

C H A P T E R - 1

OVERVIEW OF BUSINESS LAWS IN INDIA

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Nature of Business Law

The terms '*Mercantile Law*', '*Commercial Law*' and '*Business Law*' are synonymous (i.e., one and the same). Mercantile law or Commercial law is a branch of general law (i.e., a branch of civil law). Mercantile Law is that branch of civil law dealing with rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property. A *mercantile person* is a person who carries on commercial transactions and may be a single individual i.e., sole trader or a partnership or a company. *Mercantile transactions* relate mostly to what is known as merchandise or movable property or goods, as distinguished from immovable property.

With the increasing complexities of the modern business world, the scope of Mercantile Law has enormously widened. It is generally understood to include the laws relating to Contract, Sale of Goods, Partnership, Companies, Negotiable Instruments, Insurance, Insolvency, Carriage of Goods, Arbitration, Consumer Protection, Intellectual Property etc.

Growth and Sources of Business Law

Prior to the enactment of the various Acts constituting Mercantile Law, business transactions were regulated by the personal laws of the parties to the suit. The rights of Hindus and Muslims were governed by their respective laws and usages. Where both parties were Hindus, they were regulated by the Hindu Law and where both parties were Muslims, the Mohammadan Law was applied. In case where one party was a Hindu and the other was a Muslim, the personal law of the defendant was applied. In case of persons other than Hindus and Muslims, and also where laws and usages of Hindus or Muslims were silent on any point, the courts generally applied the principles of English Law.

Gradually, need for the enactment of a uniform law regulating the contracts was realised and this gave birth to the Indian Contract Act, 1872. Since then a number of statutes have been enacted, viz. The Negotiable Instruments Act, 1881; The Sale of Goods Act, 1930; The Indian Partnership Act, 1932; The Insurance Act, 1938; The Arbitration Act, 1940, etc.

Sources of Indian Business Law

The main sources of Indian Mercantile Law are : (a) English Mercantile Law, (b) Acts enacted by the Indian Legislature, (c) Judicial Decisions or Precedents; and (d) Customs and Trade Usages.

1. **English Mercantile Law** : The English Mercantile Law constitutes the foundation on which the super-structure of the Indian Mercantile Law has been built. Even now, despite the enactment of various statutes relating to matters falling within the purview of the Mercantile Law, our courts generally take recourse to the English Law where some principles are not expressly dealt within an Act, or where there is ambiguity.

2. **The Statute Law** : When a bill is passed by the Parliament and signed by the President, it becomes an 'Act' or a 'statute'. The bulk of Indian Mercantile Law is Statute Law. The Indian Contract Act, 1872; The Negotiable Instruments Act, 1881; The Sale of Goods Act, 1930; The Indian Partnership Act, 1932; The Companies Act, 1956 are instances of the Statute Law.

3. **Judicial decisions or Case Law** : Judicial decisions are usually referred to as precedents and are binding on all courts having jurisdiction lower to that of the Court which gave the judgement. They are also generally followed even by those of equal jurisdiction in deciding similar

points of law. Whenever an Act is silent on a point or there is ambiguity, the judge has to decide the case according to the principles of justice, equity and good conscience.

4. **Customs and usages** : Custom or usage of a particular trade also guides the courts in deciding disputes arising out of mercantile transactions, but such a custom or usage must be widely known, certain and reasonable, and must not be opposed to any legislative enactment. But where a statute specifically provides that the rules of law contained therein are subject to any well recognised custom or usage of trade, the latter may over-ride the statute law.

Need for Knowledge of Business Law

A knowledge of business law is quite essential to businessmen engaged in economic and commercial activities. The general knowledge of business law will certainly help the businessmen to solve their business problems and avoid conflicts with others with whom they come into business contacts. It will also save businessmen of considerable loss of time, efforts and money in case something goes wrong in their business activities.

SCOPE OF BUSINESS LAW

The salient features of the major laws currently in vogue and having influence on the business decision of firms and companies in India are explained below :

The Industries (Development & Regulation) Act, 1951

This Act influences the product and distribution decisions of companies in India. The Act divides the industrial economy into the public sector and the private sector, and reserves certain industries exclusively for the public sector. It requires industries to first acquire licence and registration whenever a new venture or substantial expansion is to be undertaken. It also reserves certain products for the small, medium or large scale industries and requires these to be sold in the manner desired by the government.

The Indian Contract Act, 1872

This Act helps people to forge legally enforceable relations and conduct business and non-business transactions. It impinges on practically every type of decisions which involves stipulation of contract. However, in a legally enforceable contract there should be an offer and acceptance, lawful consideration between the parties competent to contract, free of consent and unlawful object. In case of breach of contract the injured party may claim specific performance or damages and seek injunction. The agency relationship between the principal and the agent is also governed by this Act. It prescribes the manner of agency stipulation and rights and duties of parties.

The Indian Sale of Goods Act, 1930

This Act governs the transactions of sale and purchase. It, thus, influence the selling decisions of companies. It defines contract of sale as a contract whereby a seller transfers or agrees to transfer the property in goods to a buyer for a price. It divides the term of sale into conditions and warranty. Condition is a stipulation essential to the main purpose while warranty is collateral to the main purpose. Breach of condition gives a right of repudiating the contract while warranty does not. Warranty entitles to only damages. The Act proclaims the principle of *caveat emptor* which has

health. It is deemed injurious when :

- « The product quality is not as demanded or claimed;
- « It contains an injurious substance;
- « Any constituent of the article has been taken away;
- « It has been prepared, packed or kept under insanitary conditions;
- « It is unfit for human consumption;
- « It is obtained from deceased animals;
- « It is poisonous or deleterious;
- « It contains a prohibited preservative;
- « Its quality or purity falls below the prescribed standards.

The Weights and Measures Act, 1958

This Act was enacted to safeguard the consumers against the exploitation of weighing measures of commodities by traders. Under this Act standard weights and measures are introduced and metric system of weights and measure has been introduced.

The Drugs and Cosmetics Act, 1940

Just as in food product, drugs of sub-standard quality are manufactured and marketed. The prices charged for medicines are not proportional to the cost of production. The high prices charged by the manufacturers are high enough to exploit the consumers. There is the problem of spurious drugs – manufactured by unscrupulous producers, and they are not only harmful but also dangerous to life.

The Packaged Commodities Order, 1975

This is an important measure for consumer protection. This order provides that producers of several packaged commodities should print on the packages the contents, weights, price, month of manufacture, the date of expiry of the products, the name of manufacturer meant for retail trade so that consumers will come to know what they purchase. It has valuable provisions to consumers.

