

I N D E X

THE SPECIFIC RELIEF ACT - 1963.

SPECIFIC RELIEF : The expression "specific relief" means the relief in specie. It is a remedy which aims at the exact fulfilment of an obligation or the specific performance of a contract. It is in this sense distinguishable from the general remedy which gives pecuniary compensation only. It is called 'specific' because under its procedure, the suitor gets his relief in specie i.e. the very thing which the other party was bound to perform or to forbear.

'A' agrees to sell a piece of land to 'B'. 'B' pays the agreed price, but 'A' refuses to execute the deed of transfer. 'B' has the right to have the contract carried into effect by asking the competent court to compel 'A' to perform the contract. That will be a relief in specie, asking the court to have the very act performed by 'A' which he had agreed to do.

Again, suppose in the course of 'A' employment as a pleader, certain papers belonging to his client 'B', come into his possession. 'A' threatens to make these papers public. 'B' may sue for injunction to restrain 'A' from so doing, as no amount of damages can possibly repair the wrong done to 'B' if these papers are made public.

Legal remedies in civil law, can be either for the purpose of enforcing primary rights or for the purpose of enforcing sanctioning rights. For eg - specific performance of a contract is in the nature of enforcement of a primary right, while award of damages is in the nature of a sanctioning right. The central

problem of the SR ACT is the enforcement or protection of primary right.

The different kinds of specific relief dealt with by the Act are the following:

- 1) Recovery of possession of property - movable and immovable.
- 2) Specific performance of contracts.
- 3) Rectification of documents which have errors in them.
- 4) Rescission of contracts which are voidable.
- 5) Cancellation of instruments which are not valid.
- 6) Declaratory decrees.
- 7) Injunctions by way of preventive relief.

Sec. 2 : DEFINITIONS : In this Act unless the context otherwise requires -

- (a) OBLIGATION : Includes every duty enforceable by law.
- Notes The word obligation suggest the binding of persons in law. Generally it is a st. of one person against another person in respect of property. It is a st. in personam. Under this section an obligation includes every duty enforceable at law. Therefore moral, social and religious duties which are not enforceable in law are excluded from the definition of obligation. Generally obligation in law may

be of one of the following types - obligation arising
 (i) out of tort (ii) under a law or a statute (iii) out of contract
 (iv) out of quasi contract (v) out of trust.

(ii) SETTLEMENT: means an instrument (other than a will or codicil as defined by the Indian Succession Act 1925) whereby the destination or devolution of successive interest in movable or immovable property is disposed of or is agreed to be disposed of.

- X — X — X — X — X —

Q. What is the remedy of a person who is illegally disposed of the immovable property?

A. Sec. 6.

Suit by person dispossessed of immovable property.

(i) If any person is dispossessed (without his consent) of immovable property otherwise than in due course of law, he (or any person claiming through him) may, by suit, recover possession thereof, notwithstanding any other title may be set up in such suit:

(ii) No suit under this section shall be brought
 (a) after the expiry of six months from the date
 of dispossession or
 (b) against the Govt.

(iii) No appeal shall lie from any order or decree passed in suit instituted under this section.

nor, shall any review of any such order or decree be allowed.

(iv) Nothing in this sec. shall bar any person from suing to establish his title to such property and to recover possession thereof.

Under this sec. possession is sufficient evidence of right as against the trespasser. If a plaintiff proves that he was in possession of immovable property and he was dispossessed not in due course of law, he can recover the possession of such property without reference to any question of title (Bodges Vs. Dharm AIR 1933 All 561) The main object of this section is to prevent people who has forcibly taken possession of an immovable property to retain it.

A tenant holding over cannot be forcibly dispossessed such tenant can invoke the protection of sec. 6. Similarly, a tenant by sufferance, (i.e. person who continues in possession of the property after the expiration of the tenancy) cannot be regarded as a mere trespasser, his entry was lawful and therefore he cannot be forcibly ejected.

The defendant cannot resist the suit by setting up a title in himself. The question of ownership or title to the property is irrelevant in such a suit. Even if the defendant has a better title, he must first surrender possession to the plaintiff and then bring his own suit based upon his title.

Q. Write a short note on.

A. Recovery of specific movable property :

Sec. 7

A person intitled to the possession of specific movable property may recover it in the manner provided by the code of civil procedure 1908.

EXPLANATION :- 1) A trustee may sue under this section for the possession of movable property sufficient to the beneficial interest in which the person for whom he acts as a trustee is intitled.

2) A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Sec. 8

Liability of person in possession, not as the owner to deliver to persons entitled to immediate possession.

Any person having the possession or control of a particular article of movable property of which he is not the owner may be compelled specifically to deliver to the person entitled to immediate possession, in any of the following cases:

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff.
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss.

of thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

EXPLANATION:

Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section presume:

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed or as the case may be;

(b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

Section 9

DEFENCE RESPECTING SUITS FOR RELIEF BASED ON CONTRACT.

Except as otherwise provided herein, where any relief is claimed under this chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

This section lays down the general principle that in a suit for specific performance

the defence can plead all the defences available to a defendant in a suit for damages for breach of contract. For eg: absence of consideration, absence of free consent or want of capacity are valid defence even in a suit for specific performance. The underlying principle is that unless there is a valid contract, you cannot compel the specific performance of it and similarly if there has been a valid discharge of a contract there is no contract which can be specifically enforced.

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Q What contract can be enforced specifically.

A: Sec: 10 : CASES IN WHICH SPECIFIC PERFORMANCE OF CONTRACT ENFORCEABLE:

Except as otherwise provided in this chapter, the specific performance of any contract may (in the discretion of the court) be enforced.

(a) when there exists no standards for ascertaining the actual damage caused by the non-performance of the act agreed to be done i.e. where the article agreed to be purchased and sold is a rare or precious article, which cannot be procured elsewhere or

(b) when the act agreed to be done is such that compensation in money (for the non-performance) would not afford adequate relief.

EXPLANATION : Unless and until the contrary is proved, the court shall presume

- 1) That the breach of a contract to transfer movable property can be relieved except in the adequately relieved by compensation in money and
- 2) That the breach of a contract to transfer movable property can be relieved except in the following cases
 - (a) where the property is not an ordinary article of commerce or is of special value or interest to the plaintiff or consists of goods which are not easily obtainable in the market and
 - (b) where the property is held by the defendant as the agent or trustee of the plaintiff.

It must, however, be noted that the enforcement of specific performance of a contract is discretionary with the court and it is not compulsory upon it to decree specific performance only because the case falls within any of the provisions of section 10 of the Act. The court is not bound to grant such relief only because it is lawful to do so. The discretion of the court is (however) not arbitrary but sound and reasonably guided by judicial principle and capable of correction by a court appeal.

Illustration of clause (a) A agrees to buy and B agrees to sell a picture by a deed

painter and two have China Vases (Vessels) 'A' may compel 'B' specifically to perform this contract because there is no standard for ascertaining the actual damages which would be caused by its non performance.

Illustration of clause (b): 'A' contracts with 'B' to sell him a house for Rs. 1,000/- 'B' is entitled to a decree directing 'A' to convey the house to him, he paying the purchase-money.

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Q State the circumstances under which the court can grant specific performance of a part of a contract.

A. Sec. 12 SPECIFIC PERFORMANCE OF PART OF CONTRACT.

- 1) except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.
- 2) where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

3) where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either -

- a) forms a considerable part of the whole (though admitting of compensation in money).
- b) does not admit of compensation in money.

He is not entitled to obtain a decree for specific performance, but the court may, (at the suit of the other party) direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party -

- i) In a case falling under clause (a) pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) pays or has paid the consideration for the whole of the contract without any abatement and -
- ii) In either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.
- iii) when a part of a contract which taken by itself, can and ought to be specifically performed stands on a separate and independent footing from another part of the same contract.

which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

EXPLANATION: For the purpose of this section, a party to a contract shall be deemed to be unable to perform the whole of his part if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

Illustration: If A contracts to sell B' a piece of land consisting of 100 bighas. It turns out 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refused to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas nor so important for use or enjoyment that the loss of them may not be made good in money. A' may be directed (at the suit of B') to convey to B' the 98 bighas and to make compensation to him for not conveying the two remaining bighas or B' may be directed (at the suit of A') to pay out of receiving the conveyance and possession of the land, the stipulated purchase money less a sum awarded as compensation for the deficiency.

25. In a contract for the sale and purchase of a house and lands, for 2 lacs of rupees it is agreed that part of the furniture should be taken at a valuation. The court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the

furniture and may either have the furniture valued in the suit and include it in the decree for specific performance or may limit its decree to the house.

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Q. what are the rights of purchaser or ~~lessee~~
lessee against a person with imperfect title?

A. Sec. 13 RIGHTS OF PURCHASER OR LESSEES AGAINST PERSON WITH NO TITLE OR IMPERFECT TITLE

1) where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee subject to the other provisions of this chapter has the following rights, namely :-

a) If the vendor or lessor has (subsequently to the contract) acquired any interest in the property, the purchaser or lessee may compel him to make the contract out of such interest.

b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel

him to procure such conveyance.

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge and where necessary, also a conveyance from the mortgagee.

(d) where the vendor or lessor sue for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject matter of the contract.

2) The provisions of sub-sec (1) shall also apply as far as may be, to contracts for the sale or hire of movable property.

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Q State and explain the contracts which cannot be specifically enforced?

A. See 14 CONTRACT WHICH CANNOT BE SPECIFICALLY ENFORCED.

1) The following contract cannot be specifically enforced

namely :-

(a) a contract for the non-performance of which compensation in money is an adequate relief.

Illustration 3. 'A' contracts to sell and 'B' contracts to purchase ten bags of sugar at Rs. 600/- per bag. This contract cannot be specifically enforced because both 'A' & 'B' could be compensated in money.

(b) A contract which runs into such minute or numerous details or which is so dependent on the person qualifications or volition (willingness) of the parties; or otherwise (from its nature) is such that the court cannot enforce specific performance of its material terms. i.e. contract to do acts involving special skill such as painting a picture or to write a book for a publisher). A contract to marry would fall under category of such contracts for which cannot enforce specific performance of material terms.

(c) A contract which is in its nature a determinable (capable of being ended for e.g. partnership at will) : A and B contract to become partners in a certain business, the contract not specifically specifying the duration of the proposed partnership. This contract cannot be ~~specif~~ specifically enforced because if performed, either A or B contract might at once dissolve the partnership.

- d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.
- 27 Except as provided by the Arbitration Act, 1940 no contract to refer present or future differences to arbitration shall be specifically enforced. but if any person who has made such contract (other than an arbitration agreement, to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subjects which he has contracted to refer, the existence of such contract shall beir the suit.
- 2) Notwithstanding anything contained in clause (a) or clause (c) of sub-section (1) the court may enforce specific performance in the following cases -
- (a) where the suit is for the enforcement of a contract
- i) to execute a mortgage or furnish any other security for the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract, or
 - ii) to take up and pay for any debentures of a company.
- (b) Where the suit is for
- i) the execution of a formal deed of partake-

ship the parties having commenced to carry on the business of the partnership or

ii) the purchase of a share of a partner of a firm.

