Law of Contract and Specific Relief

Answers to Important Question

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Subject: Labour Law & Industrial Relation - 1

By Jigar Ashar

Module - 1: Sections 1 – 9, 30 – 37 and 68 – 72 of the Indian Contract Act 1872

Q. History and nature of a contractual obligation / Historical Background of Indian Contract Act 1872 (13m)

- The Indian Contract Act brings within its ambit the contractual rights that have been granted to the citizens of India. It endows rights, duties and obligations on the contracting parties to help them to successfully conclude business- from everyday life transactions to evidencing the businesses of multi-national companies. The Indian Contract Act, 1872 was enacted on 25th April, 1872 and subsequently came into force on the first day of September 1872.
- The essence of the India Contract Act has been modeled on that of the English Common Law. It is one of the most important legislation ever drafted by Britishers and the principles enacted therein are nothing but the codification of the general principle governing transactional relationship because of which it has seen seldom amendments.
- Before the act was enacted , the contractual relationship was governed by the personal laws of different religious communities like different laws for Hindu and Muslims. Now, to understand the contract act in its present form we have to analyze the historical evolution of contract law taking into account the practices that were prevalent before the enactment came.

Evolution of contract law different time periods:

- **Vedic and Medeival period:**
  - During the entire ancient and medieval periods of human history in India, there was no general code covering contracts. Principles were thus derived from numerous references- the sources of Hindu law, namely the Vedas, the Dhramshatras, Smritis, and the Shrutis give a vivid description of the law similar to contracts in those times. The rules governing contracts form a part of the law called Vyavaharmayukha.
  - During Chandragupta's reign, contract existed in the form of "bilateral transactions" between two individuals of group of individuals. The essential elements of these transactions were free consent and consensus on all the terms and conditions involved. It was an open contract openly arrived at.
- **Roman period:**
  - In early Rome, the law of contracts developed with the recognition of a number of categories of promises to be enforced rather than creation of any general criteria for enforcing promises. Thus, the notion that promise itself may give rise to an enforceable duty was an achievement of Roman law.
- **Islamic period:**
  - During the Mughul rule in India, all matters relating to contract were governed under the Mohammedan Law of Contract. The word contract

in Arabic is Aqd meaning a conjunction. It connotes conjunction of proposal (Ijab) and acceptance which is Qabul.
    - A contract requires that there should be two parties to it one party should make a proposal and the other accept it, the minds of both must agree that is there declaration must relate to the same matter and the object of contract must be to produce a legal result.
- **Hindu period:**
    - The Jurisprudential aspect of the Hindu law is fundamentally different from that of English law's jurisprudence. Hindu law is the result of the compilation of numerous customs and works of Smritikaras, who interpreted and analyzed Vedas to develop the various aspect of Hindu law. Manusmriti in regarding the contract law dealt with the incompetence to enter to contract.
    - It laid down the principle which is also followed in the Indian Contract Act, states that a contract entered by a minor, or intoxicated person or an old man or the cripple is not valid contract.Regarding the contract by minor, under Narada smriti an infant is considered is someone who is between in the stage of an embryo to up to 8 years. After that from 8 years to 16 years the child is considered as boyhood and after 16 years the person is competent to enter into a contract. So it can be concluded that the stage of majority to enter into a contract is 16 years, 2 years less than what has been prescribed under The Indian Contract Act.
- **British Period:**
    - Before the advent of the Indian Contract Act, The English Law was applied in the Presidency Towns of Madras, Bombay and Calcutta under the Charter of 1726 issued by king George to the East India Company. Now, since no system can afford to make all promises enforceable, the English tried out two assumptions:
        1. The assumption that promises are generally enforceable, and then create exceptions for promises considered undesirable to enforce.
        2. The assumption that promises are generally unenforceable, and then create exceptions for promises thought desirable to enforce.
    - But in the case where one of the parties is from either of the religion like if one party is Hindu and other is Muslim then, in that case, the law of the defendant is to be used. This was followed in the presidency towns, but in cities outside the presidency towns, the matter was governed by justice, equity and good conscience.
    - This procedure was followed until the time the Indian Contract Act was implemented in India. In the years 1862, the introduction of the High Courts took place in the town of Bombay, Calcutta, and Madras and the charter of these High Courts also contained the same provision as pervious law that High Courts to apply the personal laws of the respective religions before rendering any judgment in respect to the contract cases.

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- **The Advent of The Indian Contract Act:**
  - The Indian Contract Act as applied today's was drafted originally by the third Indian Law Commission in the year 1861 in England. The Indian Contract Bill tried to defined laws relating to Contracts, Sale of movable properties, Indemnity, Guarantee, Agency, Partnership and bailment.
  - The bill was not the complete law of contract, but the aim of the bill was to suffice the need of the country for a considerable period of time and during that period, judges of the courts were taking the help of English laws in determining the case when they failed to arrive at the judgments by considering the justice, equip and good conscience. once a person made a promise he has to perform it the last day of your life.
  - The act came into effect in 1872 but soon afterwards amendments were made in that regard, which repealed section 76 to 123 dealing with the sales of goods act and separate legislations were enacted called Sales of Goods Act 1930′ to govern that area. Also, section 239 to 266 dealing with partnership was repealed and new legislation was enacted called Indian Partnership Act 1932.

Q. What is Contract / Exaplain Essentials of a Contract: (2m / 6m)

- In simple terms, a contract means when two parties put into writing an agreement which contains certain obligations (promises) which are to be performed by such parties, and when such written agreement becomes enforceable by law, it becomes a Contract. Enforceable by law means when the agreement has acquired the force of law only for those who are a party to it and a violation of those obligations would attract legal action, including repudiation of the entire contract.
- The essentials of a Contract are as follows:Section 10 states conditions which are required for a contract to be valid.
  - **Agreement** − For a valid contract, agreement is the most essential element, which consists of offer and acceptance.
  - **Two parties** − Minimum two parties are required for a contract. One will offer the contract and the other will accept the contract.
  - **Free consent** − Consent is said to be free consent, if it is not created by force, needless influence, cheating, misrepresentation or fault.
  - **Legal relationships** − These are must for parties to be in a contract because agreements are not enforceable by law.
  - **Capacity of contract** − Ability of person/party to enter into a valid contract
- According to the Section 11 of Indian Contract Act, 1872, a competent to contract should advance-highlight [Maybe asked seperately for 2m as Qualifications of a Legal Contract?]
  - Have a sound mind.
  - Not be disqualified by any law.
  - Have an age of majority according to the law (in most cases 18 years of age).

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Q. Contemporary Relevance / Modern Day analysis of Indian Contract Act, 1872 (6m / 13m)

- The Indian Contract Act, 1872 is a law regulating the contractual relationship between two or more parties- persons, corporations, and governments. It deals with all aspects of contracts, including the formation, efficiency, contract enforceability, allowances and guarantees, bail and pledge, and agency.
- Although it is one of India's oldest laws, legal experts note that the relevance of the Indian Contract Act has multiplied in the current business environment, with a significant increase in the number of contracts concluded between different parties, and the resulting disputes. In recent years, attempts have been made to strengthen corporate governance across boards through new rules on corporate law and to amend the Indian Securities and Exchange Board (SEBI's) company listing agreement. The time has come for many legal experts to take a close look at the Indian Contract Act and bring it into line with the changing market climate.
- Most legal experts claim that the Indian Contract Act is a significant and detailed piece of legislation. In contract law, the principles are based on British contract law. Nevertheless, the Act includes several contrasting clauses.
- Some of the parts of the Indian Contract Act that need a relook are:
    - **Doctrine of Privity:**

      The 'Doctrine of Contract Privacy' is a long-established English Law principle that ensures that no one is entitled to or bound by the terms of the contract to which he is not a party. That is, it's a principle of common law that stipulates that rights or obligations can only be imposed on a contracting party. The law prohibits the third party from having the legal right to enforce the contract, or from enforcing contractual obligations as a result of the contract, and that contractual remedies are for negotiators only. It essentially forbids the compliance of contract conditions on a third party. Therefore, the doctrine has proven troublesome to third parties, since they are not in a position to implement the obligations of contracting parties.

    - **Need for codification of supplementary principles:** As the Preamble of the Indian Contract Act states that the Act does not claim to be a full Code dealing with contract law. When enacting this Act, the legislature did not wish to exhaustively codify the entire contract law to be enforced by the courts in India or even any specific subdivision thereof. Therefore, it was held "that Sections 124 and 125 of the Act do not lay down the whole law of Indemnity. Consequently, in all cases on which it is vague, the courts had to resort to the rules of English Common Law as concepts of 'justice, equity and good conscience'. In the 13th law commission report, it was stated that this dependence on English law concepts to supply the shortcomings of an Indian statute does not add to the consistency or simplicity of the law. It is also better to apply to the Act, the rules of English common law that our courts have

followed for almost a century so that in many cases it might not be appropriate to appeal to English law.

- **Doctrine of Consideration:** This doctrine was borrowed from English Common Law. According to some distinguished English jurists. Subject-matter legislation requires change. Professor Holdsworth described the doctrine as 'something of an anachronism and observed that ' the conditions of consideration in its present form prevent the enforcement of many contracts which should be enforced if the law really wishes to give effect to the parties' legitimate intentions, and it would prevent the enforcement of many others if the judges had not used their ingenuity to invent considerations. But the invention of considerations, through logic which is both devious and scientific, adds to the difficulties of the doctrine.'
- **Recognize non-compete restrictions:** A non-competitive clause is well known under the Contractual Laws as the agreement in any transaction between two parties where one party is the employer and the other the employee. Under this non-compete provision, the employee undertakes and acknowledges the employer's condition that he will not be the employer's competitor in the manner and nature of the employer's work during the course of the work, or even after the employee leaves the employer's services/job. Under agreements and contracts. The non-compete clause finds its place in the globe under the deals and contracts.
- **Include provisions for e-contracts:** E-contract is one of its e-business divisions. This has a similar meaning in a conventional business where goods and services are exchanged for specific consideration. The only additional element it has is that the contract takes place here through a digital mode of communication such as the Internet. This allows the sellers the chance to hit the end of the market directly without the intermediaries being involved.

Electronic contracts are born out of the need for speed, ease, and productivity (contracts that are not paper-based but relatively in (electronic form) Imagine a contract that an Indian fabricator and an American exporter would like to enter into. One option will be for one party to draw up two copies of the contract for the first time, sign them, and courier them to the next, who in turn signs both copies and guides a copy back. The other choice is for the two sides to meet somewhere and sign the contract. The entire contract can be completed in seconds in the modern era, with all parties simply adding their digital signatures to a modern copy of the document. There is no need for behind couriers and additional traveling costs in such a situation.
Thus clarifying the rules on the creation of e-contracts, the Act must provide for questions relating to the jurisdiction of e-contracts, the rights, and obligations of parties, and cases of one party's unilateral errors.

