

1 MEANING OF CERTAIN TERMS

(Sec. 2)

Proposal / Offer Sec 2(a)	When one person signifies to another His willingness To do or to abstain from doing anything, With a view to obtaining the assent of that – <ul style="list-style-type: none"> • To such act; or • Abstinence, He is said to make a proposal (i.e., offer) (Legal obligation)
Promise	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
Agreement Sec 2(e)	Every promise And Every set of promises, forming the consideration for each other, Is an agreement
Contract Sec 2(h)	An agreement enforceable by law is a contract.
Promisor & Promisee	When a proposal is accepted – <ul style="list-style-type: none"> - The person making the proposal is called as 'promisor'; and - The person accepting the proposal is called as 'promisee'.
Consideration	When, at the desire of the promisor, The promisee or any other person Has <ul style="list-style-type: none"> - done/abstained from doing something; or - does/abstains from doing something; or - promises to do/abstain from doing something, Such act/abstinence/promise is called a consideration for the promise.
Void agreement	An agreement not enforceable by law is said to be void.
Voidable contract	An agreement is a voidable contract if – <ul style="list-style-type: none"> • It is enforceable by law at the option of one or more of the parties thereto, • It is not enforceable by law at the option of the other or others.
Void contract	A contract Which ceases to be enforceable by law Becomes void when it ceases to be enforceable.

2 MEANING OF CONTRACT

(Sec. 2 & 10)

Definition [Sec. 2 (h)]	<ul style="list-style-type: none"> • An agreement enforceable by law is a contract.
Essentials of a contract	<ul style="list-style-type: none"> • Following are the two basic elements of a contract. (a) There must be an agreement (b) The agreement must be enforceable by law. • In other words, Contract = agreement + enforceability of agreement.

What agreements are contracts [Sec. 10]	<ul style="list-style-type: none"> • There must be an agreement between the parties • The parties must have an intention to create legal relations. • The parties must freely consent to enter into the agreement. • The parties must be competent to contract. • There must be consideration. • The consideration must be lawful. • The object of the contract must be lawful. • The agreement is not expressly declared to be void. • The legal formalities for entering into such a contract are completed. • It is possible to perform the agreement (Sec. 56) • The terms of the agreement are certain or are capable of being made certain (Sec. 29)
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3 DISTINCTION BETWEEN AN AGREEMENT AND A CONTRACT

Basic of difference	Agreement	Contract
Meaning	Agreement = offer + acceptance	Contract = agreement + enforceability
Creation of legal obligation	An agreement does not create a legal obligation unless it satisfies the requirements of various provisions of law.	A contract necessarily creates legal obligations.
One in other	The term agreement is wider than contract. An unenforceable agreement is not a contract.	Every contract is an agreement.

4 AGREEMENT TO DO IMPOSSIBLE ACT (Sec. 56)

Agreement to do an impossible act	<p>If - An agreement is made to do a particular act; - At the time of making of agreement, it is certain that such an act is impossible;</p> <p>Then - The agreement is void.</p>
Agreement to do an act which subsequently becomes impossible	<p>If - A contract is made to do a particular act; - At the time of making of contract, such an act is not impossible; - After the contract is made, such an act becomes impossible;</p> <p>Then - The contract has become void.</p>

Illustrative cases

Situation	Result
A agrees with B to discover treasure by magic	The agreement is void.-
A and B contract to marry each other. Before the time fixed for the marriage, A becomes mad.	The contract has become void.
A contract to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy.	The agreement is void. A must make compensation to B for the loss caused to her by non-performance of his promise.
A contract to take in cargo for B at an American port. A's Government afterwards declares war against America.	The contract has become void.
A contract to act at a theatre for 6 months in a consideration of a sum paid in advance by B. On several occasions A is too ill to act.	The contract to act on such occasions, on which A is unable to act because he is ill, becomes void.

5. AGREEMENT VOID FOR UNCERTAINTY - (Sec. 29)
ILLUSTRATIVE CASES

An agreement is void, if the meaning of such agreement is –

Not certain; or

Not capable of being made **certain**.

Illustrative cases

Situation	Result
A agrees to sell B a hundred tons of oil	The agreement is void for uncertainty since the description of oil is not specified.
A agrees to sell B 100 tons of oil of a specified description, known as an article of commerce.	There is no uncertainty and therefore the agreement is not void.
Mr. A, who is a dealer in coconut oil only, agrees to sell to B 100 tons of oil	The nature of A's trade implies that he intends to sell 100 tons of coconut oil. So, there is no uncertainty.
A agrees to sell to B all the grain in his granary at Laxmi Nagar.	There is no uncertainty since it is possible to determine the quantity of grain lying at B's granary at Laxmi Nagar.
A agrees to sell to B 1000 Kgs. Of rice at a price to be fixed by C.	As the price is capable of being made certain, there is no uncertainty to make the agreement void.
A agrees to sell to B his white horse for Rs. 500 or Rs. 1000	There is nothing to show which of the two prices was to be given. Therefore, the agreement is void.

6 CLASSIFICATION OF CONTRACTS (Sec. 2&9)

On the basis of creation	Express contract	A contract made by words spoken or written .
	Implied contract	A contract inferred by – - The conduct of a person; or - The circumstances of the case.
On the basis of execution	Executed contract	A contract in which both the parties have fulfilled their obligations under the contract.
	Executory contract	A contract in which both the parties have still to fulfill their obligations.
	Partly executed and partly executory	A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.
On the basis of enforceability	Valid contract	An agreement which satisfies all the Requirements prescribed by law.
	Void contract	A contract Which ceases to be enforceable by law Becomes void when it ceases to be enforceable.
	Void agreement	An agreement not enforceable by law is said to be void.
	Voidable contract	An agreement is a voidable contract if – - It is enforceable by law at the option of one or more of the parties thereto, - It is not enforceable by law at the option of the other or others.
	Illegal agreement	An agreement the object of which is unlawful.
	Unenforceable contract	A contract which fulfils all requirements of a contract except some technical requirements. It becomes enforceable when the defect is subsequently removed.

Offer / Proposal

7 MEANING OF OFFER

[Sec.2 (a)]

When one person signifies to another
 His willingness
 To do or to abstain from doing anything,
 With a view to obtaining the assent of that –
 To such act; or
 Abstinence,
 He is said to make a proposal (i.e., offer).

8 HOW TO MAKE AN OFFER? / MODE OF MAKING OFFER (Sec. 9)

Express offer	It means an offer made by words spoken or written .
Implied offer	It means an offer inferred by – <ul style="list-style-type: none"> • The conduct of a person; or • The circumstances of the case.

9 TO WHOM AN OFFER IS MADE?

Specific Offer	It means an offer made to – <ul style="list-style-type: none"> (a) A particular person; or (b) A particular group of persons.
General Offer	<ul style="list-style-type: none"> • It means an offer which is made to the public in general.

