact that he has derived some benefit from the contract."

Subsequent Impact of the Judgement

This judgement has significantly impacted the understanding and implementation of contract law in India, especially concerning contracts with minors.

It clarified the legal position that minors are not competent to contract, and any agreement with a minor is void ab initio, providing a clear guideline for future cases involving a similar dispute. It also clarified that minors are under no obligation to return any benefit received under a void contract, reinforcing the protective stance of the law towards minors.

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10.

KHAN GUL V. LAKHA SINGH

AIR 1928 LAH. 609

Facts in Brief

The plaintiff, Khan Gul, and the defendant, Lakha Singh, were neighboring landowners. A wall separated their properties. One day, Lakha Singh attached an overhanging spout to the wall, causing rainwater to flow into Khan Gul's property. Khan Gul took offense to this and brought the matter to court, seeking a mandatory injunction to remove the spout.

Issues

The main issue was whether the defendant, by attaching the spout to the wall, violated the plaintiff's rights to enjoy his property without interference, thus necessitating an injunction.

Arguments

For the plaintiff (Khan Gul):

The argument was that the defendant's actions were causing direct harm to his property as the spout channeled rainwater, which eroded the plaintiff's land and made it marshy. This interference with his property rights was unlawful, so he sought a mandatory injunction requiring the defendant to remove the spout.

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For the defendant (Lakha Singh):

The defense argued that there was no significant damage to the plaintiff's property. The spout was installed on his property (the wall), and the small amount of rainwater channeled onto the plaintiff's property did not constitute a significant harm or nuisance.

Held

The court held in favor of Khan Gul. They ruled that the spout constituted an actionable nuisance because it caused direct harm to the plaintiff's property. The defendant, Lakha Singh, was ordered to remove the spout.

Legal Principles with Relevant Sections

The Khan Gul v. Lakha Singh case hinges primarily on the principle of nuisance under tort law. The legal principles derived from this case are:

- a) *Nuisance*: This principle, based on common law, states that any unwarranted, unlawful, or unreasonable interference with an individual's right to use and enjoy his property constitutes a nuisance.
- b) *Right to Enjoyment of Property*: The right to enjoy one's property without interference is a basic tenet of property law. This case reinforced the fact that this right is protected and any substantial interference, even by a neighboring landowner, could be actionable.

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Unfortunately, I couldn't find specific sections of Indian legislation that were used in this case, possibly due to the age of the case and limited availability of the full judgement text.

Obiter Dictum

An obiter dictum (or "said in passing") is a judge's incidental expression of opinion, not essential to the decision and not establishing precedent. Unfortunately, without access to the full judgement text of Khan Gul v. Lakha Singh, it's challenging to provide an accurate obiter dictum from this case.

Important Para from Judgement

Again, as the full judgment text is not readily available, it's difficult to provide a verbatim quote from the case. However, a key takeaway from the case's holding would be:

"The defendant's installation of the spout and the subsequent diversion of rainwater constitute an actionable nuisance due to the harm caused to the plaintiff's property. Therefore, the defendant is ordered to remove the spout."

Subsequent Impact of the Judgement

This case is significant in setting a precedent in matters related to property law and the doctrine of nuisance in Indian jurisprudence. It emphasized the principle of the

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right to enjoy one's property without substantial interference.

The case continues to be referenced in modern cases involving property disputes and nuisance, asserting an individual's right to seek legal remedy in cases of property interference. It underscores the judiciary's role in maintaining the balance between individual property rights and neighborly conduct in property matters.



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PREVIOUS YEAR QUESTION PAPERS (PYQs) SOLUTIONS

PAPER 1

PART A

**QUESTION 1: WRITE SHORT NOTES ON THE
FOLLOWING:**

QUESTION 1: CONTINGENT CONTRACTS

A contingent contract, under Indian law, is defined in **Section 31** of the **Indian Contract Act, 1872**. It's defined as a contract to do or not do something, if some event, collateral to such contract, does or does not happen.

In simpler terms, contingent contracts are those contracts where the promisor performs his obligation only when a certain event, which is not under the control of any party, occurs or does not occur.

Essential Elements of a Contingent Contract

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There are specific characteristics or conditions that must be met for a contract to be classified as a contingent contract:

1. **Performance is Conditional:** Performance under the contract is contingent upon the occurrence or non-occurrence of a future uncertain event.
2. **Event Must Be Uncertain:** The event on which the contract is contingent must be of uncertain nature.
3. **Event Must Not Be at the Sole Will of the Promisor:** The event that forms the basis of a contingent contract cannot be at the sole will of the promisor.

Types of Contingent Contracts

Contingent contracts can be broadly classified into five categories:

1. **Contracts Contingent on the Happening of a Future Uncertain Event:** These contracts are executed when an uncertain future event occurs.
2. **Contracts Contingent on the Non-Happening of a Future Uncertain Event:** These contracts are executed when an uncertain future event does not occur.
3. **Contracts Contingent on the Future Conduct of a Living Person:** These are the

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contracts that are dependent on how a person will act in the future.

4. **Contracts Contingent on an Event Happening within a Fixed Time:** These contracts must be executed if a specified event happens within a particular time.
5. **Contracts Contingent on an Event Not Happening within a Fixed Time:** These contracts must be executed if a specified event does not happen within a certain time.

Enforceability of Contingent Contracts

According to **Sections 32 and 33** of the Indian Contract Act, 1872, the enforcement of a contingent contract depends on the happening or non-happening of an event. The contract becomes void if the event becomes impossible or the event does not occur or the event does not occur within the stipulated time.

Noteworthy Case Laws

One of the landmark cases is **Ram Mehar vs. The State of Haryana (AIR 1987 SC 967)**. In this case, it was held that a contingent contract is enforceable by law when the conditions mentioned in the contract are met.

QUESTION 2: GENERAL OFFER

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A general offer, as per the Indian Contract Act, 1872, is an offer made to the public at large. It is not specific to any person and can be accepted by anyone by fulfilling the conditions of the offer.

Essential Elements of a General Offer

The essential elements of a general offer include:

1. **Made to Public at Large:** A general offer is not directed towards any specific person or group of persons. It is made to the public at large.
2. **Intention to Create Legal Relations:** The person making the offer (the offeror) must have the intention to create legal relations.
3. **Unconditional Acceptance:** The offer must be accepted without any new conditions, alterations, or modifications.

Legal Enforceability of a General Offer

A general offer, like any other offer, becomes a promise when it is accepted. According to **Section 8** of the Indian Contract Act, 1872, a proposal, when accepted, becomes a promise.

Noteworthy Case Laws

The landmark case of **Carlill v. Carbolic Smoke Ball Company [1893] 1 QB 256**, although not an Indian case, is universally relevant in the understanding of general offers. The company, in this case, issued an

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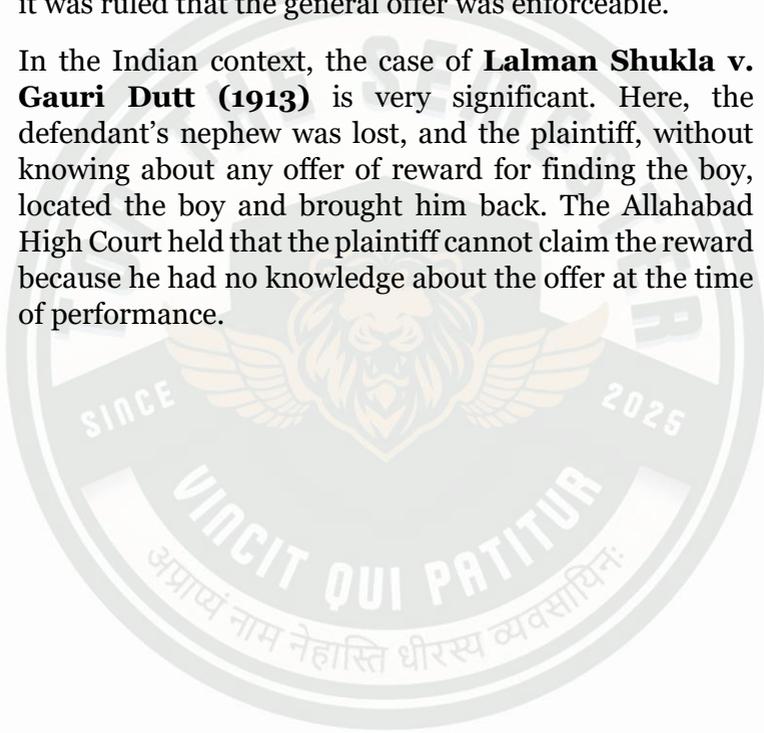
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advertisement offering a reward to anyone who contracted influenza after using their product, the 'smoke ball'. Mrs. Carlill, having used the smoke ball and still contracting influenza, successfully claimed the reward as it was ruled that the general offer was enforceable.

In the Indian context, the case of **Lalman Shukla v. Gauri Dutt (1913)** is very significant. Here, the defendant's nephew was lost, and the plaintiff, without knowing about any offer of reward for finding the boy, located the boy and brought him back. The Allahabad High Court held that the plaintiff cannot claim the reward because he had no knowledge about the offer at the time of performance.



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QUESTION 3: PRIVACY OF CONTRACT

The doctrine of privity of contract under Indian Contract law signifies that only parties to a contract can sue or be sued based on it. The principle is encapsulated in **Section 2(h)** of the **Indian Contract Act, 1872**, which defines a contract as an agreement enforceable by law.

Essential Elements of Privity of Contract

The essential elements of the doctrine of privity of contract are:

1. **Parties to the Contract:** Only the parties to the contract can claim rights or will be liable under it.
2. **Consideration:** A stranger to the consideration cannot enforce a contract even if it was made for his benefit.

Exceptions to Privity of Contract

While the doctrine of privity of contract is generally upheld, there are a few exceptions:

1. **Trust or Charge:** If a contract creates a trust or charge in favor of a third party, they can enforce their rights without being a party to the contract.
2. **Family Arrangements and Marriage Contracts:** If a contract is made for the benefit of a person as part of a family arrangement or marriage contract, the beneficiary can enforce the contract.

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3. **Acknowledgement or Estoppel:** A person who acknowledges the receipt of money paid by a third party for his benefit can't deny the obligation to the third party.
4. **Contracts with a Company:** A company, even though it wasn't in existence at the time of the contract, can sue or be sued on the contract if it had been entered into for its benefit.

Noteworthy Case Laws

A key case that shed light on this doctrine was the English case of **Tweddle v. Atkinson [1861] EWHC J57**. It established the rule that a contract cannot be enforced by a person who is not a party to it, even if the contract is made for his benefit.

An Indian case that is often referred to is **Dunlop Pneumatic Tyre Co. Ltd v. Selfridge & Co. Ltd**. In this case, it was held that a person who is not a party to a contract cannot sue upon it even if the contract is avowedly made for his benefit.

QUESTION 4: FREE CONSENT

Free consent is one of the foundational elements of a valid contract as per the **Indian Contract Act, 1872**. It's defined in **Section 14** of the Act.

Essential Elements of Free Consent

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For consent to be considered 'free', it must meet the following conditions:

1. **Given Voluntarily:** The consent must be given voluntarily and not under compulsion.
2. **Party Must Be of Sound Mind:** The party giving consent must be capable of understanding the terms and consequences of the contract.
3. **Not Caused by Coercion, Undue Influence, Fraud, Misrepresentation, or Mistake:** As per Section 14, if consent to an agreement is caused by any of these factors, it is not considered free consent.

Impact of Absence of Free Consent

If a contract is entered into without free consent, it can be set aside by the party whose consent was not free. However, if such consent was caused by the misunderstanding or unilateral mistake of a party, the contract cannot be deemed void.

Noteworthy Case Laws

In the case of **Raghunath Prasad v Sarju Prasad AIR 1924 PC 60**, it was held that if the consent of the party is obtained by coercion, undue influence, fraud, or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

In **Imperial Loan Company v Stone [1892] 1 QB 599**, it was emphasized that for a contract to be valid, it

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is necessary that there be free and genuine consent of the parties.



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QUESTION 5: DAMAGES

In the realm of the law of contracts, 'damages' are a form of compensation that a party can claim if the other party breaches the contract. The idea is to compensate the aggrieved party for the loss or injury suffered as a result of the breach.

Section 73 and Section 74 of the **Indian Contract Act, 1872** outline the rules for ascertaining damages in cases of breach of contract.

Types of Damages

There are different types of damages awarded under contract law:

1. **Ordinary Damages:** They are also known as general damages or compensatory damages and are awarded to compensate the loss that naturally arises in the usual course of things from the breach of contract.
2. **Special Damages:** These are awarded for the loss arising due to special circumstances, which were in the knowledge of the parties at the time of the contract.
3. **Exemplary or Punitive Damages:** These damages are meant to punish the breaching party and are generally not awarded in cases of breach of contract, except in cases of breach of a contract to marry.

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4. **Nominal Damages:** These are awarded when the breach has caused no actual loss to the party.
5. **Liquidated Damages and Penalty:** These are pre-estimated damages decided upon by the parties at the time of the contract.

Noteworthy Case Laws

A key case in understanding damages is **Hadley v. Baxendale (1854) 9 Exch 341**. Although an English case, it is used as a precedent in India as well. The court held that damages resulting from a breach of contract should arise naturally, i.e., according to the usual course of things from such a breach, or such damages should have been in the contemplation of both parties at the time they made the contract.

In the Indian context, **Fateh Chand v. Balkishan Das AIR 1963 SC 1405** is significant where the Supreme Court held that whether or not the stipulated sum is a penalty is a question of law, and in case of doubt, the sum stipulated is treated as penalty.

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PART B

Q. "ALL CONTRACTS ARE AGREEMENTS BUT ALL AGREEMENTS ARE NOT CONTRACTS". COMMENT.

This statement forms the very basis of the Indian Contract Act, 1872, encapsulating the fundamental essence of what constitutes a contract. To elaborate on this statement, we need to understand the definitions and differences between an 'agreement' and a 'contract'.

Agreement

An agreement, as defined in **Section 2(e)** of the Indian Contract Act, 1872, is 'every promise and every set of promises, forming the consideration for each other'. An agreement occurs when one party makes a proposal or offer, and the other party accepts the proposal. It is the confluence of two minds, i.e., 'consensus-ad-idem', which means

agreeing upon the same thing in the same sense.

Contract

On the other hand, a contract, as defined in **Section 2(h)** of the Act, is an agreement enforceable by law. Hence, the definition itself implies that while every contract is an agreement, an agreement doesn't become a contract unless it is enforceable by law.

Essential Elements of a Contract

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Certain requirements, listed in **Section 10** of the Indian Contract Act, 1872, must be fulfilled for an agreement to qualify as a contract. These include:

1. **Free Consent:** The parties to the contract must mutually agree upon the same thing in the same sense, without any influence, misrepresentation, or fraud.
2. **Lawful Object and Consideration:** The agreement must not be for an illegal purpose or against public policy. Also, the agreement must be supported by lawful consideration.
3. **Capacity to Contract:** Parties to the agreement must be competent to contract. They should be of sound mind, of legal age, and not disqualified from contracting by any law.
4. **Intention to Create Legal Obligations:** Parties must intend to create a legal relationship.
5. **Certainty and Possibility of Performance:** The terms of the agreement must be certain and not vague. The performance of the agreement should also be possible.
6. **Not Expressly Declared Void:** The agreement must not have been expressly declared void by any law in force in the country.

Agreements that are not Contracts

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There are certain types of agreements that, although satisfying the definition of an agreement, fail to meet one or more of the above criteria, and hence, do not qualify as contracts. These include:

1. **Social or Domestic Agreements:** Agreements that are social or domestic in nature generally do not create legal relations and hence, are not contracts. For example, an invitation to a party is an agreement but not a contract as it does not intend to create legal relations.
2. **Agreements Lacking Consideration:** According to **Section 25** of the Indian Contract Act, an agreement without consideration is void unless it falls under certain exceptions provided by the Act.
3. **Agreements with Unlawful Consideration or Object:** As per **Section 23**, if an agreement has an unlawful consideration or object, it is not enforceable by law and hence, is not a contract.
4. **Void Agreements:** Certain agreements are declared void by the Act, such as agreements by incompetent parties, agreements under mutual mistake, agreements under coercion, fraud, or misrepresentation.

Noteworthy Case Laws

In the case of **Balfour v Balfour [1919] 2 KB 571**, the court held that agreements of a social or domestic nature

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do not contemplate legal relations, and as such cannot give rise to a contract. Conversely, in the case of **Merritt v Merritt [1970] 1 WLR 1211**, the court found that even within domestic settings, if it can be proven that the parties intended to create legal obligations, the agreement can be considered a contract.

In **Carlill v. Carbolic Smoke Ball Co. [1893] 1 QB 256**, the court held that the company's promise was not a mere sales puff and could be turned into a contract by anyone who performed the conditions stated in the advertisement. This case also exemplifies that agreements with an intention to create legal relations can form a contract.

In **Curie v. Misa (1875) LR 10 Ex 153**, the court defined consideration and established that for an agreement to become a contract, it must be supported by consideration unless specifically exempted by law.

Similarly, the case of **Harvey v. Facey [1893] AC 552** clarified that a mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry.

Q. WHAT IS AN OFFER? WHEN IS IT COMPLETE? DISTINGUISH BETWEEN SPECIFIC AND GENERAL OFFER WITH HELP OF RELEVANT CASE LAWS.

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An 'offer' forms the basis of a contract and is the starting point of any contractual relationship. It sets the foundation for the coming into existence of an agreement, and subsequently, a contract.

Definition and Essentials of an Offer

Section 2(a) of the Indian Contract Act, 1872 defines an offer (also known as a proposal) as, "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

The key elements that constitute an offer are:

1. **Expression of Willingness:** There must be a clear expression of willingness to do or not to do something.
2. **Intention to Obtain Assent:** The offer should be made with an intention to obtain the assent of the other party.
3. **Communication:** The offer must be communicated to the offeree.

Completion of an Offer

An offer is complete when it is communicated to the offeree by the offeror. Unless the offer is communicated,

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it cannot be accepted. Thus, an offer is complete when it comes to the knowledge of the person to whom it is made.

Specific Offer versus General Offer

A **specific offer** is made to a specific person or group of persons. Only the person(s) to whom the offer is made can accept it. For example, A says to B, "I will sell you my car for Rs. 5 lakhs". This is a specific offer as it is made to B only.

On the other hand, a **general offer** is made to the public at large, and anyone who comes to know of the offer can accept it by complying with the terms of the offer.

