

LAW OF CONTRACTS

1. Essential of the contract of guarantee (section 126)

Section 126 of the Indian Contract Act (hereinafter referred to as “ICA”) defines the contract of guarantee which can be simply put as a promise made by a third party (surety) to the creditor to discharge the liabilities of the principal debtor in case he fails to perform his obligations towards the creditor i.e default in payment to creditor.

The essentials which need to be fulfilled by every contract of guarantee are as follows:

- Existence of Recoverable Debt

The essence of a contract of guarantee is that there is a person who is liable as principal debtor and there is a surety who guarantees such payment. If there is no debt and principal debtor, then the question of contract of guarantee does not arise.

- Consideration

The contract of guarantee like any other contract also requires sufficient consideration for it to be valid. Though, there need not be any direct consideration between the surety and the creditor, if the creditor has done something beneficial to the principal debtor it will amount to sufficient consideration as expressly stated under S. 127, ICA. If there is no consideration, the contract of guarantee is void.

- Oral or written

The contract of guarantee can be either in written or oral form. Moreover, it can also be formed through express or implied conduct of the parties to the contract of guarantee.

- Three parties

For the contract of guarantee, there must be three parties- principal debtor, creditor and surety. Thus, it can also be termed as tri party agreement.

- Free Consent

The contract of guarantee shall also fulfill all valid conditions of contract as mentioned under S. 10, ICA i.e lawful object, lawful consideration, free consent etc. The contract of guarantee is not a contract of uberrimae fidei (utmost good faith) but of strictissimi juris (strict interpretation of law). Thus, the surety should be made aware of all material facts to the contract and the consent should be freely obtained.

2. The distinction between a Contract of Indemnity and Guarantee (Section 124,126)

BASIS	CONTRACT OF INDEMNITY	CONTRACT OF GUARANTEE
MEANING	Section 124 defines indemnity as a contract in which one person (indemnifier) promises another (indemnified or indemnity holder) to save him from the loss occurred due to promisor's or any other person's conduct.	Section 126 defines a contract of guarantee as a contract where the surety promises the creditor to discharge the obligations of principal debtor towards the creditor in case the debtor makes a default.
NUMBER OF PARTIES	There are only two parties- indemnifier and indemnified.	There are three parties- creditor, debtor and surety.
DEGREE OF LIABILITY	The liability of the indemnifier is primary.	The liability of the surety is secondary (collateral).
PURPOSE	The purpose of indemnity is to recompense for the loss suffered by a party because of human conduct.	The purpose of the guarantee is to assure the creditor that the liability towards him will be discharged.
NATURE OF LIABILITY	The liability of the indemnifier is contingent.	The liability of the surety arises as soon as the guarantee has been acted upon.

NUMBER OF CONTRACTS	There is only one contract between the indemnifier and indemnified i.e. contract of indemnity.	There are three contracts between the parties- contract of loan between creditor and principal debtor, contract of guarantee between creditor and surety and contract of implied indemnity between principal debtor and surety.
IMPLIED INDEMNITY	There is no implied indemnity of contract i.e once the indemnifier has indemnified the indemnity holder then he cannot recover it from anyone.	There is an implied indemnity contract between the surety and principal debtor i.e. once the surety has paid the debt of debtor to the creditor then the principal debtor is duty bound to indemnify the surety.

3. Essential requisites of bailment (section 148)

Section 148, ICA defines bailment as delivery of goods from one person i.e. bailor to another person i.e. bailee for some specific purpose and after the fulfilment of the purpose the bailee will return the said goods to the bailor or dispose them as per the instructions of the bailor.

Some of the requisites for the contract of bailment are as follows:

- Existence of contract

For a valid bailment, there must be a contract between the bailor and the bailee and shall the essentials of S.10 shall be fulfilled. If there is no contract, then there will be no bailment. Though, the contract can be expressed as well as implied. In the case of State of Gujarat v. Menon Mahomed (1967 SC), the Supreme Court rejected the contention of the state that there can be no bailment without any contract and held that the government was liable and obliged by the law in pari materia as bailee to take reasonable care of the seized property even without any express contract.

- Delivery of Goods

The bailment is applicable only on movable property. For instance- car, jewellery etc. In bailment, there must be delivery of goods from one person to another person. The delivery, being a wide term, can be actual or constructive delivery.

For instance- 'X' gave his car to 'Y' to repair. . This is an actual delivery where the possession of the goods is physically handed over to another person.

In constructive delivery, the physical possession of the goods is not handed over; rather some efforts have been made or authorization is given to make the other person a bailee. Like handing over the keys of the warehouse. In the case of *Ultzen v. Nicols* (1894), the waiter of a restaurant took the coat of the customer without being asked to do so and hung the coat on the hook. When the customer was leaving, he found his coat missing. The waiter was held to be liable as he assumed the possession of the goods as bailee and thus, was liable to take care of the coat.

- Return of the Goods

In bailment, the goods are delivered for some specific purpose and when the purpose is fulfilled, the bailee is liable to return the goods in the same form unless otherwise directed. For instance- A fabric is given to a tailor with the direction to stitch it. Thus the tailor will return the goods in altered form as per the direction of the bailor.

4. Modes of discharge of contract (section 62-67)

The termination of a contractual relationship between the parties is known as discharge of contract. To simply put, when the promises and obligations of a contract are met then the parties are relieved from that contractual

relationship. There are various modes of discharge of contract- like discharge by performance, discharge by agreement, discharge by impossibility of performance, discharge by breach etc. The discharge of contract by agreement is elaborately discussed below:

- Novation

Novation can be defined as substitution of the original contract with a new contract. The effect of novation is that the old contract comes to an end and the new contract is made and to be performed. In the case of *Lata Construction v. Dr. Rameshchandra Ramniklal Shah* (1999 SC), it was held that there must be a complete substitution of the old contract.