10 LEGAL RULES AS TO VALID OFFER

Offer must be communicated	<p>Boulton v Jones</p> <ul style="list-style-type: none"> • J offered to purchase 50 feet of leather from Z. • Z in the meantime sold his business to B. • Therefore, instead of Z, B supplied the leather to J. • J refused to accept the leather. • <u>It was held that the offer was not communicated to B, and so B had no legal right to accept the offer made by J.</u> • Therefore, no contract had concluded between J and B. <p>Carlill v Carbolic Smoke Ball Co.</p> <ul style="list-style-type: none"> • A pharmaceutical company advertised that it would give 100 Pounds to anyone who contracted influenza after using their smoke balls for a certain period. • Mrs. Carlill purchased smoke balls and used them as directed. • Shortly afterwards, she contracted influenza. She claimed the 100 Pounds. • The Court held that the advertisement issued by the pharmaceutical company was a general offer made to the public at large. • [Mrs. Carlill, being a member of the public, had received the offer and had acted upon it by using the smoke balls as directed.] • Therefore, a contract was formed between the pharmaceutical company and Mrs. Carlill, and so Mrs. Carlill could claim 100 Pounds. <p>Lalman Shukla v Gauri Dutt.</p> <ul style="list-style-type: none"> • G's nephew was missing. • L, who was munim of G, went in search of the missing boy.
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	<ul style="list-style-type: none"> • Meanwhile G issued handbills offering reward of Rs. 501 to anyone who would trace the boy. • L found the boy and brought him home. • Since L had no knowledge of the offer made by G, he could not accept such offer. • Since there was no acceptance, there could be no contract, and therefore, it was held that L was not eligible to receive the reward.
Communication of complete offer	<p>Handerson v Stevenson</p> <ul style="list-style-type: none"> • X purchased a steamer ticket for traveling from Dablin to White Haven. • On the back of the ticket, certain conditions were printed. One of the conditions excluded the liability of the company for any loss, injury or delay to the passengers or their luggage. • X never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. • X's luggage was lost due to the negligence of the servants of the shipping company. • Since the steamer company had not taken any steps to ensure that the conditions printed on the back of the ticket were brought to the knowledge of the passengers, such conditions do not form part of the contract. • Therefore, X was entitled to recover the damages for loss of his luggage. <p>Parker v S.E. Rail Co.</p> <ul style="list-style-type: none"> • P deposited his bags in the cloakroom at a railway station. • On the face of the receipt, the words 'see back' were printed. One of the conditions printed on the back was -the liability of the railway company shall be limited to \$ 10 for any package. • P's bag was lost. He claimed the actual value of bag amounting to \$ 24. • It was held that the disclaimer clause was binding on P since the railway company had taken all reasonable steps to ensure that the conditions printed on the back were brought to the knowledge of P.
An offer must not thrust the burden of acceptance on the transferee	<p>An offer must not contain any term the non-compliance of which amounts to acceptance.</p> <p>Felthouse v Bindley</p> <ul style="list-style-type: none"> • A wrote to B -I will sell you my horse for Rs. 500. If I do not receive a reply by Sunday next, I shall assume that you have accepted the offer. • B did not reply. • It was held that an offer can not impose the burden on the offeree to reply. Acceptance is valid only if it is communicated to the offeror. • Since B had not communicated his acceptance to A, there was no contract between A and B, and therefore A could not sue B.
Cross offers do not conclude a contract	<ul style="list-style-type: none"> • Two offers which are similar in all respects made by two parties to each other, in ignorance of each other's offer are known as 'cross offers'. Cross offers do not conclude a contract.
Counter offer	<p>A counter offer amounts to rejection of the original offer.</p>
Offer must be distinguished from invitation to offer	<ul style="list-style-type: none"> • An invitation to offer does not imply a valid offer.

Offer must be distinguished from a declaration of intention.	A declaration or a statement merely indicates that an offer will be made or invited in future.
An offer must be certain.	The terms of the offer must be – (a) Definite; (b) Unambiguous; and (c) Certain.

11 LAPSE OF AN OFFER

Notice by offeror, i.e., Revocation	<ul style="list-style-type: none"> • Revocation of offer means withdrawal or cancellation of the offer. • An offer can be revoked by the offeror anytime. However, <u>revocation is effective only if it is made before the offer is accepted.</u>
Lapse of time	An offer lapses if it is not accepted – <ul style="list-style-type: none"> • Within the time specified in the offer; • Within reasonable time, if no time is specified in the offer.
Non-fulfillment of condition precedent.	If an offer requires fulfillment of some condition before the offer can be accepted, the offer shall lapse if such condition is not fulfilled.
Counter offer	A counter offer results in rejection of the original offer.
Acceptance is not made in prescribed mode	If the offeree accepts the offer in a manner which is different from the manner specified by the offeror, the offeror may refuse to treat such acceptance as valid, and consequently the offer shall lapse.
Death or insanity of the offeror or offeree	An offer shall lapse in the following cases: <ul style="list-style-type: none"> (a) Where the offeror dies or becomes insolvent and such fact comes to the knowledge of the offeree before acceptance of the offer. (b) Where the offeree dies or becomes insolvent before acceptance of the offer.
Rejection by the offeree	An offer comes to an end if the offeree rejects the offer and <u>communicates his refusal to the offeror.</u>
Subsequent illegality etc.	If, after making of an offer, the subject matter of the offer is destroyed or the performance becomes impossible or unlawful, the offer shall lapse.

Acceptance

12 INTRODUCTION TO ACCEPTANCE

(Sec. 2 (b))

Definition of acceptance	When the person to whom the proposal is made signifies assent thereto the proposal is said to be accepted.	
Promise	In case of a specific offer	In case of a general offer
	Only that particular person/group of persons to whom the specific offer has been made and none else.	Any person if – <ul style="list-style-type: none"> - He has the knowledge of the offer; and - He fulfils the terms and conditions of the offer.
Mode of acceptance	(a) Express acceptance (b) Implied acceptance	