Noteworthy Case Laws

The case of **Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256** is a seminal case that explains the concept of a general offer. The Carbolic Smoke Ball Company made a general offer to the public, stating that it would pay £100 to anyone who contracted influenza after using its smoke ball. Mrs. Carlill used the smoke ball, contracted influenza, and claimed the £100. The court held that the offer was made to the whole world and that Mrs. Carlill had accepted the offer by performing the condition, i.e., by using the smoke ball. Hence, there was a valid contract, and the company was liable to pay her the promised sum.

In contrast, the case of **Lalman Shukla v Gauri Dutt (1913)** showcases a specific offer. Gauri Dutt's nephew went missing, and he sent his servant Lalman Shukla to

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find him. While Lalman was away searching, Gauri Dutt announced a reward for finding his nephew. Lalman found the boy without knowledge of the reward. The court held that Lalman could not claim the reward as he was not aware of the offer at the time of performance.

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Q. WHO ARE THE PARTIES COMPETENT TO CONTRACT? WHAT IS THE LEGAL POSITION OF THE AGREEMENT MADE BY AN INCOMPETENT PERSON IN INDIA?

Parties Competent to Contract

The Indian Contract Act, 1872, under Section 11, defines 'competent persons' as those who are eligible to enter into a contract. According to this section, every person is competent to contract who:

1. **Is of the age of majority:** In India, as per the Indian Majority Act, 1875, the age of majority is 18 years.
2. **Is of sound mind:** A person is said to be of sound mind for the purpose of making a contract if, at the time he makes it, he is capable of understanding it and forming a rational judgment about its effect upon his interests.
3. **Is not disqualified from contracting by any law to which he is subject:** Certain individuals and bodies are barred from entering into a contract by specific laws, such as insolvents, alien enemies, corporations, etc.

Legal Position of the Agreement Made by an Incompetent Person in India

If a person not competent to contract, as defined in Section 11, enters into a contract, such a contract is void

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ab initio (void from the beginning) as per Section 10 of the Act. The reasoning behind this is to protect those who are incapable of protecting their own interests due to their lack of capacity.

1. **Agreement with a Minor:** As per the case of **Mohori Bibee v. Dharmodas Ghose (1903) 30 IA 114**, any agreement with a minor is void ab initio. A minor is not competent to contract, and he cannot be a party to a contract, except for the necessities of life supplied to him which he is legally bound to pay for.
2. **Agreement with a Person of Unsound Mind:** If a person is of unsound mind, he is considered incompetent to contract. As per Section 12 of the Act, a person is said to be of unsound mind for the purpose of making a contract if, at the time when he makes it, he is incapable of understanding it and forming a rational judgment as to its effect upon his interests.
3. **Agreement with Disqualified Persons:** Certain individuals and entities are disqualified from entering into a contract by specific laws, such as insolvent individuals, alien enemies, corporations, etc. Any agreement with such disqualified persons is typically considered void.

Noteworthy Case Laws

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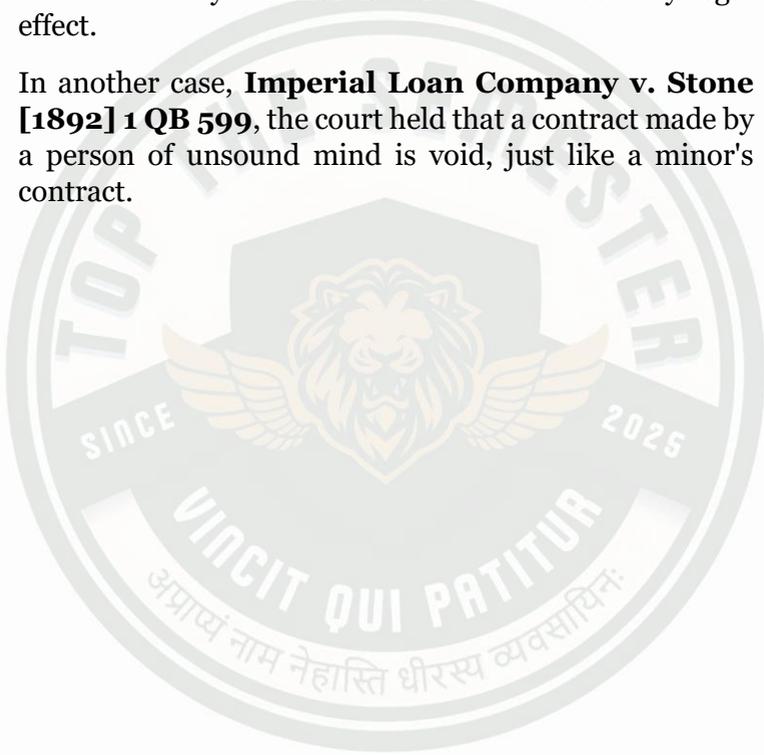
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In the case of **Mohori Bibee v. Dharmodas Ghose**, the Privy Council held that a minor's contract is void ab initio. This case established the rule that any agreement entered into by a minor is void and without any legal effect.

In another case, **Imperial Loan Company v. Stone [1892] 1 QB 599**, the court held that a contract made by a person of unsound mind is void, just like a minor's contract.



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**Q. WHAT IS A LAWFUL CONSIDERATION?
WHEN WOULD THE CONSIDERATION OR
OBJECT OF AN AGREEMENT BE UNLAWFUL?
EXPLAIN WITH ILLUSTRATIONS.**

Lawful Consideration

In the realm of contract law, 'consideration' is a fundamental element. It is defined under Section 2(d) of the Indian Contract Act, 1872, as: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise".

Consideration is lawful unless it is deemed unlawful. It need not necessarily be monetary; it can be in the form of an act, forbearance, or a promise to do or abstain from doing something.

Unlawful Consideration or Object

Section 23 of the Indian Contract Act, 1872, establishes when the consideration or object of an agreement is unlawful. The consideration or object of an agreement is unlawful if:

1. **It is forbidden by law:** If it is prohibited by any law in force in India, it would be considered unlawful. For example, an agreement to smuggle drugs would be considered unlawful as it is forbidden by law.

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- 2. It is of such a nature that, if permitted, it would defeat the provisions of any law:** If the agreement allows the evasion of legal obligations, it is considered unlawful. For example, an agreement to reduce tax liability by falsifying accounts.
- 3. It is fraudulent:** If the agreement involves fraudulent activities, it is considered unlawful. For example, an agreement to sell counterfeit goods.
- 4. It involves or implies injury to the person or property of another:** An agreement intending to harm another person or his property is deemed unlawful. For example, an agreement to vandalize someone's property.
- 5. It is immoral:** An agreement that is immoral, i.e., against the moral standards of society, is considered unlawful. For example, an agreement for prostitution.
- 6. It is opposed to public policy:** Any agreement that is against public policy is deemed unlawful. For example, trading with an enemy nation during times of war, stifling prosecution, etc.

Noteworthy Case Laws

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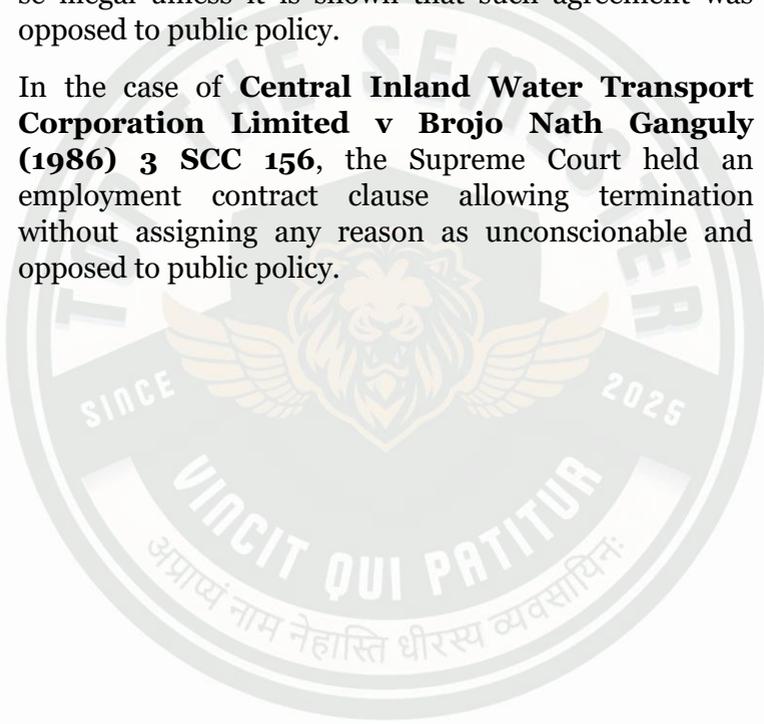
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The landmark case of **Gherulal Parakh v. Mahadeodas Maiya (1959) SCR 406** elucidates the principle of public policy. In this case, the Supreme Court held that an agreement for speculative purposes is not per se illegal unless it is shown that such agreement was opposed to public policy.

In the case of **Central Inland Water Transport Corporation Limited v Brojo Nath Ganguly (1986) 3 SCC 156**, the Supreme Court held an employment contract clause allowing termination without assigning any reason as unconscionable and opposed to public policy.



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Q. DEFINE AND DISTINGUISH BETWEEN COERCION AND UNDUE INFLUENCE. WHAT ARE THEIR EFFECTS ON A CONTRACT?

Definition of Coercion and Undue Influence

The Indian Contract Act, 1872, in its sections 15 and 16, provides definitions for 'Coercion' and 'Undue Influence' respectively.

1. **Coercion (Section 15):** Coercion is the committing or threatening to commit, any act forbidden by the Indian Penal Code (IPC), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
2. **Undue Influence (Section 16):** A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Distinction between Coercion and Undue Influence

The primary distinctions between coercion and undue influence are:

1. **Nature of Consent:** In coercion, consent is obtained by threatening or committing an act

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forbidden by the IPC or by unlawfully detaining or threatening to detain property. In undue influence, consent is vitiated by the dominance of one party's will over another due to a fiduciary relationship or other relations.

2. **Dominance:** Coercion does not require a dominant position; however, undue influence fundamentally involves the dominance of one party over another.
3. **Legal Prohibition:** The act of coercion involves committing or threatening to commit an act prohibited by the IPC, while undue influence does not necessarily involve an illegal act.
4. **Relationship between Parties:** In undue influence, the relationship between parties plays a crucial role, such as that of a solicitor and client, doctor and patient, parent and child, etc. However, in coercion, the relationship between the parties is irrelevant.

Effects of Coercion and Undue Influence on a Contract

When a contract is formed under coercion or undue influence, it impacts the validity and enforceability of the contract. The effects are:

1. **Coercion:** As per Section 19 of the Indian Contract Act, when consent to an agreement is caused by coercion, the agreement is considered

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voidable at the option of the party whose consent was so caused. They can either enforce the contract or rescind it.

2. **Undue Influence:** Similar to coercion, Section 19A states that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Noteworthy Case Laws

In **Raghunath Prasad v Sarju Prasad AIR 1924 PC 60**, it was held that to constitute undue influence, there must be either confidence reposed in the person charged with undue influence, or he must have real or apparent authority over the other.

In **Chikkam Ammiraju v. Chikkam Seshamma, ILR (1917) 41 Mad 33**, the court held that the threat of suicide amounts to coercion.

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Q. ELUCIDATE THE 'DOCTRINE OF FRUSTRATION' WITH HELP OF RELEVANT CASE LAWS.

Doctrine of Frustration

The Doctrine of Frustration, also known as the Doctrine of Impossibility, is a fundamental concept in the law of contracts. This doctrine is outlined in Section 56 of the Indian Contract Act, 1872, which states that an agreement to do an act impossible in itself is void. The doctrine provides that if a contract becomes impossible to perform, through no fault of either party, due to a change in circumstances beyond their control, the contract becomes void, and the parties are discharged from their contractual obligations.

Working of the Doctrine

The Doctrine of Frustration operates automatically when a contract becomes impossible to perform due to subsequent events. The key elements of the doctrine are:

1. The event causing the impossibility was not anticipated by the parties.
2. The event was not caused by either party.
3. The event renders the performance of the contract impossible or radically different from what was agreed.

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It's important to note that the impossibility must be objective, meaning it must be practically impossible for any party, not just difficult or unprofitable.

Relevant Case Laws

1. **Taylor v. Caldwell [1863] EWHC QB J1:** This is a landmark English case that established the Doctrine of Frustration. In this case, a music hall that was to be used for a series of concerts was destroyed by fire. The court held that the contract was frustrated, and the parties were excused from their obligations as the fundamental basis of the contract was gone.
2. **Satyabrata Ghose v. Mugneeram Bangur & Co. AIR 1954 SC 44:** In this case, the Supreme Court of India observed that Section 56 of the Indian Contract Act is not confined to something which is not humanly possible. If an untoward event or change of circumstance upsets the very foundation upon which the parties entered their agreement, the contract may be discharged on the ground of impossibility of performance.
3. **Krell v. Henry [1903] 2 KB 740:** This English case involved the rental of a flat for the purpose of viewing the coronation procession of Edward VII. However, the coronation was postponed due to

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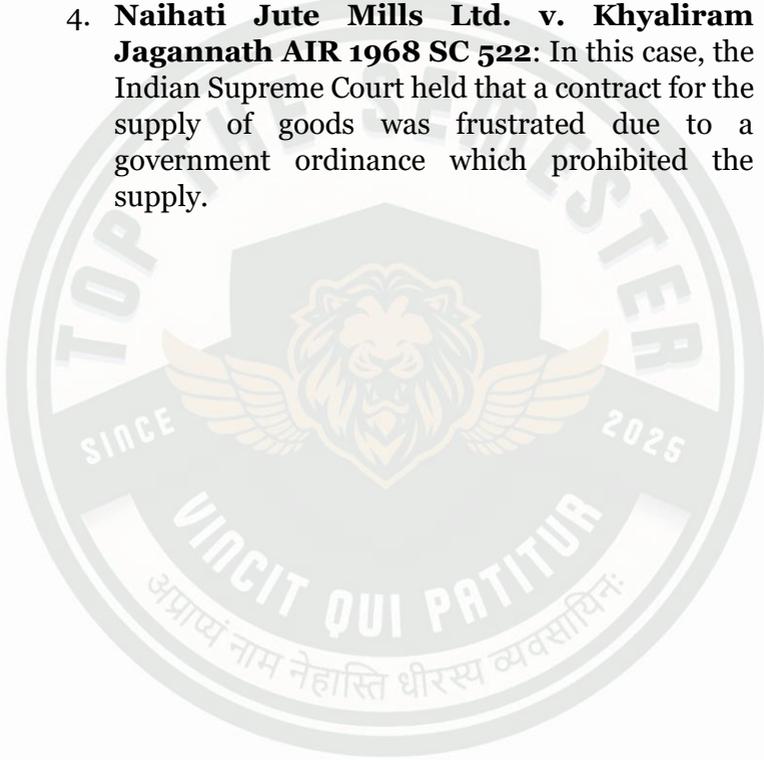
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the King's illness. The court held that the contract was frustrated as the event which formed the basis of the contract did not occur.

4. **Naihati Jute Mills Ltd. v. Khyaliram Jagannath AIR 1968 SC 522:** In this case, the Indian Supreme Court held that a contract for the supply of goods was frustrated due to a government ordinance which prohibited the supply.



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Q. DISCUSS THE REMEDIES AVAILABLE FOR THE BREACH OF CONTRACT.

The law of contract not only deals with the formation of a contract and the obligations it creates, but also provides remedies when there is a breach of contract. A breach of contract occurs when any party does not fulfill its obligations under the contract. The remedies for the breach of contract under the Indian Contract Act, 1872, include:

1. **Damages:** The most common remedy for a breach of contract is damages, or monetary compensation for loss or injury. The purpose of damages is to put the injured party in the position they would have been in had the contract been performed. There are four types of damages:
 - **Ordinary Damages:** These are damages that naturally arise in the usual course of events from the breach itself.
 - **Special Damages:** These are damages that arise due to the special circumstances of the case.
 - **Exemplary or Punitive Damages:** These are damages awarded over and above the claimant's loss, to punish the defendant rather than compensate the claimant. In India, this type of damages is generally not awarded for breach of

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contract except in the case of breach of promise to marry.

- **Nominal Damages:** These are damages awarded when the claimant has suffered no actual loss from the breach.
2. **Specific Performance:** This is a remedy where the court orders the party in breach to perform the contract as originally agreed. This remedy is only granted in cases where damages would not be an adequate remedy, such as contracts involving unique goods or real property. This remedy is provided under the Specific Relief Act, 1963.
 3. **Injunction:** An injunction is a court order preventing a party from doing something. It is typically used to prevent further breaches where damages are not an appropriate remedy.
 4. **Quantum Meruit:** This is a Latin term meaning "as much as he has earned". This remedy allows a party to recover the reasonable value of the services rendered before the contract was breached. It applies in cases where a party has partly performed a contract but the other party has failed to perform their part.

Relevant Case Laws

In the case of **Hadley v. Baxendale (1854) 9 Exch 341**, the court established the rule that the non-breaching party could recover only those damages that were

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reasonably foreseeable at the time the contract was formed.

In **S. S. Shetty v. Bharat Nidhi Ltd., AIR 1958 SC 12**, the Supreme Court of India held that in the case of a breach of contract, the party complaining of the breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby.



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EXPLAIN THE TERMS 'PENALTY' AND 'LIQUIDATED DAMAGES'. EXPLAIN WHETHER THE COURT HAS THE POWER TO INCREASE OR DECREASE THE AMOUNT FIXED BY THE PARTIES?

Definition of 'Penalty' and 'Liquidated Damages'

In the realm of contract law, the concepts of 'penalty' and 'liquidated damages' are intrinsically linked to the consequences of a breach of contract.

1. **Penalty:** A penalty is a sum that a party to a contract agrees to pay or a stipulation that a party agrees to perform upon breach of the contract. Its purpose is not merely to compensate the injured party but to deter or punish the defaulting party. The amount of a penalty is generally disproportionate to the actual damage incurred and is typically more than the likely harm from the breach.
2. **Liquidated Damages:** Liquidated damages, on the other hand, are a pre-determined sum that the parties agree will serve as compensation upon a breach of the contract. This amount is not intended to act as a punishment, but rather as a genuine pre-estimate of the damages that would be incurred from the breach.

Differentiation between Penalty and Liquidated Damages

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The principal difference between a penalty and liquidated damages rests upon the purpose each serves. A penalty is meant to act as a deterrent to prevent a breach of contract, while liquidated damages serve as a genuine pre-estimate of the loss in case of a breach. In essence, the sum stipulated as penalty is usually excessive and bears no correlation to the actual damages, whereas liquidated damages are reasonable estimates of the likely harm.

