## UNIT-I

## THE INDIAN CONTRACT ACT 1872: GENERAL PRICE OF LAW OF CONTRACT

**1. Define Contract. Explain the elements of a valid contract.**
**Ans.** A contract is an agreement between two or more parties which is enforceable by law. Section 2(h) of the Indian Contract Act provides that, "An Agreement enforceable by law is a contract". Therefore in a contract there must be (i) an agreement and (ii) the agreement must be enforceable by law.

**Elements of a valid contract:** An agreement becomes enforceable by law when it fulfils certain conditions. These conditions, which may called the essential elements of a Contract, are explained below:

**(i) Offer and Acceptance:** There must be a lawful offer by one party and a law acceptance of the other party or parties. The adjective lawful implies that the offer and acceptance must conform to the rules laid down in the Indian Contract Act regarding offer and acceptance.

**(ii) Intention to create Legal Relationship:** There must be an intention that the agreement shall result in or create legal relations. In the absence of such intention, there is no contract between them.

**(iii) Lawful Consideration:** Subject to certain exceptions, an agreement is enforceable only when each of the parties to it gives something and gets something. An agreement to do something for nothing is usually not enforceable by law. The something given or obtained is called consideration.

**(iv) Capacity of Parties:** The parties to an agreement must be legally capable of entering into an agreement; otherwise it cannot be enforceable by law. If any of the parties of the agreement suffers from minority, lunacy, idiocy, drunkenness and similar other factor, the agreement is not enforceable by law, except in some special cases.

**(v)Free Consent:** The consent of the parties to the agreement must be free and genuine. The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract. Consent is said to be free when it is not caused by coercion, undue influence, fraud, mistake or misrepresentation.

**(vi) Legality of the Object:** The object for which the agreement has been entered into must not be illegal, or immortal or opposed to public policy.

**(vii) Certainty:** The agreement must not be vague. It must be possible to ascertain the meaning of the agreement, for otherwise it cannot be enforced.

**(viii) Possibility of Performance:** The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced.

**(ix) Not declared void:** The agreement should be such that it should be capable of being enforced by law. Certain agreements have been expressly declared illegal or void by the law.

**2. "All contracts are agreements but all agreements, but all agreements are not contracts". Explain.**
**Ans.** All agreements are not contracts. Only those agreements are contract which fulfils the conditions of Section 10 of the Indian Contract Act. In order to create a valid contract, the following elements should be present:

Elements of Contract: **see above.**

The elements mentioned above must all be present. If any one of them is absent, the agreement does not become a contract. From this it follows that “all contracts are agreements but all agreements, but all agreements are not contracts”.

**3. What are the different types of contract? Explain.**
**Ans.** Contracts may be classified on the following basis:

**I. On the basis of Validity or Enforceability:** Contracts may be classified according to their validity as:

(**i) Valid Contract:** An agreement which is enforceable by law is said to be valid contract. A contract is said to be a valid contract when all the essential elements of a valid contract e.g. lawful offer and acceptance, free consent, lawful consideration, lawful object etc. are present.

**(ii) Voidable Contract:** Section 2(i) defines voidable contract as “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract." This happens when the contract is caused by coercion, undue influence, misrepresentation or fraud.

**(iii) Void Contract:** An agreement which is not enforceable by law is said to be void contract. A void contract has no legal effect. It confers no rights on any person and creates no obligations.

**(iv) Illegal Agreement:** An illegal agreement is one which is forbidden by law. It is one which is against a law in force in India. e.g. an agreement to commit murder, robbery or cheating.

**(v) Unenforceable Contract:** Where a contract is good in substance but because of some technical defect i.e absence in writing, barred by Limitation Act etc. cannot be enforced in a court of law. Such a contract is termed as unenforceable contract.

**II. On the basis of Formation:** Contracts may be classified according to their formation as:

**(i) Express Contract:** When the terms of the contract are expressly agreed upon whether by words spoken or written at the time of formation of the contract, the contract is said to be an express contract.

**(ii) Implied Contract:** the condition of an implied contract is to be understood from the acts, the conduct of the parties and/or the course of dealing between them.

**(iii) Quasi Contract:** Quasi Contracts are contracts which are created neither by word spoken nor by the conduct of the parties. But these are created by the law.

