LAW OF CONTRACT

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Preface

The law of contract is a cornerstone of legal systems worldwide, governing the formation, interpretation, and enforcement of agreements between parties. It provides a framework for establishing legal relationships, defining rights and obligations, and resolving disputes arising from contractual transactions.

Contract formation begins with the offer made by one party and acceptance by another, leading to the creation of a legally binding agreement. Essential elements of a valid contract include mutual assent, consideration, capacity, and legality of purpose.

Contracts may be express or implied, and their terms may be written or oral. The terms of a contract define the rights and duties of the parties, including provisions related to price, performance, time of delivery, warranties, and remedies for breach.

Once a contract is formed, parties are generally obligated to perform their contractual obligations as agreed. Performance may involve the delivery of goods, provision of services, payment of money, or other actions specified in the contract.

When one party fails to fulfill its obligations under the contract, it constitutes a breach. Breach of contract may occur through non-performance, defective performance, or anticipatory repudiation. The non-breaching party may seek legal remedies, including damages, specific performance, or cancellation of the contract.

Contracts may be discharged through performance, agreement, frustration, or breach. Discharge by performance occurs when parties fulfill their contractual obligations, while discharge by agreement occurs through mutual consent to terminate the contract.

In cases of breach of contract, the non-breaching party is entitled to seek remedies to compensate for the harm suffered. Common remedies include

damages, which aim to put the injured party in the position they would have been in if the contract had been performed, and specific performance, which requires the breaching party to fulfill its contractual obligations.

Contract law provides a mechanism for enforcing contractual rights and obligations through legal action. Parties may seek recourse in courts or alternative dispute resolution mechanisms to resolve contractual disputes and obtain redress for breaches of contract. Legal enforcement ensures compliance with contractual obligations and upholds the integrity of commercial transactions.

In this book, we delve into the intricate principles and applications of contract law, exploring its fundamental role in regulating agreements and safeguarding legal rights.

–Author

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Introduction

Contract, in the simplest definition, a promise enforceable by law. The promise may be to do something or to refrain from doing something. The making of a contract requires the mutual assent of two or more persons, one of them ordinarily making an offer and another accepting. If one of the parties fails to keep the promise, the other is entitled to legal redress. The law of contracts considers such questions as whether a contract exists, what the meaning of it is, whether a contract has been broken, and what compensation is due the injured party.

HISTORICAL DEVELOPMENT

Contract law is the product of a business civilization. It will not be found, in any significant degree, in noncommercial societies. Most primitive societies have other ways of enforcing the commitments of individuals; for example, through ties of kinship or by the authority of religion. In an economy based on barter, most transactions are self-enforcing because the transaction is complete on both sides at the same moment. Problems may arise if the goods exchanged are later found to be defective, but these problems will be handled through property law—with its penalties for taking or spoiling the property of another—rather than through contract law.

Even when transactions do not take the form of barter, noncommercial societies continue to work with notions of property rather than of promise. In early forms of credit transactions, kinship ties secured the debt, as when a tribe or a community gave hostages until the debt was paid. Other forms of security took the form of pledging land or pawning an individual into "debt slavery."

Some credit arrangements were essentially self-enforcing: livestock, for example, might be entrusted to caretakers who received for their services a fixed percentage of the offspring. In other cases—constructing a hut, clearing a field, or building a boat—enforcement of the promise to pay was more difficult but still was based on concepts of property. In other words, the claim for payment was based not on the existence of a bargain or promise but on the unjust detention of another's money or goods. When workers sought to obtain their wages, the tendency was to argue in terms of their right to the product of their labour.

A true law of contracts—that is, of enforceable promises—implies the development of a market economy. Where a commitment's value is not seen to vary with time, ideas of property and injury are adequate and there will be no enforcement of an agreement if neither party has performed, since in property terms no wrong has been done. In a market economy, on the other hand, a person may seek a commitment today to guard against a change in value tomorrow; the person obtaining such a commitment feels harmed by a failure to honour it to the extent that the market value differs from the agreed price.

ROMAN LAW

The Roman law of contracts, as found in the Byzantine emperor Justinian's law books of the 6th century ce, reflected a long economic, social, and legal evolution. It recognized various types of contracts and agreements, some of them enforceable, others not. A good deal of legal history turns upon the classifications and distinctions of the Roman law. Only at its final stage of development did Roman law enforce, in general terms, informal executory contracts—that is, agreements to be carried out after they were made. This stage of development was lost with the breakup of the Western Empire. As western Europe declined from an urbanized commercial society into a localized agrarian society, the Roman courts and administrators were replaced by relatively weak and imperfect institutions.

The rebirth and development of contract law was a part of the economic, political, and intellectual renaissance of western Europe. It was everywhere accompanied by a commercial revival and the rise of national authority. Both in England and on the Continent, the customary arrangements were found to be unsuited to the commercial and industrial societies that were emerging. The informal agreement, so necessary for trade and commerce in market economies, was not enforceable at law.

The economic life of England and the Continent flowed, even after a trading economy began to develop, within the legal framework of the formal contract and of the half-executed transaction (that is, a transaction already fully performed on one side). Neither in continental Europe nor in England was the task of developing a law of contracts an easy one. Ultimately, both legal systems succeeded in producing what was needed: a body of contract doctrine by which ordinary business agreements, involving a future exchange of values, could be made enforceable.

The new contract law began to grow up throughout Europe through the practices of merchants; these were at first outside the legal order and could not be upheld in courts of law. Merchants developed informal and flexible practices appropriate for active commercial life. By the 13th century, merchants' courts had been established at the international trade fairs. The merchant courts provided expeditious procedures and prompt justice and were administered by men who were themselves merchants and thus fully aware of mercantile problems and customs.

In the 12th and 13th centuries the development of the law of contracts on the Continent and in England began to diverge. In England the common law of contracts developed pragmatically through the courts. On the Continent the process was very different, with speculative and systematic thinkers playing a much larger role.

COMMON LAW

From perhaps the 13th century on, English common law dealt with contractual problems primarily through two actions: debt and covenant. When a fixed sum of money was owed, under an express or implied agreement, for a thing or a benefit given, the money was recoverable through a simple action at debt. Other debt action was available for breach of a promise, made in an instrument with a seal, to pay a fixed sum of money.

A so-called action at covenant could also be brought, but only for breach of a promise under seal. These actions did not, however, provide a remedy for the breach of an informal agreement to do something. In the 15th century the common-law courts started to develop a form of action that would render such agreements enforceable, and by the middle of the 16th century they had done so through the form of action known as *assumpsit* (Latin: "he has undertaken"). Originating as a form of recovery for the negligent performance of an undertaking, it came step by step to cover the many kinds of agreement called for by expanding commerce and technology. Having established in principle a comprehensive remedy, it was necessary for the courts to limit its scope. The courts found the limiting principle in the doctrine of "consideration," according to which a promise as a general rule is not binding unless something is given or promised in exchange. This consideration need not be of commensurate value, but it must be of some value, must be bargained for, and cannot be simply a formality.

CIVIL LAW

On the Continent, the revived study of classical Roman law had an immense influence upon the developing law of contract. It stimulated the rediscovery or construction of a general law concerning the validity of agreements. The Roman law, however, as crystallized in Justinian's law books, tended to confirm the notion that something more than an informal expression of agreement was required if a contract was to be upheld by a court. Another significant influence

in the development of contract law on the Continent was the Roman Catholic Church. The church in its own law (canon law) strongly supported the proposition that a simple, informal promise should be binding (*pacta sunt servanda*). This attitude was to encourage the development of informal contracts. The natural-law philosophers took up such ideas as *pacta sunt servanda*, although they were slow to abandon the view that some contracts, especially contracts of exchange, should require part performance if they were to be held enforceable. By the 18th century the speculative and systematic thought of jurists and philosophers had finally and fully carried the day. The legal writers and legislators of the period generally considered informal contracts as enforceable in the courts. Thus, in the French civil code (the Napoleonic Code) of 1804, contract was approached essentially in terms of agreement; obligations freely assumed were enforceable except when the welfare of society or the need to protect certain categories of persons, such as minors, dictated otherwise. With the generalization that contract rests ultimately on agreement, the civil-law systems achieved a foundation quite different from the common law's view that contract is basically a promise supported by a consideration.

All the Western systems of modern contract law provide mechanisms through which individuals can voluntarily assume, vis-à-vis others, legally binding obligations enforceable by the other person. Contract law strives to give legal expression to the endlessly varying desires and purposes that human beings seek to express and forward by assuming legal obligations. The resulting system is open-ended; in principle, no limits are set in modern contract law to the number of possible variations of contracts.

THE SETTING OF STANDARDS

In theory, contractual obligations should be concluded between parties of substantially equal awareness and bargaining power and for purposes fully approved of by society. The law reflects this utopian idea in the sense that it tends to conceive of contract as an arrangement freely negotiated between two or more parties of relatively equal bargaining power. The manifestations of intention required to form a contract are accordingly thought of as indicating real willingness, although in fact they may simply represent acquiescence.

FAIRNESS AND SOCIAL UTILITY

Much of the law of contract is concerned with ensuring that agreements are arrived at in a way that meets at least minimum standards respecting both parties' understanding of, and freedom to decide whether to enter into, the transactions. Such provisions include rules that void contracts made under duress or that are unconscionable bargains; protection for minors and incompetents; and formal requirements protecting against the ill-considered assumption of obligation. Thus, section 138 of the German Civil Code renders void any contract "whereby a person profiting from the distress, irresponsibility, or inexperience of another" obtains a disproportionately advantageous bargain. In addition, more general

social requirements and views impinge upon contracts in a number of ways. Certain agreements are illegal, such as—in the United States—agreements in restraint of trade. Others, such as an agreement to commit a civil wrong, are held by the courts to be contrary to the public interest. Certain systems discourage some purposes, such as the assumption of a legally binding obligation to confer a gift of money or other gratuitous benefit upon another, by various special requirements.

Legal systems often have recourse to interpretation in the interest of fairness and social utility. Many litigated cases in which a remedy is sought for breach of contract are concerned with the meaning to be attached to the verbal expressions and acts of the parties in their dealing with each other. Ambiguities, for example, may be resolved against the party thought to have the superior bargaining position. This decision is common in cases in which one party is able to set the terms of a contract without bargaining. Again, a written agreement may be interpreted against the party who drafts or chooses the language. Or the court may prefer an interpretation it finds to be in accord with the public interest.

Although all legal systems try to achieve a reasonable approach to freedom of contract, there are bound to be contractual obligations that depart in some degree from the ideal. No one seeking to enforce a contract is required to show affirmatively that it advances specific ends desired by society or that the contracting process is without blemish. Such a requirement would be administratively cumbersome and expensive. In addition, it would reduce the general usefulness of the contract as an economic and social instrument. Differences in the economic resources available to individuals are found in most societies; to the extent that these differences flow from general conditions and are reflected in, rather than produced by, individual contracts, it is usually not feasible to take remedial action through the law of contracts. A single contract, moreover, is often only one element in a complex of economic and legal relations. Thus, in times of severe inflation or deflation, it may simply not be feasible to seek to deal with the resulting inequities in terms of redoing individual contracts.

CONTRACTS OF ADHESION

There are large areas of economic life in which the parties to contracts have such unequal bargaining positions that little real negotiation takes place. These contracts are often known as contracts of adhesion. Familiar examples of adhesion contracts are contracts for transportation or service concluded with public carriers and utilities and contracts of large corporations with their suppliers, dealers, and customers. In such circumstances a contract becomes a kind of private legislation, in the sense that the stronger party to a large extent assigns risks and allocates resources by its fiat rather than through a reciprocal process of bargaining. Enforcement of such standard contracts can be justified on the ground that they are economically necessary. The question then becomes whether these decisions are to be made by private enterprise or by other agencies of society—in particular, government—and to what extent the interest of those

who deal with such economic enterprises can be represented and protected in the decision-making process. Contract law in such cases provides only what can be called the legal relationship. The content of the relationship derives not from bargaining between the parties but from the fiat of the large enterprise often offset by the fiat of some government agency. In a sense, the socially regulated contract of adhesion seeks to eat the cake of bureaucratic rationality while having, as well, the cake of individual choice and decision. Doubtless both cakes are diminished in the process, but the result may well be more satisfying than if only one had to be chosen. At all events, the resulting legal-economic phenomenon is radically different from that envisaged by traditional contract law. Legislative attempts have been made in a number of countries, such as the former West Germany, the United Kingdom, and France, to strike a balance between the general freedom to contract and the protection of the weaker party.

OTHER PROBLEMS OF CONTRACT LAW

Many contracts involve more than two persons. The law of contracts provides special rules for regulating claims by multiparty plaintiffs or claims against multiparty defendants, or for determining rights among the parties. Multiparty problems arise in other contexts as well. There is the problem of whether the immediate parties to a contract can enter into an agreement that will confer rights upon a person not an original party to the contract. Probably because the dogmatic structure of contract law was largely formed on the model of the simpler two-party situation, and because the contract for the benefit of third parties did not have great practical importance until such relatively modern developments as the emergence of life insurance, many systems of contract law have encountered difficulty in working out the relationship between the third party and the underlying contract. English law took the view that, as a rule, persons cannot acquire a right on a contract to which they are not a party. Some of the problems posed are difficult to resolve: under what circumstances and to what extent should the third party control the underlying contract when, for example, the original parties desire to rescind or modify it?

Another variation of the party problem is presented by efforts to add or substitute parties to a contract. In the absence of an express regulation of the problem in the basic contract, the law works with the notion of the presumed intention of the contracting parties, based on considerations of fairness and practicality. A contracting party cannot, in principle, assign to another its right under a contract if the assignment would result in a significant change in the burden assumed by the other contracting party. A contractual right to receive money or goods is a different matter; it can ordinarily be assigned because the resulting burden on the person under obligation is not great, and because society as a whole benefits from having this flexible economic and legal instrument.

One problem of contract law that has been mentioned above deserves further consideration—the problem of interpretation. Many rules of contract law are

simply presumptions, based on experience and tradition, as to what the parties ordinarily intend; if they clearly intend otherwise, the rules are not mandatory. Problems of interpretation frequently arise with respect to the particulars of a given agreement; thus the court seeks to determine what the parties actually had in mind. The effort to ascertain intention may encounter difficulties arising from the law of evidence. Many legal systems limit the use of testimonial evidence to explain the essential elements of a written contract.

MODERN TENDENCIES

ARBITRATION

Modern commercial practice relies to a growing extent on arbitration to handle disputes, especially those that arise in international transactions. There are several reasons for the growing use of arbitration. The procedure is simple, it is more expeditious, and it may be less expensive than traditional litigation. The arbitrators are frequently selected by a trade association or business group for their expert understanding of the issues in the dispute. The proceedings are private, which is advantageous when the case involves trade or business secrets. In many legal systems, the parties can authorize arbitrators to base their decision on equitable considerations that the law excludes. Finally, when the parties are from different countries, an international panel of arbitrators may offer a greater guarantee of impartiality than would a national court. Despite these advantages of arbitration, the development of contract law may suffer considerably by a withdrawal from the courts of litigation involving some of the most significant and difficult problems of the present day, all the more so because the reasoning in arbitral awards is usually not made public.

CODIFICATION

Trade and commerce flow increasingly across national and state boundaries. In response to this there have been many efforts to unify the traditional legal systems. In the United States, the Uniform Commercial Code has replaced earlier uniform statutes such as the Sales Act and the Negotiable Instruments Law; by 1990 it had been adopted by every state. Internationally, the decade of the 1960s saw significant progress towards uniform regulation of the law of sales. The creation of a uniform body of substantive rules is, of course, easiest when the communities involved have roughly similar rules and principles. In addition, the greater the volume of multistate transactions, the greater the pressure for uniform regulation. It is understandably easier to achieve a Uniform Commercial Code within the United States than to create such a system internationally.

When a transaction has a significant relationship with more than one legal order, difficult problems of private international law often arise with respect to which law shall govern. A kind of halfway point between legal diversity and unification—the creation of uniform rules for choice of law—is of some help, and in this area the Hague Conference on Private International Law has done significant work.

HISTORY OF THE INDIAN CONTRACT ACT 1872

The Indian Contract Act brings within its ambit the contractual rights that have been granted to the citizens of India. It endows rights, duties and obligations on the contracting parties to help them to successfully conclude business- from everyday life transactions to evidencing the businesses of multi-national companies. The Indian Contract Act, 1872 was enacted on 25th April, 1872 [Act 9 of 1872] and subsequently came into force on the first day of September 1872. The essence of the India Contract Act has been modelled on that of the English Common Law.

The extent of modifications made in the Act as per the Indian conditions and its adaptability to the Indian economy is an important area of research. In this regard it is pertinent to note that since the enactment of the Act there have been no amendments and thus the Law that was made in 1872 still stands good. However, these are questions of interpretation that not only depend on the text of the Act, but also on the English authorities that framed the law and before it, the subsequent development of law.

The history of the Act brings to light the very origin of the economic processes and in this regard, the importance of contracting in order to conduct one's business in everyday life. The prevalent system in the ancient times was barter and it was based on the mutual principle of give and take. This was confined to commodities as there was no medium of exchange as is seen in the form of money today and this system can be traced back in time to the Indus Valley Civilization (the earliest human civilization). The system still finds relevance in the contemporary world, where it can be found in commercially and economically underdeveloped areas.

However, the relevancy of such a system in modern times is questioned as the complexity in the nature of the economic systems as well as the increasing demand and supply systems due to the change in the wants and needs of the human beings came to the fore. Also, money had evolved as the medium of exchange such that the value of every commodity could now be quantified. Thus, in such an era of greater economic transaction one finds the existence of Contract Laws and with it, their relevance.

The Indian Contract Act codifies the way we enter into a contract, execute a contract and implement provisions of a contract and effects of breach of a contract. The contractual capacity is restricted in certain situations otherwise it is the prerogative of the individual to contract. There are specific areas which deal with property, movable gods and specific performance such as the Transfer of Property Act, The Sale of Goods Act and The Specific Relief Act. Some of these acts, were originally a part of the Indian Contract Act enacted in 1872 but were later codified as separate laws. Moreover the Act is not retrospective in nature. Hence a contract entered into prior to 1st September 1872, even though to be performed after passing of this Act is not hit by this Act. Hence, we arrive of the conclusion that the basic framework of contracting is covered in the

Indian Contract Act and it is an important area of law, with roots deep in the history of civilization- and thus forms the subject matter of this project of this course of Legal History.

RESEARCH METHODOLOGY

For this project titled, 'History of the Indian Contract Act, 1872' the doctrinal method was judged to be most appropriate. Primary resources referred to in the course of research include books, journals, law reports and cases, most of them accessed from the NALSAR law library. Other sources like articles, and the like were accessed online through the use of online databases. All direct quotations have been properly footnoted.

RESEARCH SCHEME

Aim and Objectives

The aim of the project is to trace the history of the Indian Contract Act, 1872 and analyse the developments that led to its enactment in 1872. The project also ventures to seek the history of 'Law of Contracts' in general and present a brief view on the changing notions about the contract law.

Scope and Limitations

The project covers the development of the 'Law of Contracts' right from the early stages of human civilization, making its way through Roman and English notions that eventually led to the formation of the Indian Contract Act. The project also shows the relevance of such legislation, codifying the principles of contract making.

The research is limited to the resources available at the NALSAR Library. Books related to the topic are available at the library. Also, the sources available on the internet helped a considerable deal. Suggestions from the course-instructor and fellow students have been incorporated wherever necessary.

EARLY LAW OF CONTRACT: INDIA

Vedic and Medeival Period

During the entire ancient and medieval periods of human history in India, there was no general code covering contracts. Principles were thus derived from numerous references- the sources of Hindu law, namely the Vedas, the Dhramshatras, Smritis, and the Shrutis give a vivid description of the law similar to contracts in those times. The rules governing contracts form a part of the law called Vyavaharmayukha.

Studies of the smritis reveal that the concept of contract originated in the Vedic period itself. Topics, as we know them today like debt deposit and pledges sale without ownership, mortgage and gifts, which are all contracts in nature, are mentioned therein. The general rules of contract bear a striking resemblance

to the modern law of contract. For *e.g.*, as mentioned in the Manusmriti, the first and the foremost requirement for a contract process to start is the competence of the persons who are willing to enter into a contract.

This norm laid down for competence corresponds with the provisions of the present law (Section 11, Indian Contract Act), namely, dependents, minors, sanyasis, persons devoid of limbs, those addicted to vices were incompetent to contract. The Narad smriti categorizes competent persons into three; the king, the Vedic teacher and the head of the household.

The concept of liability in contract law finds its birth in the Vedic period too. Spiritual debts were referred as 'wrin' and it was constantly reinforced by the srmitis that failure to pay back the debts meant re-birth as a slave, servant, woman or beast in the house of creditor. So, the son was liable to pay of his father's debts even if he did not inherit any property from him.

Towards the end of the medieval age, the law of contracts was pretty much being governed by two factors; the moral factor and the economic factor. Activities like transfer of property, performance of services, *etc.*, required rules for agreements and promises, which covered not just business and commercial transactions, but also personal relationships in all walks of life. This takes us to the next source, *i.e.*, the Arthashastra by Kautilya, which is considered to be the only existing secular treatise on politics and governments.

During Chandragupta's reign, contract existed in the form of "bilateral transactions" between two individuals of group of individuals. The essential elements of these transactions were free consent and consensus on all the terms and conditions involved. It was an open contract openly arrived at.

It was laid down that the following contracts were void:

- Contracts formed during the night.
- Contracts entered into the interior compartment of the house.
- Contracts made in a forest
- Contracts made in any other secret place.
- There were certain exceptions to clandestine contracts such as:
- Contracts made to ward off violence, attack and affray
- Contracts made in celebration of marriage
- Contracts made under orders of government
- Contracts made by traders, hunters, spies and others who would roam in the forest frequently.

The contract would be rendered void if there was any undue influence or if the contract was entered into a fit of anger or under influence of intoxication, *etc.* In general, women could not make contracts binding on their husbands or against family properties. It was possible for a competent person to authorise a dependent to enter into transactions. The dependents in such case included a son whose father was living, a father whose son managed the affairs, a woman whose husband was alive, a slave or hired servant.

It has to be noted that money lending was seen as an occupation. Usury was a sin only when the usurer cheated the debtor, for *e.g.*, when he lent

goods of a lower quality, but received goods of a higher quality in return or if he extracted fourfold or eightfold return from a distressed debtor. The interest would be fixed with reference to the article pledged or surety given. Although, all commentaries are not in agreement with the amount of interest to be charged, they all agree that it was sinful to take exorbitant interest and such interest would not be enforceable in court. The Yajnavalkya smriti provided that in case of cattle being loaned, their progeny was to be taken as profit.

Also, the rights and duties (of a Bailee) in a Bailment, as we know it today in the form of sections 151 and 152 of the Indian Contract Act, 1872, has its root to the Katyaynasmriti containing a special provision called the 'silpinyasa' dealing with the deposit of raw materials with an artisan- talking about the degree of care attached. The text laid down that "if an artisan does not return the things deposited with him during the stipulated time, he should be made to pay its price even in the cases, where the loss is due to acts of God or King. The artisan, however, is not responsible for the loss of an article which was defective at the very time of bailment, unless the loss is due to his own fault."

It is also interesting to note that there was no 'limitation' for bringing a suit for money lent. This was because of the rule of 'damdupat' which laid down that 'the amount of principle and interest recoverable at one time in a lump sum cannot be more than double the money lent.' It took into consideration the fact that debts were not necessarily recoverable from a man himself, his descendents were also liable. Thus there was no concept of a 'limitation period' for filing a suit. The rule of 'damdupat' is still prevalent in Calcutta and Bombay as it has been upheld to be a valid custom and thus enjoys enforceability under the savings clause, Section 1.

Islamic Law

During the Muslim rule in India, all matters relating to contract were governed under the Mohammedan Law of Contract. The word contract in Arabic is Aqd meaning a conjunction. It connotes conjunction of proposal (Ijab) and acceptance which is Qabul. A contract requires that there should be two parties to it one party should make a proposal and the other accept it, the minds of both must agree that is there declaration must relate to the same matter and the object of contract must be to produce a legal result.

It also supplied rules to govern specific contracts to commercial, mercantile and proprietary nature like agency (vakalat), guarantee and indemnity (zamaanat and tamin), partnership (shirkat), one person's money and another's work (muzarabat), bailment (kafalat). All transactions were treated as secular contracts and rules were provided for settlement of all types of disputes even relating to property and succession.

Another thing to be noted is that under Islamic Law even marriages (Nikah) were treated as contracts and till date the situation remains the same. Either of the parties to the marriage makes a proposal to the other party and if the other

party accepts, it becomes a contract and the husband either at the time of marriage or after it has to pay an amount to the wife as a symbol of respect known as Mahr. Also the Mahommedans were the firsts to recognize the concept of divorce. This way, a party to marriage could absolve itself of the contractual obligations under marriage. Muslim marriages are thus considered contracts for these reasons.

EARLY LAW OF CONTRACT: ROME

In early Rome, the law of contracts developed with the recognition of a number of categories of promises to be enforced rather than creation of any general criteria for enforcing promises. Thus, the notion that promise itself may give rise to an enforceable duty was an achievement of Roman law. A promise might be morally binding but it was not legally enforceable until it fell within the specified categories viz. "stipulation", "real" contracts and "consensual" contracts.

STIPULATION: (stipulatio) It put into force formalities and dates from a very early time in Roman law. A party could make a binding promise called "stipulation" in which the party observed a prescribed form of question and answer. Though the participation of both parties was required, only one party was bound.

REAL CONTRACTS: These were those that suited to executory exchange of promises. For example, the contract of loan, in which the recipient's promise to restore the subject matter was binding.

CONSENSUAL CONTRACTS: These were more flexible and did not hold a legal basis for enforcing purely executory exchanges of promises. They deviated from the formalities in "stipulation" and in agreement alone, without delivery, sufficed to make the promises binding. Although they were limited to four important types of contracts- sale, hire, partnership and mandate.

These three categories of enforceable promises met the Roman needs through the classical period (500 BC – 300 BC). Later on a fourth category of enforceable promise was recognized as "innominate" contracts.

INNOMINATE CONTRACTS: These were agreements under which one party was promised to give or do something in exchange for a similar promise by the other party. Unlike both real and consensual contracts they were not limited to specified classes of transactions and were therefore called "innominate". The enforceability of the promise required some performance given in exchange and was called quid pro quo (*i.e.*, the modern concept of 'consideration' of the contract). But these contracts were limited because they were binding only when one of the parties had completed performance and until that happened either party could escape liability.

Roman law always had the tendency of primitive societies to view each type of transaction as a distinct complex of rights and it never fully rid itself of this proclivity. Thus the development of a general theory of contracts was left to the modern legal systems that arose in Europe during the Middle Ages, the common law system that arose in England and the civil law systems of the European continent.

Relevance of Roman Contract Notions in Indian Law

Though Roman notions of contract law have not been directly included under the Indian law of contracts. However, the framers of the Indian Contract Act, the English, were aware of the developments in the field of law of contracts in Rome. Thus, Roman Contract notions have helped in the development of English law, thus affecting the Indian Contract Act.

EARLY LAW OF CONTRACT: ENGLAND

As stated earlier, the Roman law notions of contract were known to the English but their influence faded with the break-up of the Roman political system. English Courts therefore, had to reconstruct law in the Middle Ages. The courts succeeded in a remarkable way keeping in the view the fact that when they started, the English law of contracts was little more advanced than that of many primitive societies.