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- **Regulate unfair terms of a contract:** Legal experts agree that most developed jurisdictions have learned methods of coping with contract inequality and understand the potential for 'procedural' and 'substantial' injustice. "There should also be the power of the courts to raise a question of injustice even though the parties have not made such a plea. Even the Law Commission has recommended that separate legislation should be enacted to grant protection to parties from such unfair terms.
- **Need to reform the code of damages:** The entire law on damages in India has been criticized as being excessively subjective and lending itself, without uniformity or clarity, to the interplay of unrestrained discretion and factual vagaries. While discretion accompanied by the application of the mind results in injustice as between the parties, due to the sheer diversity in the language employed by contracts, the force of circumstances surrounding its breach, and the alleged acts of the parties, it also robs the law of preceding efficacy and a sense of initiative certainty.
- **Minors' contracts:** Section 11 of the Indian Contract Act ("the Act") states that if a person is to be qualified to contract, he must have attained the age of majority. The Indian Majority Act, 1875, provides that the voting age in India is 18 years. It is clear, when you read it together, that a person under the age of 18 is not 'competent' to contract under Indian contract law. Nevertheless, the confusion emerges from the absence of any clause under the Act allowing for the consequences of concluding a contract in contravention of Section 11.

Q. What is a proposal/offer? [Section 2(a)] (2m)

- According to the Indian Contract Act 1872, proposal is defined in Section 2 (a) as "when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."
- The person making the proposal is called the Promisor / Offeror and the person to whom the proposal is being made is called the Promisee / Offeree. When the person to whom the proposal is being made accepts the proposal then it becomes a promise.

Q. What are the Essentials of a Valid Proposal? (2m)

- An offer must be made with the intention to create legal obligations
- An offer may be expressed or implied
- The terms of the offer must be definite and not vague
- An offer cant prescribe silence as a mode of acceptance
- A general offer need not be specifically accepted
- An offer differs from an invitation to offer
- Offer must be communicated

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Q. When can a proposal be revoked? (2m)

- A proposal can be revoked by communication of notice of revocation by the proposer to the proposee.
- A proposal can be revoked if the time prescribed in the proposal has lapsed or if no time is prescribed in the offer then the proposal will lapse after the passage of a reasonable period of time.
- When the proposer dies or becomes insane and if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Q. Types of Proposal/Offer (2m / 6m)

1. General offer:
    - When an offer is made to the general public, it is called a general offer and can be taken up by any person who wishes to fulfill the terms of the offer. When an offer is accepted by the individual to whom it is directed, the offeror and the offeree enter into a contract.
    - If the offer is accepted by a large number of people, the number of contracts formed will be equal to the number of individuals who accept the offer. If a reward is offered for completing a certain task, only the person who completes the task can accept the offer.
2. Specific offer:
    - A specific offer refers to an offer made to a specific individual or group of individuals. It can only be accepted by the individual or group of individuals to whom it is directed.
3. Counter-offer:
    - In the event that the offeree is only willing to accept the offer if certain modifications are made, he or she is offering a counteroffer. A counteroffer is itself an offer, and it is considered a rejection of the initial offer. It is a new offer that terminates the initial offer, making it impossible to be revived at a later time.
      A counteroffer can be accepted or rejected by the party who offered the initial offer. If that party accepts the counteroffer, a contract is established.
4. Cross offer:
    - A cross offer is made when two parties make the same offer to one another without knowing the other party has made an offer, and the terms of both offers are identical. In this situation, there will not be a contract because it cannot be construed that one party's offer is accepted by the other party.
5. Standing offer:
    - An offer is regarded as a standing offer if it is meant to remain open for a certain amount of time and can be accepted any time before the deadline. When a company needs a large quantity of products from time to time, it usually invites tenders for the supply of the products through an advertisement. Such a tender or offer is referred to as an open, continuing, or standing tender of offer.

- When a party accepts the tender or offer made by the offeror, it does not result in the formation of a legally binding contract until an actual order is placed. It only means that the offer or tender will remain open for a specified amount of time and can lead to a binding contract when the required quantity is ordered. As such, a contract only exists when an order is placed in accordance with the terms and conditions of the offer.
- When a standing offer is accepted, it means an order will be placed with the party who submitted tender whenever the products are required, and a distinct contract will be made for each order.

6. Express and Implied Offers:
   - When an offer is expressly communicated by the offeror, it is regarded as an express offer. The communication of an express offer can be written or verbal. An offer that can be understood by circumstances of case or the conduct of parties is known as an implied offer.
   - For example, when a bus transport company operates its bus on a certain route, it is making an implied offer to transport passengers to a specified location at a certain fare. Also, a public telephone or weighing machine in a public place offers its service for a certain amount of money. Such a machine is offering an implied offer.

Q. What is acceptance? [Section 2(b)] (2m)

- The Indian Contract Act 1872 defines acceptance in Section 2 (b) as “When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.”
- When the proposal is accepted and becomes a proposal it also becomes irrevocable. An offer does not create any legal obligations, but after the offer is accepted it becomes a promise.

Q. Difference between Promiser and Promisee [Section 2(c)] (2m/6m)

- Sec.2(c)-provides that the person making the proposal is called the promiser and the person accepting the proposal is called the promisee.
- Sec 40 of the Indian Contract Act, 1872 states
  If the nature of a contract indicates that either of the parties intended that the promise contained in the contract must be performed by the promisor himself
  - then the promisor is obligated to perform the promise
  - else the promise can be performed by the promisor or his representatives or an employed agent.
- Sec 41 of the Indian Contract Act, 1872 states, If the promisee accepts the performance of a promise from a third person, then he cannot enforce it against the promisor at a later date. Hence, the performance of the promise by a third-party discharges the promisor of his obligations even if he has not authorized the third-party to perform the promise.

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- Sec 42 of the Indian Contract Act, 1872 states, If the promisors agree to perform a promise together – joint promise – then they are jointly obligated to fulfil the promise, unless the contract specifies a contrary intention. Also, if any of the promisors die, then their legal representatives must fulfil the promise jointly with the surviving promisors. If all the promisors die, then the legal representatives of each of them must perform the promise jointly.

Q: Solve the Problem: Peter and John are childhood friends. Peter is a painter and agrees to paint John's c for a payment of Rs 20,000. However, he is in urgent need and requests John to pay him in advance. John obliges and they enter into a contract for the same. Peter starts making John's portrait. However, before he can finish, he dies in a car accident. Jack inherits Peter's property. Can John file a suit for recovery since he had already made the payment but did not get his portrait in return?

- Since the contract was based on personal consideration, that is Peter's painting skills and there was no clause in the contract regarding a refund if Peter fails to deliver the portrait, John cannot file a suit for recovery of his money.

Q. Essentials of a Valid Acceptance: (2m)

1. It may be expressed or implied
2. Acceptance can only be given to whom the offer was made
3. It has to be absolute and unqualified/unconditional
4. Acceptance must be communicated / Mental Acceptance is not Valid
5. It must be in the prescribed mode

Q. Explain Communication, acceptance and revocation of proposals [Section 3] (6m / 13m)

- The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.
- To create a legally enforceable contract there must be a proposal which has to be accepted by the other party. Once a proposal is accepted by the other party and it is properly communicated to the party who made the proposal it becomes a binding contract, provided the object and consideration is not illegal and the parties do have an intention to create a legal relationship. Once it becomes a binding contract the parties cannot go back on their respective commitments.
- The parties can revoke the proposal or acceptance any time before the communication of the same is complete against the other party.
- Let us examine the revocation of proposal, revocation of acceptance and requirements of communication in detail:

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- **Communication of proposal and acceptance:**
  - When the proposal is accepted it creates legal relations between the two parties. Effective communication and a clear understanding of it is important to avoid misunderstanding between all the parties. When the parties are talking face-to-face the communication happens in real time and the offer and acceptance can be communicated on the spot, creating no confusion. But often in business the communication occurs via letters and emails etc. So, in this case, the timeline of communication is vital.
- **Mode of Communication:**
  - All communication should be according to the prescribed mode. If no mode is prescribed, the communication must be through an acceptable mode. If the offer is not accepted according to the prescribed or usual mode, the offer lapses provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the mode prescribed.
- **Revocation of Proposal:**
  - The party who has made the proposal can withdraw the proposal any time before the communication of acceptance is complete as against the proposer. The communication of acceptance of a proposal is complete against the proposer when it is put in a course of transmission to him, so as to be out of the power of the acceptor (Sec 4, Indian Contract Act 1872). The proposing party must communicate the revocation to the other party before the other party accepts the offer.
  - Once the revocation has been communicated to the other party, the original proposal stands cancelled and the other party cannot legally accept the proposal as the proposal is not in existence anymore. Revocation comes into effect as soon as it has been communicated to the relevant party.
- **Communication of Acceptance:**
  - In communication of acceptance, there are two factors to consider, the mode of acceptance and then the time of acceptance. Acceptance can be by an act which includes communication by words, oral or written through phone, letters, e-mails, fax, etc. or by conduct like boarding a bus etc.
- **Revocation of Acceptance**
  - There can be instances where a proposer makes an offer and the acceptor accepts the proposal and communicates the same to the proposer. Can the acceptor revoke/cancel this acceptance? Yes, the acceptor can cancel this acceptance before the communication of acceptance reaches the proposer. That is before the communication of acceptance is complete as against the acceptor. If the revocations of acceptance reached the proposer before the acceptance comes to the knowledge of the proposer there can be a valid revocation of acceptance. The

Revocation of Acceptance is complete only at any time before the communication of acceptance is complete as against the acceptor, but not afterwards.

- **Sec 10 (A) of Information Technology Act. 2000: (Extra and Optional)**
  - Inserted in the 2008 amendment this section is similar to Article 11 of the UNCITRAL (United Nations Commission on International Trade Law) Model law on Electronic commerce 1996. Article 11 deals with the formation and validity of contracts. It specifies that an offer and acceptance may be expressed by data messages and in cases where such data messages are used for the formation of a contract such contracts shall not be denied validity and enforceability on the ground that data messages were used for the purpose.
  - Section 10 A of the IT act reads "Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."
  - This section lays down the legislative authority to electronic contracts in India. In spite of all this, except in case of e-commerce websites most companies prefer to rely on formally darted contracts to avoid future complications where all the terms are incorporated into the contract rather than relying on the email communications through which the offer and acceptance is made.

Q. What is an Agreement [Section 2(e)]? (2m)

- 'Agreement' has been defined in section 2 (e) of the Indian Contract Act 1872 as 'any promise and any promises that take account of each other.'
- An agreement is an understanding or arrangement reached between two or more parties. In contrast, a contract is a specific type of agreement that is legally binding and enforceable in a court of law by its terms and elements. While every contract is an agreement, every agreement is not a contract. An agreement broadly comprises an offer, its acceptance and consideration, all of which must be bound together by communication within a reasonable period.

Q. What Agreements are Contracts [Section 2(h)]? (2m / 6m)

- "A contract is defined as an agreement that is enforceable by law" under Section 2(h) of the Indian Contract Act.
- An offer when it is accepted becomes an agreement. But all agreements are not contracts. In order to become a contract, an agreement must be enforceable by law. Therefore, only those agreements which are enforceable by law can result in a contract.