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land. Provided that the following conditions are fulfilled namely -

- i) The building or other work is described in terms sufficiently precise to enable the court to determine the exact nature of the building or work.
- ii) The plaintiff has a substantial interest in the performance of contract and the interest is of such a nature that compensation in money (for the non performance of the contract) is not an adequate relief and
- iii) The defendant has (in pursuance of the contract) obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

Q. Who is entitled to obtain specific performance.

A. Sec. 15. WHO MAY OBTAIN SPECIFIC PERFORMANCE

Except as otherwise provided by this chapter the specific performance of a contract may be obtained by:

(a) any party thereto;

(b) the representative in interest or the principal of any party thereto: Provided that where the learning skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest of his principal shall not be entitled to specific performance of the contract unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, of his principal, has been accepted by the other party.

(c) where the contract is a settlement of a marriage or a compromise of doubtful rights betⁿ members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power the remainderman.

(e) a reversioner in possession, where the agreement is a covenant entered with his predecessor-in

title and the revisioner is entitled to the benefits of such covenant.

(f) a reversioner in remainder, where the agreement is such a covenant and the revisioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

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Q Explain the personal bars to get the relief of specific performance.

A. Sec - 16 PERSONAL BARS TO RELIEF:

Specific performance of a contract cannot be enforced in favour of a person:

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential terms of the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion (destruction) of the relation intended to be established by the contract.
- (c) who fails to aver (affirm) and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him other than terms the performance of which has been prevented or waived by the defendant.

EXPLANATION : For the purposes of clause (c)

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit any money except when so directed by the court.
- (ii) The plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

SEC - 17 CONTRACT TO SELL OR LET PROPERTY BY ONE WHO HAS NO TITLE, NOT SPECIFICALLY ENFORCEABLE.

- 1) A contract to sell or let any immovable property cannot be specifically enforced in favour of vendor or lessor.

- (a) who knowing himself not to have any title to the property, has contracted to sell or to let the property;
- (ii) who, though he entered into the contract believing that he had a good title to the property cannot at the time fixed by the parties or by the court for completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.
24. The provisions of sub-sec.(1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

sec. 18 NON ENFORCEMENT EXCEPT WITH VARIATION
 where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases; namely-

- (a) where by fraud, mistake of fact or mis-representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract.

- (ii) where the object of the parties was to

produce a certain legal result which the contract as framed is not calculated to produce.

(c) where the parties have (subsequently to the execution of contract) varied in terms.

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Q The jurisdiction to decree specific performance is discretionary comment. On what principles does the court refuse to exercise its discretion to grant a decree for specific performance.

A. SEC. 20 DISCRETION AS TO DECREVING SPECIFIC PERFORMANCE:

1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties (at the time of entering into the contract) or the other circumstances under which the contract was entered into are such

that the contract (though not voidable) gives the plaintiff an unfair advantage over the defendant; or

(ii) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

(c) where the defendant entered into the contract under circumstances which (though not rendering the contract voidable) makes it inequitable to enforce specific performance.

3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

Although decreeing specific performance is within the discretion of the court, it does not mean that the court can arbitrarily or capriciously enforce one contract and refuse to enforce another. The jurisdiction is to be exercised on well known principles. The discretion is said to be judicial & the court is to have regard to the contract itself.

As Storey put it 'in truth the whole exercise of this whole branch of equity jurisprudence is not a matter of right in either party but is a matter of discretion in the court not indeed of arbitrary and capricious ~~decre~~ discretion which governs itself (as far as it may) by general rules and principles, but at the same time, which withholds or grants relief according to the circumstance of each particular case when these rules and principles will not furnish any exact measure of justice betⁿ the parties.'

ILLUSTRATION 3

(a) 'A' is entitled to some land under his father's will on condition that, if he sells it within twenty five years, half the purchase money shall go to 'B'. 'A' (forgetting the condition) contracts before the expiration of the twenty five years, to sell the land to 'C'. Here the enforcement of contract would operate so harshly on 'A' that the court will not compel its specific performance in favour of 'C'.

(b) 'A' contracts with 'B' to sell him certain land and to make a road to it from a certain railway station. It is found afterwards that 'A' cannot make the road without exposing himself to litigation. Specific performance (of the part of the contract relating to the road) should be refused to 'B' even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(c) 'A' contracts to buy certain land from 'B'. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to 'B'.

SEC. 21. POWER TO AWARD COMPENSATION IN CERTAIN CASES:

- 1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to or in substitution of such performance.
- 2) If in any such suit the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- 3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, & that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- 4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in sec. 73.

of the Indian Contract Act - 1882.

5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in the plaint.

Provided that where the plaintiff has not claimed any such compensation in the plaint the court shall, at any stage of the proceeding allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

EXPLANATION: The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

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Q. When and under what circumstances rectification of instrument is permissible?

or

'A' sells to 'B' his house at Pune for a valuable consideration. 'A' has 2 houses in Pune. On account of mistake the wrong number of the house is mentioned in the deed which house was already purchased by 'C'. Can the mistake be corrected? Give reasons!

A. In the given problem the mistake can be corrected w/sec. 26 which runs as follows:

SEC - 26. WHEN INSTRUMENT (DEED) MAY BE RECTIFIED (CONFIRMED)

- 1) when through fraud or a mutual mistake of the parties a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act 1956 applies) does not express their real intention, then
 - (a) either party (or his representative in interest) may institute a suit to have the instrument rectified; or
 - (b) the plaintiff may (in any suit in which any right arising under the instrument is in issue) claim in his pleading that the instrument be rectified; or
 - (c) A defendant in any such suit as is referred to in clause (b) may (in addition to any other defence open to him) ask for rectification of the instrument.
- 2) If in any suit in which a contract or other instrument is sought to be rectified under sub-section 1) the court finds that the instrument (through fraud or mistake) does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good-faith and for value.
- 3) A contract in writing may first be rectified, and then (if the party claiming rectification has so prayed in his pleading and the court think fit) may be specifically enforced.
- 4) No relief for the rectification of an instrument shall be granted to any party under this section unless

it has been specifically claimed: provided that where a party has not claimed any such relief in his pleading the court shall (at any stage of the proceeding) allow him to amend the pleading on such terms as may be just for excluding such claim.

REQUISITES OF RECTIFICATION:

- 1) There must have been a complete agreement reached prior to the written instrument which is sought to be rectified. There must be two separate stage - an agreement (verbal or written) which clearly expresses the final intention of the parties; and an instrument which purports to embody that intention.
 - 2) Both the parties must have intended and be still intending that the exact terms of the prior contract should be reduced to writing.
 - 3) Clear evidence of mistake (common to both parties) or fraud is necessary.
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Q Explain when the lateral rescission of contracts may be allowed or refused.

A Sec. 27(1) WHEN THE RESCISSION OF THE CONTRACT MAY BE ALLOWED.

Any person interested in a contract may seek to have it rescinded and such rescission may be allowed in any of the following cases.

- (a) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

ILLUSTRATION :

- 1) 'A' sells a field to 'B'. There is a right of way over the field of which 'A' has direct personal knowledge but which he conceals from 'B'. 'B' is entitled to have the contract rescinded.
- 2) 'A' (An attorney) induced his client 'B' (A Hindu widow) to transfer property to him for the purpose of defrauding 'B's' creditors. Here the parties are not equally in fault and 'B' is entitled to have the instrument of transfer rescinded.

See 27(2) WHEN THE RESCISSION OF THE CONTRACT MAY BE REFUSED.

The court may refuse to rescind the contract in the following cases.

- (a) where the plaintiff has expressly or impliedly ratified the contract; or
- (b) where due to the change of circumstances, which has taken place since the making of the contract (not being due to any act of the defendant himself) the parties cannot be substantially restored to the position in which they stood when the contract was made; or
- (c) where third parties claim (during the existence

(c) of the contract) acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is desired to be rescinded and such part is not severable from the rest of the contract.

The power of the court to order rescission is discretionary one. There can be rescission if it is not possible to restore the parties to status quo ante. Rescission will not be allowed where, a third person has acquired an interest under the contract bona fide and for value.

SEC. 28 RESCISSION IN CERTAIN CIRCUMSTANCES OF CONTRACT FOR THE SALE OR LEASE OF IMMOVABLE PROPERTY, THE SPECIFIC PERFORMANCE OF WHICH HAS BEEN DECREED.

15. Where in any suit a decree of specific performance of a contract for the sale or a lease of immovable property has been made and the purchaser or lessee does not within the period allowed by the decree or such further period as the court may allow pay the purchase money or other sum which the court has ordered him to pay the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded, on such application the court may by order rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

- 2) where a contract is rescinded under sub-sec(1) the court -
- (a) shall direct to the purchaser or the lessee if he has obtained possession of property under the contract to restore such possession to the vendor or lessor, and
 - (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was obtained by the purchaser or lessee until restoration of possession to the vendor or lessor and if the justice of the case so require; the refund of any sum paid by the vendor or lessor or earnest money or deposit in connection with the contract.
- 3) If the purchaser or lessee pay the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-sec(1) the court may on application made in the same suit award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following relief namely -
- (a) the execution of a proper conveyance or lease by vendor or lessor.
 - (b) the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease.
- 4) No separate suit in respect of any relief which may be claimed under this section

shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

SEC. 31 WHEN CANCELLATION OF INSTRUMENT MAY BE ORDERED:

- 1) Any person (i) against whom a written instrument is void or voidable
 (ii) who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up & cancelled.
- 2) If the instrument is registered the court shall also send a copy of its decree to the officer in whose office the instrument has been registered. Such officer shall note the facts of its cancellation on the copy of the instrument.

ILLUSTRATION: as 'A' (the owner of a ship) by fraudulently representing her to be seaworthy induces 'B' (an underwriter) to insure her 'B' may obtain the cancellation of the policy.

- (ii) 'A' agrees to sell and deliver a ship to 'B' to be paid for by 'B's acceptance of four bill of exchange for sum amounting to Rs 30,000 to be drawn by 'A' on 'B'. The bills are drawn and accepted but the ship is not delivered according to the agreement 'A' sues 'B' on one of the bills 'B' may obtain the cancellation of all the bills.

QUIA TIMET ACTION:

The relief given under this section is founded upon the administration of protective justice for fear (quia timet) and if there is no reasonable apprehension of serious injury to plaintiff a suit under this sec. will not lie. The court will interfere to prevent multiplicity of suits or irreparable mischief before it actually takes place on the principle of quia timet; "The party is relieved upon the principle of (as it is technically called) quia timet that is for fear that such agreement, securities, deeds or other instruments may be wrongly used against him when the evidence to impeach them may be lost or that they may now throw a cloud of suspicion over his title or interest," though not actual actual injury has been sustained, the court interferes because it is apprehended from the peculiar relation betⁿ the parties. A party is not entitled to this relief as a matter of right, its ~~exercise~~ exercise is a matter of sound judicial discretion.