Now, since no system can afford to make all promises enforceable, the English tried out two assumptions:

One, the assumption that promises are generally enforceable, and then create exceptions for promises considered undesirable to enforce. Secondly the assumption that promises are generally unenforceable, and then create exceptions for promises thought desirable to enforce. The common law Courts chose the latter assumption, the same as Roman law *i.e.*, "mere promise doses not give rise to an action." This decision accorded well with the procedural niceties of the common law courts, where the plaintiff did not have the recovery until his claim could be fitted with one of the established forms of action. It also suited the status-oriented society of the Middle Ages where no great pressure existed for enforcing promises as contracts were not yet a significant part of the business of the common law courts.

The Fifteenth and Sixteenth Centuries

The challenge faced by the common law Courts in the fifteenth and sixteenth centuries was to develop a general criterion for enforcing promises within the framework of the forms of action. And by the end of the 15th century, two forms of action for enforcing rights, which included some of those which we now call contractual, had taken a fairly definite shape. These were action on 'debt' and the action on 'convenant'.

Convenant

The word 'convenant' is the nearest medieval equivalent to current definition of 'contract'. The action of convenant mainly concerned breaches of agreement for services like building or for sales or leases of land. The primary claim was for performance, and in royal courts the action was begun by the praecipe writ ordering the defendant to keep the agreement; but judgements ceased to order specific performance and damages were awarded instead. But the action of convenant soon fell out of use, not because it was ineffective but because the other action of 'debt' proved more effective.

Debt

The action on debt covered the claims for the price of goods sold and delivered. The essential feature of it was that the claim was for money compensation for benefit received.

The defendant's liability in debt was not based on a mere promise but on the debtor's receipt of what the debtor had asked for, called quid pro quo like the Romans in the form of loan. It was therefore thought to be unjust to allow the debtor to retain it without paying for it.

The debtor's wrong was more in misfeasance than nonfeasance. Following this rationale the courts finally broadened the action of debt to allow recovery by anyone who had conferred a substantial benefit. However, the lacuna in this system was that the defendant might avoid liability by a procedure known as "wager of law", in which the defendant denied the debt under oath accompanied by a number (usually 11) of oath-helpers, who swore that defendant was telling the truth.

The Sixteenth Century: Development of 'Assumpsit'

Now, at this point the main question that confronted the courts as that how the common law would break out of this mould of "wager of law". The courts finally found answer to this question in the law of torts. They had already developed a liability in tort, where if a person undertook to perform a duty and while performing it he caused harm to the obligee; the obligee could sue on the common law action of "trespass on the case" and this principle came to be known as 'assumpsit' (from the Latin assumere, meaning that the defendant undertook).

Assumpsit

'Assumpsit' was an action for the recovery of damages by reason of the breach or non-performance of a simple contract, either express or implied, and whether made orally or in writing. It was the word always used in pleadings by the plaintiff to set forth the defendant's undertaking or promise, hence the name of the action. Claims in actions of assumpsit were ordinarily divided into (a) common assumpsit brought usually on an implied promise, and (b) special assumpsit, founded on an express promise.

As an example it was explained that "if a carpenter makes a promise to me to make me a good house and strong and of certain form, and he makes me a house which is weak and bad and of another form; I shall have an action of trespass on my case." Justice could be done by requiring the promisor to pay compensation to the promisee in an amount sufficient to restore the promisee in the same position as the promise would have been, had the promise never been made.

Also, a case in point is the case of a ferry- man who was sued. He had undertaken to ferry a horse across the Humber, but he mismanaged the whole

affair in such a way that the horse was drowned. The defendant knowing that there was no sealed document about the deal argued that the proper action would be 'convenant'. However, the action was held rightly brought in tort because the plaintiff complained about the killing of the horse and not the failure to transport it. Such claims of 'misfeasance' regularly succeeded.

The principle of 'assumpsit' was originally limited to cases of 'misfeasance' but later on cases of 'nonfeasance' were also dealt with under the same principle. Thus the claim for the action of assumpsit lay whenever the defendant had given an undertaking and had either fulfilled it improperly or failed to fulfil it at all.

It was during this period itself that the word 'consideration' of a contract, which had earlier been used without technical significance, came to be used as a word of art to express the conditions necessary for an action in assumpsit to lie. It was therefore a tautology that a promise, at least if not under seal, was enforceable only if there was a 'consideration'.

The Seventeenth and Eighteenth Centuries

The seventeenth and eighteenth centuries saw the recognition of the transferability of contract rights as kind of property, the enactment of legislation requiring writing for some kind of contracts, and the shaping of the concept of the dependency of promises. But the movement was slow during this period. Towards the end of the eighteenth century, things had dramatically changed. A modern legal historian wrote that in America years from 1800-1875 were, "above all else, the years of contract." Contract expressed, "energetic self-interest," and the law it governed it expressed "the nature of contract by insisting that men assert their interests, push them, and fight for them, if they were to have the help of the state." It is also generally supposed that it was during this period that Adam Smith had proclaimed that freedom of contract, freedom to make enforceable bargains would encourage individual entrepreneurial activity. Also from the utilitarian point of view, freedom to contract maximizes the welfare of the parties and therefore works for the good of the society.

ENGLISH LAW IN INDIA AND THE SUBSEQUENT ENACTMENT OF THE ACT

The English common and statute law in force at that time came into India by the Charters of the eighteenth century which established the Courts of justice in the three presidency towns of Calcutta, Madras and Bombay, so far it was applicable to Indian circumstances. It is a matter of controversy whether English law was introduced by the Charter of 1726 by which the statutes up to that date would be enforced in India with the same amount of force as in England, or subsequently by the Charters of 1753-74 so as to embrace statutes up to 1774.

Anyways, since there was an indiscriminate application of English law to Hindus and Mahommedans within the jurisdiction of the Supreme Court it led to many inconveniences. To obviate this, the statute of 1781 empowered the Supreme Court at Calcutta and the statute of 1797 empowered the Courts of

Madras and Bombay (recorders courts), to determine all actions and suits of contractual nature against the natives of the said towns in the case of Mahommedans by the laws and the usages of the Mahommedans and in the case of Hindus (called 'Code of Gentoo Laws' in the Statutes) by the laws and usages of the Hindus, and where only one of the parties was Mahommedan or Hindus, by the laws and the usages of the defendant. The result was that in a suit of contract between Hindus, the Hindu law of contract was applied and in case of Mahommedans the law of Mahommedans applied. And this continued until the enactment of the Indian contract act.

The year 1862 saw the introduction of High Courts in the presidency towns of Calcutta, Madras and Bombay. The courts established under the statutes of 1781 and 1797 were abolished. The charters of these new High courts contained the same provisions about the law to be applied *i.e.*, the High Court continued to administer the personal law of contracts to Hindus and Mahommedans in the same manner. But this was made subject to the legislative powers of the 'Governor General in Council' under clause 44 of Charter of 1865.

By this time, the Indian legislature had got the power to alter the provisions of clause 19 of the Charter of 1865. The Indian Contract Act was enacted in the exercise of this power by the Indian legislature to govern matters of contract. Still subject to any law made by the Governor General in Council, the High Courts were still bound, in the exercise of ordinary civil jurisdiction, to apply the personal laws of contract to Hindus and Mohammedans as being comprised in the expression 'law and equity' in clause 19.

The Bengal Regulation 3 of 1793 (Section 21) and Madras Regulation 2 of 1802 (Section 17) directed the judges in the zilla (district) and city courts to act according to justice, equity and good conscience in cases where no specific rule existed. These regulations were repealed, but the direction to act in the absence of any specific rule according to justice, equity and good conscience found place in the Bengal Civil Courts Act 1887 (Section 37) and the Madras Civil Courts Act 1873 (Section 16). The Bombay Regulation 4 of 1827 (Section 26), which is still in force, provided that the law to be observed in the trial of suits be the Acts of Parliament and regulations of government applicable to the case, and in the absence of such acts and regulations; the usage of the country in which suit arose; and if none such appeared-the law of the defendant, and in the absence of specific law and usage, equity and good conscience.

The expression 'justice, equity and good conscience' was interpreted to mean the rules of English law so far as applicable to the Indian society and circumstances. It has been observed that in practice, the application of English law did not raise difficulty because on many points there were no differences between the English and the personal law, and there was no rule of personal law in many cases, moreover because many Indian businessmen acquired experience from their relations with Britons. The law of England, so far as consistent with the principles of equity and good conscience, generally prevailed in the country unless it came in conflict with Hindu or Mahommedan law.

THE RULES OF DIFFERENT LEGAL SYSTEMS

Traditional contract law developed rules and principles controlling the voluntary assumption of obligations, regulating the performance of obligations so assumed, and providing sanctions for failure to perform.

OFFER AND ACCEPTANCE

Some of the rules respecting offer and acceptance are designed to operate only when a contrary intention has not been indicated. Thus, in German law an offer cannot be withdrawn by an offeror until the time stipulated in the offer or, if no time is stipulated, until a reasonable time has passed, but this rule yields to a statement in the offer to the effect that it shall be revocable. In Anglo-American common law, when parties contract by correspondence, the acceptance takes place on dispatch of the letter, but the offeror can stipulate that no contract will be formed until the acceptance has been received. These rules serve to fill in points on which the parties in their negotiations have not, for one reason or another, been specific.

Another function of rules relating to offer and acceptance is to enable the parties to understand and to mark when their discussions pass from an exploratory stage to the stage of commitment. The concepts of offer and acceptance are somewhat formal; they assume that the negotiations pass through clearly distinguishable phases, which is often not the case. But they help the parties to distinguish negotiation from commitment. The two words *offer* and *acceptance* become firmly associated with the assumption of obligations.

Different legal systems frequently advance comparable policies in quite different ways. Several distinctly different patterns are found in the approach of modern legal systems to the problems of whether an offeror is free to revoke an offer before acceptance and of when an acceptance is effective to form a contract. Perhaps the polar extremes are represented by German civil law on one hand and Anglo-American common law on the other. In the German view, an offer binds the offeror for any stipulated period or, when the offer is silent as to time, for a reasonable period unless the offeror has expressly made the offer revocable. The common-law rule is the opposite: an offer is revocable until it has been accepted. The two systems also have sharply divergent rules with respect to the point at which, when the parties are contracting by correspondence, the acceptance takes effect to conclude the contract. In German law the acceptance takes effect when it reaches the offeror, in the sense that the offeror either knows or can learn of it. In the common law, on the other hand, if the offeree uses an appropriate means of communication, the acceptance is effective on dispatch unless the offeror stipulated the contrary in the offer. (A revocation by the offeror, however, does not take effect until received by the offeree.)

How are these divergencies in the rules respecting offer and acceptance to be explained? In particular, do they reflect fundamental policy differences or simply different techniques designed to forward quite similar purposes? An examination of a typical problem posed when parties contract by correspondence

suggests the latter explanation. Upon receipt of an offer, offerees frequently change their position by, for example, refusing or ignoring other offers, neglecting to seek additional offers, or themselves making propositions based on the offer made to them. For this reason the legal system sees a need to provide offerees with a secure point of departure for their decision, in order both to protect them and to facilitate commerce generally. The German system provides this protection by making the offer in principle irrevocable. The common law, on the other hand, found this solution excluded by its doctrine of consideration; as the offeree does not give anything in exchange for the offer's irrevocability, consideration is lacking to support an obligation not to revoke. (On the other hand, the Uniform Commercial Code, which has been adopted everywhere in the United States, provides that a firm offer made by a merchant is irrevocable even though the other party has given no consideration.) The common law is not entirely insensitive to the offeree's predicament. The rule that the acceptance is effective upon dispatch creates a situation in which the offeror who wishes to revoke an offer is uncertain whether or not it can be revoked, since the revocation is not effective until receipt, whereas the offeree's acceptance, if one is made, takes effect on dispatch. This uncertainty makes the consequences of an attempted revocation unpredictable and thereby inhibits an offeror who might otherwise seek to revoke. In sum, the German and Anglo-American systems both try to achieve, and in a measure succeed in achieving, a fair balance between the offeror and the offeree.

UNENFORCEABLE TRANSACTIONS

In all systems of contract law, certain classes of transactions are treated as unenforceable by the judicial process because they are thought to involve unusual hazards for a contracting party or to be of marginal social utility. There are, in both civil-law and common-law systems, four kinds of concern that lead the systems to treat certain types of transaction as unenforceable. These four kinds of concern may be called evidentiary, cautionary, channeling, and deterrent. The evidentiary concern springs from the desire to protect both the individual citizen and the courts against manufactured evidence and insufficient proof. The cautionary concern seeks to safeguard individuals against both their own rashness and the importuning of others. The channeling concern seeks to mark off or label obligations that may be enforceable and to direct attention to the problem of the extent and kind of the legal obligation, so that individuals will know the legal significance that their actions may have. Finally, the deterrent concern refers to those types of transaction that are discouraged because they are felt to be of doubtful value to society.

Two quite different techniques are used to delineate types of transaction that are unenforceable in their natural, or normal, state. The first proceeds by describing the type in functional or economic terms. The common-law Statute of Frauds enacted by the English Parliament in 1677 provided that the following six kinds of contracts should be unenforceable unless expressed in writing:

contracts to sell goods exceeding a certain value; contracts to sell any interest in land; agreements that are not to be performed within a year of their making; agreements upon consideration of marriage; suretyship agreements; and undertakings by an executor or administrator to be surety on a debt of the deceased for which the estate is liable. Civil-law systems typically describe as unenforceable in the absence of an appropriate formality noncommercial contractual obligations exceeding a certain value; mortgages created by contract; noncommercial compromise agreements; marriage contracts; agreements binding a party to transfer all, or a fractional part of, its property; leases to run for more than one year; assumptions of the obligation to stand as surety, at least when the operation is not a commercial one on the surety's part; promise of an annuity; and promises to make gifts.

Another less direct technique for delineating unenforceable types of transaction derives from the common law's doctrine of consideration. It holds transactions unenforceable in the absence of a bargained-for exchange. This class would include, for example, promises to make gifts. The approach tends to be too all-embracing, treating certain types of transaction as suspect when there is little or no practical justification for doing so. It is not clearly demonstrated, for example, that an option agreement made by two businessmen should be handled differently from many other kinds of commercial dealings. A strong argument exists that the common law's handling of commercial options, business compromises, and other business transactions lacking an element of exchange is more a logical deduction from the general doctrine of consideration than an expression of justifiable policy concerns.

Except in cases where the ground for unenforceability is radical, when a given transaction type is considered unenforceable the legal system should prescribe an extrinsic element the addition of which will cure the defect—for example, expressing the agreement in writing, performing it in part, or having a document drawn up with the participation of a legally qualified notary or other public official who holds a special appointment from the state and is charged with handling and recording various types of transactions.

A complex situation has arisen with respect to the two most generally available extrinsic elements, the seal and the payment of a nominal consideration. Various states of the United States no longer consider the seal as an effective extrinsic element. The seal's decline is rooted in its changed significance in the modern, literate, democratic world. The seal was originally an impression, usually in wax, of a device, or design, representing an individual or a family. In modern times, the courts, with legislative assistance in a fair number of the states of the United States, have recognized easy-going substitutes for the wax seal, such as simple writing presumed to have been made for sufficient consideration or, in special circumstances, parol (oral) agreement for valid consideration. The effect has been to render the seal progressively less effective, particularly from the cautionary perspective, and many courts now refuse to accept it as a satisfactory formality.

Nominal consideration is a subtle and ingenious formality. Its essence is the introduction of a contrived element of exchange into the transaction. Thus A, desiring to be bound to give B $10,000, requests B to promise to give (or to give) A a peppercorn in exchange. B's promise (or performance) is an element, extrinsic to a normal gift promise, introduced by the parties in an effort to render the transaction enforceable (since the law does not treat normal gift promises as enforceable). Common-law courts often accept nominal consideration when used in a business context, such as in an option arrangement or a compromise agreement; its effectiveness is understandably more doubtful in the context of a gift promise, since such a transaction involves greater dangers for one party and is socially more marginal.

Civil-law systems have less need than the common law for a formality such as nominal consideration; they prescribe methods directly in their statutes. Interestingly enough, however, in some civil-law systems an analogous, judicially developed formality has emerged—the disguised donation (*donation déguisée*) of French law, in which the parties cast a gift promise in the form of an onerous transaction, such as a sale. It can be argued that both the nominal considerations and the disguised donation serve at least the cautionary and channeling functions of formalities mentioned above.

Another kind of extrinsic element recognized by some courts, especially in the common-law countries, is one party's reliance upon the promise of the other. The fact of reliance argues in favour of enforcement because it indicates that an underlying understanding existed between the parties and because the relying party may suffer as a consequence of its change of position. Some courts will enforce initially suspect transactions when several extrinsic elements are present in combination.

A common-law court, for example, may enforce a gift promise in which the element of reliance was present in addition to a seal or a nominal consideration. Other extrinsic elements, either alone or in combination with reliance, a seal, or a nominal consideration, may also render a transaction enforceable. Cases, for example, in which the promisor dies without attempting to revoke a gift promise could be enforced, as distinguished from cases in which the promisor seeks to revoke.

PERFORMANCE

Contract law seeks to protect parties to an agreement not only by requiring formalities but in many other ways as well. Thus rules respecting deceit, fraud, and undue influence are designed to ensure that contractual obligations are assumed freely and without one party misleading the other. Other rules regulate the modification of ongoing contractual relations with a view to preventing a party with considerable bargaining power from unfairly imposing changes in the contract.

The law also allows contractual relations to be adjusted when they have been thrown out of balance by unforeseen circumstances. The task of adjustment

is relatively easy in cases in which both parties made a mistake or in which one party laboured under a mistaken assumption that was, or plainly should have been, known to the other. The problem of mistake becomes more intractable when the error is chargeable to only one party. The solutions reached for such situations are complex and defy general statement.

Catastrophic events such as inflation, political upheaval, or natural disasters may upset the economy of a contract. In the case of natural catastrophes, relief is frequently available under theories of force majeure (action by a superior or irresistible force) and "act of God" (act of nature that is unforeseeable and unpreventable by human intervention). When the unsettling circumstances are economic in their nature, as with severe inflation or deflation, a solution is difficult to find.

A party who benefits from inflation in one contractual or economic relation may suffer from it in another. A general readjustment in contracts would be enormously complicated and time-consuming and would interject an undesirable element of uncertainty into economic and business activity.

Only under exceptional circumstances—and usually in the form of special legislation—are contractual relations adjusted for the effects of severe economic dislocations.

FAILURE TO PERFORM

Another branch of contract law deals with the sanctions that are made available to a contracting party when the other party fails to perform its contractual obligations. When these sanctions take the form of money damages—as they usually do in practice, even though some civil-law systems have a theoretical preference for specific relief—the system must decide whether plaintiffs are to be put in the same position economically that they would have been in had the contract been performed (expectancy damages) or simply reimbursed for the actual losses, if any, flowing from their reliance on the contract (reliance damages).

Reliance damages can, of course, be very large. A subcontractor who fails to deliver parts required for the construction of an ocean liner (or delivers faulty parts) may be responsible for heavy reliance damages resulting from delay in the work or actual damage to the vessel. Legal systems utilize various techniques to limit both reliance and expectancy damages when otherwise they would be unreasonably large.

If a person has agreed to buy an article from a merchant, a refusal to take delivery will not ordinarily produce substantial reliance damages. Delivery costs will have been incurred, but the merchant will presumably not have lost sales elsewhere. In such circumstances, the merchant will seek to recover not delivery costs but lost profit—the expectancy damages. The law allows relief on the basis that the expectancy created by an enforceable promise has a current economic value, measured by the economic gain that the party would derive if the particular agreement were performed.

In some circumstances, performance is not measurable in terms of market value—as, for example, when one relative has agreed to sell to another a family painting of sentimental value but of little intrinsic worth. Many legal systems in such a case require specific performance (that is, compliance with the precise terms agreed upon in the contract). The availability of specific relief varies among contemporary legal systems, for reasons that seem more historical and doctrinal than practical.

2

Contracts of Indemnity

DEFINITION

The Contracts of Indemnity has been defined as: "A Contract whereby one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a contract of indemnity."

Indemnity, in simple words, is protection against future loss. The person who promises to save the other is called the Indemnitor or Indemnifier and the person who is compensated is the Indemnitee, Indemnified or the indemnity-holder. An indemnity can be defined as a sum paid by A to B by way of compensation for a particular loss suffered by B. A, the indemnitor may or may not be responsible for the loss suffered by the B, the indemnitee. Forms of indemnity include cash payments, repairs, replacement, and reinstatement.

Contract of Indemnties should all satisfy the conditions of a valid contract. All Contracts of Insurance are Contracts of Indemnity except life insurance.

RIGHTS

Rights of Indemnified or Indemnity Holder:

- All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

- All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

The indemnity holder can call upon the indemnifier to save him from loss even before the actual loss is incurred.

Rights of Indemnifier:

- After compensating the indemnity holder, indemnifier is entitled to all the ways and means by which the indemnifier might have protected himself from the loss.

INDEMNITY

An indemnity is a sum paid by A to B by way of compensation for a particular loss suffered by B. The indemnitor (A) may or may not be responsible for the loss suffered by the indemnitee (B). Forms of indemnity include cash payments, repairs, replacement, and reinstatement.

GENERAL & LEGAL MEANING

Indemnity is often used as a synonym for compensation or reparation. All three can be construed as obligations to act on an injured party's behalf given the occurrence of a contractually-specified event. However, indemnity as a legal concept has a much broader meaning than the other two terms; namely, an indemnity is to make a party to a contract "whole" again should that contractually-specified event occur.

While the event may be specified by the contract, the actions that must be taken to make the injured party "whole" again are largely fact-based and unknown to the parties until the event occurs, while the maximum liability is often expressly limited by the contract.

A car insurance policy is an example of indemnification. If a purchaser of a car insurance policy is involved in an accident wherein the liability for the accident is undisputedly of their insured driver, then the insurance carrier has the duty to indemnify their insured driver in very specific ways to "make them whole" again.

The insurance carrier may pay them compensation (recompense for lost wages that would have normally occurred), pay them for medical/legal/(pain and suffering) damages (*i.e.*, those costs arising specifically as the result of the accident), reparations to tow and repair the vehicles involved in the accident returning them to their original condition, and the payment of rental vehicles while awaiting repairs.

It is in the breadth of the insurance carrier's obligations that we see the application of an indemnity; in other words, an indemnity is a "generalized promise of protection against a specific type of event by way of making the injured party whole again."

An indemnity should also be differentiated from a guarantee. A guarantee is the promise of a third party to honour the obligation of a party to a contract should that party be unable or unwilling to do so (usually a guarantee is limited to an obligation to pay a debt).

This distinction between indemnity and guarantee was discussed as early as the eighteenth century in *Birkmya v Darnell*. In that case, concerned with a guarantee of payment for goods rather than payment of rent, the presiding judge explained that a guarantee effectively says "Let him have the goods; if he does not pay you, I will."

COMMONWEALTH

INDEMNITY CLAUSES

Under section 4 of the Statute of Frauds (1677), a "guarantee" (an undertaking of secondary liability; to answer for another's default) must be evidenced in writing. No such formal requirement exists in respect of indemnities (involving the assumption of primary liability; to pay irrespective of another's default) which are enforceable even if made orally.

In the UK, under the Unfair Contract Terms Act 1977 s4, a consumer cannot be made to unreasonably indemnify another for their breach of contract or negligence.

CONTRACT AWARD

In England and Wales an "indemnity" monetary award may form part of rescission during an action of Restitutio in integrum. The property and funds are exchanged, but indemnity may be granted for costs necessarily incurred to the innocent party pursuant to the contract. The leading case is Whittington_v_Seale-Hayne, in which a contaminated farm was sold. Due to the contract, buyers renovated the real estate and, due to the contamination, incurred medical expenses for their manager who had fallen ill. Once the contract was rescinded, the buyer could be indemnified for the cost of renovation as this was necessary to the contract, but not the medical expenses as the contract did not require them to hire a manager. Were the sellers at fault, damages would clearly be available.

The distinction between indemnity and damages is subtle, but they may be differentiated by considering the roots of the law of obligations. How can money be paid where the defendant is not at fault? The contract before rescission is voidable but not void, meaning that, for a period of time, there is a legal contract. During this time both parties have legal obligation.

If the contract is to be voided *ab initio* the obligations performed must also be compensated. Therefore the costs of indemnity arise from the (transient and performed) obligations of the claimant rather than a Breach of obligation by the defendant.

INSURANCE

Indemnity insurance compensates the beneficiaries of the policies for their actual economic losses, up to the limiting amount of the insurance policy. It generally requires the insured to prove the amount of its loss before it can recover. Recovery is limited to the amount of the provable loss even if the face amount of the policy is higher.

This is in contrast to, for example, life insurance, where the amount of the beneficiary's economic loss is irrelevant. The death of the person whose life is insured for reasons not excluded from the policy obligate the insurer to pay the entire policy amount to the beneficiary.

Most business interruption insurance policies contain an Extended Period of Indemnity Endorsement, which extends coverage beyond the time that it takes to physically restore the property. This provision covers additional expenses that allow the business to return to prosperity and help the business restore revenues to pre-loss levels.

FREEING OF SLAVES AND INDENTURED SERVANTS

Slave owners suffered a loss whenever their slaves or indentured servants were granted their freedom. Slave owners might have been paid to cover their losses.

When the slaves of Zanzibar were freed in 1897, it was by compensation since the prevailing opinion was that the slave owners suffered the loss of an asset whenever a slave was freed.

In the 1860s in the United States, U.S., President Abraham Lincoln had requested many millions of dollars from Congress with which to compensate slave owners for the loss of their slaves. On July 9, 1868, Section IV of the Fourteenth Constitutional Amendment dismissed all of the claims that slave owners had been injured by the freeing of the slaves.

In 1807-08, in Prussia, statesman Baron Heinrich vom Stein introduced a series of reforms, the principal of which was the abolition of serfdom with indemnification to territorial lords.

Haiti was required to pay an indemnity of 150,000,000 francs to France in order to atone for the loss suffered by the French slave owners.

COSTS OF WAR

The nation that wins a war may insist on being paid compensations for the costs of the war, even after having been the instigator of the war.

- Following the Sino-Japanese War of 1894-95, the Treaty of Shimonoseki required that China pay Japan the sum of 200,000,000taels (or liangs).
- China incurred an indemnity which resulted from massacres of foreigners during the Boxer Rebellion. The payment of 450,000,000 Haikwan taels, or $330,000,000 became necessary.

CONSUMER PROTECTION ACT, 1986

Consumer Protection Act, 1986 is an act of Parliament of India enacted in 1986 to protect interests of consumers in India. It makes provision for the establishment of consumer councils and other authorities for the settlement of consum-ers' disputes and for matters connected therewith.

CONSUMER PROTECTION COUNCIL

Consumer Protection Councils are established at the national, state and district level to increase consumer awareness.

CENTRAL CONSUMER PROTECTION COUNCIL

It is established by the Central Government which consists of the following members:

- The Minister of Consumer Affairs, – Chairman, and
- Such number of other official or non-official members representing such interests as may be prescribed.

STATE CONSUMER PROTECTION COUNCIL

It is established by the State Government which consists of the following members:

- The Minister in charge of consumer affairs in the State Government – Chairman.
- Such number of other official or non-official members representing such interests as may be prescribed by the State Government.
- such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The State Council is required to meet as and when necessary but not less than two meetings every year.