The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

This Act influences the advertising decision of companies marketing drugs for certain types of ailments. It aims to protect consumers resorting to self-medication with harmful drugs and appliances. It prohibits advertisement of drugs marketed for the treatment of certain incurable diseases and which make false claims regarding their potency. It imposes both civil and criminal liabilities.

The Sales Promotion Employees (Conditions of Service) Act, 1976

This Act applies to pharmaceutical companies only. However, government can apply it to any industry. Its major influence is on the sales force decisions. The provisions of this Act regulate the service conditions of sales promotion employees and endow on them the benefits largely accruing to industrial workers under industrial legislation of the country.

The Consumer Protection Act, 1986

A consumer has option to approach any one of the following fora for seeking redressal (a) Civil Courts, (b) MRTP Commission (in regard to matters involving Monopolistic Trade Practices, Restrictive Trade Practices) (c) Consumer Forum

Apart from the tribunal/judicial mechanism by way of redressal agencies set up under the Consumer Protection Act, there exists administrative and quasi judicial set up to investigate and penalise or prosecute offenders in respect of offences affecting consumers in various economic legislation such as the Standards of Weights and Measures Act, and Packaged Commodities Rules. Foreign Exchange Management Act, Essential Commodities Act, Environmental Protection Act, etc.

The Act provides for setting up of (a) The Central Consumer Protection Council, (b) The State Consumer Protection Councils and (c) Consumer Disputes Redressal Agencies. A three tier system of consumer disputes redressal machinery has been established for the purposes of this Act.

The Foreign Trade Development and Regulation Act, 1992.

The Foreign Exchange Management Act, 1999.

The Arbitration and Conciliation Act, 1996.

The Securities Exchange Board of India Act, 1982.

The Reserve Bank of India Act, 1934.

The Copyright Act, 1957.

The Environmental Protection Act, 1986.

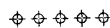
The Water (Prevention and Control of Pollution) Act, 1974.

The Air (Prevention and Control of Pollution) Act, 1981.

The Competition Act, 2002

REVIEW QUESTIONS

1. Define Business Law.
2. Explain the nature of Business Law.
3. What are the sources of Business Law?
4. Enumerate the different enactments having influence on the business decisions.
5. Explain in detail the different enactments coming under the scope of Business Law.



The law of contract is the foundation upon which the superstructure of modern business is built. It is common knowledge that in business transactions quite often promises are made at one time and the performance follows later. In such a situation if either of the parties were free to go back on its promise without incurring any liability, there would be endless complications and it would be impossible to carry on trade and commerce. Hence the law of contract was enacted which lays down the legal rules relating to promises: their formation, their performance, and their enforceability. Explaining the object of the law of contract Sir William Anson observes : "The law of contract is intended to ensure that what a man has been led to expect shall come to pass; that what has been promised to him shall be performed".

The law of contract is applicable not only to the business community, but also to others. Everyone of us enters into a number of contracts almost every day, and most of the time we do so without even realising what we are doing from the point of law. A person seldom realises that when he entrusts his scooter to the mechanic for repairs, he is entering into a contract of bailment; or when he buys a packet of cigarettes, he is making a contract of the sale of goods; or again when he goes to the cinema to see a movie, he is making yet another contract; and so on.

Besides, the law of contract furnishes the basis for the other branches of Mercantile Law. The enactments relating to sale of goods, negotiable instruments, insurance, partnership and insolvency are all founded upon the general principles of contract law.

THE INDIAN CONTRACT ACT 1872

The law relating to contracts is codified in the form of *Indian Contract Act*, 1872. The main object of the law of contract is to introduce definiteness in business transactions. The law of contract is applicable not only to business community, but also to others. A person seldom realises that when he entrusts his scooter to the mechanic for repairs, he is entering into a contract of bailment; or when he buys a packet of cigarettes, he is making a contract of the sale of goods; or again when he goes to the cinema to see a movie, he is making yet another contract and so on.

Scheme of the Act : The scheme of the Act may be divided into two main groups :

1. General principles of the law of contract (Secs. 1-75).
2. Specific kinds of contracts, viz.:
 - (a) Contracts of Indemnity and Guarantee (Secs. 124-147).
 - (b) Contracts of Bailment and Pledge (Secs. 148-181).
 - (c) Contracts of Agency (Secs. 182-238).

Before 1930 the Act also contained provisions relating to contracts of sale of goods and partnership. Sections 76-123 relating to sale of goods were repealed in 1930 and a separate Act called the *Sale of Goods Act* was enacted. Similarly, Sections 239-266 relating to partnership were repealed in 1932 when the *Indian Partnership Act* was passed.

Basic assumptions underlying the Act : Before we take up the discussion of the various provisions of the Indian Contract Act, it will be proper to see some of the basic assumptions underlying the Act. These are :

1. Subject to certain limiting principles, there shall be freedom of contract to the contracting parties and the law shall enforce only what the parties have agreed to be bound. The law shall

not lay down absolute rights and liabilities of the contracting parties. Instead it shall lay down only the essentials of a valid contract and the rights and obligations it would create between the parties in the absence of anything to the contrary agreed to by the parties.

2. Expectations created by promises of the parties shall be fulfilled and their non-fulfilment shall give rise to legal consequences. If the plaintiff asserts that the defendant undertook to do a certain act and failed to fulfill his promise, an action at law shall lie.

Law of Contract creates *right-in-personam* and not *right-in-rem*. "*Right-in-personam*" means right against a particular person or group of persons. A contract creates a right in personam only i.e., against a particular person. On the contrary *Right-in-rem* implies rights against the whole world.

Illustration : A takes a loan of Rs. 1,000 from B. B has a right to recover the said amount from A. The right of B against A is a personal right. It is called *right-in-personam* as it is available to B alone and none else. Again, this right is against A only and none else.

Right-in-rem means right against the whole world.

Illustration : X purchased a house from Y. X is the owner of the house. So he has a right of quiet possession and enjoyment against the whole world and not against Y alone. It is called *right-in-rem*. Law of Contract does not create right-in-rem, it creates right-in-personam only.

Scope of Indian Contract Act 1872 : The scope of the Indian Contract Act, 1872 may be broadly classified into two main groups, namely :

1. **General Principles of Contracts (Secs. 1 to 75) :** General Principles of contracts include rules and laws relating to communication, acceptance and revocation of proposals (Secs. 2-9), voidable contracts (Secs. 10-19A and 22-23), void agreements (Secs. 11, 22-30, 32, 36, 56, 57 and 64-67), contingent contracts (Secs. 31-36), performance of contracts (Secs. 37-67), certain relations resembling those created by law (Secs. 68-73) and consequences of breach of contract (Secs. 73-75).