Conditions for the relief: In order that sec. 31 may apply the plaintiff must make out

- 1) that the instrument is void or voidable as against the plaintiff
- 2) that he has reasonable apprehension of injury from the instrument if it is left outstanding
- 3) that the threatened injury is serious
- 4) that the court should consider the circumstances of the case in the exercise of its discretion adjudge the instrument void or voidable and order it

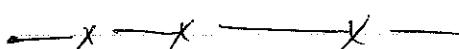
To be delivered up and cancelled.

sec. 32 WHAT INSTRUMENTS MAY BE PARTIALLY CANCELLED:

Where an instrument is evidence of different rights or of different obligations the court may, in a proper case, cancel it in part and allow it to stand for residue.

ILLUSTRATION : 'A' draws a bill on 'B' who endorses it to 'C', by whom it is endorsed to 'D' who endorsed it to 'E'. 'C's endorsement is forged. 'C' is entitled to have such endorsement cancelled leaving the bill to stand in other respects.

Ram Chande Vs. Ganga Saran (1917) 39 All 103:
 'A' executes a deed of mortgage in favour of 'B'. 'A' gets back the deed from 'B' by fraud and endorses on it a receipt for Rs. 1,200 purporting to be signed by 'B'. 'B's signature is forged. 'B' is entitled to have the endorsement cancelled leaving the deed to stand in other respects.



Q Explain the law as to declaratory relief. Write a short note on Declaratory Decree?

A sec. 34 DISCRETION OF COURT AS TO DECLARATION OF STATUS OR RIGHT:

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying (or interested to deny)

his title to such character or right, and the court may, in its discretion, make therein declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. Provided that no court shall make any such declaration when plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

ILLUSTRATION:

- 'A' is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.
- 'B' being widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may (in a suit against the adopted son) obtain a declaration that adoption was invalid.

THE REQUISITES FOR GRANT OF DECLARATORY RELIEF:

- The plaintiff is, at the time of the suit entitled to any legal character or to any right as to any property.
- The defendant has denied (or is interested in denying) the character or title of the plaintiff.
- The declaration asked for is a declaration that the plaintiff is entitled to a legal character or to

right of property.

- (4) The plaintiff is not in a position to claim further relief than the declaration of his title.
- (5) The court at its discretion considers it proper to grant declaratory relief, having in view the circumstances of the case.

WHEN DECLARATORY RELIEF IS REFUSED:

- (1) The court will not grant relief unless there is substantial injury.
- (2) If the defendant has never denied the title of the plaintiff or his legal character, no declaration will be made regarding the title or the legal character of the plaintiff.
- (3) The declaration asked for is a declaratory relief cannot be given to plaintiff who conduct is fraudulent or to one who had evaded the stamp law. This rule is based on the maxim of equity that "He who comes to seek equity must come with clean hands".
- (4) No declaration shall be made which will be ineffectuous (fruitless) or useless.

Illustration : A declaration in respect of correctness or otherwise of an electoral role when the election was already over, was held to be not obtainable because such a declaration would be mere empty and useless one.

Q what are the preventive relief (injunction). In what circumstances they are granted? is the court bound to grant the said relief.

A. Specific Relief given by preventing a party from doing that, he is under a binding not to do is called preventive relief.

SEC: 36 PREVENTIVE RELIEF HOW GRANTED:

Preventive relief is granted at the discretion of the court by injunction (temporary or perpetual)

SEC: 37 TEMPORARY AND PERPETUAL INJUNCTIONS

- 1) Temporary injunctions are such as to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit and are regulated by the code of civil procedure 1908.
- 2) A Perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined (forbidden) from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff.

DIFFERENCE BETWEEN TEMPORARY AND PERPETUAL INJUNCTIONS.

- 1) A temporary injunction is passed by an order during the pendency of a suit : Perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit.
 - 2) A temporary injunction continues only until a specified time or until further order of the court : A perpetual injunction finally settles the mutual rights of the parties and directs a party for all time to do (or abstain from doing) a thing.
 - 3) The effect and object of a temporary injunction is to preserve the property in dispute in status quo (as it is) it does not finalise a right : The effect and object of a perpetual injunction is to give effect to and protect the plaintiff's right.
 - 4) Temporary injunction are regulated by rule 1 and 2 of order 39 of C.P.C : Perpetual injunction are regulated by the Specific Relief Act.
-

Q State and explain the circumstances in which an application for an injunction will be granted and refused.

A PRINCIPLES GOVERNING TEMPORARY AND PERPETUAL INJUNCTIONS :

The general principles governing grant of temporary injunctions is the same as those governing the grant of perpetual injunction. It is discretionary matter for the court and the person seeking an injunction must satisfy the court.

So the court should see the merit of the contention between the parties and should also see on which side the balance of convenience will lie in the event of the plaintiff's success. The court should be satisfied that there is a reasonable probability for the success of the plaintiff. The court should see

- 1) that there is a prima facie case between the parties
- 2) that the plaintiff will suffer irreparable loss in case the temporary injunction is not granted.
- 3) that the balance of convenience lies in favour of the plaintiff.

SEC. 38 PERPETUAL INJUNCTION WHEN GRANTED:

- 1) Subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour (whether expressly or by implication).
- 2) when any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II (Sec. 9 to 25)
- 3) when the defendant invades (or threatens to invade) the plaintiff's right to or enjoyment of property, the court

may grant a perpetual injunction in the following cases, namely :

- (a) where the defendant is a trustee of the property for the plaintiff.
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion.
- (c) where the invasion is such that compensation in money would not afford adequate relief.
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

ILLUSTRATION: (a) 'A' lets certain land to 'B' and 'B' contracts not to dig sand or gravel thereout 'A' may sue for an injunction to restrain 'B' from digging in violation of his contract.

- (b) A trustee who threatens a breach of trust. His co-trustees, if any, should and the beneficial owners may sue for an injunction to prevent the breach.
- (c) The directors of a public company may sue for an injunction to restrain them.

SEC. 40 DAMAGES IN LIEU OF OR IN ADDITION TO INJUNCTION

- (1) The plaintiff in a suit for perpetual injunction under sec. 38 or mandatory injunction under sec. 39 may claim damages either in addition to or in

substitution for such injunction and the court may if it thinks fit, award such damages.

- 2) No relief for damages shall be granted under this sec. unless the plaintiff has claimed such relief in his plaint, provided that where no such damages have been claimed in the plaint the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.
- 3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

sec. 61. INJUNCTIONS WHEN REFUSED:

An injunction (temporary or perpetual) cannot be granted -

- (a) to restrain any person from prosecuting judicial proceeding (pending at the institution of the suit in which the injunction is sought) unless such restraint is necessary to prevent a multiplicity of proceedings.
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought
- (c) to restrain any person from applying to any legislative body

- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter.
- (e) to prevent the ~~less~~ breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent (on the ground of nuisance) an act of which it is not reasonably clear that it will be a nuisance.
- (g) to prevent a continuing breach in which the plaintiff acquiesced (consented)
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding (except in case of breach of trust)
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court.
- (j) when the plaintiff has no personal interest in the matter.

ILLUSTRATION: 'A' seeks an injunction to restrain his partner 'B', from receiving the partnership debts and effects. It appears that 'A' had improperly possessed himself of the books of the firm and refused 'B' access to them. The court will refuse the injunction.

SEC. 42. INJUNCTION TO REFORM NEGATIVE AGREEMENT:

Notwithstanding anything contained in clause (d) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement express or implied, not to do certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to reform the negative agreement; provided that plaintiff has failed to perform the contract so far as it is binding on him.

—X—X—

Q what is a mandatory injunction? Under what circumstances can a court grant it?

A MANDATORY INJUNCTION DEFINED:

It is an order of court requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him. It is, therefore in its nature both restitutory and prohibitory.

SEC. 39. MANDATORY INJUNCTION:

When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent

the breach complained of and also to compel performance of the requisite acts.

Illustration :

- 1) 'A' by new buildings, obstructs lights, to the access and use of which 'B' has acquired a right under the Indian Limitation Act Part IV. 'B' may obtain an injunction not only to restrain 'A' from going on with the buildings but also to pull down so much of them as obstruct 'B's' lights.
- 2) 'A' builds a house with eaves projecting over 'B's' land. 'B' may sue for an injunction to pull down so much of the eaves as so projects.
- 3) A, being 'B's' medical adviser, threatens to publish 'B's' written communication with him showing that 'B' had led to an immoral life. 'B' may obtain an injunction to restrain the publication.

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THE INDIAN CONTRACT ACT - 1872.

PART - I

GENERAL PRINCIPLES OF CONTRACT.

SEC - 2 INTERPRETATION CLAUSE

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

- (a) PROPOSAL : 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 ~~or~~ abstinence, he is said to make a proposal.
- (b) PROMISE : when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.
- (c) PROMISOR and PROMISEE : The person making the proposal is called the promisor and the person accepting the proposal is called the promisee.
- (d) CONSIDERATION : when at the desire of the promisor, the promisee or any other person has done or abstains from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

- (e) AGREEMENT : Every promise and every set of promises, forming the consideration for each other is an agreement.
- (f) RECIPROCAL PROMISES : Promises which form the consideration or part of the consideration for each other, are called reciprocal promises.
- (g) VOID AGREEMENT : An agreement not enforceable by law is said to be void.
- (h) CONTRACT : An agreement enforceable by law is a contract.
- (i) VOIDABLE CONTRACT : 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 voidable contract.
- (j) VOID CONTRACT : A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

— X — X —

→ FORMATION OF CONTRACT.

A contract means an agreement which is enforceable by law. An agreement consists of reciprocal promises between two parties. In case of the contract each party is legally bound by the promise made by him. A contract or an obligation to perform a promise could arise in the following ways.

- 1) By agreement and contract
- 2) By standard form contract
- 3) By promissory estoppel.

1) BY AGREEMENT AND CONTRACT.

Most common way of making a contract is through an agreement. The two parties may agree to somethings, through a mutual negotiation. when one party makes an offer and other accept the same, there arises an agreement, which may be enforceable by law.

2) BY STANDARD FORM OF CONTRACT

In the modern age some persons, institutions, or establishments such as Railway, ~~Insurance~~ Insurance companies, Banks, manufacturers of various goods etc may have to enter into a very large no. of contract with thousands of persons. They cannot possibly negotiate individually with the person with whom the contract are to be made. Contracts with pre-drafted matter are generally prepared by one party, which the other has to agree too. As a general rule such standard forms of contracts are as much valid as those entered into through negotiation.

3) Promissory ESTOPPEL :

Some-times there may be no agreement or contract in strict sense of the term but a person making a promise may become bound because of the application of doctrine of estoppel.

Q "All contracts are agreements but all agreements are not contracts" Discuss. Explain the test to be applied in determining whether an agreement is enforceable at law.

A: Agreements are of various types. An agreement may be social, religious or legal. A social agreement is not enforceable in a court of law. For eg. an agreement to go to a picnic or picture is a social agreement. It is not enforceable in the court of law because parties while entering into such agreement, do not do not intent to go to the court of law if the agreement is not honoured. Similarly religious and moral agreement are not enforceable at law. Hence they cannot become contract. A legal agreement only is enforceable at law and hence only legal agreement can become contract.