Power of the Court to Interfere

Section 74 of the Indian Contract Act, 1872, plays a crucial role in governing the power of the court in relation to liquidated damages and penalties. According to this section, when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such a breach, or if the contract contains any other stipulation by way of penalty, the aggrieved party is entitled to receive, whether or not actual damage or loss is proved to have been caused thereby, reasonable compensation not exceeding the amount so named, or the penalty stipulated.

Therefore, as per Section 74, it's clear that while the court cannot increase the amount agreed upon by the parties as liquidated damages or penalty, it does have the discretion to award a lesser amount based on the circumstances of the case. It is worth noting that Indian courts have consistently held that stipulated damages under a contract are not automatically awarded and the claimant must prove the actual loss incurred due to the breach of contract.

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Relevant Case Law

In the landmark case of **Fateh Chand v. Balkishan Das AIR 1963 SC 1405**, the Supreme Court of India held that the amount of compensation, in the case of a breach of contract, will be a reasonable amount not exceeding the penalty stipulated in the contract. The court went on to observe that the injured party must prove the actual loss suffered by him.



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PAPER 2

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

QUESTION (A): NOVATION

Novation is a legal concept that refers to the act of replacing an existing contract or obligation with a new one. This concept is codified in Section 62 of the Indian Contract Act, 1872 (ICA). A novation requires the agreement of all parties involved - the party or parties obligated under the original contract and the party or parties taking on the new obligation.

Essential Elements of Novation:

There are certain essential elements of novation that need to be met:

1. **Existing Valid Contract:** There must be a pre-existing valid contract which is intended to be substituted or replaced. This contract must be valid, meaning it has all the essential elements of a contract as per the ICA.
2. **Mutual Agreement:** All parties to the contract must mutually agree to replace the original

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contract with a new one. The agreement can be explicit or implied.

3. **New Contract:** A new contract replacing the original one must be created. This new contract can either change the terms of the original agreement, or replace one of the original parties with a new one.
4. **Extinguishment of the Old Contract:** The creation of the new contract results in the extinguishment of the original contract. This means that once novation occurs, the original contract cannot be enforced.

Case Laws related to Novation:

Some important case laws in India dealing with the concept of novation include:

1. In the case of **Indian Oil Corporation vs Amritsar Gas Service and Others** (1991) the Supreme Court held that novation can only take place with the mutual agreement of all the parties.
2. In **Muralidhar Aggarwal vs Sudhir Kumar Bansal** (2013), it was held that the burden of proving novation of contract is on the party alleging it. This case reemphasized the principle that all parties must agree to the novation.

QUESTION (B): ANTICIPATORY BREACH

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An **Anticipatory Breach** of contract is a concept in contract law that occurs when one party communicates to the other that they will not be fulfilling their contractual obligations, or when it becomes evident by their actions that they will not fulfill the obligations when they are due. This is covered under Sections 39 and 53A of the Indian Contract Act, 1872.

Types of Anticipatory Breach:

There are two types of anticipatory breach:

1. **Express Anticipatory Breach:** When a party explicitly states that they will not be performing their contractual duties.
2. **Implied Anticipatory Breach:** When a party's actions make it clear that they will not be performing their contractual duties.

Remedies for Anticipatory Breach:

Upon an anticipatory breach, the aggrieved party has two options:

1. **Treat the Contract as Discharged:** The party may choose to treat the contract as discharged and bring an immediate action for damages.

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2. Wait for the Time of Performance:

Alternatively, the party may wait until the time for performance has arrived. If the breaching party fails to perform, then the aggrieved party may sue for damages.

Case Laws related to Anticipatory Breach:

Some landmark cases in India on the concept of anticipatory breach include:

1. In **Hochster v De La Tour** (1853), a case that set a precedent for anticipatory breach, it was decided that an aggrieved party could sue immediately upon learning of the impending breach.
2. In the Indian case of **Alopi Parshad & Sons Ltd vs Union of India** (1960), the Supreme Court affirmed the principles of anticipatory breach and stated that a contract becomes voidable at the option of the aggrieved party when there is reasonable apprehension that the other party will not perform their part of the agreement.

QUESTION (C): QUASI CONTRACT

A **Quasi Contract**, also known as a constructive contract, is a legal obligation imposed by the court to bring about justice and fairness, even in the absence of an actual agreement between the parties. It is not a contract

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in the traditional sense, but a means for courts to remedy situations where one party would be unjustly enriched at the expense of another. The concept of quasi contracts is covered under Sections 68-72 of the Indian Contract Act, 1872.

Elements of a Quasi Contract:

To constitute a quasi-contract, certain elements must be present:

1. **Benefit Received:** One party must have received a benefit which would be unjust for them to retain without paying for it.
2. **Expectation of Payment:** The person providing the benefit must have done so with a reasonable expectation of payment.
3. **Absence of a Contract:** There must be an absence of a contract that would otherwise cover the transaction in question.

Types of Quasi Contracts:

Quasi contracts can be classified into several types as per the Indian Contract Act:

1. **Supply of necessities** (Section 68)
2. **Payment by an interested person** (Section 69)

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3. **Obligation to pay for non-gratuitous acts**
(Section 70)

4. **Finder of goods** (Section 71)

5. **Mistake or coercion** (Section 72)

Case Laws related to Quasi Contract:

Some of the landmark judgments related to quasi-contracts include:

1. In the case of **State of West Bengal vs B.K. Mondal and Sons** (1962), the Supreme Court held that Section 70 of the Act applies only to lawful acts and that the person doing the act must not intend to act gratuitously.

2. In **Industrial Finance Corporation vs Cannonore Spinning and Weaving Mills** (2002), the Supreme Court recognized that a quasi-contractual obligation arises from the law of equity and justice.

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QUESTION (D): CROSS OFFER

A **Cross Offer** is a type of offer in Contract Law where two parties make identical offers to each other in ignorance of each other's offer. These are two separate offers and do not constitute a contract because there is no acceptance of an offer.

Key Characteristics of Cross Offer:

1. **Independent and Identical Offers:** In a cross offer, both parties make offers that are identical to each other.
2. **Absence of Knowledge:** The offers are made independently and neither party is aware of the other's offer at the time they make their own.
3. **No Acceptance:** Despite the offers being identical, there is no acceptance because each party is making an offer rather than accepting the other's offer.

Case Law related to Cross Offer:

One of the well-known case laws related to cross offer is **Tinn vs Hoffman & Co** (1873). In this case, both parties sent letters to each other at the same time with the same offer. The court held that there was no contract formed between the two parties as there was no acceptance of any offer; instead, two identical offers had been made.

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QUESTION (E): FRAUD

Fraud, in the context of Contract Law, refers to an intentional misrepresentation, concealment, or non-disclosure of a material fact, made with the knowledge of its falsity, and with the intent to deceive another party, leading to that party's detriment. This concept is codified in Section 17 of the Indian Contract Act, 1872.

Essential Elements of Fraud:

For an act to be considered as fraud, the following elements must be present:

1. **Misrepresentation:** There should be a false statement or fact represented by the party committing fraud. This can also involve concealment of facts that ought to be disclosed.
2. **Intent to Deceive:** The misrepresentation must be made with the intention to deceive the other party. The person committing fraud knows that the statement is false or does not believe it to be true.
3. **Reliance:** The deceived party must have relied on the false statement.
4. **Resulting Loss:** The deceived party suffers a loss as a result of their reliance on the false statement.

Remedies for Fraud:

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In case of fraud, the aggrieved party may:

1. **Rescind the Contract:** The aggrieved party has the right to void the contract.
2. **Claim Damages:** The aggrieved party can claim damages for any loss incurred due to the fraud.

Case Laws related to Fraud:

Key judgments in India pertaining to fraud include:

1. In **Derry vs Peek** (1889), it was held that a fraudulent misrepresentation requires an intentional, conscious lie or a reckless statement made without caring for its truth.
2. In **Shrikumar vs Unni** (2018), the Supreme Court of India ruled that a party to the contract, who himself is guilty of fraud, cannot seek enforcement of contract.

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PART B

QUESTION 2: "ACCEPTANCE MUST BE SOMETHING MORE THAN A MERE MENTAL ACCEPTANCE." COMMENT ON THIS STATEMENT WITH THE HELP OF DECIDED CASE LAWS.

In the realm of contract law, acceptance is a crucial element that signifies the agreement of the offeree to the terms proposed by the offeror. However, it is a well-established principle that mere mental acceptance is not enough to form a contract. Acceptance must be communicated to the offeror, as prescribed under Section 2(b) and Section 3 of the Indian Contract Act, 1872. This essay will delve into the nuances of this principle and provide a detailed examination with the aid of pertinent case laws.

The Principle of Communication of Acceptance:

According to the Indian Contract Act, a proposal, when accepted, becomes a promise. However, it is pivotal to note that acceptance must be communicated. Section 3 of the Act emphasises that communication of acceptance is complete when it comes to the knowledge of the proposer. Thus, the law stipulates that the acceptance must be externalised and communicated to the offeror for a valid contract to come into existence.

Rationale Behind the Principle:

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The essence of this principle lies in the understanding that a contract is an agreement between two or more parties. Therefore, without the knowledge of acceptance by one party, the other cannot reasonably be bound by the terms of the agreement. Simply put, for a contract to be mutually binding, both parties should be aware of the formation of the agreement.

Case Laws Illustrating the Principle:

There are several case laws which emphasise the importance of communication of acceptance over mere mental acceptance.

1. **Carlill v Carbolic Smoke Ball Company (1893):** While this case is a landmark case for the concept of a 'unilateral contract,' it also subtly indicates the need for communicated acceptance. Mrs Carlill used the smoke ball as prescribed, and by doing so, she performed the act required for acceptance, communicating it in a way the company would inevitably become aware of. This suggests that acceptance cannot remain a mere mental act, it must be translated into action that communicates intention to the offeror.
2. **Powell v Lee (1908):** This case demonstrates that acceptance must be officially communicated. In this case, Powell was unofficially informed that he had been appointed as the headmaster of a school. However, the official communication never reached him due to a change in the committee's decision. The

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court held that there was no valid acceptance as it was not officially communicated to Powell.

- 3. Brogden v Metropolitan Railway Company (1877):** The case reinforces the principle of communicated acceptance. Here, Brogden had been supplying coal to the railway company for a while without a formal contract. They eventually decided to form a contract and exchanged drafts until a final version was informally agreed upon, but no express acceptance was communicated. Later, a dispute arose and it went to court, where it was held that although no formal acceptance was communicated, the continued conduct of supplying coal constituted implied acceptance.
- 4.** The principle of communicated acceptance was also reiterated in the Indian case of **Bhagwandas Goverdhandas Kedia v Girdharilal Parshottandas and Co. (1966)**. The Supreme Court ruled that acceptance with the intention to fulfil the terms must be communicated to the offeror.

Exceptions to the Principle:

However, there are certain exceptions to this rule:

- 1. Silence as acceptance:** In some cases, silence can amount to acceptance if it is the customary practice between the parties or if the offeree states that silence should be treated as acceptance.

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2. **Acceptance by conduct:** As seen in the Brogden case, acceptance can be communicated through conduct. If the offeree acts on the offer in a manner that unequivocally indicates their acceptance, a contract might be considered formed.



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QUESTION₃: EXPLAIN THE POSTAL RULE WITH RESPECT TO COMMUNICATION OF OFFER, ACCEPTANCE AND ITS REVOCATION. 'A' MAKES AN OFFER BY A LETTER TO 'B' ON 01/11/2017. TWO DAYS AFTER, 'A' REVOKES HIS OFFER THROUGH MOBILE MESSAGE. THE MOBILE MESSAGE REACHES 'B' AFTER THE LETTER. WILL THE OFFER BE DEEMED TO HAVE BEEN REVOKED?

The formation of a valid contract under the Indian Contract Act, 1872 hinges upon the lawful and timely communication of offer, acceptance, and revocation between parties. In situations where communication occurs through non-instantaneous means—such as postal services—the law recognizes what is commonly referred to as the "postal rule." This rule governs the exact moment at which the offer is said to be communicated, the acceptance becomes binding, and the revocation takes effect.

The postal rule plays an especially crucial role when there is a time lag between the dispatch and the receipt of communication. It ensures predictability in contract formation, balancing the interests of both the proposer and the acceptor. The rule is not explicitly codified under the Contract Act but is recognized through interpretation of Sections 3, 4, and 5, supplemented by judicial decisions from Indian and English courts.

Statutory Framework Governing Communication

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The relevant statutory provisions are found in Sections 3, 4, and 5 of the Indian Contract Act, 1872.

1. Section 3 explains that the communication of proposals, acceptances, and revocations is complete when it is done through any act or omission which has the effect of putting the information into the course of transmission to the other party.
2. Section 4 provides clarity on when communication is deemed complete:
 - Communication of offer is complete when it comes to the knowledge of the offeree.
 - Communication of acceptance is complete:
 - As against the proposer, when the acceptance is put into transmission, so as to be out of the power of the acceptor.
 - As against the acceptor, when it reaches the proposer.
 - Communication of revocation is complete:
 - As against the person making it, when it is dispatched.
 - As against the person receiving it, when it comes to their knowledge.
3. Section 5 lays down the rule for revocation:

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- An offer can be revoked at any time before the communication of acceptance is complete as against the proposer, but not afterwards.
- An acceptance may be revoked before the communication is complete as against the acceptor, but not afterwards.

The Postal Rule: Judicial Recognition

Although not directly enacted, the postal rule has received judicial recognition both in India and in common law jurisdictions.

The seminal English case of *Adams v. Lindsell* (1818) 1 B & Ald 681 first established the principle that a contract is formed the moment a letter of acceptance is properly posted, even if it is delayed or lost in the post. This was further affirmed in *Household Fire Insurance Co. v. Grant* (1879) 4 Ex D 216, where the court held that acceptance becomes binding once posted, regardless of whether it reaches the proposer or not.

The Indian Supreme Court in *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas*, AIR 1966 SC 543, acknowledged the complex nature of communication in contracts and held that acceptance is complete upon dispatch, not receipt, when using non-

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instantaneous modes of communication. This aligns with the essence of the postal rule.

Revocation Under the Postal Rule

Revocation of an offer is governed by a separate timing structure under Sections 4 and 5. While acceptance becomes effective against the offeror upon dispatch, revocation is not effective unless it reaches the offeree. In simpler terms, merely sending a revocation is not sufficient. The revocation must be communicated to and received by the offeree before they post their acceptance.

This principle was firmly established in *Byrne & Co. v. Van Tienhoven & Co.* (1880) 5 CPD 344, where the court ruled that a revocation posted by the offeror after the offeree had already dispatched their acceptance was ineffective. The court emphasized that an offer cannot be revoked once acceptance has been put into transmission by the offeree.

Indian courts have implicitly accepted this principle. Although Indian law does not adopt the English postal rule wholesale, it is consistent with the spirit of Section 4, which mandates that revocation is complete only upon receipt by the offeree.

Application to the Given Problem

Let us now apply these legal principles to the facts presented in the problem:

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- A sends an offer by letter to B on 01/11/2017.
- On 03/11/2017, A attempts to revoke the offer via mobile message.
- However, the mobile message reaches B only after the letter of offer has arrived.

According to the Indian Contract Act, the communication of the offer is completed only when it comes to the knowledge of the offeree, i.e., when B receives the letter, say on 04/11/2017. The revocation, though sent earlier on 03/11/2017, becomes effective only when it reaches B. If the mobile message reaches B after 04/11/2017, it cannot operate as a valid revocation, since the offer has already been communicated to B by that time.

Now, if B accepts the offer by post—for example, on 05/11/2017, and the acceptance letter is posted before the mobile message of revocation is received, then under Section 4, the contract is formed the moment the acceptance is posted. A cannot revoke the offer at that stage because the revocation reached B too late to prevent acceptance.

Hence, the answer is clear: the revocation is not valid, and the contract is concluded once B posts the letter of acceptance.

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QUESTION 4: DISCUSS THE EFFECT OF ILLEGAL AND IMMORAL CONSIDERATIONS WITH THE HELP OF RELEVANT PROVISIONS OF INDIAN CONTRACT ACT, 1872 AND JUDICIAL DECISION.

In the law of contracts, the doctrine of lawful consideration and object is of foundational importance. While the existence of consideration is essential to validate a contract under Section 2(d) of the Indian Contract Act, 1872, it is not sufficient that consideration merely exists — it must also be lawful. An agreement supported by illegal or immoral consideration is not only unenforceable but is also declared void under Section 23 of the Act. The Indian legal system thus not only regulates the formation of contracts but also polices their moral and legal boundaries through this provision.

The policy underlying this doctrine is rooted in the maxim *ex turpi causa non oritur actio* - no action arises from an immoral or illegal cause. This principle prevents the court from assisting parties who attempt to base their rights upon an immoral or unlawful transaction.

Statutory Foundation: Section 23 of the Indian Contract Act, 1872

The crux of this question lies in the interpretation and application of **Section 23**, which reads as follows:

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“The consideration or object of an agreement is lawful, unless -

- (a) it is forbidden by law; or
- (b) is of such a nature that, if permitted, it would defeat the provisions of any law; or
- (c) is fraudulent; or
- (d) involves or implies injury to the person or property of another; or
- (e) the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful.”

Thus, the statute categorizes unlawful considerations into various heads, and immorality and illegality fall under distinct but overlapping domains. An agreement tainted by either will be void under the Act and incapable of being enforced in a court of law.

Illegal Consideration: Meaning and Effect

An illegal consideration refers to a consideration that either involves a direct contravention of statutory law or seeks to achieve an unlawful purpose, even indirectly. Where the law expressly or impliedly prohibits an act, any agreement entered into for the purpose of committing

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that act, or one that has the effect of defeating the law, is void.

An illegal consideration can arise in the following ways:

1. **Acts forbidden by law** – for instance, any agreement to commit a crime or a tort.
2. **Acts which, though not expressly prohibited, render the contract void by defeating the purpose of law**, such as circumventing licensing requirements or evading taxes.
3. **Fraudulent or injurious conduct**, which is also covered under Section 23.

The effect of illegal consideration is severe – the contract becomes void ab initio, meaning that it is treated as though it never existed. Further, under the principle of in pari delicto, courts will generally refuse to help either party when both are equally at fault in an illegal contract.

For example, if A agrees to pay B ₹1 lakh to commit a murder, the agreement is void, and neither party can sue the other for performance or restitution.