2. **Specific Kinds of Contracts or Special Contracts :** The remaining part of the Act deals with three special types of contracts discussed in Secs. 124 to 238 of the Act. These are contracts of Indemnity and Guarantee (Secs. 124 to 147), Bailment and Pledge (Secs. 148-181) and Agency (Secs. 182-238). The provisions relating to contracts of Sale of Goods (Secs. 76-123) and Partnership (Secs. 239-266) were repealed and separate Acts called the 'Sale of Goods Act' and the 'Indian Partnership Act' were passed in 1930 and 1932 respectively.

AGREEMENT AND CONTRACT

Contract arises as a result of an agreement purporting to create and define rights and obligations between two parties. It is therefore quite essential to understand what an agreement is and how it can be arrived at.

Definition of Agreement : When an offer made by one (offerer) is accepted by the other, it becomes a promise. Section 2 (e) of the Indian Contract Act states that *every promise and every set of promises, forming the consideration for each other*, is an agreement. It implies that an agreement is an accepted proposal. It follows that every agreement is made of a proposal from one side and its acceptance by the other.

Characteristics of an Agreement

1. **Plurality of Persons :** Agreement is an expression of common intention of two or more

persons. The first characteristic of an agreement is thus plurality of persons. It is impossible for one person to make an agreement with himself. For instance, when a person in his official capacity, as a director of a company, makes a promise to himself as an individual, no agreement is formed by an acceptance in the latter capacity.

2. **Consensus ad-idem** : The persons making an agreement must consent to some determination with a view to create a right in one party and corresponding duty on the other party. These determinations are known as *promises*. Promises are formed only when there is meeting of the minds of the parties who must agree to the same thing in the same sense. This is known as *consensus ad-idem* which is the other important characteristic of an agreement. For instance, if A intends to sell his white horse to B and B intends to buy his black horse, there is no consensus ad-idem and hence no agreement. The real test as to whether there is consensus ad-idem depends on whether under the circumstances, one party was reasonably led to believe that there was an offer and the other party to believe that there was an acceptance.

Mental Condition : That is, a person 'promises' orally or in writing what transpires in his mind. Arising from such mental condition, promise or contract signifies two ideas; namely, agreement and obligation which are otherwise described as *consensus-ad-idem* and *vinculum juris*. Agreement implies consent of the parties and consent has to do with the state of the mind as recorded in words, oral or written. *Agreement, in other words, is the outcome of consenting minds or consensus-ad-idem.*

The other component, namely *the vinculum juris* or *the legal tie*-arises

- (a) if there is agreement
- (b) between two parties
- (c) with reference to definite acts and
- (d) which relates to legal matters and not mere social engagements.

Because the legal tie or obligation may arise also from circumstances other than agreement e.g. a tort, judgements of courts, etc. *Salmond* has made the famous observation that the *law of contracts is not the whole law of agreements; nor is it the whole law of obligations; it is the law of those agreements which create obligations and of those obligations which have their source in agreements.*

3. **Promise or Reciprocal Promises** : An agreement has been defined as *every promise and every set of promises, forming the consideration for each other*. A promise is an accepted proposal. When the person to whom the proposal is made significant his assent thereto, the proposal is said to be accepted. Offer and acceptance together constitute an agreement. Agreement is thus a promise or a set of "reciprocal promises". "*Promises which form the consideration or part of the consideration for each other are called reciprocal promises*" [Section 2(f)].

Kinds of Agreement

1. **Social Agreements** : They are of social nature and do not enjoy the benefits of law. They are not enforceable and cannot be called 'contracts'. An agreement to attend a dinner at a friend's house or to attend a marriage or a religious function, to see a movie etc., are the examples of social agreement.

2. **Legal (Valid) Agreement** : It is the sum of (a) an agreement and (b) an intention to create legal obligation. Obligations require the parties must do or obtain from doing something. However, such an act or abstinence may relate to social or legal matters. It is a valid agreement which is enforceable at law.

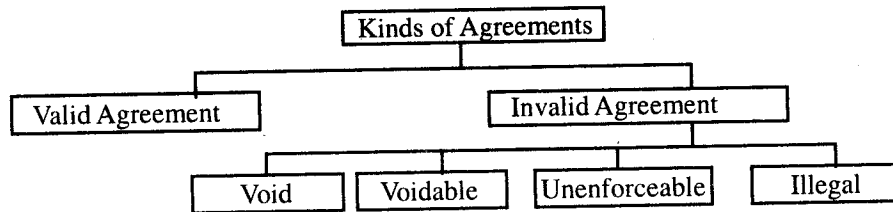
3. **Void Agreement** : An agreement not enforceable by law is said to be void. [Section (g)].

4. **Voidable Agreement** : A voidable agreement is one which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other [Section 2(i)].

5. **Unenforceable Agreement** : Such an agreement is valid in the eyes of law, but cannot be enforced in the courts because of some *technical defect in procedural matters of formation and enforcement*.

6. **Illegal Agreement** : An illegal agreement is one which is against the provisions of the law.

7. **Agreements to Agree in Future** : An agreement to agree in future is a contradiction. It is absurd to state that a man enters into an agreement till the terms of the contracts are settled. Until the terms are settled, he is free to retire from the bargain. Moreover, there can be no binding contract unless all the material conditions of contract have been agreed upon. Thus agreement to agree in future is not a contract.



Definition of Contract

A contract is a valid or legal agreement. In other words a contract is an agreement made between two or more parties whereby legal rights and obligations are created which the law will enforce. According to Sec. 2(h) of Indian Contract Act, 1872 *an agreement enforceable by law is a contract*.

As mentioned already, an agreement connotes that (a) at least two parties have expressed themselves, (b) with sufficient certainty, and (c) in terms which correspond on the subject. An agreement is a very wide term. It may be a social agreement or a legal agreement. A social agreement does not give rise to contractual obligations and is not enforceable in law court. It is only those agreements which are enforceable in the law courts are called *contracts*.

According to Sec. 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*.

Some definitions given by leading authors may here be noted :

Salmond : Contract is an agreement creating and defining obligations between the parties.

Sir William Anson : Contract is a legally binding agreement 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.

