



ಅ ಲ್ - ಅ ಮೀ ನ್ ಕಾ ನೂ ನು ಕಾ ಲೇ ಜು
AL-AMEEN COLLEGE OF LAW
Affiliated to Karnataka State Law University and Recognised by Bar Council of India
ACCREDITED WITH NAAC B++

**IMPORTANT PREVIOUS YEAR QUESTIONS WITH
ANSWERS
FOR
CONTRACT LAW - I**

Prepared by: Rasha C M

Assistant Professor

UNIT 1

1. All Contracts are Agreements, but all Agreements are not Contracts. Explain.

Introduction

The law of contract occupies an important place in modern commercial and social transactions. Every day individuals enter into numerous arrangements relating to the sale of goods, employment, services, loans, insurance, and other matters. However, not every arrangement creates legal obligations. The Indian Contract Act, 1872 distinguishes between an agreement and a contract. The relationship between these two concepts is often expressed through the statement: “All contracts are agreements, but all agreements are not contracts.”

This statement highlights the fundamental principle that while every contract originates from an agreement, only those agreements that satisfy certain legal requirements become enforceable as contracts.

Meaning of Agreement

Section 2(e) of the Indian Contract Act, 1872 defines an agreement as: “Every promise and every set of promises forming the consideration for each other is an agreement.”

An agreement is formed when one person makes a proposal or offer and the other person accepts it. Thus, an agreement is the result of offer and acceptance.

Example:

A offers to sell his motorcycle to B for ₹50,000. B accepts the proposal.

The offer and acceptance together create an agreement between A and B.

Thus: Offer + Acceptance = Agreement

An agreement merely signifies mutual understanding between parties and may or may not create legal obligations.

Meaning of Contract

Section 2(h) of the Indian Contract Act defines a contract as: “An agreement enforceable by law is a contract.”

A contract is therefore an agreement that the law recognizes and enforces. If either party fails to perform their obligations, the aggrieved party can seek legal remedies before a court of law.

Example:

A agrees to sell his house to B for ₹10 lakhs. Both parties are competent to contract, the consideration is lawful, and all legal requirements are satisfied. Such an agreement becomes a valid contract enforceable by law.

Thus:

Agreement + Legal Enforceability = Contract

Essential Elements of a Valid Contract

Not every agreement becomes a contract. To be enforceable by law, an agreement must satisfy the following essential elements:

1. Lawful Offer and Acceptance

There must be a valid offer made by one party and acceptance by the other party.

2. Intention to Create Legal Relationship

The parties must intend to create legal obligations. Mere social or domestic arrangements generally do not create legal relations.

3. Lawful Consideration

Consideration refers to the price paid for the promise. It must be lawful.

4. Capacity of Parties

The parties must be competent to contract under Section 11. They must be majors, of sound mind, and not disqualified by law.

5. Free Consent

Consent must be free and not obtained through coercion, undue influence, fraud, misrepresentation, or mistake.

6. Lawful Object

The object of the agreement must not be illegal, immoral, or opposed to public policy.

7. Certainty of Terms

The terms of the agreement must be definite and capable of being understood.

8. Possibility of Performance

The act agreed to be performed must be capable of performance.

9. Agreement Not Expressly Declared Void

The agreement should not fall within the category of void agreements under the Act.

10. Compliance with Legal Formalities

Where required by law, the agreement must be in writing, registered, or attested.

Why All Contracts are Agreements

Every contract necessarily begins with an agreement. Without agreement there can be no contract. Before legal rights and obligations arise, there must first be a meeting of minds between the parties.

Therefore, every contract contains all the elements of an agreement, namely offer and acceptance.

Example:

A offers to sell his car to B for ₹4 lakhs. B accepts the offer. Both parties are competent, consideration is lawful, and consent is free.

Since all legal requirements are fulfilled, the agreement becomes a valid contract.

Hence, every contract is an agreement.

Why All Agreements are Not Contracts

Although every contract is an agreement, every agreement does not become a contract because many agreements lack one or more essential elements required for legal enforceability.

The following examples illustrate this principle:

1. Social and Domestic Agreements

Social arrangements are generally not intended to create legal obligations.

Example:

A invites B to dinner and B accepts the invitation. Later B fails to attend.

Although there was an agreement, no legal action can be taken because it is merely a social arrangement.

2. Agreements Without Consideration

As a general rule, consideration is essential for a valid contract.

Example:

A promises to gift his watch to B without receiving anything in return.

Such an agreement is generally void unless it falls within the statutory exceptions.

3. Agreements with Minors

A minor is not competent to contract.

Example:

A minor agrees to purchase a motorcycle on credit.

The agreement is void ab initio and cannot be enforced.

4. Agreements with Unlawful Objects

An agreement whose object is illegal is void.

Example:

A agrees to pay B ₹1 lakh to assault C.

Since the object is unlawful, the agreement is void and unenforceable.

5. Agreements with Uncertain Terms

An agreement containing vague or uncertain terms cannot be enforced.

Example:

A agrees to sell B “a reasonable quantity of goods” without specifying the quantity.

Such uncertainty may render the agreement unenforceable.

Judicial Recognition of the Principle

The distinction between agreement and contract has been consistently recognized by courts. Courts enforce only those agreements that satisfy the legal requirements prescribed by the Indian Contract Act.

The Act itself embodies this principle through Sections 2(e) and 2(h), making legal enforceability the decisive factor that transforms an agreement into a contract.

Conclusion

The statement “**All contracts are agreements, but all agreements are not contracts**” correctly explains the relationship between an agreement and a contract. An agreement is the foundation of every contract, but only those agreements that satisfy the essential requirements of the Indian Contract Act become legally enforceable contracts. Agreements lacking legal enforceability remain mere agreements and cannot be enforced in a court of law. Therefore, while every contract is necessarily an agreement, every agreement cannot be regarded as a contract.

2. Define Offer and Explain the Rules Relating to a Valid Offer with Decided Cases

Introduction

Offer is the foundation of every contract. A contract comes into existence only when one party makes an offer and the other party accepts it. Therefore, the process of contract formation begins with a valid offer. Unless there is a lawful offer, there can be no acceptance, and consequently no contract. The Indian Contract Act, 1872 lays down the principles governing offers and their validity.

Meaning and Definition of Offer

Section 2(a) of the Indian Contract Act, 1872 defines a proposal or offer as follows:

“When one 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, he is said to make a proposal.”

The person who makes the offer is known as the **offeror** or **proposer**, and the person to whom the offer is made is called the **offeree** or **proposee**.

Example

A offers to sell his motorcycle to B for ₹50,000. Here, A is the offeror and B is the offeree.

If B accepts the offer, a contract is formed.

Essentials or Rules of a Valid Offer

For an offer to be legally valid, it must satisfy certain essential requirements recognized by law and judicial decisions.

1. Offer Must Show a Clear Intention to Create Legal Relations

The offer must indicate the willingness of the offeror to do or abstain from doing something with the intention of obtaining the assent of the offeree. Mere expression of desire, wish, or intention does not amount to an offer.

Example

A says, "I may sell my car for ₹3 lakhs."

This is merely a statement of intention and not a valid offer because there is no definite willingness to sell.

On the other hand, if A says, "I will sell my car to B for ₹3 lakhs," it amounts to a valid offer.

2. Offer Must Be Communicated to the Offeree

An offer becomes effective only when it is communicated to the person to whom it is made.

A person cannot accept an offer unless he has knowledge of it.

Case Law: Lalman Shukla v. Gauri Dutt (1913)

In this case, the defendant's servant was sent to search for a missing boy. While he was away, the defendant announced a reward for finding the boy. The servant found the boy without knowing about the reward and later claimed it.

The court held that he could not claim the reward because he had no knowledge of the offer when he performed the act.

Principle: Knowledge of the offer is essential for acceptance.

3. Offer Must Be Certain, Definite and Unambiguous

The terms of the offer must be clear and certain. An offer containing vague or indefinite terms cannot be accepted and therefore cannot create a contract.

Example

A offers to sell B “a large quantity of rice.”

The term “large quantity” is uncertain and vague. Such an offer may not be enforceable.

The parties must know exactly what rights and obligations they are undertaking.

4. Offer May Be Express or Implied

An offer may be made either expressly or impliedly.

(a) Express Offer

An express offer is made through spoken or written words.

Example

A writes a letter to B offering to sell his house for ₹10 lakhs.

(b) Implied Offer

An implied offer arises from the conduct of the parties or circumstances of the case.

Example

When a bus is operated on a route, there is an implied offer by the transport company to carry passengers upon payment of the prescribed fare.

Thus, an offer need not always be expressed in words.

5. Offer May Be General or Specific

(a) General Offer

A general offer is made to the public at large and can be accepted by any person who fulfills the conditions specified in the offer.

Case Law: Carlill v. Carbolic Smoke Ball Co. (1893)

The defendant company advertised that it would pay £100 to anyone who used its smoke ball according to instructions and still contracted influenza. Mrs. Carlill used the smoke ball as directed but nevertheless contracted influenza and claimed the reward.

The company argued that the advertisement was merely a sales promotion and not an offer.

The court held that the advertisement constituted a valid general offer to the public and Mrs. Carlill had accepted the offer by performing the conditions stated in the advertisement.

Principle: A general offer can be accepted by any member of the public who fulfills its conditions.

(b) Specific Offer

A specific offer is made to a particular person or group of persons and can be accepted only by them.

Example

A offers to sell his car specifically to B.

Only B can accept the offer.

6. Offer Must Be Distinguished from an Invitation to Offer

An invitation to offer is not an offer. It is merely an invitation to others to make offers.

In an invitation to offer, the person inviting offers is not bound to accept them.

Examples of Invitation to Offer

1. Display of goods in a shop.
2. Auction sales.
3. Price catalogues and advertisements.
4. Tenders and quotations.

Case Law: Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.

The defendant operated a self-service store where customers selected goods and took them to the cashier for payment.

The issue was whether the display of goods on shelves amounted to an offer.

The court held that the display of goods was merely an invitation to offer. The customer made the offer when presenting the goods at the counter, and the shopkeeper accepted the offer when processing the sale.

Principle: Display of goods in a shop is an invitation to offer and not an offer itself.

7. Offer Must Not Prescribe Silence as Acceptance

The offeror cannot impose upon the offeree an obligation to reject the offer. Silence cannot ordinarily be treated as acceptance.

A valid contract requires a positive act of acceptance.

Case Law: Felthouse v. Bindley (1862)

An uncle wrote to his nephew offering to purchase a horse and stated that if he heard no more about the matter, he would consider the horse his.

The nephew did not reply but intended to sell the horse. Later a dispute arose.

The court held that silence does not amount to acceptance and no contract had been formed.

Principle: Acceptance must be communicated; silence is not acceptance.

8. Offer Must Be Capable of Creating Legal Consequences

The offer must be one that the law recognizes and is capable of enforcement.

Example

An agreement to commit a crime cannot constitute a valid offer because its object is unlawful.

Similarly, offers made in purely social or domestic settings may lack the intention to create legal obligations.

9. Offer May Be Revoked Before Acceptance

According to Section 5 of the Indian Contract Act, a proposal may be revoked at any time before the communication of acceptance is complete against the proposer.

Example

A offers to sell his laptop to B. Before B communicates acceptance, A withdraws the offer.

The revocation is valid because acceptance had not yet become complete against A.

Thus, an offer does not remain open indefinitely and may be withdrawn before acceptance.

Importance of a Valid Offer

A valid offer is the first and most essential step in the formation of a contract. It defines the rights and obligations that may arise upon acceptance. Courts carefully examine whether a valid offer existed before determining the existence of a contract.

Without a valid offer:

- There can be no acceptance.
- There can be no agreement.
- There can be no contract.

Conclusion

Offer is the foundation upon which every contract is built. Section 2(a) of the Indian Contract Act defines an offer as the expression of willingness to do or abstain from doing an act with a view to obtaining the assent of another. For an offer to be valid, it must be communicated, certain, capable of legal enforcement, and free from ambiguity. Judicial decisions such as *Lalman Shukla v. Gauri Dutt*, *Carlill v. Carbolic Smoke Ball Co.*, *Pharmaceutical Society v. Boots Cash Chemists*, and *Felthouse v. Bindley* have played an important role in explaining the principles governing valid offers. Therefore, a proper understanding of the rules relating to offers is essential for understanding the law of contracts.

3. Define Acceptance and Explain the Essentials/Rules of a Valid Acceptance with Illustrations

Introduction

Acceptance is one of the most important elements in the formation of a contract. A contract arises when an offer made by one party is accepted by another party. Acceptance converts an offer into a promise and creates a binding legal relationship between the parties. Without acceptance, an offer remains merely a proposal and no contractual obligation arises.

The Indian Contract Act, 1872 lays down the rules regarding acceptance and the manner in which it must be communicated. For acceptance to result in a valid contract, it must satisfy certain legal requirements.

Meaning and Definition of Acceptance

Section 2(b) of the Indian Contract Act, 1872 defines acceptance as follows:

“When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.”

Thus, acceptance means the expression of assent or agreement by the offeree to the terms of the offer.

Example

A offers to sell his motorcycle to B for ₹50,000.

B agrees to purchase the motorcycle for ₹50,000.

B's assent to A's offer constitutes acceptance, and a promise is created between the parties.

Essentials or Rules of a Valid Acceptance

For acceptance to be legally valid and capable of creating a contract, it must satisfy the following requirements.

1. Acceptance Must Be Absolute and Unqualified

According to Section 7 of the Indian Contract Act, acceptance must be absolute and unqualified. It must correspond exactly with the terms of the offer.

Any variation in the terms of the offer amounts to a counter-offer and not acceptance.

Illustration

A offers to sell his car to B for ₹2 lakhs.

B replies that he will purchase it for ₹1.5 lakhs.

This is not acceptance but a counter-offer because B has altered the terms of the original offer.

Therefore, no contract is formed.

Importance

The law follows the principle of **consensus ad idem** or “meeting of minds.” Both parties must agree upon the same thing in the same sense.

2. Acceptance Must Be Communicated

Acceptance must be communicated to the offeror. Mere mental acceptance or a secret intention to accept is not sufficient.

A person cannot be bound by an acceptance of which he has no knowledge.

Case Law: Felthouse v. Bindley (1862)

In this case, an uncle wrote to his nephew offering to buy a horse and stated:

“If I hear no more about it, I shall consider the horse mine.”

The nephew did not reply but intended to sell the horse.

The court held that silence does not amount to acceptance and therefore no contract was formed.

Principle

Acceptance must be communicated by some positive act or conduct. Silence cannot ordinarily be treated as acceptance.

3. Acceptance Must Be Given by the Person to Whom the Offer is Made

An offer can be accepted only by the person or persons to whom it is addressed.

A stranger cannot accept an offer.

Illustration

A offers to sell his laptop to B.

Only B has the right to accept the offer.

If C attempts to accept the offer, no valid contract arises.

Exception

In the case of a general offer made to the public at large, any person who fulfills the conditions of the offer may accept it.

Example

Reward advertisements issued to the public can be accepted by anyone who performs the required act.

4. Acceptance Must Be Given in the Prescribed Mode

The offeror may prescribe a particular mode of acceptance.

According to Section 7(2), acceptance should be made in the manner prescribed by the offeror.

Illustration

A writes to B offering to sell goods and requires acceptance by email.

If B sends acceptance by email, the requirement is fulfilled.

If B uses a different mode, A may insist upon acceptance in the prescribed manner.

Importance

This rule ensures certainty and clarity in contractual dealings.

5. Acceptance Must Be Given Within the Prescribed or Reasonable Time

An offer cannot remain open indefinitely.

Acceptance must be made:

- Within the time prescribed by the offeror; or
- Within a reasonable time if no time is specified.

Illustration

A offers to sell his house to B and requires acceptance within ten days.

If B accepts after twenty days, the acceptance is invalid because the offer has lapsed.

Importance

The law requires prompt acceptance to avoid uncertainty in contractual relations.

6. Acceptance Must Be Made Before the Offer Lapses or Is Revoked

An offer may terminate by lapse of time, revocation, death, insanity of the offeror, or destruction of the subject matter.

Acceptance after termination of the offer is ineffective.

Illustration

A offers to sell his car to B on Monday.

On Wednesday A validly revokes the offer.

If B attempts to accept the offer on Thursday, no contract is formed because the offer has already been revoked.

Importance

Acceptance must be made while the offer is still in existence.

7. Acceptance May Be Express or Implied

Acceptance may be communicated either expressly or impliedly.

(a) Express Acceptance

Express acceptance is communicated through spoken or written words.

Example

A offers to sell his house to B.

B writes a letter stating, "I accept your offer."

This is express acceptance.

(b) Implied Acceptance

Implied acceptance arises from conduct indicating assent.

Example

A boards a public bus and pays the fare.

The conduct of the passenger and the transport company indicates acceptance.

Thus, acceptance may be inferred from actions as well as words.

8. Acceptance Must Create a Legal Relationship

The acceptance must be made in circumstances where the parties intend to create legal obligations.

Social and domestic arrangements generally do not give rise to legal relationships.

Illustration

A invites B to dinner and B accepts.

If B later fails to attend, A cannot sue B because the parties did not intend to create legal obligations.

Importance

Only agreements intended to create legal consequences can become enforceable contracts.

Communication of Acceptance

The communication of acceptance is governed by Section 4 of the Indian Contract Act, 1872.

The Act distinguishes between the position of the proposer and the acceptor.

Communication Complete Against the Proposer

Communication of acceptance is complete against the proposer when the acceptance is put into a course of transmission to him so as to be beyond the power of the acceptor.

Example

A posts a letter offering to sell goods to B.

B posts a letter of acceptance.

As soon as the acceptance letter is posted, communication becomes complete against A (the proposer).

Communication Complete Against the Acceptor

Communication of acceptance is complete against the acceptor when it comes to the knowledge of the proposer.

Example

When A receives B's acceptance letter, communication becomes complete against B (the acceptor).

Importance of Postal Rule

The postal rule protects the acceptor by treating acceptance as complete upon posting, provided the use of post is contemplated by the parties.