**III. On the basis of Performance:** Contracts may be classified according to their performance as:

**(i) Executed Contract:** A contract in which both the parties have fulfilled their obligations under the contract is termed as executed contract.

**(ii) Executory Contract:** A contract in which both the parties have still to fulfil their obligations is termed as executory contract.

**(iii) Unilateral Contract:** A unilateral contract is a one sided contract in which only one party has to perform his promise at the time of the formation of the contract.

**(iv) Bilateral Contract:** A contract in which both parties commit to perform their respective promises is called a bilateral contract. In case of such contract obligations of the parties to the contract is outstanding at the time of formation of the contract.

**4. Distinguish between illegal and void agreement.**
**Ans.** The major differences between void agreement and illegal agreement are as under:

| Basis | Void agreement | Illegal Agreement |
|---|---|---|
| **1. Meaning** | A void agreement is an agreement which does not have legal enforceability. | An illegal agreement is an agreement whose formation is prohibited by the law of state. |
| **2. Effect** | A void agreement turns into void when an agreement gives up its enforceability by the law. | An illegal agreement turns into void from the start of the agreement. |
| **3. Prohibited** | A void agreement is an agreement which is not restricted or banned by the law of state | An illegal agreement is an agreement which is restricted or banned by the law of state. |
| **4. Punishment** | In void agreement, parties that are involved in void agreement are not accountable for any punishment under law. | In illegal agreement, parties that are involved in illegal agreement are accountable for punishment and they are penalized |
| **5. Scope** | The scope of a void agreement is nearly more extensive. | The scope of an illegal agreement is narrow. |
| **6. Nature** | All void agreements are not said as an illegal agreement | An illegal agreement can be said as a void agreement. |
| **7. Object** | In void agreement, the object is not said as illegal. | In an illegal agreement, the object is said as illegal. |
| **8. Collateral agreement** | Collateral agreement related to void agreement can be valid or can be void. | Collateral agreements related to an illegal agreement are void from the beginning of the agreement so they can't enforceable. |

**5. Distinguish between void and voidable contracts.**
**Ans.** The major differences between void contract and voidable contract are as under:

| Basis | Void Contract | Voidable Contract |
|---|---|---|
| **1. Meaning** | A contract which lacks enforceability is Void Contract | A contract which lacks the free will of one of the parties to the contract is known as Voidable Contract. |
| **2. Nature** | A void agreement denotes an agreement, which does not fulfil the essentials of a valid contract. | A voidable contract implies a contract, in which the consent of one of the parties to contract is not free. |
| **2.Reason** | A void contract was valid at the time when it is created, but later on, it becomes invalid | The voidable contract is valid until the aggrieved party does not revoke it within stipulated time. |
| **3. Legality** | When it is impossible, for an act to be performed by the parties, it becomes void, as it ceases its enforceability | When the consent of the parties to the contract is not free, the contract becomes voidable at the option of |

| | | |
|---|---|---|
| | | the party whose consent is not free. |
| **4.Suit for Damages** | In void contract, no party can claim any damages for the non-performance of the contract. | The aggrieved party can claim damages for any loss sustained. |

**6. Define Offer. Explain the rules regarding offer.**
**Ans.** Section 2(a) of the Indian Contract Act, 1872 defines proposal or offer as ,When one person signifies to another his willingness to do or abstain from doing anything, with a view to obtain the assent of that other to such an act or abstinence, he is said to make a proposal.
The person making the offer is known as the offeror and the person to whom the offer is made is known as the offeree**.**

**Legal Rules Regarding Offer**:
An offer to be valid must comply with the following rules:

**(i) Offer may be express or implied:** An offer may be express or may be implied from the conduct of the parties or circumstances of the case. An express offer is made by words spoken or written. An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

**(ii) Offer may be specific or general:** A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. A general offer is made to the world at large. Therefore, it can be accepted by any person.

**(iii) Offer must give rise to legal relationship:** An offer to be valid must create legal relationship between the parties. A social party or invitation to play cards is not a legal relationship. Therefore, an offer to such an affair does not lead to a binding contract. The very purpose of entering into an agreement is to make it enforceable at a Court of law.

**(iv)Terms of an offer must be definite and certain:** The terms of an offer must be certain, definite, unambiguous and should not be vague or indefinite.