CONSUMER DISPUTES REDRESSAL AGENCIES

- *District Consumer Disputes Redressal Forum (DCDRF):* Also known as the "District Forum" established by the State Government in each district of the State. The State Government may establish more than one District Forum in a district. It is a district level court that deals with cases valuing up to ₹2 million (US$31,000).
- *State Consumer Disputes Redressal Commission (SCDRC):* Also known as the "State Commission" established by the State Government in the State. It is a state level court that takes up cases valuing less than 10 million (US$150,000)
- *National Consumer Disputes Redressal Commission (NCDRC):* Established by the Central Government. It is a national level court that works for the whole country and deals with amount more than 10 million (US$150,000).

OBJECTIVES

Objectives of Central Council

The objectives of the Central Council is to promote and protect the rights of the consumers such as:

(a) The right to be protected against the marketing of goods and services which are hazardous to life and property.
(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices.
(c) The right to be assured, wherever possible, access to a variety of goods and services at competitive prices.
(d) The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.
(e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of con-sumers; and
(f) The right to consumer education.

OBJECTIVES OF STATE COUNCIL

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) in central council objectives.

JURISDICTION

Jurisdiction of District Forum

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.
(2) A complaint shall be instituted in a Districtyes.

Forum within the local limits of whose jurisdiction:

(a) The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
(b) Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
(c) The cause of action, wholly or in part, arises.

JURISDICTION OF STATE COUNCIL

Subject to the other provisions of this Act, the State Commission shall have jurisdiction:

(a) To entertain
   (i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees onecrore; and
   (ii) Appeals against the orders of any District Forum within the State; and

(b) To call for the records and pass appropriate orders in any con-sumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

JURISDICTION OF NATIONAL COUNCIL

Subject to the other provisions of this Act, the National Commission shall have jurisdiction:

(i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) Appeals against the orders of any State Commission

To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

(1) The District Forum, the State Commis-sion or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

SALIENT FEATURES OF CONSUMER PROTECTION ACT

These days consumer is a victim of low income, price rise, scarcity, and immoral practices of seller. On account of competition among sellers adulteration, misleading presentations are rising day by day.

Often consumers cannot see through the seller's manipulations. A feel of dissatisfaction creeps in them when they fail to make proper purchases.

In olden days, a human relationship existed between the consumer and the producer. But these days no personal relations exist between them. Producers want to earn maxi-mum profit without considering the loss of the consumer.

Now the Government has initiated many programmes to safeguard the interests of the consumer. Government is advertising through newspaper and television to enlighten the con-sumers.

In these advertisements, the consumer is being educated about his rights and the role of the Government in protecting these rights. Government controls the prices of the goods. Goods of daily use are provided at subsidized rates at Super bazaar, Kendriya Bhandar, Mother dairy, *etc.* The consumer is educated about the procedure of the redressal of their grievances through advertisements and how the Government can punish the offenders.

SALIENT FEATURES OF CONSUMER PROTECTION ACT

This Act is applicable on both goods and services. Goods are manufactured by the manufacturer and consumer buys them from manufacturer or seller. Services include transport, electricity, water; roads, *etc.*, are under this Act.

Consumer Redressal Forum-Under Consumer Protection Act, the three judicial systems has been set up to provide relief to consumers. In this system, consumer forums have been set up at various levels which are functioning to safeguard the interests of consumers. Under this system, many forums and commissions have been set up at various levels where consumers can lodge their complaints.

I. At district level there is District Consumer Dispute Redressal Forum. It is headed by a judicial officer equivalent to Session Judge. He is assisted by two members. Cases involve compensation up to 20 lakhs are entertained in this forum.
II. At state level there is State Consumer Dispute Redressal Commission. It is headed by a judicial officer equivalent to High Court Judge. He is also assisted by two members. Here cases involve compensation of 20 lakhs to one crore are entertained.
III. At national level there is National Consumer Dispute Redressal Commission. It is headed by a Judge of Supreme Court. He is assisted by four members. Here cases involve compensation above one crore are entertained. National Commission has jurisdiction for appeals coming up against orders of State Commission. Supreme Court is the final deciding authority.

Under this Act there is provision to settle the complaint within three months of filing it. If the complaint needs laboratory testing, the period is extended to five months.

In Consumer Protection Act, clause VI defines the rights of the consumer which have been already discussed in the previous chapter. There is no fee for lodging a complaint. Even poor people can get justice.

The clause II of this Act has defined some terms used by Consumer Protection Act like:

I. Defect-it is any fault or shortcoming in quality, quantity, purity, potency, or standard fixed by the government.
II. Deficiency-it is any fault, shortcoming or imperfection in quality or performance.
III. Unfair Trade Practice-it is unfair and deceptive procedure used to promote sale or supply of goods and services like lottery, chit fund, conducting competitions, *etc.*
IV. Restricted trade practices.

DEFINITION OF CONSUMER

An individual who buys products or services for personal use and not for manufacture or resale.

A consumer is someone who can make the decision whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements.

Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as a consumer.

GRIEVANCE REDRESS MECHANISM IN GOVERNMENT

GRIEVANCE REDRESS

Grievance Redress Mechanism is part and parcel of the machinery of any administration. No administration can claim to be accountable, responsive and user-friendly unless it has established an efficient and effective grievance redress mechanism. In fact, the grievance redress mechanism of an organization is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the administration.

I. (A) STRUCTURE OF GRIEVANCE REDRESS MACHINERY AT APEX LEVEL

The grievances of public are received at various points in the Government of India. There are primarily two designated nodal agencies in the Central Government handling these grievances. These agencies are:

(i) Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances & Pensions
(ii) Directorate of Public Grievances, Cabinet Secretariat

DEPARTMENT OF ADMINISTRATIVE REFORMS & PUBLIC GRIEVANCES

Department of Administrative Reforms & Public Grievances is the nodal agency in respect of policy initiatives on public grievances redress mechanism and citizen

centric initiatives. The role of Department of Administrative Reforms and Public Grievances consists primarily to undertake such citizen-centric initiatives in the fields of administration reforms and public grievances in the Government so as to enable the Government machinery to deliver quality public services to the citizen in a hassle-free manner and eliminate the causes of grievance.

The grievances received by the Department are forwarded to the concerned Ministries/Departments/State Governments/UTs, who are dealing with the substantive function linked with the grievance for redress under intimation to the complainant. The Department 'takes up' about 1000 grievances every year depending upon the seriousness of the grievance and follows them regularly till their final disposal. This enables the Department to evaluate the effectiveness of the grievance redress machinery of the concerned government agency.

On the basis of the grievances received, Department identifies the problem areas in Government which are complaint-prone. These problem areas are then subjected to studies and remedial measures are suggested to the Department/ Organisation concerned.

DIRECTORATE OF PUBLIC GRIEVANCES (DPG)

Based on the review of the public grievances redress machinery in Government of India carried out in 1987, the Directorate of Public Grievances was set up in the Cabinet Secretariat with effect from 01.04.88. This Directorate was set up initially to look into individual complaints pertaining to four Central Government Departments which were more prone to public complaints. Subsequently, more Departments having larger public interface were added to its purview and presently this Directorate is handling grievances pertaining to 16 Central Government Organisations.

The Directorate was envisaged as an appellate body investigating grievances selectively and particularly those where the complainant had failed to get redress at the hands of internal machinery and the hierarchical authorities. Unlike the Department of AR&PG, Directorate of Public Grievances has been empowered to call for the files and officers for discussion to see that grievance handling has been done in a fair, objective and just manner. Wherever the Directorate is satisfied that the grievance has not been dealt in such a manner, it makes suitable recommendations for consideration and adoption by the concerned Ministry/ Department which are required to be implemented within a period of one month.

The empowered and enlightened citizenry of today is far more demanding and the government, therefore, has to develop, evolve and enable itself to meet the evolving demands of the society that it has to serve. The society today is impatient with the old system of governance which is not coming up to its expectations. To them, a government employee is perceived as insensitive, aloof, corrupt and overall the administrative system as autocratic, opaque and with no work culture

This requires a paradigm shift in governance to a system where the citizen is in the centre and he is consulted at various stages of formulation and implementation of public policy. To achieve this objective, India needs a public

service which is capable, innovative and forward looking. The traditional role of civil service which was of administrator, service provider and controller of development activities has to make way for the new roles of facilitator and regulator so as to create best environment and conditions in the country for building a nation of excellence.

Department of Administrative Reforms & Public Grievances is the nodal agency in Government of India for formulation and implementation of such policies and strategic initiatives so as to enable and equip the government machinery to meet the challenges involved in achieving this objective.

Department of Administrative Reforms and Public Grievances is the driving engine of reforms in administration and governance. The Department proposes to introduce and lead Change to establish a public service of quality, efficiency, integrity and effectiveness and modernize the public service. It is the nodal agency in government for facilitating administrative improvements and reengineering of processes across the government. Citizen's Charter initiative, Public Grievance Policy, Quality Management in Government, e-Governance, Review of Administrative Laws, *etc.* Documentation and Dissemination of Best Practices, Organisation & Methods, Information & Facilitation Counters, Civil Services Reforms are some of the areas under the ambit of Department of Administrative Reforms & Public Grievances.

Following are the necessary conditions for successful implementation of any reforms agenda:

- Political mandate
- Committed and strong executive
- Willingness and capability to take on vested interests in the system

PUBLIC GRIEVANCE REDRESS MECHANISM IN CENTRAL GOVERNMENT MINISTRIES/DEPARTMENTS/ORGANISATIONS

The Public Grievance Redress Mechanism functions in Government of India on a decentralized basis. The Central Government Ministries/Departments, their attached and subordinate offices and the autonomous bodies dealing with substantive functions as per Allocations of Business Rules, 1961 have their respective grievance redress machinery. An officer of the level of Joint Secretary is required to be designated as Director of Grievances of the Ministry/Department/ Organisation. The role and functions of Directors of Grievances are given in Department of Administrative Reforms and Public Grievances O.M.no.1/PLCY/ PG-88(7) dated 01.03.1988. This inter alia empowers the Directors of Grievances to call for files/reports and take decisions or review decisions already taken, in consultation with Secretary/HOD even in those areas which do not fall within his/her domain/charge. The functioning of Public Grievance Redress Machineries in various Ministries/Departments/Organisations is regularly reviewed by a Standing Committee of Secretaries under the Chairmanship of Cabinet Secretary with Additional Secretary Department of Administrative Reforms and Public Grievances as member-secretary.

With a view to ensure prompt and effective redress to the grievances, a number of instructions have been issued by Department of AR&PG from time to time which, inter alia include:

(a) Observe every Wednesday as a meetingless day in the Central Secretariat Offices when all the officers above a specified level should be available their desks from 1000hrs.to 1300hrs. to receive and hear public grievances. Field level offices having contact with the public have also to declare one day in the week as a meetingless day.

(b) Designate a Joint Secretary level officer as Director of Grievances including in autonomous bodies and public sector undertakings.

(c) Deal with every grievance in a fair, objective and just manner and issue reasoned speaking reply for every grievance rejected.

(d) Analyse public grievances received to help identification of the problem areas in which modifications of policies and procedures could be undertaken with a view to making the delivery of services easier and more expeditious.

(e) Issue booklets/pamphlets about the schemes/services available to the public indicating the procedure and manner in which these can be availed and the right authority to be contacted for service as also the grievance redress authority.

(f) Pick up grievances appearing in newspaper columns which relate to them and take remedial action on them in a time bound manner. Issue rejoinders to newspapers after investigation in cases which are found to be baseless and/or damaging to the image of the Organisation.

(g) Strengthen the machinery for redress of public grievance through, strictly observing meetingless day, displaying name designation, room number, telephone number, *etc.*, of Director of Grievances at the reception and other convenient places, placing locked complaint box at reception.

(h) Set up Staff Grievance Redress Machinery and designate a Staff Grievance Officer.

(i) Include the public grievances work and receipt/disposal statistics relating to redress of public grievances in the Annual Action Plan and Annual Administrative Report of the Ministries/Departments.

(j) Fix time limits for disposal of work relating to public grievances and staff grievances and strictly adhere to them.

(k) Acknowledge each grievance petition within three days of receipt, indicating the name, designation and telephone number of the official who is processing the case. The time frame in which a reply will be sent should also be indicated.

(l) Constitute Lok Adalats/Staff Adalats, if not already constituted, and hold them every quarter for quicker disposal of public as well as staff grievances and pensioners' grievances.

(m) Constitute a Social Audit Panel or such other machinery, if not already constituted, for examining areas of public interface with a view to recommending essential changes in procedures to make the organization more people-friendly.
(n) Establish a single window system at points of public contact, wherever possible to facilitate disposal of applications.
(o) Indicating telephone/fax number of the officer whose signature over a communication regarding the decision/reply is to issue to the petitioner.
(p) Monitoring of grievances in organisations under Ministries/ Departments on a monthly basis.
(q) Publicising the grievance redress mechanism through the print and electronic media.
(r) Review of receipt and disposal of grievances by Secretaries of Ministries/Departments in the weekly meetings taken by them.

TYPES OF PUBLIC GRIEVANCES

An analysis of grievances received in Department of Administrative Reforms & Public Grievances and Directorate of Public Grievances has revealed that the majority of grievances related to inordinate delay in taking decisions, extending from several months to several years and refusal/inability to make speaking replies/disclose basic information to the petitioners to enable them to examine whether their cases have been correctly decided. It is observed that, had the concerned organizations expeditiously and appropriately dealt with the grievances in the first instance, the complainants would not have approached Department of Administrative Reforms & Public Grievances/Directorate of Public Grievances.

SYSTEMIC PROBLEM AREAS

There are rules, regulations, instructions which are archaic and aimed at shifting the work towards citizens. Slackness in administration, low morale of the services, inherent inertia, absence of incentives, lack of proper authority and accountability are the delay-breeders and the delay is the major factor that generates the grievances. These factors need to be tackled properly through systematic changes. Prevention is better than cure. On these lines, the best method to redress a grievance is not to allow the grievance to arise at the first instance. Even the redress of a grievance, that arose on account of delay, is also delayed as is revealed by the analysis of grievances according to which on a average six months are taken to redress a grievance.

Many a times Departments/Organisations are found to avoid taking appropriate decisions by resorting to rejection without application of mind, not taking appropriate interest in functioning of subsidiary offices/linked autonomous organizations, and emphasize on disposal and not on the quality disposal. Decisions taken earlier are reiterated without subjecting the cases of independent examination. There is an inertia to review decisions taken by down-the-line

functionaries. In many cases Departments/Organisations justify the delay and continue with their inability to take decisions by putting the onus on another agency or on the petitioner. Many a times, the actual cause of grievance lay in internal inefficiency of the system and failure to identify simple systemic solutions. It is also observed that the time norms set by Departments for providing services were not being adhered to in many cases.

There is no doubt that grievances continue to arise because of a high systemic tolerance for delay, poor work quality and non-accountability in every day performance of functions. Failure to review archaic, redundant and incongruous rules, policies and procedures and to initiate simple, workable systemic changes is another cause for grievance generation. However, Departments and Organisations, which work with policies and procedures on a day-to-day basis, do not appear to have developed the ability to continually look 'within' and identify deficiencies. All these factors have ensured that grievances, once arisen, many a time do not get resolved in 'normal' course and need intervention at the highest administrative level.

Slackness in efficient functioning of 'Directors of Grievances' is identified as one of the prime cause for continuing delay in redress of grievances. Poor work quality, non-accountability in everyday performance of functions and failure to systemically review policies/procedures and suggest systemic changes are other important causes. In most Ministries, Departments and Organisations, the mechanism of Director of Grievances is not functioning as per the mandate prescribed.

FOCUS AREAS

In this context, it is the need of the time that the Government should review its pledge of providing hassle-free public services to the citizens by focusing on systemic changes to minimize the grievances in Government domain. In order to achieve this objective in a focused manner, it is necessary to evolve a multi-pronged strategy to be implemented in a time-bound and effective manner. Keeping in view the various factors involved in grievance redress issue, following areas need focused attention:

PERFORMANCE REVIEW – FORESEEING AREAS OF DISSATISFACTION

(a) To review processes, functions, *etc.*, in the organization and to cast them pro-actively in a manner that would foresee areas of dissatisfaction, identify activities where transparency, equity, prudence and propriety are compromised, interventions that can help achieve better outcomes, improve satisfaction of internal and external stakeholders.

(b) An annual review of laws, rules, regulations, instructions and procedures be carried out with a view to simplify the procedure making the administration more transparent, accountable and citizen-friendly.

Information Technology should be employed in re-engineering of governmental processes in order to improve efficiency and effectiveness and ensuring transparency and accountability.

IDENTIFICATION OF GRIEVANCE PRONE AREAS AND ANALYSIS

(a) Identify areas susceptible to corruption and/or grievance generation and conduct work audit of such areas. In addition, consider external/ social audit in areas of very high public interface, with the aim of identifying wrong doers and improving processes and systems. Involve NGOs in the exercise.

(b) Analyse the nature and causes of grievances with the aim of identifying systemic deficiencies in laws, rules, regulations, policies, instructions, work practices and procedures, and effecting systemic changes to remove/correct these deficiencies. The Directors of Grievances be the nodal officers for such purpose. The analysis should be conducted in the month of April every year and studies of identified grievance prone areas be undertaken. Recommendations made in the studies should be implemented by December of that year so as to bring systemic changes and remove the Causes of grievances.

(c) Fix responsibility in each and every case of delay, default or dereliction in performance of every day duties on failure to deliver services, and take disciplinary action to avoid recurrence. This will send a clear signal that in the event of failure to perform duties or deal appropriately with grievances within the time frame norms prescribed, a real possibility of having responsibility fixed on one's shoulder exists. Consider the feasibility of prescribing specific penalty clauses in such cases.

CITIZEN'S CHARTER

Formulation and effective implementation of Citizen's Charters, which should, inter-alia, include disclosure of time norms for providing various services to the citizens/clients and details of all levels of grievance redress machinery that may be approached.

INFORMATION & FACILITATION COUNTERS (IFC)

Setting up and effective operationalisation of IFC's civic society may be involved in the functioning of IFCs to make them citizen- friendly and effective.

ON LINE REGISTRATION OF GRIEVANCES

Make 'Public Grievance Redress and Monitoring System' (PGRAMS) software, operational with every Director of Grievances. This shall enable the Director of Grievances to immediately place the details of grievances received in a database (efficient 'dak' management) as well as record the fact whether he intends to monitor its progress, identify the section/division where it is being

sent, *etc.*, generate the time taken in dealing with the grievance, enable review of pending grievances in the organisation or across the organisations, generate acknowledgements to complainants, conduct analysis, *etc.* The system should also have the facility of on-line registration of grievances by the citizens and access to information on the status of his/her grievances.

PROMPT AND EFFECTIVE REDRESS OF GRIEVANCES

(a) All grievances should be necessarily acknowledged, with an interim reply within 3 days of receipt and redressed within 3 months of receipt in the Organisation. The same time limit should apply even if co-ordination with subsidiary offices or another Department/Organisation is involved. In such instances special efforts, to be suo moto disclosed when reports are called, should be made.

(b) No grievance is to be rejected without having been independently examined. At a minimum, this means that an officer superior, to the one who delayed taking the original decision or took the original decision that is cause for grievance, should actually examine the case as well as the reply, intended to be sent to the grievance holder.

(c) *Make the 'Director of Grievances' effective through the following inter-related steps:*

  (i) Secretaries/Organisational Heads ensuring that Directors of Grievances are fully 'empowered' in accordance with instructions to perform their role.

  (ii) All grievance representations received in the Department/ Organisation, either by mail, fax, e-mail to be invariably routed through Director of Grievances before they go to concerned sections/ divisions. At this stage, Office of the Director of Grievances shall go through the representations and come to a prima-facie view regarding the gravity of the matter involved and decide whether it shall monitor the case or allow down-the-line functionaries to independently deal with it. Directors of Grievances should monitor and follow up at least 3 to 5 percent of grievances received to enable them to assess the efficacy of grievance redress mechanism.

  (iii) Fix responsibility in each case of delay, default and dereliction of duty, identified by Director of Grievances, and take appropriate action against concerned personnel. In addition, consider feasibility of prescribing specific penalty clauses for such failures.

REVIEW AND MONITORING OF GRIEVANCE REDRESS MECHANISM

Ensure meaningful review of the performance of grievance redress machinery of the Ministry/Organisation as well as that of attached/subordinate organization by Secretary/Head of the Department on a monthly basis. Review should also cover action against defaulters.

ROLE OF REGULATORS, OMBUDSMAN AND LIKE BODIES

An explosive issue today in context of public grievance redress is the pace and phasing of the movement towards open markets after the gradual abandonment of centralized planning model. The Government is today withdrawing from various service sectors traditionally monopolosized by it and private enterprise is moving in. This may lead to a scenario where the Government monopolies are replaced by even more vicious private monopolies or cartels in the absence of adequate regulation, enforcement and recourse to grievance redress.

This has significant implications for the role of Government. The Government can not just abandon the interests of citizens to be taken care of by the market forces in areas of service delivery covered by the private sector. In the open market scenario, it is often the major stakeholders and players which define the cost, quality and mechanism, *etc.*, of service delivery.

The Government therefore needs to put in place appropriate mechanisms in the regulatory authorities, ombudsmen and like bodies in such sectors so that the concerns of individual citizens are also accorded equal importance and weightage and are appropriately and effectively addressed. They should safeguard the interests of the common citizens and ensure that the grievances of the citizens are attended to promptly and effectively.

THE RIGHT TO INFORMATION ACT, 2005

No. 22 of 2005

[15th June, 2005]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal; Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

CHAPTER I: PRELIMINARY

1. (1) This Act may be called the Right to Information Act, 2005.
(2) It extends to the whole of India except the State of Jammu and Kashmir.
(3) The provisions of sub-section (*1*) of section 4, sub-sections (*1*) and (*2*) of section 5, sections 12, 13, 15,16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.
2. *In this Act, unless the context otherwise requires:*
(a) "Appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
(i) By the Central Government or the Union territory administration, the Central Government;
(ii) By the State Government, the State Government;
(b) "Central Information Commission" means the Central Information Commission constituted under sub-section (*1*) of section 12;
(c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (*1*) and includes a Central Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;
(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (*3*) of section 12;
(e) *"Competent authority" means:*
(i) The Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
(ii) The Chief Justice of India in the case of the Supreme Court;
(iii) The Chief Justice of the High Court in the case of a High Court;
(iv) The President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
(v) The administrator appointed under article 239 of the Constitution;
(f) "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

(g) "Prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(h) *"Public authority" means any authority or body or institution of self- government established or constituted:*
   (a) By or under the Constitution;
   (b) By any other law made by Parliament;
   (c) By any other law made by State Legislature;
   (d) By notification issued or order made by the appropriate Government, and includes any—
      (i) Body owned, controlled or substantially financed;
      (ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

(i) *"Record" includes:*
   (a) Any document, manuscript and file;
   (b) Any microfilm, microfiche and facsimile copy of a document;
   (c) Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
   (d) Any other material produced by a computer or any other device;

(j) "Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
   (i) Inspection of work, documents, records;
   (ii) Taking notes, extracts or certified copies of documents or records;
   (iii) Taking certified samples of material;
   (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(k) "State Information Commission" means the State Information Commission constituted under sub-section (*1*) of section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (*3*) of section 15;

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (*1*) and includes a State Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(n) "Third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II: RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Subject to the provisions of this Act, all citizens shall have the right to information.
4. (1) *Every public authority shall:*
   (a) Maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
   (b) *Publish within one hundred and twenty days from the enactment of this Act:*
      (i) The particulars of its organisation, functions and duties;
      (ii) The powers and duties of its officers and employees;
      (iii) The procedure followed in the decision making process, including channels of supervision and accountability;
      (iv) The norms set by it for the discharge of its functions;
      (v) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
      (vi) A statement of the categories of documents that are held by it or under its control;
      (vii) The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
      (viii) A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
      (ix) A directory of its officers and employees;
      (x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
      (xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
      (xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) Particulars of recipients of concessions, permits or authorisations granted by it;
(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form;
(xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
(xvi) The names, designations and other particulars of the Public Information Officers;
(xvii) Such other information as may be prescribed and thereafter update these publications every year;

(c) Publish all relevant facts while formulating important policies or announcing the decisions which affect public;
(d) Provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation: For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5. (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred

days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) *Where an application is made to a public authority requesting for an information:*

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(a) The details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) Information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed: Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—

(i) The reasons for such rejection;

(ii) The period within which an appeal against such rejection may be preferred; and

(iii) The particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

8. (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:*

(a) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
(d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
(e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) Information received in confidence from foreign Government;
(g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:
Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:
Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under secton 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

10. (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(a) That only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) The reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) The name and designation of the person giving the decision;

(d) The details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) His or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

11. (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a

written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

CHAPTER III: THE CENTRAL INFORMATION COMMISSION

12. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) *The Central Information Commission shall consist of:*

(a) The Chief Information Commissioner; and

(b) Such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) *The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of:*

(i) The Prime Minister, who shall be the Chairperson of the committee;

(ii) The Leader of Opposition in the Lok Sabha; and

(iii) A Union Cabinet Minister to be nominated by the Prime Minister.

Explanation: For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

13. (1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:
Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) *The salaries and allowances payable to and other terms and conditions of service of:*
   (a) The Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;
   (b) An Information Commissioner shall be the same as that of an Election Commissioner:
   Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:
   Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:
   Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient

performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

14. (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be:

(a) Is adjudged an insolvent; or

(b) Has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) Engages during his term of office in any paid employment outside the duties of his office; or

(d) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) Has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER IV: THE STATE INFORMATION COMMISSION

15. (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) *The State Information Commission shall consist of:*
   (a) The State Chief Information Commissioner, and
   (b) Such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) *The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of:*
   (i) The Chief Minister, who shall be the Chairperson of the committee;
   (ii) The Leader of Opposition in the Legislative Assembly; and
   (iii) A Cabinet Ministrer to be nominated by the Chief Minister.
   Explanation: For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

16. (1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:
Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:
Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:
Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:
Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

(5) *The salaries and allowances payable to and other terms and conditions of service of:*
   (a) The State Chief Information Commissioner shall be the same as that of an Election Commissioner;
   (b) The State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:
   Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:
   Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits

in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:
Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

17. (1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be:

(a) Is adjudged an insolvent; or

(b) Has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) Engages during his term of office in any paid employment outside the duties of his office; or

(d) Is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) Has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER V: POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

18 (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person:

(a) Who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) Who has been refused access to any information requested under this Act;

(c) Who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) Who has been required to pay an amount of fee which he or she considers unreasonable;

(e) Who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) In respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:
   (a) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
   (b) Requiring the discovery and inspection of documents;
   (c) Receiving evidence on affidavit;
   (d) Requisitioning any public record or copies thereof from any court or office;
   (e) Issuing summons for examination of witnesses or documents; and
   (f) Any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:
Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:
Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the

appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to:*

(a) *Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including:*

(i) By providing access to information, if so requested, in a particular form;

(ii) By appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) By publishing certain information or categories of information;

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) By enhancing the provision of training on the right to information for its officials;

(vi) By providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) Require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) Impose any of the penalties provided under this Act;

(d) Reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20. (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:
Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:
Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

CHAPTER VI: MISCELLANEOUS

21. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

23. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.
24. (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.
(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.
(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.
(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:
(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.
25. (1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.
(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.
(3) *Each report shall state in respect of the year to which the report relates:*
(a) The number of requests made to each public authority;
(b) The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) The number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
(d) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
(e) The amount of charges collected by each public authority under this Act;
(f) Any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
(g) Recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

26. (1) *The appropriate Government may, to the extent of availability of financial and other resources:*

(a) Develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
(b) Encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
(c) Promote timely and effective dissemination of accurate information by public authorities about their activities; and
(d) Train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

(a) The objects of this Act;

(b) The postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;

(c) The manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(d) The assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;

(e) The assistance available from the Central Information Commission or State Information Commission, as the case may be;

(f) All remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(g) The provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(h) The notices regarding fees to be paid in relation to requests for access to an information; and

(i) Any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

27. (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:*

(a) The cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(b) The fee payable under sub-section (1) of section 6;
(c) The fee payable under sub-sections (1) and (5) of section 7;
(d) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
(e) The procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and
(f) Any other matter which is required to be, or may be, prescribed.