ESSENTIALS OF A VALID CONTRACT OR VALID AGREEMENT.

An agreement in order to be enforceable must have to fulfil following conditions. The following test should be applied to decide whether an agreement is a contract.

(1) CONSENSUS - AD - IDEM :

There must be two parties to a contract, the offeror and offeree. Both parties must have agreed about the subject matter of the contract at the same time and in the same sense. In other words, there must be identity of minds.

Illustration: 'A' owns two houses one at Delhi and another at Bombay. He offers to sell 'B' one house intending it to be the house at Bombay and 'B' accepts the offer thinking

that it is the house at Delhi. There is no ~~con~~ consensus or identity of minds and hence there is no contract.

2) Legal RELATIONSHIP :

Agreement must be legal, that is it should be entered with an intention to create legal relationship. Agreement should not be social, otherwise it will not create a legal binding and will not become a contract. For eg :- A' invites B' to a picture. If B' does not reach the picture hall in time, A' cannot go to the court of law to recover the cost of ticket or any other damages. Similarly, if A' does not reach the picture hall in time, B' cannot go to the court of law to recover damages. On the other hand, if A' agrees to sell his scooter for Rs. 5,000/- to B', both of them can go to the court of law to compel each other to perform the contract or pay the damages, because it is legal agreement.

3) LAWFUL CONSIDERATION :

An agreement must be supported by consideration. Consideration means something in return. Both the parties must get something in return for the promise. For eg:- A' sells his pen to B' for Rs. 5/-, for A' the consideration is Rs 5/- and for B' the consideration is the pen. Both are getting something. It must also be lawful, i.e. it should not be fraudulent, unlawful, opposed to public policy, etc.

Illustration : A' promises to pay Rs. 5,000/- to B' in consideration of B' murdering 'C'. The consideration is unlawful, and hence the agreement is illegal.

4) CAPACITY OF PARTIES : As per sec 11 every person is competent to contract who is

- 1) a major,
- 2) of a sound mind
- 3) not disqualified by law to enter into contract.

5) FREE CONSENT : For a valid contract, parties must give their consent freely. Consent should not be obtained by fraud, misrepresentation, coercion or undue influence. For eg:- If at a point of a knife, 'A' asks 'B' to sell his watch for half the price, 'B's consent is not free.

6) LAWFUL OBJECT : An agreement must be made for a lawful purpose. It should not be fraudulent, unlawful, immoral or opposed to public policy. All the above types of agreements are not enforceable in a court of law. 'A' promises to pay Rs 500/- for letting 'B's house for running a brothel. The object is illegal and immoral.

7) NOT EXPRESSLY DECLARED VOID : There are so many agreements which have been expressly declared to be void because these agreements are not in the public interest. eg. wagering agreements, agreements in restraint of trade, agreement in restraint of marriage etc.

8) POSSIBILITY OF PERFORMANCE : An agreement to do an act impossible in itself cannot be enforced, because it cannot be performed. Law does not compel anybody to do an impossible Act. For eg:- If 'A' agrees to pay Rs 1000/- if 'B' runs at a speed of 500 Kilo meters per hour, it is

impossible. The agreement is void.

ACCEPTANCE MUST BE ABSOLUTE AND UNCONDITIONAL

In order that an acceptance of a proposal is valid, it must be unconditional and unqualified because a qualified and conditional acceptance amounts to a counter offer and rejection of the original offer. The acceptor must comply with the terms of the offer. A variation or alteration, however, small of the offer will make the acceptance invalid.

EXAMPLE 3 - 'H' offered to sell a property to 'W' for \$ 1000. 'W' in reply made an offer to \$ 950. 'H' refused this offer. Subsequently 'W' wrote that he was prepared to pay \$ 1000. It was held that no contract had been made between the parties because 'W' had rejected the original proposal. A counter offer is thus no acceptance of an original offer.

[*Hyde v. Wrench*. 1840. 3 Beau. 334].

Q. What are different kinds of contract? Distinguish between void and voidable contract.

A. 1) VALID CONTRACTS : Contracts which fulfil all essential elements of a valid contract, (as laid down by sec. 10) are enforceable at law by both the parties to it. Such contracts are called valid contracts.

Illustration : 'A' offers to sell his house for Rs. 25,000/- to 'B', and 'B' agrees to buy it for this price. It is a valid contract.

2) VOID CONTRACTS : It is an agreement without any legal effect. It is nullity. A contract may be void from the very beginning (void-ab-initio) or it may become void subsequently. A void contract cannot be enforced by either party. It is wrong to talk of a void contract because when the contract is void it is not contract at all, as is not enforceable by law. The right term is therefore "void agreement" (not void contract).

Ex: Examples of a void agreement are, a contract to do impossible acts.

3) VOIDABLE CONTRACT : An agreement which is enforceable by law at the option of one or more parties thereto (but not at the option of the other or others) is voidable contract. A contract is voidable when one of the parties to the contract has not exercised his free consent.

Eg:- Voidable contracts are those which are induced by coercion (sec. 15) under influence (sec. 16)

fraud (sec: 17) or misrepresentation (sec: 18). The person whose consent was not freely given may avoid the contract. It follows that such a contract is good and valid until it is avoided. Once it is avoided it is void. But if the party chooses to accept it, the contract continues to be valid.

Illustration: 'A' promises to sell his ~~old~~ car to 'B' for Rs. 1000/- the consent of A is obtained by coercion. The contract is voidable at the option of A' because his consent of 'A' is not free. A may cancel the contract or elect to be bound by it. If he cancels it, it becomes a void contract. But if he elects to confirm it, it becomes a valid contract.

4) UNENFORCEABLE CONTRACT : An unenforceable contract is a contract which is otherwise valid but cannot be enforced due to some technical defect, for egs:- If a contract require registration was not registered, it would be unenforceable. Such a contract may become enforceable in future if its technical defect is cured.

For eg:- If a contract is undamped, the contract is unenforceable. But if the necessary stamp is permitted to be affixed, and it is actually affixed also the contract becomes enforceable.

5) ILLEGAL CONTRACT :- A contract which is ~~illegal~~ against law or which is criminal in nature or which is immoral is an illegal contract or more rightly "illegal agreement". It is rightly said that "all illegal agreements are void but all void agreements (or contracts) are not necessarily illegal".

for instance, an agreement with a minor is void but not illegal. further, an illegal agreement is not only void as between immediate parties but has the further effect that collateral transaction to it are also void.

Illustration : A agrees with B to murder C for Rs. 500/- to be paid by B. Murder is a crime and is punishable under the IPC. the contract is illegal. If B takes loan of Rs. 500/- from X and if knows that B wants this loan for illegal purpose of murdering C, this collateral contract between B and X also becomes illegal.

(a) Executed contract :- This is also called as unilateral contract in which one party to the contract has performed his part at the time of the contract and an obligation is outstanding only against the other.

for example:- A has paid Rs. 5 to B in consideration of which B promised to deliver a book to A. B's part to deliver the book is outstanding while A has performed his part. This is an executed contract.

(b) executory contract :- This is also called as bilateral contract, in which both the obligations are outstanding.

for ex. A promises to pay Rs. 5 to B, in consideration of B's promise to deliver a book. Both the promises are outstanding. This is called executory contract.

Que :- Define proposal. Explain its essentials. When is the communication of proposal, acceptance and revocation said to be completed? Give illustration. State rules as to offer, offer and acceptance.

Ans :- Essential of an offer (proposal) : 1) It must contain either definite terms or terms capable of being made definite.

Montreal Gas Co. vs. Vasey: It was held in this case, that a clause to favourably consider the application for renewal, is ambiguous and not binding the company.

Taylor vs Porington: The terms to put the house into thorough repairs and decorate drawing rooms according to present style, were held uncertain. In other case, where the offer contains that "If the horse was too lucky to him, he would give \$ 5 more", the terms were held to be loose and vague.

② It must intend to give rise to legal consequences.

Balfour vs. Balfour :- A husband promised to pay \$ 30 per month to his wife, staying away from him. Held that the promise was never intended to be enforced in law.

③ It must ~~intend~~ be distinguished from a quotation or an invitation to offer. Harvey vs Facey :- A telegraphed to B, "will you sell us Bumper Hall pen? Telegraph lowest cash price" B replied, "Lowest price Bumper Hall pen \$ 900". A telegraphed that he would buy at that price. It was held in this case, that mere statement of prices is not an offer. Hence, a catalogue or price list or tenders invited for the supply of goods are not proposals".

④ An offer may be made to an individual, or addressed to the world at large. An offer is called a specific offer when it is made to a particular person.

⑤ An offer is different from a tender or an option. Mr. A offers to supply goods at a particular date for a particular period from a certain date. If this offer is accepted by B, it is called a tender. It becomes an acceptance only when B places an order for a part of the goods. When an offeror agrees for consideration, not to revoke an offer until a particular date, it is called an option which binds the offeror.

⑥ An offer must be communicated to the offeree." An offer is made when (and not until) it is communicated to be offeree:

* Fitch vs. Snedaker : A person gave information without knowing that an award was offered for it and claimed that award subsequently. It was held that he was not entitled to the award as he was not aware of the same.

* Sec 4 communication when complete:- The communication of a proposal is complete, when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete ; as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.

Illustration :- ① A proposes by letters, to sell a house to B at a certain price . The communication of the proposal is complete when B receives the letter. ② B accepts A's proposal by a letter sent by post . The communication of the acceptance is complete as against A, when the letter is posted ; as against B when the letter is received by A. ③ A revokes his proposal by telegram. The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B received it. B revokes his acceptance by telegram, B's revocation is complete as against A when it reaches him.

* Sec 5 Revocation of proposal and acceptance:- A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration :- A proposes, by a letter sent by post to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance but not ~~afterwards~~ afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

* [Sec 6] Revocation how made : A proposal (offer) is revoked-

- ① By the communication of notice of revocation by the proposer to the other party.
- ② By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed by the lapse of a reasonable time without communication of the acceptance.
- ③ By the failure of the acceptor to fulfill a condition precedent to acceptance or
- ④ By the death or insanity of the proposer, if the ~~fact~~ fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Ques who are competent to contract? what do you mean by capacity to enter into a contract?

Ans :-

[Section 11] :- provides that "Every person is competent to contract who is of the age of majority (according to the law to which he is subject) and who is of sound mind and is not disqualified from contracting by any law to which he is subject".

Minor :- A minor is a person who has not completed 18 yrs. of his/her age. However, where a guardian of a minor's person

or property has been appointed or a court of wards has taken charge of minor's property, a minor will attain the age of majority after 21 yrs. of age.

Section 12 : "A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest."

Persons disqualifed by law to Enter into Contract

1) An alien enemy :- is a person whose sovereign or state is at war with the Government of India. During the war an alien enemy cannot contact with an Indian citizen. He is also not allowed to file a suit against an Indian citizen without a licence or permission from the Government of India.