Legal Significance of Acceptance

Acceptance performs a crucial role in contract formation because:

1. It converts an offer into a promise.
2. It creates legal rights and obligations.
3. It establishes consensus ad idem or meeting of minds.
4. It determines the moment at which a contract comes into existence.
5. It provides certainty in commercial transactions.

Without valid acceptance, no enforceable agreement can arise.

Conclusion

Acceptance is the final and essential step in the formation of a contract. According to Section 2(b) of the Indian Contract Act, acceptance signifies the assent of the offeree to the offer made by the proposer. For acceptance to be valid, it must be absolute, unqualified, communicated, given by the proper person, made within the prescribed time, and before the offer is revoked or lapses. Acceptance may be express or implied, but it must always indicate a clear intention to create legal relations. Therefore, a valid acceptance transforms a proposal into a promise and ultimately results in a legally enforceable contract.

4. "An Agreement without Consideration is Void." Explain with Exceptions.

Introduction

Consideration is one of the fundamental elements of a valid contract. It is often described as the "price of a promise" because it is the consideration that distinguishes a legally enforceable agreement from a mere gratuitous promise. The general principle of contract law is that a promise made without consideration creates no legal obligation. This principle is expressed in the well-known maxim:

"No Consideration, No Contract."

The Indian Contract Act, 1872 recognizes the importance of consideration and provides that, as a general rule, an agreement without consideration is void. However, the Act also recognizes certain exceptional situations where agreements without consideration are enforceable by law.

Meaning and Definition of Consideration

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 abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

Thus, consideration may consist of:

- Doing an act;
- Abstaining from doing an act; or
- Promising to do or abstain from doing an act.

The act must be done at the desire of the promisor.

Example

A agrees to sell his motorcycle to B for ₹50,000.

Here:

- A's consideration is the motorcycle.
- B's consideration is ₹50,000.

Therefore, both parties provide consideration and the agreement becomes enforceable.

Importance of Consideration

Consideration is essential because:

1. It indicates the seriousness of the parties.
2. It creates mutual obligations between the parties.
3. It prevents enforcement of purely gratuitous promises.

4. It distinguishes a contract from a gift.
5. It provides evidence that the parties intended legal consequences.

Without consideration, there is generally no binding contract.

General Rule: No Consideration, No Contract

Section 25 of the Indian Contract Act states:

“An agreement made without consideration is void.”

Therefore, where one party makes a promise and the other party gives nothing in return, the agreement is generally unenforceable.

Example

A promises to give B ₹1,00,000 as a gift.

B gives nothing in return.

This agreement lacks consideration and is void unless it falls within one of the statutory exceptions.

Thus, the general rule is:

Agreement + Consideration = Contract

Agreement – Consideration = Void Agreement

Exceptions to the Rule “No Consideration, No Contract”

The Indian Contract Act recognizes certain situations where agreements without consideration are enforceable.

1. Agreement Made Out of Natural Love and Affection

Section 25(1) provides that an agreement made without consideration is valid if:

1. It is in writing;
2. It is registered under the law relating to registration;
3. It is made on account of natural love and affection; and
4. It is between parties standing in a near relation to each other.

All these conditions must be satisfied.

Example

A father executes a registered document promising to transfer property to his son out of natural love and affection.

The agreement is enforceable even though no consideration is present.

Case Law: Rajlukhy Dabee v. Bhootnath Mukherjee

A husband promised to pay maintenance to his wife through a registered document. The court held that since there was no genuine love and affection between the parties at the time of the agreement, the exception did not apply.

Principle

Natural love and affection must genuinely exist between the parties.

2. Promise to Compensate for Past Voluntary Services

Section 25(2) recognizes a promise made to compensate a person who has voluntarily done something for the promisor.

The voluntary act must have been done before the promise was made.

Example

A finds B's lost wallet and returns it to him.

Later, B promises to pay A ₹10,000 as a reward.

The promise is enforceable even though there was no prior consideration.

Illustration

A voluntarily saves B's house from fire.

Later B promises to reward A.

The promise is valid under Section 25(2).

Principle

The law recognizes moral obligations arising from voluntary services rendered for another person's benefit.

3. Promise to Pay a Time-Barred Debt

Section 25(3) provides that a promise to pay a debt barred by limitation is valid even without consideration.

For validity:

1. The debt must be time-barred;
2. The promise must be in writing;
3. It must be signed by the debtor or his authorized agent.

Example

A owes B ₹50,000.

The limitation period expires.

Subsequently, A signs a written promise agreeing to pay the debt.

The promise is enforceable despite the absence of fresh consideration.

Principle

The law treats the written promise as sufficient evidence of the debtor's intention to revive the obligation.

4. Completed Gifts

Explanation 1 to Section 25 provides that nothing in the section affects the validity of completed gifts.

Once a gift has been actually made and completed, its validity cannot be challenged merely because there was no consideration.

Example

A voluntarily transfers a gold chain to B as a gift.

The gift is valid even though B has provided no consideration.

Principle

A completed gift is different from a mere promise to make a gift in the future.

5. Creation of Agency

According to Section 185 of the Indian Contract Act:

“No consideration is necessary to create an agency.”

An agency relationship may be created without consideration.

Example

A appoints B as his agent to purchase goods on his behalf.

Even though B receives no consideration, the agency relationship is valid.

Importance

Commercial transactions often require immediate appointment of agents without consideration.

Essential Features of Valid Consideration

For consideration to be valid, the following requirements must generally be satisfied:

1. Consideration Must Move at the Desire of the Promisor

The act must be done at the promisor's request.

Case Law: Durga Prasad v. Baldeo

The plaintiff incurred expenses constructing shops under the orders of a government officer and later sought consideration from shopkeepers.

The court held that the act was not done at the desire of the defendants and therefore did not constitute valid consideration.

2. Consideration May Move from the Promisee or Any Other Person

Indian law differs from English law in this respect.

Case Law: Chinnaya v. Ramaya

The court held that consideration may proceed from a third person and need not necessarily move from the promisee.

3. Consideration May Be Past, Present, or Future

Indian law recognizes:

- Past consideration
- Present (executed) consideration
- Future (executory) consideration

4. Consideration Must Be Lawful

Unlawful consideration cannot support a contract.

Example

A agrees to pay B for committing a crime.

The consideration is unlawful and the agreement is void.

Important Case Law

Abdul Aziz v. Masum Ali (1914)

The defendant promised to contribute money towards the construction of a mosque.

The plaintiff sued for recovery of the promised amount.

The court held that the promise was not enforceable because there was no consideration.

Principle

A mere promise unsupported by consideration is void.

Kedarnath Bhattacharji v. Gorie Mohamed

The defendant promised to contribute towards the construction of a town hall.

Acting on that promise, the plaintiff incurred liabilities.

The court held that the promise was enforceable because the plaintiff had acted upon the promise.

This case demonstrates that courts may enforce certain promises where the promisee has altered his position relying upon them.

Conclusion

Consideration is the foundation of a valid contract and is rightly described as the price paid for a promise. Section 25 of the Indian Contract Act embodies the fundamental principle that an agreement without consideration is void. However, recognizing the demands of justice and commercial convenience, the Act provides important exceptions relating to natural love and affection, compensation for past voluntary services, promises to pay time-barred debts, completed gifts, and agency. Therefore, while the general rule remains “**No Consideration, No Contract,**” the statutory exceptions ensure that deserving promises receive legal recognition and enforcement.

5. Problem Question

Facts

'A' entered a departmental store and selected an article displayed with a price tag. He then took the article to the payment counter intending to purchase it. However, the shopkeeper refused to sell the article. Aggrieved by the refusal, A wishes to sue the shopkeeper for breach of contract.

Issue

Whether the display of goods with a price tag in a departmental store amounts to a valid offer, and whether the refusal of the shopkeeper to sell the article constitutes a breach of contract.

Reasoning

Under the Indian Contract Act, 1872, a valid contract is formed only when there is a lawful offer and a valid acceptance.

A distinction must be made between an **offer** and an **invitation to offer (invitation to treat)**.

An offer is a final expression of willingness to be bound upon acceptance. In contrast, an invitation to offer is merely an invitation to others to make offers.

The display of goods in a shop with price tags is generally regarded as an invitation to offer and not a legal offer. The customer makes the offer when he selects the goods and presents them for purchase at the counter. The shopkeeper may either accept or reject that offer.

Relevant Case Law

Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd. (1953)

In this case, goods were displayed on shelves in a self-service store. Customers selected the goods and took them to the cashier.

The court held that the display of goods on shelves constituted merely an invitation to offer. The customer's act of presenting the goods at the cash counter amounted to the offer, and the contract was concluded only when the cashier accepted the offer.

Applying the above principle to the present case, the display of the article with a price tag in the departmental store was merely an invitation to customers to make offers.

When A picked up the article and brought it to the payment counter, he was making an offer to purchase the article at the stated price.

The shopkeeper was not legally bound to accept that offer. Since the shopkeeper refused to sell the article before accepting A's offer, no acceptance took place.

As acceptance is an essential element of a valid contract, no contract came into existence between A and the shopkeeper.

In the absence of a concluded contract, there can be no question of breach of contract.

Judgment

A cannot successfully sue the shopkeeper for breach of contract.

The display of goods with a price tag in a departmental store is merely an invitation to offer and not a legal offer. A made the offer when he presented the article at the payment counter, but the shopkeeper did not accept it. Therefore, no contract was formed and no breach of contract occurred.

Hence, the shopkeeper is not liable.

UNIT 2

1. Explain the Provisions Relating to Capacity to Contract and Effects of Minor's Agreement

Introduction

One of the essential requirements of a valid contract is that the parties entering into the contract must be legally competent. A person who lacks legal capacity cannot bind himself by contractual obligations. The law protects certain classes of persons such as minors and persons of unsound mind from the consequences of contractual liability.

The provisions relating to competency to contract are contained in Sections 11 and 12 of the Indian Contract Act, 1872. These provisions specify who is competent to contract and who is incapable of entering into a valid contract.

Meaning of Capacity to Contract

Capacity to contract means the legal ability or competence of a person to enter into a valid and binding contract.

A person possessing contractual capacity can acquire rights and incur liabilities under a contract. If a person lacks such capacity, the contract may be void or unenforceable.

Section 11 – Who are Competent to Contract?

Section 11 of the Indian Contract Act provides:

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

Thus, a person is competent to contract only if he satisfies the following conditions:

1. He Must Have Attained the Age of Majority

The person must have completed the age of majority.

Under the Indian Majority Act, 1875:

- A person ordinarily attains majority at 18 years of age.
- Where a guardian has been appointed by the court, majority is attained at 21 years of age.

2. He Must Be of Sound Mind

The person must be capable of understanding the nature and consequences of the contract.

3. He Must Not Be Disqualified by Law

Certain persons are prohibited by law from entering into contracts.

Therefore, the following categories of persons are incompetent to contract:

- Minors
- Persons of unsound mind
- Persons disqualified by law

I. Minor

Meaning of Minor

A minor is a person who has not attained the age of majority as prescribed by law.

Under Indian law, a person below eighteen years of age is a minor.

Since a minor lacks contractual capacity, the law grants him special protection against contractual liability.

Minor's Agreement

A contract with a minor is void from the very beginning.

Such an agreement creates no legal rights or obligations against the minor.

Leading Case: Mohori Bibi v. Dharmodas Ghose (1903)

Facts

Dharmodas Ghose, a minor, mortgaged his property in favour of a moneylender and borrowed money. At the time of the transaction, the lender was aware of the minor's age.

Later, the minor sought cancellation of the mortgage on the ground of minority.

Judgment

The Privy Council held that a minor's agreement is absolutely void and has no legal effect.

Principle

A minor is incapable of entering into a contract, and therefore any agreement with a minor is void ab initio.

This is the leading authority on the law relating to minors in India.

Effects of Minor's Agreement

1. Minor's Agreement is Void Ab Initio

A minor's agreement is void from the very beginning.

It is treated as if it never existed.

No contractual rights or obligations arise from such an agreement.

Example

A minor agrees to purchase a motorcycle on credit.

The agreement is void and unenforceable.

2. Minor Cannot Be Sued for Breach of Contract

Since a minor's agreement is void, a minor cannot be held liable for non-performance.

Even if the minor fails to perform his promise, no action for damages can be brought against him.

Example

A minor agrees to purchase goods and later refuses to take delivery.

The seller cannot sue the minor for breach of contract.

3. No Estoppel Against a Minor

The doctrine of estoppel does not apply against a minor.

Even if a minor falsely represents himself as a major and induces another person to enter into a contract, he can subsequently plead minority.

Example

A minor falsely claims that he is 20 years old and obtains a loan.

Later he refuses repayment by pleading minority.

The lender cannot enforce the agreement.

Principle

The law protects minors even against the consequences of their own misrepresentation.

4. Doctrine of Restitution

Although a minor cannot be compelled to perform a contract, the court may order restoration of property or goods obtained by the minor if such property can be traced in his possession.

This equitable remedy is known as restitution.

Example

A minor purchases a laptop through misrepresentation and still possesses it.

The court may direct the return of the laptop.

However, if the property has been consumed or disposed of, recovery is generally not allowed.

Case Law: Leslie Ltd. v. Sheill

The court held that a minor cannot be compelled to repay money borrowed under a void agreement.

5. A Minor Can Be a Beneficiary

Although a minor cannot incur contractual liability, he can receive benefits under a contract.

A contract beneficial to a minor can be enforced by him.

Example

A property is transferred in favour of a minor.

The minor can enforce his rights under the transfer.

Principle

The law protects minors and therefore allows them to enjoy benefits without imposing liabilities.

6. Liability for Necessaries Supplied to a Minor

Section 68 of the Indian Contract Act provides protection to persons who supply necessaries to minors.

A supplier of necessaries can recover the reasonable price of such goods from the minor's property.

Necessaries Include

- Food
- Clothing
- Medical treatment
- Education
- Accommodation

Example

A doctor provides emergency treatment to a minor.

The doctor can recover reasonable expenses from the minor's property.

Important Point

Recovery is made from the minor's property and not from the minor personally.

7. Minor Cannot Ratify an Agreement After Attaining Majority

Ratification means approval of an act done earlier.

Since a minor's agreement is void from the beginning, it cannot be validated by ratification after attaining majority.

Example

A minor borrows money at age 17.

After attaining majority, he simply confirms the transaction.

The original agreement remains void.

A fresh contract supported by fresh consideration is necessary.

Case Law: Nazir Ahmed v. Jiwandas

The court held that a void agreement made during minority cannot be ratified after attaining majority.

8. Minor Cannot Become a Partner

Under partnership law, a minor cannot become a full-fledged partner because partnership involves contractual obligations.

However, with the consent of all partners, a minor may be admitted to the benefits of partnership.

Rights of Such Minor

- Share in profits
- Access to accounts

Limitation

He is not personally liable for partnership debts.

9. Minor Can Act as an Agent

A minor may act as an agent.

However, he incurs no personal liability toward the principal.

Example

A minor may purchase goods on behalf of another person acting as an agent.

II. Persons of Unsound Mind

Section 12 – Meaning of Sound Mind

Section 12 provides:

A person is said to be of sound mind for the purpose of making a contract if, at the time of making it, he is capable of understanding it and forming a rational judgment as to its effect upon his interests.

Therefore, two conditions are necessary:

1. Ability to understand the contract.
2. Ability to form a rational judgment regarding its consequences.

Persons Usually Considered of Unsound Mind

1. Idiots

An idiot is a person who has permanently lost the capacity to understand and reason.

His contracts are void.

2. Lunatics

A lunatic suffers from mental illness intermittently.

A contract made during insanity is void.

However, a contract made during a lucid interval is valid.

Example

A person suffering from mental illness enters into a contract during a period of mental stability.

The contract is valid.

3. Drunken or Intoxicated Persons

A person heavily intoxicated and incapable of understanding the nature of the transaction is not competent to contract.

III. Persons Disqualified by Law

Certain persons are specifically prohibited by law from entering into contracts.

Examples

1. Alien Enemies

Citizens of countries at war with India cannot enter into contracts during the period of war without government permission.

2. Insolvents

Certain contractual powers of insolvents are restricted after adjudication.

3. Convicts

Convicts undergoing imprisonment may face restrictions on contractual capacity.

4. Foreign Sovereigns and Diplomats

Foreign sovereigns and diplomatic representatives enjoy certain immunities and special legal protections.

Conclusion

Capacity to contract is an essential element of a valid contract. Section 11 of the Indian Contract Act provides that only persons who have attained majority, are of sound mind, and

are not disqualified by law can enter into valid contracts. Among all categories of incompetent persons, minors receive the greatest protection under the law. Following the landmark decision in *Mohori Bibi v. Dharmodas Ghose*, a minor's agreement is regarded as void ab initio. Although a minor cannot be held liable under a contract, the law permits him to enjoy contractual benefits and protects suppliers of necessities. Thus, the provisions relating to capacity to contract strike a balance between contractual freedom and protection of vulnerable persons.

2. Define Coercion and Distinguish it from Undue Influence

Introduction

Consent is one of the essential elements of a valid contract. According to Section 13 of the Indian Contract Act, 1872, two or more persons are said to consent when they agree upon the same thing in the same sense (**consensus ad idem**).

However, mere consent is not sufficient. The consent must also be **free**. Section 14 of the Indian Contract Act provides that consent is said to be free when it is not caused by:

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

If consent is obtained through coercion or undue influence, the contract becomes voidable at the option of the aggrieved party.

Coercion - Meaning and Definition

Section 15 of the Indian Contract Act defines coercion as:

“The committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

Thus, coercion involves the use of force, threats, or unlawful pressure to obtain consent.

Example

A threatens to kill B unless B signs a contract transferring his property.

B signs the contract out of fear.

The consent is obtained by coercion.

Essentials of Coercion

For coercion to exist, the following elements must be present:

1. Committing or Threatening to Commit an Act Forbidden by Law

The act committed or threatened must be prohibited by law.

Example

Threatening assault, murder, kidnapping, or criminal intimidation.