28. (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:*
(i) The cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
(ii) The fee payable under sub-section (1) of section 6;
(iii) The fee payable under sub-section (1) of section 7; and
(iv) Any other matter which is required to be, or may be, prescribed.

29. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.
(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

31. The Freedom of Information Act, 2002 is hereby repealed.

3

Flaws in Contract Law

There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw, vice or error somewhere. As a result of such a flaw, the apparent agreement is not a real agreement.

Where there is no real agreement, the law has three remedies:

Firstly: The agreement may be treated as of no effect and it will then be known as void agreement.

Secondly: The law may give the party aggrieved the option of getting out of his bargain, and the contract is then known as voidable.

Thirdly: The party at fault may be compelled to pay damages to the other party.

VOID AGREEMENT

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no rights on either party. It is really not a contract at all, it is non-existent. Technically the words 'void contract' are a contradiction in terms. But the expression provides a useful label for describing the situation that arises when a 'contract' is claimed but in fact does not exist. For example, a minor's contract is void.

VOIDABLE CONTRACT

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent was not free. The contract will, however be binding, if he does not exercise his option to avoid it within a reasonable time. The consent of a party is not free and so he is entitled to avoid the contract, if he has given misrepresentation, fraud, coercion or undue influence.

ILLEGAL AGREEMENT

An illegal agreement is one which, like the void agreement has no legal effects as between the immediate parties. Further transactions collateral to it also become tainted with illegality and are, therefore, not enforceable. Parties to an unlawful agreement cannot get any help from a Court of law, for no polluted hands shall touch the pure fountain of justice. On the other hand, a collateral transaction can be supported by a void agreement.

For example, one party may have deceived the other party, or in some other way there may be no genuine consent. The parties may be labouring under a mistake, or one or both the parties may be incapable of making a contract. Again, the agreement may be illegal or physically impossible. All these are called "the *FLA WS* in contract or the *VICES* of contract".

The chief flaws in contract are:

(i) Incapacity
(ii) Mistake
(iii) Misrepresentation
(iv) Fraud
(v) Undue Influence
(vi) Coercion
(vii) Illegality
(viii) Impossibility.

(i) Flaw in Capacity - Capacity and Persons: In law, persons are either natural or artificial. Natural persons are human beings and artificial persons are corporations. Contractual capacity or incapacity is an incident of personality.

The general rule is that all natural persons have full capacity to make binding contracts. But the Indian Contract Act, 1872 admits an exception in the case of:

(i) Minors,
(ii) Lunatics, and
(iii) Persons disqualified from contracting by any law to which they are subject.

These persons are not competent to contract. 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. "A valid agreement requires that both the parties should understand the legal implications of their conduct. Thus both must have a mature mind. The legal yardstick to measure maturity, according to the law of contract is, that both should be major and of sound mind and if not, the law would presume that the maturity of their mind has not reached to the extent of visualising the pros and cons of their acts, hence, a bar on minors and lunatics competency to contract.

The contractual capacity of a corporation depends on the manner in which it was created.

MINOR'S CONTRACT

According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years. According to the Indian Contract Act, no person is competent to enter into a contract who is not of the age of majority. It was finally laid down by the Privy Council in the leading case of *Mohiri Bibee* v. *Dharmodas Ghose,* (1903) 30 Cal. 539, that a minor has no capacity to contract and minor's contract is absolutely void. In this case, X, a minor borrowed Rs. 20,000 from Y, a money lender. As a security for the money advanced, X executed a mortgage in V's favour. When sued by Y, the Court held that the contract by X was void and he cannot be compelled to repay the amount advanced by him. Indian Courts have applied this decision to those cases where the minor has incurred any liability or where the liabilities on both sides are outstanding. In such cases, the minor is not liable. But if the minor has carried out his part of the contract, then, the Courts have held, that he can proceed against the other party. The rationale is to protect minor's interest. According to the Transfer of Property Act, a minor cannot transfer property but he can be a transferee (person accepting a transfer). This statutory provision is an illustration of the above principle.

The following points must be kept in mind with respect to minor's contract:

(a) A minor's contract is altogether void in law, and a minor cannot bind himself by a contract. If the minor has obtained any benefit, such as money on a mortgage, he cannot be asked to repay, nor can his mortgaged property be made liable to pay.

(b) Since the contract is void *ab initio,* it cannot be ratified by the minor on attaining the age of majority.

(c) Estoppel is an important principle of the law of evidence. To explain, suppose X makes a statement to Y and intends that the latter should believe and act upon it. Later on, X cannot resile from this statement and make a new one. In otherwords, X will be stopped from denying his previous statement. But a minor can always plead minority and is not stopped from doing so even where he had produced a loan or entered into some other contract by falsely representing that he was of full age, when in reality he was a minor.

But where the loan was obtained by fraudulent representation by the minor or some property was sold by him and the transactions are set aside as being void, the Court may direct the minor to restore the property to the other party.

For example, a minor fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the trader for its price. The minor cannot be compelled to pay the amount to the promissory note, but the Court on equitable grounds may order the minor to return the car to the trader, if it is still with the minor.

Thus, according to Section 33 of the Specific Relief Act, 1963 the Court may, if the minor has received any benefit under the agreement from the other party require him to restore, so far as may be such benefit to the other party, to the extent to which he or his estate has been benefited thereby.

(d) A minor's *estate* is liable to pay a *reasonable price* for necessaries supplied to him or to anyone whom the minor is bound to support (Section 68 of the Act).
The necessaries supplied must be according to the position and status in life of the minor and must be things which the minor actually needs. The following have also been held as necessaries in India.
Costs incurred in successfully defending a suit on behalf of a minor in which his property was in jeopardy; costs incurred in defending him in a prosecution; and money advanced to a Hindu minor to meet his marriage expenses have been held to be necessaries.

(e) An agreement by a minor being void, the Court will never direct specific performance of the contract.

(f) A minor can be an agent, but he cannot be a principal nor can he be a partner.
He can, however, be admitted to the benefits of a partnership.

(g) Since a minor is never personally liable, he cannot be adjudicated as an insolvent.

(h) An agreement by a parent or guardian entered into on behalf of the minor is binding on him provided it is for his benefit or is for legal necessity. For, the guardian of a minor, may enter into contract for marriage on behalf of the minor, and such a contract would be good in law and an action for its breach would lie, if the contract is for the benefit of the minor *(Rose Fernandez* v. *Joseph Gonsalves,* 48 Bom. L. R. 673) *e.g.*, if the parties are of the community among whom it is customary for parents to contract marriage for their children. The contract of apprenticeship is also binding.

However, it has been held that an agreement *for service,* entered into by a father on behalf of his daughter who is a minor, is not enforceable at law *(Raj Rani* v. *Prem Adib,* (1948) 51 80m. L.R. 256).

Lunatic's Agreement (Section 2): A person of unsound mind is a lunatic. That is to say for the purposes of making contract, a person is of unsound mind if at the time when he makes the contract, he is incapable of understanding it and of forming rational judgment as to its effect upon his interests. A person unsound mind cannot enter into a contract. A lunatic's agreement is therefore void. But if he makes a contract when he is of sound mind, *i.e.*, during lucid intervals, he will be bound by it.

A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests cannot contract whilst such delirium or state of drunkenness

lasts. A person under the influence of hypnotism is temporarily of unsound mind. Mental decay brought by old age or disease also comes within the definition.

Agreement by persons of unsound mind are void. But for necessaries supplied to a lunatic or to any member of his family, the lunatic's estate, if any, will be liable. There is no personal liability incurred by the lunatic. If a contract entered into by a lunatic or person of unsound mind is for his benefit, it can be enforced (for the benefit) against the other party (Jugal Kishore v. Cheddu, (1903) I All. L.J 43).

PERSONS DISQUALIFIED FROM ENTERING INTO CONTRACT

Some statues disqualify certain persons governed by them, to enter into a contract. For example, Oudh "Land Revenue Act provides that where a person in Oudh is declared as a 'disqualified proprietor' under the Act, he is incompetent to alienate his property.

ALIEN ENEMIES

A person who is not an Indian citizen is an alien. An alien may be either an alien friend or a foreigner whose sovereign or State is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy.

A contract with an alien enemy becomes unenforceable on the outbreak of war. For the purposes of civil rights, an Indian citizen of the subject of a neutral state who is *voluntarily* resident in hostile territory or is carrying on business there is an alien enemy. Trading with an alien enemy is considered illegal, being against public policy.

FOREIGN SOVEREIGNS AND AMBASSADORS

Foreign sovereigns and accredited representatives of foreign states, *i.e.*, Ambassadors, High Commissioners enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the jurisdiction of the Indian Courts. Foreign Sovereign Governments can enter into contracts through agents residing in India. In such cases the agent becomes personally responsible for the performance of 'the contracts.

PROFESSIONAL PERSONS

In England, barristers-at law were prohibited by the etiquette of their profession from suing for their fees. So also are the Fellow and Members of the Royal College of Physicians and Surgeons. But they can sue and be sued for all claims other than their professional fees. In India, there is no such disability and a barrister, who is in the position of an advocate with liberty both to act and plead, has a right to contract and to sue for his fees *(Nihal Chand* v. *Oilawar Khan,* 1933 All. L.R. 417).

CORPORATIONS

A corporation is an artificial person created by law, *e.g.*, a company registered under the Companies Act, public bodies created by statute, such as Municipal Corporation of Delhi. A corporation exists only in contemplation of law and has no physical shape or form.

The Indian Contract Act does not speak about the capacity of a corporation to enter into a contract. But if properly incorporated, it has a right to enter into a contract. It can sue and can be sued in its own name. There are some contracts into which a corporation cannot enter without its seal, and others not at all. A company, for instance, cannot contract to marry. Further, its capacity and powers to contract are limited by its charter or memorandum of association. Any contract beyond such power in *ultra vires* and void.

MARRIED WOMEN

*I*n India there is no difference between a man and a woman regarding contractual capacity. A woman married or single can enter into contracts in the same ways as a man. She can deal with her property in any manner she likes, provided, of course, she is a major and is of sound mind.

Under the English law, before the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935, a husband was responsible for his wife's contracts but since 1935 this liability no longer arises unless the wife is acting as the husband's agent. Now, therefore, even in England a married woman has full contractual capacity, and can sue and be sued in her own name.

FLAW IN CONSENT

The basis of a contract is agreement, *i.e.*, mutual consent. In other words, the parties should mean the something in the same sense and agree voluntarily. It is when there is consent, that the parties are said to be *consensus ad idem i.e.*, their minds have met. Not only consent is required but it must be a free consent. Consent is not free when it has been caused by coercion, undue influence, misrepresentation, fraud or mistake. These elements if present, may vitiate the contract'.

When this consent is wanting, the contract may turn out to be void or voidable according to the nature of the flaw in consent. Where there is no consent, there can be no contract as in the case of mutual mistake. Where there is consent, but it is not free, a contract is generally voidable at the option of the party whose consent is not free. In the case of misrepresentation, fraud, coercion, undue influence, the consent of one of the parties is induced or caused by the supposed existence of a fact which did not exist.

Mistake (Sections 20 and 21): The law believes that contracts are made to be performed. The whole structure of business depends on this as the businessmen depend on the validity of contracts. Accordingly, the law says that it will not aid anyone to evade consequences on the plea that he was mistaken.

On the other hand, the law also realises that mistakes do occur, and that these mistakes are so fundamental that there may be no contract at all. If the law recognises mistake in contract, the mistake will render the contract *void.*

EFFECT OF MISTAKE

A mistake in the nature of miscalculation or error of judgement by one or both the parties has no effect on the validity of the contract. For example, if A pays an excessive price for goods under a mistake as to their true value, the contract is binding on him *(Leaf* v. *International Galleries* (1950) 1 All E.R. 693). Therefore, mistake must be B *"vital operative mistake", i.e.*, it must be a mistake of fact which is fundamental to contract.

To be operative so as to render the contract void, the mistake must be:

(a) Of fact, and not of law or opinion;
(b) The fact must be essential to agreement, *i.e.*, so fundamental as to negative
(c) The agreement; and
(d) Must be on the part of both the parties.

Thus, where both the parties to an agreement are under a mistake as to a matter of fact essential agreement, the agreement is void (Section 20). Such a mistake prevents the formation of any contract at all and the Court will declare it void. For example, A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain though neither party was aware of the fact. The agreement is void.

MISTAKE OF LAW AND MISTAKE OF FACT

Mistakes are of two kinds: (i) mistake of law, and (ii) mistake of fact. If there is a mistake of law of the land, the contract is binding because everyone is deemed to have knowledge of law of the land and ignorance of law is no excuse *(ignorantia juris non-excusat).* But mistake of foreign law and mistake of private rights are treated as mistakes of fact and are excusable. The law of a foreign country is to be proved in Indian Courts as ordinary facts. So mistake of foreign law makes the contract void. Similarly, if a contract is made in ignorance of private right of a party, it would be void, *e.g.*, where A buys property which already belongs to him.

MUTUAL OR UNILATERAL MISTAKE

Mistake must be mutual or bilateral, Le., it must be on the part of both parties. A unilateral mistake, Le., mistake on the part of only one party, is generally of no effect unless (i) it concerns some fundamental fact and (ii) the other party is aware of the mistake. For this reason, error of judgement on the part of one of the parties has no effect and the contract will be valid.

MUTUAL OR COMMON MISTAKE AS TO SUBJECT-MATTER

A contract is void when the parties to it assume that a certain state of things exist which does not actually exist or in their ignorance the contract means one

thing to one and another thing to the other, and they contract subject to that assumption or under that ignorance. There is a mistake on the part of both the parties. Such a mistake may relate to the existence of the subject matter, its identity, quantity or quality.

(a) *Mistake as to existence of the subject matter:* Where both parties believe the subject matter of the contract to be in existence but in fact, it is not in existence at the time of making the contract, there is mistake and the contract is void. In *Couturier* v. *Hastie* (1857), there was a contact to buy cargo described as shipped from port A to port B and believed to be at sea which in fact got lost earlier unknown to the parties and hence not in existence at the time of the contract. *Held,* the contract was void due to the parties mistake.

(b) Mistake as to identity of the subject matter: Where the parties are not in agreement to the identity of the subject matter, *i.e.*, one means one thing and the other means another thing, the contract is void; there is no consensus ad idem.

In *Raffles* v. *Wichelhous* (1864), A agreed to buy from B a cargo of cotton to arrive "ex Peerless form Bombay". There were two shows called "Peerless" sailing from Bombay, one arriving in October and the other in December. A meant the earlier ship and B the latter. *Held,* the contract was void for mistake.

(c) *Mistake* as *to quantity of the subject matter:* There may be a mistake as to quantity or extent of the subject matter which will render the contract void even if the mistake was caused by the negligence of a third-party.

In *Henkel* v. *Pape* (1870), P wrote to H inquiring the price of rifles and suggested that he might buy as many as fifty. On receipt of a reply he wired "send three rifles". Due to the mistake of the telegraph clerk the message transmitted to H was "send the rifles". H despatched 50 rifles. *Held,* there was no contract between the parties.

(d) Mistake as to quality of the subject-matter or promise: Mistake as to quality raises difficult questions. If the mistake is on the part of both the parties the contract is void. But if the mistake is only on the part of one party difficulty arises.

The general rule is that a party to a contract does not owe any duty to the other party to discloses all the facts in his possession during negotiations. Even if he knows that the other party is ignorant of or under some misapprehension as to an important fact, he is under no obligation to enlighten him. Each party must protect his own interests unaided. In contract of sale of goods, this rule is summed up in the maxim *caveat emptor* (Let the buyer beware.) The seller is under no duty to reveal the defects of his goods to the buyer, subject to certain conditions.

UNILATERAL MISTAKE AS TO NATURE OF THE CONTRACT

The general rule is that a person who signs an instrument is bound by its terms even if he has not read it. But a person who signs a document under a fundamental mistake as to its nature (not merely as to its contents) may have it avoided provided the mistake was due to either:

(a) The blindness, illiteracy, or senility of the person signing, or
(b) A trick or fraudulent misrepresentation as to the nature of the document.

In *Fosterv. Mackinnon* (1869), M, a senile man of feeble sight, endorsed a bill of exchange for £ 3,000 thinking it was a guarantee. Held, there was no contract and no liability was incurred by the signature. But if M knew that the document whereon he put his signature was a bill of exchange, he cannot avoid it on the ground that he believed that the bill was for £ 30 only. In the former case, he was mistaken as to the nature or the latter case he was mistaken as to the contents of the document. In the latter case he was mistaken as to the contents of the document.

UNILATERAL MISTAKE AS TO THE IDENTITY OF THE PERSON CONTRACTED WITH

It is a rule of law that if a person intends to contract with A, B cannot give himself *any right under it. Hence, when a contract is made in which personalities of the contracting parties are or may be of importance, no other person can interpose and adopt the contract. For example, where M intends to contract only with A but enters into contract with B believing him to be A, the contract is vitiated by mistake as there is no consensus ad idem.*

Mistake as to the identity of the person with whom the contract is made will operate to nullify the contract only if:

(i) The identity is for material importance to the contracts; and
(ii) The mistake is known to the other person, *i.e.*, he knows that it is not intended that he should become a party to the contract.

In *Cundy* v. *Lindsay* (1878), one Blenkarn posing as a reputed trader Blankiron placed an order for some goods with *Mis* Lindsay and Co. The company, thought that it is dealing with Blankiron and supplied the goods. Blenkarn sold the goods to Cundy and did not pay to Undsay. The latter sued Cundy. The Court held that there was contract between Lindsay and Blenkarn and therefore Cundy has no title to the goods.

Misrepresentation (Section 18): The term "misrepresentation" is ordinarily used to connote both "innocent misrepresentation" and "dishonest misrepresentation". Misrepresentation may therefore, be either (i) Innocent misrepresentation, or (ii) Wilful misrepresentation with intent to deceive and is called fraud.

INNOCENT MISREPRESENTATION

If a person makes a representation believing what he says is true he commits innocent misrepresentation. Thus, any false representation, which is made with

an honest belief in its truth is innocent. The effect of innocent misrepresentation is that the party misled by it can avoid the contract, but cannot sue for damages in the normal circumstances.

But in order to avoid a contract on the ground of misrepresentation, it is necessary to prove that:

(i) There was a representation or assertion,
(ii) Such assertion induced the party aggrieved to enter into the contract.
(iii) The assertion related to a matter of fact (and not of law as ignorance of law is no excuse).
(iv) The statement was not a mere opinion or hearsay, or commendation (i.e, reasonable praise). For example an advertisement saying, washes whiter" than the whitest".
(v) The statement which has become or turned out to be untrue, was made with an honest belief in its truth.

DAMAGES FOR INNOCENT MISREPRESENTATION

Generally the injured party can only avoid the contract and cannot get damages for innocent misrepresentation. But in the following cases, damages are obtainable:

(i) From a promoter or director who makes innocent misrepresentation in a company prospectus inviting the public to subscribe for the shares in the company;
(ii) Against an agent who commits a breach of warranty of authority:
(iii) From a person who (at the Court's discretion) is estopped from denying a statement he has made where he made a positive statement intending that it should be relied upon and the innocent party did rely upon it and thereby suffered damages;
(iv) Negligent representation made by one person to another between whom a confidential relationship, like that of a solicitor and client exists.

Wilful Misrepresentation or Fraud (Section 17): Fraud is an untrue statement made knowingly or without belief in its truth or recklessly, carelessly, whether it be true or false with the intent to deceive. The chief ingredients of a fraud are:

(i) A false representation or assertion;
(ii) Of fact (and not a mere opinion),
(iii) Made with the intention that it should be acted upon,
(iv) The representation must have actually induced the other party to enter into the contract and so deceived him,
(v) The party deceived must thereby be damnified, for there is no fraud without damages, and
(vi) The statement must have been made either with the knowledge that it was false or without belief in its truth Oi recklessly without caring whether it was true or false.

It is immaterial whether the representation takes effect by false statement or with concealment. The party defrauded can avoid the contract and also claim

damages. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless silence is in itself equivalent to speech, or where it is the duty of the person keeping silent to speak as in the cases of contracts *uberrimae fidei* - (contracts requiring utmost good faith).

CONTRACTS UBERRIMAE FIDEI

There are contracts in which the law imposes a special duty to act with the utmost good faith Le., to disclose all material information. Failure to disclose such information will render the contract voidable at the option of the other party.

Contracts *uberrimae fidei* are:

(a) *Contract of insurance of all kinds:* The assured must disclose to the insurer all material facts and whatever he states must be correct and truthful.

(b) *Company prospectus:* When a company invites the public to subscribe for its shares, it is under statutory obligation to disclose truthfully the various matters set out in the Companies Act. Any person responsible for non-disclosure of any of these matters is liable to damages. Also, the contract to buy shares is voidable where there is a material false statement or non-disclosure in the prospectus.

(c) *Contract for the sale of land:* The vendor is under a duty to the purchaser to show good title to the land he has contracted to sell.

(d) *Contracts of family arrangements:* When the members of a family make agreements or arrangements for the settlement of family property, each member of the family must make full disclosure of every material fact within his knowledge.

Difference between Fraud and Innocent Misrepresentation:

1. Fraud implies an intent to deceive, which is lacking if it is innocent misrepresentation.
2. In case of misrepresentation and fraudulent silence, the defendant can take a good plea that the plaintiff had the means of discovering the truth with ordinary diligence. This argument is not available if there is fraud (Section 19-exception).
3. Misrepresentation may lead to avoidable of contract. In fraud, the plaintiff can claim damages as well.
4. If there is fraud, it may lead to prosecution for an offence of cheating under the Indian Penal Code.

COERCION

Coercion as defined in Section 15 means “the committing or threatening to commit any act forbidden by the Indian Penal Code, or 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”.

Simply stated, the doing of any act forbidden by the Indian Penal Code is coercion even though such an act is done in a place where the Indian Penal Code is not in force. If A at the point of a pistol asks B to execute a promissory note in his favour and B to save his life does so he can avoid this agreement as his consent was not free. Even a threat to third-party, *e.g.*, where A compels B to sign a document threatening to harm C, in case B does not sign would also amount to coercion. It has been held that mere threat by one person to another to prosecute him does not amount to coercion. There must be a contract made under the threat and that contract should be one sought to be avoided because of coercion *(Ramchandra* v. *Bank of Kohlapur,* 1952 Bom. 715). It may be pointed out that coercion may proceed from any person and may be directed against any person, even a stranger and also against goods, *e.g.*, by unlawful detention of goods.

UNDUE INFLUENCE

Under Section 16 of the Indian Contract Act, 1872, a contract is said to be produced 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"

The elements of undue influence are (i) a dominant position, and (ii) the use of it to obtain an unfair advantage. The words "unfair advantage" do not limit the jurisdiction to cases where the transaction would be obviously unfair as between persons dealing on an equal footing. In the words of Lord Kingston, "the principle applies to every case where influence is acquired and abused where confidence is reposed and betrayed."

Sub-section (2) of Section 16 provides that a person is deemed to be in a position to dominate the will of another:

(a) Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other, *e.g.*, minor and guardian; trustee and beneficiary; solicitor and client. There is, however, no presumption of undue influence in the relation of creditor and debtor, husband and wife (unless the wife is a *parda-nishin* woman) and landlord and tenant. In these cases the party has to prove that undue influence has been exercised on him, there being no presumption as to existence of undue influence.

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress *e.g.*, doctor and patient.

ILLUSTRATION

A, having advanced money to his son B, during his minority, upon B's coming of age obtains, by misuse of parental influence a bond upon B for a greater amount than the sum due in respect of the advance. A employs undue influence.

A, a man enfeebled by disease or age is induced by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. 8 employs undue influence.

A parent stands in a fiduciary relation towards his child and any transaction between them by which any benefit is procured by the parent to himself or to a third party, at the expense of the child will be viewed with jealousy by Courts of Equity and the burden will be on the parent or third-party claiming the benefit of showing that the child in entering into the transaction had independent advice, that he thoroughly understood the nature of transaction and that he was removed from all undue influence when the gift was made (Marim Bibi v. Cassim Ebrahim (1939) 184 I.C. 171 (1939) A.I.A. 278).

Where there is a presumption of undue influence, the presumption can be rebutted by showing that:

(i) Full disclosure of all material facts was made,
(ii) The consideration was adequate, and
(iii) The weaker party was in receipt of independent legal advice.

TRANSACTION WITH PARDA-NISHIN WOMEN

The expression *'parda-nishin'denotes* complete seclusion. Thus, a woman who goes to a Court and gives evidence, who fixes rents with tenants and collects rents, who communicates when necessary, in matters of business with men other than members of her own family, could not' be regarded as a *parda-nishin* woman *(Ismail Musafee* v. *Hafiz Boo* (1906) 33 Cal. LR 773 and 33 I.A. 86). The principles to be applied to transactions with *parda-nishin* woman are founded on *equity and good conscience* and accordingly a person who contracts with *parda-nishin* woman has to prove that no undue influence was used and that she had free and independent advice, fully understood the contents of the contract and exercised her free will. "The law throws around her a special cloak of protection" *(Kali Baksh* v. *Ram Gopal (1914)* L.R. 41 I.A. 23, 28-29, 36 All 81, 89).

Unconscionable transactions: An unconscionable transaction is one which makes an exorbitant profit of the other's distress by a, person who is in a dominant position. Merely the fact that the rate of interest is very high in a money lending transaction shall not make it unconscionable. But if the rate of interest is very exorbitant and the Court regards the transaction unconscionable, the burden of proving that no undue influence was exercised lies on the creditor. It has been held that urgent need of money on the part of the borrower does not itself place the lender in a position to dominate his will within the meaning of this Section *(Sunder Koer* v. *Rai Sham Krishen* (1907) 34 Cal. 150, C.R. 34 I.A. 9).

LEGALITY OF OBJECT

One of the requisites of a valid contract is that the object should be lawful. Section 10 of the Indian Contract Act, 1872, provides, "All agreements are contracts if they are made by free consent of parties competent to contract fur a

lawful consideration and with a *lawful object...* " Therefore, it follows that where the consideration or object for which an agreement is made is unlawful, it is not a contract.

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is lawful unless it is:

(i) Forbidden by law; or,
(ii) It is. of such nature that if permitted it would defeat the provisions of law; or
(iii) Is fraudulent; or
(iv) Involves or implies injury to the person or property or another; or
(v) The Court regards it an immoral or opposed to public policy.