2) foreign Sovereign and Ambassadors :- They have been given honourable status and therefore enjoy some special privileges. Foreign sovereigns can not be sued unless they voluntarily submit or agree to the jurisdiction of the local courts.

3) Convicts :- If a convict is undergoing imprisonment he is incapable of entering into contract. After the imprisonment is over or he is pardoned, he again becomes incapable of contracting. Sometimes he is granted a ticket of leave, i.e. he is lawfully allowed a leave (parole) for sometime; during this period of leave he can enter into a contract.

4) Insolvents :- When a person is declared insolvent his property rests in an officer appointed by the court. Such an officer is called official Receiver. He sells the assets and distributes the proceeds among the creditors of the insolvent. Unless the insolvent is discharged, he is not capable of entering into contract.

5) Corporations :- A corporation is ~~considered~~ a special type of company created by special Act of ~~legislative~~ legislature e.g. state & Trading corporation of India. A corporation or a company can enter into contract only if it is authorised by the Act by which it was created or by its Memorandum of Association. A company or corporation cannot do anything in excess of the powers given to it by its memorandum.

6) Married Woman :- Under Indian Law men and women have equal contractual capacity. Therefore, a woman (married or unmarried) can enter into a contract if she is major, has sound mind and is not disqualified by any law. In England, before 1983 married woman was incapable to enter into a contract. Now in England also she is capable of contracting just like a married woman in India.

7) Lawyer :- Indian law does not disqualify a lawyer from claiming his fees from his client. Therefore, if a client fails to pay the fees of a lawyer who is registered as an advocate of a High court, such an advocate can file suit to recover his fees. But in England a barrister cannot sue his client for his fees.

Que

Explain the minor's position with the help of case law.

Ans:-

A ~~person~~ A minor is a person who is not a major. He attains majority on completion of 21 yrs in England and 18 yrs in India. Even ~~in~~ in India, he attains majority on completion of 21 yrs when his property is managed by court of wards of guardian.

1) In Indian law, a contract by a minor is void ab initio

Mohoribibi Vs Dhamodas Ghose: A minor had executed a mortgage for Rs. 20,000/- the money lender had paid Rs. 8,000/- on the security of mortgage. The minor sued for setting aside the mortgage. It was held that a contract by a minor was void and that the amount advanced by the lender could not be recovered under section 64 and 65 of the Indian Contract Act.

2) A contract entered into by a major during his minority cannot be ratified (confirmed) by him on attaining majority. Such a ratified agreement can not be enforced against him. If it is necessary, a fresh contract should be made on attaining majority. But the fresh contract will require fresh consideration.

Arumugam VS Duraisinga:- A minor, having given a promissory note during his minority, has executed another note on attaining majority in satisfaction of the previous note. It was held that the note executed by the minor is void.

3) A contract entered into by a minor by fraudulently misrepresenting his age, is void. He cannot be stopped from taking plea of minority, because there cannot be any estoppel against the statute.

4) "Minors can have no privilege to cheat men" :- The law protects minors so that people may not take undue advantage of the young age of minors. But the minors also are not allowed to cheat majors. So, if a minor receives goods on credit, while payment cannot be enforced, goods can be recovered, if recovery is possible.

Illustration:- A minor misrepresents his age and obtains a scooter on credit and executes a promissory note. The trader cannot sue on the note, as a contract by minor is void. If the

If the scooter is still with him, the court may order restitution i.e. to return the scooter to the trader. If the minor sells away the scooter, he will be stopped from spending the sale proceed. If he has already spent the proceeds nothing can be recovered from him because he is not personally liable.

5) The property of the minor is liable for the necessaries supplied to him, if the goods supplied are necessities suitable to the condition of his life and status. Even here, he is not personally liable, but his property only is liable, so a trader can recover his money u/s 68 of the Indian contract Act.

Kedar Nath vs Ajudnia :- It was held that money advanced to a minor for his marriage expenses is recoverable.

6) While a sale or mortgage by a minor is void, a ~~sale~~ sale or mortgage in favour of a minor is enforceable by him.

7) A contract by a guardian on behalf of the minor is enforceable by or against the minor, provided the guardian is competent to contract and the contract is beneficial to the minor. But he cannot sell immovable property without obtaining the consent of the court.

8) Under section 30 of Indian Partnership Act, a minor may be admitted to the benefits (but not to losses) of partnership with the consent of all the partners.

Que :- What is consent? when it is free?

Ans :- **Section 13** "consent" defined :- Two or more persons are said to consent when they agree upon the same thing in the same sense

* **Section 14** "Free consent": Consent is said to be free when it is not caused by coercion, Undue influence, fraud, misrepresentation or mistake.

Consent is said to be so caused when it would not have been given but for (without) the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

* **Section 15 Coercion**: Coercion is the committing (or threatening to commit any act forbidden by the IPC, or the ~~unlawful~~ unlawful detaining (or threatening to detain) any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

for ex. ① In the case of Renganayakamma vs Alwar Chetti where a young girl of 13 yrs. was forced to adopt a child to her deceased husband by the relatives, preventing the dead body from being removed by cremation, it was held that the consent of the girl was not free

② 'A' threatens to kill B and obtains his (B's) consent to a contract. This is a coercion

③ A Hindu induced his wife and son to execute a release in favour of his brother B by giving a threat of suicide. This threat is coercion and hence the release deed is voidable at the option of the executants.

Chikam Amiraju vs - shushamma.

18

Section 16 :- "A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other". A person is deemed to be in a position to dominate the will of other - ① where he holds a real or apparent authority over the other or where he stands in a fiduciary relationship to the other, or ② where ~~the~~ he enters into contract with a person suffering from old age, illness, or mental or bodily distress.

There is presumption of undue influence in the relationship of parent and child, guardian and ward, teacher and student, lawyer and client etc. The burden of proving that contract was not induced by undue influence lies upon the person who is in a position to dominate the will of the other.

Difference between Coercion and undue influence :-

- ① In the case of coercion parties may not be related, but there is some relationship in the case of undue influence.
- ② In coercion, the consent is given under the threat of an offence while in undue influence consent is given under moral influence.
- ③ Lastly in coercion there is the use of physical force while in undue influence there is the use of moral force, or mental pressure.

Coercion - Duress : Coercion in India is known as duress in England. If the consent of the other party to a contract is obtained under fear caused by threats of bodily harm, it is

Known as the use of duress. The scope of the term coercion is wider than the term duress. The following are the points of distinction betⁿ the two:

- ① Coercion may be directed even against a third party. But duress must be aimed against the life of the contracting party, his wife or children.
- ② Coercion may be aimed against the person or property of another but duress must be aimed against the life or liberty of the person.
- ③ Duress must proceed from the party to the contract or his agent, Coercion may proceed from any person.
- ④ Duress must be such as to cause immediate violence. In the case of the coercion, it is not necessary.

* **Section 17 :** "fraud" defined - "Fraud" means and includes any of the following act committed by a party to a contract (or with his connivance, or by his agent) with intent to deceive another party thereto or his agent or to induce him to enter into the contract -

- ① the suggestion, (as to a fact) of that which is not true by one who does not believe it to be true.
- ② the active concealment of a fact by one having knowledge or belief of the fact,
- ③ a promise made without any intention of performing, it
- ④ any other act fitted to deceive,
- ⑤ any such act or omission as the law specially declares to be fraudulent.

Explanation :- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, (regard being had to them) it is the duty of the person

keeping silence to speak or unless his silence is (in itself) equivalent to speech.

- Illustration :-
- (A) A sells, by auction to B, a horse, which A knows to be unsound - A says nothing to B about the horse's unsoundness. This is not fraud in A.
 - (B) B is A's daughter, and has come of age. Here the relation betw the parties would make it A's duty to tell B if the horse is unsound.
 - (C) B says to A - "if you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

Difference - fraud and undue influence :-

- ① In undue influence there must be some relation existing betw the parties while in case of fraud no such relations are necessary.
- ② Dominating of will is necessary in undue influence while it is not so in fraud.
- ③ In fraud there must be intent to deceive while in undue influence there is no deceiving.
- ④ Undue influence is more possible in a contract with a person suffering from old age, illness or mental or bodily distress while fraud is possible with anybody.
- ⑤ There is presumption of undue influence in certain relationship while there is no such presumption of fraud in any relationship.

Section 18 :- "misrepresentation" means and includes -

- ① The positive assertion, (in the 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)

- ④ 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 any one claiming under him).
- ⑤ 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.

Difference - fraud and misrepresentation.

Fraud

- ① There is intention to deceive
- ② Means of discovering truth are immaterial
- ③ Damages can be claimed.
- ① There is no such intention
- ② Means of discovering truth are material
- ③ Damages cannot be claimed.

* **Section 19] Validity of agreements without free consent :**

when consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

* **Section 20] Agreement void where both parties are under mistakes as to matter of fact :-** where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation :- A wrong opinion as to the value of the thing (which from the subject matter of the agreement) is not to be deemed a mistake as to a matter of fact.

Illustration :- A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargaining, though neither party was aware of the fact. The agreement is void.

★

Section 21 Effect of mistakes as to law — A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India (foreign law) has the same effect as a mistake of fact.

Illustration :- A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

★

Section 22 contract caused by mistake of one party as to matter of fact — A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Mistake of law — 1) mistake of Indian law (Not voidable sec. 21)
2) Mistake of foreign law [void, if mistake is bilateral Sec. 20 and 22]

Mistake of fact — 1) Bilateral mistake [mistake of both parties void — sec. 20]
2) Unilateral mistake [mistake of one party]
Not voidable sec. 22

Que

Write a short note on — contract with pardanashin Ladies.

Ans

There is a presumption of undue influence in case of contract by or with a 'pardanashin' Woman. She can void any contract entered into by her on the plea of undue influence and it is for the other party to prove that no undue influence was used. For proving the absence of undue influence, the other party will have to satisfy the court : ① that the terms of contract were fully explained to her ② that she understood their implications and was free to have independent advice in the matter and ③ that she freely consented to the contract. It may be noted

the term "pandanashin" here refers to a woman who observes complete seclusion (Parda) from contracts with people outside her own family, because of the custom of her community and one does not become 'pandanashin' simply because she lives in some degree of seclusion [Shaik Ismaili vs. Amir Bibi]. further note that the protection granted to pandanashin woman is also extended to illiterate and ignorant ladies who are equally exposed to the danger and risk of an unfair deal. [Sonia Parshuni - vs - Baksha]

Ques "Mere consideration is not sufficient, it must be lawful."

Ans 4 **Section 23** lays down that the consideration or object of an agreement is lawful except in the following cases:-

- ① when it is forbidden by law: for example A, B and C enter into an agreement for the division among them, of the gain acquired, by them fraud. The agreement is void as the object is unlawful.
- ② when it defeats the provision of law: where an insolvent debtor agrees to pay a creditor in full, before he pays to other creditors the agreement is void.
- ③ when it is fraudulent
- ④ when it causes injury to the person or property of another.

for ex:- A promises to pay Rs. 10 to B, if B beats C. The agreement is void.

- ⑤ when it is immoral

for ex:- A agrees to let her daughter on hire to B for concubinage. The agreement is void as it is immoral.