- Alteration

Alteration means some of the terms of the contract are being changed by mutual consent of the parties. For instance- 'X' agrees to sell 20 Mobile phones to 'Y' at a certain price within 15 days. Later, 'X' and 'Y' both mutually agreed to change the delivery time to 45 days. This is an alteration in the terms of the contract.

- Rescission

Rescission can be defined as when the parties to the contract mutually agreed to dissolve the old contract and not to enter in a new contract.

Above modes of discharge are only to be done bilaterally (with the consent of all the parties involved).

- Remission of Performance

S. 63, ICA states remission as when the lesser sum is accepted than what is due and agreed under a contract. For instance- 'X' sold his pen to 'Y' for Rs. 100. 'Y' pays only Rs. 40 and the balance of Rs. 60 is due. But 'X' takes Rs 40 as full payment of pen. 'Y' is discharged of his liability to pay the remaining amount.

- Time of Performance Extended

The promisee to a contract also has the right to extend the time of performance of contract but this extension should be done with the consent of both the parties.

- Principle of Accord and Satisfaction

As per the theory of Accord and satisfaction, the party can be discharged from its contractual obligations by way of performing substituted obligations. To simply put, the promisee may accept any satisfaction as he deems fit instead of the promise initially agreed upon. In the case of National Insurance Company Ltd. v. M/S Boghara Polyfab Pvt. Ltd. (2008 SC), it was held that “discharge through accord and satisfaction refers to a contract that is being discharged by the performance of certain substituted obligations. The agreement through which the original obligation is discharged is the accord, and the fulfilment of the substituted obligation is the satisfaction”.

However, This doctrine is not applicable in English law.

S. 64-67 deals with the mode and effect of such discharge of contract.

5. 'All contracts are agreements, but all agreements are not contracts' (section 2(e))

Section 2(e), ICA defines agreement as a promise or set of promises forming the consideration for each other. And, 'promise' has been defined under S.2 (b) as an accepted proposal and likewise, section 2(a) defines proposal as when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence. Therefore, by above three provisions, we can conclude that-

AGREEMENT = PROMISE + CONSIDERATION

However, section 2(h) states that an agreement which has enforceability of law can be termed as 'contract'. Thus,

CONTRACT = AGREEMENT + ENFORCEABILITY OF LAW

There are some requisites mentioned under S.10 for an agreement to become a contract which are as follows:

- Competent Parties

The parties entering into a contract must be competent i.e sound mind, major and not disqualified by any law. If an agreement has been entered into with a minor, unsound mind or a person disqualified by law, it will not have enforceability of law and thus, will be void.

- Free Consent

The parties should enter into an agreement with their free will. There should not be any external factors involved which have influenced their consent. Section 14 provides that a consent is said to be free when it is not caused by- coercion (S.15), undue influence (s.16), fraud (s.17), misrepresentation (s.18) and mistake (s.20-22).

- Lawful consideration and object

The consideration and object of an agreement is to be lawful to have an enforceability of law. If the consideration or object is unlawful, fraudulent, forbidden by law, defeats the provision of law etc, then the agreement is void. For instance- 'X' gave Rs.10000 to 'Y' to kill 'A'. Here, the object is unlawful so the agreement is void.

To conclude, all contracts are agreements as agreement is the basis of any contract. As discussed above, for an agreement to become a contract, it must have legal enforceability. If the agreement is not legally enforceable then it is not a contract.

Thus, all agreements are not contracts.

6. Doctrine of Frustration (section 56)

The origin of the doctrine of frustration can be traced back to 1863 in the case of 'Taylor v. Caldwell'. Prior to this case, the law related to obligations of contract was extremely rigid and this case carved out an exception to absolute contract theory and for the first time in English law subsequent impossibility was granted as an excuse. Though the roots of the doctrine are found from common law, the development of doctrine in Indian law has been exhaustive.

In India, the doctrine of frustration has been enshrined under S.56, ICA which provides for the impossibility to perform the contractual obligations due to external factors which are beyond the control of either parties to a contract. The impossibilities are divided into two parts- Initial impossibility and Subsequent impossibility.

Initial impossibility means that the agreement to do an impossible act is itself void. In this even before the contract is made, the promise is impossible to perform and thus, void. For instance- an agreement to bring the dead back alive.

On the other hand, in subsequent impossibility when the contract was entered into it is possible to perform its promises but subsequently when the performance is due, there occurs some unavoidable circumstances and events which renders it physically as well as legally impossible to perform the contractual obligations and therefore, it becomes subsequently void. In the case of *Krell v. Henry*, a person hired a building for two days to watch the king's procession and paid some amount of the rent in advance. Later, the king's procession got cancelled. The court held that the object of the contract was frustrated due to non-happening of the king's process. Thus, the plaintiff cannot claim the balance rent.

In the case of *Satyabrata Ghose v. Mugneeram Bangur and Co.* (1954 SC), the Court explained the doctrine of frustration and observed "the essential idea upon which the doctrine of frustration lies is that of impossibility of performance of the contract, in fact impossibility and frustration are often used interchangeably. The changed circumstances makes the performance of the contract impossible and the parties are absolved from further performance of it as they did not promise to perform an impossibility."

However there are situations where the doctrine of frustration does not apply. For instance- commercial hardship, non- performance due to fault of promisor executed contracts etc. In the case of *Sachindra Nath v. Gopal Chandra* (1945 Cal HC), the court held that commercial hardship i.e, where the performance of a contract has not become impossible but difficult and costly, will not be included within the purview of doctrine of frustration.

Section 56 also provides that if the promisor had the knowledge or if he could have reasonably found about the impossibility to perform the contractual obligations then he will be liable to compensate the promisee for the loss incurred by him due to non-performance of contract.

7. Rights and Liabilities of the Finder of Goods (section 168)

As per S.71, ICA a person who finds the goods belonging to another person and takes them into his custody then he is subject to the same responsibility as that of bailee. The finder of goods will have to take reasonable care of the goods found and will have to perform all duties as that of bailee.