Absolute & unqualified	<ul style="list-style-type: none"> The offeree should assent to all the terms of the offer. There must be no variation/reservation, i.e., acceptance must be unconditional. 	
Acceptance must be communicated	Acceptance cannot be made in ignorance of the offer. Mere mental acceptance is no acceptance.	
Acceptance to whom?	<ul style="list-style-type: none"> The acceptance must be communicated to the offeror. <p>Felthouse v Bindley</p> <ul style="list-style-type: none"> F made an offer to his nephew to buy the nephew's horse for Rs. 500. The offer stated that if the nephew failed to reply to the offer of F within 10 days, F shall consider that the horse had been sold to him. The nephew directed his manager not to sell that horse to anybody since he wanted to sell that horse to F. But, the nephew did not send any reply to F. By mistake, the manager sold that horse to some other person. It was held that nephew was not bound to send notice of refusal to F. Therefore, failure to send the letter of refusal within 10 days did not amount to acceptance. Also, nephew's communication of decision to sell the horse of F did not result in a valid acceptance since such decision was not communicated to F, the offeror. Since there was no contract between F and the nephew, F had no right against the nephew. 	
Acceptance by whom?	Acceptance must be given by the person who has the authority to accept the offer.	
Manner of acceptance.	Situation (A) : The offer does not prescribe the manner of acceptance	Situation (B): The offer prescribes the manner of acceptance.
	The offer must be accepted in some usual and reasonable manner.	<ul style="list-style-type: none"> The offer must be accepted in the prescribed manner. If the offer is not accepted in the prescribed manner, the offeror may approve or reject such acceptance.
Time limit for acceptance	Situation (A): The offer does not prescribe the time limit	Situation (B): The offer prescribes the time limit.
	The offer must be accepted within reasonable time.	The offer must be accepted within the prescribed time limit.
Acceptance must be given before the offer lapses or revoked	<ul style="list-style-type: none"> Acceptance can be given only to an existing offer. An offer open for a limited period can be accepted only before the expiry of such specified period. An offer can be revoked before acceptance. 	
Mode of acceptance	Acceptance may be given by – <ul style="list-style-type: none"> Performance of conditions, or Acceptance of consideration. 	

14 COMMUNICATION WHEN COMPLETE**(Sec. 4)**

Communication of	Communication when complete?	
Offer	When the offer comes to the knowledge of the offers.	
Acceptance	Communication is complete against the offer	When acceptance is put in a course of transmission so as to be out of the power of the offeree.
	Communication is complete against the offeree	When acceptance to the knowledge of the offeror.
Revocation	Communication is complete against the person who makes it -	When revocation is put in a course of transmission So as to be out of the power of the person who makes it.
	Communication is complete against the person to whom it is made -	When revocation comes to the knowledge of the person to whom it is made.

15 TIME LIMIT FOR REVOCATION**(Sec. 5)**

Revocation of ...	Time limit for revocation
Offer	Before communication of acceptance is complete against the offeror.
Acceptance	Before communication of acceptance is complete against the offeree.

Consideration**16 MEANING OF CONSIDERATION****(Sec. 2 (d))**

When, at the desire of the promisor,

The promisee or any other person

Has done/abstained from doing, or does/abstains from doing, or promises to do/to abstain from doing, something,

Such act/abstinence/promise is called a consideration for the promise.

17 ESSENTIALS OF A VALID CONSIDERATION

Consideration must move at the desire of the promisor.	An act or abstinence shall constitute a good consideration only if it is done at the desire of the promisor.
Consideration may move from promisee or any other person.	<ul style="list-style-type: none"> • So long as there is consideration for promise, it is immaterial as to who has furnished it. • If a party receives consideration, the contract is valid, even though the person furnishing the consideration is not a party to the contract. • Where a third party furnishes the consideration, it is valid consideration. • As long as there is consideration in a contract, it is immaterial as to who has given this consideration. This rule is generally stated as 'Privity of consideration is not required'.

No adequacy of consideration required.	<ul style="list-style-type: none">• The law requires that there must be consideration in every contract.• However, adequacy of consideration is not required. Even if it is proved that such consideration is inadequate, the contract is not void.• The fact of inadequacy of consideration shall be given due weightage while determining whether the consent of the promisor was freely given or not.
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It must be different from promisor's existing obligation	Consideration received by a party must be something more than the other party's contractual and legal obligation.
Consideration must be lawful	An agreement is void if the consideration furnished by any of the parties is unlawful.
It must be real, and not illusory	<ul style="list-style-type: none"> • Consideration received by a party must be of some value. • Consideration must not be illusory (i.e., existing in name)

18 EXCEPTIONS TO THE RULE: NO CONSIDERATION (Sec. 25) NO CONTRACT

Agreements made on account of natural love and affection Conditions	<ul style="list-style-type: none"> • The agreement is made in writing. • The agreement must be registered. • The agreement must be made between the parties standing in immediate relation to each other. • There must be natural love and affection between the parties. However, mere nearness of relationship does not imply natural love and affection. 	
Compensation for past voluntary services - conditions	<ul style="list-style-type: none"> • A party renders some services to the other party or performs the legal obligation of the other party. • The services are rendered without any desire of the other party, i.e., the services are rendered voluntarily. • The other party afterwards promises to compensate the former party for the services rendered to him. 	
Promise to pay a time-barred debt	Meaning of time barred debt	A creditor can sue the debtor for recovery of his money by going to the Court of law. However, if the creditor fails to institute the suit within 3 years of debt becoming due for payment, the debt is said to be time barred debt, i.e., the creditor cannot institute the suit after the expiry of said period of 3 years.
	General rule	The general rule is that an agreement to pay a time barred debt is void .
	Exception	An agreement to pay a time barred debt is enforceable if the following conditions are satisfied: <ul style="list-style-type: none"> • The debt is a time barred debt. • The debtor promises to pay the time barred debt. • The promise is made in writing. • The promise is signed by the debtor.
Completed gift	<ul style="list-style-type: none"> • Agreement to make a gift is not enforceable. • However, once a gift has actually been made, the donor cannot demand it back on the ground that there was no consideration. 	
Agency	No consideration is necessary to create an agency.	
Remission	No consideration is necessary for an agreement to receive less than what is due.	
Guarantee	In a contract of guarantee, consideration received by the principal debtor shall be sufficient consideration for the surety.	

19 PRIVACY OF CONTRACT

(Sec. 25)

Privity of consideration	<ul style="list-style-type: none"> • It is well established that privity of consideration is not required. • Consideration may move from promisee or any other person. • So long as there is consideration for promise, it is immaterial who has furnished it. 	
Privity of contract – Meaning	<ul style="list-style-type: none"> • The general rule is that only the parties to a contract can sue. • In other words, if a person is not a party to the contract (i.e., a stranger to contract), he cannot sue. 	
Privity of contract Example	<p>Dunlop Pneumatic Tyre Co. V Selfridge and Co.</p> <ul style="list-style-type: none"> • D entered into a contract of sale of certain tyres to P. • The contract provided that P shall not sell the tyres below the list price. Also, the contract provided that P shall, at time of resale, impose a condition on the retailer that sale by retailer shall not be made below the list price. • P sold certain tyres to S.S. resold certain tyres below the list price. • In a suit instituted by D against S, the Court held that such suit was not maintainable since there was no privity of contract between S and D. 	
Privity of contract Exceptions	Creation of a trust.	Beneficiary is not a party to the agreement creating a trust. However, the beneficiary is allowed to sue the trustee for enforcement of trustee’s duties.
	Marriage / Family arrangements	Where a marriage or family settlement is made, the person who is a beneficiary under such settlement is entitled to sue even though he may not be a party to sue settlement.
	Acknowledgement	The person, who becomes an agent of a third party by acknowledgement, can be sued by such third party.
	Assignment of a contract.	An assignee is entitled to exercise all the rights which could have been exercised by the assignor previously, even though the assignee was not a party to the contract as originally made.