2. Unlawful Detention or Threatened Detention of Property

Coercion may also arise where property is unlawfully detained.

Example

A unlawfully retains B's goods and refuses to return them unless B signs an agreement.

3. Intention to Cause a Person to Enter into an Agreement

The threat or unlawful act must be made with the intention of obtaining consent.

4. Consent Must Be Obtained Through Such Threat or Pressure

There must be a direct connection between the coercive act and the consent given.

Important Case Law

Chikham Ammiraju v. Chikham Seshamma (1917)

Facts

A husband threatened to commit suicide unless his wife and son executed a release deed in his favour.

Judgment

The court held that threatening to commit suicide amounted to coercion because suicide was an act forbidden by law.

Principle

A threat of suicide may constitute coercion under Section 15.

Effects of Coercion

According to Section 19 of the Indian Contract Act:

A contract induced by coercion is **voidable** at the option of the aggrieved party.

The aggrieved party may:

1. Rescind (cancel) the contract; or
2. Affirm the contract and insist upon its performance.

The court may also order restoration of benefits received under the contract.

Undue Influence

Meaning and Definition

Section 16(1) of the Indian Contract Act provides:

“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.”

Thus, undue influence arises when one party abuses a position of trust, confidence, or authority to obtain consent.

Example

A doctor persuades his seriously ill patient to transfer valuable property to him at a very low price.

The patient's consent may be regarded as obtained through undue influence.

Essentials of Undue Influence

1. One Party Must Be in a Position to Dominate the Will of the Other

The dominant party must possess authority, influence, or control over the other.

Examples

- Parent and child
- Teacher and student
- Doctor and patient
- Spiritual guru and disciple
- Solicitor and client
- Trustee and beneficiary

2. Use of Dominant Position

The dominant party must actually use the position of influence.

Mere existence of a special relationship is not enough.

3. Obtaining an Unfair Advantage

The dominant party must obtain an unfair or unconscionable benefit from the transaction.

When Undue Influence is Presumed

Section 16(2) provides that a person is deemed to dominate the will of another where:

(a) Real or Apparent Authority Exists

Example:

Employer and employee.

(b) Fiduciary Relationship Exists

Example:

Lawyer and client.

(c) Contract is Made with a Person Whose Mental Capacity is Affected

Example:

A person suffering from illness, old age, or mental distress.

Important Case Law

Raghunath Prasad v. Sarju Prasad

Facts

A son borrowed money from his father and executed certain documents.

Judgment

The court held that mere existence of a father-son relationship does not automatically establish undue influence. It must be proved that the father actually dominated the son's will and obtained an unfair advantage.

Principle

Undue influence must be established by evidence and cannot be presumed solely from the relationship.

Effect of Undue Influence

According to Section 19A of the Indian Contract Act:

A contract induced by undue influence is **voidable** at the option of the aggrieved party.

The court may:

1. Set aside the contract entirely; or
2. Enforce it on such terms as it considers just and equitable.

Distinction Between Coercion and Undue Influence

Basis	Coercion	Undue Influence
Definition	Defined under Section 15	Defined under Section 16
Nature	Involves physical force, threats, or unlawful detention	Involves moral pressure and domination of will
Method Used	Threat, force, or unlawful act	Abuse of confidence, trust, or authority
Relationship Between Parties	No special relationship required	Special relationship generally exists
Criminal Element	Usually involves an act forbidden by law	No criminal act is necessary
Consent	Obtained through fear or compulsion	Obtained through influence or domination
Pressure Applied	Physical or unlawful pressure	Mental or moral pressure
Parties Involved	Can be committed by any person	Usually arises between persons in fiduciary or confidential relationships

Basis	Coercion	Undue Influence
Burden of Proof	Aggrieved party must prove coercion	In certain cases, burden shifts to dominant party
Example	Threatening to kill a person unless he signs a contract	A spiritual guru inducing a disciple to transfer property

Similarities Between Coercion and Undue Influence

1. Both affect free consent.
2. Both render contracts voidable.
3. In both cases, consent is not genuine.
4. The aggrieved party has the right to avoid the contract.
5. Both are recognized under the Indian Contract Act, 1872.

Conclusion

Free consent is the foundation of every valid contract. Coercion and undue influence are two important factors that vitiate consent. Coercion involves the use of force, threats, or unlawful detention of property to obtain consent, whereas undue influence arises from the abuse of a dominant position or relationship of trust to secure an unfair advantage. Although both make contracts voidable at the option of the aggrieved party, they differ significantly in their nature, method, and circumstances. Therefore, understanding the distinction between coercion and undue influence is essential for determining the validity and enforceability of contracts under the Indian Contract Act, 1872.

3. What is Fraud? Explain the Essential Elements of Fraud with Leading Cases.

Introduction

Free consent is an essential requirement of a valid contract. According to Section 14 of the Indian Contract Act, 1872, consent is said to be free when it is not caused by coercion, undue

influence, fraud, misrepresentation, or mistake. When consent is obtained through fraud, it ceases to be free and the validity of the contract is affected.

Fraud is one of the most serious factors vitiating consent because it involves deliberate deception by one party to induce another party to enter into a contract. The law does not permit a person to benefit from his own dishonest conduct and therefore provides remedies to the aggrieved party.

Meaning and Definition of Fraud

Section 17 of the Indian Contract Act, 1872 defines fraud as:

“Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.”

Thus, fraud involves a deliberate intention to deceive another person and induce him to enter into a contract.

Example

A sells a car to B and falsely states that the car has never met with an accident, knowing fully well that it was severely damaged in an accident.

B purchases the car relying on this statement.

A has committed fraud.

Essential Elements of Fraud

For fraud to exist, the following essential elements must be present:

1. False Representation of a Material Fact

There must be a false statement regarding a material fact.

The statement must relate to an existing fact and not merely an opinion or future intention.

Example

A tells B that a piece of land measures 10 acres when it actually measures only 5 acres.

This is a false representation of a material fact.

Importance

The fact misrepresented must be significant enough to influence the decision of the other party.

2. Knowledge of Falsity

The person making the representation must know that the statement is false or must make it recklessly without caring whether it is true or false.

A genuine belief in the truth of a statement does not amount to fraud.

Example

A knowingly sells counterfeit jewellery as genuine gold.

Since A knows the statement is false, the element of fraud is satisfied.

Principle

Fraud requires dishonesty and bad faith.

3. Intention to Deceive

The false representation must be made with the intention of deceiving the other party or inducing him to enter into the contract.

Without an intention to deceive, there is no fraud.

Example

A falsely claims that a machine can produce 1,000 units per day in order to persuade B to purchase it.

The intention is clearly to induce B to contract.

4. The Other Party Must Have Relied Upon the Representation

The aggrieved party must have acted upon the false statement.

If the party did not rely on the representation, fraud cannot be established.

Example

A falsely states that a building is earthquake-resistant.

B relies on this statement and purchases the building.

The requirement of reliance is satisfied.

Importance

There must be a direct connection between the fraudulent statement and the decision to enter the contract.

5. Resulting Damage or Injury

The party deceived must suffer some loss or injury as a result of the fraudulent representation.

Example

B purchases machinery relying on A's false statements and later discovers that the machinery is defective.

B suffers financial loss.

Principle

Fraud becomes actionable when it causes prejudice to the aggrieved party.

Acts Amounting to Fraud under Section 17

Section 17 specifies various acts that constitute fraud.

1. Suggestion of a False Fact

A person knowingly makes a false statement which he does not believe to be true.

Example

A knowingly states that a horse is healthy when he is aware that it suffers from a serious disease.

2. Active Concealment of a Fact

Active concealment occurs when a person deliberately hides or suppresses a material fact.

Example

A seller paints over major cracks in a building to conceal structural defects.

This constitutes active concealment.

Distinction

Mere silence may not amount to fraud, but active concealment does.

3. Promise Made Without Intention of Performing It

A promise made dishonestly, without any intention of fulfilling it, amounts to fraud.

Example

A promises to deliver goods to B despite having no intention of supplying them.

The promise itself constitutes fraud.

4. Any Other Act Fitted to Deceive

Any conduct designed to mislead another person may amount to fraud.

Example

Selling imitation products while representing them as original products.

5. Any Act or Omission Specifically Declared Fraudulent by Law

Certain acts may be declared fraudulent by specific statutory provisions.

Such acts also constitute fraud under Section 17.

Silence and Fraud

General Rule

As a general rule: **“Mere silence does not amount to fraud.”**

A person is ordinarily not bound to disclose every fact relating to a transaction.

Example

A seller remains silent regarding a fact that the buyer could discover through ordinary inspection.

Such silence is not fraud.

Exceptions: When Silence Amounts to Fraud

1. Duty to Speak Exists

Where one party is under a legal duty to disclose material facts, silence may amount to fraud.

This commonly arises in contracts requiring utmost good faith.

Examples

- Insurance contracts
- Partnership agreements
- Family settlements

Example

A person seeking life insurance conceals a serious illness.

The concealment amounts to fraud.

2. Silence Equivalent to Speech

Where circumstances make silence misleading, silence may amount to fraud.

Example

A says:

“If you do not deny it, I shall assume the horse is healthy.”

Knowing the horse is diseased, B remains silent.

In such circumstances, silence may be equivalent to a false statement.

Leading Cases on Fraud

1. Derry v. Peek (1889)

Facts

The directors of a company issued a prospectus stating that the company had authority to use steam-powered vehicles. In reality, government approval was still required.

The directors honestly believed the statement to be true.

Judgment

The House of Lords held that fraud requires proof of an intention to deceive.

A false statement honestly believed to be true does not amount to fraud.

Principle

Fraud exists only when a false statement is made knowingly, without belief in its truth, or recklessly.

2. Peek v. Gurney (1873)

Facts

False statements were included in a company's prospectus to attract investors.

Investors purchased shares relying on those statements.

Judgment

The court held that the persons responsible for the prospectus were liable for fraud.

Principle

False representations made to induce investment may amount to actionable fraud.

3. Schneider v. Heath

Facts

A seller deliberately concealed the defective condition of a ship from the buyer.

Judgment

The court held that active concealment of material facts amounted to fraud.

Principle

Deliberate concealment is equivalent to making a false representation.

Effect of Fraud

According to Section 19 of the Indian Contract Act, a contract induced by fraud is **voidable at the option of the aggrieved party**.

The aggrieved party may:

1. Rescind the Contract

The contract may be cancelled and the parties restored to their original position.

2. Insist on Performance

The aggrieved party may affirm the contract and require performance according to the representation made.

3. Claim Damages

Since fraud is a civil wrong as well as a contractual wrong, the aggrieved party may claim compensation for losses suffered.

Example

If a buyer purchases defective goods because of fraudulent statements, he may rescind the contract and recover damages.

Distinction Between Fraud and Misrepresentation

Basis	Fraud	Misrepresentation
Intention	Intentional deception	No intention to deceive
Knowledge of Falsity	Statement known to be false	Statement believed to be true
Damages	Damages can generally be claimed	Damages generally not available under contract law
Nature	Deliberate dishonesty	Innocent false statement
Effect on Consent	Makes contract voidable	Makes contract voidable

Conclusion

Fraud is a deliberate act of deception intended to induce another person to enter into a contract. Section 17 of the Indian Contract Act identifies various acts that constitute fraud, including false representations, active concealment, false promises, and other deceptive conduct. The essential elements of fraud include a false representation, knowledge of falsity, intention to deceive, reliance by the other party, and resulting damage. Judicial decisions such as *Derry v. Peek*, *Peek v. Gurney*, and *Schneider v. Heath* have clarified the principles governing fraud. Since fraud destroys free consent, the law treats contracts induced by fraud as voidable and grants remedies such as rescission and damages to the aggrieved party.

4. Discuss the Agreements Declared Void under the Indian Contract Act

Introduction

The Indian Contract Act, 1872 recognizes that not all agreements are enforceable by law. While every contract is an agreement, only those agreements that satisfy the essential requirements of a valid contract become enforceable. Certain agreements are expressly

declared void by the Act because they are against public policy, morality, justice, or legal principles.

A void agreement is defined under Section 2(g) of the Indian Contract Act as: “**An agreement not enforceable by law is said to be void.**” A void agreement creates no legal rights or obligations and is unenforceable from its inception or becomes unenforceable subsequently.

The Indian Contract Act specifically declares several types of agreements void.

1. Agreements with Unlawful Consideration or Object – Section 23

According to Section 23, the consideration or object of an agreement must be lawful.

An agreement is void if its object or consideration is:

- Forbidden by law;
- Defeats the provisions of any law;
- Is fraudulent;
- Involves injury to the person or property of another;
- Is immoral; or
- Is opposed to public policy.

Example

A agrees to pay B ₹1,00,000 for murdering C.

The object of the agreement is unlawful.

Therefore, the agreement is void.

Case Law: Gherulal Parakh v. Mahadeodas Maiya

The Supreme Court observed that agreements opposed to public policy are void and unenforceable.

2. Agreements Without Consideration – Section 25

The general rule of contract law is:

“No Consideration, No Contract.”

Section 25 provides that an agreement made without consideration is void unless it falls within the statutory exceptions.

Example

A promises to gift ₹50,000 to B without any consideration.

The agreement is void unless covered by an exception such as natural love and affection.

Exceptions

1. Natural love and affection.
2. Compensation for past voluntary services.
3. Promise to pay a time-barred debt.
4. Completed gifts.
5. Creation of agency.

3. Agreement in Restraint of Marriage – Section 26

Section 26 declares that every agreement in restraint of the marriage of any person other than a minor is void.

Marriage is regarded as a social institution and the law protects an individual's freedom to marry.

Example

A agrees to pay B ₹5 lakhs if B never marries.

Such an agreement is void.

Principle

Any restraint, whether total or partial, imposed upon the marriage of a major person is void.

Case Law: Lowe v. Peers

An agreement restraining a person from marrying anyone other than a specified individual was held void.

4. Agreement in Restraint of Trade – Section 27

Section 27 provides:

“Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.”

The law promotes freedom of trade and occupation.

Example

A enters into an agreement that he will never carry on the business of tailoring in India.

The agreement is void.

Exception – Sale of Goodwill

A seller of goodwill may agree not to carry on a similar business within specified local limits.

Example

A sells the goodwill of his bakery and agrees not to start a competing bakery within five kilometres.

Such an agreement is valid if reasonable.

Case Law: Madhub Chander v. Raj Coomar

The court held that an agreement restraining trade is void unless it falls within a recognized exception.

5. Agreement in Restraint of Legal Proceedings – Section 28

Section 28 declares void any agreement that restricts a party from enforcing his legal rights through ordinary legal proceedings.

The law ensures access to courts and legal remedies.

Examples

- Agreement prohibiting a party from filing a lawsuit.
- Agreement completely restricting legal remedies.

Example

A contract provides that neither party shall ever approach a court in case of dispute.

Such a clause is void.

Principle

Parties cannot completely deprive themselves of legal remedies available under law.

6. Uncertain Agreements – Section 29

Section 29 provides that agreements whose meaning is uncertain or incapable of being made certain are void.

Certainty is essential for a valid contract.

Example

A agrees to sell B “a reasonable quantity” of rice.

The quantity is uncertain and cannot be determined.

Hence, the agreement is void.

Example of Valid Agreement

A agrees to sell B 100 bags of rice.

The terms are certain and therefore valid.

Principle

The court cannot enforce an agreement if the essential terms are vague or ambiguous.

7. Wagering Agreements – Section 30

A wagering agreement is an agreement in which:

1. The parties agree to depend on the happening or non-happening of an uncertain event.
2. Neither party has any real interest in the event.
3. One party stands to win and the other stands to lose.

Section 30 declares wagering agreements void.

Example

A and B bet ₹10,000 on the outcome of a cricket match.

The winner receives the amount and the loser pays it.

This is a wagering agreement and is void.

Essential Elements of Wagering Agreement

1. Uncertain event.
2. Mutual chance of gain or loss.
3. No interest in the event except winning or losing money.
4. Event beyond the control of parties.

Case Law: Carlill v. Carbolic Smoke Ball Co.

The court distinguished a wagering agreement from a genuine offer made with an intention to create legal obligations.

8. Agreements with Minors

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

Under Section 11, a minor is not competent to contract.

Leading Case: Mohori Bibi v. Dharmodas Ghose (1903)

Facts

A minor mortgaged his property and borrowed money.

Judgment

The Privy Council held that a minor's agreement is absolutely void.

Principle

A minor's agreement is void ab initio and cannot be enforced.

9. Agreements to Do Impossible Acts – Section 56

Section 56 provides:

“An agreement to do an act impossible in itself is void.”

The impossibility may be physical or legal.

Example

A agrees to bring a dead person back to life.

The agreement is impossible and therefore void.

Example

A agrees to discover treasure through supernatural powers.

The agreement is void because performance is impossible.

Principle

The law does not compel a person to perform an impossible act.

Case Law: Taylor v. Caldwell

The doctrine of impossibility was recognized where performance became impossible due to destruction of the subject matter.

10. Agreements Contingent on Impossible Events

Under Section 36, contingent agreements dependent on impossible events are void.

Example

A promises to pay B ₹50,000 if B marries a person who died last year.

The event is impossible.

Therefore, the agreement is void.

Importance of Declaring Certain Agreements Void

The law declares certain agreements void in order to:

1. Protect public interest.
2. Safeguard morality and ethics.
3. Prevent exploitation and injustice.
4. Ensure certainty in commercial transactions.
5. Promote freedom of trade and marriage.
6. Prevent illegal and fraudulent activities.

Conclusion

The Indian Contract Act, 1872 expressly declares several categories of agreements void to protect public policy, morality, and justice. Agreements involving unlawful objects, absence of consideration, restraints on marriage, trade, or legal proceedings, uncertainty, wagering transactions, contracts with minors, and impossible acts are unenforceable in law. These provisions ensure that contractual freedom is exercised within the limits of legality, fairness, and public welfare. Therefore, the rules relating to void agreements play a vital role in maintaining the integrity of contractual relationships and protecting the interests of society.