The rights of finder of goods as laid down under S.168 and 169 are discussed below:

- Right of Lien

As per S.168, ICA the finder of goods has no right to sue the owner of goods for compensation for trouble and expenses voluntarily incurred by him to preserve the goods and find the owner. But, the finder has the right to retain the goods with himself till the compensation is paid by the owner for such expense.

- Sue for Reward Announced by the Owner

Though, the finder cannot sue the owner for compensation of expenses voluntarily incurred by him but if the owner has announced some specific reward to find the goods then the finder may sue the owner to claim such reward in case he is not willing to give the reward to him and also has the power to retain such goods until he receives such reward. For instance- 'X' lost his watch and announced that whoever finds it and brings it to him will be rewarded with Rs. 2000. 'Y' found the watch and brought it to 'X' but he refused to make the payment of the reward. 'Y' has the power to sue 'X' for rewards and retain the watch until he receives it.

- Right to Sell the goods

As per s.169 the finder of the goods has the right to sell the goods found if the owner cannot be found or he has refused to pay the compensation or reward and the goods are of perishable nature or lawful charges of the finder amounts to two-third of the value of goods.

The duties of the finder of goods are same as that of bailee which are discussed below:

- Duty to take proper care

As per section 151, the finder of the goods is duty bound to take proper care of the goods as a reasonable man would take care of his own goods. If he fails to take such care and destroys the goods then he will be liable for the same. But as per section 152 if, even after due care the goods get lost or destroyed then the finder will not be held liable.

- Duty not to make unauthorised use of goods

As per S.153 and 154, if the finder of the goods make such use of goods which are not consistent with the conditions of bailment then the bailee has the right to rescind the contract as well as has the right to get the compensation for the loss cause due to such act to goods.

- Duty to return the goods and increase

As per section 160 and 161, the finder of the goods is responsible to return the goods to its true owner within specified time and if he fails to return within such time then he will be liable for the loss or destruction, if any, caused to goods in such time. As per S.163 the finder is also responsible to return the increase of profit accrued from such goods unless otherwise agreed.

8. Doctrine of Privity of Contract (section 2(h))

The rule of privity of contract basically relates to who can enforce the contract. It means a person who is not party to a contract cannot enforce the contract. To simply put, a stranger cannot carry out the promises made by the parties to a contract. For instance- 'X' and 'Y' entered into a contract. then , only these two have the right to enforce the contract. No third party can perform the promises made by these two to each other.

This rule was first laid down in the case of *Tweddle v. Atkinson* (1861) where two friends having a son and a daughter entered into a contract that both fathers will pay a certain sum of money to the son if he marries the daughter. The father paid the amount to the son but the father in law died before paying such an amount. The son sues the father-in-law to pay the amount. The court rejected his prayer and held that though the contract was entered into for the benefit of the son but he cannot bring a suit as he was not the party to the contract. Later, the rule was affirmed in the case of *Dunlop Pneumatic Tyre and Co. v. Selfridge and Co.* (1915).

In the case of *Jamna Das v. Ram Avtar*(1911), the application of this rule was extended to India. The privy council was perhaps the authority for this extension. However, in the case of *M.C. Chacko v. State Bank of Travancore* (1969) approved the application of this rule in India.

This rule is not absolute and has certain exceptions to it which are as follows:

- Trust or charge

As per this exception, if a charge or trust has been created in the favour of a person then he/she may enforce the contract even if not a party to it. In the case of *Khwaja Mohammed v. Hussaini Begum*, the privy council did not follow the english rule of privity of contract and recognised the exception to it.

- Marriage and other settlements

In the case of marriage settlements, partitions and other settlements, a provision for the benefit of the person should be made then only they will be able to enforce the contract even though they are not a party to it.

Some other exceptions related to the rule are- tort of negligence, agency, assignment, covenants running with land etc.

9. Contingent contract (section 31)

Contingent contracts are those which are based upon the contingency of happening or non-happening of an event which is collateral to the contract. If the contingency is of an impossible event then it will be a void agreement. For instance- the insurance company assures the insured to pay a sum of Rs. 10000 if his house caught fire. The insurance company will only pay the amount if the house catches fire, else not.

Some of the essentials to a valid contingent contract are as follows:

- Valid contract

There must be a valid contract which can be enforced by law. The enforceability of such a contract depends upon the happening or non-happening of an event which are governed by section 32 and 33.

- Uncertain event

The most essential part of the contingent contract is that the event on which the contract is dependent should be uncertain. It must occur in the near future. If the event is not uncertain to happen, then it will not constitute a contingent contract.

- Collateral to contract

The happening or non-happening of an event should be collateral to the contract i.e it should not be a part of consideration to contract and should exist independently.

10. Contract by way of the wager (section 30)

As per s.30, agreements by way of wager are void. Wager in layman terms can be called a bet. In such agreements, there is a mutual chance of win and loss. The primary purpose of making such agreements void is to discourage people from playing such games or events one which wager can be made. For eg: lottery. The aforesaid provision does not render the contract illegal thus if any collateral transaction i.e subsidiary to the main transaction is made then such collateral transaction will not be void. For such collateral transactions to be

valid, it is essential that the earlier main transaction or agreement should be void and not illegal. If the main transaction is illegal then the collateral transaction will be void.

Some of the requisites to constitute a wagering agreement are as follows:

- There is a mutual chance of win and loss. Thus, the parties to the agreement should have opposites regarding the event.
- It is between two parties as a whole. Even if there are numerous parties involved in the agreement, they should be divided on either sides, win or lose.
- The parties in the agreement should not have any other interest in the wager other than winning or losing.