In each of these cases the consideration or object of an agreement is said to be unlawful. *Every agreement of which the object or consideration is unlawful is void.*

Illustration:

(i) X, Y and Z enter into an agreement for the division among them of gains acquired by them by fraud. The agreement is void as its object is unlawful.
(ii) X promises to obtain for Y an employment in the Government service and Y promises to pay Rs. 1,500 to X. The agreement is void, as the consideration for it is unlawful.
(iii) X promises to Y to drop a prosecution which he has instituted against Y for robbery, and Y promises to restore the value of the things taken. The agreement is void as its object is unlawful.
(iv) A who is B's *mukhtr* promises to exercise his influence, as such, with B in favour of C and C promises to pay Rs. 1,000 to A. The agreement is void because it is immoral.
(v) A agrees to let her daughter to hire to. B for concubinage. The agreement is void because it is immoral though, the letting may not be punishable under the India Penal Code.
(vi) An agreement by the proprietors of a newspaper to indemnify the printers against claims arising from libels printed in the newspaper is void as it implies or involves injury to the person of another.

VOID AND ILLEGAL CONTRACTS

A void contract is one which is destitue of legal effects altogether. An illegal contract too has no legal effect as between the immediate parties to the contract, but has the further effect of tainting the collateral contracts also with illegality. For instance A borrows from B to Rs. 1,000 for lending to C a minor. The contract between A and C is void, but B can nevertheless recover the money from A, On the other hand, if A had borrowed Rs. 1,000 from B to buy a pistol to shoot C, the question whether B can recover the money hinges on whether B was aware of the purpose for which money was borrowed. If B had knowledge

of the illegal purpose, he cannot recover. Therefore, it may be said that all illegal agreements are valid but all void agreements are not necessarily illegal.

Consequence of Illegal Agreements:

(i) An illegal agreement is entirely void;

(ii) No action can be brought by a party to an illegal agreement. The maxim is 'Ex turpi cause non-oritur actio' - from an evil cause, no action arises;

(iii) Money paid or property transferred under an illegal agreement cannot be recovered. The maxim *is in parti delicto potier. est conditio defendeties* - In cases of equal guilt, more powerful is the condition of the defendant;

(iv) Where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and

(v) Any agreement which is collateral to an illegal agreement is also tainted with illegality and is treated as being illegal, event though it, would have been lawful by itself *(Film Pratapchand* v. *Firm Kotri Re.* AIR (1975) S.C. 1223).

EXCEPTION TO GENERAL RULE OF NO RECOVERY OF MONEY OR PROPERTY

In the following cases, a party to an illegal agreement may sue to recover money paid or property transferred:

(a) Where the transfer is not in *pari delicto* (equally guilty) with the detendant, Le. the transferee. For example, where A is induced to enter into an illegal agreement by the fraud of B, A may recover the money paid if he did not now that the contract was illegal.

(b) If the plaintiff can frame a cause of action entirely dependent of the contract. (c) Where a substantial part of the illegal transaction *was* not been carried out and the plaintiff is truly and genuinely repentant. *(Bigos* v. *Bonstead* (1951), All E.R. 92).

IMMORAL AGREEMENTS

An agreement is illegal if its object is immoral or where its consideration is an act of sexual immorality, *e.g.*, an agreement for future illicit co-habitation, the agreement is illegal and so unenforceable. Similarly, where the purpose of the agreement is the furtherance of sexual immorality and both the parties know this, it, is illegal. Where A let a taxi on hire to B, a prostitute, knowing that it was to be used for immoral purposes, it was held that A could not recover the hire charges. *(Pearce* v. *Brookes* (1866) L.R.1 Exch 213).

AGREEMENTS VOID AS BEING OPPOSED TO PUBLIC POLICY

The head "public policy" covers a wide range. Agreements may offend public policy by tending to the prejudice of the State in times of war, by' tending to the

abuse of justice or by trying to impose unreasonable and inconvenient restrictions on the free choice of individuals in marriage, or their liberty to exercise lawful trade or calling. The doctrine of public policy is a branch of Common Law and like any other branch of Common Law it is governed by the precedents *[Cherumal Parakh* v. *Mahadeodas Maiya* (1959) 2 S.C.R. (Suppl.) 406; AIR 1959 S.C. 781]. The doctrine of public policy is not to be extended beyond the classes of cases already covered by it and no Court can invent a new head of public policy *Lord Halsbury, Janson* v. *Driefontien Consolidated Mines* (1902) A.C. 484, 491. It has been said by the House of Lords that public policy is always an unsafe and treacherous ground for legal decisions. Even if it is possible for Courts to evolve a new head of public policy, it should be done under extraordinary circumstances giving rise to incontestable harm to the society.

The following agreement are void as being against public policy but they are not illegal:

(a) *Agreement in restrain of parental rights:* An agreement by which a party deprives himself of the custody of his child is void.

(b) *Agreement in restraint of marriage:* An agreement not to marry at all or not to marry any particular person or class of persons is *void* as it is in restraint of marriage.

(c) *Marriage brocage or brokerage Agreements:* An agreement to procure marriage for reward is *void.* Where a purohit (priest) was promised Rs. 200 in consideration of procuring a wife for the defendant, the promise was held *void* as opposed to public policy, and the purohit could not recover the promise sum.

(d) *Agreements in restraint of personal freedom are void:* Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was *void.*

(e) *Agreement in restraint of trade:* An agreement in restraint of trade is one which seeks to restrict a person from freely oxidising his trade or profession.

4

Key Components of a Legally Binding Agreement

Section 10 of the Indian Contract Act, 1872 provides that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are nothereby expressly declared to be void".

The essential elements of a valid contract are:

(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an *agreement-consensus-ad-idem.*

(ii) An intention to create legal relations or an intent to have legal consequences.

(iii) The agreement is supported by lawful consideration.

(iv) The parties to contract are legally capable of contracting.

(v) Genuine consent between !he parties.

(vi) The object and consideration of the contract is legal and is not opposed to public policy.

(vii) The terms of the contract are certain.

(viii) The agreement is capable of being performed Le., it is not impossible of being performed.

Therefore, to form a valid contract there must be (1) an agreement, (2) based on the genuine consent of the parties, (3) supported by consideration, (4) made for a lawful object, and (iv) between the competent parties.

TYPES OF CONTRACTS

On the basis of validity:

1. *Valid contract*: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.
2. *Void contract [Section 2(g)]*: A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void. – There are many judgments which have stated that where any crime has been converted into a "Source of Profit" or if any act to be done under any contract is opposed to "Public Policy" under any contract—than that contract itself cannot be enforced under the law-
3. *Voidable contract [Section* 2(i)]*: An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.*
4. *Illegal contract*: A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.
   "All illegal agreements are void agreements but all void agreements are not illegal."
5. *Unenforceable contract*: Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

On the basis of formation:

1. *Express contract*: Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.
2. *Implied contract*: An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.
3. *Quasi contract*: A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another. examples
   - Claim for necessaries supplied to person incapable of contracting or on his account
   - Reimbursement of person paying money due to another, in payment of which he is interested

- Obligation of person enjoying benefit of non gratuitous act
- Responsibility of finder of goods
- Liability of person to whom money is paid or thing delivered.

On the basis of performance:

1. *Executed contract*: An executed contract is one in which both the parties have performed their respective obligation.
2. *Executory contract*: An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.
3. *Unilateral contract*: A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.
4. *Bilateral contract*: A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

OFFER

Proposal is defined under section 2(a) of the Indian contract Act, 1872 as "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer". Thus, for a valid offer, the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer. The rules regarding the offer are The offer must show an obvious intention on the part of the offerror. For example "if "A" jokingly offers "B" his scooter for Rs.10/- and "B" knowingly that "A" is not serious, says "I accept "A"s proposal". This does not constitute an offer. Secondly, the terms of offer must be defenite, un ambigious, not loose and vague. For example "A" says to "B". "I will sell you a car" "A" owns three different cars. The offer is not defenite. Third thing regarding offer is, mere declaration of intention and announcement is not an offer. A declaration by a person that he intends to do something, gives no right of action to another. Such a declaration only means that an offer will be made or invited in future and not an offer is made now. An advertisement for a concern for auction sale does not amount to an offer to hold such concern for auction sale. For example an auctioneer advertised in a news paper that a sale of office furniture would be held. A broker came from a distant place to attend the auction, but all the furniture was withdrawn. The broker thereupon sued the auctiioner for his loss of time and expenses. It was held that, a declaration of intention to do something did not create a binding contract with those acted upon it and hence the broker could not recover damages. An offer should be made to obtain the assent of the other. The offer should be communicated to the offeree. Unless an offer is

communicated to the offeree by the offerer or his duly agent, there can be no acceptance. The offer must be made with a view to obtain the assent of the other party addressed and not merely with a view to disclose the intention to make an offer. The offer should not contain a term that, the non compliance of which would amount to acceptance. For example, "A" writes to "B", "i will sell you my horse for Rs.10,000/- and if you do not reply I shall assume you have accepted the offer". There is no contract if "B" does not reply. However if "B" is in possession of "A"s horse and he continues possession thereafter, "B"s silence and his continued use amounts to valid acceptance. A statement of price is not an offer. A mere statement of price is not an offer to sell. For example three telegrams were exchanged between "A" and "B". communication by "B" to "A"- " will you sell your car?". Communication by "A" to "B". "The price of the car is one lakh rupees". Communication from "B" to "A"- "I agree to buy the car". These 3 communications does not make a valid offer.

Classification of Offer:

1. *General Offer*: Which is made to public in general.
2. *Special Offer*: Which is made to a definite person.
3. *Cross Offer*: Exchange of identical offer in ignorance of each other.
4. *Counter Offer*: Modification and Variation of Original offer.
5. *Standing, Open or Continuing Offer*: Which is open for a specific period of time. The offer must be distinguished from an invitation to offer. *Invitation to offer* "An invitation to offer" is only a circulation of an invitation to make an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in formation of a contract and only an offer emerges in the process of negotiation. A statement made by a person who does not intend to bound by it but, intends to further act, is an invitation to offer.

ACCEPTANCE

According to Section 2(b), "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

Rules:

1. *Acceptance must be absolute and unqualified:* If the parties are not in ad idem on all matters concerning the offer and acceptance, there is no valid contract. For example "A" says to "B" "I offer to sell my car for Rs.50,000/-. "B" replies "I will purchase it for Rs.45,000/-". This is not acceptance and hence it amounts to a counter offer.
2. *It should be Communicated to the offeror:* To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.
3. *Acceptance must be in the mode prescribed:* If the acceptance is not according to the mode prescribed or some usual and reasonable mode (where no mode is prescribed) the offeror may intimate to the offeree

within a reasonable time that acceptance is not according to the mode prescribed and may insist that the offer be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the offer. For example "A" makes an offer to "B" says to "B" that "if you accept the offer, reply by voice. "B" sends reply by post. It will be a valid acceptance, unless "A" informs "B" that the acceptance is not according to the prescribed mode.

4. *Acceptance must be given within a reasonable time before the offer lapses:* If any time limit is specified, the acceptance must be given within the time, if no time limit is specified it must be given within a reasonable time.
5. *It cannot proceed an offer:* If the acceptance proceeds an offer it is not a valid acceptance and does not result in contract. For example in a company shares were allotted to a person who had not applied for them. Subsequently when he applied for shares, he was un aware of the previous allotment. The allotment of share previous to the application is not valid.
5. Acceptance by the way of conduct.
6. *Mere silence is no acceptance:* Silence does not per-se amounts to communication- Bank of India Ltd. Vs. Rustom Cowasjee- AIR 1955 Bom. 419 at P. 430; 57 Bom. L.R. 850- Mere silence cannot amount to any assent. It does not even amount to any representation on which any plea of estoppel may be founded, unless there is a duty to make some statement or to do some act
7. Offree and offerer must be consent
8. Acceptance must be unambiguous and definite.

LAWFUL CONSIDERATION

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain something, such an act or abstinence or promise is called consideration for the promise. "Consideration" means to do something in return. In short, Consideration means *quid pro quo i.e.*, something in return.

An agreement must be supported by a lawful consideration on both sides. Essentials of valid considerations are:

- *It must move at the desire of the promisor:* An act constituting consideration must have been done at the desire or request of the promiser. If it is done at the instance of a third party or without the desire of the promisor, it will not be good considsration. For example "A" saves "B"'s goods from fire without being ask him to do so. "A" cannot demand payment for his service.
- *Consideration may move from the promisee or any other person:* Under Indian law, consideration may be from the promisee of any other person ie, even a stranger. This means that as long as there is consideration for the promisee, it is immaterial, who has furnished it.

- Consideration must be an act, abstinence or forbearance or a returned promise.
- *Consideration may be past, present or future:* Past consideration is not consideration according to English law. However it consideration as per Indian law. Example of past consideration is, "A" renders some service to "B" at latter's desire. After a month "B" promises to compensate "A" for service rendered to him earlier. When consideration is given simultaneously with promise, it is said to be present consideration. For example "A" receives Rs.50/- in return for which he promises to deliver certain goods to "B". The money "A" receives is the present consideration. When consideration to one party to other is to pass subsequently to the maker of the contract, is said to be future consideration. For example. "A" promises to deliver certain goods to "B" after a week. "B" promises to pay the price after a fortnight, such consideration is future.
- *Consideration must be real:* Consideration must be real, competent and having some value in the eyes of law. For example "A" promises to put life to "B"'s dead wife, if "B" pay him Rs.1000/-. "A"'s promise is physically impossible of performance hence there is no real consideration.
- *Consideration must be something which the promiser is not already bound to do:* A promise to do something what one is already bound to do, either by law, is not a good consideration., since it adds nothing to the previous existing legal consideration.
- *Consideration need not be adequate. Consideration need not be necessarily be equal to value to something given:* So long as consideration exists, the courts are not concerned as to adequacy, provided it is for some value.

The consideration or object of an agreement is lawful, unless and until it is:

1. *forbidden by law:* If the object or the consideration of an agreement is for doing an act forbidden by law, such agreement are void. For example,"A" promises "B" to obtain an employment in public service and "B" promises to pay Rs one lakh to "A". The agreement is void as the procuring government job through unlawful means is prohibited.
2. *If it involves injury to a person or property of another:* For example, "A" borrowed Rs. 100/- from "B" and executed a bond to work for "B" without pay for a period of 2 years. In case of default, "A" owes to pay the principal sum at once and huge amount of interest. This contract was held void as it involved injury to the person.
3. *If courts regards it as immoral:* An agreement in which consideration or object of which is immoral is void. For example, An agreement between husband and wife for future separation is void.
4. *Is of such nature that, if permitted, it would defeat the provisions of any law:*
5. Is fraudulent, or involves or implies injury to the person or property of another, or

6. *Is opposed to public policy:* An agreement which tends to be injurious to the public or against the public good is void. For example, agreements of trading with foreign enemy, agreement to commit crime, agreements which interfere with the administration of justice, agreements which interfere with the course of justice, stifling prosecution, maintenance and champerty.
7. *Agreements in restrained of legal proceedings:* This deals with two category. One is, agreements restraining enforcement of rights and the other deals with agreements curtailing period of limitation.
8. *Trafficking in public offices and titles:* Agreements for sale or transfer of public offices and title or for procurement of a public recognition like padma vibhushan or padma sree, *etc.*, for monetary consideration is unlawful, being opposed to public policy.
9. *Agreements restricting personal liberty:* Agreements which unduly restricts the personal liberty of parties to it are void as being opposed by public policy.
10. *Marriage brokerage contact:* Agreements to procure marriages for rewards are void under the ground that marriage ought to proceed with free and voluntary decisions of parties.
11. *Agreements interfering marital duties:* Any agreement which interfere with performance of marital duty is void being opposed to public policy. An agreement between husband and wife that the wife will never leave her parental house.
12. Consideration may take in any form-money, goods, services, a promise to marry, a promise to forbear, *etc.*

Contract Opposed to Public Policy can be Repudiated by the Court of law even if that contract is beneficial for all of the parties to the contract- What considerations and objects are lawful and what not-Newar Marble Industries Pvt. Ltd. Vs. Rajasthan State Electricity Board, Jaipur, 1993 Cr. L.J. 1191 at 1197, 1198 [Raj.]- Agreement of which object or consideration was opposed to public policy, unlawful and void-

What better and what more can be an admission of the fact that the consideration or object of the compounding agreement was abstention by the board from criminally prosecuting the petitioner-company from offence under Section 39 of the act and that the Board has converted the crime into a source of profit or benefit to itself. This consideration or object is clearly opposed to public policy and hence the compounding agreement is unlawful and void under Section 23 of the Act. It is unenforceable as against the Petitioner-Company.

COMPETENT TO CONTRACT

Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor *i.e.*, an individual who has not attained the age of majority *i.e.*, 18 years in normal case and 21 years if guardian is appointed by the Court.

2. He should be of sound mind while making a contract. A person who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. Similarly if a person is usually of sound mind, but occasionally of unsound mind, may not make a valid contract when he is of unsound mind.
3. He is not a person who has been personally disqualified by law to which he is subject.

FREE CONSENT

According to Section 14, " two or more persons are said to be consented when they agree upon the same thing in the same sense (*Consensus-ad-idem*).

A consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements Vitiating free Consent:

1. *Coercion (Section 15):* "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45,1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. For example, "A" threatens to shoot "B"if he doesn't release him from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.
2. *Undue influence (Section 16):* "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."
   (Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another;
   - Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. An income tax authority over to the assessee.
   - Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee.
   - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"
3. *Fraud (Section 17):* "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract. Mere silence is not fraud. A contracting party is not obliged

to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, then keeping silence is fraud. or when silence is in itself equivalent to speech, such silence is fraud.

4. *Misrepresentation (Section 18):* "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".
5. *Mistake of fact (Section 20):* "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". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

PERFORMANCE OF CONTRACTS

The promise under a contract can be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

1. *Promisor himself:* "The contracts which involve the exercise of personal skill must be performed by the promisor himself.
2. *Agent:* "Where personal skill is not required, the promisor may appoint his agent to perform it.
3. *Representatives:* "On the death of the promisor, the legal heirs of the promisor must perform the contract unless a contrary intention appears in the contract.
4. *Third persons:* "When a promisee accepts performance from a third person, he cannot afterwards enforce it against promisor".
5. *Joint promisors:* "When two or more persons have made a joint promise, all such persons must jointly fulfil the promise, unless a contrary intention appears from it". A contract may be discharged by performance, by agreement or consent, by impossibility, by lapse of time, by operation of law or by breach of contract. When both parties fulfill their respective obligation arising under the contract, within the time and manner prescribed in such case the parties are discharged. A contract may also be discharged by further agreement or consent. A contract may also discharge by lapse of time.

AGENCY

In law, the relationship that exists when one person or party (the principal) engages another (the agent) to act for him, *e.g.*, to do his work, to sell his goods, to manage his business. The law of agency thus governs the legal relationship in which the agent deals with a third party on behalf of the principal. The competent agent is legally capable of acting for this principal vis-a-vis the third party. Hence, the process of concluding a contract through an agent involves a

twofold relationship. On the one hand, the law of agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of the principal. On the other hand, it rules the internal relationship between principal and agent as well, thereby imposing certain duties on the representative (diligence, accounting, good faith, *etc.*). Under section 201 to 210 an agency may come to an end in a variety of ways:

(i) *By the principal revoking the agency:* However, principal cannot revoke an agency coupled with interest to the prejudice of such interest. Such Agency is coupled with interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, *e.g.*, where the goods are consigned by an upcountry constituent to a commission agent for sale, with poor to recoup himself from the sale proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold, nor is the agency terminated by death or insanity.

(ii) By the agent renouncing the business of agency;

(iii) By the business of agency being completed;

(iv) By the principal being adjudicated insolvent (Section 201 of The Indian Contract Act. 1872)

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal (Section 204), though he can always do so, before such authority has been so exercised (Sec 203).

Further, as per section 205, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill continuous disobedience of lawful orders, and rude or insulting behaviour has been held to be sufficient cause for dismissal of an agent. Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid (Section 206). As per section 207, the revocation or renunciation of an agency may be made expressly or impliedly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them (Section 208).

When an agent's authority is terminated, it operates as a termination of subagent also. (Section 210).

OFFER OR PROPOSAL AND ACCEPTANCE

One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Thus, when one party (the offeror) makes a definite proposal to another party

(the offeree) and/the offeree accepts it in its entirety and without any qualification, there is a meeting of the minds of the parties, and a contract comes into being, assuming that all other elements are also present.

What is an *Offer or* a *Proposal?* An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in- return for a promise, act or forbearance. Section 2(a) defines proposal or offer as "when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

RULES GOVERNING OFFERS

A valid offer must comply with the following rules:

(a) An offer must be clear, definite, complete and final. It must not be vague. For example, a promise to pay an increased. Price for a horse if it proves lucky to promiser, is too vague and is not binding.

(b) An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.

(c) The communication of an offer may be made by express words-oral or written-or it may be implied by conduct. A offers his car to B for Rs. 10,000. It is an express offer. A bus plying on a definite route goes along the street.
This is an implied *offer* on the part of the owners of the bus to carry passengers at the scheduled fares for the various stages.

(d) The communication of the offer may be general or specific. Where an offer is made to a specific person it is called *specific offer* and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals Le. the world at large, it is a *general offer* and can be accepted by any member of the general public by fulfilling the condition laid down in the offer. The leading case on the subject is *Carlill* v. *Carbolic Smoke Ball Co.* The company offered by advertisement, a reward of £ 100 to anyone who contacted influenza after using their smoke ball in the specified manner. Mrs. Carlill did use smoke ball in the specified manner, but was attacked by influenza. She claimed the reward and it was held that she could recover the reward as general offer can be accepted by anybody. Since this offer is of a continuing nature, more than one person can accept it and can even claim the reward. But if the offer of reward is for seeking some information or seeking the restoration of missing thing, then the offer can be accepted by one individual who does it first of all. The condition is that the claimant must have prior knowledge of the reward before doing that act or providing that information.

Example: A advertise in the newspapers that he will pay rupees one thousand to anyone who restores to him his lost son. B without knowing of this reward

"finds A's ost son and restore him to A. In this case since B did not know of the reward, he cannot claim it from A even though he finds A's lost son and restores him to A. In India also, in the case of *Harbhajan Lal* v. *Harcharan Lal* (AlA 1925 All. 539), the same rule was applied. In this case, a young boy ran away from his father's home. The father issued a pamphlet offering a reward of As. 500 to anybody who would bring the boy home. The plaintiff saw the boy at a railway station and sent a telegram to the boy's father. It was held that the handbill was an offer open to the world at large and was capable to acceptance by any person who fulfilled the conditions contained in the offer. The plaintiff substantially performed the conditions and was entitled to the reward offered.

An Offer must be Distinguished from:

(a) *An invitation to treat or an invitation to make* an *offer: e.g.*, an auctioneer's request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self-service store or a shopkeeper's catalogue of prices are invitations to an offer.

(b) A *mere statement of intention: e.g.*, an announcement of a coming auction sale. Thus a person who attended the advertised place of auction could not sue for breach of contact if the auction was cancelled *(Harris* v. *Nickerson* (1873) L.A. 8 QB 286).

(c) A *mere communication of information in the course of negotiation: e.g.*, a statement of the price at which one is prepared to consider(negotiating the sale of piece of land *(Harvey* v. *Facey* (1893) A.C. 552).

An offer that has been communicated, properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

LAPSE OF OFFER

Section 6 deals with various modes of lapse of an offer. It states that an offer lapses if:

(a) It is not accepted within the specified time (if any) or after a reasonable time, if none is specified.

(b) It is not accepted in the mode prescribed or if no mode is prescribed in some usual and reasonable manner, *e.g.*, by sending a letter by mail when early reply was requested

(c) The offeree rejects it by distinct refusal to accept it;

(d) Either the offerer or the offeree dies before acceptance;

(e) The acceptor fails to fulfill a condition precedent to a acceptance.

(f) The offeree makes a counter offer, it amounts to rejection of the offer and an offer by the offeree may be accepted or rejected by the offeror.

REVOCATION OF OFFER BY THE OFFEROR

An offer may be revoked by the offeror at any time before acceptance. Like any offer, revocation must be communicated to the offeree, as it does not take

effect until it is actually communicated to the offeree. Before its actual communication, the offeree, may accept the offer and create a binding contract. The revocation must reach the offeree before he sends out the acceptance.

An offer to keep open for a specified time(option) is not binding unless it is supported by consideration.

ACCEPTANCE

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2(b) of the Contract Act when a 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.".

Rules Governing Acceptance:

(a) Acceptance may be express Le. by words spoken or written or implied from the conduct of the parties.

(b) If a particular method of acceptance is prescribed offer must be accepted in the prescribed manner.

(c) Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.

(d) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse, *e.g.*, where a horse is offered for Rs. 1,000 and the offeree counter-offers Rs. 990, the offer lapses by rejection.

(e) Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated. Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract. Mere mental acceptance is not enough.

(f) Mere silence on the part of the offeree does not amount to acceptance. Ordinarily, the offeror cannot frame his offer in such a way as to make the silence or inaction of the offeree as an acceptance. In other words, the offeror can prescribed the mode of acceptance but not the mode of rejection. In *Felthouse* v. *Bindley* (1865), F offered by letter to buy his nephew's horse for £ 30 saying: "If I hear no more about him I shall consider the horse is mine at £ 30". The nephew did not reply, but he told an auctioneer who was selling his horses not to sell that particular horse because it was sold to his uncle. The auctioneer inadvertently sold the horse. *Held:* F had no claim against the auctioneer because the horse had not been sold to him, his offer of £ 30 not having been accepted.

(g) If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for in the offer itself. Thus, if a reward is offered for finding a lost dog, the offer. is accepted by finding the dog after reading about the offer,. And it is unnecessary before beginning to search for the dog to give notice of acceptance to the offeror.

(h) Acceptance must be given within a reasonable time and before the offer lapses or is revoked. An offer becomes irrevocable by acceptance.

An acceptance *never* precedes an offer. There can be no acceptance of an offer which is not communicated. Similarly, performance of conditions of an offer without the knowledge of the specific offer, is no acceptance. Thus in *Lalman Shukla* v. *Gauri Duff* (1913) where a servant brought the boy without knowing of the reward, he was held not entitled to reward because he did not know about the offer.

STANDING OFFERS

Where a person offers to another to supply specific goods, up to a stated quantity or in any quantity which may be required, at a certain rate, during a fixed period, he makes a standing offer. Thus, a tenderto supply goods as and when required, amounts to a standing offer.

A standing offer or a tender is of the nature of a continuing offer. An acceptance of such an offer merely amounts to an intimation that the offer will be considered to remain open during the period specified and that it will be accepted from time to time by placing order during the period specified quantities. Each successive order given, while the offer remains in force, is an acceptance of the standing offer as to the quantity ordered, and creates a seperate contract. It does not bind either party unless and until such orders are given. Where P tendered to supply goods to L upto a certain amount and over a certain period, L's order did not come up to the amount expected and P sued for breach of contract *Held:* Each order made was a separate contract and P was bound to fulfill orders made, but there was no obligation on L to make any order to all *(Percival Ltd.* v. *L.C.C. (1918).*

TICKETS

Tickets purchased for entrance into places of amusement, or tickets issued by railways or bus companies, clock-room tickets, and many other contracts set out in printed documents contain numerous terms, of many of which the partly receiving the ticket or document is ignorant. If a passenger on a railway train receives a ticket on the face of which is printed this ticket is issued subject to the notices, regulations and conditions contained, in the current timetables of the railway", the regulations and conditions referred to are deemed to be communicated to him and he is bound by them whether or not he has read them. He is bound even if he is illiterate and unable to read them. But it is important that the notice of the conditions is contemporaneous with the making of the contract and not after the contract has been made.