ESSENTIALS OF A CONTRACT

A Contract in order to be enforceable by law must have the following ten essential elements :

- 1. Plurality of Persons :** There must be two persons or groups of persons to form a contract. There must also be privity (knowledge) of contract between the two parties.
- 2. Offer and Acceptance :** There must be a lawful proposal or offer by one party and a lawful acceptance of that proposal by the other party - thus resulting in an agreement. The terms of the offer and acceptance must be definite. The acceptance of the offer must be absolute and unconditional. It must also be according to the terms prescribed and must be communicated to the proposer. A proposal when accepted becomes a promise or agreement. The offer and acceptance must be '*consensus ad-idem*', which means that both the parties must agree on the same thing in the same sense (i.e., identity of wills or uniformity of minds).
- 3. Legal Relationship, Legal Consequences, Promises & Obligations recognized by law :** When two parties enter into an agreement, their intention must be to create a legal relationship between them. If there is no such intention, there can be no contract between the parties. In *Balfour Vs. Balfour (1919)* a husband agreed to pay \$ 30 to his wife every month while he was abroad. On failure to pay, his wife sued him for the recovery of amount. It was held that it was a domestic agreement which did not intend to create legal relations. In *Weeks Vs. Tybald* the defendant in the course of casual conversation stated to the plaintiff that he would give \$100 to any one marrying his daughter with his consent. The plaintiff having married his daughter with his consent, sued for the amount. It was held that there was no legal offer as the statement was not capable of creating legal relation.
- 4. Lawful Consideration :** The agreement to be enforceable by law must be supported by consideration. The term *consideration*, in simple words, means something in return. The agreement is legally enforceable only when both the parties give something and get something in return. A promise to do something, getting nothing in return, is usually not enforceable by law. The intention of the parties to create legal relationship can only be ascertained by the presence or absence of consideration. The consideration need not necessarily be in cash or kind. It may be an act or abstinence (refraining from doing something) or promise to do or not to do something. The consideration may be past, present or future. But it must be real, definite, lawful and of some value in terms of money.
- 5. Contractual Capacity of Parties (Competency) :** The parties to the agreement must be capable of entering into a valid contract. Every person is competent to contract if he (a) is of the age of majority, (b) is of sound mind and (c) is not disqualified from contracting by any law to which he is subject. Incapacity to contract may arise from minority, lunacy, idiocy, drunkenness, professional, status etc. If a party suffers from any flaw in the required capacity, the contract becomes invalid except in some special cases.
- 6. Free and Genuine Consent :** It is essential to the creation of every contract that there must be a free and genuine consent of the parties to the agreement. 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. The parties are said to have identity of mind or agreed on the same thing in the same sense when all the terms of the consent are put in the form of an offer or proposal by one party and the

other party says "yes" to it. There is absence of free and genuine consent if the agreement is induced by coercion, undue influence, fraud, misrepresentation, mistake etc.

7. Lawful Object : The object of the agreement must be lawful. It is lawful unless it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or is immoral or opposed to public policy. In simple words, the object of the agreement must not be (a) illegal, (b) immoral, or (c) opposed to public policy. If an agreement suffers from any legal flaw, it would not be enforceable by law.

8. Agreement Not Declared Void : The agreement, though it might possess all the essential elements discussed above, must not have been expressly declared void by any law in force in the country.

Sections 24 to 30 of the Indian Contract Act specify certain types of agreements which have been expressly declared to be void. Some of those agreements are : (a) An agreement in restraint of marriage, (b) An agreement in restraint of trade, (c) An agreement in restraint of legal proceedings and (d) A wagering agreement.

9. Certainty and Possibility of Performance : The terms of the agreement must be certain and not vague or ambiguous. The terms of the agreement must also be such as are capable of performance.

Illustration : A agrees to sell B 100 tons of oil. There is nothing in the agreement to show what kind of oil is intended. In this case, it is not clear as to what kind/brand of oil is intended to be sold. That means, the agreement is vague or uncertain, and so, it is void. However, if A, a dealer in coconut oil, agrees to sell to B 100 tons of oil, the terms of the agreement are considered to be definite, in spite of the fact that the kind of oil is not specified, because, in the case of a dealer in coconut oil, the oil contemplated is naturally the coconut oil.

An agreement to do an act impossible in itself cannot be enforced. This is based on the maxim *lex non cogit ad impossibilia* which means that *law does not compel to do what is impossible*.

Pre-contractual Impossibility : A contract which at the time it was entered into was impossible to perform, is *void ab initio* and creates no rights and obligations, e.g., a promise to bring honey from moon for one's honeymoon, to promise to put life in to a dead body or even a promise to discover treasure by magic.

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*. It is also known as the *Doctrine of Frustration*.

10. Legal Formalities : The agreement may be oral or in writing. Where it is to be in writing, it must comply with the necessary legal formalities as to writing, stamping, registration and attestation. Further, an agreement is to be made in the presence of requisite witness. If the agreement does not comply with these legal formalities, it cannot be enforced by law.

Some of the contracts which must be *in writing* otherwise they will be invalid are: (1) A promise to pay a time barred debt; (2) An arbitration agreement, (3) Lease agreement for a period of more than three years, (4) Contracts of insurance, (5) Negotiable instruments, e.g.,

- (iii) **Restitution** : In case of void agreements, restitution is always followed unless the void nature of the agreement was known to the parties at the time of its formation. On the other hand, in a voidable contract when rescinded, the benefit received will be restored as far as possible.
- (iv) **Compensation** : Since a void agreement is unenforceable, the question of compensation does not arise on the non-performance of such an agreement. But under a voidable contract, any person who has received any benefit must compensate or restore it to the other party who rightfully rescinds it.
- (v) **Collateral transactions** : A voidable contract does not affect collateral transactions. But if the agreement is void on account of the object and consideration being illegal or unlawful, the collateral agreement will also become void.

3. Differences between Void and Illegal Agreement

- (a) **All Inclusive** : The word *Void* is used in broader sense, it includes illegal aspects. 'Illegal' as a word is used in narrow sense, it does not include void. *All illegal agreements are void but all void agreements are not necessarily illegal.*
- (b) **Proofs** : Void agreements are not illegal until they are proved to be illegal. But illegal agreements remain so from the very beginning.
- (c) **Collateral Transaction** : A void agreement does not involve collateral transactions. But an illegal agreement vitiates not only primary transactions but also collateral transactions.

Examples

- (i) P engages B to kill C and borrows Rs. 10000 from D to pay B. Here the agreement with B is illegal. The agreement with D is collateral to it, if D is aware of the purpose of the loan. In this case the loan transaction is void and D cannot recover the money. But if D is not aware of the purpose of the loan, it may be argued that the loan transaction, is not collateral to the other illegal agreement, is valid.
- (ii) W enters into a wagering agreement and borrows Rs. 100 for the purpose. The main agreement is void but the loan transaction being merely collateral to it is valid even though the creditor is aware of the purpose of the loan.
- (d) **Punishability** : Void agreements are not always punishable. But illegal agreements are always punishable.