In the case of *Carlill v. Carbolic Smoke Ball Co.* (1892) it was observed “a wagering agreement is one by which two persons professing to hold opposite views touching the issue of future uncertain event, mutually agree that, dependant upon the determination of that event, one shall win from the other, and the other shall pay or handover to him, a sum of money or other stake. If either party may win but cannot lose or may lose but cannot win, it is not a wagering contract.”

Some of the exceptions related to this rule are-horse racing, games involving skills like chit fund, KBC, Dream 11 etc. are not wagers.

S.30 has expressly stated that S.294 of IPC is not affected by this provision.

11. Quasi-contracts and their type (section 68-72)

A quasi contract is a contract which is created by court order and not by agreement between the parties. It is “almost” an agreement having enforceability of law. The purpose of such a contract is to prevent unjust enrichment of one party at the cost of another.

As per s.68, ICA if a person has supplied some necessities to a person incompetent to contract like lunatic or minor or any other person to whom that incompetent person is bound to supply necessities then such person is entitled to reimbursement from the property of such incompetent person, if any. However, if such

incompetent person has no property then he cannot bring any suit against that incompetent person and he will not be personally liable. Moreover, the necessary supplies not only include basic means of life but also such things which are required to maintain his/her lifestyle. Although, mere luxury items are always excluded.

Section 69 states that when one person is interested in the payment of money and he pays it for the other person who is bound to pay but fails. Then such a person is bound to be reimbursed by the other for whom such payment is made. In the case of *East India Transport Agency v Oriental Insurance Co. Ltd.* (2014 SC) the court held that the insurer who has paid the entire amount of damage to the consignee is liable to be reimbursed by the carrier.

Section 70 provides that when a person does something or delivers something to another person lawfully and non-gratuitously and if the other person has enjoyed the benefit of such thing then he is bound to restore and compensate the benefit to the former. In the case of *P.C Wadhwa v. State of Punjab* (1986 Punjab-Haryana HC) held that s.70 is applicable in the present case as the appellant went under the training provided by the state when he could have refused to do so but he did not.

Section 71 creates the responsibility of the finder of the goods same as that of bailee if he has taken the goods under his custody. This provision should be read together with s.168 and 169.

Section 72 provides that when money has been paid or anything delivered to some other person under a mistake or coercion then he is bound to repay or return the same. Here, the words 'mistake' and 'coercion' should be interpreted in a general sense. However, if the money has been paid under a mistake of fact or law then also the money is recoverable.

12. Requisites of a valid contract, explain its classification (section 10)

Section 2(h) states that an agreement which has enforceability of law can be termed as 'contract'. Thus,

CONTRACT = AGREEMENT + ENFORCEABILITY OF LAW

Some of the requisites which creates a valid contract are as follows:

- Competent Parties

The parties entering into a contract must be competent i.e sound mind, major and not disqualified by any law. If an agreement has been entered into with a minor, unsound mind or a person disqualified by law, it will not have enforceability of law and thus, will be void.

- Free Consent

The parties should enter into an agreement with their free will. There should not be any external factors involved which have influenced their consent. Section 14 provides that a consent is said to be free when it is not caused by- coercion (S.15), undue influence (s.16), fraud (s.17), misrepresentation (s.18) and mistake (s.20-22).

- Lawful consideration and object

The consideration and object of an agreement is to be lawful to have an enforceability of law. If the consideration or object is unlawful, fraudulent, forbidden by law, defeats the provision of law etc, then the agreement is void. For instance- 'X' gave Rs.10000 to 'Y' to kill 'A'. Here, the object is unlawful so the agreement is void. In the case of *Durga Prasad v. Baldeo* (1880) it was held that the consideration should be moved at the desire of the promisor. Here, in this case the shops were constructed at the desire of the collector and not the defendant. Thus, there was no consideration.

- Not expressly declared void

The agreement to be legally enforceable is essential that it should not be expressly declared void in the law. There are certain agreements which are void in the Act under S.24- 30 like- agreement in restraint of marriage, agreement in restraint of trade, wagering agreement etc.

- Intention to create legal relationship

The parties who are entering into a contract shall intend to create a legal relationship. If both the parties mutually did not agree to create a legal relationship then it will not result in a contract. In the case of *Rose and Frank Co. v. Crompton Brothers* (1923) it was held that "for creating a contract there must be a common intention of the parties who are entering in a contract". However, in the case of *Balfour v. Balfour* (1919) the husband was not held liable to keep the promise of paying her wife as long as he is in England on the ground that it is a domestic arrangement and there was no intention of the husband to create a legal relation. In India, the position of applicability of the rule can be seen in the case of *Banwari Lal v. Sukhdarshan Dayal* (1973 SC), it was held

that “the defendant gave a consideration to Manohar Devi. Thus, it will amount to legal sale and shows that the parties had intent to contract. Hence, the consideration equally plays an important role to find out whether the parties had intention to enter into a legal relationship”.

13. Essentials of valid consideration (section 2(d))

Consideration is quid pro i.e something in return. Consideration has been defined under section 2 (d) as “when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise.” for instance- ‘X’ enters into a contract with ‘Y’ to sell his phone for Rs. 10000. Here, for ‘X’ the consideration is Rs. 10000 and for ‘Y’ the consideration is phone.

According to Pollock, “consideration is the price for which the promise of the other is bought.”

The essentials of the consideration are as follows:

- It is necessary for a consideration to be valid that it is moved at the desire of the promisor rather at the instance of any other.

In the case of Durga Prasad v. Baldeo (1880) it was held that the consideration should be moved at the desire of the promisor. Here, in this case the shops were constructed at the desire of the collector and not the defendant. Thus, there was no consideration.

- The consideration should proceed from the promisee or any other person. This is a ‘privity to consideration’.

In the case of Chinnaya v. Ramayya (1882) the daughter contended that she is not bound to pay annuity to her uncle as he has not moved any consideration. The court rejected this contention and held her liable to pay as the consideration was moved by her mother by giving her estate.

- The consideration can be past i.e given before the date of promise, present i.e consideration and promise are done simultaneously and future i.e consideration is given after entering into a contract.