CONTRACTS BY POST

Contracts by post are subject to the same rules as others, but because of their importance, these are stated below separately:

(a) An offer by post may be accepted by post, unless the offero(indicates anything to the contrary.

(b) An offer is made only when it actually reaches the offeree and not. Before, *i.e.*, when the letter containing the offer is delivered to the offeree.

(c) An acceptance is made as far as the offeror is concerned, as soon as the letter containing the acceptance is posted, to offeror's correct address; it binds the offeror, but not the acceptor. An acceptance binds the acceptor only when the letter containing the acceptance reaches the offeror. The result is that the acceptor can revoke his acceptance before it reaches the offeror.
(d) An offer may be revoked before the letter containing the acceptance is posted. An acceptance can be revoked before it reaches the offeror.

CONTRACTS OVER THE TELEPHONE

Contracts over the telephone are regarded the same in principle as those negotiated by the parties in the actual presence of each other. In both cases an oral offer is made and an oral acceptance is expected. It is important that the acceptance must be audible, heard and understood by the offeror. If during the conversation the telephone lines go, "dead" so that the offeror does not hear the offeree's word of acceptance, there is no contract at the moment. If the whole conversation is repeated and the offeror hears and understands the words of acceptance, the contract is complete *(KanhaiyalaJv. Dineshwarchandra* (1959) AIR, M.P. 234).

INTENTION TO CREATE LEGAL RELATIONS

The second essential element of a valid contract is that there must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. As such they are not contracts. A proposal or an offer is made with a view to obtain the assent to the other party and when that other party expresses his willirness to the act or abstinence proposed, he accepts the offer and a contract is made between the two. But both offer and acceptance must be made with the intention of creating legal relations between the parties. The test of intention is objective. The Courts seek to give effect to the presumed intention of the parties. Where necessary, the Court would look into the conduct of the parties, for much can be inferred from the conduct. The Court is not concerned with the mental intention of the parties, but rather with what a reasonable man would say, was the intention of the parties, having regard to all the circumstances of the case. For example, if two persons agree to assist each other by rendering advice, in the pursuit of virtue, science or art, it cannot be regarded as a contract. In commercial and business agreements, the presumption is usually that the parties intended to create legal relations. But this presumption is rebuttable which means that it must be shown that the parties did not intend to be legally bound.

CONSIDERATION

Need for Consideration: Consideration is one of the essential elements of a valid contract. The requirement of consideration stems from the policy of

extending the arm of the law to the *enforcement of mutual promises of parties. A mere promise is not enforceable at law. For example, if A promises to make a gift of Rs. 500 to B, and subsequently changes his mind, B cannot succeed against A for breach of promise, as B has not given anything in return. It is only when a promise is made for something in return from the promisee, that such promise can be enforced by law against the promisor. This something in return is the consideration for the promise.*

DEFINITION OF CONSIDERATION

Sir Fredrick Pollock has defined consideration "as an act or forbearance of one party, or the promise thereof is the price for which the promise of the other is bought." It is "some right, interest, profit, or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other" *(Currie* v. *Misa* (1875) L.R. 10 Ex. 153).

Section 2(d) of the Indian Contract Act, 1872 defines consideration thus: "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise". The fundamental principle that consideration is essential in every contract, is laid down by both the definitions but there are some important points of difference in respect of the nature and extent of consideration and parties to it under the two systems of law:

(a) *Consideration at the desire of the promisor:* Section 2(d) of the Act begins with the statement that consideration must move at the desire or request of the promisor. This means that whatever is done must have been done at the desire of the promisor and not voluntarily or not at the desire of a third party. If A rushes to B's help whose house is on fire, there is no consideration but a voluntary act. But if A goes to B's help at B's request, there is good consideration as B did not wish to do the act gratuitously.

(b) *Consideration may move from the promisee or any other person:* In English law, consideration must move from the promisee, so that a stranger to the consideration cannot sue on the contract. A person seeking to enforce a simple contract must prove in court that he himself has given the consideration in return for the promise he is seeking to enforce.

In Indian law, however, consideration may move from the promisee or any other person, so that a stranger to the consideration may maintain a suit. In *Chinnaya* v.*Ra,maya* (1882) 4 Mad. 137, a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donor's brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donor's brother agreeing to pay the community. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved

from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

PRIVITY OF CONTRACT

A stranger to a contract cannot sue both under the English and Indian law for want of privity of contract. The following illustration explains this point. In *Dunlop Pneumatic Tyre Co.* v. *Selfridge Ltd.* (1915) A.C. 847. D supplied tyres to a wholesaler, X, on condition that any retailer to whom X re-supplied the tyres should promise X, not to sell them to the public below D's list price. X supplied tyres to S upon this condition, but nevertheless S sold the tyres below the list price. *Held:* There was a contract between D and X and a contract between X and S. Therefore, D could not obtain damages from S, as D had not given any consideration for S's promise to X nor was he party to the contract between D and X. Thus, a person who is not a party to a contract cannot sue upon it even though the contract is for his Gift. A, who is indebted to B, sells his property to C, and C he purchaser of the property, promises to payoff the debt to B. In case C fails to pay B, B has no right to sue C for there is no privity of contract between B and C.

The leading English case on the point is *Tweddle* v. *Atkinson* (1861) 1 Band Section 393. In this case, the father of a boy and the father of a girl who was to be married to the boy, agreed that each of them shall pay a sum of money to the boy who was to take up the new responsibilities of married life. After the demise of both the contracting parties, the boy (the husband) sued the executors of his father-in-law upon the agreement between his father-in-law and his father. *Held:* the suit was not maintainable as the boy was not a party to the contract.

Exception to the doctrine of privity of contract: Both the Indian law and the English law recognize certain exceptions to the rule that a stranger to a contract cannot sue on the contract.

In the following cases, a person who is not a party to a contract can enforce the contract:

(i) A beneficiary under an agreement to create a trust can sue upon the agreement, though not a party to it, for the enforcement of the trust so as to get the trust executed for his benefit. In *Khawaja Muhammad* v. *Hussaini Begum,* (1910) 32 All. 410, it was held that where a Mohammedan lady sued her father-in-law to recover arrears of allowance payable to her by him under an agreement between him and her own father in consideration of her marriage, she could enforce the promise in her favour insofar as she was a beneficiary under the agreement to make a settlement in her favour, and she was claiming as beneficiary under such settlement.

(ii) An' assignee under an assignment made by the parties, or by the operation of law (*e.g.*, in case of death or insolvency), can sue upon the contract for the enforcement of his rights, title and interest. But a

mere nominee (Le., the person for whose benefit another has insured his own life) cannot sue on the policy because the nominee is not an assignee.

(iii) In cases of family arrangements or settlements between male members of a Hindu family which provide for the maintenance or expenses for marriages of female members, the latter though not parties to the contract, possess an actual beneficial right which place them in the position of beneficiaries under the contract, and can therefore, sue.

(iv) In case of acknowledgement of liability, *e.g.*, where A receives money from B for paying to C, and admits to C the receipt of that amount, then A constitutes himself as the agent of C.

(v) Whenever the promisor is by his own conduct stopped from denying his liability to perform the promise, the person who is not a party to the contract can sue upon it to make the promisor liable.

(vi) In cases where a person makes a promise to an individual for the benefit of third party and creates a charge on certain immovable property for the purpose, the third party can enforce the promise "though, he is stranger to the contract.

KINDS OF CONSIDERATION

Consideration may be:

(a) *Executory or future* which means that it makes the form of promise to be performed in the future, *e.g.*, an engagement to marry someone; or

(b) *Executed* or present in which it is an act or forbearance made or suffered for a promise. In other words, the act constituting consideration is wholly or completely performed, *e.g.*, if A pays today Rs. 100 to a shopkeeper for goods which are promised to be supplied the next day, A has executed his consideration but the shopkeeper is giving executory consideration - a promise to be executed the following day. If the price is paid by the buyer and the goods are delivered by the seller at the same time, consideration is executed by both the parties.

(c) Past which means a past act or forbearance, that is to say, an act constituting consideration which took place and is complete (wholly executed) before the promise is made.

According to English law, a consideration may be executory or executed but never past. The English law is that past consideration is no consideration. *The Indian law recognizes all the above three kinds of consideration.*

Rules Governing Consideration:

(a) Every simple contact must be supported by valuable consideration otherwise it is formally void subject to some exceptions.

(b) Consideration may be an act of abstinence or promise.

(c) There must be mutuality Le., each party must do or agree to do something. A gratuitous promise as in the case of subscription for charity, is not enforceable. For example, where A promises to subscribe Rs. 5,000 for the repair of a temple, and then refuses to pay, no action can be taken against him.

(d) Consideration must be real, and not vague, indefinite, or illusory, *e.g.*, a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.
(e) Although consideration must have some value, it need not be adequate Le., a full return for the promise. Section 25 (Exp. II) clearly provides that "an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate." It is upon the parties to fix their own prices. For example, where A voluntarily agreed to sell his motor car for Rs. 500 to S, it became a valid contract despite the inadequacy of the consideration.
(f) Consideration must be lawful, *e.g.*, it must not be some illegal act such as paying someone to commit a crime. If the consideration is unlawful, the agreement is void.
(g) Consideration must be something more than the promisee is already bound to do for the promisor. Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration. For example, if a seaman deserts his ship so breaking his contract of service and is induced to return to his duty by the promise for extra wages, he cannot later sue for the extra wages since he has only done what he had already contracted for: *Stilk* v. *Myrick* (1809).

WHEN CONSIDERATION' NOT NECESSARY

The general rule is that an agreement made without consideration is void. But Section 25 of the Indian Contract Act lays down certain exceptions which make a promise without consideration valid and binding.

Thus, an agreement without consideration is valid:

1. If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or
2. If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compliable to do; or
3. If it is a promise in writing and signed by the person to be charged therewith, or by his agent, to pay a debt barred by the law of limitation.
4. Besides, according to Section 185 of the Indian Contract Act, consideration is not required to create an agency.
5. In the case of gift actually made, no consideration is necessary. There needn't be nearness of relation and even if it is, there need not be any natural love and affection between them. .

The requirements in the above exceptions are noteworthy. The first one requires written and registered promise. The second may be oral or in writing and the third must be in writing.

Illustrations:

A, for natural love and affection, promises to give his son B Rs. 10,000. A put his promise to 8 into writing and registered it. This is a contract. A registered

agreement between a husband and his wife to pay his earnings to her is a valid contract, as it is in writing, is registered, is between parties standing in near relation, and is for love and affection *(Poonoo Bibi* v. *Fyaz Buksh,* (1874) 15 80m LA. 57).

But where a husband by a registered document, after referring to quarrels and disagreement between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable, as it was not made for love and affection *(Rajluckhy Deb* v. *Bhootnath* (1900) 4 C.W.N. 488).

WHETHER GRATUITOUS PROMISE CAN BE ENFORCED

A gratuitous promise to subscribe to a charitable cause cannot be enforced, but if the promises is put to some detriment as a result of his acting on the faith of the promisee and the promisor knew the purpose and also knew that on the faith of the subscription an obligation might be incurred, the promisor would be bound by promise *(Kedar Nath* v. *Gorie Mohan 64).*

It may be noted that it is not necessary that the promisor should benefit by the consideration, it is sufficient if the promisee does some act from which a third person is benefited and he would not have done that act but for the promise of the promisor.

For example, Y requests X for loan, who agrees to give loan to Y if S gives guarantee of repayment of the loan. S gives such a guarantee of repayment by Y. Thereupon X gives loan to Y. Here S will be promisor and X the promisee, but from X's action, benefit is derived by Y and not by S. X would not have given the loan to Y had S not given the guarantee of repayment of loan. Thus the benefit conferred on Y by X at the request of S is a sufficient consideration on the part of X as against the promise of S to replay the loan. Alternatively, it may be said that the detriment which X suffered by giving loan to Y at the request of S is sufficient consideration on the part of X in respect of the promise of S to repay the loan.

Consideration therefore, is some detriment to the promisee or some benefit to the promisor. Detriment to one person and benefit to the other are the same things looked from two angles. Ordinarily a promisor is not bound by his promise, unless some consideration is offered by the promisee.

TERMS MUST BE CERTAIN

It follows from what has been explained in relation to offer, acceptance and consideration that to be binding, an agreement must result in a contract. That is to say, the parties must agree on the terms of their contract. They must make their intentions clear in their contract. The Court will not enforce a contract the terms of which are uncertain. Thus, an agreement to agree in the future (a *contract to make* a *contract)* will not constitute a binding contract *e.g.*, a promise to pay an actress a salary to be *"mutually agreed between us"* is not a contract since the salary is not yet agreed: *Loftus* v. *Roberts (1902).*

Similarly, where the terms of a final agreement are too vague, the contract will fail for uncertainty. Hence, the terms must be definite or capable of being made definite without further agreement of the parties. The legal maxim, therefore, is "a *contract to contract is not* a *contract"*. If you agree "subject to contract" or "subject to agreement", the contract does not come into existence, for there is no definite or unqualified acceptance.

RESUME

Thus a contract is always based upon:

(i) Agreement *(consensus ad item)* an unqualified acceptance of a definite offer;
(ii) An intent to create legal obligations; and
(iii) Consiideration.

5

Formalities and Writing Requirements for Contracts Law

A contract is often evidenced in writing or by deed. The general rule is that a person who signs a contractual document will be bound by the terms in that document. This rule is referred to as the rule in *L'Estrange v Graucob*. This rule is approved by the High Court of Australia in *Toll(FGCT) Pty Ltd v Alphapharm Pty Ltd*. But a valid contract may (with some exceptions) be made orally or even by conduct. Remedies for breach of contract include damages (monetary compensation for loss) and, for serious breaches only, repudiation (*i.e.*, cancellation). The equitable remedy of specific performance, enforceable through an injunction, may be available if damages are insufficient.

Typically, contracts are oral or written, but written contracts have typically been preferred in common law legal systems; in 1677 England passed the Statute of Frauds which influenced similar statute of frauds laws in the United States and other countries such as Australia. In general, the Uniform Commercial Code as adopted in the United States requires a written contract for tangible product sales in excess of $500, and real estate contracts are required to be written. If the contract is not required by law to be written, an oral contract is valid and therefore legally binding. The United Kingdom has since replaced the original Statute of Frauds, but written contracts are still required for various circumstances such as land (through the Law of Property Act 1925).

An oral contract may also be called a parol contract or a verbal contract, with "verbal" meaning "spoken" rather than "in words", an established usage in British English with regards to contracts and agreements, and common

although somewhat deprecated as "loose" in American English. If a contract is in a written form, and somebody signs it, then the signer is typically bound by its terms regardless of whether they have actually read it provided the document is contractual in nature. However, affirmative defenses such as duress or unconscionability may enable the signer to avoid the obligation. Further, reasonable notice of a contract's terms must be given to the other party prior to their entry into the contract.

An unwritten, unspoken contract, also known as "a contract implied by the acts of the parties", which can be either an implied-in-fact contract or implied-in-law contract, may also be legally binding. Implied-in-fact contracts are real contracts under which the parties receive the "benefit of the bargain". However, contracts implied in law are also known as quasi-contracts, and the remedy is quantum meruit, the fair market value of goods or services rendered.

CONTRACT TERMS: CONSTRUCTION AND INTERPRETATION

A contractual term is "an[y] provision forming part of a contract". Each term gives rise to a contractual obligation, breach of which can give rise to litigation. Not all terms are stated expressly and some terms carry less legal weight as they are peripheral to the objectives of the contract.

Uncertainty, Incompleteness and Severance

If the terms of the contract are uncertain or incomplete, the parties cannot have reached an agreement in the eyes of the law. An agreement to agree does not constitute a contract, and an inability to agree on key issues, which may include such things as price or safety, may cause the entire contract to fail. However, a court will attempt to give effect to commercial contracts where possible, by construing a reasonable construction of the contract. In New South Wales, even if there is uncertainty or incompleteness in a contract, the contract may still be binding on the parties if there is a sufficiently certain and complete clause requiring the parties to undergo arbitration, negotiation or mediation.

Courts may also look to external standards, which are either mentioned explicitly in the contract or implied by common practice in a certain field. In addition, the court may also imply a term; if price is excluded, the court may imply a reasonable price, with the exception of land, and second-hand goods, which are unique.

If there are uncertain or incomplete clauses in the contract, and all options in resolving its true meaning have failed, it may be possible to sever and void just those affected clauses if the contract includes a severability clause. The test of whether a clause is severable is an objective test—whether a reasonable person would see the contract standing even without the clauses. Typically, non-severable contracts only require the substantial performance of a promise rather than the whole or complete performance of a promise to warrant payment. However, express clauses may be included in a non-severable contract to explicitly require the full performance of an obligation.

Classification of Terms

Contractual terms may be given different names or required different content, depending upon the context or jurisdiction. Terms establish conditions precedent. English (but not necessarily non-English) common law distinguishes between important *conditions* and warranties, with a breach of a condition by one party allowing the other to repudiate and be discharged while a warranty allows for remedies and damages but not complete discharge. Whether or not a term is a *condition* is determined in part by the parties' intent.

In a less technical sense, however, a condition is a generic term and a warranty is a promise. Not all language in the contract is determined to be a contractual term. Representations, which are often precontractual, are typically less strictly enforced than terms, and material misrepresentations historically was a cause of action for the tort of deceit. Warranties were enforced regardless of materiality; in modern United States law the distinction is less clear but warranties may be enforced more strictly. Statements of opinion may be viewed as "mere puff".

In specific circumstances these terms are used differently. For example, in English insurance law, violation of a "condition precedent" by an insured is a complete defense against the payment of claims. In general insurance law, a warranty is a promise that must be complied with. In product transactions, warranties promise that the product will continue to function for a certain period of time.

In the United Kingdom the courts determine whether a term is a condition or warranty; for example, an actress' obligation to perform the opening night of a theatrical production is a *condition*, but a singer's obligation to rehearse may be a warranty. Statute may also declare a term or nature of term to be a condition or warranty; for example the Sale of Goods Act 1979 s15A provides that terms as to title, description, quality and sample are generally *conditions*. The United Kingdom has also contrived the concept of an "intermediate term" (also called innominate), first established in *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962].

DEFINITION AND TYPES OF CONTRACT

DEFINITION OF CONTRACT

In our everyday lives, from dawn till dusk, all of us enter into a variety of contracts. These contract making activities of humans have only further increased with the increasing trade, commerce, industry, and technological advancements and here we are today living in this electronic age of digital signatures and E-Contracts.

Therefore, it wouldn't be wrong to say that living in a modern society would be impossible if the law did not recognize this contract making power of the person and the same prompted Roscoe Pound to make his celebrated observation that "Wealth, in a commercial age, is made up largely of promises".

Due to such an inevitable nature of agreements and contracts in our every life, the study of the Law of Contract is indispensable to the study of law. Therefore, it is important for us to firstly look at the various definitions of the term Contract that have been promulgated by various prominent Jurist and Legal luminaries who have interpreted it in accordance with their own understanding of the term.

According to Salmond, "A contract is an agreement creating and defining obligations between the parties."

Sir William Anson elucidates that "A Contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others".

Sir Fredrick Pollock defines, "Every agreement and promise enforceable at law is a contract".

The term Contract has been defined by Section 2(h) of the Indian Contract Act, 1872. It provides that, "An agreement enforceable by law is a contract."

According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises forming the consideration for each other is an agreement."

All agreements are not enforceable by law, therefore all agreements aren't contracts. Only those agreements which satisfy the essentials mentioned in Section 10 of the Indian Contract Act, 1872, can be called as contracts.

According to Section 10, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

INTENTION TO CREATE A LEGAL OBLIGATION

In order to ensure that an offer, after its acceptance, results in a valid contract, it is important that the offer must be made with an intention to create a legal relationship and be attached by legal consequences. Generally, the promises that are made in the case of social engagements lack this intention on the part of the parties to bind themselves by the legal obligations and such agreements can therefore not be considered as legally binding contracts.

The agreements such as the one made to go out for a walk together, watch a movie or play a game, *etc.*, cannot be enforced in the court of law as in such cases, there is absolutely no intention on the part of either of the parties to enter into a legally binding agreement. While in some cases, the parties may themselves expressly mention that they do not wish to enter into a formal or legal agreement, on the other occasions, such an intention has to be presumed from the terms of the agreement.

The test to ascertain whether the parties intended to enter into a legal binding agreement is objective and not subjective. This means that merely because either of the parties affirms that there was no such intention on their part, would not exempt them from a liability and the Court shall look into the conduct of the parties to deduce the same.

RELEVANT CASE LAWS

Balfour v. Balfour (1919)

In this case, the defendant was a government servant employed in Ceylon, who went on leave to England with his wife but due to health issues, the wife could not return back to Ceylon with her husband but the husband had promised her to pay a certain amount every month as maintenance for the time period. However, the husband failed to pay this amount, and when his wife sued him for not fulfilling his promise; he contended that there was no such intention to create a legal relationship.

Atkin L.J. observed that "There are agreements entered into by the parties that do not result in contracts within the meaning of this term in the law. Such agreements are not contracts since the parties did not intend that they should be attended by any legal consequences."

Rose and Frank Co. v. Crompton & Bros. Ltd. (1925)

In this case, when one of the parties made a breach of the agreement, the other party moved the Court of Law for the enforcement of the agreement. It was held that since the arrangement entered into by the parties is not a legal or formal agreement, it shall not be subject to legal jurisdiction and should rather be carried out by the parties themselves through mutual loyalty and friendly cooperation.

Jones v. Padavatton (1969)

In this case, an agreement was made between a mother *i.e.*, Mrs. Jones and her daughter wherein the mother agreed to pay a monthly allowance to her divorced daughter during her studies for the bar in England. Mrs. Jones also bought a house in England and the daughter was allowed to stay in a part of it, while the rest of it was rented.

But in the meantime, differences arose between both of them and Mrs. Jones brought an action against her daughter to evict the house. But the daughter contended that her mother was legally bound to maintain her until her studies were completed since she had promised to do the same.

In this case, the Court held that there was no intention to enter into any legal obligations by either of the parties and therefore, Mrs. Jones's action against her daughter for eviction succeeded.

Meritt v. Meritt (1970)

In this case, a couple was a joint owner of a house that was subject to a mortgage. But the husband left the house to live with another woman and signed a note in the name of his wife that said that she would pay the outstanding amount in respect of the house and in return, the property shall be transferred to

her sole ownership. In this case, it was held that generally in close relationships, there is no intention to enter into any legal obligations but nothing prevents these persons from entering into a legally binding contract. Therefore, if an agreement clearly manifests an intention to create a legal relationship, the parties shall be bound by the same.

CLASSIFICATION OF CONTRACTS

On the Basis of Enforceability:

1. *Contract:* According to Section 2 (h) of the Indian Contract Act, 1872, a contract is an agreement enforceable by law.
2. *Voidable Contract:* According to Section 2(i), an agreement which is enforceable by the law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract.
3. *Void Contract:* According to Section 2(j), a void contract is the one which ceases to be enforceable by the law.
4. *Unenforceable Contract:* A contract that is good in substance but becomes unenforceable because of some technical error and therefore cannot be enforced by the law is an unenforceable contract.
5. *Illegal Agreement:* When the object and consideration of an agreement are unlawful, it is said to be an illegal agreement and such an agreement is void.

On the Basis of Formation:

1. *Express Contract:* When the terms of the contract are expressly agreed upon either in words written or spoken, at the time of the formation of the contract, such an agreement is said to be an express contract.
2. *Implied Contract:* An implied contract is the one that is inferred from the act or conduct of the parties and the circumstances of the case.
3. *Quasi Contracts:* Sections 68-72 contained in Chapter V of the Indian Contract Act, 1872 deal with "Quasi Contracts" or "certain relations resembling those created by contract". Such contracts are created by law on the basis of the principle of equity which states that a party must not be allowed to enrich itself at the cost of the other party. In this case, the parties do not have any intention to enter into any legal obligations but the same is imposed upon them by the law.

On the Basis of Performance:

1. *Executed Contract:* A contract is said to be executed when both the parties have performed their respective contractual obligations and as such nothing is left to be performed.
2. *Executory Contract:* An executory contract is the one in which either one or both the parties to the contract have to perform their respective contractual obligations in a future time. Such a contract is, therefore, either wholly unperformed or partially performed.

REMEDIES FOR DEFENDANT ON DEFENSES

Setting Aside the Contract

To rescind is to set aside or unmake a contract. There are four different ways in which contracts can be set aside. A contract may be deemed 'void', 'voidable' or 'unenforceable', or declared 'ineffective'. Voidness implies that a contract never came into existence. Voidability implies that one or both parties may declare a contract ineffective at their wish. Kill fees are paid by magazine publishers to authors when their articles are submitted on time but are subsequently not used for publication. When this occurs, the magazine cannot claim copyright for the "killed" assignment. Unenforceability implies that neither party may have recourse to a court for a remedy.

Ineffectiveness arises when a contract is terminated by order of a court, where a public body has failed to satisfy the requirements of public procurement law. This remedy was created by the Public Contracts (Amendments) Regulations 2009, (SI 2009/2992).

DISPUTES

Procedure

In many countries, in order to obtain damages for breach of contract or to obtain specific performance or other equitable relief, the aggrieved injured party may file a civil (non-criminal) lawsuit in court.

In England and Wales, a contract may be enforced by use of a claim, or in urgent cases by applying for an interim injunction to prevent a breach. Likewise, in the United States, an aggrieved party may apply for injunctive relief to prevent a threatened breach of contract, where such breach would result in irreparable harm that could not be adequately remedied by money damages.

Arbitration

If the contract contains a valid arbitration clause then, prior to filing a lawsuit, the aggrieved party must submit an arbitration claim in accordance with the procedures set forth in the clause. Many contracts provide that all disputes arising thereunder will be resolved by arbitration, rather than litigated in courts.

Arbitration judgments may generally be enforced in the same manner as ordinary court judgments, and are recognized and enforceable internationally under the New York Convention, which has 156 parties. However, in New York Convention states, arbitral decisions are generally immune unless there is a showing that the arbitrator's decision was irrational or tainted by fraud.

Some arbitration clauses are not enforceable, and in other cases arbitration may not be sufficient to resolve a legal dispute. For example, disputes regarding validity of registered IP rights may need to be resolved by a public body within the national registration system. For matters of significant public interest that go beyond the narrow interests of the parties to the agreement, such as claims

that a party violated a contract by engaging in illegal anti-competitive conduct or committed civil rights violations, a court might find that the parties may litigate some or all of their claims even before completing a contractually agreed arbitration process.

United States

In the United States, thirty-five states (notably not including New York) and the District of Columbia have adopted the Uniform Arbitration Act to facilitate the enforcement of arbitrated judgments.

Customer claims against securities brokers and dealers are almost always resolved pursuant to contractual arbitration clauses because securities dealers are required under the terms of their membership in self-regulatory organizations such as the Financial Industry Regulatory Authority (formerly the NASD) or NYSE to arbitrate disputes with their customers. The firms then began including arbitration agreements in their customer agreements, requiring their customers to arbitrate disputes.