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- An Offer + Its Acceptance = An Agreement
- An Agreement + Its Enforceability by Law = Contract

[For 2m write till here]

- The necessary element in a contract is that must be an intent to create legal relationship, not a mere social, moral, or religious ones. Essentially, a contract is a legally binding agreement between the parties that establishes some legal relationship involving mutual obligations towards one another in exchange for some mutual gain, as well as the enforcement of these obligations in the event of failure of commitment, then penal provisions must be implemented.
- To understand the term contract one has to go through various terms involved in relation to that. Those terms are as follows:
    - **Proposal / offer:** An offer is the building block of the contract. The primary step to come into a contract is an offer. Offer requires a "manifestation of willingness to enter into a bargain. "The promise is the essential part of the contract. Until or unless there is an offer made there will be no establishment of a contract.
    - **Acceptance:** When the person to whom an offer is made gives his assent thereto is said to have accepted the offer.5 Unless or until the offer proposed is accepted, the contract can't be formed.
    - **Promise:** It should be technically known that without a promise given to each other while dealing with each other, no contract is reliable and acceptable. It is now necessary to make a promise. A promise is required for a contract to be legally binding, and it is supplied as an incentive to make a promise. If the promoter makes no commitment to do anything and thereby ignores a legal contract, the promise is illusory.
    - **Consideration:** Anything that has value in the eyes of law is known as consideration. Its not necessary that mutually consideration should be of the same value as the thing proposed.
    - **Agreement:** An Agreement is a promise between two entities creating mutual obligations by law.

Q. Mistake [Section 20/21/22]: (2m / 6m)

- 'Mistake' in general meaning is something that does not work out in search of a solution. The word 'Mistake' is used interchangeably with 'error'. In law, misunderstanding or erroneous belief about a material fact may prevent the formation of a valid contract.
- 'Mistake' is not defined in the Indian Contract Act.
- Sections 20, 21 and 22 deal with the concept related to mistakes.
- **Section 20** says that an agreement is void when both the parties are under mistake as to matter of fact that is essential to the contract.

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  - Eg: A agrees to buy a horse from B. At the time of agreement the horse was dead but no one knew about it. The agreement is void.
- **Section 21** says that a contract is not voidable if it was caused by mistake as to law in India. However, mistake as to law outside India has the same effect as mistake of fact.
- **Section 22** says that contract is not voidable merely because one of the parties was under mistake as to fact.
- Types of Mistake:
  - **Mistake of Law:** Mistake of Law means any contract which is performed by parties without knowing the law (or by ignoring the law), which is essential for that contract. Section 21 of the Indian Contract Act deals with 'effect of mistake as to law'.
  - **Mistake of Fact:** Mistake of fact means any contract which is performed by parties without knowing any material fact (or ignoring the fact), which is essential for that contract. Section 20 and 22 of the Indian Contract Act deals with 'Mistake of Fact'.
    - Mistake of Fact is of three types:
      i. Bilateral mistake,
      ii. Unilateral mistake
      iii. and Common mistake.

Q. Types of Contract (6m)

- From the beginning of the history of the Indian contract act 1872, all the IPCC contract act notes defined different types of contracts.
- Based on validity, the types of contracts are:
  - valid contracts, agreements or
  - void contracts,
  - voidable contracts,
  - illegal contracts, and
  - enforceable contracts.
- On the basis of formation, the types of contracts are
  - contigent contracts
  - express contracts,
  - quasi-contract,
  - implied contracts, and
  - E-contract.
- Based on performance, contract types are
  - executed contracts,
  - unilateral contracts,
  - executory contracts, and
  - bilateral contracts.

Q. Types of Contracts On The Basis Of Validity:

- Chapter 2 of the Indian Contract Act, 1872 discusses the voidable contracts and void agreements.

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- On the basis of validity or enforceability, we have five different types of contracts as given below:
    - Valid Contracts: A valid contract is enforceable by law and if a contract is not valid it may lead to obstruction of businesses and unlawful and insincere dealings.
    - Void Contract Or Agreement:
        - The section 2(j) of the Act defines a void contract as “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. This makes all those contracts that are not enforceable by a court of law as void.
        - We have already stated examples of these kinds of contracts in the “Essentials of a Contract”.
        - Example: A agrees to pay B a sum of Rs 10,000 after 5 years against a loan of Rs. 8,000. A dies of natural causes in 4 years. The contract is no longer valid and becomes void due to the non-enforceability of the agreed terms.
    - Voidable Contract:
        - These types of Contracts are defined in section 2(i) of the Act: “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.”
        - Example: Suppose a person A agrees to pay a sum of Rs. 10,0000 to a person B for an antique chair. This contract would be valid, the only problem is that person B is a minor and can’t legally enter a contract.
    - Illegal Contract:
        - An agreement that leads to one or all the parties breaking a law or not conforming to the norms of the society is deemed to be illegal by the court. A contract opposed to public policy is also illegal.
        - Example: A agrees to sell narcotics to B. Although this contract has all the essential elements of a valid contract, it is still illegal.
        - The illegal contracts are deemed as void and not enforceable by law. As section 2(g) of the Act states: “An agreement not enforceable by law is said to be void.”
    - Unenforceable Contracts:
        - Unenforceable contracts are rendered unenforceable by law due to some technical. The contract can’t be enforced against any of the two parties.
        - For example, A agrees to sell to B 100kgs of rice for 10,000/-. But there was a huge flood in the states and all the rice crops were destroyed. Now, this contract is unenforceable and can not be enforced against either party.

Q. List the main differences between a void and a voidable contract?:

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- The following table will illustrate the major differences between a void and a voidable contract:

Void Contract	Voidable Cont
"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".	"An agreemen the parties ther contract."
A contract becomes void if either it lacks the essential elements, the law changes drastically or the terms of the contract change such that it is no longer possible to enforce the contract in a court of law.	A contract bec reserves its co time of the for
Void contracts can't be fulfilled.	The validity ar of the unbound becomes void.
This type of contract can't grant any rights or considerations to any of the involved parties.	The right to re

Q. Contigent Contracts:

- Section 31 of the Indian Contract Act, 1872 defines the term 'Contingent Contract' as follows:
- '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'.
- In simple words, contingent contracts, are the ones where the promisor perform his obligation only when certain conditions are met. The contracts of insurance, indemnity, and guarantee are some examples of contingent contracts.
- Eg. A contracts to pay to B Rs. 20,000 if B's house is burnt. This is a contingent.
- ***Essential elements of the contingent contract:***
    - There must be a valid contract to do or abstain from doing something.
        - Section 32 and 33 of the Act talks about enforcement of the contingent contract on the happening or not happening of the events respectively. The contract will be valid only if it is about performing or not performing an obligation.

        - Eg. X makes a contract with Y to buy Y's dog if X survives Z. This contract cannot be enforced by law unless and until Z dies in X's lifetime.
    - Performance of the contract must be conditional
        - The condition for which the contract has been entered into must be a future event, and it should be uncertain. If the performance of the contract is dependent on an event, which is although a future event, but certain and sure to happen, then it'll not be considered as a contingent contract.
    - The said event must be collateral to such contract
        - The event on whose happening or non-happening of the event on which the performance of the contract is dependent should not be a part of the consideration of the contract. The happening or non-happening of the event should be collateral to the contract and should exist independently.
        - Eg. X enters into a contract with Y and promises to deliver 10 books to him. Y promises to pay Rs. 2000 upon delivery. This is not a contingent contract since Y's obligation depend on the event which is a part of the contract(delivery of 10 Books) and not a collateral event.
    - The event should not be at the discretion of the promisor:
        - The event so considered as for contingency should not at all to be dependent on the promisor. It should be totally a futuristic and uncertain event.
        - Eg. X promises to pay Y, Rs. 10,000 if Y leaves Delhi for London on 31st March 2019. This is a contingent contract. Going to London can be within Y's will but is not merely his will.

Q. Quasi Contracts:

- The word 'quasi' means pseudo or partly or almost and that is why it can also be called a pseudo contract. A quasi-contract is an agreement that is retroactive in nature. These kinds of agreements take place between parties who have no prior contractual commitments or intention of getting into a contract. The judge simply develops the concept of a quasi-contract to rectify situations where one side acquires something at the detriment of the other side. In layman's language, this type of contract aims to prevent one party from benefiting financially in a situation while financially draining the other party. Such agreements may be enforced by the approval of the party which is responsible for providing the goods or services but it is not necessary to keep this factor in mind before enforcing a quasi-contract.
- The only factor that constitutes a quasi-contract is that there lacks an understanding between parties beforehand. Quasi-contracts exaggerate one party's duties to the other party where the second party is in control of the first party's personal property. As a remedy, it is the judge's duty to impose the

agreement by the law. To support this statement, the author would like to give an example: in a hypothetical situation, Party A found a wallet on the road which belongs to Party B. By this example shows that Party A owes something to Party B as they now possess Party B's property indirectly or by mistake. The contract becomes enforceable only if Party A decided to keep Party B's wallet without trying to return it to the original owner.

- A second word for quasi-contracts is implied contracts. A literal meaning is attached to the term implied contract as the defendants are ordered to pay for the damages and the quantum meruit or restitution is measured as per the intensity of the wrong done.
- ***Essential Elements of a quasi-contract;***

    - An individual or as the law recognizes, one claimant. There must also be a defendant who will be responsible and asked to pay the restitution.
    - The defendant must be willing to recognize or even acknowledge the value of the product/ service in question but has not made any efforts to return it/ pay for it or even made an effort to do something about it.
    - The complainant needs to prove that the defendant earned wrongful enrichment.

Q. Standard Form Agreements / Contracts: (6m /13m)

- A standard form of agreement is an agreement in which one of the parties to the contract determines the terms, and the other party cannot change these terms. This agreement between two parties is also known as a standardized contract. Mass distribution of goods and services is possible thanks to standard contracts, which are very popular among consumers and businesses. Standard agreements have features that distinguish them from other contract types. These features are essential elements such as minimum bargaining rights, high trading volumes, and low risk.
- ***Nature of Standard Form Contracts:***

    - A standard form contract does not provide room for any negotiations.
    - It is entered into between partners with unequal bargaining powers.
    - Strictly speaking, these are legally binding agreements entered into by the parties to perform or abstain from performing something, in which one party holds all the bargaining power and therefore employs it to write the contract principally to their advantage.
    - Thus, the fundamental right to negotiate is affected by this type of arrangement.
- ***Issues Concerning Standard Form of Contracts:***

    - **Mistakenly missing out to read clauses:** Courts have held several times that contracts, even if entered into in the standard form, are meant to be performed and cannot be set aside unless it is shown to be entered into employing fraud, misrepresentation, mistake or coercion. Thus under normal circumstances, the standard form

contracts are valid, i.e., in the case of negligence from the side of the party is paying attention to the terms and conditions of the contract while signing it, they will get no remedy.
    - **Unequal Bargaining Powers:** Courts have strictly ruled against those standard form contracts that exploit the employees' position by the employers. In the case of employment agreements between the employer and employee, there is a general tendency to insert terms and conditions favourable to the employers, leaving no other option for the employees other than to accept it.
    - **Irrational terms or unconscionable nature:** Courts have refused to interfere in cases where the parties' bargaining power was judged to be equal but otherwise.
- ***Reasons to why people welcome a standard form contract:***
    - Mostly when given a standard form contract, a vast majority of people do not care to read through them. It could be in an expectation that all the conditions would be reasonable as it is the same for everyone, or people do not think it is worth spending time reading it through.
    - People considering their purpose of entering into the contract to be more important than the negative consequences it can create later on, while entering into the contract.
    - At times the party drafting the contract would have orally explained the major terms and policies of the contract to the other party, which might make it seem that it is not important to read the final draft of the contract.
    - Moreover, if people wish to benefit from the deal, even if they come across an unfavourable term, they have no other option; to go ahead and sign the contract or opt-out of it.
    - Tools and Mechanisms evolved to protect parties entering into Standard Form Contracts.
- ***Advantages of standard form contracts:***
    - The cost of contracting is significantly reduced as there is no need for drafting a new contract every time.
    - Since there is no opportunity for negotiation, the whole process becomes fast.
    - Since the terms and conditions do not change often, it will be easier for people to comprehend and familiarise themselves with it.
    - Even though there is no specific legislation governing standard form contracts, the precedents set by courts over time has established a body of case laws that can be referred to by parties in case of disagreement over any issue.
- ***Disadvantages of Standard from contract:***
    - People might miss out on specific terms and conditions, which can put them at a disadvantage even if their side is just.