- The consideration should not be illusory rather real i.e. should have some value in the eyes of law.
- The general rule is that the agreement without consideration is void (Ex nudo pacto non oritio actio). Though, certain exceptions have been carved out to this general rule.
- The explanation to s. 25 has laid that there must be a consideration for a valid contract. But the requisite of adequacy of consideration has been done away with.
- The consideration should not be immoral, illegal or opposed to public policy.

14. **Novation of contracts (section 62)**

The concept of novation has been given under section 62 of the Act. Novation can be defined as substitution of the original contract with a new contract. The effect of novation is that the old contract comes to an end and the new contract is made and to be performed. In the case of Lata Construction v. Dr. Rameshchandra Ramniklal Shah (1999 SC), it was held that there must be a complete substitution of the old contract. In the case of CITIBank N.A. v. Standard Chartered Bank (2004), it was held that “both the contracting parties must consent to substituting the old contract with a new one. Where only one of the parties tries to unilaterally bring about novation, there is no good novation”.

Essentials of Novation:

- There must be a mutual agreement between the parties to substitute the existing contract with a new one. If it is a unilateral agreement to substitute it then it will not be valid.
- It is essential for novation the earlier contract which is supposed to be substituted is valid and not breached.
- The new contract needs to be valid and lawful.
- The novation can be done either to change the parties or the terms of the contract.

15. **Rights and duties of bailment (section 151)**

Section 148, ICA defines bailment as delivery of goods from one person i.e. bailor to another person i.e. bailee for some specific purpose and after the fulfilment of the purpose the bailee will return the said goods to the bailor or dispose them as per the instructions of the bailor.

The rights of bailee are as follows:

- As per s.158 the bailee is entitled to lawful charges for providing his services to the bailor. That necessary doesn't mean remuneration but the expenses incurred by him in protection of the bailed goods.
- As per s.164 if the bailor was not entitled to bail the goods or to give instructions in respect of them but he still does so then he will be liable to pay the compensation to bailee for the loss incurred by him during such bailment, if any.
- As per S.170 the bailee has the right to keep the possession of the goods until the bailor pays the remuneration or compensation as the case may be for bailment of such goods.
- S.180 entitles the bailee to sue any person who has wrongfully taken the goods out of his possession or injures them in any way. He will be having the same rights in respect of the bailed goods as that of the owner.

The duties of the bailment are as follows:

- Duty to take proper care

As per section 151, the bailee is duty bound to take proper care of the goods as a reasonable man would take care of his own goods. If he fails to take such care and destroys the goods then he will be liable for the same. But as per section 152 if, even after due care the goods get lost or destroyed then the bailee will not be held liable.

- Duty not to make unauthorised use of goods

As per S.153 and 154, if the bailee makes such use of goods which are not consistent with the conditions of bailment then the bailor has the right to rescind the contract as well as has the right to get the compensation for the loss caused due to such act to goods.

- Duty to return the goods and increase

As per section 160 and 161, the bailee is responsible to return the goods to its true owner within specified time without demand and if he fails to return within such time then he will be liable for the loss or destruction, if any, caused to goods in such time. As per S.163 the bailee is also responsible to return the increase of profit accrued from such goods unless otherwise agreed.

16. Impossibility of performance of contracts (section 52-56)

Impossibility of performance means one party to a contract can be discharged if unforeseeable and unpreventable circumstances arise which renders it impossible for the parties to perform their obligations. Some of the provisions related to impossibility are discussed below:

According to section 53 in a case of reciprocal promises if one party prevents the other party from performing his obligation then such contract becomes voidable at the option of the party whose performance is so prevented and he can also claim compensation from the other party for non-performance of contract.

The doctrine of frustration has been enshrined under S.56, ICA which provides for the impossibility to perform the contractual obligations due to external factors which are beyond the control of either parties to a contract. The impossibilities are divided into two parts- Initial impossibility and Subsequent impossibility.

Initial impossibility means that the agreement to do an impossible act is itself void. In this even before the contract is made, the promise is impossible to perform and thus, void. For instance- an agreement to bring the dead back alive. On the other hand, in subsequent impossibility when the contract was entered into it is possible to perform its promises but subsequently when the performance is due, there occurs some unavoidable circumstances and events which renders it physically as well as legally impossible to perform the contractual obligations and therefore, it becomes subsequently void. In the case of Krell v. Henry, a person hired a building

for two days to watch the king's procession and paid some amount of the rent in advance. Later, the king's procession got cancelled. The court held that the object of the contract was frustrated due to non-happening of the king's process. Thus, the plaintiff cannot claim the balance rent. In the case of Satyabrata Ghose v. Mugneeram Bangur and Co. (1954 SC), the Court explained the doctrine of frustration and observed "the essential idea upon which the doctrine of frustration lies is that of impossibility of performance of the contract, in fact impossibility and frustration are often used interchangeably. The changed circumstances makes the performance of the contract impossible and the parties are absolved from further performance of it as they did not promise to perform an impossibility.

However, Section 56 also provides that if the promisor had the knowledge or if he could have reasonably found about the impossibility to perform the contractual obligations then he will be liable to compensate the promisee for the loss incurred by him due to non-performance of contract.

17. Reciprocal promises(section 51-58)

The parties entering into a contract make certain promises to each other. These promises need to be performed by each party to give effect to the contract. Section 2 (f) defines reciprocal promises as "promises which form the consideration or part of consideration for each other". The rules or provisions related to reciprocal promises are discussed below:

As per s.51, in a contract where promises are to be performed simultaneously then the promisor is not duty bound to perform his promise unless the promisee agrees to perform his obligation.

Section 52 lays down a situation where the reciprocal promises to be performed in a certain order. It provides that if the parties have decided an order in which the promises to be performed then they should perform it in such decided order but if no such order is pre decided then the nature of the transaction will be taken into account to decide the order of performance of obligations.