4. Differences between Illegal and Unenforceable Agreement

- (a) **Defect in Subject/Procedure** : Illegal agreements are against public policy and law in force in India. Unenforceable agreements are not enforceable because of some technical or procedural defects.
- (b) **Timing of Unenforceability** : Illegal agreements are void from the very beginning and cannot be enforced by court of law under any circumstances. An unenforceable agreement is valid in itself but it is not enforceable by court because of some technical defects. Some of these agreements can be enforced if the technical defect is removed.
- (c) **Collateral Transactions** : In case of an illegal agreement, not only primary transactions but collateral transactions are also affected by illegality. In case of an unenforceable

one, it is a flaw in procedural matters. Some of these agreements can be enforced if the technical defect in question is removed.

- (d) **Punishment** : Illegal agreements may cause penalty. In case of unenforceable agreements, no penalty is imposed.

Thus, all illegal agreements are unenforceable. But all unenforceable agreements may not be illegal.

REVIEW QUESTIONS

1. Define the term (i) Agreement, (ii) Contract.
2. All contracts are agreements, but all agreements are not contracts - Discuss.
3. "Offer and acceptance bring the parties together but the law required some further evidence of their intention to create legal relationship". Comment.
4. Write short notes on : (a) valid contract, (b) void contract, (c) void agreement (d) Illegal contract, (e) unilateral contract (f) bilateral contract.
5. Distinguish between (a) Void agreement and Voidable contract, (b) Void and Illegal contract, (c) Void and Unenforceable contracts, (d) Agreement and Contract.

PRACTICAL PROBLEMS

Answer the following problems, giving reasons for your answers:

1. Harish says in conversation to Suresh that he will give Rs.10,000 to a person whosoever marries his daughter and Suresh files a suit to recover Rs.10,000. Will he succeed ?
(Hint: No, Harish has expressed his wish only, and has never made an offer with a view to obtaining the assent of the other party.)
2. X sees a book displayed in a shelf of a book shop with a price tag of Rs.85, X tenders Rs.85 on the counter and asks for the book. The bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the bookseller to sell the book to X?
(Hint: No, a display of goods with prices marked thereon is only an invitation for offer, and not an offer itself. Hence the bookseller is free to accept the offer or not)
3. B offered to sell his car to A for Rs.95,000. A accepts to purchase it for Rs.94,500. B refused to sell the car for Rs.94,500. Subsequently A agrees to purchase the car for Rs.95,000 but B refused to sell the car. A sues B for the specific performance of the contract. will he succeed?
(Hint: No, B's offer comes to an end by the counter-offer of A, and there was no offer available for acceptance subsequently).
4. P sold his business to Q without disclosing this his customers. M, an old customer sent an order for goods to P by name. Q, the new owner, executed the order. Is M bound to accept the goods?
(Hint: No, M is not bound to accept the goods because a Specific offer made to P can be accepted only by P and none else (Boulton Vs Jones (1897)).
5. B offered to sell his house to A for Rs.50,000. A accepted the offer by post. On the next day A sent a telegram revoking the acceptance which reached B before the letter. Is the revocation of acceptance valid? Would it make any different if both the letter of acceptance and the telegram of revocation of acceptance reach B at the same time?
{Hint: Yes. the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance and the telegram of revocation of acceptance reach B at the same time, the formation of contract will depend on the fact that which of the two is opened first by B. If B reads the telegram first, revocation is valid but if he reads the letter first, revocation is not possible.}



A contract is made by the process of lawful offer by one party and the lawful acceptance of the offer by the other party to whom it is made. Thus, an offer is the starting point of making a contract. The term *proposal* is used in the Indian Contract Act in the place of the word *offer* which conveys same meaning as proposal. Hence a detailed discussion about 'offer' is given in this chapter.

Meaning of Proposal : The term (Offer) Proposal is defined in Section 2(a) of the Indian Contract Act, 1872, thus, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. The person making the offer is known as *offeror* or '*proposer* or *promisor*' and the person to whom the offer is made is called *offeree* or *promisee*.

Illustration : A writes to B that he is willing to sell his house if B is willing to pay Rs. 4,90,000. A is said to make an offer and if B writes agreeing to that offer, it is called an *acceptance*, and A is called the offeror or proposer or promisor and B the offeree or promisee.

Characteristics of Offer : The definition of offer involves the following important points : 1. It must be an expression of willingness to do or to abstain from doing something. 2. It must be made to another person. 3. It must be made with a view to obtain the assent of the second party to such act or abstinence. 4. The expression of willingness must be made with a view to create legal obligations.

Types of Offer

1. **Express and Implied Offers :** If an offer is made by words, spoken or written, it is called an *express offer*. If offer is made otherwise than in words, the offer is called an *implied offer*. The following are the examples of implied offer.

- (a) A transport company runs buses on a particular route. There is an implied offer from the transport company to carry passengers on the route who are prepared to pay the specified fare.
- (b) In a restaurant, there is an implied promise to pay for consuming the eatables.
- (c) A video-game machine kept at a Video-Game Parlour is an implied offer to use the machine for the game by inserting the necessary coin. A person who inserts the coin is said to have accepted it.
- (d) Weighing machine in the market place, request for ticket in lottery, cinema house or other public places, cloak room, taxi running on the streets, tram car, public buses, an invitation to existing share holders or debenture holders to take up right issue or conversion etc., are example of continuous offer.

2. **Specific and General Offers :** When offer is made to a definite class of persons, it can be accepted by that particular person or class of persons only. Such an offer is called *specific offer*. When offer is made to the world at large which could be accepted by anyone e.g., reward to a person supplying information pertaining to something, it is called a *general offer* or *offer at large*.

3. **Positive and Negative Offers :** The offer may be positive or negative. Thus, an offer may be to do something or not to do something. An offer to do something, is a *positive offer*. And an offer not to do something is a *negative offer*.

It is an offer to supply certain commodity for a certain price upto a certain period. The quantity to be supplied, however may or may not be specified.

Contracts for the supply of goods over a period of time are sometimes so worded that the buyer has an option as regards the quantity to be purchased and the time of purchase. Such contracts are called "*Standing Contracts*" or "*Open Proposals*".

Illustration : P signed a tender addressed to the London County Council, agreeing, on acceptance, to supply all the goods specified in the schedule, to the extent ordered. The tender was accepted but the L.C.C. did not order any goods. Held, the L.C.C. was not bound to order any goods, but if it did so, P was bound to deliver the goods as and when ordered. *Percival Ltd. Vs. L.C.C. (1918)*.

In such cases as above, a contract comes into existence when a definite quantity is ordered. *Bengal Coal Co. Vs. Wadia (1900) Bom.*

Cross offers : Two offers similar in all respects, made by two parties to each other, in ignorance of each other's offer are termed as '*cross offers*'. Cross offers do not amount to acceptance of one's offer by the other and do not constitute a complete (formal) agreement. Hence no contract is formed.