Judicial Interpretation of Illegal Consideration

The Indian judiciary has consistently reinforced the idea that courts will not enforce agreements with illegal objects or considerations.

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In the landmark case of Sita Ram v. Radha Bai, AIR 1968 SC 534, the Supreme Court held that where both parties are involved in an illegal agreement, the court will refuse to assist either party. The doctrine of *in pari delicto potior est conditio defendentis* was applied, meaning that where both parties are equally at fault, the position of the defendant is stronger.

Similarly, in Gherulal Parakh v. Mahadeodas Maiya & Ors., AIR 1959 SC 781, the Supreme Court laid down the principle that an agreement which has the tendency to defeat the provisions of law is void, even if it is not explicitly prohibited by any statute. The Court explained that the test is not just whether the act is prohibited, but whether allowing it would undermine the statutory scheme or public interest.

In Rattan Chand Hira Chand v. Askar Nawaz Jung (1991) 3 SCC 67, the Apex Court went further to state that courts have a duty to invalidate contracts whose enforcement would promote illegality or fraud.

Immoral Consideration: Concept and Application

Immorality, while a broader and more subjective concept, also renders a contract void under Section 23(e). What constitutes immorality is not defined in the statute, but courts have interpreted it based on societal standards and judicial conscience.

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Immoral considerations typically include agreements that promote sexual immorality, extramarital relationships, prostitution, or any other act that violates prevailing social morality.

For example, if a man promises to maintain a woman in exchange for her agreeing to cohabit with him without marriage, the agreement will be considered immoral and hence unenforceable.

In *Pearce v. Brooks* (1866) LR 1 Ex 213, an English court refused to enforce a contract to supply a prostitute with a carriage for her business. The court held that although the contract was not for prostitution per se, it was entered into with the knowledge and intent of facilitating immorality.

Indian courts have followed similar reasoning. In *Vatsavaya Venkata Subba Rao v. Talluri Narayana Rao*, AIR 1936 Mad 328, a contract between a man and a concubine was held void for immorality. Similarly, in *Apporva Shantilal Shah v. Commissioner of Income Tax*, AIR 1983 Bom 268, an agreement in relation to the upkeep of a mistress was considered to be tainted by immoral consideration.

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Effect of Illegal and Immoral Consideration on Contractual Rights

The effect of both illegal and immoral consideration is the absolute nullity of the agreement. Such contracts are void ab initio and are incapable of enforcement, even if partly performed. Furthermore, the courts will not assist either party to such an agreement. A party cannot recover money paid or property transferred under a void contract grounded in illegality or immorality.

This is further clarified in Section 24 of the Indian Contract Act, which states that if any part of a single consideration for one or more objects is unlawful, the agreement is void in its entirety. However, if the unlawful part is severable from the lawful part, and does not taint the rest of the contract, the lawful part may be enforced.

In *Rajlukhy Dabee v. Bhootnath Mookerjee* (1900) ILR 27 Cal 715, the court held that where the contract contains both legal and illegal elements, and they can be separated, the legal part may be enforced. But if the illegal consideration is inseparable, the whole contract is rendered void.

No Restitution in Cases of Illegal or Immoral Agreements

One of the most significant effects of an illegal or immoral consideration is that Section 65, which provides for restitution of benefits received under a void agreement, is not applicable when the agreement is void due to illegality

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or immorality. Since such contracts are not recognized by law, no equitable remedy is available either.

In Kedar Nath Motani v. Prahlad Rai, AIR 1960 SC 213, the Supreme Court reiterated that no claim for restitution can arise from a contract which is opposed to public policy, immoral, or illegal.



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QUESTION 5: DISCUSS THE LAW ON COMPETENCE OF THE PARTIES TO ENTER INTO A CONTRACT. ALSO EXAMINE THE APPLICABILITY OF THE PRINCIPLE OF ESTOPPEL AND RESTITUTION IN CASE OF MINOR'S AGREEMENT.

The Indian Contract Act, 1872, lays down certain foundational principles for the validity of a contract, and among them, the competence of parties to enter into a contract is of fundamental significance. A contract that is not entered into by competent parties is void ab initio, meaning it is null from the very beginning, and courts will not lend support to its enforcement.

Competence to Contract under Section 11

The statutory foundation for determining whether a party is legally capable of contracting is found in Section 11 of the Indian Contract Act, 1872. It states:

“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

This section identifies three essential qualifications for contractual capacity:

1. **Majority** – The individual must have attained the age of majority, i.e., 18 years, or 21 years if a

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court-appointed guardian is involved, as per Section 3 of the Indian Majority Act, 1875.

2. **Sound Mind** – The party must be capable of understanding the contract and forming a rational judgment about its effect upon their interests.
3. **No Legal Disqualification** – The person should not be disqualified by any specific law, such as laws applicable to foreign sovereigns, alien enemies, convicts, etc.

If a person fails to satisfy any of these criteria, no valid contract can be formed with or by such a person. Of all these, the most litigated issue pertains to minor's agreements, as minors are often involved in civil and commercial matters, knowingly or otherwise.

Minor's Agreement: Void Ab Initio

The issue of a minor's capacity to contract was settled authoritatively by the Privy Council in the landmark case of *Mohori Bibee v. Dharmodas Ghose*, (1903) 30 Cal 539 (PC). In this case, a minor executed a mortgage of his property in favour of a moneylender. Later, the minor sued for cancellation of the mortgage on the ground of incapacity. The Privy Council held that:

“A minor's agreement is absolutely void, and not merely voidable.”

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This decision laid down the binding principle in Indian contract law that a minor cannot contract, and any agreement with a minor is void ab initio — it cannot be ratified even after attaining majority.

No Estoppel Against a Minor

Under the general law of estoppel, a person is precluded from denying a statement or representation that another person has relied upon to their detriment. However, in the context of minors, the law has carved out a protective exception to this principle.

In the same *Mohori Bibee* case, the Privy Council held that a minor is not estopped from pleading minority even if he had falsely misrepresented himself to be of majority age at the time of entering into the contract.

This principle has been consistently upheld in Indian jurisprudence. In *Leslie (R.) Ltd. v. Sheill*, (1914) 3 KB 607, an English case often cited in India, the court held that no estoppel can operate against a minor because the doctrine of estoppel cannot be used to enforce a void contract.

This position was reiterated by Indian courts in *Khan Gul v. Lakha Singh*, AIR 1928 Lah 609, where the Lahore High Court observed that however fraudulent a minor's misrepresentation may be, it cannot convert a void agreement into a valid one, nor can it give rise to an estoppel.

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Therefore, the law prioritizes protection of the minor over preventing fraudulent conduct, on the belief that a minor lacks mature judgment and must be shielded from the consequences of his or her actions.

Doctrine of Restitution under Section 33 of Specific Relief Act, 1963

While a minor cannot be compelled to perform a contract, the question arises whether he can be required to restore any benefits received under the contract. This brings us to the doctrine of restitution.

Historically, courts were reluctant to grant restitution in cases involving minors, fearing it would amount to indirect enforcement of a void contract. However, this position has evolved.

The modern Indian approach is reflected in Section 33 of the Specific Relief Act, 1963, which provides that if a person — including a minor — has received benefits under a void contract, the court may require restoration of such benefits, subject to certain limitations.

Section 33(1) says:

“Where a plaintiff sues to cancel an instrument, and the instrument has been partially or wholly executed in his favour, the court shall, as a condition to granting relief, require the plaintiff to restore such benefits or make compensation.”

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Section 33(2)(b) specifically addresses minors:

“In case of fraud or misrepresentation by a minor, the court may require the minor to restore benefits received under the contract, if such restoration is just and equitable.”

Thus, while the contract remains void, equitable restitution is possible if the minor is the plaintiff, and if justice demands that benefits be returned, particularly where the minor has unjustly enriched himself.

This concept was applied in *Khan Gul v. Lakha Singh*, where the court ordered partial restitution by directing the minor to return the property obtained through misrepresentation. However, it is to be noted that such restitution is limited — the courts cannot decree restitution that indirectly validates the contract or imposes a contractual liability on the minor.

Position of the Other Party in Minor's Agreements

An interesting issue arises concerning the rights of the other party to a minor's agreement. As a general rule, no compensation can be claimed by the adult party if he enters into a contract with a minor, even if the minor misrepresents his age.

In *Nash v. Inman* (1908) 2 KB 1, the English court held that a tailor who supplied clothes to a minor could not

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recover payment unless it was proved that the clothes were necessities under the Sale of Goods Act, which is incorporated into Indian law through Section 68 of the Indian Contract Act.

This section allows recovery of necessities supplied to a person incapable of contracting, but only from minor's property, not by personal liability. Therefore, if a person supplies goods or services to a minor that are necessary for their condition in life, they may recover the cost from the minor's estate, but not by enforcing any contract.

Contracts for Minor's Benefit

Although a minor cannot be bound by a contract, the law does not prevent him from being a beneficiary under a contract. Indian courts have recognized that a minor can be a promisee or a beneficiary, provided the obligation is entirely on the other party.

In Raghava Chariar v. Srinivasa, ILR 30 Mad 393, the court held that a contract for the benefit of a minor is enforceable by the minor or his guardian. Thus, unilateral obligations in favour of a minor are valid.

Similarly, contracts entered into by guardians on behalf of minors, with the approval of a court where required, are valid under Hindu law and are enforceable if they are for the minor's benefit.

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QUESTION 6: “MERE SILENCE AS TO FACT IS NOT A FRAUD”. EXPLAIN THE MEANING OF ‘FRAUD’, ‘MISREPRESENTATION’, AND ‘MISTAKE’ WITH REFERENCE TO THE ABOVE STATEMENT AND DECIDED CASES.

The Indian Contract Act, 1872, governs the law relating to contracts and lays significant emphasis on **free consent**. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake. Among these, fraud, misrepresentation, and mistake are closely linked to the quality of the parties’ knowledge and representations at the time of forming a contract.

The maxim "mere silence as to fact is not fraud" encapsulates a general principle of contract law that a party is not obliged to disclose everything known to them unless a duty to speak exists. However, this principle is subject to exceptions under the Indian Contract Act and in equity, especially where active concealment, fiduciary relationships, or contracts uberrimae fidei (contracts of utmost good faith) are involved.

Meaning of Fraud: Section 17 of the Indian Contract Act, 1872

Section 17 defines fraud as acts committed by a party to a contract, or with his connivance, or by his agent, with

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intent to deceive another party thereto or his agent. The section enumerates specific acts which constitute fraud:

- Suggestion, as a fact, of something which is not true, by one who does not believe it to be true.
- Active concealment of a fact by a person having knowledge or belief of the fact.
- A promise made without intention of performing it.
- Any other act fitted to deceive.
- Any act or omission declared fraudulent by law.

The most important part of the section, relevant to this question, is the Explanation:

- "Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

This implies that silence becomes fraudulent when:

- There is a duty to disclose material facts.
- Silence is misleading, as in the case of half-truths.
- There is active concealment of facts.

Case Law: Derry v. Peek (1889) 14 App Cas 337

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This English decision, frequently cited in India, clarified that fraud implies a false representation made knowingly, or without belief in its truth, or recklessly, not caring whether it be true or false. In that case, the directors of a company issued a prospectus stating that they had authority to use steam power, which turned out to require prior government approval. Since they believed in good faith that they would receive the approval, no fraud was found.

However, Lord Herschell emphasized that mere silence or expression of belief, unless dishonest or made with knowledge of its falsity, does not amount to fraud.

Indian Position: Rajagopala Iyer v. South Indian Rubber Works Ltd., AIR 1964 Mad 118

The Madras High Court held that fraud requires an intention to deceive. Silence will only amount to fraud where there is a duty to speak, such as in fiduciary relationships (e.g., guardian-ward, solicitor-client), or in contracts requiring utmost good faith like insurance contracts.

Misrepresentation: Section 18 of the Indian Contract Act, 1872

Section 18 defines misrepresentation as:

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- A positive assertion, not warranted by the information of the person making it, of that which is not true, though he believes it to be true.
- Any breach of duty which, without intent to deceive, gains an advantage to the person committing it, or anyone claiming under him.
- Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The essential distinction between fraud and misrepresentation is the absence of intention to deceive in the latter.

In misrepresentation, the party makes a false representation honestly, believing it to be true. Such misrepresentation renders the contract voidable at the option of the aggrieved party under Section 19, provided the misrepresentation actually induced the other party into the contract.

Case Law: Indian Airlines Corp. v. Madhuri Chowdhuri, AIR 1965 Cal 252

The Calcutta High Court held that misrepresentation can occur even without fraudulent intent. If a party enters into a contract due to misrepresentation, even if innocent, the contract is voidable at his option.

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Mistake: Sections 20 to 22 of the Indian Contract Act, 1872

Mistake, unlike fraud or misrepresentation, is not based on misstatements but on wrong assumptions or lack of consensus ad idem (meeting of minds).

There are two types of mistakes under Indian contract law:

- **Bilateral mistake** (Section 20): Where both parties are under a mistake as to a matter of fact essential to the agreement, the contract is void.
- **Unilateral mistake** (Section 22): Where only one party is mistaken, the contract remains valid, unless the mistake is caused by misrepresentation or fraud.

Example: Couturier v. Hastie (1856) 5 HLC 673

In this case, a contract for the sale of corn was held void because both parties assumed that the corn was in existence, while it had already been sold off due to spoilage. This was a bilateral mistake as to the subject matter, rendering the contract void.

Indian Case: Ganga Saran v. Firm Ram Charan Ram Gopal, AIR 1952 SC 9

The Supreme Court held that a unilateral mistake of law will not render a contract void, reaffirming the principle

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that mistake must be bilateral and relate to a fact essential to the agreement.

Application of the Principle – “Mere Silence is Not Fraud”

Returning to the central theme, the law recognizes that in ordinary commercial contracts, silence alone does not amount to fraud. For instance, if a seller knows that a car has been in a minor accident but does not disclose it, that is not fraud per se. However, if the buyer specifically asks about prior accidents and the seller remains silent or gives an evasive answer, it may constitute fraud by active concealment.

Similarly, if there is a fiduciary relationship, such as between a principal and agent, or if the contract is of a type requiring full disclosure, then silence may amount to fraud.

Case Law: Keates v. Lord Cadogan (1851) 10 CB 591

The defendant leased a house that was in a ruinous condition but did not inform the tenant of it. The court held that no fraud had occurred because there was no duty to disclose, and mere silence was not fraud.

Exceptions to the Rule – When Silence Can Be Fraud

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While the default rule is that silence is not fraud, Indian courts recognize three major exceptions:

1. **Duty to Speak** – Where one party is under an obligation to disclose material facts due to a fiduciary or special relationship.
2. **Contracts Uberrimae Fidei** – Contracts requiring utmost good faith (e.g., insurance, family settlements).
3. **Partial Disclosure or Half-Truths** – When a party makes incomplete statements that are misleading in context, silence can become fraudulent.

In all such cases, failure to disclose may amount to fraudulent silence, and the contract may be declared voidable at the instance of the party whose consent was so obtained.

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QUESTION 7: DEFINE THE TERM ‘CONSENSUS-AD-IDEM’. DISCUSS ITS RELEVANCE REGARDING THE FORMATION OF A VALID CONTRACT. CITE RELEVANT CASE LAWS.

The Latin maxim “**Consensus-ad-idem**”, which literally translates to “**meeting of minds**”, lies at the heart of the **formation of a valid contract**. It means that the parties to a contract must have a **mutual agreement on the same thing in the same sense at the same time**. This principle ensures that both parties are **on the same page** with respect to the terms, subject matter, and purpose of the contract.

In the context of Indian Contract Law, the concept of consensus-ad-idem is deeply embedded in the definition of **agreement** and **contract** as per the Indian Contract Act, 1872.

Legal Framework under Indian Contract Act, 1872

According to **Section 2(e)** of the Indian Contract Act, 1872:

- “Every promise and every set of promises, forming the consideration for each other, is an agreement.”

And **Section 2(h)** defines a **contract** as:

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- “An agreement enforceable by law.”

It follows that **an agreement is the foundation of a contract**, and an agreement arises only when there is a **valid offer and valid acceptance**, and both are made with a **clear understanding of the same subject matter and terms**. This clarity and mutuality are ensured only when there is **consensus-ad-idem**.

Relevance of Consensus-ad-idem in Contract Formation

A contract without consensus-ad-idem is no contract at all. For consent to be valid, it must be **free** and **informed**. **Section 13** of the Indian Contract Act, 1872 states:

- “Two or more persons are said to consent when they agree upon the same thing in the same sense.”

This is a **codification of the principle of consensus-ad-idem**. If there is no such agreement, then even if the offer and acceptance seem to exist **on the surface**, there is in fact **no binding contract** in law.

For instance, if A intends to buy a particular horse named ‘Black Beauty’ from B, but B thinks A is buying another horse ‘White Flash’, there is **no consensus-ad-idem**, and hence, **no contract**.

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The courts have consistently held that unless the **intention of both parties coincides**, no contract can arise. It is not enough that words of agreement are exchanged – the parties must **understand and agree to the same material terms**.

Key Judicial Precedents

Raffles v. Wichelhaus (1864) 2 H & C 906 (Peerless case)

This is the **classic English case** that illustrates the doctrine of **consensus-ad-idem**. The plaintiff agreed to sell goods that were to be shipped on a vessel named 'Peerless'. However, there were **two ships named 'Peerless'** sailing from Bombay at different times. The buyer and seller were thinking of **two different ships**, leading to a **misunderstanding** regarding the essential term of the contract. The court held that **there was no consensus-ad-idem**, and hence **no binding contract**.

This case is foundational in the common law understanding of mutual consent, and Indian courts have also relied upon it in interpreting similar contractual disputes.

Smith v. Hughes (1871) LR 6 QB 597

In this English case, a seller offered to sell oats, and the buyer believed them to be **old oats**, suitable for his

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racehorses. In fact, the oats were **new**. The seller had made **no representation** about the age of the oats. The court held that since the seller had not misrepresented and both parties agreed on the **same oats**, there was **consensus-ad-idem**, and the contract was **binding**, even though the buyer had made a **unilateral mistake**.

This case illustrates that the law does **not protect mistaken assumptions**, unless there was **misrepresentation or ambiguity**.

Sri Chand v. Jagdish Pershad Kishan Chand, AIR 1966 SC 1427

The Supreme Court of India, in this case, reiterated that for a contract to be binding, there must be **consensus-ad-idem**, and **mere exchange of correspondence is not sufficient** if the minds of the parties are not meeting on material terms.