CAPACITY OF PARTIES

20 EFFECTS OF MINOR’S AGREEMENT

Agreement is void ab initio, i.e., without any legal effect.	<p>A minor is incompetent to enter into any contract. Therefore, any agreement made by a minor is void ab initio, i.e., it is without any legal effect.</p> <p>Mohori Bibi v Dharmodas Ghose (IMP.)</p> <ul style="list-style-type: none"> • A minor entered into an agreement for mortgage of his property. • He was paid a certain amount for mortgaging the property. • Afterwards, the mortgagee filed a suit against the minor for recovery of money paid to the minor. • It was held that the money was paid to the minor under a void agreement, and therefore the mortgage was not valid.
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An agreement for the benefit of minor is enforceable by minor	<ul style="list-style-type: none"> • The principle laid down in Mohori Bibi v Dharamodas Ghose applies only if the agreement creates an obligation of a minor. • Where, an agreement is for the benefit of a minor, the agreement is not void and therefore the minor can enforce such agreement. • If the other party to the agreement fails to perform his part of obligation, the minor can claim restitution. 		
Restitution	<p>Khan Gul v Lakha Singh Following principles were laid down in the above case:</p> <ul style="list-style-type: none"> • The Court may grant relief to the other party if the other party had entered into a contract with the minor on the basis of a misrepresentation made by the minor. • If the minor had received some consideration under the agreement, the Court may grant restitution to the other party. • However, the minor shall not be personally liable. In other words, restitution shall be made only to such an extent as the estate of minor has been benefited. • The power of the Court to grant relief is discretionary in nature. • The Court shall not grant relief if the other party had the knowledge of the fact that it was entering into an agreement with a minor. 		
No estoppel against a minor	<ul style="list-style-type: none"> • If the rule of estoppel is applied against a minor, it would amount to an indirect way of enforcing a void agreement. • Therefore, the rule of estoppel does not apply against a minor. 		
No specific performance	<ul style="list-style-type: none"> • The other party cannot demand that minor should perform the obligation which he had agreed to perform under the agreement. 		
No ratification by a minor	<ul style="list-style-type: none"> • Ratification means acceptance of a transaction already done. • An agreement entered into by a minor cannot be ratified by him after he has attained majority. • Where on attaining majority, a minor agrees to pay for the goods supplied by a third party, such agreement is void for want of consideration. 		
No liability of guardian	The guardian of a minor shall not be liable for acts of a minor.		
Contracts by a guardian – Valid	The contract by a guardian on behalf of a minor shall be valid if – (a) The contract is for the benefit of minor; and (b) The guardian has the authority to enter into such a contract.		
Minor’s liability for necessities	<table border="1"> <tr> <td data-bbox="451 1581 632 1704">Nature of liability</td> <td data-bbox="632 1581 1474 1704">As per Sec. 68, a minor is liable for necessities supplied to – (a) him; or (b) Any other person who is dependent on the minor.</td> </tr> </table>	Nature of liability	As per Sec. 68, a minor is liable for necessities supplied to – (a) him; or (b) Any other person who is dependent on the minor.
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<table border="1"> <tr> <td data-bbox="451 1704 632 1895">Conditions</td> <td data-bbox="632 1704 1474 1895">(a) The liability is only for ‘_necessities’ of life. The term ‘_necessity’ means necessities of life as per the social status and conditions of life of the minor. (b) The minor is not already in possession of such necessities. (c) The minor shall not be personally liable.</td> </tr> </table>	Conditions	(a) The liability is only for ‘_necessities’ of life. The term ‘_necessity’ means necessities of life as per the social status and conditions of life of the minor. (b) The minor is not already in possession of such necessities. (c) The minor shall not be personally liable.	
Conditions	(a) The liability is only for ‘_necessities’ of life. The term ‘_necessity’ means necessities of life as per the social status and conditions of life of the minor. (b) The minor is not already in possession of such necessities. (c) The minor shall not be personally liable.		
Position of minor	(a) Minor cannot be a guarantor. (b) Minor may be admitted as a member where the shares are fully paid up.		

	(c) Minor can be an apprentice provided he is of at least 14 years of age. (d) Minor cannot be a partner in a firm. However, he may be admitted to the benefits of partnership.
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21 PERSONS OF UNSOUND MIND

(Sec. 12)

Meaning of 'sound mind'	A person is said to be of sound mind if he is able to - <ul style="list-style-type: none"> • understand the contract; and • Form a rational judgment. 	
Presumption	The law presumes that every person is of sound mind.	
Requirements of law	At the time of entering into a contract, a person must be of sound mind. A person can enter into a contract in accordance with the following principles:	
	Nature of person	When can he enter into a contract?
	A person of sound mind	<ul style="list-style-type: none"> • He can enter into a contract at all the times. • He cannot enter into a contract when he is of unsound mind.
	A person of unsound mind.	<ul style="list-style-type: none"> • He can enter into a contract only at such intervals of time, if any, when he is of sound mind.
Burden of proof	Case	Burden of proving otherwise
	A person who is usually of sound mind	The burden of proving that he was of unsound mind at the time of entering into the contract lies on the person who challenges the validity of the contract.
	A person who is usually of unsound mind.	The burden of proving that he was of sound mind at the time of entering into the contract lies on the person who affirms the contract.

22 PERSONS DISQUALIFIED UNDER LAW

Company	<ul style="list-style-type: none"> • A company is a legal person and therefore it can enter into a contract in its own name. • However, a company is disqualified to enter into any contract which falls outside the object clause of memorandum 	
Alien enemy	Existing contract	<ul style="list-style-type: none"> - is suspended until the war is over; - is discharged, if such contract is against public policy.
	Fresh contract	- cannot be entered into until the war is over
	Permission of CG	<ul style="list-style-type: none"> - An existing contract can be enforced; - A fresh contract can be entered into.
Foreign diplomats	Right to sue others	
	Can be sued	Available <ul style="list-style-type: none"> - Only in the following cases: - (a) Where he submits himself to the Court - (b) Where approval of CG is obtained.

Convict	Existing contract	Is suspended until his conviction is completed.
	Fresh contract	Cannot be entered into
	Permission of CG	An existing contract can be enforced. A fresh contract can be entered into.