- Being offered a standard contract with the prices for products printed as part of the text is price-fixing. Similarly, being offered fixed terms and conditions put one at a disadvantage as one is denied a chance to negotiate.
- The language used could be confusing and difficult to comprehend, which makes people not wanting to read through them or, even if they do, fail to understand what exactly it is asserting.
- This clearly favours one party leaving the other in a disadvantaged position.

Q. What is an E-Contract? / Types of E-Contract (2m / 6m / 13m)

- Considering the situation of society due to the pandemic, an e-contract is one of the easiest options to enter into a contract. With recent advancements in computer technology, telecommunications technology, software, and information technology, people's standard of living has been transformed in unfathomable ways. Communication is no longer limited due to geographical and temporal restrictions. More information is transmitted and received than ever before. This is where electronic commerce provides flexibility to the business environment in terms of location, time, space, distance, and money.
- All essential elements of contract law apply equally to contracts established electronically or orally. People often question how old and conventional contract law concepts apply to new and innovative types of technology, which creates a dilemma. However, the basics and features of e-contracts remain the same as those of paper-based contracts as of nowadays. While the fundamentals of a paper-based contract apply to e-contracts, the techniques for concluding the e-contract are derived from Indian Contract Law and are nearly identical to paper-based contracts. E-commerce refers to the purchasing and selling of information, products, and services through computer networks. It is a method of conducting business online, typically over the Internet. It is the instrument that leads to 'enterprise integration.' Therefore, with the expansion of e-commerce comes to a significant increase in the usage of e-contracts.
- E-contracting is a subset of e-business. It is comparable to traditional business in that products and services are exchanged for a certain amount of money. The only difference is that the contract is executed using a digital method of communication such as the internet.
- ***E-Contracts under Information and Technology Act, 2000:***

  - Section 10A of the Information Technology Act, 2000 (hereinafter referred to as "IT Act") deals with the validity of contracts formed through electronic means and states that the contract is legal if the contract creation, communication, and revocation of proposal/acceptance are all represented in electronic form or through electronic records. An e-contract will not be deemed unenforceable merely because it was created in an electronic format or through the use of electronic means. Signatures of contract parties are necessary

to demonstrate acceptance of the terms and conditions for any contract to be legitimate. An electronic signature is used in the case of an e-contract.

- Adding further, Section 4 of the IT Act grants legal recognition to electronic records, stating that if any legislation requires information or matter to be in a written or printed form, such need is deemed met if the information or matter is available and accessible in an electronic form.
- As per the second schedule of the IT Act, the documents that cannot be executed in electronic or digital form and must be executed in physical form in order to be legal and enforceable in a court of law are as follows:
  - Negotiable instruments except for cheques;
  - Trusts;
  - Power of Attorney;
  - Will or Testament;
  - A sale or conveyance deed of immovable property or any interest in such a party.

- ***Types of E-Contracts:***

  - **Shrink-wrap agreements:** Typically, shrink wrap contracts are a licencing agreement for software purchases. In the event of shrink-wrap agreements, the terms and conditions for access to such software goods should be enforced by the person purchasing it, with the start of the software product's packaging. Tightening-up agreements are just the agreements that consumers accept, such as Nokia pc-suite, at time of installing the software on a CD-ROM. Additional terms may only be viewed after installing the programme into your computer, and if the customer disagrees, he has the option to return the software package. The Shrink-wrap Agreement protects the product maker by absolving the manufacturer of any infringement of copyright or intellectual property rights as soon as the customer rips the product or the covering for the goods. However, there is no firm decision or precedent in India regarding the legality of shrink-wrap agreements.
  - **Click or web-wrap agreements:** A Click-wrap contract refers to a web-based contract that needs approval or assent of the user via the "I Accept," or "OK" button. With the clickwrap agreements, the user must accept the conditions before using a specific software. Users who do not agree with the terms and conditions will be unable to use or purchase the product following cancellation or rejection. Someone nearly always abides by web-wrap agreements. Before users agree to the terms of service, they must be written down. For example, online shopping, software download or installation, to purchase airline tickets or music online, using websites, registering an account on a social media website, etc.
  - **Browse-wrap agreements:** A browsing wrap agreement is a contract that is binding on two or more parties through the usage of a website.

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In the event of a browsing agreement, an ordinary user of a particular website is required to accept the terms and conditions of use as well as other website rules for continued usage. Such internet contracts are very common in our daily lives. Other nations have dealt with such online agreements and determined that both Shrink-wrap Agreements and Click-Wrap Agreements are enforceable as long as the contract's general principles are not breached.

- **E-signatures:**
  - After the parties have formed the contract to suit their interests, the stage of execution by affixing an e-signature is the following step. The IT Act recognises two types of signatures: digital signatures generated by an asymmetric crypto-system and hash function, and electronic signatures defined in its second schedule, wherein the user of an Aadhar card is assigned a unique identification number via which they can electronically sign documents via third-party forums (often through generation of a one-time-password). Section 5 of the IT Act defines e-signatures as a broad range of ways for signing a document, whereas a digital signature is a type of e-signature that employs cryptography.
  - While a lack of jurisprudence on the legal tenability and feasibility of e-signatures indicates that acceptance of the same remains uncertain, efforts have been made to overcome these issues through changes to the IT Act. The Information Technology (Amendment) Act of 2008 replaced the phrase 'digital signature' for 'electronic signature' with the goal of broadening the scope of e-signatures.
  - E-signatures are valid if they are uniquely linked to the signatory, who must have complete control over all data used to create the e-signature, if alterations to the e-signature or the document to which it is affixed can be detected after the act of signing, and if a digital signature certificate is issued after the process is completed. With the exception of Schedule I papers, a combined interpretation of the IT Act and the Evidence Act will give legal legitimacy and enforceability to electronic documents completed using e-signatures.

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Module - 2: Section 10-30 of the Indian Contract Act 1872

Q. Essential Ingredients / Elements for Enforceability: (2m / 6m /13m)

- A Contract refers to a legal agreement involving two or more individuals who agree to mutual rights and responsibilities. The transfer of commodities, services, or a promise to transfer any of these at a later period, are all common elements of a contract. An injured party may seek damages or rescission in the case of a contract breach. A fundamental premise of contract law, which deals with the law of obligations related to contracts, is that commitments must be honored. To be clear, this isn't a sign of a readiness to compromise or negotiate. Unless the terms of the offer are rejected, an offer is a firm guarantee to be kept if it is accepted.
- There are various essential elements of a contract that must be considered. These include identifying the parties, which allows the participants to be recognized. Another element is each party's rights to guarantee that fairness is practiced in the transaction, as well as a description of each of their contractual obligations. Moreover, contract terms should also be established to avoid conflicts. An outline of the termination process, terms, and a dispute resolution system in the event that one develops are also important.
- The five elements of an enforceable contract are as follows:
    - **Offer:** Contract terms, or the "why" of the agreement, are expressed in the offer, which specifies what each party promises to do or not do under the contract. The offer should be properly expressed so that all parties are aware of their responsibilities and expectations. The contract may not be precise enough to be enforced by a court if the offer is not specific enough.
    - **Acceptance:** Acceptance means the recipient of the offer agrees to the terms of the deal. Consent is required for acceptance. In other words, it's illegal for someone to accept an offer when they're signing a contract with a gun pointed at them. Other alternatives to acceptance are rejecting a contract or submitting a counteroffer.
    - **Conideration:** When two parties agree to a contract, they must agree on a consideration. A party may receive something other than money in exchange for signing a contract. Hence the term "payment" is ambiguous when used to describe consideration.
    - **Awareness:** Contract signers must be capable of fulfilling their obligations under the agreement. A person who is old enough and mentally competent enough to sign a contract is eligible to do so.
    - **Capacity:** This element of a contract requires that a party that is entering into a contract actually be able to enter into that contract. Additionally, a party that does not have capacity could be one that is intoxicated at the time or is mentally incompetent.

Q. Competency Of Parties To A Contract (6m)

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- The consideration of competency of parties is essential in the way that it very much ensures that the people participating in a contract are sound/sane and capable to form a contract and subsequently fulfil their promises as well. Thus, its importance arises from the fact that people come into a contract, to secure their position by making other party act in accordance of the agreement entered into, and to get legal enforceability.
- For this, law requires the parties intending to form a contract, to make certain that each of them is in a position where they are fully prudent to understand the terms of the contract and satisfy their respective promises and consideration.
- Section 11 of the Indian Contract Act, 1872 details as to which parties are competent to contract- a person who has attained majority, who is of sound mind and lastly, is not disqualified by the law to enter into a contract. The subsequent sections of the act details about each of these requirements as mentioned by the law.
- The details of each of these is as under:
    - **Minor's Agreement:**
        - As per the Indian Majority Act, a minor is someone who is below the age of eighteen. Hence, the law makes a person of the majority age, i.e. age above eighteen to be qualified to enter into a contract. However, earlier the case was that if there is an appointed guardian, majority age was fixed at twenty one years, which eventually changed through an amendment, and majority age was fixed at eighteen years.
        - The Indian Contract Act declares all agreements of minor to be void-ab-initio, i.e. void from the beginning, as it assumes people below the majority age to be less capable of fully understanding the terms and conditions of the contract. It is to be noted that a person cannot enforce the contract that was entered during his minority, when he attains the age of majority, since the agreement entered earlier was itself void from the very initial. Also, a minor's agreement cannot be ratified later, as an agreement which is void is not capable of ratification at a later point, as there is no contract formed in the first place.
    - **Unsoundness Of Mind:**
        - Law restricts people who are not of sane mind or are lunatics to enter into a contract and declares it void. A person with an unsound mind is not capable to fully understand the agreement in its true sense and thus there will be no meeting of minds when one person is unaware of what the contract entails with itself. Lunatics are people who are generally of sound mind but occasionally of unsound mind.
        - The duration in which they are of unsound mind, they are restricted to enter into a contract because of their mental

conditions, which limits their understanding ability. It is on the person who is of unsound mind to prove that he was not capable of understanding the agreement. This was established as per the case of Sudama vs. Rakshpal Singh.

- **Disqualification by law:**
  - There are some classified group of people who are considered to be disqualified by the law to enter into contracts. These include alien enemies, convicts, persons against whom insolvency proceedings are filed and some foreign diplomats.