**(v) Offer must be distinguished from a mere declaration of intention:** A declaration of intention to make an offer is not an offer. It is regarded as an invitation to offer. An advertisement for sale in a Newspaper or Magazine etc. is not an offer for sale.

**(vi) Offer must be communicated:** An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.

**(vii) Communication of Special Terms:** Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated.

**(viii) Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:** The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer.

**7. When does the offer lapse? Or**

**Explain the condition of revocation of an offer.**
**Ans.** An offer comes to an end and is no longer open to acceptance under the following acceptance under the following circumstances:

**(i) By notice:** If the offeror gives notice of revocation to the other party, i.e., expressly withdraws the offer and the offer comes to an end. An offer may be revoked any time before acceptance but not afterwards.
The notice of revocation does not take effect until it comes within the knowledge of the offeree.

**(ii) By lapse of time:** When the proposer prescribes a time within the proposal must be accepted, the proposal lapses as soon as the time expires.

**(iii) After expiry of reasonable time:** If no time has been prescribed, the proposal lapses after the expiry of a reasonable time. What is reasonable time will depend on the circumstances of the case.

**(iv) By failure of a condition precedent:** An offer lapses by the failure of the acceptor to fulfil a condition precedent to acceptance, where such a condition has been prescribed.

**(v) By death or insanity:** An offer lapses by death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

**(vi) Counter Offer:** When a counter offer is given, the original offer lapse.

**(vii) By refusal:** A proposal once refused is dead and cannot be revived by its subsequent acceptance.

**8. Define Acceptance. Explain the rules regarding acceptance.**
**Ans.** The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise."
So as the definition states, when the offeree to whom the proposal is made, unconditionally accepts the offer it will amount to acceptance. After such an offer is accepted the offer becomes a promise.

A valid acceptance must be in conformity with the following rules:

**(i) Acceptance must be given only by the person to whom the offer is made:** An acceptance to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offeree and no one else.

**(ii) Acceptance must be absolute and unqualified:** In order to be legally effective it must be an absolute and unqualified acceptance of all the terms of the offer. Even the slightest deviation from the terms of the offer makes the acceptance invalid. In effect a deviated acceptance is regarded as a counter offer in law.

**(iii) The acceptance must be in the prescribed manner:** If the offeror prescribes no mode of acceptance, the acceptance must be communicated according to some usual and reasonable mode. The usual modes of communication are by word of mouth, by post and by conduct.
When acceptance is given by words spoken or written or by post or telegram, it is called an express acceptance. When acceptance is given by conduct, it is called an implied acceptance.

**(iv) The acceptance must be given within the time prescribed or within a reasonable time:** Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term 'reasonable time' depends upon the facts and circumstances of each case.

**(v) Acceptance must be communicated by the acceptor:** For an acceptance to be valid, it must not only be made by the offeree but must also be communicated to the offeror. It may be noted that until the acceptance is communicated, it does not create any legal relations.

**(vi) Acceptance must succeed the offer:** Acceptance must be given after receiving the offer. It should not precede the offer. In a company shares were allotted to a person who had not applied for them. Subsequently he applied for shares being unaware of the previous allotment. It was held that the allotment of shares previous to the application was invalid.

**(vii)The acceptance must be given before the lapse of offer:** A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn. An acceptance which is made after the withdrawal of the offer is invalid, and does not create any legal relationship.

**(viii) The acceptance cannot be presumed from silence:** Sometimes, the acceptor does not convey his decision to the offeror/and keeps silent. In such a case, his silence does not amount to acceptance.

**9. Define Consideration. What are the rules regarding consideration?**

**Ans.** Consideration is an essential element in a contract. Subject to certain exceptions, an agreement is not enforceable unless each party to the agreement gets something. This something is known as Consideration.

According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee."

According to Section 2(d) of the Indian Contract Act, 1872, the following features are essential for a valid consideration:

**(i) Consideration must move at the desire of the promisor*:*** Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration.

**(ii) Consideration may move from the promisee to any other person*:* The consideration for a** contract can be move either from the promisee or from any other person. This point is made clear by the definition of consideration, according to which at the desire of the promisor, the promisee or any other person, doing something is consideration.

**(iii) It can be in the past, present or future:** Since consideration is the price of a promise, it is normally given to induce the promise. However, it can be given before the promise is made by the promisor. This is past consideration.