According to section 53 in a case of reciprocal promises if one party prevents the other party from performing his obligation then such prevented party has the right to rescind the contract and also to claim compensation from the other party for non-performance of contract because of his fault.

Section 54 declares that if the reciprocal promises are dependent on each other and the promisor has to perform his promise first for the promisee to perform his part of performance but he fails then the promisor has no right to claim the performance of his reciprocal promise. Moreover, the promisor will have to compensate the promisee for any loss incurred by him due to such non performance.

Section 55 lays down that the contract in which time is the essence then the promisor has the duty to perform it within such specified time but if he fails then he will have to compensate the promisee for any loss incurred by him. If time is not specifically mentioned then it can be gathered from the intention of the terms of the contract. Even if the time is not the essence then also the promisor should perform his part of the contract within reasonable time. What will constitute 'reasonable time' will depend upon facts and circumstances of each case.

Section 56 provides impossibility to perform promises. It states that an agreement to do an impossible act is void. It includes initial as well as subsequent impossibility. Initial impossibility means that the agreement to do an impossible act is itself void. In this even before the contract is made, the promise is impossible to perform and thus, void. For instance- an agreement to bring the dead back alive. On the other hand, in subsequent impossibility when the contract was entered into it is possible to perform its promises but subsequently when the performance is due, there occurs some unavoidable circumstances and events which renders it physically as well as legally impossible to perform the contractual obligations and therefore, it becomes subsequently void. In the case of Krell v. Henry, a person hired a building for two days to watch the king's procession and paid some amount of the rent in advance. Later, the king's procession got cancelled. The court held that the object of the contract was frustrated due to non-happening of the king's process. Thus, the plaintiff cannot claim the balance rent.

Section 57 states if the parties enters into a contract containing reciprocal promises of legal and illegal acts then the contract for legal acts will be valid but void for the illegal acts.

Section 58 provides that if parties had made alternative promises to each other in which one part is legal and other is illegal then the contract for the legal party can only be enforced.

18. General offer

The entire process of entering into an agreement starts with an offer made by one person to another. There are different kinds of offers- general offer, special offer, cross offer, counter offer.

The general offer is an offer made to the world at large. It is not made to a specific individual or group of individuals. Thus, anyone from the public can accept the offer by fulfilling the conditions laid down in it and be entitled for the reward.

In the landmark case of *Carlill v. Carbolic Smoke Ball Co.* (1893), the company offered through an advertisement to pay 100 pounds to anyone who caught influenza or cold after taking the medicine made by the company as per the prescribed instructions. To showcase their sincerity towards the offer, they even deposited the said amount in a bank. A woman named Carlill had the medicine as per the instructions but still she caught influenza. She sued the company for the reward. The company contended that the offer was not made to a specific person and was made only to increase the sales and not to be legally bound by that. Thus, they are not liable to pay. The court rejected their contention and held that in case of general offer, the performance of conditions will automatically amount to acceptance of offer and communication is not required. It also held that the amount deposited in the bank shows the intention of the company to create a legal relation and be legally bound by the agreement. Thus, they are liable to pay.

The Indian position regarding general offer is same as that of English law. In the landmark case of *Lalman Shukla v. Gauri Dutt* (1872), a master sent his servant to search for his lost nephew. Meanwhile the servant was looking for the nephew, the master announced a reward for anyone who will find his lost nephew. The servant, unaware of the reward, finds the nephew and brings him back to the master. The master refused him to pay the reward on the ground that he did not make it with him and he had no knowledge of the same. The court rejected his contention and held him liable to pay to the servant.

Therefore, the offer can be made to the public at large and anyone from that public can accept the offer. But the contract will be made with only that person who comes forward and fulfils the conditions of the general offer. The performance of the conditions of the offer will itself amount to acceptance of offer.

19. Explain: offer and acceptance (section 2(b))

The whole process of entering into a contract starts with a party making a proposal to another party. And when such a proposal gets accepted, an agreement is formed.

Offer (proposal) has been defined under S.2(a) as “when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal.”

Thus, it is a statement that is an expression of the will or intention of one person to enter into a contract with another. The person making the proposal is called ‘promisor/proposer’ and the person to whom it is made is called the ‘promisee/proposee.’ For an offer to be legal and valid, it is essential that it is unconditional and made at proper time and place. Moreover, there must be an intention to create a legal relationship and it should be communicated to the other person expressly or impliedly.

There are different kinds of offer- general offer, special offer, counter offer, cross offer and continuing offer.

Acceptance has been defined under s.2(b) as “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.”

Essentials of a valid acceptance:

- Every acceptance must be communicated by the offeree or his authorised agent. But it is only the offeree who can accept the offer. In the case of *Powell vs Lee*, it was held that unauthorised acceptance is no acceptance.
- It is expressly provided that the ‘communication of proposal’ is complete when it comes to the knowledge of the offeree. Thus, for a valid acceptance it is essential that the offeree has the knowledge of the offer.
- The acceptance must be communicated to the offeror. However, there are certain exceptions to this rule. In the case of *Felthouse vs Bindley*, it was held that mental acceptance is no acceptance. In the case of *Bhagwan Das vs Girdharlal*, the Supreme court held that “to think to accept or to decide to accept is no acceptance”. It should be shown by any word, act, or conduct.

- Assent signified should be absolute and unqualified. In the case of *UOI vs. Narayan Singh*, it was held that provisional acceptance is no acceptance. *Jurist Mulla* has stated that *section 7 (1)* is the mirror rule of acceptance.

Thus, a valid offer and valid acceptance can constitute a valid structure of entering into a contract.