5.Problem Question

Facts

'A' kidnapped B's son and threatened to kill him unless B signed a sale deed in his favour. Acting under fear and pressure, B signed the sale deed. Subsequently, B seeks to set aside the contract on the ground that his consent was not freely given.

Issue

Whether the sale deed executed by B under the threat of harm to his son is a valid contract, and whether B is entitled to have the contract set aside.

Reasoning

According to **Section 15 of the Indian Contract Act, 1872**, coercion means:

"The committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property, with the intention of causing any person to enter into an agreement."

Further, **Section 14** provides that consent is free only when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake.

Under **Section 19**, when consent to an agreement is caused by coercion, the agreement is **voidable at the option of the aggrieved party**.

In the present case, A kidnapped B's son and threatened to kill him unless B executed the sale deed. Kidnapping and criminal intimidation are acts forbidden by criminal law. The threat was made with the clear intention of compelling B to enter into the agreement.

B did not sign the sale deed voluntarily. His consent was obtained under fear for the safety and life of his son. Therefore, the consent was not free but was induced by coercion within the meaning of Section 15 of the Indian Contract Act.

Since the contract was entered into as a result of coercion, Section 19 becomes applicable. The law gives the aggrieved party the right either to affirm the contract or to rescind it.

Relevant Case Law

Chikham Ammiraju v. Chikham Seshamma (1917)

In this case, a threat to commit suicide was held to amount to coercion because it was a threat involving an act forbidden by law. The court held that a contract obtained by such threats was voidable.

The principle established is that any agreement obtained through unlawful threats or pressure amounts to coercion and is voidable at the option of the aggrieved party.

Judgment

The sale deed was executed by B as a result of coercion. The kidnapping of B's son and the threat to kill him are acts forbidden by law and fall squarely within the definition of coercion under Section 15 of the Indian Contract Act, 1872.

Therefore, the contract is **voidable at the option of B**, and B is entitled to approach the court to have the sale deed set aside. A cannot enforce the contract against B.

UNIT 3

1. Explain the Various Modes of Discharge of Contract

Introduction

A contract creates legal rights and obligations between the parties. These rights and obligations continue until they are terminated in accordance with law. The termination of contractual obligations is known as the discharge of a contract.

A contract is said to be discharged when the parties are released from their respective obligations and no further performance is required. Once a contract is discharged, the contractual relationship between the parties comes to an end.

The Indian Contract Act, 1872 recognizes several modes by which a contract may be discharged.

Meaning of Discharge of Contract

Discharge of contract means the termination of contractual obligations between the parties.

When a contract is discharged:

- Rights arising under the contract come to an end.
- Obligations of the parties cease to exist.
- The parties are released from further performance.

A contract may be discharged by performance, mutual agreement, impossibility, lapse of time, operation of law, or breach.

1. Discharge by Performance

Performance is the most natural and common mode of discharge.

When both parties perform their respective promises according to the terms of the contract, the contract is discharged.

Example

A agrees to sell goods to B for ₹50,000.

A delivers the goods and B pays the price.

The contract is discharged by performance.

Performance may be of two kinds:

(a) Actual Performance

Actual performance occurs when each party completely performs his contractual obligations.

Example

A contracts to paint B's house.

A completes the painting work and B pays the agreed amount.

The contract is discharged by actual performance.

(b) Attempted Performance or Tender

Attempted performance occurs when one party offers to perform his obligation but the other party refuses to accept it.

A valid tender is equivalent to performance.

Example

A offers to deliver goods to B on the agreed date.

B refuses to accept delivery.

A is discharged from liability.

Essentials of a Valid Tender

1. It must be unconditional.
2. It must be made at the proper time.
3. It must be made at the proper place.
4. It must be made to the proper person.
5. The promisor must be ready and willing to perform the whole obligation.

2. Discharge by Mutual Agreement

The parties who created the contract may also terminate or modify it by mutual consent.

The various modes of discharge by agreement are:

(a) Novation – Section 62

Novation means substitution of a new contract for an existing contract.

The old contract is discharged and replaced by a new one.

Example

A owes B ₹1,00,000.

Later both agree that A will transfer a car instead of paying money.

The original contract is discharged and a new contract takes its place.

Case Law: Scarf v. Jardine

The court held that when a new contract replaces an old one with the consent of all parties, the original contract is discharged.

(b) Rescission

Rescission means cancellation of a contract by mutual agreement.

Example

A agrees to supply goods to B.

Before performance, both parties agree to cancel the contract.

The contract stands discharged.

(c) Alteration

Alteration means changing one or more terms of a contract with the consent of all parties.

Example

The parties agree to extend the date of delivery from 1st June to 1st July.

The original contract is discharged and replaced by the altered contract.

(d) Remission – Section 63

Remission means acceptance of a lesser performance than originally promised.

Example

A owes B ₹10,000.

B voluntarily accepts ₹8,000 in full satisfaction.

The balance amount cannot subsequently be claimed.

(e) Waiver

Waiver means intentional relinquishment of a known right.

Example

A has a right to receive delivery by 1st June but voluntarily waives that right.

The contract stands discharged to that extent.

3. Discharge by Impossibility of Performance

A contract is discharged when performance becomes impossible.

The law does not compel a person to perform an impossible act.

This principle is embodied in Section 56 of the Indian Contract Act.

(a) Initial Impossibility

Where the act is impossible from the very beginning, the agreement is void.

Example

A agrees to discover treasure by magic.

The agreement is void because performance is inherently impossible.

(b) Supervening Impossibility (Doctrine of Frustration)

Sometimes performance becomes impossible after the contract has been formed due to events beyond the control of the parties.

This is known as supervening impossibility or frustration.

Causes of Supervening Impossibility

1. Destruction of Subject Matter

Example

A contracts to rent a hall to B for a concert.

Before the concert, the hall is destroyed by fire.

The contract is discharged.

Case Law: Taylor v. Caldwell

The court held that destruction of the subject matter discharged the contract.

2. Death or Personal Incapacity

Example

A famous singer contracts to perform at a concert.

Before the event, the singer dies.

The contract is discharged.

Case Law: Robinson v. Davison

The illness of a performer discharged the contract.

3. Change of Law

Example

A agrees to export goods to another country.

Subsequently, the government prohibits such exports.

The contract is discharged.

4. Natural Calamities

Example

Floods, earthquakes, or pandemics may render performance impossible.

4. Discharge by Lapse of Time

The law prescribes a time limit within which contractual rights must be enforced.

If the aggrieved party fails to bring an action within the prescribed period, the remedy becomes barred.

Example

A debt becomes recoverable in 2020.

No legal action is taken within the limitation period.

The right to sue becomes barred.

Limitation Period

Under the Limitation Act, a suit for breach of contract is generally required to be filed within **three years** from the date of breach.

5. Discharge by Operation of Law

In certain cases, the law itself discharges the contract.

(a) Death

Contracts involving personal skill, knowledge, or qualifications terminate upon the death of the promisor.

Example

A famous artist agrees to paint a portrait but dies before completion.

The contract is discharged.

(b) Insolvency

When a person is declared insolvent, his property vests in the Official Receiver or Official Assignee.

The contractual obligations are affected by operation of law.

(c) Merger

When an inferior right merges into a superior right, the earlier right is extinguished.

Example

A tenant purchases the property he was leasing.

The tenancy rights merge into ownership rights.

(d) Unauthorized Material Alteration

A material alteration made without the consent of the other party discharges the contract.

Example

Changing the amount payable in a promissory note without consent.

The contract becomes void.

6. Discharge by Breach of Contract

A contract may be discharged when one party fails to perform his obligations.

The innocent party is released from further performance and may claim damages.

(a) Actual Breach

Actual breach occurs on the due date of performance or during the performance of the contract.

Example

A agrees to deliver goods on 1st June but fails to do so.

This constitutes actual breach.

(b) Anticipatory Breach

Anticipatory breach occurs before the due date when one party clearly indicates that he will not perform the contract.

Example

A agrees to supply goods on 1st July but informs B on 1st June that he will not perform the contract.

This amounts to anticipatory breach.

Case Law: Hochster v. De La Tour

The court held that the aggrieved party may sue immediately upon anticipatory breach.

Importance of Discharge of Contract

The rules relating to discharge of contract are important because they:

1. Determine when contractual obligations come to an end.
2. Protect parties from perpetual liability.
3. Provide remedies in cases of breach.
4. Recognize circumstances where performance becomes impossible.
5. Promote certainty and fairness in contractual relations.

Conclusion

Discharge of contract refers to the termination of contractual rights and obligations between the parties. Under the Indian Contract Act, a contract may be discharged by performance, mutual agreement, impossibility of performance, lapse of time, operation of law, or breach. Among these, performance is the normal mode of discharge, while the other modes operate under special circumstances. The provisions relating to discharge ensure fairness, certainty, and justice in contractual relationships by clearly defining the situations in which parties are released from their obligations.

2. Explain the Doctrine of Frustration with the Help of Decided Cases

Introduction

One of the fundamental principles of contract law is that parties must perform the obligations they voluntarily undertake. However, situations may arise where, after the formation of a contract, an unforeseen event occurs which makes performance impossible, unlawful, or fundamentally different from what was originally contemplated by the parties.

In such circumstances, the law recognizes the **Doctrine of Frustration**, under which the contract is automatically discharged and the parties are released from further obligations.

The doctrine is incorporated in **Section 56 of the Indian Contract Act, 1872**.

Meaning of the Doctrine of Frustration

The doctrine of frustration applies when a contract becomes impossible to perform due to events occurring after the formation of the contract and beyond the control of the parties.

The doctrine is based on the principle that the law does not compel a person to perform an impossible act (**lex non cogit ad impossibilia**).

Statutory Provision – Section 56

Section 56 of the Indian Contract Act provides:

“An agreement to do an act impossible in itself is void.”

Further, it states:

“A contract to do an act which, after the contract is made, becomes impossible or unlawful by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful.”

Thus, when performance becomes impossible or unlawful after the formation of the contract, the contract is automatically discharged.

Meaning of Frustration

Frustration occurs when:

- A valid contract exists;
- An unforeseen event occurs after formation;
- The event is beyond the control of the parties;
- The event makes performance impossible, unlawful, or radically different;

- Neither party is responsible for the occurrence.

When these conditions are satisfied, the contract becomes void automatically.

Essentials of the Doctrine of Frustration

For the doctrine to apply, the following conditions must be satisfied:

1. There Must Be a Valid Contract

A lawful and enforceable contract must exist between the parties.

Example

A contracts with B to supply machinery.

The contract is validly formed.

2. Performance Must Become Impossible After Formation

The impossibility must arise after the contract has been entered into.

Example

A agrees to rent a hall for a concert.

The hall is destroyed by fire before the event.

3. The Impossibility Must Be Beyond the Control of the Parties

The frustrating event must occur without the fault of either party.

Example

Government prohibition, war, natural disaster, or death.

4. The Parties Must Not Be Responsible for the Event

If the impossibility is self-induced, the doctrine does not apply.

Grounds of Frustration

The courts have recognized several situations in which frustration may occur.

1. Destruction of Subject Matter

Where the subject matter essential for performance is destroyed, the contract becomes impossible to perform.

Case Law: Taylor v. Caldwell (1863)

Facts

A music hall was hired for concerts. Before the concerts could be held, the hall was destroyed by fire.

Judgment

The court held that the contract was discharged because the subject matter of the contract no longer existed.

Principle

Destruction of the subject matter frustrates the contract.

Example

A agrees to rent his auditorium to B for a cultural programme. Before the programme, the auditorium is destroyed by fire.

The contract is discharged.

2. Death or Incapacity in Personal Service Contracts

Where performance depends upon the personal skill, talent, or qualifications of a particular person, death or incapacity frustrates the contract.

Case Law: Robinson v. Davison (1871)

Facts

A pianist agreed to perform at a concert but became seriously ill before the event.

Judgment

The court held that illness made performance impossible and the contract stood discharged.

Principle

Contracts involving personal performance are frustrated by death or incapacity.

Example

A famous singer contracts to perform at a concert but dies before the performance.

The contract is discharged.

3. Change in Law or Government Action

A contract becomes frustrated when a subsequent change in law makes performance unlawful.

Example

A agrees to export goods to another country.

Before shipment, the government imposes an export ban.

The contract becomes void.

Principle

The law will not compel a person to perform an illegal act.

4. Non-occurrence of an Essential Event

Sometimes the entire purpose of the contract depends upon the occurrence of a particular event.

If that event does not occur, the contract may be frustrated.

Case Law: Krell v. Henry (1903)

Facts

A room was rented for viewing the coronation procession of King Edward VII.

The coronation procession was cancelled due to the King's illness.

Judgment

The court held that the foundation of the contract had failed and the contract was frustrated.

Principle

Where the common purpose of the contract is destroyed, frustration occurs.

5. Outbreak of War

War may make performance impossible or illegal.

Example

A agrees to export goods to a country.

War breaks out between the countries before performance.

The contract may be discharged.

6. Natural Calamities and Acts of God

Events such as floods, earthquakes, cyclones, and pandemics may render performance impossible.

Example

A agrees to organize an outdoor event.

A severe flood destroys the venue.

The contract becomes frustrated.

Circumstances Not Amounting to Frustration

The doctrine of frustration is applied narrowly. Certain situations do not amount to frustration.

1. Commercial Difficulty or Increased Expense

Mere increase in cost, inconvenience, or loss does not frustrate a contract.

Case Law: Davis Contractors Ltd. v. Fareham Urban District Council

Facts

Construction work became more expensive and took longer than expected.

Judgment

The court held that increased difficulty or expense does not amount to frustration.

Principle

A contract is not frustrated merely because performance becomes more burdensome.

2. Self-Induced Impossibility

A party cannot rely on frustration if the impossibility was caused by his own conduct.

Example

A voluntarily sells machinery required for performance and later claims impossibility.

The doctrine will not apply.

3. Foreseeable Events

If the event could reasonably have been anticipated and provided for in the contract, frustration generally does not apply.

4. Temporary Difficulty

A temporary interruption that does not destroy the foundation of the contract does not amount to frustration.

Indian Position on Frustration

The doctrine in India is governed primarily by Section 56 rather than by judicially created principles.

Leading Indian Case: Satyabrata Ghose v. Mugneeram Bangur & Co.

Facts

A company agreed to sell land to the plaintiff. Subsequently, the land was requisitioned by the government during wartime.

The seller claimed frustration.

Judgment

The Supreme Court held that impossibility under Section 56 does not mean literal impossibility alone.

If performance becomes impracticable, useless, or fundamentally different from what the parties contemplated, the contract may be frustrated.

Principle

The word "impossible" should be interpreted in a practical and reasonable manner.

Effect of Frustration

When a contract is frustrated:

1. Contract Becomes Void Automatically

No action by either party is necessary.

The contract terminates by operation of law.

2. Parties Are Discharged from Future Obligations

Neither party is required to perform future promises.

3. Benefits Received Must Be Restored

Under **Section 65** of the Indian Contract Act, any advantage received under a void contract must be restored.

Example

If advance payment has been made, it may have to be refunded.

4. No Claim for Future Performance

Neither party can insist on performance after frustration.

Importance of the Doctrine of Frustration

The doctrine serves several important purposes:

1. Prevents injustice where performance becomes impossible.
2. Protects parties from unforeseen events beyond their control.
3. Promotes fairness and equity.
4. Recognizes practical realities of contractual performance.
5. Prevents liability for events that neither party could prevent.

Conclusion

The Doctrine of Frustration is an important exception to the general rule that contracts must be performed. Under Section 56 of the Indian Contract Act, a contract becomes void when, after its formation, an unforeseen event beyond the control of the parties makes performance impossible or unlawful. Courts have recognized various grounds of frustration such as destruction of the subject matter, death or incapacity, change of law, cancellation of an essential event, war, and natural calamities. However, mere commercial hardship or self-induced impossibility does not amount to frustration. Through landmark decisions such as *Taylor v. Caldwell*, *Krell v. Henry*, *Robinson v. Davison*, and *Satyabrata Ghose v. Mugneeram Bangur & Co.*, the doctrine has evolved as a vital principle ensuring fairness and justice in contractual relationships.

3. Explain the Law Relating to Time and Place of Performance of Contract

Introduction

Performance of a contract is one of the most important aspects of the law of contracts. A contract is discharged when the parties perform their respective obligations according to its terms. For performance to be valid, it must be made at the proper time, at the proper place, and in the proper manner.

The Indian Contract Act, 1872 contains specific provisions regarding the time and place of performance of contracts under **Sections 46 to 50**. These provisions ensure certainty and prevent disputes between contracting parties. Failure to perform at the prescribed time or place may amount to breach of contract and may give rise to legal consequences.

Meaning of Performance of Contract

Performance means the fulfilment of the obligations undertaken by the parties under a contract.

When the promisor performs his promise and the promisee accepts such performance, the contract is discharged.

Example

A agrees to deliver 100 bags of rice to B on 1st June and B agrees to pay ₹50,000.

When A delivers the rice and B pays the price, the contract is performed and discharged.

Law Relating to Time of Performance

The provisions relating to time of performance are contained mainly in Sections 46 and 55 of the Indian Contract Act.

1. Performance Where Time is Specified – Section 46

When the contract expressly fixes a time for performance, the promisor must perform the promise within the prescribed time.

The parties are bound by the terms of the contract and performance must take place on or before the agreed date.

Example

A contracts to deliver machinery to B on 1st July.

A must deliver the machinery on the specified date.

Failure to do so may amount to breach of contract.

Principle

Where a specific date or period is fixed, the promisor cannot postpone performance without the consent of the promisee.

2. Performance Where No Time is Specified – Section 46

When no time for performance is mentioned in the contract, the promise must be performed within a reasonable time.

The Act does not define the expression “reasonable time.”

Whether a particular period is reasonable depends upon the facts and circumstances of each case.

Factors Determining Reasonable Time

1. Nature of the contract.
2. Circumstances of the transaction.
3. Usage and customs of trade.
4. Conduct of the parties.
5. Nature of the goods or services involved.

Example

A agrees to repair B's house but no date is fixed.

The work must be completed within a reasonable time considering the nature of the repairs.