Free Consent

23 COERCION - CONDITION

(Sec. 15)

(a) Acts forbidden by IPC Unlawful detention of property	<ul style="list-style-type: none"> • Actually committing an offence forbidden by IPC; or • Threatening to commit an offence forbidden by IPC • Actually detaining the property; or • Threatening to detain the property
(b) Intention	<ul style="list-style-type: none"> • Causing any person to enter into an agreement.

Other points :

Applicability of IPC is not relevant	It is irrelevant as to whether or not IPC is in force – <ul style="list-style-type: none"> • At the time when coercion is employed; or • At the place where coercion is employed.
How coercion may proceed?	<ul style="list-style-type: none"> • Coercion may proceed from – • A party to the contract; or • Stranger to contract.
Against whom coercion may be directed?	Coercion may be directed against - <ul style="list-style-type: none"> • A party to the contract; or • Stranger to contract

24 UNDUE INFLUENCE - CONDITIONS

(Sec. 16)

Relations between the parties	<ul style="list-style-type: none"> • One party is in a position to dominate the will of the other.
Use of the dominant position	<ul style="list-style-type: none"> • The dominant party uses his dominant position.
Dominant party obtains an unfair advantage	<ul style="list-style-type: none"> • The dominant party obtains an unfair advantage by way of entering into a contact.
Undue influence was employed/not employed – burden of proof.	
Unconscionable transactions	<ul style="list-style-type: none"> • The burden of proof is on the dominant party. • The dominant party has to prove that undue influence was not employed.
Any other transaction	<ul style="list-style-type: none"> • The burden of proof is on the weaker party. • The weaker party has to prove that undue influence was employed.

25 ESSENTIALS OF FRAUD

(Sec. 17)

By a party to the contract	<ul style="list-style-type: none"> • It must be proved that fraud was committed by- <ul style="list-style-type: none"> (a) A party to the contract; or (b) Anyone with the connivance of a party to the contract.
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The party makes a representation	<ul style="list-style-type: none"> • The party has made a representation of a fact. • An opinion, a statement of expression, or a statement of intention does not constitute a fraud.
<ul style="list-style-type: none"> • The representation is false 	
<ul style="list-style-type: none"> • The misrepresentation was made willfully. 	
<ul style="list-style-type: none"> • The misrepresentation was made with a view to deceive the other party. 	
<ul style="list-style-type: none"> • The other party is actually deceived. 	
<ul style="list-style-type: none"> • The other party has suffered a loss. 	

When is a representation considered as false?

Suggestion of a false fact	<ul style="list-style-type: none"> • Where the person makes a representation of a fact knowing that such fact is not true.
Concealment of a fact	<ul style="list-style-type: none"> • Where the person conceals a fact even though he has knowledge of such a fact.
Promise	<ul style="list-style-type: none"> • Where a person makes a promise without any intention of performing it.
An act/omission	<ul style="list-style-type: none"> • Any act omission declared by law as fraud also amounts to fraud.
Any other act	<ul style="list-style-type: none"> • Any other act fitted to deceive also amounts to fraud.

Silence as fraud

General rule	<ul style="list-style-type: none"> • Mere silence, which is likely to affect the willingness of the other party, is not a fraud.
Exceptions	<ul style="list-style-type: none"> • Where the parties stand in fiduciary relationship. • When silence is equivalent to speech. • Partial disclosure of truth which deceives the other party is a fraud.

26 ESSENTIALS OF FRAUD

(Sec. 18)

- By a party to the contract.
- The party makes a representation.
- The representation is false.
- The misrepresentation was made innocently.
- The misrepresentation was not made with a view to deceive the other party.
- The other party has actually acted.

27 MISTAKE

(Sec. 20 & 22)

Mistake of Indian law	<ul style="list-style-type: none"> • The contract is not voidable
Bilateral mistake	<ul style="list-style-type: none"> • The agreement is void if- <ul style="list-style-type: none"> (a) The mistake relates to a fact; (b) Such fact is material to the agreement; and (c) Both the parties are at mistake. • Bilateral mistake may be <ul style="list-style-type: none"> (a) Mistake as to the subject matter. (b) Mistake as to the possibility of performance.
Unilateral Mistake	<ul style="list-style-type: none"> • The contract is neither void nor voidable.

Legality of object and consideration

27 UNLAWFUL OBJECT OR CONSIDERATION- (Sec. 23)
MEANING AND EFFECTS.

Circumstances in which object or consideration is unlawful	An agreement to do something forbidden by law	An agreement is unlawful if, It involves doing of an act which is forbidden by any law for the time being in force.
	Defeating the provisions of any law	An agreement is unlawful if, It is of such a nature that if permitted It would defeat the provisions of any law Even though it is not directly prohibited by any law.
	Fraudulent	An agreement is unlawful if It is made to make a fraud on any person.
	Involves injury to any person or his property.	An agreement is unlawful if It is made for the purpose of causing injury to – - Any other person ; or - Property of another person.
	Immoral or opposed to public policy	An agreement is unlawful If, the Court regards that object or consideration of such agreement is - immoral ; or - opposed to public policy
Legal effect	Every agreement of which the object or consideration is unlawful is void.	

29 WHEN IS OBJECT OR CONSIDERATION SAID TO BE AGAINST PUBLIC POLICY

- Agreement for trading with enemy
- Agreement interfering with personal liberty.
- Agreement interference with parental duties
- Agreement interfering with marital duties..
- Agreement interfering with course of justice.
- Agreement for improper promotion of litigation.
- Agreement for stifling prosecution
- Maintenance agreement.
- Champerty agreement.
- Agreement to do an act against the duty of a person.
- Marriage brokerage agreement.
- Agreement not to bid.
- Agreement to create monopolies or to eliminate or reduce competition.
- Agreement for sale of public offices and titles.

30 MAINTENANCE AND CHAMPERTY AGREEMENT

Meaning of maintenance agreement	<ul style="list-style-type: none"> • A party agrees to provide assistance (Financial or otherwise) to another party to institute or defend a suit. • The person providing such assistance has no interest in such suit. • The party who receives such assistance agrees to pay something in return to the person who provides such assistance.
Legal effect of maintenance agreement	<ul style="list-style-type: none"> • The maintenance agreement is valid, if it is bonafide and the payment the person providing such assistance is reasonable.
Meaning of Champerty agreement	<ul style="list-style-type: none"> • A party agrees to provide assistance (financial or otherwise) to another party to institute or defend a suit. • The person providing such assistance has no interest in such suit. • The party who receives such assistance agrees to share the proceeds from the suit received by him in return to the person who provides such assistance.
Legal effect of champerty agreement	<ul style="list-style-type: none"> • The Champerty agreement is valid, if it is bonafide and the share of proceeds paid to the person providing such assistance is reasonable.