Gauri Nath Mukherjee -vs- Madhumani Peshkar :- It was held that arrears of rent for a house occupied by a prostitute for the purpose of carrying on her vocation cannot be recovered.

- ⑥ when it is opposed to public policy:- No contract can be entered

into to injure the interests of the public at large. So contracts for trading with enemy, or for stifling prosecution, champerty and maintenance, etc. are all illegal.

Problem 915 : A promises to obtain for B employment in the public service and B promises to pay Rs. 1000 to A. What is the nature of agreement? Is it enforceable?

Solution : The agreement is not enforceable (void) because the consideration for it is unlawful as per section 23.

Que which agreements are expressly declared void? OR write a short note on "opposed to public policy".

Ans Following agreements are expressly declared to be void on the ground that they are opposed to the well-being of the public at large i.e. against public policy.

① An agreement with an alien enemy is void :- If a contract is entered into before the declaration of war, its performance will be suspended during the period of war. If the war continues for a long time, the contract becomes void on the ground of impossibility of performance.

② An agreement to stifle (prevent) prosecution is void:

For ex : A commits an offence, B who knows everything about the crime, promises A not to expose him and in consideration B gets a promise from A to pay him (B) Rs. 500/- This agreement stifles prosecution and hence void. It is said, "you cannot make a trade of your felony," you cannot convert a crime into a source of profit." Agreement is restraint of legal proceedings are void.

③ Maintenance and Champerty :- An agreement which tends to abuse (misuse) legal process is void — An agreement to promote

Litigation and maintain a suit in which the promisor has no legal interest is called maintenance. Champerty is an agreement whereby a person promises to assist another in the recovering of his property and to share the proceeds of such action. Both Champerty and maintenance are illegal in England. In Indian Law they are not illegal unless they are totally unacceptable and are not made with the bonafide object of assisting another in getting the relief.

④ Agreement creating interest opposed to Duty is void :-

If a person enters into an agreement whereby he is bound to do something which is against his public or professional duties the agreement is void on the ground of public policy.

for ex: An agreement by a newspaper proprietor not to comment on the conduct of particular person is unlawful, being opposed to public policy (Newell vs. Dominion of Canada News Co. Ltd. 1915)

⑤ An agreement in restraint of parental rights is void.

Illustration: A father agreed to transfer the guardianship of his two minor sons permanently. Later on he filed a suit to recover their custody. The court allowed the father to get back his sons - Giudu - vs - Mrs. Annie Besant

⑥ Agreement without consideration is void (section 25)

⑦ Section 26 lays down that an agreement in restraint of marriage of any person (other than a minor) is void.

Lowe -vs- Peers: A promises to marry B and none else (and in default, to pay Rs. 1000/-). It was held that the contract is void.

- ⑧ An agreement in restraint of personal freedom is void.
:- Ramasastriar-v-s- Ambedkar Koren — A obtained a loan from B and agreed to work in lieu of interest. Such work was paid for at a low rate. It was held that the agreement was void on the ground that it in fact amounted to slavery.
- ⑨ An agreement which interferes with the course of justice is void :- Nandkishore-v-s- Kunjbehari → where a person promised to assist delaying execution of 3 decree, it was held that the promise was void.
- * ⑩ As per section 27 agreement in restraint of trade is void except :—
 A) In case of sale of goodwill putting reasonable restrictions on the seller not to ~~carry~~ carry on similar business within specified local limits.
 B) In case of service contracts : Like servicing doctors are generally barred from private practice during term of their employment in hospitals.
 C) In the case of exclusive agency the principal may restrict the agent from selling goods of another. similarly in case of an exclusive contract a film producer may restrict ~~the agent~~ ~~from selling goods of another~~ the artist from working in the film of any other producer.
 D) Trade combinations may also restrict their members from selling below a certain fixed price.
- * ⑪ As per section 29 agreements, the meaning of which is not certain, or capable of being made certain, are void.
- * ⑫ As per section 30 agreements by way of wager are void.

que

"An agreement without consideration is void." Explain this principle with exceptions. OR "consideration is the life of contract." Discuss what are exceptions to it?

Ans

Consideration being one of the essential elements of a valid contract, the general rule is that "an agreement made without consideration is void". But there are a few exceptions to the rule, where an agreement without consideration will be perfectly valid and binding. These exceptions are as follows.

① Agreement made on account of natural love and affection : [section 25(1)] An agreement made without consideration is enforceable if, it is expressed 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.

Illustrations : ① A promises, for no consideration, to give to B Rs. 1000/- This is void agreement

② A for natural love and affection, promised to give his son B, Rs. 1000/- A puts his promises to B into writing and registers it. This is a contract.

③ A registered agreement, whereby an elder brother, on account of natural love and affection promised to pay the debts of his younger brother was held to be valid and binding and the younger brother could sue the elder brother in the event of his not carrying out the agreement (Venkataswamy vs. Rangaswamy)

④ Agreement to compensate for past voluntary service : [sec. 25(2)]

A promise made without consideration is also valid, if it is a promise to compensate, (wholly or in part) a person who has already voluntarily done something for the promisor, or done something which the promisor was legally compellable to do.

Illustrations : ① A finds B's purse and gives it to him, B promises

to give A Rs. 50/- This is a contract

- ⑥ A supports B's infant son. B promises to pay A's expense in so doing. This is a contract.
- ⑦ A rescued B from drowning in the river, and B appreciates the service that has been rendered, promises to pay Rs. 100/- to A. There is a contract.

⑧ Agreement to pay time-barred debt : [sec 25(3)] where there is an agreement, made in writing and signed by the debtor or by his authorised agent, to pay (wholly or in part) a debt barred by the law of limitation, the agreement valid even though it is not supported by any consideration. A time barred debt cannot be recovered and therefore a promise to repay such a debt is without consideration hence the importance of the present exception.

Illustration : A owes B Rs. 1000/- but the debt is barred by the Limitation Act. A signs a written promise to pay Rs. 500/- on account of the debt. This is a valid contract and can be enforced.

⑨ Contract of agency : sec. 185 of the Contract Act lays down that no consideration is necessary to create an agency.

⑩ For compromising a due debt, i.e. agreeing to accept less than what is due, no consideration is necessary. Similarly an agreement to extend time for performance of contract need not be supported by consideration.

⑪ Contribution to charity : A promise to contribute to charity (though gratuitous) would be enforceable (if on the faith of the promised subscription, the promisee takes definite steps in furtherance of the object and undertakes a liability) to the extent of liability incurred but not exceeding the promised amount of subscription.

Adequacy of consideration : An agreement to which the consent of the promisor is freely given is not void only because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

Illustration : (a) A agrees to sell a house worth Rs. 1000/- for Rs. 10. A's consent to the agreement was freely given. This agreement is a contract notwithstanding the inadequacy of the consideration. (b) A agrees to sell a horse worth Rs. 1000/- for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the court should take into account in considering whether or not A's consent was freely given.

Q2. Write a short note on past consideration.

Past consideration When the consideration for a present promise was given before the date of the promise, it is said to be past consideration. A past consideration, if given at the request of the promisor will support a subsequent promise. A past consideration is as good as present or future consideration. Under the English law, consideration must be present or future, and there is no such thing as past consideration. If the servants put forth extra work in consideration whereof a bonus is promised to them, by the employer, it is a promise for past services which is good under Indian law.

Examples :- (a) A lawyer, gave up his practice and served as manager of a land-owner at the latter's request in lieu of which the land owner subsequently promised a pension. It was held that there was good past consideration.

(b) P ~~s~~ rendered services to D during his minority at D's request, which were continued after D ceased to be minor. After attaining majority D promised to pay an annuity to P for the services

rendered in the past. It was held that this was a good contract and P can recover the money (Sindha vs Abraham (1895) 20 Bom. 755)

Ques

"A stranger to a consideration can sue but a stranger to a contract cannot sue upon it" - Discuss fully and state the exceptions, if any

Ans

In English law, consideration must move from the promisee also. So, a stranger to consideration cannot sue on an agreement.

Tweedle vs Atkinson :- The father and father-in-law of a groom agreed that each would pay a certain sum of money to the groom. The groom brought a suit on the executors of his father-in-law for payment of the amount due, it was held that a stranger to consideration could not sue though the promise was made for his benefit.

But in Indian Law, according to Sec 2(d) of the Indian Contract Act, the consideration may come from the promisee or any other person.

for ex :- A, in consideration of Rs.5 received from B, promises C to deliver a book to him(C). This contract is enforceable by C, though he has not supplied consideration.

But a stranger to consideration is different from a stranger to contract who cannot sue on a contract in English law as well as in Indian law.

for ex :- A receives Rs.5 from B and promises B to deliver a book to C. Here, C is a stranger to consideration as well as a stranger to contract and cannot sue A for the delivery of the book, both according to English law and Indian law.

A receives Rs.5 from B and promises B to deliver a book to C. C cannot sue on this contract as he has neither supplied the consideration nor is a party to the contract. So a stranger to contract can not sue, as there is no privity of contract bet' him and the promisor.

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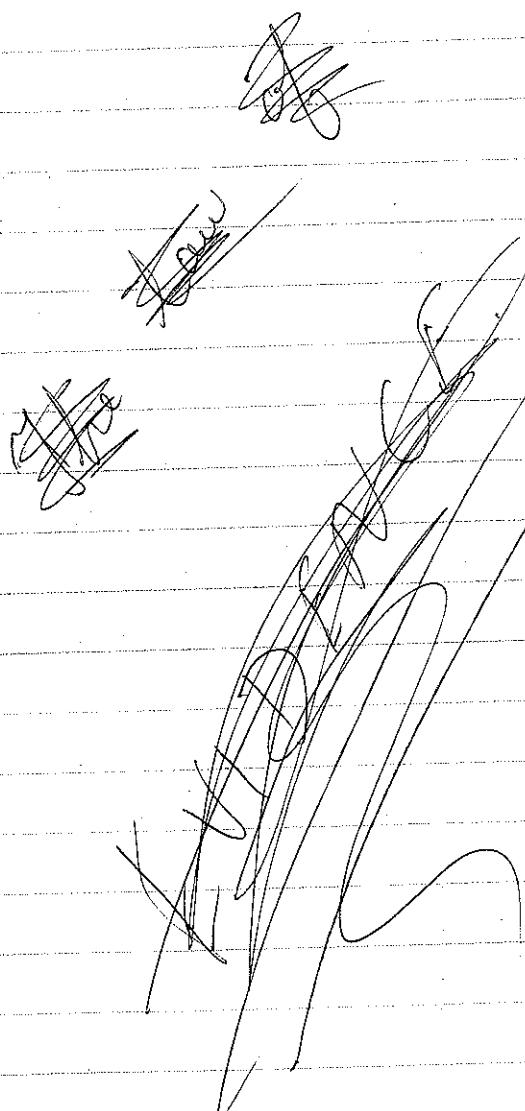
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Following are the exceptions to the rule that a stranger to contract can not sue:-

- ① In the case of a trust, a beneficiary can enforce the provisions of the trust.

for ex :- A creates a trust in favour of F and appoints B, C and ~~and~~ D as trustees. F can enforce the provisions of the trust in his favour.