Time as the Essence of Contract

The question whether time is the essence of a contract is of great importance.

When time is the essence of the contract, performance within the stipulated time is an essential condition.

Failure to perform within the agreed time entitles the promisee to treat the contract as terminated.

Example

A decorator agrees to decorate a marriage hall on the day before the wedding.

The work must be completed on time because the purpose of the contract depends on timely performance.

Effect

If time is of the essence and the promisor fails to perform on time, the contract becomes voidable at the option of the promisee.

Section 55 – Effect of Failure to Perform at Fixed Time

Section 55 deals with the consequences of delay in performance.

The legal effect depends upon whether time is the essence of the contract.

(a) When Time is the Essence

If the parties intended time to be essential and the promisor fails to perform within the stipulated period, the contract becomes voidable at the option of the promisee.

Example

A agrees to supply flowers for a wedding ceremony on 10th June.

The flowers are delivered after the wedding.

The purpose of the contract has failed.

The promisee may rescind the contract.

(b) When Time is Not the Essence

If time is not intended to be essential, delay does not make the contract voidable.

However, the promisee may claim compensation for any loss suffered due to the delay.

Example

A agrees to construct a boundary wall by 1st June but completes it on 10th June.

The contract remains valid, but compensation may be claimed for losses caused by the delay.

Leading Case: Hind Construction Contractors v. State of Maharashtra

Facts

The contractor failed to complete construction work within the stipulated period.

Judgment

The Supreme Court held that in ordinary building contracts, time is generally not regarded as the essence of the contract unless expressly provided.

Principle

Whether time is the essence depends upon the intention of the parties and the nature of the transaction.

Law Relating to Place of Performance

The provisions relating to the place of performance are contained in Sections 47, 49, and 50 of the Indian Contract Act.

1. Performance Where Place is Fixed – Section 47

When the contract specifies the place where performance is to be made, the promisor must perform the contract at that place.

Example

A agrees to deliver goods at B's warehouse in Kochi.

The goods must be delivered at the specified warehouse.

Principle

The parties are bound by the agreed place of performance.

2. Performance Where No Place is Fixed – Section 49

Where no place of performance is specified, it is the duty of the promisor to apply to the promisee and obtain a reasonable place for performance.

Example

A owes money to B but the contract does not specify where payment should be made.

A must contact B and ask where payment should be tendered.

Principle

The promisor must take reasonable steps to ascertain the proper place of performance.

3. Performance at Proper Time and Place – Section 50

Section 50 provides that performance must be made during ordinary business hours and at a proper place.

The promisee is not bound to accept performance at an unreasonable time or place.

Example

A attempts to repay a debt at midnight.

B may refuse to accept the payment because it is not tendered during normal business hours.

Tender of Performance

A tender means an offer by the promisor to perform his obligation.

When a valid tender is made and the promisee refuses to accept it, the promisor is discharged from liability.

Tender is also known as attempted performance.

Example

A offers to deliver goods on the agreed date and at the agreed place.

B refuses to accept delivery.

A is discharged from further responsibility.

Essentials of a Valid Tender

For a tender to be valid, the following conditions must be satisfied:

1. It Must Be Unconditional

The offer must not be subject to new terms or conditions.

2. It Must Be Made at the Proper Time

The tender must be made on the due date or within the stipulated period.

3. It Must Be Made at the Proper Place

Performance must be offered at the agreed or reasonable place.

4. It Must Cover the Entire Obligation

Partial performance is not a valid tender unless accepted by the promisee.

5. The Promisor Must Be Ready and Willing to Perform

The promisor must possess the ability and intention to perform the whole contract.

6. It Must Be Made to the Proper Person

The tender should be made to the promisee or his authorized representative.

Importance of Time and Place of Performance

The rules regarding time and place of performance are important because they:

1. Ensure certainty in contractual dealings.

2. Prevent unnecessary disputes.
3. Protect the interests of both parties.
4. Facilitate smooth performance of contracts.
5. Determine whether a breach has occurred.
6. Help courts decide liability in case of non-performance.

Conclusion

The law relating to time and place of performance under Sections 46 to 50 of the Indian Contract Act, 1872 plays a vital role in ensuring the proper discharge of contractual obligations. Performance must generally be made within the stipulated or reasonable time and at the agreed or reasonable place. Where time is of the essence, failure to perform on time may render the contract voidable. Similarly, performance must be tendered at the proper place and in the proper manner. These provisions promote certainty, fairness, and efficiency in contractual relationships and help determine the rights and liabilities of the parties in case of default.

4. What is Anticipatory Breach of Contract? Explain its Effects.

Introduction

A contract imposes legal obligations on the parties, and each party is expected to perform its promise according to the terms of the agreement. Failure to perform such obligations amounts to a breach of contract. Breach of contract occurs when a party refuses to perform, disables himself from performing, or fails to perform his contractual obligations.

Breach of contract may be classified into two types:

1. Actual Breach of Contract
2. Anticipatory Breach of Contract

Among these, anticipatory breach is unique because the breach occurs before the time fixed for performance. The law recognizes the right of the innocent party to take immediate action without waiting for the due date of performance.

Meaning of Anticipatory Breach of Contract

Anticipatory breach of contract occurs when one party, before the due date of performance, clearly indicates that he will not perform his contractual obligations.

It is also known as **anticipatory repudiation**.

The breach takes place before the actual performance becomes due, giving the aggrieved party an immediate right of action.

Definition

Anticipatory breach occurs when a party to a contract:

- Expressly refuses to perform the contract before the due date; or
- By his conduct makes it impossible to perform the contract.

Thus, even before the date fixed for performance arrives, the contract is treated as broken.

Modes of Anticipatory Breach

Anticipatory breach may occur in two ways:

1. Express Repudiation

Express repudiation occurs when one party expressly communicates to the other that he will not perform the contract.

Example

A agrees to supply 500 bags of rice to B on 1st July.

On 1st June, A informs B that he will not supply the goods.

This is an anticipatory breach by express refusal.

Principle

A clear and unequivocal refusal to perform the contract before the due date amounts to anticipatory breach.

2. Implied Repudiation

Implied repudiation occurs when a party's conduct makes performance impossible.

Example

A agrees to sell a specific car to B on 1st August.

Before that date, A sells the same car to C.

By his conduct, A has made performance impossible.

This amounts to anticipatory breach.

Principle

Actions inconsistent with the performance of the contract may amount to anticipatory breach even without an express refusal.

Leading Case: Hochster v. De La Tour (1853)

Facts

The defendant engaged the plaintiff as a courier for a European tour commencing on a future date.

Before the journey began, the defendant informed the plaintiff that his services would no longer be required.

The plaintiff immediately filed a suit for damages without waiting for the date fixed for performance.

Issue

Whether the plaintiff could sue immediately upon receiving notice of repudiation or had to wait until the due date.

Judgment

The court held that the plaintiff was entitled to sue immediately.

The innocent party need not wait until the date of performance when the other party has clearly repudiated the contract.

Principle

The case established the doctrine of anticipatory breach and recognized the immediate right of action available to the aggrieved party.

Rights of the Aggrieved Party

When anticipatory breach occurs, the innocent party has two alternatives.

1. Treat the Contract as Rescinded Immediately

The aggrieved party may accept the repudiation and treat the contract as terminated.

He may immediately bring an action for damages.

Consequences

- Contract comes to an end.
- Future obligations cease.
- Suit for damages can be filed immediately.

Example

A agrees to deliver machinery to B on 1st September.

On 1st August, A refuses to perform.

B may immediately terminate the contract and sue for damages.

Advantage

The innocent party need not wait until the due date of performance.

2. Keep the Contract Alive Until the Due Date

The aggrieved party may refuse to accept the repudiation and insist that the contract remains in force.

He may wait until the date fixed for performance.

Consequences

- Contract continues to exist.
- Parties remain bound by contractual obligations.
- Performance may still take place.

Example

B may choose to wait until 1st September in the hope that A changes his mind and performs the contract.

Risk of Keeping the Contract Alive

If the innocent party chooses to keep the contract alive and an event occurs before the due date which discharges the contract by frustration, he may lose his right to claim damages.

Example

A contracts to supply goods to B on 1st July.

On 1st June, A repudiates the contract.

B chooses to keep the contract alive.

Before 1st July, a government ban prohibits the sale of the goods.

The contract becomes frustrated.

B may lose the right to sue for anticipatory breach.

Effects of Anticipatory Breach

Anticipatory breach produces several important legal consequences.

1. Contract Becomes Voidable at the Option of the Innocent Party

The innocent party may either:

- Accept the repudiation and terminate the contract; or
- Continue the contract until the due date.

The choice lies entirely with the aggrieved party.

2. Immediate Right of Action Arises

The innocent party may sue immediately upon repudiation.

There is no need to wait until the date fixed for performance.

Importance

This prevents unnecessary delay and protects the interests of the aggrieved party.

3. Right to Claim Damages

The innocent party may recover compensation for losses suffered as a result of the breach.

The measure of damages is governed by Sections 73 and 74 of the Indian Contract Act.

Example

If A refuses to supply goods and B has to purchase them at a higher market price, B may recover the additional cost as damages.

4. Release from Future Performance

Once repudiation is accepted, the innocent party is discharged from performing his own obligations under the contract.

Example

If A refuses to deliver goods, B is no longer bound to pay the contract price.

5. Contract May Continue if Repudiation Is Not Accepted

If the innocent party elects to keep the contract alive, the contractual relationship continues until the due date.

Difference Between Actual Breach and Anticipatory Breach

Basis	Actual Breach	Anticipatory Breach
Time of Occurrence	Occurs on or after the due date	Occurs before the due date
Nature	Failure to perform when performance becomes due	Refusal to perform before performance becomes due
Right to Sue	Arises on actual non-performance	Arises immediately upon repudiation
Performance Date	Already arrived	Yet to arrive
Example	Failure to deliver goods on due date	Refusal to deliver goods before due date

Importance of the Doctrine of Anticipatory Breach

The doctrine is important because it:

1. Protects the innocent party from uncertainty.
2. Allows immediate legal remedies.
3. Prevents unnecessary waiting.
4. Reduces commercial losses.
5. Promotes certainty in contractual relations.
6. Encourages good faith performance of contracts.

Related Indian Law

Although the Indian Contract Act does not expressly define anticipatory breach, the principle has been recognized through judicial decisions and is consistent with the provisions relating to breach and compensation under Sections 39, 73, and 75.

Section 39

When a party refuses to perform or disables himself from performing his promise in its entirety, the promisee may put an end to the contract unless he signifies his acquiescence.

This section forms the statutory basis for anticipatory breach in India.

Conclusion

Anticipatory breach of contract occurs when one party repudiates the contract before the date fixed for performance, either expressly or by conduct. The doctrine, established in *Hochster v. De La Tour* and recognized under Section 39 of the Indian Contract Act, enables the innocent party to take immediate action without waiting for the due date. Upon anticipatory breach, the aggrieved party may either treat the contract as terminated and sue for damages or keep the contract alive until the date of performance. The doctrine serves an important role in commercial transactions by protecting parties from uncertainty and providing timely legal remedies.

5. Problem Question

Facts

Umesh entered into a contract with Ganesh agreeing to sell his house for ₹10 lakhs. Before the sale could be completed and the property transferred, the house was accidentally destroyed by fire without the fault of either party. Ganesh thereafter filed a suit against Umesh for breach of contract.

Issue

Whether Umesh is liable for breach of contract when the subject matter of the contract was destroyed by accidental fire before the completion of the sale.

Reasoning

Section 56 of the Indian Contract Act, 1872 embodies the **Doctrine of Frustration** and provides that:

"A contract to do an act which, after the contract is made, becomes impossible or unlawful by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful."

When the subject matter essential for the performance of a contract is destroyed without the fault of either party, the contract is discharged due to supervening impossibility.

Leading Case: Taylor v. Caldwell (1863)

Facts

A music hall was hired for conducting concerts. Before the concerts could take place, the hall was accidentally destroyed by fire.

Judgment

The court held that the contract became void because the subject matter of the contract had ceased to exist.

Principle

Destruction of the subject matter without the fault of either party results in frustration of the contract and discharges both parties from further performance.

In the present case, the house agreed to be sold was the very subject matter of the contract. Before the sale could be completed, the house was accidentally destroyed by fire.

The destruction was not caused by either Umesh or Ganesh. Since the existence of the house was essential for the performance of the contract, its destruction made performance impossible.

Accordingly, the contract became void under Section 56 of the Indian Contract Act due to supervening impossibility or frustration.

Since the contract was discharged by operation of law, Umesh cannot be said to have committed any breach of contract.

Judgment

The accidental destruction of the house amounts to frustration of the contract under Section 56 of the Indian Contract Act, 1872. The contract became void due to destruction of the subject matter, and both parties were discharged from further obligations.

Therefore, **Umesh is not liable for breach of contract, and Ganesh cannot successfully maintain a suit for damages against him.**

UNIT 4

1. What are the Remedies Available for Breach of Contract? Explain.

Introduction

A contract creates legal rights and obligations between the parties. When one party fails to perform his contractual obligations without lawful excuse, a breach of contract occurs. The party who suffers loss due to such breach is known as the aggrieved or injured party.

The law provides various remedies to compensate the injured party and enforce contractual rights. The remedies for breach of contract are primarily contained in **Sections 73, 74 and 75 of the Indian Contract Act, 1872**, and certain equitable remedies are available under the **Specific Relief Act, 1963**.

The objective of these remedies is to place the injured party, as far as possible, in the same position in which he would have been if the contract had been duly performed.

Meaning of Breach of Contract

A breach of contract occurs when a party:

- Refuses to perform his promise;
- Fails to perform within the stipulated time; or
- Performs the contract improperly.

Example

A agrees to deliver 500 bags of rice to B on 1st July. A fails to deliver the goods on the agreed date.

This amounts to breach of contract.

Remedies Available for Breach of Contract

The following remedies are available to the aggrieved party:

1. Suit for Damages

Damages are the most common remedy for breach of contract.

Damages refer to monetary compensation awarded by the court to compensate the injured party for the loss suffered due to the breach.

Section 73

Section 73 provides that a party who suffers loss due to breach of contract is entitled to receive compensation for:

- Loss arising naturally in the usual course of things; or
- Loss which the parties knew to be likely at the time of making the contract.

The purpose of damages is compensatory and not punitive.

Leading Case: Hadley v. Baxendale (1854)

Facts

The plaintiff's mill stopped working due to a broken crankshaft. The defendant delayed delivery of the shaft for repairs, causing loss of profits.

Judgment

The court held that only losses that arise naturally or were within the contemplation of the parties are recoverable.

Principle

This case established the rule governing the assessment of damages for breach of contract.

Types of Damages

(a) Ordinary or General Damages

These are damages that arise naturally and directly from the breach in the ordinary course of events.

Example

A contracts to supply goods to B but fails to deliver them.

B purchases similar goods at a higher market price.

The difference in price can be recovered as ordinary damages.

(b) Special Damages

Special damages arise due to special circumstances affecting the injured party.

Such damages are recoverable only if those special circumstances were communicated to the other party at the time of the contract.

Example

A contracts to supply machinery parts to B and knows that B's factory will remain closed until delivery.

If A fails to deliver and the factory suffers losses, B may recover special damages.

(c) Exemplary or Vindictive Damages

These damages are awarded in exceptional cases to punish the wrongdoer.

They are generally awarded only in:

1. Breach of promise to marry.
2. Wrongful dishonour of a cheque by a bank.

Example

A bank wrongfully dishonours a customer's cheque despite sufficient funds.

The customer may recover exemplary damages.

(d) Nominal Damages

Nominal damages are awarded when a legal right has been violated but no substantial loss has been suffered.

Example

A technical breach occurs but causes no actual financial loss.

The court may award a small amount as nominal damages.

2. Suit for Specific Performance

Specific performance is an equitable remedy provided under the Specific Relief Act, 1963.

Instead of awarding damages, the court directs the defaulting party to actually perform the contract according to its terms.

Meaning

It is a judicial order compelling a party to perform his contractual obligations.

When Granted

Specific performance is generally granted when damages are inadequate.

Examples

- Contracts relating to sale of immovable property.
- Contracts involving unique goods.
- Contracts involving rare or valuable articles.

Example

A agrees to sell a particular piece of land to B but later refuses.

Since land is unique, monetary compensation may not be adequate.

The court may order specific performance.

When Not Granted

Specific performance is usually not granted:

- In contracts involving personal services.
- Where damages are an adequate remedy.
- Where the contract is uncertain.

3. Suit for Injunction

An injunction is an order of the court restraining a party from doing a particular act.

It is another equitable remedy under the Specific Relief Act.

Purpose

To prevent the breach of contractual obligations.

Types of Injunction

(a) Temporary Injunction

Granted for a limited period until the final disposal of the case.

(b) Perpetual Injunction

Granted permanently by a final decree of the court.

Example

A agrees not to work for a competitor during the term of employment.

If A violates this negative covenant, the court may grant an injunction restraining him from doing so.

4. Suit upon Quantum Meruit

The expression **Quantum Meruit** means:

"As much as earned" or "As much as deserved."

It allows a person who has partly performed a contract to recover reasonable remuneration for the work already done.

Circumstances Where Quantum Meruit Applies

1. When the contract becomes void.
2. When one party prevents the other from completing performance.
3. When work is done under a void agreement.
4. When the contract is divisible and partly performed.

Example

A contractor completes half the construction work.

The employer wrongfully terminates the contract.

The contractor may recover payment for the work already completed.

Importance

The doctrine prevents unjust enrichment of one party at the expense of another.

5. Rescission of Contract

Rescission means cancellation or termination of the contract.

The aggrieved party may rescind the contract when the other party commits a fundamental breach.

Effect of Rescission

- Parties are released from future obligations.
- The injured party may sue for damages.
- The contract comes to an end.

Section 75

A person who rightfully rescinds a contract is entitled to compensation for losses caused by non-performance.

Example

A refuses to perform a contract.

B rescinds the contract and claims compensation.

6. Restitution

The principle of restitution requires a party to restore benefits received under a contract.