Choice of law

When a contract dispute arises between parties that are in different jurisdictions, law that is applicable to a contract is dependent on the conflict of laws analysis by the court where the breach of contract action is filed. In the absence of a choice of law clause, the court will normally apply either the law of the forum or the law of the jurisdiction that has the strongest connection to the subject matter of the contract. A choice of law clause allows the parties to agree in advance that their contract will be interpreted under the laws of a specific jurisdiction.

Within the United States, choice of law clauses are generally enforceable, although exceptions based upon public policy may at times apply. Within the European Union, even when the parties have negotiated a choice of law clause, conflict of law issues may be governed by the Rome I Regulation.

Choice of forum

Many contracts contain a forum selection clause setting out where disputes in relation to the contract should be litigated. The clause may be general, requiring that any case arising from the contract be filed within a specific state or country, or it may require that a case be filed in a specific court. For example, a choice of forum clause may require that a case be filed in the U.S., State of California, or it may require more specifically that the case be filed in the Superior Court for Los Angeles County.

A choice of law or venue is not necessarily binding upon a court. Based upon an analysis of the laws, rules of procedure and public policy of the state and court in which the case was filed, a court that is identified by the clause may find that it should not exercise jurisdiction, or a court in a different jurisdiction or venue may find that the litigation may proceed despite the clause.

As part of that analysis, a court may examine whether the clause conforms with the formal requirements of the jurisdiction in which the case was filed (in some jurisdictions a choice of forum or choice of venue clause only limits the parties if the word "exclusive" is explicitly included in the clause). Some jurisdictions will not accept an action that has no connection to the court that was chosen, and others will not enforce a choice of venue clause when they consider themselves to be a more convenient forum for the litigation.

Some contracts are governed by multilateral instruments that require a non-chosen court to dismiss cases and require the recognition of judgments made by courts having jurisdiction based on a choice of court clause. For example, the Brussels regime instruments (31 European states) and the Hague Choice of Court Agreements Convention (European Union, Mexico, Montenegro, Singapore), as well as several instruments related to a specific area of law, may require courts to enforce and recognize choice of law clauses and foreign judgments.

REMEDIES

In the United Kingdom, breach of contract is defined in the Unfair Contract Terms Act 1977 as: [i] non-performance, [ii] poor performance, [iii] part-performance, or [iv] performance which is substantially different from what was reasonably expected. Innocent parties may repudiate (cancel) the contract only for a major breach (breach of condition), but they may always recover compensatory damages, provided that the breach has caused foreseeable loss.

It was not possible to sue the Crown in the UK for breach of contract before 1948. However, it was appreciated that contractors might be reluctant to deal on such a basis and claims were entertained under a petition of right that needed to be endorsed by the Home Secretary and Attorney-General. S.1 Crown Proceedings Act 1947 opened the Crown to ordinary contractual claims through the courts as for any other person.

Damages

There are several different types of damages.

- Compensatory damages, which are given to the party injured by the breach of contract. With compensatory damages, there are two heads of loss, consequential damage and direct damage. In theory, compensatory damages are designed to put the injured party in his or her rightful position, usually through an award of expectation damages.
- Liquidated damages are an estimate of loss agreed to in the contract, so that the court avoids calculating compensatory damages and the parties have greater certainty. Liquidated damages clauses may be called "penalty clauses" in ordinary language, but the law distinguishes between liquidated damages (legitimate) and penalties (invalid). A test for determining which category a clause falls into was established by the English House of Lords in *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd*

- Nominal damages consist of a small cash amount where the court concludes that the defendant is in breach but the plaintiff has suffered no quantifiable pecuniary loss, and may be sought to obtain a legal record of who was at fault.
- Punitive or exemplary damages are used to punish the party at fault; but even though such damages are not intended primarily to compensate, nevertheless the claimant (and not the state) receives the award. Exemplary damages are not recognised nor permitted in some jurisdictions. In the UK, exemplary damages are not available for breach of contract, but are possible after fraud. Although vitiating factors (such as misrepresentation, mistake, undue influence and duress) relate to contracts, they are not contractual actions, and so, in a roundabout way, a claimant in contract may be able to get exemplary damages.

Compensatory damages compensate the plaintiff for actual losses suffered as accurately as possible. They may be "expectation damages", "reliance damages" or "restitutionary damages". Expectation damages are awarded to put the party in as good of a position as the party would have been in had the contract been performed as promised. Reliance damages are usually awarded where no reasonably reliable estimate of expectation loss can be arrived at or at the option of the plaintiff. Reliance losses cover expense suffered in reliance to the promise. Examples where reliance damages have been awarded because profits are too speculative include the Australian case of *McRae v Commonwealth Disposals Commission* which concerned a contract for the rights to salvage a ship. In *Anglia Television Ltd v. Reed* the English Court of Appeal awarded the plaintiff expenditures incurred prior to the contract in preparation of performance.

After a breach has occurred, the innocent party has a duty to mitigate loss by taking any reasonable steps. Failure to mitigate means that damages may be reduced or even denied altogether. However, Professor Michael Furmston has argued that "it is wrong to express (the mitigation) rule by stating that the plaintiff is under a duty to mitigate his loss", citing *Sotiros Shipping Inc v Sameiet, The Solholt*. If a party provides notice that the contract will not be completed, an anticipatory breach occurs.

Damages may be general or consequential. General damages are those damages which naturally flow from a breach of contract. Consequential damages are those damages which, although not naturally flowing from a breach, are naturally supposed by both parties at the time of contract formation. An example would be when someone rents a car to get to a business meeting, but when that person arrives to pick up the car, it is not there. General damages would be the cost of renting a different car. Consequential damages would be the lost business if that person was unable to get to the meeting, if both parties knew the reason the party was renting the car. However, there is still a duty to mitigate the losses. The fact that the car was not there does not give the party a right to not attempt to rent another car.

To recover damages, a claimant must show that the breach of contract caused foreseeable loss. *Hadley v Baxendale* established that the test of foreseeability

is both objective or subjective. In other words, is it foreseeable to the objective bystander, or to the contracting parties, who may have special knowledge? On the facts of this case, where a miller lost production because a carrier delayed taking broken mill parts for repair, the court held that no damages were payable since the loss was foreseeable neither by the "reasonable man" nor by the carrier, both of whom would have expected the miller to have a spare part in store.

Specific Performance

There may be circumstances in which it would be unjust to permit the defaulting party simply to buy out the injured party with damages. For example, where an art collector purchases a rare painting and the vendor refuses to deliver, the collector's damages would be equal to the sum paid.

The court may make an order of what is called "specific performance", requiring that the contract be performed. In some circumstances a court will order a party to perform his or her promise (an order of "specific performance") or issue an order, known as an "injunction", that a party refrain from doing something that would breach the contract. A specific performance is obtainable for the breach of a contract to sell land or real estate on such grounds that the property has a unique value. In the United States by way of the 13th Amendment to the United States Constitution, specific performance in personal service contracts is only legal "*as punishment for a crime whereof the party shall have been duly convicted*".

Both an order for specific performance and an injunction are discretionary remedies, originating for the most part in equity. Neither is available as of right and in most jurisdictions and most circumstances a court will not normally order specific performance. A contract for the sale of real property is a notable exception. In most jurisdictions, the sale of real property is enforceable by specific performance. Even in this case the defenses to an action in equity (such as laches, the *bona fide* purchaser rule, or unclean hands) may act as a bar to specific performance.

Related to orders for specific performance, an injunction may be requested when the contract prohibits a certain action. Action for injunction would prohibit the person from performing the act specified in the contract.

HISTORY

Whilst early rules of trade and barter have existed since ancient times, modern laws of contract in the West are traceable from the industrial revolution (1750 onwards), when increasing numbers worked in factories for a cash wage. In particular, the growing strength of the British economy and the adaptability and flexibility of the English common law led to a swift development of English contract law. Colonies within the British empire (including the USA and the Dominions) would adopt the law of the mother country. In the 20th century, the growth of export trade led to countries adopting international conventions, such as the Hague-Visby Rules and the UN Convention on Contracts for the International Sale of Goods, to promote uniform regulations.

Contract law is based on the principle expressed in the Latin phrase *pacta sunt servanda,* ("agreements must be kept"). The common law of contract originated with the now-defuct writ of assumpsit, which was originally a tort action based on reliance. Contract law falls within the general law of obligations, along with tort, unjust enrichment, and restitution.

Jurisdictions vary in their principles of freedom of contract. In common law jurisdictions such as England and the United States, a high degree of freedom is the norm. For example, in American law, it was determined in the 1901 case of *Hurley v. Eddingfield* that a physician was permitted to deny treatment to a patient despite the lack of other available medical assistance and the patient's subsequent death. This is in contrast to the civil law, which typically applies certain overarching principles to disputes arising out of contract, as in the French Civil Code. Other legal systems such as Islamic law, socialist legal systems, and customary law have their own variations.

However, in both the European union and the United States, the need to prevent discrimination has eroded the full extent of freedom of contract. Legislation governing equality, equal pay, racial discrimination, disability discrimination and so on, has imposed limits of the full freedom of contract. For example, the Civil Rights Act of 1964 restricted private racial discrimination against African-Americans. In the early 20th century, the United States underwent the "Lochner era", in which the Supreme Court of the United States struck down economic regulations on the basis of freedom of contract and the Due Process Clause; these decisions were eventually overturned, and the Supreme Court established a deference to legislative statutes and regulations that restrict freedom of contract. The US Constitution contains a Contract Clause, but this has been interpreted as only restricting the retroactive impairment of contracts.

COMMERCIAL USE

Contracts are widely used in commercial law, and form the legal foundation for transactions across the world. Common examples include contracts for the sale of services and goods (both wholesale and retail), construction contracts, contracts of carriage, software licenses, employment contracts, insurance policies, sale or lease of land, and various other uses.

Although the European Union is fundamentally an economic community with a range of trade rules, there is no overarching "EU Law of Contract". In 1993, Harvey McGregor, a British barrister and academic, produced a "Contract Code" under the auspices of the English and Scottish Law Commissions, which was a proposal to both unify and codify the contract laws of England and Scotland. This document was offered as a possible "Contract Code for Europe", but tensions between English and German jurists meant that this proposal has so far come to naught.

CONTRACT THEORY

Contract theory is the body of legal theory that addresses normative and conceptual questions in contract law. One of the most important questions asked

in contract theory is why contracts are enforced. One prominent answer to this question focuses on the economic benefits of enforcing bargains. Another approach, associated with Charles Fried, maintains that the purpose of contract law is to enforce promises. This theory is developed in Fried's book, *Contract as Promise.* Other approaches to contract theory are found in the writings of legal realists and critical legal studies theorists.

More generally, writers have propounded Marxist and feminist interpretations of contract. Attempts at overarching understandings of the purpose and nature of contract as a phenomenon have been made, notably relational contract theory originally developed by U.S., contracts scholars Ian Roderick Macneil and Stewart Macaulay, building at least in part on the contract theory work of U.S., scholar Lon L. Fuller, while U.S., scholars have been at the forefront of developing economic theories of contract focussing on questions of transaction cost and so-called 'efficient breach' theory.

Another dimension of the theoretical debate in contract is its place within, and relationship to a wider law of obligations. Obligations have traditionally been divided into contracts, which are voluntarily undertaken and owed to a specific person or persons, and obligations in tort which are based on the wrongful infliction of harm to certain protected interests, primarily imposed by the law, and typically owed to a wider class of persons.

Recently it has been accepted that there is a third category, restitutionary obligations, based on the unjust enrichment of the defendant at the plaintiff's expense.

Contractual liability, reflecting the constitutive function of contract, is generally for failing to make things better (by not rendering the expected performance), liability in tort is generally for action (as opposed to omission) making things worse, and liability in restitution is for unjustly taking or retaining the benefit of the plaintiff's money or work.

The common law describes the circumstances under which the law will recognise the existence of rights, privilege or power arising out of a promise.

REPRESENTATIONS VERSUS WARRANTIES

Statements of fact in a contract or in obtaining the contract are considered to be either warranties or representations. Traditionally, warranties are factual promises which are enforced through a contract legal action, regardless of materiality, intent, or reliance. Representations are traditionally precontractual statements that allow for a tort-based action (such as the tort of deceit) if the misrepresentation is negligent or fraudulent; historically, a tort was the only action available, but by 1778, breach of warranty became a separate legal contractual action. In U.S., law, the distinction between the two is somewhat unclear; warranties are viewed as primarily contract-based legal action while negligent or fraudulent misrepresentations are tort-based, but there is a confusing mix of case law in the United States. In modern English law, sellers often avoid using the term 'represents' in order to avoid claims under the Misrepresentation

Act 1967, while in America 'warrants and represents' is relatively common. Some modern commentators suggest avoiding the words and substituting 'state' or 'agree', and some model forms do not use the words; however, others disagree.

Statements in a contract may not be upheld if the court finds that the statements are subjective or promotional puffery. English courts may weigh the emphasis or relative knowledge in determining whether a statement is enforceable as part of the contract.

In the English case of *Bannerman v White* the court upheld a rejection by a buyer of hops which had been treated with sulphur since the buyer explicitly expressed the importance of this requirement. The relative knowledge of the parties may also be a factor, as in English case of *Bissett v Wilkinson* where the court did not find misrepresentation when a seller said that farmland being sold would carry 2000 sheep if worked by one team; the buyer was considered sufficiently knowledgeable to accept or reject the seller's opinion.

Standard Terms and Contracts of Adhesion

Standard form contracts contain "boilerplate", which is a set of "one size fits all" contract provisions. However, the term may also narrowly refer to conditions at the end of the contract which specify the governing law provision, venue, assignment and delegation, waiver of jury trial, notice, and escape clauses ("get-out clauses") such as *force majeure*. Restrictive provisions in contracts where the consumer has little negotiating power ("contracts of adhesion") attract consumer protection scrutiny.

Implied Terms

A term may either be express or implied. An express term is stated by the parties during negotiation or written in a contractual document. Implied terms are not stated but nevertheless form a provision of the contract.

Terms Implied in Fact

Terms may be implied due to the factual circumstances or conduct of the parties. In the case of *BP Refinery (Westernport) Pty Ltd v Shire of Hastings*, the UK Privy Council, on appeal from Australia, proposed a five-stage test to determine situations where the facts of a case may imply terms. The classic tests have been the "business efficacy test" and the "officious bystander test". Under the "business efficacy test" first proposed in *The Moorcock* [1889], the minimum terms necessary to give business efficacy to the contract will be implied. Under the officious bystander test (named in *Southern Foundries (1926) Ltd v Shirlaw* [1940] but actually originating in *Reigate v. Union Manufacturing Co (Ramsbottom) Ltd* [1918]), a term can only be implied in fact if an "officious bystander" listening to the contract negotiations suggested that the term be included the parties would promptly agree. The difference between these tests is questionable.

Terms Implied in Law

Statutes or judicial rulings may create implied contractual terms, particularly in standardized relationships such as employment or shipping contracts. The Uniform Commercial Code of the United States also imposes an implied covenant of good faith and fair dealing in performance and enforcement of contracts covered by the Code. In addition, Australia, Israel and India imply a similar good faith term through laws.

In England, some contracts (insurance and partnerships) require utmost good faith, while others may require good faith (employment contracts and agency). Most English contracts do not need any good faith, provided that the law is met. There is, however, an overarching concept of "legitimate expectation".

Most countries have statutes which deal directly with sale of goods, lease transactions, and trade practices. In the United States, prominent examples include, in the case of products, an implied warranty of merchantability and fitness for a particular purpose, and in the case of homes an implied warranty of habitability.

In the United Kingdom, implied terms may be created by:

- Statute, such as the Sale of Goods Act 1979, the Consumer Rights Act 2015 and the Hague-Visby Rules;
- Common Law, such as *The Moorcock*, which introduced the "business efficacy" test;
- Previous Dealings, as in *Spurling v Bradshaw*.
- Custom, as in *Hutton v Warren.*

Terms Implied by Custom

A term may be implied on the basis of custom or usage in a particular market or context. In the Australian case of *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur (Aust) Limited*, the requirements for a term to be implied by custom were set out.

For a term to be implied by custom it needs to be "so well known and acquiesced in that everyone making a contract in that situation can reasonably be presumed to have imported that term into the contract".

THIRD PARTIES

The common law doctrine of privity of contract provides that only those who are party to a contract may sue or be sued on it. The leading case of *Tweddle v Atkinson* [1861] immediately showed that the doctrine had the effect of defying the intent of the parties.

In maritime law, the cases of *Scruttons v Midland Silicones* [1962] and *N.Z. Shipping v Satterthwaite* [1975] established how third parties could gain the protection of limitation clauses within a bill of lading. Some common law exceptions such as agency, assignment and negligence allowed some

circumvention of privity rules, but the unpopular doctrine remained intact until it was amended by the Contracts (Rights of Third Parties) Act 1999 which provides:

A person who is not a party to a contract (a "third party") may in his own right enforce a contract if:

(a) The contract expressly provides that he may, or
(b) The contract purports to confer a benefit on him.

PERFORMANCE

Performance varies according to the particular circumstances. While a contract is being performed, it is called an executory contract, and when it is completed it is an executed contract. In some cases there may be substantial performance but not complete performance, which allows the performing party to be partially compensated.

Research in business and management has also paid attention to the influence of contracts on relationship development and performance.

DEFENSES

Vitiating factors constituting defences to purported contract formation include:

- Mistake (such as *non est factum*)
- Incapacity, including mental incompetence and infancy/minority
- Duress
- Undue influence
- Unconscionability
- Misrepresentation or fraud
- Frustration of purpose

Such defenses operate to determine whether a purported contract is either (1) void or (2) voidable. Void contracts cannot be ratified by either party. Voidable contracts *can* be ratified.

Misrepresentation

Misrepresentation means a false statement of fact made by one party to another party and has the effect of inducing that party into the contract. For example, under certain circumstances, false statements or promises made by a seller of goods regarding the quality or nature of the product that the seller has may constitute misrepresentation. A finding of misrepresentation allows for a remedy of rescission and sometimes damages depending on the type of misrepresentation.

In a court of law, to prove misrepresentation and/or fraud, there must be evidence that shows a claim was made, said claim was false, the party making the claim knew the claim was false, and that party's intention was for a transaction to occur based upon the false claim.

There are two types of misrepresentation: fraud in the factum and fraud in inducement. Fraud in the factum focuses on whether the party alleging

misrepresentation knew they were creating a contract. If the party did not know that they were entering into a contract, there is no meeting of the minds, and the contract is void. Fraud in inducement focuses on misrepresentation attempting to get the party to enter into the contract. Misrepresentation of a material fact (if the party knew the truth, that party would not have entered into the contract) makes a contract voidable.

Assume two people, Party A and Party B, enter into a contract. Then, it is later determined that Party A did not fully understand the facts and information described within the contract. If Party B used this lack of understanding against Party A to enter into the contract, Party A has the right to void the contract.

The foundational principle of "caveat emptor," which means "let the buyer beware," applies to all American transactions. In Laidlaw v. Organ, the Supreme Court decided that the buyer did not have to inform the seller of information the buyer knew could affect the price of the product.

According to *Gordon v Selico* [1986] it is possible to misrepresent either by words or conduct. Generally, statements of opinion or intention are not statements of fact in the context of misrepresentation. If one party claims specialist knowledge on the topic discussed, then it is more likely for the courts to hold a statement of opinion by that party as a statement of fact.

It is a fallacy that an opinion cannot be a statement of fact. If a statement is the honest expression of an opinion honestly entertained, it cannot be said that it involves any fraudulent misrepresentations of fact.

For an innocent misrepresentation, the judge takes into account the likelihood a party would rely on the false claim and how significant the false claim was.

Remedies for misrepresentation. Rescission is the principal remedy and damages are also available if a tort is established. In order to obtain relief, there must be a positive misrepresentation of law and also, the person to whom the representation was made must have been misled by and relied on this misrepresentation:*Public Trustee v Taylor*.

Contract law does not delineate any clear boundary as to what is considered an acceptable false claim or what is unacceptable. Therefore, the question is what types of false claims (or deceptions) will be significant enough to void a contract based on said deception. Advertisements utilizing "puffing," or the practice of exaggerating certain things, fall under this question of possible false claims.

Mistake

A mistake is an incorrect understanding by one or more parties to a contract and may be used as grounds to invalidate the agreement. Common law has identified three types of mistake in contract: common mistake, mutual mistake, and unilateral mistake.

- Common mistake occurs when both parties hold the same mistaken belief of the facts. This is demonstrated in the case of *Bell v. Lever Brothers Ltd.*, which established that common mistake can only void

a contract if the mistake of the subject-matter was sufficiently fundamental to render its identity different from what was contracted, making the performance of the contract impossible. In *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*, the court held that the common law will grant relief against common mistake, if the test in *Bell v. Lever Bros Ltd* is made out. If one party has knowledge and the other does not, and the party with the knowledge promises or guarantees the existence of the subject matter, that party will be in breach if the subject matter does not exist.

- Mutual mistake occurs when both parties of a contract are mistaken as to the terms. Each believes they are contracting to something different. Courts usually try to uphold such mistakes if a reasonable interpretation of the terms can be found. However, a contract based on a mutual mistake in judgment does not cause the contract to be voidable by the party that is adversely affected.
- Unilateral mistake occurs when only one party to a contract is mistaken as to the terms or subject-matter. The courts will uphold such a contract unless it was determined that the non-mistaken party was aware of the mistake and tried to take advantage of the mistake. It is also possible for a contract to be void if there was a mistake in the identity of the contracting party. An example is in *Lewis v Avery* where Lord Denning MR held that the contract can only be voided if the plaintiff can show that, at the time of agreement, the plaintiff believed the other party's identity was of vital importance. A mere mistaken belief as to the credibility of the other party is not sufficient.

Duress and Undue Influence

Duress has been defined as a "threat of harm made to compel a person to do something against his or her will or judgment; esp., a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition."

An example is in *Barton v Armstrong* [1976] in a person was threatened with death if they did not sign the contract. An innocent party wishing to set aside a contract for duress to the person only needs to prove that the threat was made and that it was a reason for entry into the contract; the burden of proof then shifts to the other party to prove that the threat had no effect in causing the party to enter into the contract. There can also be duress to goods and sometimes, 'economic duress'.

Undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person through a special relationship such as between parent and child or solicitor and client. As an equitable doctrine, the court has discretion. When no special relationship exists, the question is whether there was a relationship of such trust and confidence that it should give rise to such a presumption.

Unconscionable Dealing

In Australian law, a contract can be set aside due to unconscionable dealing. Firstly, the claimant must show that they were under a special disability, the test for this being that they were unable to act in their best interest. Secondly, the claimant must show that the defendant took advantage of this special disability.

Illegal Contracts

If based on an illegal purpose or contrary to public policy, a contract is *void*. In the 1996 Canadian case of *Royal Bank of Canada v. Newell* a woman forged her husband's signature, and her husband agreed to assume "all liability and responsibility" for the forged checks. However, the agreement was unenforceable as it was intended to "stifle a criminal prosecution", and the bank was forced to return the payments made by the husband.

In the U.S., one unusual type of unenforceable contract is a personal employment contract to work as a spy or secret agent. This is because the very secrecy of the contract is a condition of the contract (in order to maintain plausible deniability).

If the spy subsequently sues the government on the contract over issues like salary or benefits, then the spy has breached the contract by revealing its existence.

It is thus unenforceable on that ground, as well as the public policy of maintaining national security (since a disgruntled agent might try to reveal *all* the government's secrets during his/her lawsuit). Other types of unenforceable employment contracts include contracts agreeing to work for less than minimum wage and forfeiting the right to workman's compensation in cases where workman's compensation is due.

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Guaranteed Investment Contract

A guaranteed investment contract (GIC) is a contract that guarantees repayment of principal and a fixed or floating interest rate for a predetermined period of time. Guaranteed investment contracts are typically issued by life insurance companies and marketed to institutions qualified for favourable tax status under the Internal Revenue Code (for example, 401(k) plans). A GIC is used primarily as a vehicle that yields a higher return than a savings account or United States Treasury securities. GICs are sometimes referred to as funding agreements, although this term is often reserved for contracts sold to non-qualified institutions.

It is not to be confused with a Guaranteed Investment Certificate, a product sold by Canadian banks, which also goes by the acronym of GIC.

Example: Funds obtained through a municipal bond issuance will generally take time to be drawn down. Depositing the bond proceeds in a GIC gives the bond issuer the liquidity of having the funds available while earning a higher rate of return than it would earn in a money market account. GICs are considered safe vehicles since most insurance companies offering them are rated in the AA to AAA range.

The term "GIC" is sometimes used in the context of "Guaranteed Investment Agreements" (GIAs).

HISTORY

As of 1990, a large amount of people's 401k retirement money had been invested into GICs. However when life insurance companies started failing, people began to lose their faith in GICs as a product. For example, Executive

Life Insurance Company had some junk bond problems in 1990, and people started redeeming their GICs. So many people redeemed Executive GICs that it couldn't pay all that it owed. It was 'failed' and seized by the government. Investors who had bought GICs, such as the Unisys employee fund, found that their money was frozen. This resulted in a lawsuit against Unisys.

In 1995 the New York State Insurance Department enabled the 'monoline' municipal-bond insurance companies to write insurance on GICs. Thus if the GIC issuer failed, the monoline insurer could pay back investors instead. Insured GICs were called "wrapped" GICs. In the late 2000s, insurance company AIG was bailed out by the federal government to the tune of over a hundred billion dollars. Much of the government money (at least 9 billion dollars) was used to pay out on "Guaranteed Investment Agreement" contracts that AIG had sold to investors.

In 2010 many GIC sellers were sued by counties such as Los Angeles and Oakland over alleged price fixing regarding GICs. Many large banks and other companies were named as 'co-conspirators'

FINANCIAL GUARANTEE CONTRACTS AND CREDIT INSURANCE

Financial guarantee contracts (sometimes known as 'credit insurance') require the issuer to make specified payments to reimburse the holder for a loss it incurs if a specified debtor fails to make payment when due under the original or modified terms of a debt instrument. These contracts can have various legal forms, such as that of a financial guarantee, letter of credit, credit default contract or insurance contract. Some financial guarantee contracts result in the transfer of significant insurance risk and thus meet the definition of 'insurance contract' in IFRS 4 *Insurance Contracts*.

Mindful of the need to develop a 'stable platform' of Standards for 2005, the Board decided to finalise IFRS 4 without specifying the accounting for these contracts and to subsequently develop separate proposals on this aspect.

As part of finalising IFRS 4, the IASB also decided:

- If a financial guarantee contract is not an insurance contract, as defined in IFRS 4, it should be within the scope of IAS 39 *Financial Instruments: Recognition and Measurement*
- If a financial guarantee contract was entered into or retained on transferring to another party financial assets or financial liabilities within the scope of IAS 39, the issuer should apply IAS 39 to that contract even if the contract is an insurance contract, as defined in IFRS 4.

This project page discusses the development and finalisation of these additional proposals.

BAILMENT

Bailment describes a legal relationship in common law where physical possession of personal property, or a chattel, is transferred from one person (the

'bailor') to another person (the 'bailee') who subsequently has possession of the property. It arises when a person gives property to someone else for safekeeping, and is a cause of action independent of contract or tort.

GENERAL

Bailment is distinguished from a contract of sale or a gift of property, as it only involves the transfer of possession and not its ownership. To create a bailment, the bailee must both intend to possess, and actually physically possess, the bailable chattel. Bailment is a typical common law concept although similar concepts exists in civil law (Spain- Depósito).