Q. Consent [Section 13] / Free Consent (2m / 6m / 13m)

- In the Indian Contract Act, the definition of **Consent** is given in Section 13, which states that "it is when two or more persons agree upon the same thing and in the same sense". So the two people must agree to something in the same sense as well.
- Eg. A agrees to sell his car to B. A owns three cars and wants to sell the Maruti. B thinks he is buying his Honda. Here A and B have not agreed upon the same thing in the same sense. Hence there is no consent and subsequently no contract.
- Just giving consent is not enough for a contract to be enforceable. The consent given must be **free and voluntary**.
- The definition of **Free Consent** is provided under Section 14 of the Indian Contract Act is Consent that is free from Coercion, Undue Influence, Fraud, Misrepresentation or Mistake. [For 2m write till here]

- **Elements Vitiating Free Consent:**
  - **Coercion (Section 15):**
    - Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as
      - committing or threatening to commit any act forbidden by the law in the IPC
      - unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract
    - For example, A threatens to hurt B if he does not sell his house to A for 5 lakh rupees. Here even if B sells the house to A, it will not be a valid contract since B's consent was obtained by coercion.
  - **Undue Influence (Section 16):**
    - Section 16 of the Act contains the definition of undue influence. It states that when the relations between the two parties are such that one party is in a position to dominate the other party,

and uses such influence to obtain an unfair advantage of the other party it will be undue influence.
    - The section also further describes how the person can abuse his authority in the following two ways,
        - When a person holds real or even apparent authority over the other person. Or if he is in a fiduciary relationship with the other person
        - He makes a contract with a person whose mental capacity is affected by age, illness or distress. The unsoundness of mind can be temporary or permanent
    - Say for example A sold his gold watch for only Rs 500/- to his teacher B after his teacher promised him good grades. Here the consent of A (adult) is not freely given, he was under the influence of his teacher.
- **Fraud (Section 17):**
    - Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.
    - So according to Section 17, a fraud is when a party convinces another to enter into an agreement by making statements that are
        - suggesting a fact that is not true, and he does not believe it to be true
        - the active concealment of facts
        - a promise made without any intention of performing it
        - any other such act fitted to deceive
    - Let us take a look at an example. A bought a horse from B. B claims the horse can be used on the farm. Turns out the horse is lame and A cannot use him on his farm. Here B knowingly deceived A and this will amount to fraud.
- **Misrepresentation (Section 18):**
    - Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true. Misrepresentation can be of three types
        - A person makes a positive assertion believing it to be true
        - Any breach of duty gives the person committing it an advantage by misleading another. But the breach of duty is without any intent to deceive
        - when one party causes the other party to make a mistake as to the subject matter of the contract. But this is done innocently and not intentionally.

Q. Consideration [Section 2(d)] (2m / 6m)

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- According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined 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 is called a consideration for the promisee.”
- Assume Mr. X sells his car to Mr. Y for Rs. 2,00,000. Mr. Y accepts the offer and agrees to pay him the amount. The sum of Rs. 2,00,000 will be a valid consideration, making this agreement a contract.
- Types of Consideration:
    - Past consideration
    - Present or executed consideration
    - Future or executory consideration
- Essential elements of consideration:
    - **Consideration must move at the desire of the promisor:** An act or abstinence without any request from the promisor is a voluntary act and does not come within the definition of consideration. Similarly an act or abstinence done at the request of any person other than the promisor does not constitute consideration. In other words an act shall not be a good consideration unless it is done at the desire of the promisor.
    - **Consideration may move from the promisee or any other person:** It means that so long as there is consideration for promise, it is immaterial who has furnished it. It may move from the promisee, or from any other person if the promisor has no objection.
    - Consideration is an act, abstinence, forbearance or detriment: At times consideration is taken as misnomer of money form of exchange. The legal term consideration does not mean payment of money only. The Contract Act says that the consideration can be in the form of an act, abstinence, forbearance or detriment.
    - Consideration can be past, present or future:
        - Past consideration: past consideration consists in an act already done by one as consideration for a promise of the other. Thus when a person promises to compensate another in return for what the latter had done for the promisor in the past or before making of the promise, such promise is said to be for past consideration, i.e. consideration which took place in the past. Past consideration is as good as present or future consideration.
        - Present (Executed) Consideration: The consideration which moves simultaneously with the promise is present consideration. It consists in “doing” or “abstaining from doing something”. The best example of present consideration is cash sale where performance by both the parties (seller and buyer) is simultaneous. Another example is a contract of marriage where there is simultaneous performance by both the parties. The present consideration is also known as executed consideration because it emphasizes on the execution part of performance.

- Future (Executory) Consideration: A promise to do something in future is legal consideration. When the consideration from one party to another is to move at some future date, it is called future consideration. The consideration for A's promise to B may be a promise by B to A. The consideration is then said to be executory. If A promises to marry B in consideration of B promising to marry A, the promise made by each is the consideration for the promise made by the other.

Q. Stranger to the contract / Privity of contract (2m /6m)

- A person who is not a party (*i.e.* neither a promisor nor a promisee) to the contract is a stranger to the contract. Under the law of contract, an agreement can be binding on and can only be enforced against the parties to it. Since a contract is a private relationship between the parties who make it, the rights and obligations under such a contract are strictly confined to them – *Tweedle* v. *Atkinson* [1861-73] All. E.R. Rep. 369. This is known as the doctrine of privity of contract.
- From this follows a general rule of law that only parties to a contract may sue and be sued on a contract. Privity of contract means relationship subsisting between the parties who have entered into contractual obligations. The consequences of the doctrine of privity of contract are:
    1. a person who is not a party to a contract cannot sue upon it even though he has provided the consideration.
    2. a contract cannot confer rights or impose obligations arising under it on any person other than the parties to it. Thus if there is a contract between X and Y, Z cannot enforce it.
- **Examples:**
    - A clause in a Motor Insurance Policy providing that the Insurance Company shall indemnify the insured against his legal liability in respect of death of or accident of other passengers cannot give a right of suit against the insurance company for the money due under the policy to a passenger who is a mere stranger to the contract of insurance. [AIR 1938 Bom. 217(217)]
    - S bought tyres from the Dunlop Rubber Company and sold them to D, a sub-dealer, who agreed with S not to sell below Dunlop's list price and to pay the Dunlop Company 5 Pounds as damages on every tyre sold below the list price by D.S sold two tyres at less than the list price and thereupon the Dunlop company sued him for the breach. Held, the Dunlop company could not maintain the suit as S was a stranger to the contract – *Dunlop Pneumatic Tyre Co. Ltd.*v. *Selfridge & Co. Ltd.*[1915] A.C. 847.

Q. Legality of Object and Consideration (6m / 13m)

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By Jigar Ashar

- For a contract to be a valid contract two things are absolutely essential – lawful object and lawful consideration. So the Indian Contract Act gives us the parameters that make up such lawful consideration and objects of a contract. Let us take a look at the legality of object and consideration of a contract.
- Section 23 of the Indian Contract Act clearly states that the consideration and/or object of a contract are considered lawful consideration and/or object unless they are:
    - **Forbidden by Law:** When the object of a contract or the consideration of a contract is prohibited by law, then they are not lawful consideration or object anymore. They then become unlawful in nature. And so such a contract cannot be valid anymore.
    - **Consideration or Object Defeats the Provision of the Law:** This means if the contract is trying to defeat the intention of the law. If the courts find that the real intention of the parties to the agreement is to defeat the provisions of the law, it will put aside the said contract. Say for example A and B enter into an agreement, where A is the debtor, that B will not plead limitation. This, however, is done to defeat the intention of the Limitation Act, and so the courts can rule the contract as void due to unlawful object.
    - **Fraudulent Consideration or Object:** Lawful consideration or object can never be fraudulent. Agreements entered into containing unlawful fraudulent consideration or object are void by nature. Say for example A decides to sell goods to B and smuggle them outside the country. This is a fraudulent transaction as so it is void. Now B cannot recover the money under the law if A does not deliver on his promise.
    - **Defeats any Rules in Effect:** If the consideration or the object is against any rules in effect in the country for the time being, then they will not be lawful consideration or objects. And so the contract thus formed will not be valid.
    - **When they involve Injury to another Person or Property:** In legal terms, an injury means to a criminal and harmful wrong done to another person. So if the object or the consideration of the contract does harm to another person or property, this will amount to unlawful consideration. Say for example a contract to publish a book that is a violation of another person's copyright would be void. This is because the consideration here is unlawful and injures another person's property, i.e. his copyright.
    - **When Consideration is Immoral:** If the object or the consideration are regarded by the court as immoral, then such object and consideration are immoral. Say for example A lent money to B to obtain a divorce from her husband C. It was agreed once B obtains the divorce A would marry her. But the court passed the judgement that A cannot recover money from B since the contract is void on account of unlawful consideration.
    - **Consideration is Opposed to Public Policy:** For the good of the community, we restrict certain contracts in the name of public policy. But we do not use public policy in a wide sense in this matter. If that

was the case it would curtail individual freedom of people to enter into contracts. So for the purpose of lawful consideration and object public policy is used in a limited scope. We only focus on public policy under the law.

Q. Expressly Void Agreements / Void Agreements (6m / 13m)

- There are certain essential elements of a valid contract. And if those elements are not present, the contract would then be void or voidable. However, there are certain agreements that are expressly void agreements. This means these agreements that are declared void by the law itself.
- The Indian Contract Act 1872 defines a void agreement as “an agreement that is not enforceable by law”. And there can be many times of void agreements, some of which we have covered in the previous articles. But the contract states certain agreements that are expressly declared as void agreements.
- Some of these are as follows:
    - **Agreement in Restraint of Marriage:**
        - Any agreement that restrains the marriage of a major (adult) is a void agreement. This does not apply to minors. But if an adult agrees for some consideration not to marry, such an agreement is expressly a void agreement according to the contract act.
        - So A agrees that if B pays him 50,000/- he will not marry such an agreement is a void agreement.
    - **Agreement in Restraint of Trade:**
        - An agreement by which any person is restrained from plying a trade or practising a legal profession or exercising a business of any kind is an expressly void agreement. Such an agreement violates the constitutional rights of a person.
        - However, there are a few exceptions to this rule. If a person sells his business along with the goodwill then the buyer can ask the seller to refrain from practising the same business at the local limits.
        - So if according to such an agreement as long as the buyer or his successor carry on such a business the agreement to restrain the trade of the seller will be valid.
        - Let us take for example the case of physician A who employs B as his assistant for three years. For this duration of three years, B agrees not to practice medicine anywhere else. This is a valid agreement even though it is in restraint of trade.
        - But say A a lawyer sells his legal practice to B along with the goodwill. And A agrees never to practice as a lawyer anywhere in the state for the next 20 years. This is not a valid agreement since the terms are completely unreasonable.
    - **Agreement in Restraint of Legal Proceedings:**
        - An agreement that prevents one party from enforcing his legal rights under a contract through the legal process (of courts,

arbitration, etc) then such an agreement is expressly void agreement.
    - However, there are exceptions like, if the agreement states that any dispute between parties will be referred to arbitration and the amount awarded in such arbitration will be final will be a valid contract.
    - Also if the parties agree that any dispute between them in the present or the future will be referred to arbitration, then such an agreement is also valid. But such a contract has to be in writing.
- **An Agreement Whose Meaning is Uncertain:**
    - An agreement whose meaning is uncertain cannot be a valid agreement, it is a void agreement. If the essential meaning of the contract is not assured, obviously the contract cannot go ahead. But if such uncertainty can be removed, then the contract becomes valid.
    - Say for example A agrees to sell to B 100 kg of fruit. This is a void contract since what type of fruit is not mentioned. But if A exclusively sells only oranges then the agreement would be valid because the meaning would now be certain.
- **Wagering Agreement:**
    - According to the Indian Contract Act, an agreement to wager is a void agreement. The basis of a wager is that the agreement depends on the happening or non-happening of an uncertain event. Here each side would either win or lose money depending on the outcome of such an uncertain event.
    - The essentials of a wagering agreement are as follows. If all elements are met then the agreement will be void:
        - Must contain a promise to pay money or money's worth
        - Is conditional on the happening or non-happening of a certain event
        - The event must be uncertain. Neither party can have any control over it
        - Must be the common intention to bet at the time of making the agreement
        - Parties should have no other interest other than the stake of the bet
    - The following agreements are not considered wagering agreements,
        - Chit Fund
        - Commercial Transactions, i.e Transactions of the Share MArket
        - Athletic Competition and Competitions involving Skills
        - Insurance Contracts