The purpose is to prevent unjust enrichment.

Example

A pays an advance amount to B under a contract.

The contract is subsequently rescinded.

A is entitled to recover the advance payment.

Importance

Restitution restores the parties to their original position before the contract.

Difference Between Damages and Specific Performance

Basis	Damages	Specific Performance
Nature	Monetary compensation	Actual performance of contract

Basis	Damages	Specific Performance
Purpose	Compensate loss	Enforce performance
Granted When	Loss can be measured in money	Damages are inadequate
Example	Failure to supply goods	Sale of immovable property

Importance of Remedies for Breach of Contract

The remedies for breach of contract serve several important purposes:

1. Protect contractual rights.
2. Compensate the injured party.
3. Ensure fairness and justice.
4. Discourage breach of contractual obligations.
5. Maintain confidence in commercial transactions.
6. Prevent unjust enrichment.

Conclusion

The law provides various remedies to protect parties against breach of contract. These remedies include damages, specific performance, injunction, quantum meruit, rescission, and restitution. Sections 73, 74 and 75 of the Indian Contract Act, 1872 and the provisions of the Specific Relief Act, 1963 ensure that the aggrieved party receives appropriate relief. The ultimate objective of these remedies is to compensate the injured party, enforce contractual obligations, and uphold the sanctity of contracts.

2. Explain the Principle of Remoteness of Damages with Special Reference to Hadley v. Baxendale.

Introduction

When a contract is breached, the injured party is entitled to claim compensation for the loss suffered. However, the law does not permit recovery of every loss that may result from a breach. Liability for damages is limited to those losses that are the natural and probable consequences of the breach.

The principle which determines whether a particular loss is recoverable is known as the **Doctrine of Remoteness of Damages**.

The doctrine seeks to distinguish between losses that are sufficiently connected with the breach and those that are too remote. Only losses that arise naturally from the breach or were within the contemplation of the parties at the time of making the contract are recoverable.

The leading authority on this subject is the celebrated English case of **Hadley v. Baxendale (1854)**, which has also been incorporated into Indian law through **Section 73 of the Indian Contract Act, 1872**.

Meaning of Remoteness of Damages

Remoteness of damages refers to the legal principle that compensation can be claimed only for losses that are the direct and foreseeable consequences of the breach.

A person committing a breach is not liable for every consequence that may follow from it. He is liable only for those losses that:

- Arise naturally in the ordinary course of events; or
- Were reasonably contemplated by the parties when the contract was made.

Losses that are indirect, unexpected, or unforeseeable are regarded as remote damages and cannot be recovered.

Object of the Doctrine

The doctrine serves several important purposes:

1. Prevents unlimited liability for breach of contract.
2. Ensures fairness between contracting parties.

3. Restricts compensation to foreseeable losses.
4. Promotes certainty in commercial transactions.
5. Prevents speculative and exaggerated claims.

The Leading Case: Hadley v. Baxendale (1854)

Facts of the Case

The plaintiffs were owners of a flour mill. The mill stopped functioning because its crankshaft had broken.

The plaintiffs delivered the broken crankshaft to the defendants, who were common carriers, for transportation to the manufacturer so that a new shaft could be made.

The defendants negligently delayed the delivery of the shaft.

As a result of the delay, the mill remained closed for a longer period, causing the plaintiffs to suffer loss of profits.

The plaintiffs filed a suit claiming damages for the loss of profits resulting from the delay.

Issue

Whether the defendants were liable for the loss of profits suffered by the plaintiffs due to the delayed delivery of the crankshaft.

Judgment

The Court held that the defendants were **not liable** for the loss of profits.

The defendants were not informed that the entire mill would remain closed until the shaft was delivered.

Since the special circumstances were not communicated to them, the loss of profits could not reasonably have been contemplated by the defendants.

Therefore, such loss was considered too remote and unrecoverable.

Rule Laid Down

The Court formulated a two-fold rule for determining recoverable damages:

Damages may be recovered for:

1. Losses Arising Naturally in the Usual Course of Things

These are losses that ordinarily and naturally result from the breach.

Such damages are recoverable even if no special circumstances are communicated.

Example

A contracts to supply goods to B but fails to deliver them.

B purchases similar goods at a higher market price.

The difference in price is a natural consequence and is recoverable.

2. Losses Within the Contemplation of Both Parties

These are losses arising from special circumstances known to both parties at the time of making the contract.

Such damages are recoverable only when the special circumstances have been communicated.

Example

A contracts to deliver a machine part to B and is informed that B's factory will remain closed until delivery.

If A delays delivery and the factory suffers loss, such loss may be recovered because the circumstances were communicated.

Essentials of the Doctrine of Remoteness

For damages to be recoverable, the following conditions must be satisfied:

1. Damage Must Be the Natural Consequence of the Breach

The loss must flow directly from the breach.

2. Damage Must Be Foreseeable

The loss should be one that a reasonable person could anticipate.

3. Damage Must Not Be Too Remote

Indirect or unexpected consequences are not recoverable.

4. Special Circumstances Must Be Communicated

Where damages arise from special circumstances, those circumstances must be known to both parties.

Types of Damages Under the Rule

1. Ordinary or General Damages

These are damages that arise naturally and directly from the breach.

Example

A seller fails to deliver goods.

The buyer purchases equivalent goods at a higher price.

The extra amount paid is recoverable.

Recoverability

Always recoverable if they naturally arise from the breach.

2. Special Damages

These arise due to special circumstances affecting the injured party.

Example

A supplier knows that delayed delivery of machinery will shut down a factory.

If delivery is delayed and the factory suffers losses, such losses may be recovered.

Recoverability

Recoverable only when the special circumstances were communicated to the defendant.

3. Remote Damages

These are indirect or unforeseeable losses.

They do not arise naturally from the breach and were not within the contemplation of the parties.

Example

A supplier delays delivery of goods.

Due to the delay, the buyer loses a future business opportunity that was never disclosed.

Such loss is too remote and cannot be recovered.

Recoverability

Not recoverable.

Indian Position – Section 73 of the Indian Contract Act, 1872

The rule in *Hadley v. Baxendale* has been incorporated into Indian law through Section 73.

Section 73 Provides

When a contract is broken, the injured party is entitled to compensation for:

1. Loss or damage that naturally arose in the usual course of things from the breach; or
2. Loss or damage that the parties knew, at the time of making the contract, was likely to result from the breach.

The section further provides that compensation is not to be given for remote and indirect loss or damage.

Thus, Section 73 adopts the principles laid down in *Hadley v. Baxendale*.

Illustrations

Illustration 1 – Recoverable Damage

A agrees to supply 100 bags of wheat to B at ₹2,000 per bag.

A fails to deliver the wheat.

B purchases the wheat in the market at ₹2,300 per bag.

The difference of ₹300 per bag is recoverable as ordinary damages.

Illustration 2 – Special Damage Recoverable

A contracts to deliver a machine part to B.

B informs A that his entire factory depends on that part.

A delays delivery and the factory remains closed.

Loss suffered by the factory is recoverable because the special circumstances were communicated.

Illustration 3 – Remote Damage Not Recoverable

A delays delivery of goods to B.

Because of the delay, B loses a future contract with another customer.

A was never informed about this future contract.

The loss is remote and cannot be recovered.

Importance of the Doctrine

The doctrine of remoteness of damages is important because it:

1. Limits contractual liability to foreseeable consequences.
2. Protects parties from excessive claims.
3. Encourages disclosure of special circumstances.

4. Promotes certainty in commercial dealings.
5. Ensures fairness in the assessment of damages.

Conclusion

The Doctrine of Remoteness of Damages is a fundamental principle governing the assessment of compensation for breach of contract. The landmark decision in *Hadley v. Baxendale* established that damages are recoverable only for losses that arise naturally from the breach or were within the contemplation of the parties at the time of contracting. This principle has been incorporated into Indian law through Section 73 of the Indian Contract Act, 1872. The doctrine prevents recovery of remote and indirect losses while ensuring that parties are fairly compensated for foreseeable consequences of breach. It therefore strikes a balance between compensating the injured party and limiting the liability of the defaulting party.

3. Distinguish between Liquidated Damages and Penalty.

Introduction

When parties enter into a contract, they may agree in advance on the amount payable in the event of a breach. Such a clause is inserted to avoid future disputes regarding compensation. The sum stipulated may either represent a genuine estimate of the probable loss likely to result from the breach or an amount intended to compel performance by imposing a heavy financial burden on the defaulting party.

These two concepts are known as **Liquidated Damages** and **Penalty**.

The law relating to stipulated damages is contained in **Section 74 of the Indian Contract Act, 1872**, which provides that upon breach of contract, the aggrieved party is entitled to reasonable compensation not exceeding the amount stipulated in the contract.

Meaning of Liquidated Damages

Liquidated damages refer to a sum fixed by the parties at the time of entering into the contract as a genuine pre-estimate of the probable loss that may arise from a breach.

The amount is determined honestly and reasonably based on the anticipated loss.

The object of liquidated damages is compensation and not punishment.

Definition

Liquidated damages are a predetermined amount representing a fair and reasonable estimate of the loss likely to be suffered in case of breach.

Example

A contractor agrees to complete a building by 1st June. The contract provides that for every month of delay, the contractor shall pay ₹50,000 as compensation.

If ₹50,000 represents a reasonable estimate of the expected loss, it is liquidated damages.

Meaning of Penalty

A penalty is a sum stipulated in a contract not as a genuine estimate of loss but as a threat to secure performance.

The amount is generally excessive, unreasonable, or disproportionate to the actual loss likely to result from the breach.

The primary purpose of a penalty is to deter breach by creating fear of financial consequences.

Definition

A penalty is an amount fixed in terrorem (by way of threat) to compel performance and punish the defaulting party.

Example

A contract provides that for delay in delivering goods worth ₹1 lakh, the defaulting party must pay ₹10 lakhs.

Such an amount is clearly excessive and is likely to be regarded as a penalty.

Distinction Between Liquidated Damages and Penalty

Basis	Liquidated Damages	Penalty
Meaning	Genuine pre-estimate of probable loss	Amount fixed to punish the defaulting party
Object	Compensation	Punishment and deterrence
Nature	Reasonable and fair	Excessive and oppressive
Relationship to Loss	Closely related to anticipated loss	Disproportionate to anticipated loss
Intention of Parties	To estimate damages in advance	To secure performance through fear
Amount	Reasonable estimate	Unreasonably large amount
Enforceability under English Law	Fully enforceable	Not enforceable
Court's Approach	Generally enforced	Court refuses to enforce excessive amount
Purpose	To compensate injured party	To penalize the wrongdoer
Example	₹50,000 fixed as probable loss for delay	₹10 lakhs fixed for minor delay

Position under English Law

English law draws a clear distinction between liquidated damages and penalties.

Liquidated Damages

Where the amount stipulated is a genuine pre-estimate of loss, the courts enforce it fully.

The parties' assessment of probable loss is respected.

Penalty

If the amount stipulated is excessive and intended to punish, it is regarded as a penalty.

The courts refuse to enforce such clauses and instead award actual damages.

Leading Case: Dunlop Pneumatic Tyre Co. Ltd. v. New Garage & Motor Co. Ltd.

The House of Lords laid down principles for distinguishing liquidated damages from penalties.

The court held that a clause will be treated as liquidated damages if it represents a genuine pre-estimate of loss and not a penalty intended to punish.

Position under Indian Law

The Indian position differs from English law.

Section 74 of the Indian Contract Act does not strictly distinguish between liquidated damages and penalty.

The section provides:

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of breach, the party complaining of the breach is entitled to receive reasonable compensation not exceeding the amount so named.

Thus, under Indian law:

1. The court is not bound by the amount specified in the contract.
2. The court awards only reasonable compensation.
3. The compensation cannot exceed the stipulated amount.
4. The court may award less than the stipulated amount if justice requires.

Therefore, whether the clause is termed liquidated damages or penalty, the court ultimately grants reasonable compensation.

Essentials of Section 74

For Section 74 to apply:

1. There must be a valid contract.
2. The contract must contain a stipulation regarding payment upon breach.
3. A breach of contract must occur.
4. The court must determine what constitutes reasonable compensation.
5. Compensation awarded cannot exceed the amount stipulated.

Leading Case: Fateh Chand v. Balkishan Das

Facts

The defendant agreed to purchase immovable property and paid an advance amount. The contract provided that in case of breach by the purchaser, the seller could forfeit the advance and recover further amounts.

The purchaser committed breach and the seller sought to retain the entire amount.

Issue

Whether the seller was entitled to recover the entire amount stipulated in the contract.

Judgment

The Supreme Court held that Section 74 controls all stipulations regarding payment upon breach.

The court can award only reasonable compensation and not automatically the entire amount mentioned in the contract.

Principle

The stipulated sum represents only the maximum limit. The court must determine what amount is reasonable in the circumstances.

Other Important Case

Maula Bux v. Union of India

The Supreme Court held that where actual loss can be determined, compensation should be based on the loss proved.

Forfeiture of money without proof of loss is not automatically permissible.

Importance of Distinguishing Between Liquidated Damages and Penalty

The distinction is important because:

1. It protects parties from oppressive contractual terms.
2. It prevents unjust enrichment.
3. It ensures that compensation remains fair and reasonable.
4. It discourages punitive contractual provisions.
5. It promotes equity and justice in contractual relationships.

Practical Illustration

Liquidated Damages

A software company contracts to complete a project by a specified date.

The contract provides that for each week of delay, ₹20,000 shall be payable as compensation.

The amount is based on anticipated business losses and is therefore liquidated damages.

Penalty

A tenant agrees to pay ₹5,000 monthly rent.

The agreement states that a one-day delay in payment will require payment of ₹2 lakhs.

This amount is excessive and constitutes a penalty.

Conclusion

Liquidated damages and penalty clauses are contractual mechanisms designed to address the consequences of breach. Liquidated damages represent a genuine and reasonable estimate of

the probable loss and are intended to compensate the injured party, whereas a penalty is an excessive amount intended to punish the defaulting party and secure performance through fear. While English law carefully distinguishes between the two concepts, Indian law under Section 74 adopts a broader approach by focusing on reasonable compensation. The Supreme Court in *Fateh Chand v. Balkishan Das* clarified that the court will award only reasonable compensation, irrespective of the terminology used by the parties. Thus, the underlying objective of Indian law is not punishment but fair compensation for the loss actually suffered.

4. What is Quasi-Contract? Explain the Different Types of Quasi-Contracts.

Introduction

The Indian Contract Act, 1872 primarily deals with obligations arising out of agreements between parties. However, there are certain situations where obligations are imposed by law even though there is no agreement, no offer and acceptance, and no intention to create legal relations.

Such obligations are known as **Quasi-Contracts**.

A quasi-contract is not a real contract because it lacks the essential elements of a valid contract. Nevertheless, the law treats certain relationships as contractual in nature and imposes obligations upon parties in order to prevent one person from being unjustly enriched at the expense of another.

The provisions relating to quasi-contracts are contained in **Sections 68 to 72 of the Indian Contract Act, 1872**.

Meaning of Quasi-Contract

The term "Quasi" means "as if" or "almost."

Thus, a quasi-contract means an obligation resembling a contract.

It is a legal obligation created by law and not by the consent of the parties.

Definition

A quasi-contract may be defined as:

An obligation imposed by law upon a person to compensate another, even in the absence of an agreement, in order to prevent unjust enrichment.

Nature of Quasi-Contracts

A quasi-contract differs from an ordinary contract because:

- There is no offer and acceptance.
- There is no consensus ad idem (meeting of minds).
- There is no intention to create legal relations.
- Rights and obligations arise by operation of law.
- Liability is imposed to achieve justice and fairness.

Thus, quasi-contracts are sometimes referred to as **constructive contracts** or **implied-in-law contracts**.

Basis of Quasi-Contract

The doctrine of quasi-contract is founded on the equitable principle:

"No person should unjustly enrich himself at the expense of another."

The law does not permit a person to retain benefits obtained unfairly or without paying for them when justice requires compensation.

This principle is known as the **Doctrine of Unjust Enrichment**.

Essential Features of Quasi-Contracts

The following are the essential characteristics of quasi-contracts:

1. No Actual Agreement

There is no contract between the parties.

2. Obligation Imposed by Law

Liability arises by operation of law.

3. Prevention of Unjust Enrichment

The object is to prevent one party from unfairly benefiting at another's expense.

4. Right to Compensation

The person conferring the benefit is entitled to reasonable compensation.

5. Enforceable by Courts

The obligations created by law can be enforced through legal proceedings.

Types of Quasi-Contracts

The Indian Contract Act recognizes five important kinds of quasi-contractual obligations.

1. Claim for Necessaries Supplied to a Person Incapable of Contracting (Section 68)

Provision

When necessaries suitable to the condition in life of a person incapable of contracting are supplied to him or to someone whom he is legally bound to support, the supplier is entitled to be reimbursed from the property of such incapable person.

Persons Covered

- Minors
- Persons of unsound mind

Meaning of Necessaries

Necessaries include goods or services essential for existence and suitable to the person's status in life, such as:

- Food
- Clothing
- Medical treatment

- Education
- Shelter

Example

A doctor provides medical treatment to a minor.

The doctor can recover reasonable expenses from the minor's property.

Nature of Liability

The minor is not personally liable, but reimbursement may be claimed from his property.

2. Reimbursement of Money Paid by an Interested Person (Section 69)

Provision

A person who is interested in the payment of money and pays money which another is legally bound to pay is entitled to reimbursement.

Essentials

The following conditions must be satisfied:

1. The plaintiff must have an interest in making the payment.
2. The defendant must be legally bound to pay.
3. The payment must have been made to protect the plaintiff's interest.

Example

A tenant pays municipal taxes which the landlord was legally bound to pay in order to prevent the property from being sold by the authorities.

The tenant may recover the amount from the landlord.

Purpose

The law prevents a person from benefiting from another's payment of his legal obligation.

3. Obligation to Pay for Non-Gratuitous Acts (Section 70)

Provision

Where a person lawfully does something for another person or delivers something to him, not intending it to be gratuitous, and the other person enjoys the benefit thereof, the latter is bound to compensate.