If the promise and consideration take place simultaneously then it is present or executed consideration. When the consideration is to move at a future date, it is called Future or Executory Consideration.

**(iv) It must have value in the eyes of the law:** While the law allows the parties to decide an 'adequate' consideration for them, it must be real and have value in the eyes of law. While the Court will not consider inadequacy, it will look at it to determine if the consent was given by the party with free-will or not.

**(v) It should be over and above the Promisors' existing obligations:** If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.

**(vi) It must not be illegal, immortal or opposed to public policy:** If either the consideration or the object of the agreement is illegal, the agreement cannot be enforced. The same principles apply if the consideration is immoral or opposed to public policy.

**10. What are the different types of consideration?**
**Ans.** Consideration may be classified into three types, as follows:

**(i) Past Consideration:** When the consideration of one party was given before the date of the promise, it is said to be past.

**(ii) Present Consideration:** If the promise and consideration take place simultaneously then it is present or executed consideration.

**(iii) Future Consideration:** When the consideration is to move at a future date, it is called Future or Executory Consideration.

**11. "No consideration, no contract". Explain the statement with exceptions.**

**Ans.** A promise without consideration cannot create a legal obligation. The general rule is that an agreement made without consideration is void. This rule is contained in Section 25 of the Indian Contract Act, which declares that 'an agreement made without consideration is void'. This means that consideration is a must in all the cases. But this Section provides certain exceptions where an agreement is valid even without consideration. These cases are:

**(i)Agreement made on account of natural love and affection [Section 25 (1)]:** If an agreement is in writing and registered between two parties in close relation (like blood relatives or spouse), based on natural love and affection, then such an agreement is enforceable even without consideration.

**(ii) Agreement to compensate for past voluntary services [Section 25 (2)]:** An agreement without consideration is enforceable, if it is a promise to compensate wholly, or in part a person who has already voluntarily done something for the promiser, or something which the promiser was legally bound to do.

**(iii) Agreement to pay time-barred debt [Section 25(3)]:** According to this exception, a promise to pay a time-barred debt wholly or in part is enforceable if such promise is in writing and signed by the debtor or his authorized agent. A time barred debt-cannot be recovered and, therefore, a promise to repay such debt is without consideration.

**(iv) Completed gift:** The gift actually made by a donor and accepted by the done will be valid even without the consideration. So in case of a gift actually made, consideration is not necessary.

**(v)Contract of agency:** Section 185 specifically states that no consideration is necessary to create an agency. Thus, when a person is appointed as an agent, his appointment is valid even if there is no consideration. Although, generally, an agent gets remuneration by way of commission for the services rendered, but no consideration is immediately necessary at the time of appointment.

**(vi) Charity:** If a person undertakes a liability on the promise of another to contribute to charity, then the contract is valid. In this case, no consideration no contract rule does not apply.

**12. Define capacities of parties to a contract. Who are competent to contract under the Indian Law of Contract?**

According to Section 11, *"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."*

Every person is competent to contract:
(1) who is of the age of majority according to the law to which he is subject;
(2) who is of sound mind; and
(3) who is not disqualified from contracting by any law to which he is subject.

**13. Explain the rules regarding minor's agreement.**

A minor's agreement being void is wholly devoid of all effects. When there is no contract there should be no contractual obligation on either side.

**(i) An agreement with or by minor is void:** Section 10 of the Indian Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not a competent. Therefore an agreement entered into by a minor is void and the question of its enforceability does not arise.

**(ii) No ratification:** An agreement with the minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent authorize an act cannot give it validity by ratifying.

**(iii) Minor can be beneficiary:** A Minor can be a beneficiary. Any agreement which provides some benefit to the minor and under which he is required to bear no obligation, is valid. As per the law, the minor is not incompetent for accepting a benefit. For example, where a minor has sold goods, he is entitled to recover the price from the buyer.

**(iv) No estoppel against a minor:** There can be no estoppel against a minor where a minor has entered into a contract by misrepresenting his age, he cannot be made liable on the contract. But court may direct the minor to restore the property to the other party as "minors can have no privilege to cheat men".

**(v) No Specific performance:** A minor's contract being absolutely void, the will never direct specific performance of such an agreement by him.