Example : X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs. 1 lakh. The letter is posted on 1st January and the same day Y of Delhi sends a letter by post to X of Agra offering to buy X's car for Rs. 1 lakh. These two letters cross each other. Y's letter is merely an offer and not the acceptance of X's letter. Here, both the parties are making offer and no party has accepted the offer therefore no contract has been entered into, if they want to enter into a contract, at least one of them must send his acceptance to the offer made by the other.

ESSENTIALS OF A VALID OFFER

1. It must be made with a view to obtain acceptance.
2. It must be intended to create legal relations.
3. The terms of the offer must be definite and certain.
4. The offer must be communicated to the offeree.
5. An offer may be express or implied.
6. It must be distinguished from "Invitation to offer" or "declaration of intention".
7. The special terms of the offer must be communicated.
8. The offer should not contain any terms the non-compliance of which amounts to acceptance.
9. Two identical cross-offers do not result in a contract.
10. An offer may be general or specific.

Termination of Offer

Section 6 deals with various modes of terminating (revocation or lapse) of an offer. In all these cases, an offer comes to an end.

"wire reply please" and the reply is sent by post; there is no acceptance of the offer, if the offeror informs the offeree that the acceptance is not according to the mode prescribed.

3. Acceptance cannot precede an offer : There can be no acceptance before the communication of offer : An acceptance cannot precede the offer. There can, therefore be no acceptance before the communication of the offer. In a company, shares were allotted to a person who had not applied for them. Subsequently, when he applied for shares, he was unaware of the previous allotment. Held, the allotment of shares previous to the application was invalid.

Acceptance may be express or implied : Acceptance must be communicated to the offeror by spoken or written words or conduct. When acceptance is made by words spoken or written, it is an express acceptance. If it is accepted by conduct it is an implied acceptance (*Carlill Vs. Carbolic Smoke Ball Co. (1893)*). The acceptor must have done something to signify his intention to accept. Mere intention or mental acceptance, if uncommunicated, will lack essence. If the acceptor never communicates his acceptance to the proposer, there will be no binding agreement. For the validity of an agreement it is essential that the proposer must know that his proposal has been accepted.

Though the general rule is that an acceptance must be communicated to the proposer, yet it is possible to accept a proposal by performing the conditions of such proposal; the fulfilment of the conditions will be sufficient to signify the mental assent to the proposal. But the performance of the conditions of the offer must indicate that : (i) the proposal must be accepted by a definite person; and (ii) something must happen to ensure that the proposal has been accepted by the specified person.

4. Acceptance must be given within a reasonable time : If any time limit is specified acceptance must be given within that period. If no time is stipulated, it must be given within a reasonable time.

5. Acceptance must show to fulfil a promise : Acceptance, in order to be valid, must be made under circumstances which would show that the acceptor intends to fulfil the terms of the promise. If no such intention is present, the acceptance is not valid.

6. Acceptance must be by an ascertained person i.e., the Person to whom the offer is made (offeree) : While an offer may be made to unascertained persons, or the world at large, acceptance must be by an ascertained individual.

7. Offer once rejected cannot be accepted until it is renewed : Once a proposal refused, it cannot be accepted unless it is renewed. Thus, if A makes a proposal to sell his house for Rs. 5,00,000 and B says that he will pay Rs. 4,00,000, he cannot under any circumstances bind A to sell the house even though he is ready to pay the amount demanded by A. However, variations which are immaterial do not vitiate the acceptance.

8. Acceptance of offer means acceptance of all terms attached to the offer : However, if the terms are to a large extent apparent in the face and no reasonable caution is taken to draw the attention of the acceptor then, these terms will not be binding, e.g., where the attention of a passenger was not drawn to the clause, "*Luggage at owner's Risk*" meaning that the company is not liable for any loss of luggage, it was held in a suit for the loss of luggage, that the company was liable.

9. Acceptance must be made before the lapse or revocation of an offer.

10. **The acceptor must be aware of the proposal at the time of the offer:** Acceptance follows offer. If the acceptor is not aware of the existence of the offer and conveys his acceptance, no contract comes into being. There must be a knowledge of the offer before anyone could consent to it. An act done in ignorance of the offer of a reward cannot be called an acceptance.

Lalman Shukla Vs. Gauri Dutt (1913) D sent P who was in his service in search of his missing nephew. Subsequently D announced a reward of Rs. 500 for information relating to the boy. But before P saw the announcement he had traced the boy. In a suit to recover the promised award, it was held that there can be no acceptance unless there is a knowledge of the offer.

11. **Silence does not imply acceptance :** A mere mental acceptance not evidenced by words or conduct is in the eyes of law no acceptance. Acceptance must be something more than a mere mental assent.

Exceptions : The following exceptions to the rule that 'silence does not imply acceptance' may be noted :

- (i) Where because of previous dealings, the offeree has given the offeror reason to understand that his silence means that he accepts.
- (ii) Where the offeror has dispensed with the communication of acceptance. This may be gathered from the circumstances of the case, or the terms of the offer.
- (iii) Where the offeror imposes certain conditions in the offer, performance of all the conditions even without communication of notice of acceptance is also a sufficient acceptance of the offer.
- (iv) Where the offeree having reasonable opportunity to reject the offer, takes the benefit of the offer, it will amount to acceptance.

ESSENTIALS OF VALID ACCEPTANCE

1. It must be absolute and unqualified.
2. It must be communicated to the offeror.
3. It must be in the prescribed manner or usual mode.
4. It must be made within reasonable time.
5. It must be by the offeree.
6. It must be in response to offer.
7. It must be made before the offer lapses.
8. It must be accepted before rejection unless the offer is renewed.
9. It must be accepted only when acceptor is aware of proposal.
10. Acceptance may be express or implied; Silence does not imply acceptance

12. **Rules for Communication of Acceptance :** (S.4). It has following two aspects :

- (i) *As against the person who makes it :* When it is put into course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; and
- (ii) *As against the person to whom it is made :* When it comes to his knowledge.

Revocation of Proposal : A proposal may be revoked at any time before the communication of acceptance is complete as against the acceptor, but not afterwards.

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

Rules for Communication by Post

Where the proposal and acceptance are made by letters sent by post, the rule is that the communication is complete and the *contract is made at the time when and the place where the letter of acceptance is posted* and not at the place where the offer is posted or acceptance is received. Therefore, no cause of action arises at the place where the offer is posted or acceptance is received. The rules relating to the communication of offer and acceptance through the post may be stated as follows :

1. An offer sent through post may be accepted by post, unless the offeror indicates some other *mode of communication*. Even if the offer is not sent through post, acceptance may be sent by post, if the circumstances indicate that the parties intended that the post might be used. An offer sent by post is communicated only when it reaches the offeree.
2. An acceptance sent through post is completed, the moment the letter of acceptance *properly addressed and stamped* is posted. The posting of an acceptance letter by the offeree binds the offeror, as he (offeror) is deemed to have received the acceptance, at the moment when it is so despatched so as to be "*out of power of the acceptor*", and it becomes a promise on which the offeree (acceptor) can sue even though the letter never reaches the offeror (i.e., is lost or delayed in postal transit).
3. An acceptance binds the acceptor only when it reaches the offeror. This is done to give an opportunity to the acceptor to revoke his acceptance before the letter communicating the acceptance reaches the latter. However, the English Law does not accept this position.
4. The place where the letter of acceptance is posted will be the place where the contract is made.
5. Regarding revocation of an offer, the letter of revocation must have been posted before the letter of acceptance is posted by the offeree.