Essentials

Three conditions must exist:

(a) The Act Must Be Lawful

The work or service rendered must be lawful.

(b) No Intention to Act Gratuitously

The person rendering the service should not intend it to be free of charge.

(c) Benefit Must Be Enjoyed

The other party must voluntarily accept and enjoy the benefit.

Example

A contractor mistakenly constructs a wall on government land.

The government uses and benefits from the wall.

The contractor may claim reasonable compensation.

Leading Case

State of West Bengal v. B.K. Mondal & Sons

Facts

A contractor constructed structures for the Government without a formal contract.

The Government accepted and used the construction.

Judgment

The Supreme Court held that the Government was bound to compensate the contractor because it had enjoyed the benefit of the work.

Principle

A person who accepts and enjoys the benefit of a lawful non-gratuitous act must compensate the person who rendered it.

4. Responsibility of Finder of Goods (Section 71)

Provision

A person who finds goods belonging to another and takes them into his custody has the same responsibilities as a bailee.

Rights of Finder

The finder has the right:

- To retain the goods until compensated for expenses incurred.
- To recover reasonable expenses.
- In certain circumstances, to sell the goods.

Duties of Finder

The finder must:

1. Take reasonable care of the goods.
2. Make efforts to locate the true owner.
3. Not use the goods for personal purposes.
4. Return the goods when the owner is found.

Example

A person finds a lost wallet and keeps it safely until the owner is identified.

The finder has legal duties similar to those of a bailee.

5. Money Paid or Goods Delivered by Mistake or Under Coercion (Section 72)

Provision

A person to whom money has been paid or goods have been delivered by mistake or under coercion must repay or return them.

Meaning

The section applies when:

- Payment is made under a mistake of fact.
- Payment is made under a mistake of law.
- Money is paid under coercion.
- Goods are delivered under coercion.

Example

A bank mistakenly transfers ₹50,000 to the wrong account.

The recipient is legally bound to return the money.

Example of Coercion

A person pays money under unlawful pressure or threat.

He can recover the amount paid.

Object

To prevent unjust enrichment arising from accidental payments or coercive transactions.

Difference Between Contract and Quasi-Contract

Basis	Contract	Quasi-Contract
Formation	Created by agreement	Created by law
Consent	Essential	Not required
Offer and Acceptance	Necessary	Absent
Intention	Present	Absent

Basis	Contract	Quasi-Contract
Basis of Liability	Agreement	Equity and justice
Purpose	Enforce promises	Prevent unjust enrichment

Importance of Quasi-Contracts

Quasi-contracts play an important role in ensuring justice because they:

1. Prevent unjust enrichment.
2. Protect persons who confer benefits on others.
3. Promote fairness and equity.
4. Ensure compensation for lawful services rendered.
5. Fill gaps where no actual contract exists.

Conclusion

A quasi-contract is not a true contract but a legal obligation imposed by law to prevent one person from being unjustly enriched at the expense of another. The doctrine is based on principles of equity, justice, and good conscience. Sections 68 to 72 of the Indian Contract Act recognize various forms of quasi-contractual obligations, including supply of necessities, reimbursement of payments made by interested persons, compensation for non-gratuitous acts, duties of a finder of goods, and recovery of money paid by mistake or coercion. Through these provisions, the law ensures fairness even in the absence of a valid agreement.

5.Problem Question

Facts

'A' entered into a contract with 'B' to supply certain goods on a specified date. However, 'A' failed to deliver the goods as agreed. As a result of the non-supply of goods, 'B' was compelled to close his factory and suffered losses. 'B' now seeks legal remedies against 'A'.

Issue

Whether 'B' is entitled to claim compensation and other remedies for the losses suffered due to 'A's failure to supply the goods as agreed under the contract.

Reasoning

Under **Section 73 of the Indian Contract Act, 1872**, when a contract is broken, the party who suffers loss due to such breach is entitled to receive compensation for:

1. Losses that naturally arise in the usual course of things from the breach; and
2. Losses that the parties knew, at the time of making the contract, were likely to result from the breach.

However, compensation is not payable for remote or indirect losses.

The leading case on this principle is **Hadley v. Baxendale**, where the court held that special damages can be recovered only if the special circumstances causing the loss were communicated to the defaulting party at the time of making the contract.

In the present case, 'A' failed to perform his contractual obligation by not supplying the goods on the agreed date. This amounts to a breach of contract.

1. General Damages

As a consequence of the breach, 'B' is entitled to recover ordinary or general damages arising naturally from the non-supply of goods.

For example, if 'B' had to purchase similar goods from another supplier at a higher price, the difference in cost can be recovered from 'A'.

2. Special Damages

The closure of the factory may amount to special loss.

If, at the time of entering into the contract, 'B' had informed 'A' that the goods were essential for the functioning of the factory and that failure to supply them would result in closure of operations, then 'A' would be liable for the factory losses as special damages.

This is based on the rule laid down in *Hadley v. Baxendale*.

However, if 'A' was not informed about these special circumstances, the factory losses may be considered too remote and may not be recoverable.

3. Rescission of Contract

Since 'A' has committed a breach, 'B' may treat the contract as rescinded and terminate the contractual relationship.

4. Specific Performance

If the goods are unique, rare, or not readily available in the market, and monetary compensation is inadequate, 'B' may seek specific performance under the Specific Relief Act, requiring 'A' to perform the contract.

5. Injunction

Where circumstances justify equitable relief, 'B' may seek an injunction to prevent further breach or violation of contractual obligations.

Judgment

'A' has committed a breach of contract by failing to supply the goods on the specified date. Therefore, 'B' is entitled to appropriate remedies under the Indian Contract Act, 1872.

'B' can recover **general damages** for the loss naturally arising from the breach. He may also recover **special damages for the closure of the factory if he had informed 'A' at the time of the contract that non-supply of goods would result in such loss**. In addition, 'B' may rescind the contract and, in appropriate cases, seek specific performance or injunction.

Conclusion

The primary remedy available to 'B' is a claim for damages under **Section 73 of the Indian Contract Act, 1872**. Factory losses will be recoverable as special damages only if the special circumstances were within the knowledge of 'A' when the contract was made.

UNIT 5

1. What is Specific Performance? When can Contracts be Specifically Enforced?

Introduction

The ordinary remedy for breach of contract is an award of damages. However, in certain situations, monetary compensation may not adequately protect the interests of the aggrieved party. In such cases, the law provides the equitable remedy of **specific performance**.

Specific performance is governed by the **Specific Relief Act, 1963**. It is one of the most important equitable remedies available for enforcing contractual obligations. Instead of awarding money as compensation, the court directs the defaulting party to perform the contract according to its terms.

Thus, specific performance ensures that the parties receive exactly what they had contracted for.

Meaning of Specific Performance

Specific performance means the actual carrying out of the contractual obligations agreed upon by the parties.

It is a decree of the court compelling a party who has breached the contract to perform his promise according to the terms of the agreement.

Definition

Specific performance may be defined as:

A judicial remedy whereby the court orders a party to perform the contract according to its precise terms instead of merely paying damages for its breach.

Example

A agrees to sell his house to B for ₹50 lakhs. After entering into the agreement, A refuses to execute the sale deed.

Since every house is unique and damages may not adequately compensate B, the court may order A to execute the sale deed in favour of B.

Object of Specific Performance

The principal objectives of specific performance are:

1. To compel the actual performance of contractual obligations.
2. To provide complete and effective justice.
3. To protect the legitimate expectations of contracting parties.
4. To prevent injustice where damages are inadequate.
5. To ensure that a party does not profit from his own breach.
6. To preserve the sanctity of contracts.

Nature of the Remedy

Specific performance is:

- An equitable remedy.
- A discretionary remedy.
- A remedy granted by the court when justice demands actual performance.
- A remedy generally available where damages are inadequate.

Since it is an equitable remedy, the conduct of the parties becomes highly relevant.

Contracts Which Can Be Specifically Enforced

The Specific Relief Act recognizes circumstances in which contracts may be specifically enforced.

1. Contracts Where Monetary Compensation is Inadequate

The most important ground for granting specific performance is that damages are not an adequate remedy.

Where money cannot adequately compensate the injured party, the court may compel actual performance.

Example

Contracts relating to:

- Land
- Buildings
- Unique property

Every piece of immovable property is considered unique and irreplaceable.

Therefore, contracts for the sale of immovable property are generally specifically enforceable.

2. Contracts Relating to Unique or Special Goods

Specific performance may be granted when the subject matter of the contract possesses special value and cannot easily be replaced.

Examples

- Rare paintings
- Antique furniture
- Family heirlooms
- Historical artifacts
- Unique works of art

Since identical substitutes may not be available in the market, damages may be inadequate.

3. Contracts Capable of Being Enforced by the Court

The terms of the contract must be:

- Certain
- Clear
- Definite
- Capable of performance

A court cannot enforce a contract whose terms are vague or uncertain.

Example

A agrees to sell “a reasonable quantity of goods” to B.

Such an agreement may be too uncertain to be specifically enforced.

4. Contracts Where the Plaintiff Has Performed or is Ready and Willing to Perform

A person seeking specific performance must demonstrate that he has:

- Performed his part of the contract; or
- Always been ready and willing to perform his obligations.

This is one of the most important requirements.

Example

If B seeks specific performance against A for the sale of land, B must show that he was ready and willing to pay the agreed purchase price.

5. Contracts Creating Enforceable Obligations

The contract must be:

- Valid
- Lawful
- Supported by consideration
- Capable of legal enforcement

Void agreements and illegal agreements cannot be specifically enforced.

Persons Who May Obtain Specific Performance

The following persons may seek specific performance:

1. Any Party to the Contract

Either party whose rights have been violated may seek the remedy.

2. Representative-in-Interest

Legal representatives and successors may enforce the contract in appropriate cases.

3. Beneficiaries

Certain beneficiaries may also seek enforcement where the contract was intended for their benefit.

Contracts Which Cannot Be Specifically Enforced

Section 14 of the Specific Relief Act specifies certain contracts that are not specifically enforceable.

1. Contracts Involving Personal Skill, Talent, or Qualifications

The court cannot compel a person to render personal services.

Examples

- Singer
- Musician
- Artist
- Actor
- Author
- Dancer

Since personal talent cannot be forced, such contracts are not specifically enforceable.

2. Contracts of Personal Service or Employment

Employment contracts are generally not specifically enforceable.

Example

If an employee refuses to work, the court cannot compel him to continue employment.

Similarly, an employer cannot ordinarily be compelled to retain an employee.

3. Determinable Contracts

A contract that can be terminated or revoked by either party cannot ordinarily be specifically enforced.

Example

A distributorship agreement terminable by notice.

Since either party can bring it to an end, specific performance serves little purpose.

4. Contracts Requiring Continuous Supervision by the Court

The court will not grant specific performance where continuous monitoring becomes necessary.

Examples

- Complex construction contracts
- Long-term management agreements
- Continuous commercial operations

Courts are not equipped to supervise day-to-day performance indefinitely.

5. Contracts with Uncertain Terms

Where the obligations of the parties are vague or ambiguous, specific performance cannot be granted.

Example

A agrees to supply “some machinery” to B without identifying the machinery.

Such uncertainty prevents judicial enforcement.

Discretion of the Court

Specific performance is not granted automatically.

The court exercises judicial discretion based on principles of equity and fairness.

The court considers:

1. Conduct of the Parties

A person seeking equity must act fairly and honestly.

2. Readiness and Willingness

The plaintiff must show continuous readiness to perform his obligations.

3. Fairness of the Contract

The contract must not be unconscionable or oppressive.

4. Hardship

Specific performance may be refused if it causes undue hardship to the defendant.

5. Possibility of Performance

The contract must remain capable of actual performance.

Advantages of Specific Performance

Specific performance offers several advantages:

1. Provides complete justice.
2. Protects contractual rights effectively.

3. Prevents unjust enrichment.
4. Preserves the sanctity of contracts.
5. Ensures delivery of unique property.
6. Avoids inadequate monetary compensation.

Difference Between Damages and Specific Performance

Basis	Damages	Specific Performance
Nature	Monetary compensation	Actual enforcement
Objective	Compensate loss	Secure performance
Adequacy	Suitable where money is sufficient	Suitable where money is inadequate
Relief	Substitutionary	Direct and specific
Example	Breach of supply contract	Sale of unique property

Illustrations

Illustration 1

A agrees to sell his ancestral house to B.

A later refuses to execute the sale deed.

Since the property is unique, the court may order specific performance.

Illustration 2

A agrees to paint B's portrait.

Later A refuses.

The court will not compel A to paint because the contract depends upon personal skill and artistic talent.

Illustration 3

A agrees to sell a rare antique sculpture to B.

Since the sculpture is unique and cannot easily be replaced, the court may decree specific performance.

Conclusion

Specific performance is one of the most important equitable remedies under the Specific Relief Act, 1963. It compels the actual performance of contractual obligations where monetary compensation is inadequate. The remedy is commonly granted in contracts relating to immovable property and unique goods, while contracts involving personal skill, employment, determinable obligations, or continuous supervision are generally excluded. Since specific performance is an equitable and discretionary remedy, the court considers fairness, readiness and willingness of the parties, and the overall interests of justice before granting relief. Thus, specific performance plays a vital role in ensuring that contractual obligations are honoured and that parties receive the exact benefit for which they contracted.

2. Explain Perpetual and Temporary Injunctions.

Introduction

An injunction is one of the most important preventive remedies recognized under the **Specific Relief Act, 1963**. The object of an injunction is not to compensate for a wrong already committed but to prevent the commission or continuance of a wrongful act that may cause injury to a person's legal rights.

According to **Section 36 of the Specific Relief Act, 1963**, preventive relief is granted at the discretion of the court by means of an injunction.

Thus, an injunction is an equitable remedy granted by a court to protect legal and equitable rights and to prevent irreparable harm.

Meaning of Injunction

An injunction is a judicial order directing a person:

- To refrain from doing a particular act; or
- To perform a particular act in certain circumstances.

It is a remedy aimed at preventing future injury rather than compensating for past injury.

Example

If A threatens to construct a wall blocking B's right of way, the court may issue an injunction restraining A from doing so.

Object of Injunction

The main objectives of granting an injunction are:

1. To prevent violation of legal rights.
2. To preserve property and proprietary interests.
3. To maintain peace and status quo.
4. To prevent multiplicity of legal proceedings.
5. To avoid irreparable injury.
6. To ensure complete justice between the parties.

Types of Injunctions

Under **Section 37 of the Specific Relief Act, 1963**, injunctions are of two kinds:

1. Temporary Injunction
2. Perpetual Injunction

I. Temporary Injunction

Meaning

A temporary injunction is an interim order granted by the court for a limited period or until the final disposal of the suit.

It is intended to preserve the existing state of affairs until the rights of the parties are finally determined.

Temporary injunctions are governed primarily by **Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.**

Nature of Temporary Injunction

A temporary injunction:

- Operates only for a limited period.
- Is granted during the pendency of the suit.
- Does not finally determine the rights of parties.
- Is provisional and interim in nature.

Purpose of Temporary Injunction

The purpose is to:

- Preserve the subject matter of the dispute.
- Prevent further harm.
- Maintain status quo.
- Protect the rights of parties until final adjudication.

Conditions for Grant of Temporary Injunction

Courts generally consider three essential requirements:

1. Prima Facie Case

The applicant must show that there is a genuine and substantial question to be tried.

The court need not decide the entire case at this stage but must be satisfied that the claim is not frivolous.

2. Balance of Convenience

The court compares the inconvenience likely to be caused to both parties.

The injunction will be granted if refusal would cause greater hardship to the plaintiff than the inconvenience caused to the defendant.

3. Irreparable Injury

The plaintiff must show that refusal of injunction would result in injury that cannot be adequately compensated by monetary damages.

Illustrations of Temporary Injunction

Example 1

A disputes B's ownership of a piece of land.

During the pendency of the suit, B attempts to sell the property.

The court may grant a temporary injunction restraining the sale until the dispute is resolved.

Example 2

A company threatens to demolish a disputed building.

The court may issue a temporary injunction preventing demolition until the rights of the parties are determined.

II. Perpetual Injunction

Meaning

A perpetual injunction is a final order granted by the court after hearing the parties and deciding the suit on merits.

It permanently restrains the defendant from committing a particular act that would violate the plaintiff's rights.

A perpetual injunction can be granted only by a final decree.

Statutory Provision

Perpetual injunctions are governed by **Section 38 of the Specific Relief Act, 1963**.

When Perpetual Injunction May Be Granted

Under Section 38, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the plaintiff.

1. To Prevent Breach of Contractual Obligations

Where a person threatens to violate a contractual duty, the court may permanently restrain such conduct.

Example

A agrees not to open a competing business in a particular area but later attempts to do so.

The court may issue a perpetual injunction.

2. To Protect Property Rights

Where a person's ownership or possessory rights are threatened.

Example

A repeatedly enters B's land without permission.

The court may permanently restrain A from trespassing.

3. To Prevent Repeated Wrongful Acts

Where the defendant continuously interferes with the plaintiff's legal rights.

Example

Continuous obstruction of a pathway or drainage system.

4. To Prevent Invasion of Enjoyment of Property

The court may intervene where there is interference with:

- Easement rights
- Rights of access
- Rights of light and air
- Possession of property

Illustrations of Perpetual Injunction

Example 1

A neighbour repeatedly blocks B's right of way.

The court may grant a perpetual injunction permanently restraining such obstruction.

Example 2

A factory continuously releases smoke causing nuisance to nearby residents.

The court may permanently restrain the factory from continuing the nuisance.

Difference Between Temporary and Perpetual Injunction

Basis	Temporary Injunction	Perpetual Injunction
Nature	Interim remedy	Final remedy
Duration	Limited period	Permanent
Stage	Granted during pendency of suit	Granted after final hearing
Purpose	Maintain status quo	Permanently protect rights

Basis	Temporary Injunction	Perpetual Injunction
Governing Law	CPC and Specific Relief principles	Section 38 of Specific Relief Act
Effect	Temporary restraint	Permanent restraint

Mandatory Injunction (Section 39)

Although injunctions are generally prohibitory in nature, courts may also grant a **mandatory injunction** under Section 39.