- ② By acknowledgement of liability or By the Rule of Estoppel:- A pays Rs. 500 to B, to be given to C. B acknowledges to C that he holds the amount for him. C can sue and recover the amount.
- ③ when a charge on some specific immovable property is created for the benefit of a third party, such party can sue.

Khwajd Muhammad vs Hussaini Begam :- There was an agreement betⁿ the father of the groom and the father of the bride to pay an allowance to the daughter-in-law and a charge on specific immovable property was created. It was held that she was entitled to sue.

- ④ The female members of a Hindu Joint Family can sue on agreements entered into by the male members of the family for their maintenance and marriage expenses, etc.
- ⑤ A principal can sue third parties on agreement entered into by his agent on his behalf
- ⑥ An assignee can also sue on the basis of the assignment.

Que

Write a short note on "Wagering Agreement".

Ans :-

Section 30 Agreements by way of wagers void :- Agreements by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager. A wager means a bet, the subject matter of the bet may be anything. Wager is a game of chance in which there will be either gain or loss depending fully on an uncertain event. Thus there are following essentials of wager :-

- (A) Uncertain event
- (B) Mutual chances of gain and loss
- (C) No other interest in the happening of the event than the sum of stake.
- (D) No control over the event

Illustration :- A bets with B that it will rain on Monday. If it rains B will pay Rs. 500/- and if it does not A will pay Rs. 500/- It is an agreement by way of wager, and hence, void. The winner cannot file a suit against the loser for recovery of bet amount.

Exception in favour of certain prizes for horse of racing :-

This section shall not be deemed to render unlawful, a subscription or contribution, or agreement to subscribe or contribute made or entered into for or towards any plate prize or sum of money, of the value of or amount of Rs. 500/- or upwards to be awarded to the winner or winners of any horse-race.

Kinds of wagering agreement :-

- (1) Lotteries is a game of chance and hence a wagering agreement.
- (2) A cross word puzzle competition involving a good measure of skill for its successful solution is not wager. But if its prizes depend upon the correspondence of the competitor's solution with previously prepared

Solution Kept with editor of a newspaper, it is a lottery or game of chance and wagering transaction.

- ③ Prizes in game of skill exceeding Rs. 1000/- are wager.
- ④ Horse race prize below Rs. 500/- are wager.
- ⑤ Gambling of any type is wager.

Que What are "contingent contract"?

Ans **Section 31** A contract may be an absolute contract or a contingent contract. An absolute contract is one in which the promisor binds himself to performance in any event without any condition. "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."

Where, for example goods are sent on approval the contract is contingent one depending on the act of the buyer to accept or reject the goods, other examples

- ① A contracts to pay Rs. 10,000/- to B. If B's house is burnt. This is a contingent contract.
- ② A agrees to sell a certain piece of land to B in case he succeeds in his litigation concerning that land. This is a contingent contract.

Essential of contingent contract :-

- ① Its performance depends upon the happening or non-happening (in future) of some event. It is dependence on a future event which distinguishes a contingent contract from other contracts. But if the performance of the contract depends on the mere will or pleasure of the promisor it is no promise at all and hence of no value. Thus if A promises to pay Rs. to B Rs. 1000/- if A so choose, is not promise at all and therefore is not a contingent contract.

② The event must be uncertain. If the event is bound to happen (certain) and the contract will have to be performed in any case, it is not contingent contract.

③ The event must be collateral, i.e. connected to the contract.

④ As per section 36 Agreement contingent on impossible events are void.

for ex - A agrees to pay Rs. 1000/- to B if two straight lines should enclose a square. The agreement is void. Contract of insurance, contract of indemnity and contract of guarantee etc. are common examples of contingent contract.

Wagering agreement and Contingent contract :-

① A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.

② A wagering agreement is void whereas a contingent contract is valid.

③ In a wagering agreement the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. This is not so in the contingent contract.

Difference bet. wager and contract of Insurance :-

A contract of insurance is not a wager due to the following reasons.

① While any person can enter into a wagering contract only persons having insurable interest in life or property can enter into a contract of insurance.

- ② In the case of fire and marine insurance, only actual loss is paid. But the whole amount for which the policy is taken is not paid.
- ③ In the case of life insurance policy, the amount of the policy is specified at the time of contract itself, as it is difficult to estimate the loss caused by the death of the assured.

Ques What is tender of performance? When can it be valid? What is the effect of refusal to accept offer of performance?

Ans Section 37 Obligation of parties to contracts — The parties of a contract must either perform, or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Act, or of any other law. Promises bind the representative of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustration — (a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before the day. A's representatives are bound to deliver the goods to B and B is bound to pay Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Section 38 Effect of refusal to accept offer of performance — Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil, the following conditions:

- ① It must be unconditional;
- ② It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing then and there to do the whole or what he is bound by his promise to do;
- ③ If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration - A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is the cotton of the quality contracted for and that there are 100 bales.



Section 39 Effect refusal of refusal of party to perform promise wholly — when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has ~~sing~~ signified by words or conduct, his acquiescence in its continuance.

Illustration - A, a singer, enters into a contract with B, the manager of a theater, to sing at his theatre two nights in every week during the next two months, and B engages to pay her Rs. 100 for each night. On the sixth night, A wilfully absent herself,

from the theatre. B is at liberty, to put an end to the contract.

- (b) A, a singer, enters into a contract with B the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of Rs. 100 for each night. On the sixth night, A wilfully absents herself with the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

the Que What do you mean by reciprocal promises? State the order of performance of reciprocal promises?

Ans Reciprocal promises - Promises which form the consideration or part of the consideration for each other are called reciprocal promises.

Illustration: ① A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods unless A is ready and willing to deliver them on payment.

② A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. A need not deliver, unless B is ready and willing to pay the first instalment on delivery. B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Section 52 Order of performance of reciprocal promises -

where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in

that order, and where the order is not expressly fixed by the contract, they shall be performed in the order which the nature of the transaction requires.

Illustrations : ① A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

② A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Que

Explain and illustrate the various modes in which a contract may be discharged.

Ans

A contract may be discharged (ended) in the following ways:

1) By Performance : A contract may be discharged by the performance or by an offer by the parties to the contract to perform their promises. In the absence of a contract to the contrary, the legal representatives of the promiser are bound by the promises in the event of the death of the promiser before the performance of the contract.

Illustration : A promises to deliver 100 bags of rice to B on 1st January, 1984. If A dies before that date, A's legal representative are bound to deliver the goods and B is bound to pay the amount.

2) By Breach :- when a promisor had refused to perform or disabled himself from performing his promise, the promisee may put an end to the contract.

Illustration:- A contracts with the manager of a theatre to sing at his theatre two nights in every week during the next three months. The manager agreed to pay the singer Rs. 100/- for each night's performance. A was absent willfully on the 5th night. The manager may put an end to the contract. However, if the promisee (Manager) signifies his consent in the continuance of the contract, he cannot repudiate the contract subsequently. So if in the above example, the manager has allowed A to give performance on the sixth night, it is said that he has consented in the continuance of the contract.

3) By frustration of Contract : Frustration may be defined as the premature end of a contract b/w the parties due to the happening of an intervening event or change of circumstances which are fundamental to the contract, by external causes beyond the contemplation of the parties. In other words frustration means the discharge of a contract which has become impossible of performance due to external causes beyond the contemplation and control of the parties because the "Law does not compel the impossible", so a contract to do an impossible act is void. Hence such contract need not be performed. sec. 56

(A) Impossibility existing at the time of making of contract :-
 If contract was capable of performance at the time of formation but subsequently it becomes impossible to perform the contract, such impossibility is known as supervening impossibility and when it is caused by the circumstances beyond the control of the parties, the parties are discharged from the performance. Such impossibility may arise in any of the following way:

- ① by declaration of war :- A contracts to take in cargo for B at a foreign port. A's Government (afterwards) declares war against the country in which the port is situated. The contract

becomes void when the war is declared.

- ⑥ by destruction of the subject matter :- A agrees to let a music hall to B. But the hall was destroyed by fire. It was held that the contract becomes void by the destruction of the subject matter ~~unless the war is declared~~. matter of the contract (Taylor vs Calfwell)
- ⑦ by death or disappearance of the parties to the contract. A singer agreed to give a performance. But he had fallen ill on the day of performance. The contract became void.
- ⑧ Failure of ultimate purpose :- where the ultimate purpose for which the contract was entered into fails, the contract is discharged, although there is no destruction of any property affected by the contract and the performance of the contract remains possible. The leading case of Krell vs Henry is a good illustration on the point :- 'H' hired a room in London from K with the object (as both parties well knew) of using the room to ~~view~~ view the intended coronation procession of King Edward VII on a particular date. By reason of the king's illness the procession was postponed. H consequently could not use the room although he could go there and sit but with no purpose as there was no procession. K filed a suit for the recovery of rent. It was held that H need not pay the rent as the contract ~~was~~ was discharged on failure of the ultimate purpose or on postponement of the procession which was foundation of the contract.

A and B contract to marry each other. Before the time fixed for the marriage, A goes Mad. The contract becomes void. This is known as the "frustration of the contract" because the contract

can not be performed as originally intended by the parties.

② Subsequent change of law : A licensed wholesaler of wine agreed to supply a particular quantity of wine to B on 1st March but before that date the Government declares complete prohibition. The contract will become void.

Section 65 lays down that : " When an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it."

Problem — Whether contract is frustrated by accident or illness of a party?

Solution — Yes, the contract will be frustrated by a serious accident or serious illness of a party because such an event will disable a party from performing his part of the contract and also he has no control over accident or illness.

Problem — Whether a contract is frustrated by Economical hardship to perform contract?

Answer — No, Economical hardship is not 'an external cause beyond the contemplation of and control of the parties'.

4) By lapse of time :- If the contract is not performed, the injured party must take action within a specific period failing which the contract shall be treated as discharged.

5) By operation of law :- In case of contracts involving personal skill or ability like singing, painting, acting etc. the contract is

ended on the death of the promisor, so also when a person is declared insolvent he is discharged from all his previous liability. If a party makes material alteration in the contract, contract can be terminated by injured party. If rights and liabilities vest in the same person, the contract is discharged.

for ex: If a tenant purchases the house, he will not have to pay the rent any more.

6) **Discharged by agreement or consent** :- The contractual obligations are created by mutual agreement, so they may be discharged by mutual agreement.

que:- what is quasi contract? "A quasi contract is not a contract at all, it is an obligation which the law creates". Discuss OR "A person shall not be allowed to enrich himself unjustly at the expenses of another" Explain.

Ans
Under certain circumstances, a person may receive a benefit ~~to~~ to which the law regards another person as better entitled, or for which the law considers he should pay to other person even though there is no contract betⁿ the parties. Such relationships are termed quasi contracts, because, although there is no contract or agreement betⁿ the parties, they are put in the same position as if there were a contract betⁿ them. These relationships are termed quasi-contracts or implied contracts or constructive contracts under the English law and "certain relations resembling those created by contract" under the Indian law. Strictly speaking a quasi contract is not a contract at all. The contract is intentionally entered into, A quasi contract (on the other hand) is created by law, and there is no question of consent.