31 AGREEMENTS UNLAWFUL IN PART (Sec. 25)

An agreement containing legal and illegal parts.	<p>Whether unlawful part can be separated from unlawful part-</p> <ul style="list-style-type: none"> • If <u>'yes'</u> - Lawful part can be enforced; or - Unlawful part cannot be enforced. • If <u>'no'</u> - The whole agreement is void.
A reciprocal agreement containing legal and illegal parts	<p>The reciprocal promise to do –</p> <ul style="list-style-type: none"> • Legal things – can be enforced • Illegal things - cannot be enforced.
An agreement containing legal and illegal parts	<p>The alternate promise to do –</p> <ul style="list-style-type: none"> • Legal things – can be enforced • Illegal things - cannot be enforced.

Void Agreements

32 AGREEMENTS IN RESTRAINT OF MARRIAGE (Sec. 26)

Every agreement in restraint of the marriage of any person is void.

33 AGREEMENTS IN RESTRAINT OF TRADE (Sec. 27)

Agreements in restraint of trade is void	<p>Every agreement by which Anyone is restrained from exercising A lawful profession, trade or business of any kind Is void To that extent.</p>
Burden of proof	<ul style="list-style-type: none"> • Party supporting the contract – must show that the restraint is reasonably necessary to protect his interests. • Party challenging the contract – must show that the restraint is injurious to the public.

Exceptions to Sec. 27

Sale of goodwill	<ul style="list-style-type: none"> (a) Such restriction must relate to a similar business. (b) Such restriction must be within specified local limits. (c) Such restriction must be for the time so long as the buyer or any person deriving title to the goodwill from him, carries on a like business in the specified local limits. (d) Such specified local limits should be reasonable having regard to the nature of the business.
Restriction on existing partner	An agreement by a partner not to carry on any business other than that of the firm is valid.
Restrictions on outgoing partner	<ul style="list-style-type: none"> (a) An agreement may provide that an outgoing partner will not carry on a similar business after dissolution of the firm. (b) Such restriction must be within specified local limits or within a specified period. (c) The restriction should be reasonable having regard to the nature of the business.
Restrictions on partners upon or in anticipation of the dissolution of the firm	<ul style="list-style-type: none"> (a) An agreement may provide that some or all of the partners will not carry on a similar business. (b) Such restriction must be within specified local limits or within a specified period. (c) The restriction should be reasonable having regard to the nature of the business.
Restriction in case of sale of goodwill of a firm.	<ul style="list-style-type: none"> (a) At the time of sale of goodwill of the firm, a partner may agree that he will not carry on a similar business. (b) Such restriction must be within specified local limits or within a specified period. (c) The restriction should be reasonable having regard to the nature of business.

34 AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS (Sec. 28)

Agreement restricting enforcement of rights	An agreement by which Any party is restricted absolutely From enforcing his legal rights under any contract is void.
Agreements limiting period of limitation	An agreement which limits the time within which an action may be brought is void.
Exceptions	<ul style="list-style-type: none"> (a) An agreement is not void merely because it provides that any dispute arising between two or more persons shall be referred to arbitration. (b) An agreement is not void merely because it provides that any dispute that has arisen between two or more persons shall be referred to arbitration.

35 WAGERING AGREEMENTS (Sec. 30)

Meaning	An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering agreement.
Effects of wagering agreements	<ul style="list-style-type: none"> (a) The agreement is void. (b) The agreement is illegal in the states of Maharashtra and Gujrat. (c) No suit can be filed to recover the amount won on any wager.

Agreements not held as wagers	(a) Agreement to pay prize money not exceeding Rs. 1,000 (b) An agreement to pay a prize exceeding Rs. 500 to the winner of a horse race is not a wager.
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Contingent Contracts

36 INTRODUCTION TO CONTINGENT CONTRACTS (Sec. 31)

Meaning of contingent contract	A ‘contingent contract’ is a contract to do or not to do something, If some event, collateral to such contract, does or does not happen.
Essentials features of a contingent contract	(a) It is a contract to do or not to do something. (b) This contract is dependent on happening or non-happening of an event. (c) Such an event is a collateral event, i.e., it is collateral to the contract, i.e., the event must not depend upon the mere will of a party. (d) The event is uncertain.

37 INTRODUCTION TO CONTINGENT CONTRACTS (Sec. 31)

Contract contingent upon	When can it be enforced?	When does it become void?
Happening of an event	When such event has happened.	When the happening of such event becomes impossible.
Non- happening of a future event	When the happening of such event becomes impossible.	When such event has happened.
Happening of an event within a specified time	When such event has happened within the specified time.	When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened within the specified time.
Non-happening of an event within a fixed time.	When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened within the specified time.	When such event has happened within the specified time.
Future conduct of a living person.	When such person acts in the manner as desired in the contract.	When such person does anything which makes the desired future conduct of such person – (a) Impossible; or (b) Dependent upon certain contingency.
Impossible events	Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.	

Quasi Contracts

38 INTRODUCTION TO QUASI CONTRACTS

Meaning of a quasi contract	It means a contract which lacks one or more of the essentials of a contract.
Basis of quasi contract	Quasi contracts are declared by law as valid contracts on the basis of principles of equity, i.e., no person shall be allowed to enrich himself at the expense of another.
Legal effect of a quasi contract.	The legal obligations of parties remain same in case of a quasi contracts also, i.e., the parties will have same obligations and rights as if such quasi contract fulfils all the essentials of a contract.

39 SUPPLY OF NECESSARIES TO PERSONS INCOMPETENT (Sec. 68) TO CONTRACT

Who is made liable u/s. 68?	<ul style="list-style-type: none"> • A person who is incompetent to contract is made liable u/s. 68.
Conditions of Sec. 68	<p>The liability of an incompetent person arises if necessities are supplied to –</p> <ul style="list-style-type: none"> • Such person (.e., incompetent person); or • Any other person who is dependent on such incompetent person.
Liability of incompetent person	<ul style="list-style-type: none"> • The person who supplies necessities to the incompetent person is entitled to be reimbursed from the property of such incompetent person. • However, the incompetent person is not personally liable.
Meaning of necessities	<ul style="list-style-type: none"> • ‘Necessities’ means necessities suitable to the conditions in life of the person to whom such necessities are supplied.

40 PAYMENT BY A PERSON WHO IS INTERESTED IN A (Sec. 69) TRANSACTION

Conditions of Sec. 69	<ul style="list-style-type: none"> • One person is legally bound to make a payment. • Some other person makes such payment. • The person making such payment is not legally bound to make such payment. • The person making such payment is interested in paying such amount.
Legal effect of Sec. 69	<ul style="list-style-type: none"> • If all the conditions of Sec. 69 are satisfied, the person who is interested in paying such amount shall be entitled to recover the payment made by him.