A mandatory injunction directs a person to perform a positive act in order to restore the original position.

Examples

- Removal of an illegal construction.
- Demolition of an unauthorized wall.
- Removal of encroachment on another's property.

Illustration

A unlawfully constructs a wall blocking B's access road.

The court may order A to remove the wall through a mandatory injunction.

Injunction When Refused (Section 41)

For a comprehensive answer, students should briefly mention situations where injunctions may be refused.

An injunction cannot generally be granted:

1. To restrain criminal proceedings.
2. To restrain legislative proceedings.
3. To prevent a person from instituting legal proceedings in a competent court.
4. Where the plaintiff has no personal interest.

5. Where an equally effective remedy is available.
6. Where the conduct of the plaintiff is unfair or inequitable.

Importance of Injunctions

Injunctions play a vital role because they:

1. Protect legal rights before irreparable damage occurs.
2. Prevent multiplicity of suits.
3. Preserve property and contractual rights.
4. Maintain public order and fairness.
5. Provide speedy and effective relief.

Conclusion

An injunction is an important equitable and preventive remedy under the Specific Relief Act, 1963. It is granted to prevent the violation of legal rights and to ensure justice. **Temporary injunctions** are interim orders granted during the pendency of litigation to preserve the status quo, whereas **perpetual injunctions** are final orders granted after the disposal of the suit and permanently restrain wrongful conduct. Together with mandatory injunctions, they constitute a powerful mechanism for protecting legal and equitable rights and preventing irreparable injury.

3. Explain the Provisions Relating to Recovery of Movable and Immovable Property under the Specific Relief Act.

Introduction

One of the principal objectives of the Specific Relief Act, 1963 is to provide specific remedies for the protection of proprietary and possessory rights. A person who is wrongfully deprived of possession of property should not be left without a remedy merely because

monetary compensation is available. The Act therefore provides legal remedies for the recovery of both movable and immovable property.

The provisions relating to recovery of possession are contained in **Sections 5 to 8** of the Specific Relief Act, 1963.

These provisions seek to protect lawful possession and ownership and discourage persons from taking the law into their own hands.

Recovery of Immovable Property

The law relating to recovery of immovable property is contained in **Sections 5 and 6** of the Specific Relief Act.

Immovable property includes:

- Land
- Buildings
- Houses
- Apartments
- Agricultural property
- Other interests attached to land

Section 5 – Recovery of Specific Immovable Property Based on Title

Provision

Section 5 provides that a person entitled to the possession of specific immovable property may recover it through the procedure prescribed by the Code of Civil Procedure.

In simple words, where a person has legal title to immovable property and another person is wrongfully occupying it, the rightful owner can file a suit for recovery of possession.

Essentials of Section 5

To succeed under Section 5, the plaintiff must prove:

1. Legal Title

The plaintiff must establish ownership or a better title to the property.

2. Right to Possession

The plaintiff must show that he is entitled to possess the property.

3. Unlawful Possession by Defendant

The defendant must be occupying the property without lawful authority.

Illustration

A is the owner of a piece of land.

B trespasses upon the land and constructs a temporary structure.

A may institute a suit under Section 5 and recover possession by proving his title.

Nature of Remedy under Section 5

- Based on ownership or title.
- Plaintiff must prove title.
- Governed by ordinary civil procedure.
- Available even after the expiry of six months.
- Questions relating to ownership can be fully adjudicated.

Section 6 – Recovery of Possession of Immovable Property

Provision

Section 6 provides a summary remedy to a person who has been dispossessed of immovable property without his consent and otherwise than in due course of law.

The object is to discourage forcible dispossession and maintain public order.

The law protects possession itself, irrespective of ownership.

Essentials of Section 6

The plaintiff must establish:

1. Previous Possession

The plaintiff must have been in actual possession of the property.

2. Dispossession

He must have been dispossessed by the defendant.

3. Without Consent

The dispossession must have occurred without the plaintiff's consent.

4. Not in Due Course of Law

The defendant must have taken possession by force or other unlawful means.

5. Suit Must Be Filed Within Six Months

The suit must be instituted within six months from the date of dispossession.

Important Features of Section 6

1. Ownership Need Not Be Proved

The plaintiff need only prove prior possession.

Questions relating to ownership are irrelevant.

2. Summary Remedy

The court follows a speedy procedure.

3. Suit Must Be Filed Within Six Months

Failure to file within six months bars the remedy under Section 6.

4. No Appeal or Review

The Act generally prohibits appeal and review against a decree passed under Section 6.

5. Subsequent Title Suit Permitted

The unsuccessful party may still institute a regular suit based on title.

Illustration

A tenant is forcibly evicted by the landlord without obtaining a court order.

The tenant may recover possession under Section 6 even though he is not the owner of the property.

Object of Section 6

The purpose is:

- To discourage self-help and use of force.
- To maintain law and order.
- To ensure disputes are resolved through courts.
- To protect lawful possession.

Difference Between Sections 5 and 6

Basis	Section 5	Section 6
Basis of Claim	Title or ownership	Prior possession
Ownership	Must be proved	Need not be proved
Limitation	Ordinary limitation period	Six months
Nature of Remedy	Regular suit	Summary suit
Question of Title	Relevant	Irrelevant

Basis	Section 5	Section 6
Appeal	Permitted	Generally not permitted

Recovery of Movable Property

The provisions relating to movable property are contained in **Sections 7 and 8** of the Specific Relief Act.

Movable property includes:

- Jewellery
- Vehicles
- Books
- Documents
- Machinery
- Furniture
- Valuable articles

Section 7 – Recovery of Specific Movable Property

Provision

A person entitled to possession of a specific movable property may recover it through legal proceedings.

The section enables a person to recover the actual article rather than merely claiming damages.

Essentials of Section 7

1. Existence of Specific Movable Property

The property must be identifiable and specific.

2. Plaintiff's Right to Possession

The plaintiff must establish entitlement to possession.

3. Wrongful Possession by Defendant

The defendant must be unlawfully withholding the property.

Persons Entitled to Sue

1. Owner of the Property

The owner can seek recovery.

2. Person Having a Special Right to Possession

Even a person who is not the owner but has a lawful possessory right may sue.

Examples include:

- Bailees
- Pledgees
- Agents
- Custodians

Illustration

A lends his car to B for one month.

After the expiry of the period, B refuses to return the vehicle.

A may file a suit under Section 7 to recover the specific movable property.

Section 8 – Liability to Deliver Specific Movable Property

Provision

Section 8 empowers the court to order delivery of specific movable property in certain circumstances.

The court may compel delivery when mere compensation is not an adequate remedy.

When Section 8 Applies

1. Property Held by Trustee

Where the defendant holds the property in trust for the plaintiff.

2. Property Held by Agent

Where an agent refuses to return the principal's property.

3. Property Having Special Value

Where the article has unique or sentimental value.

4. Monetary Compensation is Inadequate

Where money cannot adequately compensate the plaintiff.

Illustration

A family heirloom of great sentimental value is wrongfully retained by another person.

Since damages cannot replace the heirloom, the court may order delivery of the specific article.

Examples of Property Covered Under Section 8

- Family heirlooms
- Rare manuscripts
- Valuable documents
- Historical artifacts
- Unique paintings
- Antique jewellery

Importance of Recovery Provisions

The provisions relating to recovery of property are important because they:

1. Protect ownership rights.
2. Protect possessory rights.
3. Discourage forcible dispossession.
4. Preserve public order.
5. Provide specific remedies instead of merely awarding damages.
6. Ensure justice where property has special value.

Judicial Principle

The courts have consistently emphasized that no person should be permitted to take possession of property by force. Even a true owner must recover possession through lawful procedures and not through self-help.

Thus, the Specific Relief Act upholds the rule of law by ensuring that disputes concerning possession are settled through judicial process.

Conclusion

The Specific Relief Act, 1963 provides effective remedies for the recovery of both movable and immovable property through **Sections 5 to 8**. **Section 5** protects ownership rights by enabling recovery based on title, while **Section 6** protects possession by providing a summary remedy against unlawful dispossession. Similarly, **Sections 7 and 8** enable recovery of specific movable property where the plaintiff is entitled to possession and where monetary compensation is inadequate. These provisions play a crucial role in safeguarding proprietary and possessory rights and ensuring that individuals seek legal remedies rather than resorting to force.

4. Explain the Provisions Relating to Cancellation of Instruments.

Introduction

The law recognizes that written instruments such as sale deeds, gift deeds, mortgage deeds, contracts, settlements, and other legal documents create rights and obligations between parties. Sometimes such instruments may be void, voidable, fraudulent, forged, or otherwise defective. If such documents are allowed to remain in existence, they may cause serious injury to the persons affected by them.

To protect individuals from the harmful consequences of such documents, the **Specific Relief Act, 1963** provides the equitable remedy of **cancellation of instruments**.

The provisions relating to cancellation of instruments are contained in **Sections 31, 32, and 33 of the Specific Relief Act, 1963**.

Cancellation is a preventive and protective remedy through which a court declares a document void or voidable and orders it to be cancelled so that it no longer affects the rights of the parties.

Meaning of Instrument

An instrument means a formal written legal document that creates, transfers, modifies, records, limits, or extinguishes legal rights and liabilities.

Examples

- Sale deed
- Gift deed
- Mortgage deed
- Lease deed
- Settlement deed
- Release deed
- Power of attorney
- Trust deed

- Contractual documents

Such documents often affect valuable civil rights and property rights.

Meaning of Cancellation of Instruments

Cancellation of an instrument means a judicial declaration that a document is void or voidable and an order directing that it be cancelled so that it ceases to have legal effect.

The purpose is to remove a cloud upon the rights of a person and prevent future litigation or injury.

Example

A executes a sale deed in favour of B due to coercion.

A may approach the court seeking cancellation of the sale deed.

If the court is satisfied, it may declare the deed voidable and order its cancellation.

Object of Cancellation

The remedy of cancellation serves several important purposes:

1. To Prevent Future Injury

It protects a person from future legal harm arising from a defective document.

2. To Remove Defective Instruments

It eliminates documents that are void, voidable, forged, or fraudulent.

3. To Protect Property Rights

It safeguards ownership and proprietary interests.

4. To Prevent Multiplicity of Litigation

Cancellation prevents repeated disputes arising from the same instrument.

5. To Preserve Justice and Fairness

It ensures that a person is not subjected to legal liability based on an invalid document.

Section 31 – When Cancellation May Be Ordered

Provision

Section 31 empowers the court to cancel an instrument where:

1. The instrument is void or voidable against the plaintiff; and
2. The plaintiff has a reasonable apprehension that the instrument, if left outstanding, may cause serious injury.

Essentials of Section 31

The following conditions must be satisfied:

1. Existence of an Instrument

There must be a written legal document.

2. Instrument Must Be Void or Voidable

The instrument should either:

(a) Be Void

A document having no legal effect from the beginning.

(b) Be Voidable

A document that is valid until avoided by the affected party.

3. Reasonable Apprehension of Serious Injury

The plaintiff must show that the continued existence of the document may seriously affect his rights.

4. Judicial Discretion

The court must be satisfied that cancellation is necessary to prevent injustice.

Instruments Which May Be Cancelled

The court may cancel various types of documents such as:

1. Instruments Obtained by Fraud

Where consent was obtained through deception.

Example

A is induced by false representations to execute a sale deed.

2. Instruments Obtained by Coercion

Where consent was obtained through threats or force.

Example

A signs a mortgage deed after being threatened.

3. Instruments Obtained by Undue Influence

Where a dominant party unfairly influences another.

Example

A spiritual guru persuades his disciple to transfer property.

4. Forged Documents

Where signatures or contents are fabricated.

Example

A forged sale deed executed without the owner's knowledge.

5. Instruments Executed by Mistake

Where the document was executed under a fundamental mistake affecting its validity.

Persons Entitled to Sue for Cancellation

A suit for cancellation may be filed by:

1. Any Person Against Whom the Instrument is Void

The document must adversely affect his rights.

2. Any Person Against Whom the Instrument is Voidable

The plaintiff must have the right to avoid the instrument.

3. Any Person Having Reasonable Fear of Injury

There must be a genuine apprehension of future legal harm.

Illustration

A forged sale deed is created showing B as owner of A's property.

A may file a suit seeking cancellation because the forged document threatens his ownership rights.

Powers of the Court under Section 31

After examining the facts and evidence, the court may:

1. Adjudge the Instrument Void

The court may declare that the instrument has no legal effect.

2. Adjudge the Instrument Voidable

The court may recognize the plaintiff's right to avoid the instrument.

3. Order Cancellation

The court may direct that the document be cancelled.

4. Direct Delivery and Destruction

The instrument may be surrendered and cancelled.

5. Protect Legal Rights

The court may issue consequential reliefs to safeguard the plaintiff's interests.

Section 32 – Cancellation of Instruments Through Registration Authorities

Where the cancelled instrument has been registered under the registration law, the court may send a copy of its decree to the concerned registration authority.

The registering officer shall make a note of the cancellation in the official records.

Importance of Section 32

This provision ensures:

- Public notice of cancellation.
- Accuracy of official records.
- Prevention of future fraudulent claims.
- Protection of third parties dealing with property.

Section 33 – Power of Court to Require Restoration of Benefits

Cancellation should not result in unjust enrichment.

Therefore, Section 33 empowers the court to direct restoration of benefits received under the instrument.

Principle Behind Section 33

The principle is:

"He who seeks equity must do equity."

A person seeking cancellation must restore any benefit received under the instrument.

Example

A sells land to B and receives consideration.

Later A succeeds in getting the sale deed cancelled due to fraud.

The court may direct A to return the purchase money received from B.

Partial Cancellation of Instruments

Sometimes only a portion of a document is invalid.

If the invalid part is separable from the valid part, the court may cancel only the defective portion.

Example

A deed contains:

- One valid covenant, and
- One fraudulent covenant.

The court may cancel only the fraudulent portion if it can be separated from the rest.

Effect of Cancellation

Once an instrument is cancelled:

1. The Instrument Becomes Ineffective

It ceases to have legal force.

2. Rights Created by the Instrument Disappear

No rights can be claimed under the cancelled document.

3. Parties Are Restored to Their Original Position

As far as possible, the court seeks to place the parties in the position they occupied before execution of the instrument.

4. Future Claims Are Prevented

The document cannot be relied upon in subsequent proceedings.

5. Public Records Are Corrected

Where registered, appropriate entries are made in official records.

Illustrations

Illustration 1

A is compelled through threats to execute a gift deed in favour of B.

A may seek cancellation on the ground of coercion.

Illustration 2

A fraudulently obtains B's signature on a mortgage deed.

B may seek cancellation because the instrument is voidable due to fraud.

Illustration 3

A forged sale deed is created showing transfer of A's property to B.

A may obtain cancellation because the document is void and threatens his ownership rights.

Importance of Cancellation of Instruments

The remedy is important because it:

1. Protects property rights.
2. Prevents misuse of fraudulent documents.
3. Removes uncertainty regarding legal rights.
4. Prevents multiplicity of suits.
5. Promotes justice and fairness.

6. Protects innocent persons from future injury.

Conclusion

The provisions relating to cancellation of instruments under **Sections 31 to 33 of the Specific Relief Act, 1963** provide an important equitable remedy against void and voidable documents. Where a written instrument is likely to cause serious injury if left outstanding, the court may declare it void or voidable and order its cancellation. The court may also direct correction of official records and restoration of benefits received under the document. These provisions ensure that fraudulent, coercive, forged, or otherwise defective instruments do not continue to cloud legal rights and create future disputes.

5. Problem Question

Problem

B, being a medical advisor, threatens to publish patient C's confidential communications showing that C had led an immoral life. Advise C regarding the remedy available under the Specific Relief Act.

Answer

Facts of the Case

C is a patient who has disclosed certain confidential information to B, his medical advisor, during the course of treatment. B threatens to publish these confidential communications, which would expose C's private life and adversely affect his reputation. C seeks legal protection against such disclosure.

Issue

Whether C can obtain relief under the Specific Relief Act to prevent B from publishing confidential communications obtained during a professional relationship.

Reasoning

Under the **Specific Relief Act, 1963**, the court may grant an **injunction** to prevent the breach of an obligation existing in favour of the plaintiff.

The relationship between a doctor and a patient is a **fiduciary and confidential relationship**. A medical practitioner is under a professional and ethical duty not to disclose information received from a patient except in circumstances recognized by law.

In the present case, B acquired the information in his capacity as a medical advisor. Threatening to disclose such information amounts to a breach of confidentiality and an invasion of C's privacy.

If the information is published, C may suffer:

- Loss of reputation,
- Mental distress,
- Invasion of privacy,
- Irreparable injury that cannot be adequately compensated by monetary damages.

Therefore, damages would not be an adequate remedy. The appropriate relief is an injunction restraining B from publishing or disclosing the confidential communications.

The court may grant:

1. Temporary Injunction

A temporary injunction may be granted to immediately restrain publication during the pendency of the suit and preserve the status quo.

2. Perpetual Injunction

After hearing the parties and deciding the case on merits, the court may grant a perpetual injunction permanently restraining B from publishing the confidential information.

Principle Involved

Courts generally protect confidential and fiduciary relationships such as:

- Doctor and patient,
- Advocate and client,

- Trustee and beneficiary,
- Employer and employee regarding confidential information.

Since B is attempting to misuse information obtained through a professional relationship, the court is likely to intervene and protect C's rights.

Judgment

The court would likely hold that B's threatened disclosure amounts to a breach of professional confidence and would cause irreparable injury to C. Accordingly, C is entitled to seek an injunction under the Specific Relief Act. The court may grant a **temporary injunction** to immediately restrain publication and, upon final determination of the suit, a **perpetual injunction** permanently preventing B from disclosing the confidential communications.

Therefore, C's appropriate remedy is a suit for injunction restraining B from publishing the confidential information.