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Module - 3: Sections 36 – 67 and 73-75 of the Indian Contract Act 1872

Q. Performance of Contract: (2m / 6m /13m)

- The term performance in its literal sense means the performance of a task or action. In its legal sense “performance” means the fulfilment or the completion of the obligations which they have towards the other party by virtue of the contract entered into by them.
- Section 37 of the Contract Act talks about performance. According to the Section, there are two types of performance which are:
    - **Actual performance:** Actual performance of the contract means the actual discharge of the liability or obligation which a person has undertaken to perform and there remains no other task which he is obliged to discharge under the promise. He is said to have made the actual performance of the promise.
    - **Attempted performance:** At times when the performance becomes due. The promisor is not able to discharge his obligation or perform his duty because he is prevented by the promisee in doing so. This situation where the promisor actually intended to perform his obligation or discharge his duty but is prevented from doing so by an intervening disability is known as the attempted performance of a promise.
- Attempted performance is also known as Tender. A tender can be of two types:
    - **Tender of goods and services:** The discharge of the contract to deliver goods and services is completed when the goods are tendered for acceptance in accordance with the terms of contact. If the goods and services so tendered are not accepted they are to be taken back by the offeror and he is discharged from his liability.
    - **Tender of money:** where the debtor tenders the money which is to be paid to the creditor but the debtor refuses to accept the money. The debtor is not discharged from the lability to pay back the money. Therefore, a tender of money can never result in the discharge of debt.
- **Tender of performance:**
    - The offeror should offer the performance of an obligation under the contract to the offeree. The offer is made is called the “tender of performance”. It is the discretion of the promisee to accept the offer. In case the promisee chooses not to accept the offer then neither the offeror could be held liable for the non-performance of the terms of the contract nor he loses his rights under the terms of the contract. Therefore, it is a settled principle that non-acceptance of the tender of performance would result in the exclusion of the promisor from further performance of the terms of the contract and he is also entitled to sue the other party for not performing the terms of the contract. Section 38 of the Contract Act makes it clear that a tender of performance tantamounts to performance. Every tender of performance must fulfil a certain essential condition:

- **Section 38(1):** The offer should be unconditional;
- **Section 38(2):** The offer must be made at a proper time and place so as to allow the party to have a reasonable time for ascertaining that the person who is making the offer to him is competent to enter into a contract;
- **Section 38(3):** If the offer to the offeree is such as to deliver some goods addressed to the offeree then it is the duty of the offeror to provide reasonable time to the offeree in which he can ascertain that the goods offered to him is the same by which the offeror is bound under the terms of the contract.

- **Promises bind the representatives of the promisor:**
  - The provisons attached to Section 37 of the Act provides that in case of the death of the promisors the representative of such promisors would be bound by the promises made by them unless a contrary intention appears from the terms of the contract. In the case of Basanti Bai vs Sri Prafulla Kumar Routrai, that in case a person dies without leaving behind any legal representative, then, in that case, the liability to perform the promise on his behalf would fall upon the person who acquires interest over the subject matters of the contract through that deceased party. The Cuttack High Court, however, held that in the present case, the plaintiff was not able to enjoy the above mentioned legal proposition as she was unable to prove the existence of the agreement which was alleged by her.
- **Clause for renewal:**
  - The Clause for renewal is the provision by which the terms of the contract initially agreed upon are renewed or recommenced.
  - In Hardesh Ores Pvt. Ltd vs M/S. Hede And Company, the terms of the contract contained a renewal clause. The party which have the authority in accordance with the terms of the contract to renew the same exercised it. However, the other party refused to accept the new terms caused by renewal. The Supreme Court held that in such a case the best course of action for the party who is empowered by the terms of the contract to renew the terms of the contract is to get the renewal declared and enforced by the court of law or to get the declaration of renewal of contract by the court.
- **Joint promises:**
  - Section 42 of the Indian Contract Act talks about the joint promises. When two or more promisors agree to perform the terms of the promise together they are said to have made a joint promise and the people who jointly agreed to perform the promise are called the joint promisors. The section provides that the promisors are jointly liable to fulfil the promise until the terms of the contract provide anything to the contrary. The Section also provides that in case of death of any one of the joint promisors his legal representatives will be bound by the obligation under which the promisor was in his lifetime.
- **Performance of joint promises:**

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- According to English law, in a case where one of the several joint promisors dies. The surviving joint promisor would be bound by the rights and liabilities of the deceased joint promisors until a single joint promisor is alive the representatives of the promisor will not acquire any rights or liabilities. This rule is sometimes considered to put the creditor in the loss as he has no security of solvency of the creditors. This lacuna of the rule is filled by Section 42 of the Indian Contract Act.

- **Devolution of joint liabilities:**
  - Section 42 of the Indian Contract Act deals with the devolution of joint liabilities. According to the Section in case, there are several joint promisors involved in a contract by making a promise then during the joint lives of the promisors they must fulfil the promise jointly. In case of death of any of the joint promisor, the representatives of the deceased promisor along with the surviving promisors should strive to fulfil the promise. On the death of the last surviving promisor, the representatives of all the deceased promisors would be jointly liable for fulfilment of the promise. However, this legal proposition is subject to any private arrangement between the parties to the contract.

Q. Discharge of Contract: (2m / 6m /13m)

- The discharge of a contract is characterised as the end of an agreement or an arrangement made by a couple of parties, which results in the failure in performing or playing out the obligations referenced at the hour of making a contract with the acknowledgment of all the parties with free consent. Subsequently, the commitments might be legal or contractual or performance, or even operational.
- The different methods by which a contract can be discharged are as follows:

  - Discharge of contract by breach of contract: Breach of contract is concerned with the termination of the original contract due to the failure of performing obligations by either or all of the parties, which discourages each of the other parties. It relates to void or terminating the original contract completely. These breaches of contracts may be either anticipatory or actual.
  - Discharge of contract by accord and satisfaction: Accord is an executor contract that helps to perform the existing duties at present to avoid the contractual discharge. On the other hand, based on the performance of the accord, the satisfaction of a contract will be considered, and one doesn't want to void the entire contract.
  - Discharge of contract by the impossibility of performance: In this case, the discharge of the contract happens without any interference from both of the parties. Despite the fact that everything is acceptable at the place of pain, certain unexpected and undetermined issues might occur, which decreases the chance of playing out or performing a contract. This includes a downturn for the market, catastrophic events, absence of legitimate reason, unfortunate episodes, and so on. In the Indian Contract Act, segment 59 plainly clarifies that assuming any of

the reasons might prompt the difficulty of execution, and it is prudent to break the agreement.

- Discharge of contract by lapse of time: According to the Limitation Act 1963, it is indicated that in case if the agreement can't be performed within the predetermined period, it might influence the other party and lead to the abrogation of the whole agreement. Then, at that point, it is treated as a contractual discharge of the agreement by a time-lapse.
- Discharge of contract by agreement: If both of the individuals or parties in the agreement aren't willing to proceed with the agreement till the due date, then it is changed over to the next party, whether or not they might acknowledge the discharge of the agreement or contract by the understanding will occur.
- However, it happens in different circumstances. They are as follows:
    1. Waiver: Waiver refers to the abandonment of right. In case any of the parties surrender their rights from the contract, which affects the other party, then it leads to the discharge of the contract by substitute agreement.
    2. Alteration: It is another situation where the particulars of the agreement or contract will be changed either partially or totally with the assent of the two parties. Be that as it may, the parties will not change, and they can appreciate new advantages, possibly they may less or more than the old agreement or contract.
    3. Rescission: Here, both the parties agreed to modify certain rules and regulations in the contract with mutual understanding. It may lead to the cancellation of all the rules or may cancel partially.
    4. Novation: Specifying the substitution of either a new contract in the place of the original contract or new members in the place of the old one, whether it may be a single person or both the parties, is known as novation, which is a part of the contractual discharge by substitution of agreement.
- Discharge of contract by performance: The discharge of a contract occurs when both parties are refused to perform the obligations can be referred to as discharge by performance.

Q. Breach of Contract: (2m / 6m /13m)

- A breach of contract is any violation of a contractual contract's agreed-upon terms and conditions. A breach might range from a late payment to a more serious offence like failing to deliver a promised item. A contract is legally binding and will hold up in court. It is essential to be able to establish that a contract breach occurred in order to effectively pursue a breach of contract claim. When one party to a legally binding agreement fails to deliver according to the terms of the agreement, it is called a breach of contract. A contract violation can occur in both written and oral contracts. In the event of a contract violation, the parties may address the matter among themselves or in a court of law. A minor or material violation, as well as an actual or anticipatory

breach, are examples of contract breaches. The article aims to discuss types of contracts and additional information related to the same.

- ***Ingredients of breach of a contract:***
  The elements that must be present in order for a party to a contract to claim damages over a breach of contract are:
  - **The fact that a contract exists:** In order to show the court that the contract was valid, it must be shown that there was an offer, acceptance of the offer, and consideration involved in accepting the offer.
  - **Plaintiff's performance or some reason for non-performance:** Take, for instance, even if the contract's provisions were not carried out exactly as requested, the defendant obtained services that were basically as requested. The defendant is obligated to pay at this time. For example, if a person painted a room but the receiver didn't like the colour clarity, he or she will be obligated to pay, even if not the whole sum, at least something. If the colour was a key term in the contract, he or she may refuse to sign it.
  - **The defendant's failure to execute the contract:** The defendant cannot claim that the plaintiff is not entitled to compensation because of his or her own fault. The plaintiff will not be held liable if he or she was unable to fulfil specific tasks because the defendant made them impossible to complete. He or she has the right to make a claim.
  - **The plaintiff's damages as a result of the defendant's failure to perform as per their contractual terms:** Each party's pledge should be included in the contract they have entered into. The quality of the contract's preparation will determine whether or not there is a breach of contract. Therefore, before signing into a contract, having an attorney analyse it is quite beneficial.
- ***Reasons behind the breach of a contract:***
  - It is the court that will determine if the violation of a contract had a legal justification or not. The defence, for example, may argue that the contract was fraudulent because the plaintiff misrepresented or suppressed key facts.
  - The defendant might also claim that the contract was signed under duress, claiming that the plaintiff used threats or physical force to compel it to sign the agreement.
  - In other circumstances, both the plaintiff and the respondent may have committed mistakes that led to the breach.
- ***What are the types of breaches of contract:***
  - A contract violation might be classified as minor or material. When you don't obtain an item or service before the due date, it is referred to as a minor breach. One may, for example, bring a suit to your tailor for custom fitting. The tailor guarantees (in an oral contract) that the altered garment would be delivered in time for your essential presentation, but it arrives a day later.