20. Contracts that cannot be specifically enforced

The Indian contract Act provides the remedy of compensation or damages when the contract is breached. But sometimes the monetary relief is not sufficient. Thus, the specific relief Act was enacted in which specific performance of the contract was a discretionary relief. Now, after amendment it has been made to be a mandatory relief. However, not all contracts can be specifically enforced. Thus, the Act itself expressly provides for the situations where the relief of specific performance cannot be granted. Some of such contracts are as follows:

- If the aggrieved party due to non-performance of another party has suffered loss but can be compensated for such in monetary terms and made whole again then the court will not specifically enforce such contracts.
- If the contract is complex and involves personal skills or knowledge of a party then also the court may not specifically enforce such contract.
- If the aggrieved contracted party has obtained for substituted performance of such contract then the court may not specifically enforce such contract.
- A contract which involves continuous performance of a duty which the court is not able to supervise cannot be specifically enforced.
- A contract which is determinable i.e revocable or put to an end by a party cannot be specifically enforced.

The Specific Relief Act provides for 6 remedies- Recovery of possession of the property, Specific performance of contracts, Preventive Relief, Declaratory Relief, Injunction and Rectification or Cancellation of Instruments and rescission of contracts. The specific performance of a contract is one of the reliefs provided to the aggrieved parties but not all contracts can be specifically enforced. Section 14 specifically laid down the contract which cannot be specifically enforced.

21. Misrepresentation (section 18)

Section 13 defines the term 'consent' as "when two or more persons agree upon the same thing in the same sense" which is an essential ingredient to a valid contract. However, s.14 lays down the instances where the consent is said to be not freely given-

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

The term 'representation' means a statement given by a person to another. Thus, misrepresentation in layman terms can be an untrue statement given by one party to another which influences him/her to enter into a contract. The term "misrepresentation" has been defined under section 18 as follows:

S. 18 "Misrepresentation means and includes-

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

- Unwarranted Positive Assertion

As per this, the person making the statement believes it to be true despite the fact that his information is not gathered or supported by any trustworthy sources.

- Breach of Duty

When a party has not acted in a reasonable manner to prevent the foreseeable injuries to the other party and has derived benefits out of it then that would amount to misrepresentation. In the case of Oriental Bank Corporation vs. John Fleming (1879) the plaintiff was allowed to set aside the deed and held that the defendant had no legal responsibility to reveal the terms of the deed.

- Inducing mistake about a subject matter

This revolves around a mistake of fact. It happens when a party has induced others to make a mistake about the nature or quality of the subject matter of the contract. It can also happen when important information about the subject matter is not revealed.

The contract made under misrepresentation is voidable at the option of the party who consent is so caused. Therefore, the aggrieved party of misrepresentation has the remedy to rescind the contract and claim damages.

22. **“Agreement without consideration is void”, discuss the exception to the rule (section 25)**

Consideration is quid pro i.e something in return. Consideration has been defined under section 2 (d) as “when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise.” for instance- ‘X’ enters into a contract with ‘Y’ to sell his phone for Rs. 10000. Here, for ‘X’ the consideration is Rs. 10000 and for ‘Y’ the consideration is phone. According to Pollock, “consideration is the price for which the promise of the other is bought.”

Section 25 states that the general rule is “agreement without consideration is void” (Ex nudo pacto non oritio actio). Though, certain exceptions have been carved out to this general rule in the provision itself which are

discussed

as

follows:

- Natural Love and Affection

Section 25(1) lays down that “it is in writing and registered under the law for the time being in force for the registration of [documents] and is made on account of natural love and affection between parties standing in a near relation to each other”. Thus, if an agreement is made between two parties who are closely related to each other out of natural love and affection then that agreement will be valid even if no consideration has been paid. Here, it is essential that the agreement is in writing and registered. In the case of *Rajlukhy Dabee vs Bhootnath Mukerjee* (1900), the agreement entered into by husband and wife to pay her maintenance and separate residence due to quarrels between them was held to be not covered by the exception. Thus, declared to be void.

- Voluntary services

As per s.25 (2), if a person has done something voluntarily for the promisor or on behalf of the promisor which he was legally bound to do then in such an agreement to compensate such a person will be valid even without any consideration. Here, the agreement need not be in writing.

- Time barred debt

As per s.25(3), the time barred debt is also enforceable if the person who has to pay has signed the document and expressed his intention to pay the debt. Here, registration of the document is not necessary but it should be signed.

- Gift

As per explanation 1 to s.25, a gift has been saved from the application of this provision and states that gifts without consideration are valid contract.

- Agency

As per s.185, no consideration is required to create an agency.

To conclude, an agreement without consideration is void. It is the general rule but certain exceptions as discussed above have been carved. Consideration is a really vital part to form a contract. Therefore, it needs to be valuable but these exceptions are made to protect the interests of third parties.

23. Various ways by which an agency can be created, when is an agency irrevocable (section 182)

In layman terms, the delegation of authority from one person to another is called agency. As per section 182, “an ‘agent’ is a person employed to do any act for another, or to represent another in dealing with the third person”. The ‘principal’ is defined as “the person for whom such an act is done”. The relationship between such an agent and principal is called agency. To form an agency, consideration is not necessary. The effect of such agency is that the acts of an agent done on behalf of the principal will bind the principal towards the third party.

The different modes of creation of agency are as follows:

- Principal’s Authority

When the principal appoints the agent by an express agreement. This express agreement can be in written or oral. Though, it is not mandatory to have an express agreement but when the agent is appointed to execute a deed then it is compulsory to appoint him through power of attorney.

The agent can also be appointed impliedly i.e through the conduct of the parties. Section 187 states that “an authority is to be implied when it is to be inferred from the circumstances of the case, things spoken or written or the ordinary course of dealing, may be accounted for circumstances of the case.”

- Ratification

The agency can be created by ratification when the principal ratifies or approves the act of the agent done on his before or in his name when he had no such authority to do so. This ratification only creates agency between the principal and agent for the act which has been ratified by the principal and for no other acts.