When a proposal is made through the post, the post office is by implication the agent of the proposer. Therefore a letter of acceptance duly addressed and posted is sufficient acceptance even though the letter does not actually reach the proposer. (Notice to an agent is considered to be notice to the principal). The letter must, however, be correctly addressed. The letter must be actually posted. It is not enough to give it to somebody to post.

Illustrations

- (i) G applied for shares in a company. A letter of allotment was posted but the letter did not reach G. Held there was a binding contract and G was a shareholder of the company. *Household Fire Insurance Co. Vs. Grant. (1877)*

- (ii) A registered envelope was tendered by the postman to the addressee, who refused to accept it. It is to be presumed that the addressee has the knowledge of the content thereof. *Har Charn Singh v. Shiv Rani and Others. (1981) SC*

Rules for Contracts over the Telephone or the Telex : Nowadays most of the commercial transactions are carried on through telephones. These contracts are treated on the same line as if the parties are facing each other. No contract can arise unless the offeree's acceptance is audible, heard and understood by the offeror. "During conversation if the line goes dead and the offeror fails to hear the words of acceptor, he should once again establish the contact with the acceptor and his words should be heard" - *Justice Anson (Law of Contract)*

The High Court Judgement about this matter is quoted below. "Now, when the parties negotiate a contract orally in the presence of each other or over telephone and one of them makes an oral offer to the other, it is plain that an oral acceptance is expected, and the acceptor must ensure that his acceptance is audible, heard and understood by the offer. The acceptance in such a case must be by such words which have the effect of communicating it". *Kanhaiyal v. Dineshwar Chandra (1959)*.

In an English court it was held that a communication, sent through a telex or a teleprinter machine in the office, is valid. A contract made by 'telex' was no exception to the general rule that acceptance is not complete until communicated. *Entores Ltd. v. Miles Far Eastern Corporation. (1955)*.

Microphone : There was an auction sale of plots of land. The terms, including certain restrictive conditions, were announced by a microphone. The Supreme Court held, "Microphones have not yet acquired notoriety as carriers of binding representations. Promises held out over loudspeakers are often claptraps of politics" *Banwari Lal v. Sukhdarshan Dayal. (1973) S.C.*

Difference between Offer and Acceptance

1. Offer constitutes the first stage in the formation of a contract, whereas acceptance constitutes the second stage in the formation of a contract.
2. An offer is made by the offeror to the offeree. But an acceptance is given by the offeree to the offeror.
3. An offer is not held to be made until it is brought to the knowledge of the offeree (i.e., communicated to the offeree). On the other hand, an acceptance may, in certain circumstances, be held to be made, though it has not come to the knowledge of the offeror (i.e., though it is not communicated to the offeror).

REVIEW QUESTIONS

1. What is an offer? State the essentials of a valid offer.
2. Why is the intention to create legal relations an essential of a valid contract? Give three examples of obligations arising from agreement which are not legal obligations.
3. Distinguish between an offer and an invitation to offer.
4. When is an offer complete? How and when may an offer be revoked?
5. Define 'acceptance', and state the legal rules governing valid acceptance.
6. "Acceptance is to an offer what a lighted match is to a train of gun powder". Discuss the statement in

the context of acceptance of an offer.

7. 'A mental resolve to accept an offer does not give rise to a contract'. Discuss.
8. State the law relating to contract by post, telephone, telex and fax.

PRACTICAL PROBLEMS

Answer the following problems, giving reasons for your answers :

1. Harish says in conversation to Suresh that he will give Rs. 10,000 to a person whosoever marries his daughter. Ashok marries Harish's daughter and files a suit to recover Rs. 10,000. Will he succeed?
(*Hint.* No, Harish has expressed his wish only, and has never made an offer with a view to obtaining the assent of the other party.)
2. X sees a book displayed in a shelf of a book shop with a price tag of Rs. 85. X tenders Rs. 85 on the counter and asks for the book. The bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the bookseller bound to sell the book to X?
(*Hint.* No, a display of goods with prices marked thereon is only an invitation for offer, and not an offer itself. Hence the bookseller is free to accept the offer or not).
3. B offered to sell his car to A for Rs. 2,95,000. A accepts to purchase it for Rs. 2,94,500. B refused to sell the car for Rs. 2,94,500. Subsequently A agrees to purchase the car for Rs. 2,95,000 but B refused to sell the car. A sues B for the specific performance of the contract. Will he succeed?
(*Hint.* No, B's offer comes to an end by the counter-offer of A, and there was no offer available for acceptance subsequently.)
4. P sold his business to Q without disclosing this to his customers. M, an old customer sent an order for goods to P by name. Q, the new owner, executed the order. Is M bound to accept the goods?
(*Hint.* No. M is not bound to accept the goods because a specific offer made to P can be accepted only by P and none else (*Boulton Vs. Jones*).
5. B offered to sell his house to A for Rs. 6,50,000. A accepted the offer by post. On the next day A sent a telegram revoking the acceptance which reached B before the letter. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of acceptance reach B at the same time?
(*Hint.* Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance and the telegram of revocation of acceptance reach B at the same time, the formation of contract will depend on the fact that which of the two is opened first by B. If B reads the telegram first, revocation is valid but if he reads the letter first, revocation is not possible).

CONSIDERATION AND CAPACITY

CHAPTER OUTLINE

CONSIDERATION

- **DEFINITION OF CONSIDERATION**
- **ELEMENTS OF CONSIDERATION**
- **LEGAL RULES OF CONSIDERATION**
- **NO CONSIDERATION NO CONTRACT**
- **STRANGER TO CONSIDERATION**
- **STRANGER TO CONTRACT**
- **DOCTRINE OF PRIVITY OF CONTRACT**

CONTRACTUAL CAPACITY

- **PERSON OF SOUND MIND**
- **MENTAL INCOMPETENTS**
 - **IDIOTS AND LUNATICS**
- **CONTRACT WITH INFANT OR MINOR**
- **LEGAL DISABILITY**

**(NATIONAL, POLITICAL, PROFESSIONAL,
CORPORATE, INSOLVENT AND IMPRISONMENT
STATUS)**

DEFINITION OF CONSIDERATION

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

Elements of Consideration : The analysis of this legal definition shows that following are the essential parts of the consideration : 1. The consideration is an act, or abstinence. 2. Such act, or abstinence should be done at the desire of the promisor. 3. Such act or abstinence may be done by the promisee or any other person. 4. Such act or abstinence is either already executed, or is in the process of execution or may be still executory.