**(vi) No insolvency:** A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.

**(vii) Partnership:** A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Contract Act, he can be admitted to the benefits of partnership.

**(viii) Minor can be an agent**: A minor can act as an agent. But he will not to be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

**(ix) Surety for minor** – A minor cannot be surety as he is not liable to pay under a contract. Where an adult stands surety for a minor, the adult is liable to third party.

**14. Define free consent. When does the consent to a contract not become free?**

**Ans.** An agreement is valid only when it is the result of the free consent of all the parties to it. Section 13 of the Act defines the meaning of the term consent and Section 14 specifies under what circumstances consent is free.
According to Section 13, Consent means, when two or more persons agree upon the same thing and in the same sense.
According to Section 14, consent is said to be free when it is not caused by – (a) coercion, (b) undue influence, (c) fraud, (d) misrepresentation and (e) mistake.

**The consent to a contract not becomes free when it is caused by**:

**(i)Coercion (Section 15):** Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as
(a) committing or threatening to commit any act forbidden by the law in the IPC (Indian Penal Code),
(b) unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract.

**(ii)Undue Influence (Section 16):** Section 16 of the Act contains the definition of undue influence. It states that when the relations between the two parties are such that one party is in a position to dominate the other party, and uses such influence to obtain an unfair advantage of the other party it will be undue influence.

**(iii) Fraud (Section 17):** Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.

**(iv) Misrepresentation (Section 18):** Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true.

**(v) Mistake (Section 20):** Mistake may be defined as an erroneous belief about something. If the agreement is made under an erroneous belief it cannot be said that the parties enjoyed free consent i.e. both parties shall understand the same thing in the same sense.

**15. Under what circumstances is the object or consideration of a contract deemed unlawful?**

Ans. The circumstances which would make a consideration as well as object of an agreement unlawful are discussed as under:

**(i)Forbidden by Law:** Where the object or the consideration of an agreement is the performance of an act which is forbidden by law, the agreement is void. Acts or undertakings forbidden by law are those punishable under any statute as well as those prohibited (expressly or implicitly) by special legislation of Parliament and state legislatures.

**(ii) Defeat the Purpose of Provisions of any Law:** If the object or the consideration of an agreement is of such a nature that it would indirectly lead to a violation of the law, the agreement is void.

**(iii)Fraudulent:** An agreement, the object of which is to defraud others is void. Where the parties agree to practice a fraud on a third person, not a party to the contract, their agreement is unlawful and void.

**(iv) Injurious to Person or Property:** Any agreement that implies or involves injury to person or others property, it is deemed unlawful and therefore void.

**(v) Immoral:** If the object or consideration of an agreement is opposed to morality, it is void.

**(vi) Agreements Opposed to Public Policy:** The term public policy in a wider sense means restriction of freedom of persons from doing something in the larger interest or for the good of the community. In the context of the Indian Contract Act, it restricts the freedom of persons to contract in certain areas which are detrimental to public policy. An agreement is void if the law regards it as opposed to public policy.
In law, the doctrine of public policy covers many heads such as the following.

(a) Trading with an alien enemy
(b)Interference with administration of justice
(c)Marriage brokerage agreements
(d)Trafficking in public offices
(e)Unfair or unreasonable dealings
The ordinary function of the courts is to rely on the well-settled heads of public policy and to apply them to varying situations.

**16. Name the various types of agreement which are opposed to public policy.**

**Ans.** The several of types of agreement which are opposed to public policy are:

(a) Trading with an enemy.
(b) Interference with administration of justice.
(c) Marriage brokerage agreements.
(d) Trafficking in public offices.
(e) Unfair or unreasonable dealings.

**17. Define void agreement. Explain briefly the different types void agreement under the Indian Contract Act 1872.**

**Ans.** According to Section 2 (g), an agreement not enforceable by law is said to be void. A void agreement has no legal effect. It confers no rights on any person and creates no obligations.

The agreements which are declared to be void by the Indian Contract Act are stated below:

**(i) Agreements by incompetent parties (Section 11):** Section 11 says that a minor is not a competent. Therefore an agreement entered into by a minor is void.

**(ii) Agreements void, if considerations and objects unlawful in part (Section 24)** : If any part of a single consideration for one or more objects, or any one or any part of any one of several consideration of a single object, is unlawful, the agreement is void.