41 OBLIGATION OF PERSON ENJOYING BENEFIT OF (Sec. 70) NON-GRATUITOUS ACT

Conditions of Sec. 70	<ul style="list-style-type: none"> • A person has lawfully- <ul style="list-style-type: none"> ○ Done something for another person; or ○ Delivered something to another person. • Such person must have acted- <ul style="list-style-type: none"> ○ Voluntarily; and ○ Non-gratuitously
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	<ul style="list-style-type: none"> • The other person has enjoyed the benefit of – <ul style="list-style-type: none"> ○ The act done for him; or ○ The thing delivered to him.
Legal effect of Sec. 70	<ul style="list-style-type: none"> • If the conditions of Sec. 70 are satisfied, there will be a quasi contract between the parties. • Consequently, the party who has done something or delivered a thing shall be entitled to recover its value from the person who obtained the benefit of the same.

42 FINDER OF GOODS (Sec. 71)

A finder of goods has same rights and duties as that of a bailee.

43 MONEY PAID UNDER A MISTAKE OR COERCION (Sec. 72)

Conditions of Sec. 72	<ul style="list-style-type: none"> • A person has - <ul style="list-style-type: none"> ○ Paid money to another person; or ○ Delivered something to another person. • Such person must have acted- <ul style="list-style-type: none"> ○ Under a mistake; or ○ Under coercion
Legal effect of Sec. 72	<ul style="list-style-type: none"> • If the above conditions are satisfied, there will be a quasi contract between the parties. • Consequently the party who has paid money or delivered a thing shall be entitled to recover its value from the person who obtained the benefit of the same.

Performance of a Contract

44 OBLIGATIONS OF PARTIES TO CONTRACTS (Sec. 37 & 38)

Actual performance	Promisor makes an offer of performance to the promisee. The offer has been accepted by the promisee.
Offer to perform/ Tender / Attempted performance	Promisor makes an offer of performance to the promisee. The offer has not been accepted by the promisee.

45 TYPES OF TENDERS AND THEIR EFFECTS

Tender of goods and services	Goods or services need not be offered again if The promisor is – <ul style="list-style-type: none"> (a) Discharged; (b) Not required to offer again; (c) Not responsible for non-performance; (d) Is entitled to sue the other party;
Tender of money	The debtor remains liable to pay the debt. The debtor is discharged from liability for payment of interest from the date of tender.

46 CONDITIONS OR ESSENTIALS FOR A VALID TENDER (Sec. 38)

- (a) The tender must be unconditional
- (b) The tender must be for the whole obligation.
- (c) The tender must be given at a proper time.
- (d) The tender must be given at a proper place.
- (e) The tender must give a reasonable opportunity of inspection.
- (f) The party giving the tender must be willing to perform his obligation.
- (g) The tender must be made to the proper person.
- (h) The tender must be made for the exact amount of money.

**47 PERSONS LIABLE FOR, & ENTITLED TO, (Sec. 40 & 42)
PERFORMANCE**

Persons liable for performance	Persons entitled to performance
(a) Promisor	(a) Promisee
(b) Agent of promisor	(b) Agent of promise
(c) An of the several joint promisors	(c) Joint promises
(d) Legal representative of a promisor	(d) Legal representative of a promisee.

48 PERFORMANCE OF JOINT PROMISE (Sec. 42)

- (a) All the joint promisors are jointly and severally liable. However, the contract between the joint promisors may provide otherwise.
- (b) A joint promisor may claim contribution from other joint promisors, if he is compelled to perform the whole promise.
- (c) A joint promisor may claim contribution from other joint promisors, if any other joint promisor makes a default in performance of his promise.
- (d) Where one of the joint promisors is released, other joint promisors shall continue to be liable.

49 APPROPRIATION OF PAYMENTS (Sec. 59 to 61)

Application of payment where debt to be discharged is indicated	<ul style="list-style-type: none"> • A debtor owes several distinct debts to the creditor. • The debtor makes a payment to the creditor. • The debtor intimates the creditor that the payment made is to be applied to the discharge of some particular debt. • The creditor has no option but to apply such payment for the discharge of such particular debt.
Application of payment where debt to be discharged is not indicated.	<ul style="list-style-type: none"> • A debtor owes several distinct debts to the creditor. • The debtor makes a payment to the creditor. • The debtor does not indicate the debt for which the payment is to be applied. • The creditor has the discretion to apply such payment for any lawful debt which is due to him from the debtor.

Application of payment where none of the parties makes the appropriation	<ul style="list-style-type: none"> • A debtor owes several distinct debts to the creditor. • The debtor makes a payment to the creditor. • The debtor does not indicate the debt for which the payment is to be applied. • The creditor accepts such payment but does not apply such payment for any lawful debt which is due to him from the debtor. • The payment shall be applied in discharge of the debts in order of time.
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Discharge of a contract

50 MEANING OF DISCHARGE OF A CONTRACT

Discharge of contract means termination of contractual relations between the parties to a contract.

51 MODES OF DISCHARGE OF A CONTRACT

1. Discharge by performance
2. Discharge by impossibility of performance.
3. Discharge by mutual agreement.
4. Discharge by lapse of time.
5. Discharge by operation of law
6. Discharge by breach of contract.

52 DISCHARGE BY PERFORMANCE (Sec. 37 to 38)

Actual performance	<ul style="list-style-type: none"> • When both the parties perform their respective obligations in accordance with the terms of the contract, the contract is discharge.
Attempted performance or tender	<ul style="list-style-type: none"> • Where a valid tender is not accepted by the other party, the promisor is discharged.

53 DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE (Sec. 56)

Meaning of supervening impossibility	<ul style="list-style-type: none"> • No impossibility existed at the time of making of the contract. • The impossibility arises subsequently to the formation of the contract. • The impossibility arises because of- <ol style="list-style-type: none"> (i) Change in circumstances beyond the contemplation of parties; or (j) Change in law. • The impossibility is of such a nature that it makes the performance of a contract impossible or illegal. • If particular state of things, which forms the basis of a contract, ceases to exist or occur, the contract is discharged. <p>Krell v Henry</p> <ul style="list-style-type: none"> • X hired a room from Y for viewing the coronation process of King Edward. • The procession was cancelled because of King's illness. • Since the ultimate and only purpose of the contract was defeated, the contract was discharged.
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	<ul style="list-style-type: none"> • Partial failure of objects or partial impossibility does not discharge a contract. <p>H.B. Steamboat Co. v Hulton</p> <ul style="list-style-type: none"> • X agreed to hire a boat from Y for the purpose of viewing the naval review on the eve of coronation of king and for sailing around the fleet. • Due to king's illness, the naval review was cancelled, but the fleet was assembled. • X used the boat for sailing around the fleet. • Although the primary purpose of the contract was defeated, the secondary purpose was fulfilled and therefore, the contract was not discharged by supervening impossibility.
Effects of supervening impossibility	<ul style="list-style-type: none"> • The contract becomes void. All the parties are discharged from their respective obligations. • Restitution is allowed.