- Necessity

Agency by necessity can be created when there is a situation of such emergency that it is required for the agent to act on behalf of the principal even though he is not able to communicate with him. In today's scenario, it does not arise that often as the communication system is advanced.

The chapter X of ICA deals with agency. The consideration which is otherwise an essential element to constitute a valid contract is not an essential element to create agency. The creation of agency can be through various modes as discussed above. This type of contract i.e. agency is quite common in business laws.

Termination of agency:

When the relationship between the principal and the agent comes to an end, it is the termination of agency.

The termination of agency can be done in the following ways:

- Mutual agreement between the principal and agent
- Renunciation of authority by the agent.
- Revocation of authority by the principal.
- Completion of the purpose for which agency has been created.
- Death or insanity of principal or agent.

An agency can be created when one person has delegated his authority to some other person. There are different modes to create and terminate an agency. This kind of relationship is quite common in business laws.

24. Contract of bailment, discuss its essential features (148-171)

Section 148, ICA defines bailment as delivery of goods from one person i.e. bailor to another person i.e. bailee for some specific purpose and after the fulfilment of the purpose the bailee will return the said goods to the bailor or dispose them as per the instructions of the bailor.

Some of the essential features of the contract of bailment are as follows:

- For a valid bailment, there must be a contract between the bailor and the bailee and shall the essentials of S.10 shall be fulfilled. If there is no contract, then there will be no bailment. Though, the contract can be expressed as well as implied. In the case of *State of Gujarat v. Menon Mahomed* (1967 SC), the Supreme Court rejected the contention of the state that there can be no bailment without any contract and held that the government was liable and obliged by the law in pari materia as bailee to take reasonable care of the seized property even without any express contract.
- The bailment is applicable only on movable property. For instance- car, jewellery etc. In bailment, there must be delivery of goods from one person to another person. The delivery, being a wide term, can be actual or constructive delivery. For instance- 'X' gave his car to 'Y' to repair. . This is an actual delivery where the possession of the goods is physically handed over to another person.
- In constructive delivery, the physical possession of the goods is not handed over; rather some efforts have been made or authorization is given to make the other person a bailee. Like handing over the keys of the warehouse. In the case of *Ultzen v. Nicols* (1894), the waiter of a restaurant took the coat of the customer without being asked to do so and hung the coat on the hook. When the customer was leaving, he found his coat missing. The waiter was held to be liable as he assumed the possession of the goods as bailee and thus, was liable to take care of the coat. In bailment, the goods are delivered for some specific purpose and when the purpose is fulfilled, the bailee is liable to return the goods in the same form unless otherwise directed. For instance- A fabric is given to a tailor with the direction to stitch it. Thus the tailor will return the goods in altered form as per the direction of the bailor.
- As per section 151, the bailee is duty bound to take proper care of the goods as a reasonable man would take care of his own goods. If he fails to take such care and destroys the goods then he will be liable for the same. But as per section 152 if, even after due care the goods get lost or destroyed then the bailee will not be held liable.
- As per S.153 and 154, if the bailee makes such use of goods which are not consistent with the conditions of bailment then the bailor has the right to rescind the contract as well as has the right to get the compensation for the loss caused due to such act to goods.
- As per s.158 the bailee is entitled to lawful charges for providing his services to the bailor. That necessary doesn't mean remuneration but the expenses incurred by him in protection of the bailed goods.

- As per section 160 and 161, the bailee is responsible to return the goods to its true owner within specified time without demand and if he fails to return within such time then he will be liable for the loss or destruction, if any, caused to goods in such time. As per S.163 the bailee is also responsible to return the increase of profit accrued from such goods unless otherwise agreed.
- As per s.164 if the bailor was not entitled to bail the goods or to give instructions in respect of them but he still does so then he will be liable to pay the compensation to bailee for the loss incurred by him during such bailment, if any.
- As per S.170 the bailee has the right to keep the possession of the goods until the bailor pays the remuneration or compensation as the case may be for bailment of such goods.
- S.180 entitles the bailee to sue any person who has wrongfully taken the goods out of his possession or injures them in any way. He will be having the same rights in respect of the bailed goods as that of the owner.

25. Rights and duties of pawnor and pawnee (section 226)

A pledge is a special kind of bailment where a person transfers his property to another person with a purpose to secure a loan. It seems to be like bailment but it differs on the basis of purpose. The bailor is called pawnor and the bailee is called pawnee.

Rights of Pawnor:

- The pawnor has the right to file the suit for redemption to get the goods back after the payment of debt.
- If the pawnee has damaged the goods pledged or used them for his own purpose then the pawnor can sue him for tort of conversion and can claim damages.

Duties of Pawnor:

- If the pawnee has incurred some expenses in protecting the pledged goods then the pawnor is duty to reimburse the same.
- The pawnor has the duty to pay the debt amount and interest as and if agreed.
- If the pawnee has suffered any legal damages due to the pledged goods of pawnor then he is liable to be compensated by the pawnor.

Rights of Pawnee:

- The pawnee has the right to retain the pledged good until the debt is repaid.
- If the pawnor fails to repay the amount then the pawnee has the right to sell the pledged goods to recover the debt amount and if any deficiency remains then he can also sue the pawnor for the same. However, the pawnee has to give reasonable time and notice to the pawnor before selling the goods.
- If he has incurred some expenses or legal damages then he has the right to be reimbursed or compensated as the case may be.

Duties of Pawnee:

- The pawnee is duty bound to properly manage and protect the pledged goods.
- He has the duty to not use the pledged good for his own benefit unless otherwise agreed. If he makes any unauthorised use of goods then he will be liable for tort of conversion.
- If any bonus or increase arises on the pledged goods then the pawnee should return it to the pawnor with pledged goods.
- He should not mix pledged goods with his own goods.

Thus, the pledge is like bailment but the purpose of delivery of goods in pledge is for specific purpose i.e to secure loan. The essentials of pledge are- delivery of goods, security for debt and transfer of possession of some movable property.