**(iii) Agreement without consideration (Section 25) :** An agreement made without consideration is void, unless - it is expressed in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.

**(iv) Agreement in Restraint of Marriage (Section 26):** Any agreement that restrains the marriage of a major (adult) is a void agreement. This does not apply to minors.

**(v) Agreement in Restraint of Trade (Section 27):** Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

**(vi) Agreement in Restraint of Legal Proceedings (Section 28):** An agreement that prevents one party from enforcing his legal rights under a contract through the legal process (of courts, arbitration, etc) then such an agreement is expressly void agreement.

**(vii) Agreements void for uncertainty (Section 29):** Agreements, the meaning of which is not certain, or capable of being made certain, are void.

**(viii) Wagering Agreement (Section 30):** According to the Indian Contract Act, an agreement to wager is a void agreement. The basis of a wager is that the agreement depends on the happening or non-happening of an uncertain event. Here each side would either win or lose money depending on the outcome of such an uncertain event.

**18. Define Performance of contract/tender. What are the essentials of a tender/performance of contract?**

**Ans.** The term 'Performance of contract means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. Section 27 of Indian contract Act says that "the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law".

The offer to perform the contract is called Tender. Offer to perform or Tender may be called attempted performance. A tender, to be legally valid, must fulfil the following conditions:

**(i)Tender must be Unconditional:** There must not be any condition associated with the tender**.** The tender should be unconditional.

**(ii)Tender must be made at a proper time and place:** A tender should be made at the proper time and place. Generally, the time and place of performance are fixed by the parties in their contract.

**(iii) Chance of Adjudging:** A tender must be made under such circumstances that the person to whom the tender is made shall have a fair amount of chance of adjudging that the person by whom the tender is made is able and eager and then proceed with what he is bound by his promise.

**(iv) Must be for Agreed Quantity and Quality:** If the offer is to deliver a particular thing to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the same that the promisor is bound by his promise to deliver.

**(v) Whole Obligation:** The tender must be of whole and not of that part. Tender in part is no tender. Moreover, a tender by instalment is not a valid tender unless the contract so provides.

**(vi) Should be made to the Proper Promisee:** A tender of performance made to a stranger i.e. third party is not a valid tender. It should be made to the promisee or his duly authorized agent.

**(vii) Reasonable Opportunity to Inspect:** When a tender of goods is made by the promisor, a reasonable opportunity must be given to the promisee to inspect the goods to enable him to see whether the quality of the goods is as per the contract.

**(viii)Should be made in Legal Tender:** A tender money must be in legal tender money, not by any foreign money, or by promissory note or cheque.

**(ix) Ability and Willingness to Perform the Obligation:** The party making a tender must be in a position and willing to perform his promise.

**19. Under what circumstances a contract need not be performed.**

**Ans.** The circumstances under which contracts need not be performed are as follows:

1. If parties to a contract agree to 'Novation,' 'Rescission' or 'Alteration'; the original contract need out be performed (Section 62). In such cases the original contract disappears and is substituted by a new contract.

2. If parties to a contract agree to dispense with or remit performance of promise either wholly or in part, the original contract stands discharged (Sec. 63). This is technically called as 'Remission.'

3. When a person, at whose option a contract is voidable, rescinds it, the other party there to need not perform his promise. (Sec. 64).

4.If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused for the non-performance of the contract (Sec.67).

5. When the performance of the contract becomes impossible. (Sec.56)

6. When the contract is illegal. (Sec.23)

**20. Briefly explain the methods of termination/discharge of contract.**

**Ans.** When the obligation created by a contract comes to an end, the contract is said to be discharged or terminated. A contract may be discharged or terminated in any of the following ways:

**(i) Termination by Performance:** The obligations of a party to a contract come to an end when he performs his promise. Performance by all the parties, of the respective obligations, puts an end to the contract completely. This is the normal and natural mode of discharging a contract.

**(ii) Termination by Mutual Agreement:** By agreement of all parties, a contract may be cancelled or its terms altered or a new agreement substituted for it. Whenever any of these things happen the old contract is terminated.