Bhagwandas v. Girdharilal, AIR 1966 SC 543

The Court emphasized that an **offer and acceptance** must coincide in terms and must be **communicated** effectively to create a valid contract. In this sense, **consensus-ad-idem** becomes the **moment of contract formation**, i.e., when both minds are aligned.

Consensus-ad-idem and Mistake (Related Doctrine)

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When there is **absence of consensus-ad-idem due to mistake**, especially **bilateral mistake of fact**, the contract is rendered **void** under **Section 20** of the Indian Contract Act.

Example: If A agrees to sell his car to B, believing the car is in his garage, but the car was actually stolen the night before without their knowledge, the contract is void for **want of consensus on the existence of subject matter**.

This shows that even **honest misunderstandings** between parties can prevent the formation of a valid contract when **consent is not real and mutual**.

Implications in Practical Contract Law

In business and commercial contexts, parties often enter into contracts based on emails, letters, verbal conversations, or pre-written terms. If one party agrees thinking a clause means one thing, and the other thinks it means something else, and if such misunderstanding is on a **material point**, courts may hold that **no contract has been formed** due to lack of consensus-ad-idem.

Thus, the principle has a vital role in **dispute resolution**, especially in interpreting contracts, determining **enforceability**, and deciding the **liability** of parties.

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QUESTION 8: COMPARE AND CONTRAST 'PERFORMANCE OF CONTRACT' AND 'DISCHARGE OF CONTRACT' UNDER THE RELEVANT PROVISIONS OF THE INDIAN CONTRACT ACT, 1872, AND CASE LAWS.

Meaning and Distinction Between the Two Concepts

Performance of contract refers to the actual fulfillment of the contractual obligations by the parties to the contract. When the parties perform their promises as agreed, the contract is said to have been performed, and the rights and duties arising under the contract are satisfied.

On the other hand, Discharge of contract is a broader legal concept that encompasses all the possible ways by which a contract can be brought to an end. Performance is only one method of discharge among several others. A contract may also be discharged by mutual agreement, impossibility of performance, lapse of time, breach of contract, and operation of law.

Thus, while all performances lead to discharge, not all discharges result from performance.

Performance of Contract – Legal Provisions and Explanation

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The law governing performance of contracts is primarily laid down in Sections 37 to 67 of the *Indian Contract Act, 1872*.

According to Section 37, the parties to a contract are bound to either:

- Perform, or
- Offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the Act or of any other law.

Performance can be of two kinds:

- Actual Performance – When the promisor actually carries out his promise as per the terms of the contract.
- Attempted or Tendered Performance – When the promisor offers to perform but the promisee refuses to accept. This is governed by Section 38.

Section 40 provides that if it appears from the nature of the case that it was the intention of the parties that any promise contained in a contract shall be performed by the promisor himself, such promise must be performed by him.

Section 41 states that if a promisee accepts performance from a third party, he cannot later enforce it against the original promisor.

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Discharge of Contract – Broader Framework

Discharge of contract means that the contractual relationship between the parties comes to an end, and their legal obligations cease. As noted earlier, performance is just one among several modes of discharge. The various modes of discharge include:

1. **By Performance** - As discussed above, when parties perform the contract.
2. **By Mutual Agreement** - Under Section 62, a contract may be discharged by novation, rescission, or alteration of its terms with the mutual consent of parties.
3. **By Lapse of Time** – Under the Limitation Act, 1963, if a contract is not enforced within the limitation period, it becomes unenforceable.
4. **By Operation of Law** – e.g., in cases of death, bankruptcy, or merger of rights.
5. **By Impossibility of Performance** – Covered under Section 56, which declares a contract void when performance becomes impossible or unlawful after it was made. This is also known as Doctrine of Frustration.
6. **By Breach of Contract** – When a party fails to perform or refuses to perform, it is a breach, and the other party may treat the contract as discharged.

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Hence, performance is one of the methods of discharge, but discharge itself is a more comprehensive term, including situations where the contract ends without performance.

Case Laws Illustrating the Concepts

***Satyabrata Ghose v. Mugneeram Bangur & Co.*, AIR 1954 SC 44**

This landmark case explained the doctrine of frustration under Section 56, which leads to discharge of contract without performance due to supervening impossibility. The Supreme Court held that if the performance of a contract becomes impossible due to some unavoidable circumstances, it stands discharged.

***Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588**

The Supreme Court emphasized that economic hardship or escalation in prices does not discharge the contract unless it renders the performance of the contract objectively impossible.

***Kedar Nath v. Gorie Mohammad* (1886) ILR 14 Cal 64**

In this case, a promise was made to contribute funds for the construction of a town hall. The court held that the contract was not performed and could not be enforced, hence leading to no performance and no discharge by performance.

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Union of India v. Chaman Lal Loona, AIR 1957 Bom 170

The Bombay High Court held that tender of performance is equivalent to performance if duly made, and if the promisee refuses to accept, then the promisor is discharged from liability.

Aspect	Performance of Contract	Discharge of Contract
Definition	Fulfillment of contractual obligations by parties	Termination of contractual obligations
Scope	Narrow – only actual or attempted fulfillment	Wider – includes performance, breach, frustration, etc.
Sections	Sections 37 to 67	Sections 37, 56, 62, Limitation Act, etc.
Outcome	Leads to satisfaction of contract terms	Brings legal obligations to an end
Includes breach?	No	Yes

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Aspect	Performance of Contract	Discharge of Contract
Includes impossibility?	No	Yes

QUESTION 9: DISCUSS THE PRINCIPLES LAID DOWN UNDER THE LEADING AND WELL KNOWN CASE “HADLEY V. BAXENDALE” WITH THE RELEVANT PROVISIONS OF THE INDIAN CONTRACT ACT, 1872.

One of the most foundational and frequently cited decisions in the law of contract—both in Indian and English jurisprudence—is the English case of *Hadley v. Baxendale*, [(1854) 9 Exch 341]. This case is pivotal in establishing the principles governing the award of damages for breach of contract, particularly in terms of what losses can be recovered and what losses are considered too remote to be compensable.

In the Indian legal context, the principles of *Hadley v. Baxendale* have been adopted and incorporated into Sections 73 and 74 of the Indian Contract Act, 1872, which deal with compensation for loss or damage caused by breach of contract.

Facts of *Hadley v. Baxendale*

In this case, the plaintiffs (*Hadley*) owned a flour mill in Gloucester. The crankshaft of their steam engine broke, and they contracted with the defendants (*Baxendale*),

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who were carriers, to transport the shaft to the manufacturers in Greenwich for repairs. It was agreed that the shaft would be delivered the next day, but due to the defendant's negligence, there was a delay, and the mill remained shut for several days. The plaintiffs sued for loss of profits due to this delay.

However, it was found that Baxendale had not been informed that the mill was non-operational and that the delivery of the shaft was urgently required for its functioning.

The Court held that since the special circumstances (i.e., the dependence of mill operations on the shaft) had not been communicated, the carrier could not be held liable for the consequential loss of profits.

Legal Principles Established in Hadley v. Baxendale

The rule of remoteness of damages laid down in this case has two main limbs, which are:

1. **Ordinary Damages:** Damages that may fairly and reasonably be considered arising naturally, i.e., according to the usual course of things, from such breach of contract.
2. **Special Damages:** Damages that may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach.

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If the loss is too remote, and was not foreseeable by the parties, or was not within the contemplation of both parties at the time of entering into the contract, then such damages cannot be recovered.

Thus, the liability of the breaching party is limited to:

- Losses that naturally arise from the breach, and
- Losses that were in the reasonable contemplation of the parties at the time the contract was formed.

Relevance under the Indian Contract Act, 1872

The above rule has been directly incorporated into Section 73 of the Indian Contract Act, which reads as follows:

“When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach.”

Thus, Section 73 mirrors the two limbs of the rule in *Hadley v. Baxendale*, by explicitly mentioning:

- **General damages** arising naturally, and
- **Special damages** arising out of known or communicated special circumstances.

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Importantly, the section further provides that remote and indirect loss or damage is not recoverable.

Additionally, Section 74 deals with liquidated damages and penalties, providing compensation when a specific sum is stipulated in the contract itself. However, Section 74 must be read in consonance with Section 73, as even stipulated damages are subject to the rule of reasonableness and proximity.

Indian Judicial Recognition of Hadley v. Baxendale

Indian courts have consistently applied and upheld the principles of Hadley v. Baxendale in numerous decisions, particularly in cases concerning commercial loss, delay in delivery, and contracts for service. A few leading judgments are noted below:

Murlidhar Chiranjilal v. Harishchandra Dwarkadas, AIR 1962 SC 366

The Supreme Court categorically endorsed the Hadley v. Baxendale test while dealing with a case involving non-delivery of goods. The Court held that only such damages can be awarded as are reasonably foreseeable and which either arise naturally or were within the contemplation of the parties.

Union of India v. Steel Stock Holders Syndicate, AIR 1976 SC 879

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In this case, dealing with breach of contract for supply of iron and steel, the Supreme Court reiterated the principle that special damages can be awarded only when the special circumstances are brought to the knowledge of the promisor.

A.K.A. Nasir Ahmed v. Union of India, AIR 1980 Del 10

The Delhi High Court relied on Hadley v. Baxendale to deny loss of profits as special damages when no communication of urgency had been made to the other party.

Application and Modern Importance

The Hadley v. Baxendale rule still forms the bedrock of modern contract law relating to damages for breach, especially in commercial disputes involving:

- **Delay in transport**
- **Failure to deliver goods on time**
- **Service contracts**
- **Breach of supply contracts**

Its enduring importance lies in establishing a reasonable limitation on liability. Without this principle, parties could be unjustly burdened with unforeseeable consequences of breach. Therefore, this rule promotes both certainty and fairness in commercial transactions.

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Furthermore, the doctrine encourages parties to disclose special circumstances while forming contracts to safeguard their interests.



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PAPER 3

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

QUESTION (a): INTENTION TO CREATE A LEGAL RELATIONSHIP

In the realm of Contract Law, the 'intention to create a legal relationship' stands as one of the pivotal pillars. It refers to the mutual consensus of parties involved in a contract to legally bind themselves to the terms and conditions stipulated. A contract, even when supported by considerations, would be rendered void if such intention is absent. This principle was aptly affirmed in the case of *Balfour v. Balfour* [1919] 2 KB 571.

Intention in Domestic and Social Agreements

It is commonly presumed that domestic and social agreements lack the intention to create legal relations. The case of *Balfour v. Balfour* stands as a precedent, where a husband's promise to pay allowance to his wife was held unenforceable due to lack of intention to create legal obligation.

However, this presumption is not infallible. In instances where evidence clearly suggests an intention to legally bind domestic and social agreements, the courts will

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uphold them. In the case of *Merritt v. Merritt* [1970] 1 WLR 1211, where an agreement was made post-separation, it was held to be legally enforceable, indicating the court's openness to interpret intention in the context of the agreement.

Intention in Commercial Agreements

Contrarily, commercial agreements are generally presumed to possess the requisite intent. In *Esso Petroleum Co. Ltd. v. Commissioners of Customs and Excise* [1976] 1 All ER 117, Esso's promotional offer of free 'World Cup Coins' was considered a legally binding contract, despite being a marketing stunt.

However, there are exceptions. When express statements clarify that legal obligations are not intended, the agreement is not legally binding. This was shown in *Jones v. Vernons Pools* [1938] 2 All ER 626, where despite being a commercial agreement, the claim was dismissed due to an explicit clause stating no legal relations were intended.

Presumption and Rebuttal

The existence of presumptions for different types of agreements does not imply rigidity. Parties can rebut these presumptions by proving a contrary intention. As observed in *Edwards v. Skyways* [1964] 1 WLR 349, an ex gratia payment, even in a commercial context, was

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held unenforceable as there was no intent to create a legal obligation.



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QUESTION (b): PRIVACY OF CONSIDERATION

'Privity of Consideration', a unique concept in the Indian Contract Law, has been a topic of considerable debate. Unlike the English law principle of 'Privity of Contract', which emphasizes that only the parties to a contract can sue or be sued, the Indian law incorporates a broader notion. Under Indian law, even if a person is not a party to the contract, as long as they are the one providing the consideration, they can enforce the contract.

Concept and Statutory Basis

The 'Doctrine of Privity of Consideration' suggests that consideration must move from the promisee, which is not necessarily the case under Indian law. Section 2(d) of the Indian Contract Act, 1872, allows for a stranger to consideration to enforce a contract. It reads, "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing ... such act or abstinence is called a consideration for the promise."

Case Laws

In *Khirod Behari Dutt v. Man Gobinda and others* (AIR 1934 Cal 682), the Calcutta High Court clarified the position in Indian law and held that as long as consideration exists, it can come from the promisee or any other party.

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Similarly, in the case of *Chinnaya v. Ramayya* (1882) I.L.R. 4 Mad 137, a promise made to a person at the behest of the promisor's aunt was enforced by the person, despite the aunt receiving the benefit, thus highlighting the flexibility of privity of consideration.

Exception and Comparison with English Law

However, it is essential to note that while a stranger to consideration can sue, a stranger to a contract cannot. This distinction, upheld in the case of *Dunlop Pneumatic Tyre Co. Ltd v. Selfridge & Co. Ltd* [1915] AC 847 in English law, also applies to Indian law.

QUESTION (c): UNLAWFUL OBJECTS

The object of an agreement refers to the purpose or design for which the parties enter into the agreement. It is distinct from “consideration”, although both must independently be lawful. Where either the consideration or the object is unlawful, the agreement is void under Section 23 of the Act.

Categories of Unlawful Object under Section 23

The various categories of **unlawful objects** are explained below with the help of relevant illustrations and judicial precedents.

Forbidden by Law

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An agreement is unlawful if the object of the agreement is expressly prohibited by law. This includes statutes, delegated legislation, or regulations passed by competent authorities.

Defeats the Provisions of Any Law

Even if an act is not directly prohibited, if its object is such that it would defeat the provisions of any existing law, then the object becomes unlawful.

Fraudulent Object

If the object is to commit fraud, or aid in the commission of fraud, it is unlawful.

Involves or Implies Injury to Person or Property

Any agreement the object of which causes or tends to cause injury to a person or property is void.

Immoral or Opposed to Public Policy

Courts also have discretion to treat an object as unlawful if it is considered immoral or against public policy, even if not explicitly prohibited by law. The test is whether the agreement is injurious to the interests of the public at large.

Examples of immoral objects:

- Agreements for **illicit cohabitation**

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- Agreements facilitating **prostitution**

Examples of agreements against public policy:

- Agreement to **stifle prosecution**
- Agreement in **restraint of legal proceedings**
- Marriage brokerage contracts

Impact of Unlawfulness

When an object is unlawful, the resulting agreement is void, meaning it does not enforce any legal obligations on the parties and cannot be enforced in a court of law. This was upheld in the case of *Gherulal Parakh v. Mahadeodas Maiya* AIR 1959 SC 781.

Moreover, Section 65 of the Act, which deals with restitution, does not apply where the agreement is unlawful, as the courts will not assist a party who is particeps criminis (i.e., a party to the illegal act).

Unlawful Objects and Public Policy

In *Rustom K. Karanjia v. Krishnaraj M.D. Thackersey* AIR 1970 Bom 424, the Bombay High Court reiterated that agreements with objects that tend to harm public interests or public policy are void. However, what constitutes 'public policy' can be fluid, given its dependence on the prevailing socio-economic conditions.

QUESTION (d): ANTICIPATORY BREACH

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The law of contract, rooted in the principles of mutual obligation and promise, also provides for remedies when such promises are broken or repudiated. One such form of breach is called an “anticipatory breach”—a situation where a party clearly refuses or becomes disabled from performing the contract before the time fixed for performance has arrived. This kind of breach is conceptually and practically distinct from an actual breach, and is expressly recognized under Section 39 of the Indian Contract Act, 1872.

This provision underscores that the right to terminate the contract upon such refusal or renunciation rests with the promisee, and the law does not presume automatic discharge unless the promisee elects to do so.

Legal Consequences and Rights of the Promisee

1. The promisee in cases of anticipatory breach has **two alternative courses of action**, both recognized by Indian courts and legal commentators:
 - **Treat the contract as immediately terminated** and sue for damages without waiting for the actual due date of performance.
 - **Elect to keep the contract alive**, in the hope that the promisor may perform on the due date. In this case, the promisee cannot sue immediately but retains the right to sue later if actual breach occurs on the date of performance.

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2. This election is a **strategic legal choice**, and once the promisee elects to treat the contract as subsisting, he cannot subsequently treat it as terminated unless a fresh breach occurs.

Key Judicial Pronouncements

Sukhdev Singh v. Union of India, AIR 1994 SC 2331

In this Indian Supreme Court case, the court reiterated that repudiation before the date of performance gives rise to a right to sue for breach, provided the promisee does not accept the continued existence of the contract.

Murlidhar Chiranjilal v. Harishchandra Dwarkadas, AIR 1962 SC 366

This case discussed compensation for loss caused by anticipatory breach. The court stressed that the general principles of Section 73—that damages must be foreseeable and directly resulting from the breach—are fully applicable even when the breach is anticipatory in nature.

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QUESTION (e): LIABILITY FOR NECESSARIES SUPPLIED

The law of contracts recognizes that for a party to be legally bound, they must be competent to contract, as per Section 11 of the Indian Contract Act, 1872. However, the law also recognizes the need to protect vulnerable persons such as minors, who are not legally competent to contract. In this context, Section 68 of the Indian Contract Act, 1872 provides for a special exception where a minor or a person incapable of contracting is held liable for "necessaries" supplied to him or to anyone whom he is legally bound to support.

This liability, though not arising from a contract in the usual sense, is recognized under quasi-contractual obligations (also called obligations resembling those created by contract). The principle behind this exception is rooted in equity and justice, to prevent unjust enrichment and ensure that suppliers are not deprived of payment for essential goods or services provided in good faith.

Scope and Interpretation of "Necessaries"

The term "necessaries" is not defined in the Act but has been interpreted through judicial precedents. It refers to goods or services which are:

1. **Essential to the life of the minor or incapable person, and**

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2. Suited to the person's status and condition in life.

What constitutes “necessaries” depends on the facts and circumstances of each case, including the age, social standing, lifestyle, and existing possessions of the individual. Necessaries include food, clothing, education, medical treatment, and in certain cases, lodging and legal services.

It is also important to note that the minor is not personally liable—the claim is against the property (if any) of the minor or incapable person.