55 DISCHARGE BY MUTUAL AGREEMENT

(Sec. 62 to 63)

Novation	<ul style="list-style-type: none"> • Novation means substitution of a new contract in place of the original contract. • The new contract may be- <ul style="list-style-type: none"> ○ Between the same parties; or ○ Between different parties. • A new contract is entered into in consideration of discharge of the old contract. In other words, the consideration for the new contract is the discharge of the original contract.
Alteration	<ul style="list-style-type: none"> • Alteration means a change in one or more of the terms of a contract with mutual consent of parties. • An alteration discharges the original contract and creates a new contract between the parties. • However, the parties to the new contract remain the same.
Remission	<ul style="list-style-type: none"> • Remission means acceptance of a lesser consideration than agreed to in the contract. • A promise may – <ul style="list-style-type: none"> ○ Dispense with (wholly or in part) the performance of a promise made to him; or ○ Extend the time for performance due by the promisor; or ○ Accept a lesser sum instead of the sum due under the contract; or ○ Accept any other consideration than agreed to in the contract. • No consideration is necessary for remission.
Rescission	<ul style="list-style-type: none"> • It means cancellation of a contract by one or all the parties to the contract. <ol style="list-style-type: none"> (a) A party whose consent was not free may avoid the contract. (b) A party to the contract may rescind a contract if breach of contract is made by the other party to the contract. (c) All the parties may mutually agree to bring the contract to an end.

Waiver	<ul style="list-style-type: none"> • Waiver means intentional relinquishment of a right under a contract.
Merger	<ul style="list-style-type: none"> • Conversion of an inferior right into a superior right is called as merger. • The effect of conversion is that the contract under which inferior right is created is discharged.

55 DISCHARGE BY LAPSE OF TIME

Where the time of performance by a party is due but the party fails to perform within the time specified, the contract is discharged by non-performance.

56 DISCHARGE BY OPERATION OF LAW

Death	<ul style="list-style-type: none"> • Contracts involving personal skill, knowledge or ability of the deceased party are discharged automatically.
Insolvency	<ul style="list-style-type: none"> • The insolvent is discharged from liability on all contracts entered into upto the date of insolvency.
Unauthorized material alteration	<ul style="list-style-type: none"> • An alteration which changes the substance (i.e., legal effect or basic character) of a contract is called as material alteration.
Merger of rights.	<ul style="list-style-type: none"> • If the rights and liabilities arising under a contract vest in the same person, the contract is discharged.

57 DISCHARGE BY BREACH OF CONTRACT

Meaning of breach	<ul style="list-style-type: none"> • Failure of a party to perform his part of contract is called as breach.
Consequences of breach	<ul style="list-style-type: none"> • The other party is relieved from performing its part of obligation. • It gets a right to proceed against the party at fault.

58 KINDS OF BREACH

(Sec. 39)

Actual breach	Time when breach takes place	<ul style="list-style-type: none"> • On the due date of performance • During performance.
	Manner in which actual breach may take place	<ul style="list-style-type: none"> • Where a party fails to perform. • Where a party refuses to perform. • Where a party acts in such a manner that it becomes impossible for him to perform.
Anticipatory breach	Meaning of anticipatory breach	Where a party declares his intention of not performing the contract before the performance of contract is due.
	Modes of anticipatory breach	<p>(a) Express Repudiation. Where a party refuses to perform his obligation before the performance has become due.</p> <p>(b) Party disables himself. Where a party acts in such a manner that it is impossible for him to perform, i.e., the party has disabled himself from performance that he had promised.</p>

Remedies for Breach of a Contract

59 REMEDIES FOR BREACH OF A CONTRACT.

Following remedies are available in case of breach of a contract:

1. Rescission
2. Suit for damages
3. Suit for specific performance
4. Suit for injunction.
5. Suit for quantum meruit

60 RESCISSION**(Sec. 39)**

Meaning of rescission	<ul style="list-style-type: none"> Rescission means a right available to an aggrieved party to terminate a contract.
Effects of rescission	<ul style="list-style-type: none"> The aggrieved party is not required to perform his part of obligation. The aggrieved party can claim compensation for any loss caused to him.

61 SUIT FOR DAMAGES**(Sec. 73)**

Meaning	<ul style="list-style-type: none"> Monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract.
Object of awarding damages	<ul style="list-style-type: none"> Not to punish the party at fault. To make good the financial loss suffered by the aggrieved party due to breach of contract.

Kinds of damages

Ordinary damages	<ul style="list-style-type: none"> These damages are awarded for such loss suffered by a party which is a proximate consequence of breach. Damages are not awarded if they have resulted because of an indirect consequence. 			
Special damages	<ul style="list-style-type: none"> Special damages are awarded to cover such loss which through does not arise naturally, but was in the contemplation of both the parties at the time when the contract was made. These damages can be recovered only if the special circumstances which would result in a special loss in case of breach of a contract are communicated to the other party. 			
Exemplary or punitive or vindictive damages	These damages are awarded only in the following 2 cases:			
	<table border="1"> <tr> <td>Breach of a contract to marry</td> <td>The damages shall be calculated on the basis of mental injury sustained by the aggrieved party.</td> </tr> <tr> <td>Unjustified dishonor of a cheque</td> <td>The damages shall be calculated on the basis _lower the amount of cheque, greater will be the damages_.</td> </tr> </table>	Breach of a contract to marry	The damages shall be calculated on the basis of mental injury sustained by the aggrieved party.	Unjustified dishonor of a cheque
Breach of a contract to marry	The damages shall be calculated on the basis of mental injury sustained by the aggrieved party.			
Unjustified dishonor of a cheque	The damages shall be calculated on the basis _lower the amount of cheque, greater will be the damages_.			
Nominal damages	<ul style="list-style-type: none"> Where no loss is suffered by the aggrieved party, the Court generally awards nominal damages. 			
Damages for inconvenience etc.	<ul style="list-style-type: none"> Where a party has suffered physical inconvenience, discomfort or mental agony as result of breach, the Court may award damages for the same. 			
Liquidated damages and penalty	<ul style="list-style-type: none"> Where the parties to a contract specify a certain sum in the contract which will become payable as a result of breach, such specified sum is called as _liquidated damages_ or _penalty_. If the specified sum represents a fair and genuine pre-estimate of the damages likely to result due to breach, such specified sum is called as _liquidated damages_. If the specified sum is disproportionate to the damages which are likely to result as a result of breach, such specified sum is called as _penalty_. In India, damages shall be restricted to a reasonable compensation not exceeding the specified sum. 			
Forfeiture of security deposit	<ul style="list-style-type: none"> If any loss is suffered by a party as a result of breach, the damages awarded to him shall be limited to the loss suffered by him. Any clause in the contract entitling the aggrieved party to forfeit the security deposit is not valid. 			