Illustration : A agrees to sell his car to B for Rs. 2,40,000. In this case B's promise to pay the sum of Rs. 2,40,000 is the consideration for A's promise to sell the car. A's promise to sell the car is the consideration for B's promise to pay the sum of Rs. 2,40,000.

LEGAL RULES REGARDING CONSIDERATION

1. **Consideration is required both for formation and discharge of an agreement or contract** : According to Sec. 25 of the Indian Contract Act, 1872 "*An agreement without Consideration is void*". Hence the rule *No consideration, no contract* with few exceptions provided under Sec. 25 and Sec. 185 of the same Act.
2. **Consideration may be past, present or future** : The words "has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing" indicate that consideration may be past, present or future.
3. **Consideration may be either positive or negative** : According to Section 2(d) of the Indian Contract Act, the Consideration may be a promise to do something or to abstain from doing something. Thus, a consideration may be an act '*to do*' or '*not to do*' something, i.e., it may be positive or negative.

Consideration may be forbearance to sue : The term '*forbearance to sue*' means that the plaintiff has a right of action against the defendant or any other person, and on a promise by the defendant, the (plaintiff) refrains the bringing legal action. The forbearance to sue is regarded as a valid consideration.

4. **Consideration must move (i.e., must be done or promised to be done) at the desire of the promisor** : The act or abstinence must be done at the desire of the promisor and not at the desire of any other person. The desire of the promisor can be implied from the conduct of the parties. An act done without any request by the promisor is a voluntary act and does not come within the definition of consideration. But it is not necessary that what is done by the promisee by way of consideration should benefit the promisor. Any benefit conferred by promisee or any other person at the request of promisor is taken to be good consideration in terms of promise. In other words, an act shall not be a good consideration for a promise unless it is done at the desire of the promisor.
5. **Consideration may be furnished by the Promisee or any Other Person**: Consideration may move from the promisee or any other person. Indian Contract Act recognises consideration moving from a third party other than the promisee. Thus consideration

furnished by a third party will also be valid if it has been done at the desire of the promisor. Accordingly, even a stranger to the consideration can sue upon a contract, provided he is a party to the contract. This is called as the '*doctrine of constructive consideration*'. In other words, consideration may move from a stranger, but it must flow at the desire of the promisor. Consideration moving from a third party who is a minor is no consideration.

6. **Consideration must be lawful** : According Sec. 10 - "All agreements are contracts if they are made ... for a lawful consideration..."
Sec. 24 further provides "if any part of a single consideration for one or more objects, or any part of any one of the 'several considerations for a single object, is unlawful, the agreement is void'. Thus, where part of the consideration is unlawful the whole agreement is void unless the part which is unlawful can be separated from the one which is legal.
7. **Consideration must be real and not illusory** : Though consideration need not be adequate, yet it must have some value in the eyes of law i.e., it must be real. Real consideration is one which is not physically or legally impossible and it is not illusory or sham or uncertain.
8. **Consideration must be of some value in the eyes of law** : The word '*something*' in the definition indicated that whatever is moved, as consideration, should have some value in the eyes of law.
9. **Consideration need not be adequate** : An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.
10. **Consideration must not be the performance of existing duties** : The term '*existing duties*' includes legal obligations or contractual obligations. A person may be bound to do something by law. The consideration must be something more than that what the promisee is already bound to do by law. The performance of legal duty is not consideration for promise.

Illustration : A's wife was caught in fire in a burning building. A offered reward to anyone who would rescue his wife, dead or alive. B, a fireman, at a great risk to his life and health, rescued A's wife. He was allowed to receive the amount of reward because the court found that as a fireman of the city, he was not legally bound to risk his life in this rescue operation.

Forbearance to sue is a kind of abstinence and has always been considered as valuable consideration. The *compromise of disputed claim*, doubtful rights, pending suit have been regarded as sufficient consideration. *Part-Payment* by a third party may be a good consideration for the discharge of the whole of the debt. Compromise of a pending suit is a good consideration provided the dispute is bona fide. Thus where, *payment of a lesser sum* is a good satisfaction for a larger sum where this is done in pursuance of an agreement of compromise entered into by the debtor with his creditors. Payment of a lesser sum before time, or in a different mode, or at a different place than appointed in the original contract or "the gift of a horse, hawk or robe etc., in satisfaction is good".

RULES REGARDING CONSIDERATION

1. Consideration is required both for formation and discharge of a contract.
2. Consideration must move at the desire of the promisor.
3. Consideration may move from the promisee or any other person. i.e., a stranger to consideration may maintain a suit.
4. Consideration may be past, present or future.
5. Consideration need not be adequate.
6. Consideration must be real and not illusory.
7. Consideration must be lawful.
8. Discharging of a pre-existing obligation is not consideration.
9. Consideration may be either positive or negative.
10. A stranger to the contract cannot maintain a suit.

NO CONSIDERATION, NO CONTRACT

The general rule is that *an agreement made without consideration is void* (Section 25). However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreements, though made without consideration, are taken to be valid and enforceable.

Exceptions to the Rule *No Consideration No Contract*

(A) **Natural Love and Affection** : An agreement made in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other [Sec. 25)].

An agreement without consideration is valid under Section 25(1) only if the following requirements are complied with : (i) The agreement is made in a *written* document, (ii) The document is *registered* according to the law relating to registration in force at the time, (iii) The agreement is made on account of *natural love and affection*. (iv) The parties to the agreement stand in *near relation to each other*.

Venkataswamy Vs. Rangaswamy (1903) : An elder brother V on account of natural love and affection, promised to pay the debts of his younger brother, R. The agreement was put in writing and was registered. But V did not repay the debt. The brother R repaid the debt out of his own and then sued the former for recovery of the money. Held, the younger brother has the right to do so because the agreement was valid, under Section 25(1).

Rajlukhee Debee Vs. Bhootnath (1900) : The defendant, a Hindu husband, after referring to quarrels and disagreements between him and his wife, executed a registered document in favour of his wife agreeing to pay for her maintenance, but no consideration moved from his wife. Held the agreement was void for want consideration. It was not made out of natural love and affection. Therefore, it was not a valid contract.

(B) **Compensation for past voluntary service** : An agreement made without consideration is also valid and enforceable if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was