The judicial perspective on 'necessaries' has been quite expansive. In *Nash v. Inman* [1908] 2 KB 1, clothing supplied to a minor who already had adequate clothing was not considered necessary. Contrastingly, in *Roberts v. Gray* [1913] 1 KB 520, a minor's contract for professional development (in this case, a billiard player's tour) was deemed necessary as it was beneficial for the minor's livelihood.

Indian courts have adopted a comprehensive view of 'necessaries.' In *Mohori Bibee v. Dharmodas Ghose* (1903) 30 IA 114, the Privy Council held that a minor's contract is void. However, it recognized an exception for contracts providing necessaries. Indian law protects a minor from exploitative contracts while ensuring their right to basic necessities.

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PART B

QUESTION 2: WHAT ARE THE ESSENTIALS OF A VALID OFFER OR PROPOSAL? HOW OFFER IS DIFFERENT FROM INVITATION TO TREAT, EXPLAIN WITH THE HELP OF DECIDED CASE LAWS?

The formation of a contract begins with a proposal or offer. This concept is elucidated in the Indian Contract Act, 1872, which provides a comprehensive framework to distinguish between an offer and an invitation to treat. Understanding the distinction between these concepts is crucial to understand contract formation and enforcement.

Essentials of a Valid Offer

An offer, defined in Section 2(a) of the Indian Contract Act, 1872, is when a person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence. For an offer to be legally enforceable, it must possess the following essential elements:

1. **Intention to Create Legal Relations:** The offer must indicate a clear intention to create a legal relationship. If such an intention is absent, the "offer" cannot lead to a contract, as seen in *Balfour v. Balfour* (1919).
2. **Definite and Unambiguous:** The terms of the offer must be certain and not vague. An offer with

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ambiguous terms cannot be made into a contract, as illustrated by the case *Karina Leasing Ltd. v. Barclays Bank* (1992).

3. **Communicated:** The offer must be communicated to the offeree. Until and unless an offer is communicated, it cannot be accepted. This was upheld in the case *Fitch v. Snedaker* (1868).
4. **Contain All Material Terms:** An offer must be so definite that the acceptance of which creates a contract. It must be certain and not just an invitation to negotiate.
5. **Offer May Be Express or Implied:** Offers can be expressed in words, written or spoken, or may be implied from the conduct of the parties or circumstances of the case.
6. **Legal Compliance:** The terms of the offer should not propose anything illegal or against public policy.

Difference between Offer and Invitation to Treat

While an offer leads to the formation of a contract upon acceptance, an invitation to treat is merely an invitation to make an offer. Unlike an offer, it does not create an obligation upon acceptance. The primary distinction rests on the intention to create legal relations.

Case Laws Illustrating the Difference

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

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1 QB 401: The display of goods with a price in a self-service store was held to be an invitation to treat and not an offer. When a customer takes the item to the cash desk, they make an offer to buy the item, which the cashier can accept or reject.

2. **Harvey v. Facey** [1893] AC 552: The defendant's statement of the lowest price they would sell property for was held to be an invitation to treat rather than a specific offer to sell at that price.

3. **Carlill v. Carbolic Smoke Ball Co** [1892] EWCA Civ 1: This case stands in contrast. The company's advertisement offering to pay £100 to anyone who contracted influenza after using their product was held to be a unilateral offer. The advertisement was not merely an invitation to make an offer but showed a clear intention to be legally bound.

QUESTION 3 EXPLAIN 'ACCEPTANCE' TO AN OFFER. HOW COMMUNICATION OF ACCEPTANCE CAN BE MADE. DISCUSS THE MODE OF REVOCATION OF ACCEPTANCE.

In contract law, acceptance plays a crucial role in forming a valid contract. A simple definition under Section 2(b) of the Indian Contract Act, 1872, establishes acceptance as

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the manifestation of assent to the proposal. This essay will explore the nature of acceptance, methods for communicating acceptance, and the concept of revocation of acceptance, highlighting the significance of these principles with the help of judicial precedents.

Understanding Acceptance

The process of acceptance involves the offeree giving their approval to the proposal put forth by the offeror. For acceptance to be valid and convert an offer into a contract, it must fulfill the following requirements:

1. **Absolute and Unconditional:** Acceptance should be absolute and must correspond with the terms of the offer without any variation or conditions. As established in the *Hyde v. Wrench* (1840) case, a counter-offer negates the original offer.
2. **Communicated to the Offeror:** Acceptance must be communicated by the offeree to the offeror, either explicitly or implicitly.
3. **In Prescribed Manner:** If the offer prescribes a manner of acceptance, it must be followed. If not, the offeror must inform the offeree, who then has a reasonable time to comply.
4. **Accepted by the Party to Whom it was Made:** Only the person to whom the offer is made can accept it, as laid down in *Boulton v. Jones* (1857).

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Communication of Acceptance

Communication of acceptance is pivotal for contract formation, and it can be done in several ways:

1. **Express Acceptance:** This involves a direct communication of acceptance to the offeror through spoken or written words.
2. **Implied Acceptance:** In certain scenarios, acceptance is implied by the conduct of the parties involved.
3. **Silence as Acceptance:** Ordinarily, silence cannot imply acceptance, as highlighted in *Felthouse v. Bindley* (1862). However, past dealings or express stipulations might constitute an exception.
4. **Instantaneous Modes of Communication:** When the acceptance is communicated via telephone, fax, or email, the contract is considered to be formed at the place where the acceptance is received.
5. **Postal Rule:** As per this rule, the acceptance takes effect as soon as it is posted, even if it never reaches the offeror. This was established in *Adams v. Lindsell* (1818).

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Revocation of Acceptance

Revocation of acceptance refers to the withdrawal of acceptance before it is communicated to the offeror. As per Section 5 of the Indian Contract Act, acceptance can be revoked at any time before the communication of acceptance is complete against the acceptor but not afterwards.

Case Laws on Revocation of Acceptance

1. **Byrne & Co v. Leon Van Tienhoven & Co** (1880): This case highlighted that a revocation is not effective until it is communicated to the party to whom it is made. The revocation sent after the acceptance was held ineffective.
2. **Henthorn v. Fraser** [1892]: The court reinforced the postal rule and stated that revocation is not effective until it has been received by the offeree.

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QUESTION 4. DEFINE PRIVACY OF CONTRACT ALONG WITH ITS EXCEPTIONS?

The doctrine of privity of contract, a cornerstone of contract law, holds that a contract cannot impose obligations on or confer rights to any person who is not a party to it. While it helps to maintain the personal nature of contracts and the reciprocal nature of obligations and rights, several exceptions have evolved to cater to practical needs and social changes. This essay delves deeper into the definition, significance, and exceptions to this doctrine.

Understanding Privity of Contract

Privity of contract refers to the relationship that exists between the parties to a contract. The doctrine implies that only the parties to a contract are legally obliged to fulfill the contractual duties and are entitled to enforce the rights emanating from it.

The fundamental principle behind this doctrine is that a contract is a legally binding agreement between parties who have consciously agreed to it and thus are bound by its terms. The case of *Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co Ltd* [1915] AC 847 provides a classic exposition of this rule, emphasizing that contractual obligations can only be enforced by and against the parties to the contract.

This doctrine is essential because it upholds the sanctity of personal bargaining, protects the parties against

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unexpected liabilities, and prevents third parties from interfering with a contract's contractual matrix.

Exceptions to Privity of Contract

Over time, exceptions to the privity doctrine have emerged to cater to evolving societal norms, business practices, and to ensure justice and fairness. These exceptions, which recognize rights or obligations of third parties or non-contracting parties, are detailed below:

1. **Trusts:** In trust arrangements, a party (the trustee) holds property for the benefit of another (the beneficiary). Although the beneficiary is not a party to the trust deed, they can enforce the obligations under it.
2. **Contracts for the Benefit of Third Parties:** Some contracts, although made between two parties, are intended to benefit a third party. English law formally recognized this exception in the Contracts (Rights of Third Parties) Act 1999, while Indian law recognized this in *M.C. Chacko v. State of Travancore* AIR 1962 SC 1.
3. **Family Arrangements:** Within the ambit of family arrangements or marriage settlements, courts have occasionally allowed persons who were not parties to the contract to enforce contractual obligations.
4. **Agency:** In agency agreements, the agent acts on behalf of the principal. Even if the principal was

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not a party to the agreement between the agent and a third party, they can enforce the contract's rights and be liable for its obligations.

5. **Covenants Running with Land:** Certain promises made in land contracts, known as covenants, can bind or benefit not only the original parties but also subsequent owners of the land.
6. **Assignment of Contractual Rights:** If a party assigns its contractual rights to a third party, the third party can enforce these rights despite not being a party to the original contract.
7. **Negotiable Instruments:** In the case of negotiable instruments, such as cheques or promissory notes, a holder in due course can enforce the instrument's rights, even if they were not party to the original contract.

QUESTION 5

A.) DISCUSS THE CONSEQUENCES OF MINOR'S AGREEMENT.

B.) DISCUSS 'CONSIDERATION SHOULD BE LAWFUL IN THE EYE OF LAW'.

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The rules relating to minor's agreements and the requirement for lawful consideration form key components of contract law. The legal outcomes of a minor's agreement reflect society's intent to protect those who lack the maturity to fully understand the consequences of their actions. The requirement for lawful consideration, on the other hand, underscores the law's commitment to uphold morality, public policy, and social welfare.

Part A: Consequences of Minor's Agreement

In Indian law, a minor is a person under the age of 18 years. The Indian Contract Act, 1872 (hereinafter, "the Act") declares a minor's agreement as void ab initio, meaning it is void from the very beginning and has no legal effect. This principle is clearly stated in Section 11 of the Act.

The primary consequence of this rule is that no obligation can arise on a minor, and a minor cannot be asked to compensate for any benefits received under a void agreement. This position was reiterated in the landmark case of *Mohiri Bibi v. Dharmodas Ghose* (1903), where the Privy Council held that a minor's contract is void and that no claim for compensation for benefits conferred under a void agreement can be entertained.

However, there are specific exceptions to this principle:

1. **Necessaries:** Under Section 68 of the Act, a minor is liable to pay for necessities supplied to

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him or to anyone whom he is legally bound to support. 'Necessaries' in this context means goods suitable to the minor's condition in life and actual requirements at the time of the sale and delivery.

2. **Beneficial Contracts of Service:** A minor can enforce a contract of service if it is unequivocally for his benefit, such as a contract of apprenticeship.
3. **Contracts relating to Property:** A minor who is the owner of property can contract to receive any obligation on his property, as long as it is for his benefit.
4. **Insurance Contracts:** Under the Insurance Act, 1938, a minor who has attained the age of 15 years can enter into a valid contract of insurance.

Part B: 'Consideration should be Lawful in the Eye of Law'

Consideration, a crucial element of a valid contract, refers to something in return. It is quid pro quo, meaning something in return for something. However, not all forms of consideration are recognized by law. As per Section 23 of the Act, the consideration for an agreement must be lawful.

For consideration to be deemed lawful, it must not be:

1. **Forbidden by law:** If the consideration involves an act forbidden by law, the agreement is void.

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2. **Fraudulent:** Consideration that involves or promotes fraud is unlawful.
3. **Causing injury to the person or property of another:** Consideration should not cause harm to the person or property of another.
4. **Immoral or opposed to public policy:** Any consideration that promotes immorality or is against public policy is considered unlawful.

In *Central Inland Water Transport Corporation Limited v. Brojo Nath* (1986), the Supreme Court of India held that a contract with consideration or an object opposed to public policy is unlawful and, therefore, void. It further stated that a clause in a contract, which is opposed to public policy, would be struck down as being void.

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QUESTION 6 DISCUSS THE PRINCIPLES LAID DOWN IN HADLEY V. BAXENDALE RELATING TO DAMAGES

The landmark case of *Hadley v. Baxendale* (1854) in English contract law laid down the seminal rule for the determination of consequential damages in breach of contract cases. This case, with its principle of foreseeability, has left an indelible imprint on the law relating to contractual damages, not just in England but across common law jurisdictions.

Background of Hadley v. Baxendale

The case involved two parties, Mr. Hadley, who operated a mill, and Mr. Baxendale, who was a carrier. When the mill's crankshaft broke, Hadley engaged Baxendale to transport the broken crankshaft to the manufacturers as a model for a new one. Due to Baxendale's delay, the mill remained idle for a longer period, causing Hadley to lose profits. Hadley sought to recover these lost profits from Baxendale. However, Baxendale was not informed about the potential loss of profit if the delivery was delayed.

Principles Laid Down in Hadley v. Baxendale

The Court held that Baxendale was not liable for Hadley's lost profits as Baxendale was not aware, nor should he have reasonably foreseen, that his delay would lead to such loss. This ruling led to two seminal principles for determining the extent of damages in breach of contract cases:

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1. **Direct Damages:** Damages that may fairly and reasonably be considered as arising naturally, i.e., according to the usual course of things, from such breach of contract itself.
2. **Consequential Damages:** Damages that may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.

In essence, for a party to be liable for damages, such damage should either be the natural consequence of the breach (which occurs in the ordinary course of things) or should be within the reasonable contemplation of the parties at the time of entering the contract. This is known as the rule of foreseeability.

Impact and Application of the Principles

The principles laid down in *Hadley v. Baxendale* represent a fine balance between fairness and predictability. They ensure that a breaching party is not unfairly burdened with damages that he or she could not have foreseen at the time of the contract. Simultaneously, they offer a degree of predictability by restricting contractual damages to those that naturally flow from the breach or were reasonably foreseeable at the time of the contract.

These principles have been widely accepted and adopted in various common law jurisdictions, including India,

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Australia, Canada, and the United States. In India, the principles of *Hadley v. Baxendale* were incorporated into the Indian Contract Act, 1872, through Sections 73 and 74.



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QUESTION 7 DISCUSS THE DOCTRINE OF UNJUST ENRICHMENT AND CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT IN THE INDIAN CONTRACT ACT, 1872

The principle of unjust enrichment is an equitable doctrine that prevents an individual from benefiting at another's expense without making restitution for the reasonable value of such benefits. In Indian law, the concept of unjust enrichment and certain relations resembling contract are embodied in Sections 68 to 72, known as the 'Quasi Contractual Obligations', under the Indian Contract Act, 1872.

Understanding Unjust Enrichment

Unjust enrichment occurs when one person is enriched at the expense of another in circumstances that the law sees as unjust. Where an individual is unjustly enriched, the law imposes an obligation upon the recipient to make restitution. The key elements of unjust enrichment are: enrichment of the defendant; at the expense of the plaintiff; and it is unjust.

Quasi-Contractual Obligations Under Indian Contract Act, 1872

Quasi-contracts are based on the principle of equity and justice and are inferred by law in situations where there is no formal contract between parties. The Indian

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Contract Act, 1872 codifies the following relations that closely resemble those created by contract:

1. **Claim for necessities supplied to a person incapable of contracting (Section 68):** If a person incapable of entering into a contract, or anyone whom they are legally bound to support, is supplied with necessities suited to their condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Reimbursement of person paying money due by another, in payment of which he is interested (Section 69):** A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by the other.
3. **Obligation of person enjoying benefit of non-gratuitous act (Section 70):** Where a person lawfully does something for another person or delivers something to them, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.
4. **Responsibility of finder of goods (Section 71):** A person who finds goods belonging to

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another and takes them into his custody, is subject to the same responsibility as a bailee.

5. **Liability of person to whom money is paid, or thing delivered, by mistake or under coercion (Section 72):** A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Indian Jurisprudence on Unjust Enrichment

The doctrine of unjust enrichment is used by Indian courts to prevent individuals from profiting at another's expense unjustly. In *State of Madhya Pradesh v. Kaluram* (AIR 1967 SC 1106), the Supreme Court held that the principles of unjust enrichment are applicable not only to instrumentalities of State but also to private individuals.

In *Mafatlal Industries Ltd. v. Union of India* (1997), the Supreme Court discussed unjust enrichment in the context of indirect taxes. The court held that if a burden (tax) was passed on to another person, the person who initially paid the burden (tax) is not entitled to claim a refund as they have not borne the burden themselves, and if they were to receive a refund, it would lead to unjust enrichment.

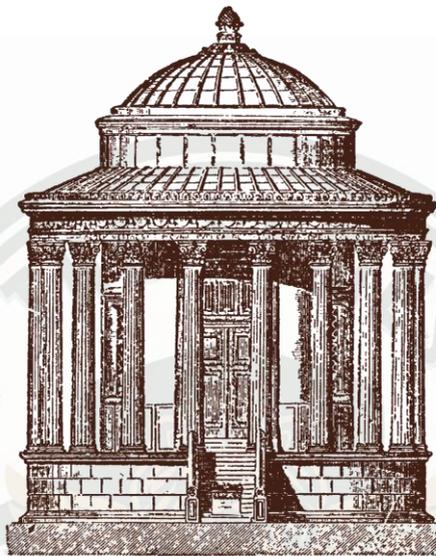
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UNIT 1

A OFFERS TO SELL HIS WATCH TO B FOR ₹2,000. B ACCEPTS.

- Offer: A proposes to sell watch
- Acceptance: B agrees to buy
- Intention to create legal relationship
- Lawful consideration (₹2,000)
- Capacity of parties

A, A MINOR, ENTERS INTO A CONTRACT TO BUY A MOBILE PHONE FROM B.

- Minor's lack of capacity to contract
- Contract is void (Mohori Bibee v. Dharmodas Ghose)

ILLUSTRATIONS OF CONTRACTS

A OFFERS TO SELL HIS CAR TO B IF B AGREES TO MARRY C.

- Unlawful object (marriage for consideration)
- Contract is void (against public policy)

A AGREES TO PAINT B'S HOUSE FOR ₹50,000, BUT IT BECOMES IMPOSSIBLE.

- Impossibility of performance
- Frustration of contract
- Contract becomes void (Carlill v Carbolic Smoke Ball Co).

TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

PAYNE V. CAVE

- Offeror's right to withdraw offer prior to acceptance
- Defendant withdrew bid before auctioneer's hammer fell

RAMSGATE HOTEL CO. V MONTEFIORE

- Offer lapses due to unreasonable delay in acceptance
- Defendant applied for shares, company allotted shares later

LANDMARK JUDGEMENTS ON OFFER

BYRNE V VAN TIENHOVEN

- Communication of revocation before acceptance
- Defendant mailed revocation, plaintiff posted acceptance earlier

DICKINSON V DODDS

- Offer revoked through inconsistent actions
- Defendant agreed to sell property to third party

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LANDMARK
JUDGEMENTS

MOHORI BIBEE V
DHARMODAS GHOSE

- Contract by a minor
- Agreement declared void ab initio
- Minor lacks capacity to contract

RAFFLES V
WICHELHAUS

- Contract based on mutual mistake
- No consensus ad idem (meeting of minds)
- Parties referred to different subjects

CHIKKAM AMMIRAJU
V CHIKKAM
SESHAMMA

- Agreement under coercion
- Contract induced by coercion

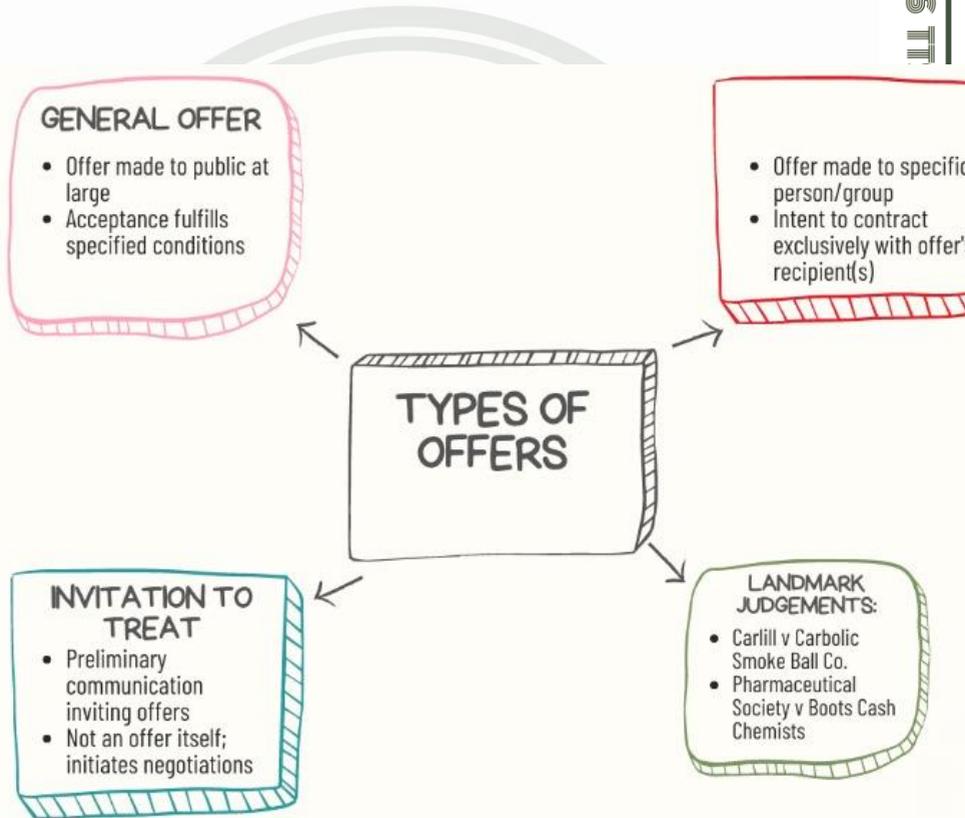
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COMMUNICATION

- Offer must come to the knowledge of the offeree
- Directly or through authorized agent
- Offer complete upon offeree's understanding

ELEMENTS

- Concurrence of offeror's intention
- Awareness by offeree
- Knowledge of offer terms

COMMUNICATION OF OFFER

DIRECT COMMUNICATION

- Offeror communicates directly to offeree
- Communication of offer is explicit and clear

AUTHORIZED AGENT

- Offer communicated through authorized representative
- Agent acts on behalf of offeror

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01

DEFINITION:

Agreement enforceable by law (Section 2(h))



02

COMPONENTS:

- Agreement: Proposal + Acceptance (Sections 2(a) & 2(b))
- Enforceability by law: Legally binding + Meets legal requirements

06

ILLUSTRATIONS:



- A offers to sell a watch to B for ₹2,000. B accepts.
- A agrees to paint B's house, but it becomes impossible

MEANING OF CONTRACT

03

AGREEMENT:

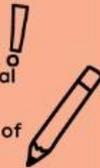
- Mutual understanding between parties
- Proposal: Declaration of willingness to do/abstain
- Acceptance: Act of assenting to the proposal (Section 2(b))



05

IMPORTANCE

- Forms basis of contractual relationships
- Governs Various aspects of contracts



04

ENFORCEABILITY BY LAW:

- Agreement satisfies legal requirements
- Legally binding and enforceable



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01

SIMPLE CONTRACTS

- Oral or written agreements
- Formed by offer and acceptance



02

CONTRACTS UNDER SEAL

- Executed under the seal of parties
- Legally binding



04

QUASI-CONTRACTS

- Not actual contracts, but legal obligations
- Imposed by law to prevent unjust enrichment
- Example: Obligation to return money paid by mistake



03

IMPLIED CONTRACTS

- Terms inferred from conduct or circumstances



TYPES OF CONTRACT

05

ILLUSTRATIONS OF CONTRACT TYPES:

- A agrees to repair B's car, but no written agreement
- A leases property to B under seal
- A buys goods from B, terms not expressly stated
- A mistakenly pays money to B



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ENTORES LTD V MILES FAR EAST CORP

- Acceptance complete upon offeror's receipt
- Offeree responsible for bringing acceptance to offeror's attention

VOID AGREEMENTS:

- Definition: Not enforceable by law
- Reasons: Mistakes, impossibility, public policy

VOIDABLE AGREEMENTS:

- Definition: One party can rescind due to defects
- Defects: Misrepresentation, fraud, coercion, etc.

ILLUSTRATIONS:

- Illegal agreement: Sale of stolen property
- Void minor's contract
- Void due to impossibility

EFFECT OF VOID, VOIDABLE, VALID, ILLEGAL, UNLAWFUL AGREEMENTS

VALID AGREEMENTS:

- Essential requirements: Offer, acceptance, consideration, consent, lawful object, terms
- Effect: Legally binding, rights, obligations

LANDMARK JUDGEMENTS:

- Mohori Bibee v Dharmodas Ghose: Minor's contract, void ab initio
- Raffles v Wichelhaus: Mutual mistake, no consensus ad idem

UNLAWFUL AGREEMENTS

- Broader scope, against morality, public welfare
- Effect: Unenforceable, void

ILLEGAL AGREEMENTS:

- Involves unlawful objects)
- Examples: Crime, fraud, injury, against public policy
- Effect: Unenforceable, void ab initio

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01

INTRODUCTION

- Offer as a foundation of contract formation
- Understanding definition, communication, and revocation



02

DEFINITION OF OFFER/PROPOSAL

- Offeror's declaration of willingness
- To do/abstain from an act for the assent of the offeree
- Express (words) or implied (conduct/circumstances)

06

COMMUNICATION OF OFFER

- Offer must come to knowledge of offeree
- Directly or through authorized agent
- Offer complete upon offeree's understanding.

OFFER/ PROPOSAL

03

LANDMARK JUDGEMENTS

- Payne v. Cave
- Ramsgate Victoria Hotel Co. v Montefiore
- Byrne v Van Tienhoven
- Dickinson v Dodds



05

KEY ELEMENTS

- Declaration of willingness
- Specific act/abstinence
- Intent to obtain assent
- Essential step in contract formation



04

ILLUSTRATIONS:

- Communication of an express offer through a letter
- Implied offer through display with a price tag
- Revocation before acceptance through a message
- Revocation due to lapse of time



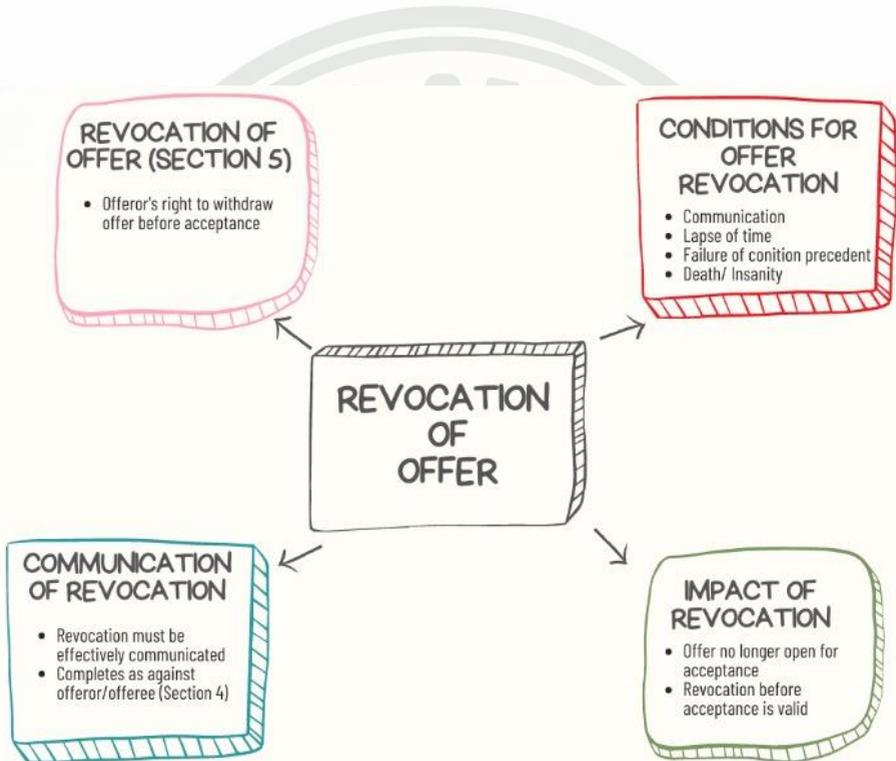
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01

OFFER MADE TO PUBLIC AT LARGE

- Offeror willing to contract with anyone who fulfills conditions



02

CHARACTERISTICS

- Addressed to the public in general
- Acceptance by fulfilling specified conditions

06

LANDMARK JUDGEMENT

- Carlill v Carbolic Smoke Ball Co. (1893)
 - Advertisement for reward as a valid general offer

GENERAL OFFER

03

EXAMPLES

- The company advertises rewards for finding a lost dog
- Reward offered to anyone meeting specified conditions
- Store announces "50% off all items" sale for a day
- General offer to the public for a specified period



05

LEGAL IMPACT

- Offeree's fulfillment of conditions creates binding contract
- Offeror bound to fulfill promise upon acceptance



04

FORMATION OF CONTRACT

- Offeree accepts by meeting the conditions
- Contract arises upon acceptance



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01

OFFER MADE TO A PARTICULAR PERSON/GROUP

- Intent to contract exclusively with specific recipient(s)



02

CHARACTERISTICS

- Addressed to named or identified individuals
- Offeror intends to enter into a contract with recipients

06

LANDMARK JUDGEMENT

- Pharmaceutical Society v Boots Cash Chemists (1953)
 - Display of goods as an invitation to treat, not offer

SPECIFIC OFFER

03

EXAMPLES

- A sends letter offering to sell car to B
- Company writes to supplier with order request



05

LEGAL IMPACT

- Offeror obligated to fulfill terms upon acceptance
- Recipient(s) become party to valid contract



04

FORMATION OF CONTRACT

- Offeree accepts an offer to create a contract
- Acceptance by the specific recipient(s) required
- Acceptance results in a legally binding contract
- Specific terms of offer govern contract terms



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01

PRELIMINARY COMMUNICATION INVITING OFFERS

- Not a definite offer but an invitation to negotiate



02

CHARACTERISTICS

- Invites potential offers from others
- Initiates bargaining process

06

LANDMARK JUDGEMENT

- Pharmaceutical Society v Boots Cash Chemists (1953)
 - Display of goods as an invitation to treat, not offer
- Fisher v Bell (1961)
 - Displayed goods not offers; invitation to treat

INVITATION TO TREAT

03

EXAMPLES

- Store displays products with price tags
- Auctioneer announces auction of goods



05

LEGAL IMPACT

- Contracts formed when offers arising from invitation are accepted
- No contractual obligation until acceptance by offeror



04

FORMATION OF CONTRACT

- Offer arises from offeree in response to invitation
- Contract formed upon acceptance of offer by the offeror



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01

DEFINITION OF ACCEPTANCE

- Assent of offeree to terms of offer
- Formation of legally binding contracte



02

TYPES OF ACCEPTANCE

- Express: Communicated in words (spoken or written)
- Implied: Inferred from conduct or circumstances

06

ENTORES LTD V MILES FAR EAST CORP (1955)

- Acceptance complete upon offeror's receipt
- Offeree responsible for bringing acceptance to offeror's attention

ACCEPTANCE IN CONTRACT LAW

03

COMMUNICATION OF ACCEPTANCE

- Section 4 of Indian Contract Act, 1872 |
- Acceptance communicated to offeror
- Complete upon offeror's knowledge and understanding



05

LANDMARK JUDGEMENTS

- Adams v Lindsell (1818)
- Delay in communication does not invalidate acceptance



04

REVOCAION OF ACCEPTANCE

- Section 5 of Indian Contract Act, 1872
- Acceptance can be revoked before communication is complete
- Once communicated, acceptance cannot be revoked



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01

INTRODUCTION

- Standard form contract (boilerplate/adhesion contract)
- Used repeatedly, non-negotiable terms
- Industries: insurance, finance, telecom, online services



02

ADVANTAGES

- Efficiency (time, resources)
- Consistency (reduce disputes)
- Ease of use (clear language)

06

ILLUSTRATIONS

- Mobile service provider's contract:
- Bank's loan agreement

STANDARD FORM OF CONTRACT

03

DISADVANTAGES

- Imbalance of power (favour offeror)
- Lack of customization
- Unconscionability (unfair terms)



05

LANDMARK JUDGEMENTS

- Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly
- LIC v Consumer Education & Reserach



04

LEGAL POSITION IN INDIA

- Generally enforceable, valid contract requirements
- Unconscionability doctrine recognized
- Court intervention to protect the weaker party



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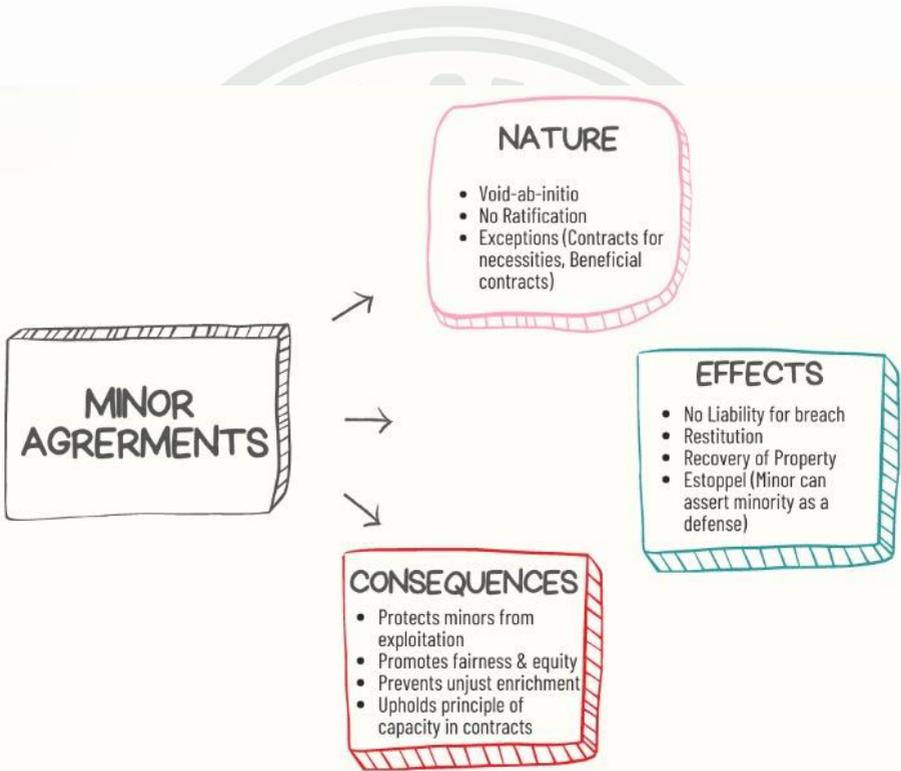
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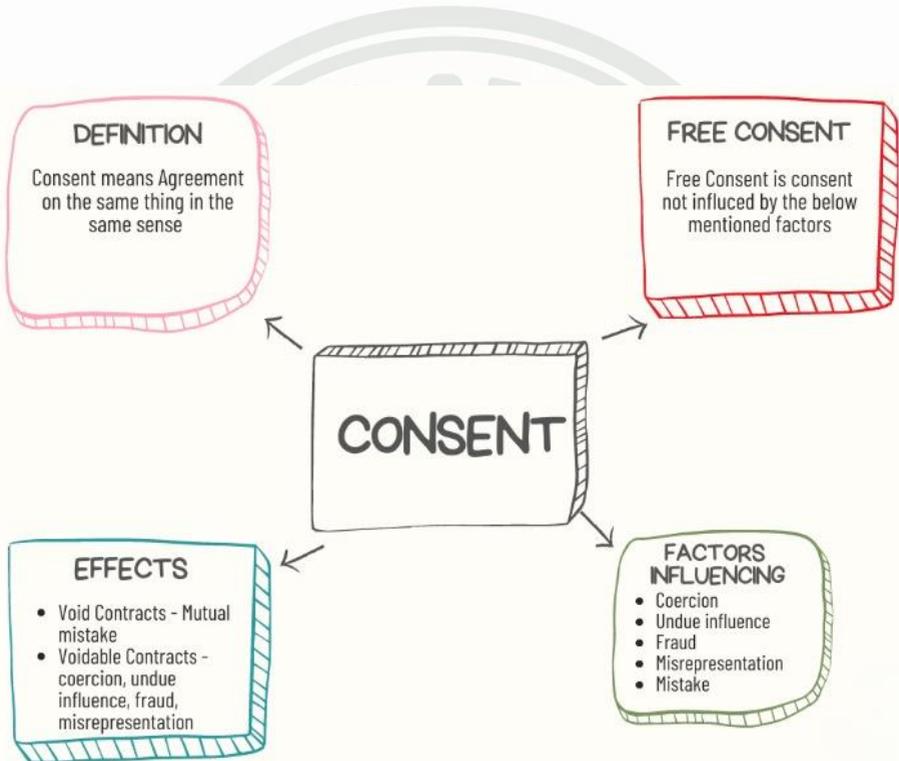
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01

INTRODUCTION

- Fundamental element of a valid contract
- Price/value for promises or performance
- Quid pro quo, "something for something"



02

DEFINITION

- Act/abstinence/promise at the promisor's desire
- Forms basis for a valid contract

05

INTERCONNECTED NATURE

- Integral to valid contract formation
- Ties into essential contract elements
- Links with previous discussions
- Legal recognition

CONSIDERATION

03

KINDS

- Executory consideration
- Executed consideration
- Past consideration



04

ESSENTIALS

- Promisor's desire
- Something of value
- Must be legal
- May be past, present or future
- Need not to be adequate



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01 PRIVACY OF CONTRACT

- Only parties bound by contract terms
- Third parties cannot enforce or be held liable



02 RATIONALE

- Maintain control of contractual rights and obligations
- Avoid undue burden from third party claims

06

LANDMARK JUDGEMENTS

- Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.
- M.C. Chacko v. State Bank of Travancore
- Beswada Sambayya v. Gangavaram Venkatanarasimharaju

PRIVITY OF CONTRACT & CONSIDERATION

03

- Trust
- Agency
- Covenants Running with Land



05 LESS STRICT REQUIREMENT

- Consideration may be provided by promisee or other person
- Third party's consideration does not negate enforceability



04 PRIVACY OF CONSIDERATION

- Only parties providing consideration can enforce the contract
- Section 2(d) of the Indian Contract Act, 1872



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01 MINOR'S INCAPACITY TO CONTRACT

- Minors are not competent to contract
- Contracts entered by minors are void-ab-initio



02 CONTRACTS FOR NECESSITIES

- Necessities include basic needs like food, clothing, shelter
- Minor liable to pay reasonable price for necessities

06 ILLUSTRATIONS

- A, 16-year-old, smartphone purchase contract is void
- B, 17-year-old, liable for reasonable price of necessary clothing
- C, 15-year-old, enforceable apprenticeship contract if beneficial

MINOR'S POSITION

03 BENEFICIAL CONTRACTS

- Valid
- Contracts of employment, insurance, apprenticeship, etc.
- No possibility of burden or detriment to the minor



05 RESTITUTION

- Minor who received benefits under void contract may need restitution
- Prevents unjust enrichment and ensures fairness



04 RATIFICATION

- Minors cannot ratify contracts upon reaching the majority
- Contract remains void even after minor becomes an adult
- New contract required for validity



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01 DISCHARGE BY PERFORMANCE

- Fulfillment of contractual obligations.
- Section 37: Obligation to perform or offer performance.
- Section 38: Partial performance and acceptance.
- Parties must perform or offer to perform unless excused.