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- When you obtain something that differs from what was specified in the agreement, it is referred to as a material breach. Take for example your company hires a vendor to supply 200 copies of a bound handbook to a convention in the car sector. However, when the boxes arrive at the conference venue, they are filled with gardening brochures.
- Furthermore, a breach of contract can be classified as either an actual breach (when one party refuses to completely implement the contract's obligations) or an anticipatory breach (when one party declares in advance that they will not be delivering on the contract's terms).

- ***Actual breach of contract:***

  - An actual breach of contract refers to a breach that has actually happened, indicating that the breaching party has either refused to fulfil their responsibilities by the due date or has executed their duties badly, or has left them incomplete. When a breach occurs, the opposite party has numerous options for resolving the situation. Take for example on July 21, 2018, Mr. X signs a deal with Mr. Y, pledging to deliver 50 bags of jute to him. However, he fails to provide the same on the designated day. This is a clear case of an actual breach of contract.
  - **Types of an actual breach of contract:**

    - Actual breach of contract due to late performance
    - Actual breach of contract during the course of performance

- ***Anticipatory breach of contract:***

  - When one party thinks that the other party is not going to keep their half of the bargain, the same is termed as an anticipatory breach. This is usually demonstrated by a firm refusal to fulfil a contract, doing an action that makes it impossible to finish the contract, or when the contract's subject matter becomes unavailable. In certain cases, the 'non-breaching' party has the option to terminate the contract. An anticipatory breach of contract is an activity that indicates a party's intention to break its contractual obligations to another party. The counterparty's responsibility to execute its obligations is terminated in the event of an anticipatory breach. The counterparty can start legal action after demonstrating the other party's intent to violate the contract. Put simply, an anticipatory breach, also known as repudiation, occurs when one party fails to satisfy its contractual commitments to another. If parties seeking compensation in court assert an anticipatory breach, they must make every effort to limit their own damages. To qualify as an anticipatory breach, the purpose to violate the contract must be a complete unwillingness to perform the obligations. It is worth noting that by claiming an anticipatory breach, the counterparty can take legal action right away rather than waiting for the contract's provisions to be violated.
  - Take for example the case of a real estate developer who hires an architecture company to design blueprints for a new building by a

certain date. It is not sufficient to establish an anticipatory breach if the developer demands regular updates on the project and is dissatisfied with the current outcomes. While working on the project, the architects may be behind schedule. Even in this situation, the architects may be able to make their deadline provided remedial measures are adopted. An anticipatory breach would occur if the architects took activities that made meeting the deadline difficult. For instance, the architects may put the first project on hold and devote all of their energies on a new project with a different developer.

Q. Actual vs Anticipatory Breach of Contract: (2m / 6m)

- A breach of contract is any violation of a contractual contract's agreed-upon terms and conditions. A breach might range from a late payment to a more serious offence like failing to deliver a promised item. A contract is legally binding and will hold up in court. It is essential to be able to establish that a contract breach occurred in order to effectively pursue a breach of contract claim. When one party to a legally binding agreement fails to deliver according to the terms of the agreement, it is called a breach of contract. A contract violation can occur in both written and oral contracts. In the event of a contract violation, the parties may address the matter among themselves or in a court of law. A minor or material violation, as well as an actual or anticipatory breach, are examples of contract breaches. The article aims to discuss types of contracts and additional information related to the same.
- When one party fails to execute his or her portion of the deal by the due date or performs incompletely, this is referred to as an actual breach. When one party declares his or her intention to not execute his or her share of the deal ahead of the due date for performance, an anticipatory breach takes place.
- The entire contract is rejected or cancelled in the event of an anticipatory breach of contract. The breach might be of a condition, guarantee, or an indefinite term in an actual breach of contract.
- In an anticipatory breach of contract, the aggrieved party can rescind or cancel the contract and file a lawsuit for damages without having to wait until the contract's due date, or they can wait until the contract's due date and then file a lawsuit against the defaulting party for contract breach. In the event of an actual breach of contract, the injured party has no choice but to file a lawsuit.

Q. Remedies for a breach of contract: (2m / 6m / 13m)

- Under Section 73 of the Indian Contract Act, 1872, when a contract is broken, the party who is aggrieved by the breach is entitled to receive compensation for damages, from the party who has broken the contract. The damages must have naturally arisen in the normal course of things from the breach or which the parties knew when they made the contract to be likely to result from the breach. The damage is only payable if the loss was caused by the breach, according to Section 73 of the Indian Contract Act, 1872. There are no damages if there is no loss as a result of the breach. No loss from the breach automatically leads to any damages. Compensation is not paid for any remote or indirect loss or damage sustained because of the breach.

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- The Section also adds that *'in assessing the damage or loss resulting from the breach of contract, the inconvenience caused by the non-performance of the contract must also be taken into consideration'.* The difference between the market price and the contract price at the time of the breach is the measure of damages for a breach by the buyer at the time of the breach.
- The repercussions of a contract violation are determined by the laws of the state to which the promisor belongs. If you reside in a state where a minor violation of contract does not result in the agreement being voided, your choices and remedies for breach of contract may be restricted. However, if the other party breaches the agreement materially, you may have the legal right to stop performing your responsibilities and claim for damages. It is essential to contact an experienced contract attorney near you before filing a breach of contract lawsuit. The aggrieved party necessarily doesn't want to be held liable for failing to execute their responsibilities due to a minor contract violation that does not result in the contract becoming invalid.
- Potential legal remedies for breach of contract cases vary depending on different states' laws and the facts of one's case, but they may include, but are not limited to:
    - Rescission (releases the non-breaching party from performance obligations).
    - A court orders the breaching party to perform the terms of the agreement (specific performance).
    - Compensatory damages (monetary damages for losses caused by the breach of contract).
    - Punitive damages (typically only awarded in cases involving fraud).
    - Restitution (returning the injured party to the position it was in before signing the contract).

Q. Types of Damages: [Section 73-75] (2m / 6m / 13m)

- Sections 73-75 of the Indian Contract Act, 1872, define remedy by way of damages as the entitlement of the suffering party to recover compensation for losses suffered due to non-performance of the contract. The damages can be of the following types:
    - **Ordinary damages:**
        - On the breach of a contract, the suffering party may incur some damages arising naturally, in the usual course of events. Even if the suffering party knew about the likely damages if the contract was breached, he can claim compensation for such losses.
        - Peter agrees to sell and deliver 10 bags of potatoes to John for Rs 5,000 after two months. On the date of delivery, the price of potatoes increases and Peter refuses to perform his promise. John purchases 10 bags of potatoes for Rs 5,500. He can receive Rs 500 from Peter as ordinary damages arising directly from the breach.
    - **Special Damages:**
        - A party to a contract might receive a notice of special circumstances affecting the contract. In such cases, if he

breaches the contract, then he is liable for the ordinary damages plus the special damages.

- Peter hired the services of John, a goods transporter, to deliver a machine to his factory urgently. He also informed John that his business has stopped for want of the machine. However, John delayed the delivery of the machine by an unreasonable amount of time. Peter missed out on a huge order since he didn't have the machine with him.
- In this case, Peter can claim compensation from John. The compensation amount will include the amount of profit he could have made by running his factory during the period of delay. However, he cannot claim the profits that he would have made if he got the contract since John was not made aware of the same.

- **Vindictive or Exemplary Damages:**
  - There are two scenarios for awarding vindictive or exemplary damages:
    - Breach of a promise to marry because it causes injury to his/her feelings
    - Wrongful dishonour of cheque by a banker because it causes loss of reputation and credibility.
  - In case of a wrongful dishonour of cheque from a businessman, the compensation will include exemplary damages even if he has not suffered any financial loss. However, a non-trader is not awarded heavy compensation unless the damages are alleged and proved as special damages.
  - Example: Peter is a farmer. He issues a cheque for procuring seeds for his next crop. He has sufficient funds in his account but the bank erroneously dishonours the cheque. Peter files a suit claiming compensation for damages to his reputation. The Court awards a nominal amount as damages since Peter is not a trader.
- **Nominal Damages:**
  - If a party to a contract files a suit for losses but proves that while there has been a breach of contract, he has not suffered any real losses, then compensation for nominal damages is awarded. This is done to establish the right to a decree for a breach of contract. Also, the amount can be as low as Re 1.
- **Damages for Deterioration caused by Delay:**
  - In cases where goods are being transported by a carrier and he delays the delivery of goods causing them to deteriorate, the affected party can file a suit for damages for deterioration by the delay. Deterioration can mean physical damage to the goods and/or loss of a special opportunity for sale.
- **Pre-fixed damages:**
  - During the formation of a contract, the parties might stipulate payment of a certain amount as compensation upon the breach

of the contract. This amount can be a reasonable estimate of the likely loss in case of a breach or a penalty.
    - Under Section 74 of the Indian Contract Act, 1872, it is specified that if an amount is mentioned in a contract as the sum to be paid in case of a breach, then the suffering party is entitled to reasonable compensation, not exceeding the amount specified.

Q. Solved Question on Suit for Damages: [Section 73-75] (3m)

- If the contract specifies the penalty amount as Rs 100,000 and the actual loss due to the breach is Rs 70,000. What will be the damages?
    - If the contract specifies the penalty amount as Rs 100,000 and the actual loss due to the breach is Rs 70,000, then the compensation awarded to the suffering party is Rs 70,000. On the other hand, if the suffering party sustains a loss of Rs 150,000, the compensation awarded will be Rs 100,000 and NOT the actual loss sustained.

Q. Remedies for Breach of Contract: (2m / 6m / 13m)

- A contract can be said to be breached or broken when either of the parties fails or refuses to perform his obligations, or his promise under the contract. Therefore, it can be said that when a binding agreement is not honoured by one or more parties by non-performance of his promise, the agreement can be said to be breached.
- Parties to a contract are legally expected to perform their respective obligations, so naturally, the law frowns upon a breach by either party. Therefore, as soon as one party commits a breach of the contract, the law grants to the other party three remedies. He may seek to obtain:
    - Damages for the loss sustained, or
    - A decree for specific performance, or
    - An injunction.
- The laws relating to damages are governed by the Contract Act, whereas the laws relating to injunctions and specific performance are governed by the Specific Relief Act, 1963.
- ***Damages for the loss sustained:***
    - Section 73 of the Indian Contract Act 1872 lays down four important rules governing the measure of damages.
    - First Rule: [Section 73(1)]
        - When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him:
            - Which naturally arose in the usual course of things from such breach, or
            - Which the parties knew, when they made the contract, to be likely to result from the breach of the contract.
    - Second Rule: [Section 73(3)]

- The second rule of measuring damages deals with remoteness of damage. It states,
- "Such compensation is not to be given for any remote and indirect loss or damage sustained by the reason of the breach."
- Damages are measured by the loss actually suffered by the party. The loss must naturally arise in the usual course of things from the breach; or it must be such as the parties knew, when they made the contract, to be likely to result from the breach of it. Therefore, it follows that a party is not liable for a loss too remote, i.e. which is not the natural or probable consequence of the breach of the contract.

  - Third rule: Explanation to Section 73

    - The third rule is to be found in the Explanation to Section 73, which provides as follows:
    - *"In estimating the loss or damage arising from a breach or contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."*

  - Fourth Rule: [Section 73]

    - It is to be noted finally, that damages payable for the breach of a quasi-contract are exactly the same as those payable for any other contract. To rephrase, all the above rules apply to quasi-contracts in the same manner.
    - It should be noted that when no loss arises from the breach of contract, only nominal damages are awarded. Damages are given by way of restitution and compensation only, and not by way of punishment. The aggrieved party can therefore recover the actual loss caused to him as compensation.