Section 68 to 72 deal with five kinds of quasi-contractual obligations:-

These are discussed below:-

* **Section 68** claim for necessaries supplied to person incapable of contracting (or on his account) :- If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with ~~necess~~ necessities, suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustration :- ① A supplies to B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property. ② A supplies the wife and children of B, a lunatic with necessities suitable to their condition ~~of~~ in life. A is entitled to be reimbursed from B's property.

* **Section 69** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.

Illustration :- B holds land in Bengal on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrear, his land is advertised of sale by the Government under the revenue law the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease pays to the government the sum due from A. A is bound to make good to B amount so paid.

* **Section 70** obligation of person enjoying benefit of ~~non-gratuitous~~ non-gratuitious ACT :- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit

thereof, the latter is bound to make compensation to be
former in respect of (or to restore) the thing so done or delivered

Illustration :- (a) A, a tradesman, leaves goods at B's house
by mistake. B treats the good as his own. He is bound to
pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation
from B, if the circumstances show that he intended to act
gratuitously.

* **Section 71** Responsibility of finder of goods :- A person who
finds goods belonging to another and takes them into his
custody is subject to the same responsibility as a bailee.

* **Section 72** A person to whom money has been paid, or
anything delivered by mistake or under coercion, must repay
or return it.

Illustration :- (a) A and B jointly owe 100 rupees to C. A alone
pays the amount to C, and B not knowing this fact, pays
100 rupees over again to C; C is bound to repay the amount to B.

Que. State the provisions relating to compensation for loss or
damage caused by breach of contract. State the principles
for the assessment of damages in respect of breach of a contract.
OR Explain the remedies for breach of contract with special
reference to damages.

Ans **Section 73** Compensation for loss or damage caused by breach
of contract :- When a contract has been broken, the party
who suffers by such breach is entitled to receive, from the
party who has broken the contract, compensation for any loss or
damage caused to him thereby, which naturally arose in the
usual course of things from such breach or which the parties knew

when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Liquidated damages and penalty (penal damages) :- Sometimes parties to a contract stipulate (at the time of its formation) that on the breach of contract by either of them, a certain specified sum will be payable as damages. such a sum may amount to either 'liquidated damages' or a penalty.

Liquidated damages represent a sum, fixed or ascertained by parties in the contract which is a fair and genuine pre-estimate of the probable loss that might arise as a result of the breach. A 'penalty' is a sum named in the contract at the time of its making, which is disproportionate to the damage likely to accrue as a result of the breach. It is fixed up with a view to securing the performance of the contract. In other words, 'penalty means an amount fixed in terrorem without any regard to the probable loss'.

Hadley vs- Baxendale The foundation of modern laws of damages (both in India and England) is to be found in the judgment in the case of Hadley vs- Baxendale (1854). The facts of this case were as follows:

X's mill was stopped by the break down of a shaft. He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to, copy it and make a new one. X did not make known to Y that delay would result in loss of profits. By some neglect on the part of Y the delivery of the shaft was delayed in transit beyond a reasonable time. (So that the mill was idle for a longer period than otherwise would have been

the case had there been no breach of the contract of carriage). Held Y was not liable for loss of profits during the period of delay because the circumstances communicated to Y did not show that a delay in the delivery of shaft would entail (result in) loss of profits to the mill.

Alderson observed in this case as follows :-

"where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e. (according to the usual course of things from such breach of contract itself) or such as may reasonably be supposed to have been in the knowledge of both parties at the time they made the contract, as the probable result of breach of it." This statement of law is generally known as the Rule in Hadley vs. Baxendale.

capacity to contract:

Sec. 10 of ICA - 1872 inter alia, declares that the parties must be competent to contract. U/sec every person is competent to contract who is of the age of majority according to the law to which he is subject, & who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Thus the following persons are not competent to contract:

- 1) a minor
- 2) a person of unsound mind.
- 3) a person disqualified by any law.

who is minor :- A minor is a person, U/sec. 3 of Indian majority Act - 1875, who has not attained the age of 18 yrs. However, if a person for whose person or property a guardian is appointed by the court then he attains the age of majority on 21 yrs age. Sec. 11 declares minor not competent to contract.

In Mohori Debi Vs. Dharmodas Ghose (1903) 30 IA 116 (PC) the privy council declared a minor's agreement void. In this case, Dharmodas Ghose executed a mortgage of his house in favour Brahmo Della to secure the repayment of Rs. 20,000/- advanced on 12% interest. Brahmodutta carried on business of money lending at ~~and~~ Calcutta. During this transaction, he was absent. This transaction was carried on for him through his attorney Kedar Nath Mittra and the

money was advanced by his local manager, Debaj Dharmodas Ghose was a minor. He had not attained the age of 21 yrs and his mother, Jagendra Nandini dasi was his guardian appointed by the court when she came to know of his deal going on betw

Dharmodas & Brahmudutta, she informed by a letter to Kedar Nath Mittra through her attorney Bhupendra Nath Bose that Dharmodas Ghose was a minor & she was his mother and guardian appointed by the high court under letter patent of the person and property of ~~Dear~~ Balu Darmadas Ghose. She also informed that any one lending money to D.G. would do that at his own risk. The letter was written on 15th July 1895. The mortgage was executed on 20th July 1895. On the day the mortgage was executed, Kedar Nath got a declaration signed by Dharmodas Ghose that he had come of age of majority on 17th June. & Kedar Nath & Debaj D.Ghose relying on that statement agreed to advance his money. The fact was in full knowledge of Kedar Nath that D.Ghose was a minor.

On 10th Sept. 1895. Dharmodas Ghose through his mother as his guardian and next friend commenced action against Brahmudutta that Dharmodas Ghose was a minor when he executed a mortgage and prayed the declaration that it was void, inoperative and asked for its cancellation. The defense of Brahmudutta was that neither he nor Kedar Nath had knowledge that Dharmodas Ghose was a minor when the money was advanced to him. Even if he was a minor, his declaration was fraudulent

to deceive the defendant and therefore the plaintiff was not entitled to any relief. In any case, the court should not grant a relief to the plaintiff unless he repaid the money advanced to him. The appeal to the appellate court failed. Then the appeal was preferred to the Privy Council. Subsequent to it, Brahmudutta died. Then the appeal was prosecuted by his executors.

Contracts which are compulsory to be in expresssed form (in writing)

- 1) contract dealing immovable property.
- 2) Specific contract.
- 3) in which registration of contract is necessary
- 4) Bill of exchange / promissory note.
- 5) trust.
- 6) time Barred debt
- 7) without consideration.
- 8) Verbal if able to prove,

Void agreements

- 1) Agreements in restraint of Marriage
- 2) Agreements in restraint of Trade
- 3) Agreements without consideration
- 4) Agreements in restraint of Judicial proceeding
- 5) wagering agreements
- 6) where terms are not certain
- 7) agreements to do impossible things

Breach of contract

- 1) By Performance - 37-67
- 2) By mutual consent - 62-67
- 3) By Subsequent impossibilities - 56
of frustration
- 4) By lapse of time.
- 5) by operation of law.
- 6) By breach of contract 39-73

Remedies

- 1) Rescission of contract
- 2) Suit for damages
- 3) suit upon quantum meruit
- 4) suit for specific performance
- 5) suit for injunction

minor :

what is majority

- 1) minor cannot satisfy the things when he becomes major (as agreement when he was minor is void)
- 2) No estoppel against minor .
- 3) liability of contract .
- 4) Doctrine of restitution
- 5) liabilities of necessities .
- 6) No specific performance
- 7) No insolvency for a minor .
- 8) minor & partnership
- 9) minor can be an agent .
- 10) cannot be a member of a registered company .

conclusion

Q what is partner by holding out? what is the liability of a partner by holding out is there any exception to it.

→ The partnership Ad came into force on 1st July 1932. It applies to whole of India except to the State of Jammu & Kashmir. It governs all the matters in relation to partnership. There are several types of partners in the firm, mainly active or ostensible partner, sleeping or dormant partner nominal partner or partner by holding out etc.

The partnership Ad deals with all the above partners with different rights & liabilities respectively.

meaning : The Ad defines partnership at Sec-4 as a relationship subsisting betⁿ 2 or more persons where one of them acts on behalf of the others or one of them acting for on every body's behalf.

The persons who commit to such a Partnership are termed as partners. The partner by holding out is also called as partner by estoppel.

This partner presents himself to the world as if he is the partner of the firm and acts accordingly. He makes those obligations & liabilities as a normal dormant partner would. As to an ordinary prudent man, he is deemed to be an active partner from his behavior.

In such a case later on such a partner is estopped from denying the previous statements made by him & the previous allegations termed by him. He shall be treated as a partner in

true sense for that part of the transaction.

* Liabilities:

The partner who is holding out also has certain liabilities they are:

He shall be made liable for the transactions in which he pretended to be the partner.

If in case the firm is unable to fulfil the liabilities the partner by himself shall be personally held liable.

If in case any other debt has been incurred in due course of his dealings he shall be made liable for that too.

He shall be liable for the loss incurred to the firm due to his sole act.

He is liable towards the third party with whom he has transacted in the first place.

If in case he earns any profit he is liable to transfer that share in the firm name. However once found out that he is a partner by holding out, any subsequent transaction cannot be made liable to him.

Exceptions:

However there are certain exceptions to the liabilities of such a partner. In some cases he may not be made personally liable, when he acts bona fide. In case where there is an emergency & he acts in accordance to save the goods of the partnership firm he shall not be made liable.

for ex-

Suppose a truck is carrying tomatoes

to a certain place & breaks down in between the road. The driver of the truck, in good faith sells all the tomatoes on the road itself instead of the respective place, and incurs loss in the process. The truck driver in this case shall be termed to be a partner by holding out and he cannot be made liable for the losses incurred by him.

Conclusion : Partner by holding out or estoppel are termed to be partners for the time of the transaction, even if the retired partner does not give a public notice, he shall be deemed to be partner by holding out until such notice is served.

Dissolution of firm:

Introduction : The partnership Act governs all the matters containing partnership, restitution, dissolution etc. of the firm. The Act governs the basic features of the firm when the subsisting relation between partners comes to an end; it is known as winding up of the firm. The partners inherently share an agent relationship. Every partner is an agent of the other, such relation comes to an end at the end of the firm.

meaning : Dissolution of the firm means when the firm ceases to exist, after the winding up of the firm. In case where the partnership firm stops to exist, the partners are no longer jointly & severally liable, all their rights & obligations are fulfilled and they no longer maintain agency.

In case of dissolution the joint property of the firm is divided accordingly to the respective shares. The liabilities are also paid off accordingly. The outsiders are informed of the dissolution by way of a public notice in the official gazette. The name of the firm is struck off from the register of the Registrar's office. The partners are free to carry out their own business in future unless otherwise contracted without court's intervention.

* When the dissolution of the firm happens automatically