02 DISCHARGE BY AGREEMENT

- Mutual agreement to discharge contract.
- Novation: Substituting a new contract.
- Cancellation or alteration of the original contract.

05

DISCHARGE BY OPERATION OF LAW

- Contract terminated by law.
- Events include death, insolvency, merger, and statutory provisions.

CONSIDERATION

03

DISCHARGE BY IMPOSSIBILITY

- Contract becomes void due to impossibility or unlawfulness.
- Performance becomes impossible or unlawful.
- Compensation for advantage received.

04 DISCHARGE BY LAPSE OF TIME

- Non-performance within a reasonable or specified time.
- Contract treated as discharged.



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UNIT 3

DEFINITION - SEC(15)

- Use of force, threats, or intimidation.
- Purpose: Compelling a person to enter into an agreement against their will.

LANDMARK JUDGEMENT

Ranganayakamma v. Alwar Setti

COERCION

EFFECTS

Voidable Contract
Contracts entered into under coercion can be voided at the option of the aggrieved party.

IMPORTANCE

- Protects parties from entering contracts against their will
- Upholds free and valid consent

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DEFINITION - SEC(16)

- Exploiting a position of power or dominance
- Purpose: Obtain consent to a contract for unfair advantage

LANDMARK JUDGEMENT

Mannu Singh v. Umadat Pande

UNDUE INFLUENCE

EFFECTS

Voidable Contract
Contracts entered into under undue influence can be voided at the option of the aggrieved party

IMPORTANCE

- Ensures parties freely and fairly consent to contracts
- Upholds the principle of balanced and voluntary agreements

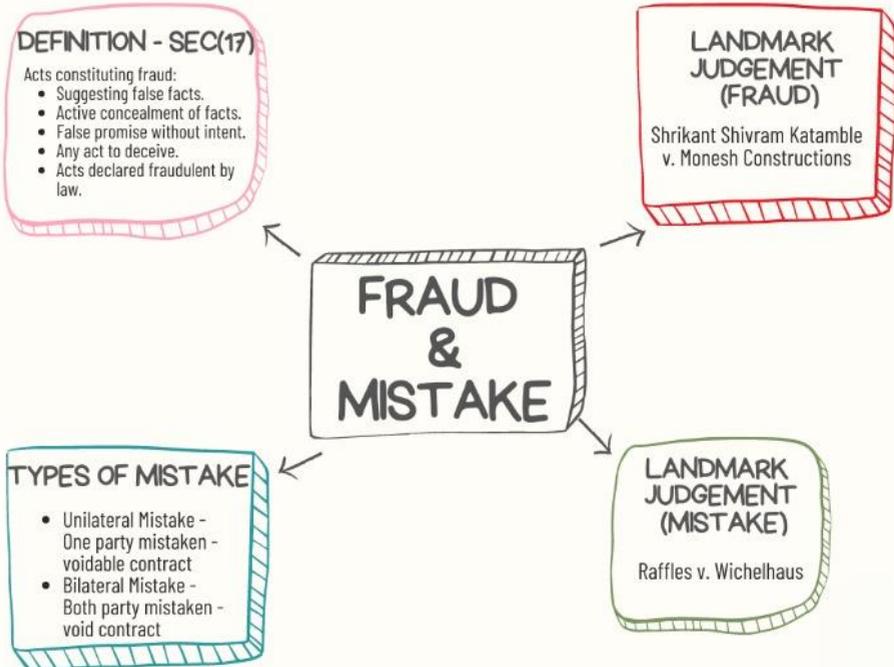
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DEFINITION - SEC(18)

- Unintentional provision of false/misleading information
- Types: Positive assertion, breach of duty, causing mistake.

LANDMARK JUDGEMENT

Derry v. Peek

MISREPRESENTATION

EFFECTS

Voidable Contract
Contracts entered into due to misrepresentation can be voided by the aggrieved party.

IMPORTANCE

- Ensures parties enter contracts based on accurate information.
- Upholds transparency and fairness in contractual dealings.

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UNLAWFUL
CONSIDERATION
AND OBJECT



UNLAWFUL CONSIDERATION

Consideration is unlawful if:

- Forbidden by law.
- Would defeat any law's provisions
- Fraudulent
- Implies injury to person/property.
- Immoral/opposed to public policy



UNLAWFUL OBJECT

Object is unlawful if:

- Forbidden by law.
- Would defeat any law's provisions.
- Fraudulent.
- Implies injury to person/property.
- Immoral/opposed to public policy.

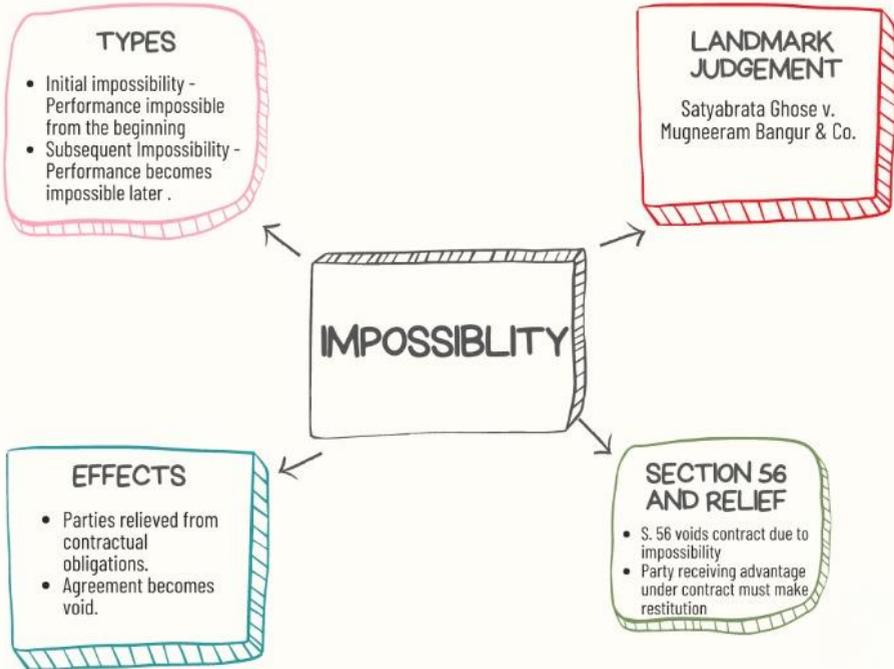
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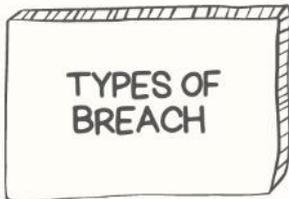
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ANTICIPATORY BREACH

- Party refuses or shows an inability to perform.
- Treat the contract as discharged and claim damages immediately.
- Or, Wait until the due date for performance.



PRESENT BREACH

- Failure to fulfil obligations when due.
- Claim damages for breach.
- Or, Decide to treat or affirm the contract.

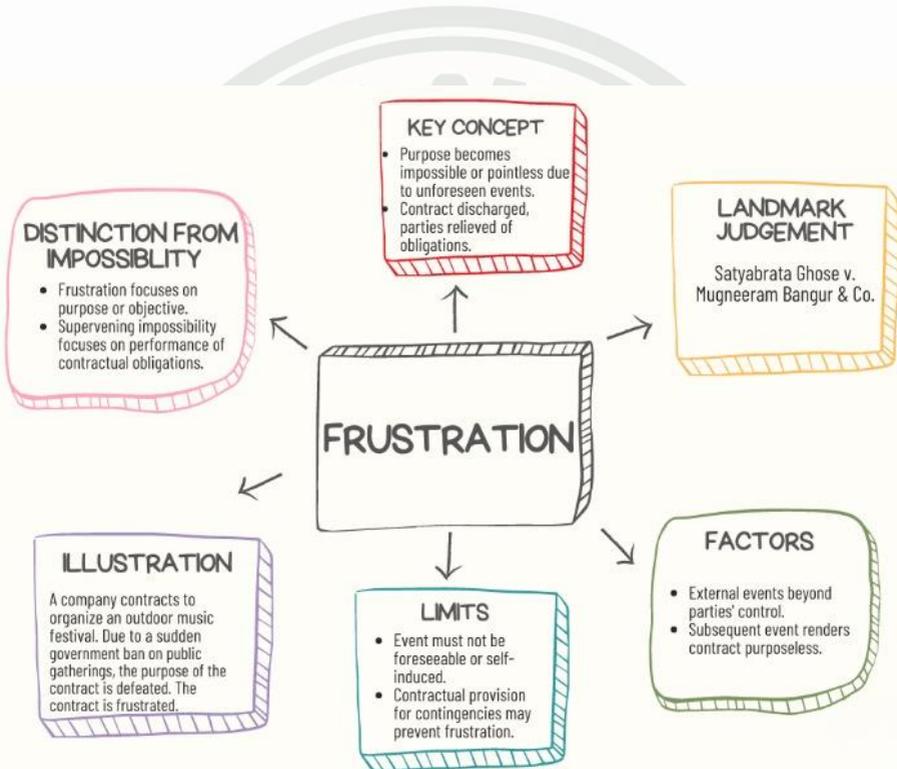
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01 PERFORMANCE OF CONTRACT

- Parties fulfil obligations.
- Actual performance (Section 38).
- Attempted performance (Section 39).
- Ready and willing to perform.



02

IMPOSSIBILITY OF PERFORMANCE

- Contract void if performance is impossible.
- Initial impossibility vs. subsequent impossibility.
- Relief from obligations.

05

FRUSTRATION VS SUPERVENING IMPOSSIBILITY

- Frustration focuses on purpose defeat.
- Supervening impossibility focuses on performance.
- Frustration broader, includes supervening impossibility.



IMPOSSIBILITY & FRUSTRATION OF CONTRACT

03

FRUSTRATION OF CONTRACT

- Purpose rendered impossible.
- Contract considered frustrated.
- Parties relieved from obligations.



04

LANDMARK JUDGEMENTS

- Satyabrata Ghose v. Mugneeram Bangur & Co
- Alopi Parshad & Sons Ltd. v. Union of India
- Raja Dhruv Dev Chand v. Raja Harmohinder Singh
- Shipton, Anderson & Co. v. Weil Brothers & Co



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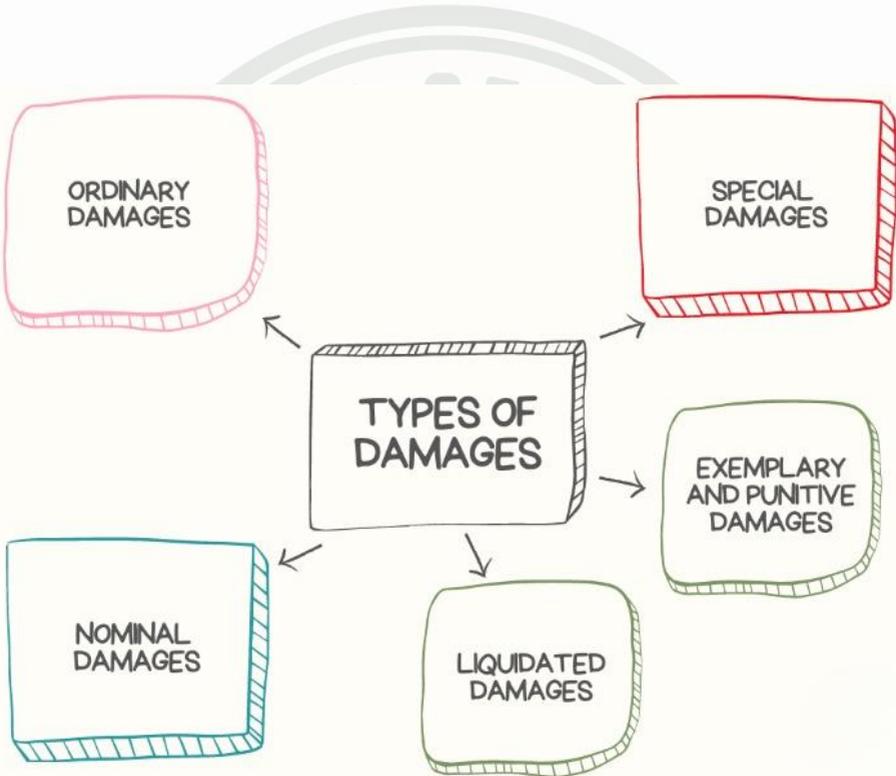
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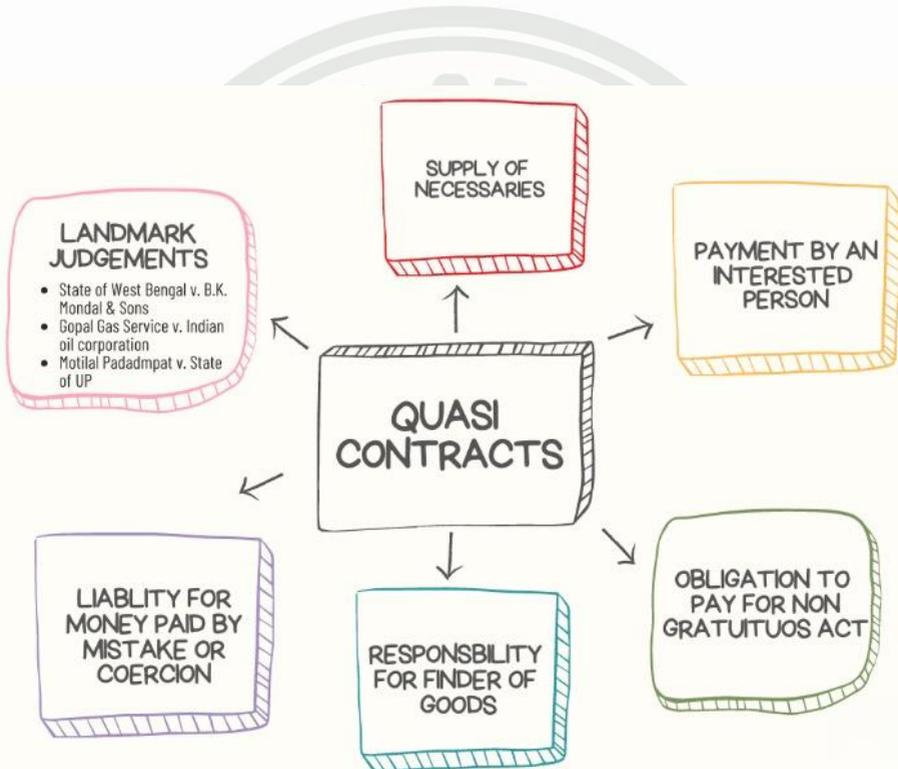
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01 TYPES

- Anticipatory breach
- Present breach



02 DEFINITION

Breach of contract occurs when a party fails to fulfill contractual obligations.

05

ILLUSTRATIONS



- A contracts to supply products to B; B fails to deliver on time.
- Frustration of contract due to unforeseen circumstances.
- Liquidated damages reduced by court.

BREACH

03

LANDMARK JUDGEMENTS

- Hadley v. Baxendale
- Jalaluddin v. Radha Kishan
- Fateh Chand v. Balkishan Das



04 REMEDIES FOR BREACH

- Rescission of Contract
- Suit for Damages
- Suit for Specific Performance
- Suit for Injunction
- Suit for Quantum Meruit

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01 HADLEY V. BAXENDALE



- Rule for determining ordinary (general) damages
- Plaintiff's mill shut down, defendant delayed repair
- Lost profits not reasonably foreseeable, no liability

02

RUXLEY ELECTRONICS V. FORSYTH

- Nominal damages for breach, no actual loss
- Swimming pool built shallower than specified
- Breach without loss, nominal damages awarded

06

ALOPI PARSHAD & SONS LTD. V. UOI

- Frustration due to government price controls
- Plaintiff contracted to supply ghee at fixed price
- Government imposed price controls, frustration of contract

LANDMARK JUDGEMENTS ON REMEDIES

03

FATEH CHAND V. BALKISHAN DAS



- Excessive liquidated damages reduced
- Court reduced liquidated damages to a reasonable amount

05 JALALUDDIN V. RADHA KISHAN



- Damages for failure to pay consideration
- Plaintiff entitled to claim damages for breach

04

PLANCHE V. COLBURN

- Quantum meruit for work done
- Plaintiff, an author, contracted to write a book
- Defendant canceled project after partial completion



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