In addition, unlike a lease or rental, where ownership remains with the lessor but the lessee is allowed to use the property, the bailee is generally not entitled to the use of the property while it is in his possession.

A common example of bailment is leaving your car with a valet. Leaving your car in a parking garage is typically a license rather than a bailment, as the car park's intent to possess your car cannot be shown. However, bailments arises in many other situations, including terminated leases of property, warehousing (including store-it-yourself) or in carriage of goods.

PURPOSES

There are three types of bailments:

1. For the benefit of the bailor and bailee
2. For the sole benefit of the bailor; and
3. For the sole benefit of the bailee.

Examples:

A bailment for the mutual benefit of the parties is created when there is an exchange of performances between the parties (*e.g.*, a bailment for the repair of an item).

A bailor receives the sole benefit from a bailment when a bailee acts gratuitously (*e.g.*, a restaurant, the bailee, provides an attended coatroom free of charge to its customer, the bailor).

A bailment is created for the sole benefit of the bailee when a bailor acts gratuitously (*e.g.*, the loan of a book to a patron, the bailee, from a library, the bailor).

TYPES

Modifying the earlier opinion of Lord Holt (*Coggs v. Bernard, 92 Eng. Rep. 107 (K.B. 1704)*), Sir William Jones in his 1781 *An Essay on The Law of Bailments* divided bailments into five sorts, namely:

- Deposit (*depositum*);
- Gratuitous agency (*mandatum*);
- Loan for use (*commodatum*);
- Possessory pledge (*pignori acceptum*);

- Loan for hire (*locatum*). Also called *locatio et conductio*, this is subdivided into *locatio rei*, or hiring by which the hirer (*bailee*) gains a temporary use of the thing, *locatio operis faciendi* when something is to be done to the thing delivered, and *locatio operis mercium vehendarum* when the thing is merely to be transported from one place to another.

LIABILITY

No matter how a bailment arises, the bailee will incur liability in the taking of a bailment in some cases insuring the goods. Different jurisdictions maintain different standards of care.

STRICT LIABILITY

The old common law held a bailee strictly liable for the bailment. The exception to this rule was the case of involuntary bailments, when the bailee is only held to a standard of due care.

TIERED SYSTEM

In many jurisdictions the system of strict liability has been replaced by a tiered system of liability that depends on the relationship of the bailee to the bailor. The bailee is generally expected to take reasonable precautions to safeguard the property, although this standard sometimes varies depending upon who benefits from the bailment.

- If both bailor and bailee are found to benefit from the relationship, such as sending a package, then the bailee is held to a standard of ordinary, or reasonable, care. (*mutual-benefit bailment*)
- If the bailment is to the primary benefit of the bailor, such as finding a lost wallet, the bailee must be found grossly negligent to be liable for damage done to the bailment.
- If the bailee primarily benefits, such as if you borrow your neighbour's rake to clean your lawn, the bailee must exercise highest care, *i.e.*, is liable for any damages arising from slight negligence.

NORMAL CARE

Some jurisdictions have held bailees to a standard of normal care regardless of who benefits in the bailor/bailee relationship.

INVOLUNTARY BAILEES

An exception to all the above is the case of an involuntary bailee, one who by not intentional acts is made a bailee.

For example, if one is given a stock certificate but it turns out to be the wrong certificate (intended for someone else), he is an unintentional bailee, he has made no intentional act to become a bailee.

He is therefore entitled to divest himself of the certificate regardless of a duty of care, so long as he does no malicious or intentional harm to another.

DAMAGES

Plaintiffs will be able to sue for damages based on the duty of care. Often this will be normal tort damages. Plaintiff may elect also to sue for conversion, either in the replevin or trover, although these are generally considered older, common law damages.

TERMS

Bailment can arise in a number of situations, and is often described by the type of relationship that gave rise to the bailment. Several common distinctions are:

- *Voluntary vs. Involuntary:* In a voluntary bailment, the bailee agrees to accept responsibility for possession of the goods. In an involuntary bailment, the bailee has possession of the goods without intent to do so. A common situation that creates voluntary bailment is when a person leaves goods with someone for service (*e.g.*, dry cleaning, pet grooming, car tune-up). The bailee must hold the goods safe for the bailor to reclaim within a reasonable time. An involuntary (or *constructive*) bailment occurs when a person comes into possession of property accidentally or mistakenly, as where a lost purse or car keys are found and need to be protected until properly redelivered – a bailment is implied by law.
- *For consideration vs. gratuitous:* NO: If a person agrees to accept a fee or other good consideration for holding possession of goods, they are generally held to a higher standard of care than a person who is doing so without being paid (or receives no benefit). Consider a paid coat-check counter versus a free coat-hook by the front door, and the respective obligations of the bailee. Some establishments even post signs to the effect that "no bailment" is created by leaving your personal possessions in their care, but local laws may prevent unfair enforcement of such terms (especially attended car parks).
- *Fixed term vs. indefinite term:* A bailor who leaves property for a fixed term may be deemed to have abandoned the property if it is not removed at the end of the term, or it may convert to an involuntary bailment for a reasonable time (*e.g.*, abandoned property in a bank safe, eventually escheats to the state, and the treasurer may hold it for some period, awaiting the owner). However, if there is no clear term of bailment agreed upon, the goods cannot be considered abandoned unless the bailee is given notice that the bailor wishes to give up possession of the goods. Frequently, in the case of storage of goods, the bailee also acquires a contractual or statutory right to dispose of the goods to satisfy overdue rent; a lawful conversion of bailed goods.

CASES

- *Coggs v Bernard* (1703)

REFERENCES IN POPULAR CULTURE

- In season two episode 18 of TV show Big Bang Theory character Sheldon Cooper references Bailment when attempting to explain to a fellow character his "obligation" once he signed for a package. His supporting argument is to describe the concept of Bailment by quoting the first sentence of this article.

PLEDGE

A Bailment *or delivery of* Personal Property *to a creditor as security for a debt or for the performance of an act.*

Sometimes called *bailment*, pledges are a form of security to assure that a person will repay a debt or perform an act under contract. In a pledge one person temporarily gives possession of property to another party. Pledges are typically used in securing loans, pawning property for cash, and guaranteeing that contracted work will be done. Every pledge has three parts: two separate parties, a debt or obligation, and a contract of pledge. The law of pledges is quite old, but in contemporary U.S., law it is governed in most states by the provisions for Secured Transactions in article 9 of the Uniform Commercial Code.

Pledges are different from sales. In a sale both possession and ownership of property are permanently transferred to the buyer. In a pledge only possession passes to a second party. The first party retains ownership of the property in question, while the second party takes possession of the property until the terms of the contract are satisfied. The second party must also have a lien—or legal claim—upon the property in question. If the terms are not met, the second party can sell the property to satisfy the debt. Any excess profit from the sale must be paid to the debtor, or first party. But if the sale does not meet the amount of the debt, legal action may be necessary.

A contract of pledge specifies what is owed, the property that shall be used as a pledge, and conditions for satisfying the debt or obligation. In a simple example, John asks to borrow $500 from Mary. Mary decides first that John will have to pledge his stereo as security that he will repay the debt by a specific time. In law John is called the *pledgor*, and Mary the *pledgee.* The stereo is referred to as *pledged property.* As in any common pledge contract, possession of the pledged property is transferred to the pledgee. At the same time, however, ownership (or title) of the pledged property remains with the pledgor. John gives the stereo to Mary, but he still legally owns it. If John repays the debt under the contractual agreement, Mary must return the stereo. But if he fails to pay, she can sell it to satisfy his debt.

Pledged property must be in the possession of a pledgee. This can be accomplished in one of two ways. The property can be in the pledgee's *actual* possession, meaning physical possession (for example, Mary keeps John's stereo at her house). Otherwise, it can be in the *constructive* possession of the pledgee,

meaning that the pledgee has some control over the property, which typically occurs when actual possession is impossible. For example, a pledgee has constructive possession of the contents of a pledgor's safety deposit box at a bank when the pledgor gives the pledgee the only keys to the box.

In pledges both parties have certain rights and liabilities. The contract of pledge represents only one set of these: the terms under which the debt or obligation will be fulfilled and the pledged property returned. On the one hand, the pledgor's rights extend to the safekeeping and protection of his property while it is in possession of the pledgee. The property cannot be used without permission unless use is necessary for its preservation, such as exercising a live animal. Unauthorized use of the property is called conversion and may make the pledgee liable for damages; thus, Mary should not use John's stereo while in possession of it.

For the pledgee, on the other hand, there is more than the duty to care for the pledgor's property. The pledgee has the right to the possession and control of any income accruing during the period of the pledge, unless an agreement to the contrary exists. This income reduces the amount of the debt, and the pledgor must account for it to the pledgee. Additionally, the pledgee is entitled to be reimbursed for expenses incurred in retaining, caring for, and protecting the property. Finally, the pledgee need not remain a party to the contract of pledge indefinitely. She can sell or assign her interest under the contract of the pledge to a third party. However, the pledgee must notify the pledgor that the contract of pledge has been sold or reassigned; otherwise, she is guilty of conversion.

AGENCY AGREEMENT

An agency agreement is a legal contract creating a fiduciary relationship whereby the first party ("the principal") agrees that the actions of a second party ("the agent") binds the principal to later agreements made by the agent as if the principal had himself personally made the later agreements. The power of the agent to bind the principal is usually legally referred to as authority. Agencycreated via an agreement may be a form of implied authority, such as when a person gives their credit card to a close relative, the cardholder may be required to pay for purchases made by the relative with their credit card.

Many states employ the equal dignity rule whereby the agency agreement must be in writing if the later agreement would also necessarily be written, such as a contract to buy thousands of dollars worth of goods.

An example of the existence of an agency agreement at issue in a 2006 court case arose when a tennis tournament sponsor suedVenus and Serena Williams for not participating. The sponsor argued that their father, Richard Williams, had committed to their participation in the tournament. The Williams sisters argued that their father did not have the authority to bind them to such an agreement. If their father did commit the sisters to play, the issue for the court to decide is whether a valid agency agreement existed between the Williams sisters and their father. If not, then they likely were not bound to his agreement under the law of agency.

Manufacturers and suppliers of goods frequently appoint agents to act on their behalf in promoting sales, both in the home country of the manufacturer as well as overseas. A formal agreement is usually signed setting out the commission the agent will receive, the territory, duration and other terms on which the principal and agent will do business together.

Within the European Union, there is legislation designed to give some protection to agents, in particular the right to compensation in certain circumstances when an agency is terminated. The same applies in other parts of the world and in some countries it is necessary for a foreign manufacturer to appoint as agent an individual or company that is a national of the country where the agency will operate.

An agent should be distinguished from a distributor – in commercial parlance, a distributor will buy stock from the supplier or principal and then sell it on to his customers at a mark-up, whereas an agent will find customers for the principal who then sells direct to the customers and pays commission to the agent.

7

Legal Status of Standard form of Contract

Indian contract system does not have any specific differentiation between SFC and general contract, as the SFC is a kind of contract which is govern by the laws provided for general contracts in Indian contract Act 1872. Due to heavy industrial development these kind of contract has become common and are executed in large numbers now a days. This had led to demand of formulation of fledge rules on standard form of contract to protect the rights of the weaker party in standard form of contract.

However, in many countries judiciary is empowered to apply the principle of natural justice and give good justice to the weaker party as it is in Israel there are certain provisions that may be cancelled by court of law. Apart from courts some legislature have also made laws related to this kind of contract. There are certain rules made by the legislature which seems to be unreasonable like in U.K, sec 3 of Unfair Contract Terms Act 1977 limits the ability of drafter on consumer or limits the provision of standard form of contract to the Drafter.

Why People Accept Standard form of Contract?

1. First reason why people accept SFC, they don't read the contract clauses thoroughly as even after reading they don't find it worthy of giving so much time in writing down the clauses.
2. In certain contracts, there are clauses like if you accept the given terms and condition then they will tell the full terms and condition of the contract.

3. SFC kind of contract the party generally focus on the price mentioned in the contract; he doesn't really care about other different clauses which might be exploitative in nature.
4. Manufactured pressure on the party is created by another party to sign SFC, earlier all the negotiation and the terms had been discussed orally and explained to them. So it becomes a kind of bounding on the party to sign the contract.
5. The major point SFC's are that they are take it or leave basis, so they don't have any choice but to accept the contract.

Ways to Limit Exploitation from SFC

It is easy to exploit the party entering into standard form of contract, there are certain rules made to protect the interest of the weaker party. Specific procedure has been mention in order to protect the weaker party in SFC contract.

Reasonable Notice

A reasonable notice must be given by the person delivering the document to give adequate information about the terms and condition laid down in the contract. This principle was propounded in the case of *Henderson V. Stevenson* from House of Lords. Case facts were that, a person buy a ship ticket on face of it only boarding place and arriving place was written on it but on its back side there were certain terms and conditions which party didn't see nor anything was written on face of it to turn over and look at the back of ticket. Simple reason given by court was that a person cannot agree to a term if he had not seen it or is not told of it.

Notice of the terms and condition should be given before or at the time of contract when it is to be signed. As clearly said by Lord Denning it is duty of the party relying on a clause to its benefit to make it clear to other party the terms and condition of contract in the famous case of *Thornton V. Shoe Lan Parking Ltd*.

Contractual Document

For a standard form of the document, there must be a contractual document signed between the parties in order to make it enforceable in court. The basic problem lies between identifying the document as a contract document or as a receipt. Different between these two is, if the document clearly explains the express and implied a condition in the document then it is a contractual document if not then it is a receipt. The contract must be signed by the person accepting the terms and conditions mentioned in the document.

Misrepresentation, Fraud, Mischief and other elements which makes a contract void should not present in the contract in order to make an agreement enforceable by law.

Unreasonable or Unfair Terms

Pointing out unreasonable terms in the contract can be one the protective safeguard for the weaker party. Unreasonable terms of contract can be said about those terms in the contract which contradicts the very purpose of the contract or are against the public policy. In *Lilly White V. Mannu-Swami* this principle has been clearly explained in the case. In this case the laundry receipt contained a condition that in case of loss or destruction of cloth only 15% money of the market price of cloth will be returned these clauses were held unreasonable from the court and was held that the clauses were against the public interest.

In an Indian financial case of *Seven Day Adventists Vs. M.A Uneerikutty and Anr.* MANU/SC/3291/2006 it says that if any consideration of several clauses mentioned in the contract is unlawful then agreement itself is void and the decision of the court says that this type of cases are against the public policy, if any type of clauses violating public policy that contract is void. This doctrine is not only applicable to harmful cases but to the cases with harmful tendencies.

In the case of contract with the government certain points must be observed in order to prevent exploitation of the other party in the contract. As the decision from the government had been taken in bad faith. Decision is based on irrational or irrelevant consideration. Decision has been taken without following the prescribed procedure in the system. If these things are not followed diligently contract will be termed as irrelevant by the court and party will be protected by certain clauses against exploitation of contracted party.

THEORY OF FUNDAMENTAL BREACH

It's one of the tools to protect the weaker party from exploitation through this theory. What happens in theory there is a core or fundamental of the contract which is bounding on both parties to follow them and if that is not followed then there will be a breach of contract. In the case of breach of contract the weaker party will not be bound to follow the contract in case of breach of contract by other party. Test of fundamental breach of contract can be done through sec 11 of 1977 unfair contract act which says the contract will be void if it will not satisfy the reasonableness of the contract.

In case of *Food Corporation of India Vs. Laxmi Cattle Feed Industries* MANU/SC/8041/2006, Supreme Court held that in case of breach of contract, the plaintiff has to prove all the essentials of breach of contract. If the plaintiff is not able to prove, it will not be considered as breach of contract.

EXEMPTION CLAUSES AND THIRD PARTY

Under this clause we have to take a look at the doctrine of privity of contract which says that the contract is between the two parties who have contracted with each other and no third party is entitled to enjoy the right provided in the contract nor hold any liability. As the third party does not hold any responsibility for the irregularity in the contract, he is not entitled to any benefit from the contract.

AMBIT AND AUTHORITY OF CONTRACT ACT

Under the Indian contract, there is no such form or condition which is binding on the parties. Parties may agree to contract in a particular mode which is not probihited under the law.

Problem that is prevalent in the Indian context is that there is no such specific rule provided in Contract Act, different provision has been mentioned in different kinds of Act which govern activity of contract like specific provision of railways act, public transport control by the government. Different kinds of rules provided by the government to contract in coffee industry, tea plantation which is entered into by workers with the industry.

CONCLUSION

The standard form of contract are written in fine print with all the terms and conditions laid down clearly in the contract. In Indian context cases are entertained under the rules provided by Indian Contract Act, there is no any act only made to deal with standard form of contract specifically. In this type of contract weaker party can easily be exploited and there is no specific rule for the prevention from this type of action by dominating party.

With the evolution of legal system the courts had found different kinds of method and tools to protect the basic right of the weaker party by applying the principles of natural justice, precedent of different cases helping in protecting interest of weaker section.

As through transformation these kind of contract are made on daily basis in enormous number, that's why proper scrutiny and providing a lengthy procedure will not work best thing can be done is to provide awareness about the rule so that the parties entering into the contract will read the clauses and try to understand and ask question on certain clauses if they are not able to understand it.

Take it leave it as it is the nature of the contract which leads to commencement of certain cases in court in which there is an immediate urge to provide justice to the weaker party who without knowing the specific clauses entered into the contract.

LAW RELATED TO STANDARD FORM OF CONTRACTS

Standard contracts are contracts which are drafted by one party and signed by another party without any modification or change. Though standard contracts present the advantage of preprinted standard format; they are essentially "take it or leave it" contracts with no room for negotiations. These contracts are criticized for killing the bargaining power of the weaker party and open up wide opportunity for exploitation.

ISSUES WHICH ARE GENERALLY INVOLVED WITH STANDARD FORM OF CONTRACTS

Consent

In the case of commercial contracts courts have repeatedly held that contracts even if entered into the standard format, are meant to be performed and not to be avoided. Unless it is shown that consent is obtained by fraud, mistake or duress a consent given by party to a contract cannot be vitiated. As defined under Section 13 of the Contract Act, 1872 two or more persons are said to consent, when they agree upon the same thing in the same sense. Consent, according to Section 14, is free, when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Thus where the parties with equal bargaining powers have fairly consented to the terms of the contract without any fraud, duress or mistake courts have refused to interfere.

Unfair Terms of the Contract

Courts have looked into the terms of the contract in relation to the bargaining powers of the parties and have interfered in cases where the bargaining power of the parties was not equal. *In Life Insurance Corporation of India v. Consumer Education and Research Centre and others* the Hon'ble Supreme Court has held that "if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract".

In Central Inland Transport Corporation Limited v. Brojo Nath, Hon'ble Apex Court while giving some illustrations of unreasonable and unfair clauses in contracts, based on unconscionable bargaining in para 90 of the decision and explaining the scope of expression "public policy", in para 93 held in para 94 that the type of contracts to which the principle formulated by us above applies, are not contracts which are tainted with illegality, but are contracts which contain terms, which are so unfair and unresonable that they shock the conscience of the court. It is apt to reproduce the relevant extract of para 90 as under:-

"90. This principle is that the courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance,

the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard from or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a cause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

Thus courts will not enforce and will, strike down an unfair and unreasonable contact or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal or where both parties are businessmen and the contract is a commercial transaction.

Further cases where the terms of the contract are unreasonable as to the nature of the contract courts have struck them out following the principles as laid down under Contract Act or under common law. In *M Siddalingappa v. T Nataraj*, where applicability of the clause printed on the back of the laundry receipt which read as:

"All articles for cleaning and dyeing are accepted on conditions that the company shall incur no liability in respect of any damage which may occur and for delay or in the event of loss for which the company may accept the liability which shall in no case exceed eight times the cleaning charges." was in question Court held that petitioner is, undoubtedly, a bailee in respect of the sarees given to him and there is a minimum duty of care imposed upon all bailees under Section 151 of the Contract Act which they cannot contract themselves out of it is not subject to any contract to the contrary between the parties. Under that section, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would in similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed. Once that minimum duty is imposed upon the bailee by the law, a breach of that duty undoubtedly clothes the party affected with the right to recover damages commensurate with the consequences".

Unconscionable Nature of the Contract

Basic test of "unconscionability" of contract is whether under circumstances existing at time of making of contract and in light of general commercial background and commercial needs of particular trade or case, clauses involved are so one-sided as to oppress or unfairly surprise party.

Precursors of Unconscionability: Courts of equity did not share the reluctance of common law courts to police bargains for substantive unfairness. Though mere "inadequacy of consideration" alone was not a ground for withholding equitable relief, a contract that was "inequitable" or "unconscionable" one that was so unfair as to "shock the conscience of the court" would not be enforced in equity.

In *Ferro Alloys Corpn. Ltd. v. A.P. State Electricity Board and another,* Supreme Court of India refused to interfere in adhesion contract on the ground that it was not unconscionable so as to "shock the conscience of the court"

Inequality of Bargaining Powers

Courts have strictly ruled against those standard contracts which exploit the position of an employee vis a vis the employer. They have repeatedly held that in case of employment contract between the employer and employee, there is a universal tendency on the part of the employer to insert those terms, which are favourable to him in a printed and standard form, leaving no real meaningful choice to the employee except to give assent to all such terms. In such a situation the parties cannot said to be in even position possessing equal bargaining power. Where the parties are put on unequal terms the standard form of contract cannot be said to be the subject-matter of negotiation between the parties and the same is said to have been dictated by the party whose higher bargaining power enable him to do so.

In *Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai*, Hon'ble Supreme Court held that

"It is well settled that employees covenants should be carefully scrutinized because there is inequality of bargaining power between the parties; indeed no bargaining power may occur because the employee is presented with a standard form of contract to accepts or reject. At the time of the agreement, the employee may have given little thought to the restriction because of his eagerness for a job; such contracts "tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions, and expose them to imposition and oppression."

Such a protection is also given against the action of the state where the Courts have ruled that that the action of the State in contractual field also must be fair and reasonable. The requirement of Article 14 of the Constitution should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled, the State cannot cast of its personality and exercise unbridled

power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist. Therefore, total exclusion of Article 14 non-arbitrariness which is basic to rule of law - from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contacts where the bargaining power is unequal so that these are not negotiated contracts but standard form of contracts between unequals. Bringing the State activity in contractual matters also within the purview of judicial review is inevitable.

Conclusion

Despite absence of a specific legislation courts have shown a marked willingness to interfere with standard form of contracts where there is evidence of unequal bargaining power. Courts have given reliefs in cases where weaker party has been burdened with unconscionable, oppressive, unfair, unjust and unconstitutional obligations in a standard form contract. In *D.C.M. Ltd. v. Assistant Engineer (HMT Sub-Division), Rajasthan State Electricity Board, Kota* where the division bench had to consider the question whether the Rajasthan State Electricity Board functioning under the Electricity Act of 1910 and the Electricity (Supply) Act, 1948 could in exercise of its powers under Section 49 of the Supply Act require the consumer-appellant before them to pay by way of minimum charges at nearly three times the normal rate charged from other consumers being heavy industries consuming heavy demand of 25 MW. Even though the appellant before them, D.C.M. Ltd., had entered into such an agreement with the Board it was held that the said term in the agreement was unreasonable and consequently the demand of such excessive minimum consumption charges was not justified and could not be countenanced on the touchstone of Article 14 of the Constitution of India as the Electricity Board was an instrumentality of the State. The Court in this connection had to consider the nature of the written agreements entered into by the consumers of the electricity with the Board which was a monopolist and the further question whether an apparently inconceivable and unjust term in the written contract could be enforced by the Board against the consumer. Following pertinent observations were made by J.S. Verma, C.J in paragraph 24 of the Report:

...We may further add that for the reasons already given it is obvious that the giving of such an undertaking by execution of the agreement was no doubt a conscious act of the petitioner, but in the circumstances it cannot be held to indicate the petitioner's willingness to be bound by such an onerous condition, if it had the option; It is obvious that there was no option to the petitioner and, therefore, it cannot be said that the petitioner voluntarily and willingly chose and accepted the more onerous condition of a higher rate instead of the normal rate for payment of minimum charges. The willingness to accept such an onerous

term with free consent can be assumed only where a consumer has an option or in other words he can get the supply of electricity he wants even without agreeing to any such term specified by the Board for being incorporated in the written contract without execution of which the consumer cannot insist on supply of electricity to him. It is not the Board's case that it was willing to honour the petitioner's requisition and make the supply even without the petitioner undertaking in writing to pay minimum charges according to Clause 16(c). How can it be said that the petitioner willingly accepted this term when the fact is that it had no option in the matter. It is further observed that Assuming that reasonably sufficient notice of a standard form contract has been given to the person who receives the printed document, we must now consider the way in which the terms of the document are to be construed. Such is the disparity between the bargaining power of large enterprises (both private and public) and the consumer that terms have often been imposed upon him which are onerous or unfair in their application and which exempt the party putting forward the document, either wholly or in part, from his just liability under the contract. This may be one of the reasons why, at common law, the Courts evolved certain canons of construction which normally work in favour of the party seeking to establish liability and against the party seeking to claim the benefit of the exemption. The impression should not be given, however, that the" application of these canons of construction render exemption clauses generally ineffective. If the clause is appropriately drafted so as to exclude or limit the liability in question, then the Courts must (subject to the powers now conferred on them by the Unfair Contract Terms Act 1977) give effect to the clause.

Moreover, as between businessmen, exemption clauses can perform a useful function in that they may, for example, anticipate future contingencies which hinder or prevent performance, establish procedures for the making of claims and provide for the allocation of risks as between the parties to the contract. In a business transaction, the effect of an exemption clause may simply be to determine which of the parties is to insure against a particular risk. Exemption clauses in business transactions are not necessarily unfair or inequitable. But even in business transactions the Courts must be satisfied that the clause, on its wording, does have the effect contended for by the person relying on it, that is, the party seeking to exclude or restrict his liability. (a) Strict interpretation of the clause. 'If a person is under a legal liability and wishes to get rid of it, he can only do so by using clear words.' The words of the exemption clause must therefore exactly cover the liability which it is sought to exclude. So an exemption clause in a contract excluding liability for 'latent' defects' will not exclude the condition as to fitness for purpose implied by the Sale of Goods Act."

LAW OF CONTRACT

"Law of Contract" serves as a comprehensive guide to the principles, doctrines, and intricacies of contract law, offering invaluable insights for legal practitioners, students, and individuals involved in contractual agreements. This authoritative text explores the foundational concepts of contract formation, interpretation, performance, and remedies, providing readers with a thorough understanding of the legal framework governing contractual relationships. The book begins by examining the essential elements of a valid contract, including offer, acceptance, consideration, and intention to create legal relations. It then delves into various types of contracts, such as bilateral, unilateral, and contracts under seal, exploring their characteristics and legal implications. Through case studies and analysis of landmark judicial decisions, "Law of Contract" elucidates key principles such as contractual capacity, legality of contracts, and the doctrine of privity. It also addresses contemporary issues and developments in contract law, including the impact of digital technologies, standard form contracts, and international trade agreements. With its practical approach, the book equips readers with the knowledge and analytical skills needed to navigate contractual disputes and negotiate favorable terms. It also provides guidance on drafting contracts, avoiding common pitfalls, and enforcing contractual rights in a legal context. Whether used as a textbook in law schools or as a reference guide for practitioners, "Law of Contract" offers a comprehensive and accessible overview of contract law principles, empowering readers to navigate the complexities of contractual relationships with confidence and clarity.

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