**(iii) Termination by Impossibility of Performance:** Agreements become void when it becomes impossible to perform them due to a variety of reasons. This is known as impossibility of performance, which may be:
(a) Pre-contractual Impossibility: A contract which at the time it was entered into was impossible to perform, is void. e.g. a promise to ride a horse to sun.
(b) Post-contractual Impossibility: A contract which at the time it was entered into, was capable of being performed may subsequently become impossible to perform or unlawful. In such cases the contract becomes void. This is known as the doctrine of Supervening Impossibility.

**(iv)Termination by Operation of Law:** A contract terminates by operation of law in case of death, insolvency and merger.
**(a) Death:** In contracts involving personal skill or ability, death terminates the contract.
**(b) Insolvency:** When a person is declared insolvent, he is discharged from his ability incurred prior to his adjudication.
**(c) Merger:** When a superior right and an inferior right coincide and meet in one and the same person, the inferior right vanishes into the superior right. This is known as merger.

**(v) Termination by Lapse of Time:** Contracts may be terminated by lapse of time. A contract should be performed within a specific period as prescribed in the Law of Limitation Act 1963. If it is not performed, the contract is said to be terminated.

**(vi)Termination by Material Alteration:** If the documents containing the terms of a contract is materially altered by a party to the contract, without the consent of the other parties, the contract is discharged and cannot be enforced any more.

**(vii) Termination by Breach of Contract:** The term breach of contract means a breaking of the obligation which a contract imposes. When a contract is broken by one party, the other party or parties are free from the obligation of performing the contract.
Breach of contract may arise in two ways:
**(a) Actual Breach of Contract:** Actual Breach of Contract occurs when on the due date of performance or during the performance a party fails to perform his obligations.
**(b) Anticipatory Breach of Contract:** When a party repudiates the contract before the time is fixed for its performance or when a party by his own act disable himself absolutely from performing the contract.

**21. Briefly explain the remedies of breach of contract.**

**Ans.** When a breach of contract occurs, the aggrieved party or the injured party becomes entitled to the following reliefs:

**(i) Rescission of the Contract:** The aggrieved party is freed from all his obligations under the contract.

**(ii) Suit for Damages:** The aggrieved party is entitled to receive compensation for any loss or damage caused to him by the breach of contract and can file a suit for getting a decree for damages.

**(iii) Suit upon Quantum Meruit:** When a contract has been partly performed the aggrieved party can under certain circumstances, file a suit for the price of the services performed before breach of contract.

**(iv)Specific Performance of the Contract: In certain special cases the court can direct a party to**

**(v) Injunction:** Under certain circumstances the court can issue an order upon a party whereby he is prohibited from doing something which amounts to a breach of contract.

**22. Define contingent contract. What are the essential elements of a contingent contract?**

**Ans.** Section 31 of the Indian Contract Act, 1872 defines the term 'Contingent Contract' as follows:

'A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen'.

In simple words, contingent contracts are the ones where the promisor performs his obligation only when certain conditions are met. The contracts of insurance, indemnity, and guarantee are some examples of contingent contracts.

**(i) A contract to do or abstaining from doing something:** Section 32 and section 33 of the Act talks about enforcement of the contract on the happening of the event or the non-happening of the event respectively. The contract will be valid only if it is about performing or not performing an obligation.

**(ii) Performance of the Contract must be Conditional:** The condition for which the contract has been entered into must be a future event, and it should be uncertain. If the performance of the contract is dependent on an event, which is although a future event, but certain and sure to happen, then it will not be considered as a contingent contract.

**(iii) Event must be Collateral to the Contract:** The event on whose happening or non-happening of the event on which the performance of the contract is dependent should not be a part of the consideration of the contract. The happening or non-happening of the event should be collateral to the contract and should exist independently.

**(iv) Event should not be at the discretion of the Promisor**: The event on whose happening or non-happening, the contract can be enforced should not depend on the promisor. To make a contract a contingent contract, the promisor should not have any power to control the events.

**23. Define Quasi Contract. State its features.**
**Ans.** Quasi Contracts are contracts which are created neither by word spoken nor by the conduct of the parties. But these are created by the law.

**Features of Quasi Contract**:

(i) Quasi contract always gives rise to right to money and generally, though not always, to a liquidated sum of money.

(ii) Quasi contract does not arise from any agreement of the parties concerned, but it imposed by the law.

(iii) Every Quasi contract is based upon the principle of equity and good conscience.

(iv) A suit for its breach may be filed in the same way as in case of a complete or ordinary contract.