- ***A decree for Specific Performance:***

  - According to *Section 10* of the *Specific Relief Act, 1963,* there are seven cases when specific performance of a contract may be allowed by the Court. They are:
  - When there is no standard for ascertaining actual damage
  - When it is impossible to quantify the actual damage caused by the non-performance of the act agreed to be done, the Court may, in its discretion, grant a decree of Specific Performance of that act.

- ***An injunction:***

  - Under Section 36 of Specific Relief Act 1963, an injunction is defined as an order of a competent court, which:
    - Forbids the commission of a threatened wrong,
    - Forbids the continuation of a wrong already begun, or
    - Commands the restoration of status quo (the former course of things).

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- Clauses i and ii deal with preventive relief, whereas clause iii deals with an injunction called mandatory injunction, which aims at rectifying, rather than preventing the defendant's misconduct.
- Under Sections 36 & 37 of the Specific Relief Act 1963, there are two types of injunctions – temporary and perpetual, whereas Section 39 governs mandatory injunctions.
- **Types of Injunctions:**
  - Temporary or interim injunctions are governed by Order 39 of Civil Procedure Code 1908 and are those injunctions that remain in force until a specified period of time, e.g. 15 days, or till the date of the next hearing. Such injunctions can be granted at any stage of the suit.
  - Permanent or perpetual injunctions, as under Sections 38 to 42 of the Specific Relief Act, 1963 are contained in the decree passed by the Court after fully hearing the merits of the case. Such an injunction permanently prohibits the defendant from committing an act which would be contrary to the plaintiff's rights.
  - Mandatory injunctions are granted in cases where in order to prevent the non-performance of an obligation, it is necessary to compel the performance of certain acts which the Courts are capable of enforcing. Thus, the Court may at its discretion grant an injunction to prevent such non-performance and also to compel performance of the required acts. This injunction is applicable to the breach of any obligation. It may be permanent or temporary, although temporary-mandatory injunctions are rare.

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By Jigar Ashar

Module - 4: Specific Relief Act, 1963

Q. Evolution of Equitable Remedies ind India / Origin of Specific Relief as Equitable Relief: (6m /13m)

- In India the courts of justice are courts of both law and equity and so many refinements which beset this kind of jurisdiction as administered by the courts of chancery could be got rid of in our country but still the inherent difference between the two great classes of relief remained and there remained the fact that the former of these namely specific relief though more exact was more delicate and more difficult to administer and that it required more skill and care on the part of the judge.
- Some guidance of the legislature was, therefore, necessary for him and hence the specific relief act 1877. It embodies the equitable principles which have so long continued to govern the exercise of that remedial justice one peculiar to the court of chancery but now by recent legislation applicable by all courts alike in England. The specific relief act is pre-eminently an embodiment of English jurisprudence. its author was a practical English lawyer who derived his materials from the jurisprudence in which he has been trained.
- The act codifies those rules of equity and good conscience by which our courts in India have been bound to govern themselves. In India, the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the “Specific Relief Act” was passed by the Parliament of India following the recommendation of the Law Commission of India in its ninth report on the act, the Specific Relief Bill 1962 was introduced in Lok Sabha in June 1962 and repealing the earlier “Specific Relief Act” of 1877.
- Under the 1963 Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. With this codification, the nature and tenure of the equitable reliefs available earlier have been modified to make them statutory rights and are also required to be pleaded specifically to be enforced.
- Further to the extent that these equitable reliefs have been codified into rights, they are no longer discretionary upon the courts or as the English law has it, “Chancellor’s foot” but instead are enforceable rights subject to the conditions under the 1963 Act being satisfied. Nonetheless, in the event of situations not covered under the 1963 Act, the courts in India continue to exercise their inherent powers in terms of **Section 151** of the **Code of Civil Procedure**, 1908, which applies to all civil courts in India.
- There is no such inherent powers with the criminal courts in India except with the High Courts in terms of **Section 482** of the **Code of Criminal Procedure**, 1973. Further, such inherent powers are vested in the Supreme Court of India, in terms of **Article 142** of the Constitution of India which confers wide powers on the Supreme Court to pass orders “as is necessary for doing complete justice in any cause of matter pending before it”.
- The Law of Specific Relief seeks to implement the idea of Bentham who said: “The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objection to them.” The Law

of Specific Relief is in its essence, a part of the law of procedure, for Specific Relief is a form of judicial redress.

- **Specific Relief Act** was enacted in 1877. The Act was originally drafted upon the lines of the Draft, **New York Civil Code, 1862**, and its main provisions embodied the doctrines evolved by the English Equity Courts. The **Specific Relief Act**, 1963 is the outcome of the acceptance by the Central Government on the recommendations made by the Law Commission of India.
- They had in their ninth report put forth certain recommendations on the Specific Relief Act, 1877, except in regard to **Section 42** which was retained A bill to repeal the Act of 1877 was introduced in Lok Sabha and was passed by the both the houses of Parliament and on 13th December, 1963 the President assented to the same.
- The act as revised deals only with certain kinds of equitable remedies. The rights codified under the 1963 Act were as under;
    - Recovery of possession of immovable property (ss. 5 – 8)
    - Specific performance of contracts (ss. 9 – 25)
    - Rectification of Instruments (s. 26)
    - Recession of Contracts (ss. 27 – 30)
    - Cancellation of Instruments (ss. 31 – 33)
    - Declaratory Decrees (ss. 34 – 35)
    - Injunctions (ss. 36 – 42)

Q. Kinds of Relief / Relief in Specific Relief Act 1963: (6m /13m)

- The **Specific Relief Act, 1963** is an Act of the Parliament of India which provides remedies for persons whose civil or contractual rights have been violated. It replaced an earlier Act of 1877. The following kinds of remedies may be granted by a court under the provisions of the Specific Relief Act:
    - Recovery of possession of property
    - Specific performance of contracts
    - Rectification of instruments
    - Rescission of contracts
    - Cancellation of Instruments
    - Declaratory decrees
    - Injunction
- **Recovery of possession of property / Possessory Remedies:**
    - The first chapter provides relief to those who have been dispossessed of their property.
    - Peaceful possession of a property is quite essential for the maintenance of law and order in society since the failure to observe the same has the potential to create disturbance and disequilibrium in society. Civil Laws primarily CPC 1908, do provide relief per se in this matter. The addition of the reliefs under specific relief act further widen the ambit of the relief available to the public and add to their cause and rescue. Henceforth, the first chapter of the said act provides relief to those who have been unlawfully dispossessed of their property which could be both immovable or movable.
- **Specific performance of contracts:**

Subject: Labour Law & Industrial Relation - 1

By Jigar Ashar

- Today's contemporary modern world thrives on the intricacy and nuances of contracts. Due to their utmost significance in the economic hemisphere, contracts can be rightly characterized as modern wealth. They form the base of all economic transactions ranging from all sorts of employments/ professional employments to monetary transactions of the bank. Enforcement of the contracts forms the centerpiece in the execution of the contractual obligations as often a particular contract forms a link in the chain of various interlinked contracts and failure to observe any one of them may lead to serious dysfunction of the economic ecosystem.
- The Indian Contracts Act 1872 provides relief to the aggrieved parties for the enforcement of the contracts in the form of damages i.e. monetary compensation only. In some instances, the monetary compensation does not suffice and such circumstances demand actual enforcement of the contract. This is where the specific relief act comes into the picture and provides a speedy and just remedy by demanding the enforcement of the contractual obligations through the instrument of specific performance of the contracts.

- **Rectification and cancellation of instruments:**
  - A written transaction is basically called an instrument. The expedience of law and prudence demands a transaction to be in writing. Sometimes, it might so happen that the instruments fail to express the intention of the parties involved due to the operative elements of mutual mistake or fraud. Such a situation demands the rectification of the documents. Section 26 of Chapter III of the Specific Relief act provides for rectification of the mistakenly executed instruments.
  - When documents/instruments after their due execution are discovered to be void or thereafter become void, such documents need to be canceled and Section 31 to 33 under Chapter V of the Specific Relief Act provides this relief. So basically, when a document becomes void, voidable, or has a reasonable apprehension of causing serious injury to the plaintiff if left outstanding, such instruments can be canceled at the discretion of the court. Benefits are to be restored or compensation is to be given on cancellation of an instrument
- **Rescission of contracts:**
  - Voidable contracts are those that are enforceable at the option of one party to the contract but not the other. It remains valid as long as the aggrieved party wishes to continue with the terms of the contract. There are certain factors that may render a contract voidable at the option of the other party. These factors include lack of free consent in the form of undue influence, fraud, misrepresentation, and coercion, under section 19 and 19 (A), failure to perform a time-bound contract in which the time was of the essence under section 55, and when one party to a contract prevents the performance of a reciprocal promise by the other party under section 53. So, the party at whose instance the contract becomes voidable has the right to rescind the contract.

Chapter IV of the Specific Relief Act provides relief of the recession of the contracts.

- Section 27 and 28 of the Act lay down detailed grounds for filing a suit for recession. A suit for a recession may be brought when the contract is voidable at the instance of the plaintiff or when the contract is unlawful for latent reasons. When the rights over the subject matter of the contract are acquired by any third party in good faith during the course of a contract for a value, implying a change of position of the parties to the contract or when the plaintiff ratified the voidable contract either expressly or impliedly, the court may refuse to rescind the contract.

- **Declaratory Relief:**

  - At times, the person legally entitled to the possession or enjoyment of any immovable property might be denied the right to the enjoyment of such property at the instance of the other. It is in the backdrop of such wrongful denial that the court may issue a general declaration as to the entitlement of such right to the aggrieved party. So if a cloud is cast on the title of any immovable property of the plaintiff, he may dispel it with the aid of this discretionary power of the court and avoid future litigation. Section 34 and 35 under Chapter VI of the Specific Relief Act deal with declaratory relief against the impugned person who denies or is interested in denying the right to the aggrieved party.

- **Preventive Relief / Injunction:**
  - Remedy of injunction falls under the ambit of preventive relief. An injunction is a court order that either directs the party concerned to do a particular act (mandatory injunction wherein the court compels the performance of certain acts to prevent a breach of an obligation) or not do a particular act. In such cases, the order of injunction is issued at the instance of the court. Section 36 to 40 under Chapter VII of the Specific Relief act covers the relief of injunction. The objective of injunction is to restrain the commission or continuance of a wrongful act. An injunction is issued against individuals, public bodies, or states and willful disobedience of it results in contempt of court.
  - These orders are not granted in cases wherein the specific performance of the contract or damages is likely to serve the purpose of the contract, or where damages are appropriate to remedy, or where the plaintiff is not entitled to an injunction on account of his conduct or where an injunction is not the appropriate remedy.
  - Injunctions are a discretionary relief and may be temporary or perpetual. Temporary injunctions are granted at any stage of suit for a specified period of time and are governed by the provisions of CPC 1908. They are granted for the protection of interest in the property or to prevent a continuous breach of contract. A perpetual injunction can be made only by deciding the merits of the suit via decree and deciding the rights of the parties. It is to be noted that in suits for an injunction, damages may also be claimed additionally.