

Chapter - 10

Contract: Legal provisions

Definition of contract, according to section 10 of Indian contract act, was explained in previous chapter, along with its characteristics. In this chapter, legal provisions regarding contract are explained, in detail.

1. Legal Provisions Related with Proposal

The major provisions related to the proposal are as follows:

1. There must be two parties for a proposal.
2. Proposal can be positive or negative
3. It must be express and implied. It must be specific or general.
4. Proposal is done with intention to create a legal relationship.
5. The conditions of a proposal must be certain.
6. Offer is only considered as communicated only when the proposed person knows about the proposal. An offer is effective and complete only when it is communicated to the person to whom it is made. Naturally the offer can be accepted only when the offeree knows about it and offer accepted without the knowledge of the offeree does not give any legal rights against the offer. Offer can be written, oral, symbolic, face to face, telephonic, through radio, TV, newspaper or handbills. Even offer can be made through the medium of birds and animals but Judiciary does not consider the tape recorded offers as legal. Offer must not contain any such statement, so that other party is bounded to give the acceptance of the offer.
7. The desire to offer cannot be considered as an

offer, so the auction advertisement shows a desire to offer. Invitation to proposal is not considered as proposal. The catalog, price list, hotel menu card, reply of an enquiry, prospectus of a company, time table of railway, advertisement for insurance, application for vacant posts etc. are example to invitation of offer, not an offer.

2. Legal provisions related with acceptance

Following are the legal provisions related to acceptance:

1. Acceptance must absolute and unconditional.
2. It must be in prescribed manner. If the proposal prescribes some mode of acceptance, it must be accepted in that particular manner. If the proposal does not prescribe any mode of acceptance, it must be accepted in usual and reasonable manner.
3. It may be express or implied by conduct.
4. Acceptance must be given within the prescribed time or within a reasonable time. Acceptance given after prescribed or reasonable time, does not create any contract.
5. It must be communicated to the offeree. An acceptance is incomplete and ineffective when it is not communicated to the offeree. In order to constitute a contract, there must be an acceptance of an offer and there can be no acceptance, unless there is knowledge of the offer. (Lalman Shukla v/s Gauri Dutt)
6. Acceptance must be given by the party to whom the offer is made. If it is accepted by any other person except offeree, it will not be

treated as a legal contract. A general offer may be accepted by general public.

7. Proposer can set a mode of acceptance but acceptance cannot be presumed from silence. In some exceptional cases, it can be presumed from silence and legal bindings are created.
8. Acceptance must be communicated by competent or authorized person. If it is given by any unauthorized person, it will not create any legal binding.
9. Acceptance must be given in usual and reasonable manner, if mode of communication is not otherwise prescribed. Postal acceptance is valid, only if acceptance letter is properly addressed. In case of telephonic communication, the contract is concluded as soon as the offerer receives or hear the acceptance.
10. Acceptance cannot be given before communication of offer. It must be made before the offer lapses or is withdrawn.

3. Legal provisions related with contractual capacity

According to Section 11 of the contract act, every person is competent to contract, who is of 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.

Persons disqualified from contracting: Minor, Persons of unsound mind and Persons disqualified by statute of his own country.

1. Provisions related to minor

1. An agreement with a minor is void ab initio (from the very beginning). It is an established rule in India that an agreement with a minor is void ab initio i.e. this is based on the decision

made in the case of *Mori BeeBee V/S Dhurmodas Ghose* by Privy Council.

2. Liability for necessities: A minor is incompetent to contract i.e. he is not personally liable for the payment of necessities of life, which are supplied to him or his legal dependents. His property, if any, is liable. Necessities include food, clothes, shelter, house rent, medical expenses etc.
3. A minor cannot become a partner in a partnership firm. However, with the consent of all partners, he can be admitted to the benefits of partnership.
4. A minor cannot be adjudged insolvent.
5. A minor can act as an agent and only his principal is liable for his acts but he will not be personally liable for his acts.
6. Contracts by guardian, for the benefit of minor, are enforceable by law.
7. Under an agreement, if a minor, receives benefits from the other party, the court may order the minor to restore the benefits, at the time of rescission of the agreement.
8. Minor can be a beneficiary. Minor is allowed to enforce the agreement to realize his benefit and nothing is admitted by Court to create his personal liability.
9. A minor is not bound by the rule of estoppel. Minor can always plead his minority. Even if he has falsely represented to be a major and induced the other party to contract, can later deny the stand.
10. A minor is liable for a tort i.e. civil wrong committed by him.
11. The parents of a minor are not liable for agreement made by their minor ward.
12. If a minor enters into a marriage agreement at

minority age, then that marriage agreement is void.

13. Ratification on attaining majority is not allowed.
14. Minor is not competent to contract, he cannot become a member of a joint stock company.
15. A minor may become a member of the registered trade union and may enjoy all rights of a member and execute all instruments however keeping the provisions of the contract act in mind he will not be personally liable for his acts.
16. Documents jointly executed by minor and major person shall be void in relation to minor.

2. Provisions related with person of unsound mind

Section 12 of the contract act lays down that “A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, (i) he is capable of understanding it and (ii) he is capable of forming a rational judgement as to its effect upon his interests.” Generally idiot, lunatic, drunken, hypnotized person and mentally decayed person are treated as unsound mind person. Where a person is usually of unsound mind, the burden of proving that at the time of execution of a document, he was of sound mind lies on the person who affirms it. Lunatics and idiots cannot make a valid contract. They cannot be held personally responsible. Their property is liable for necessities supplied to them.

3. Provisions related to person disqualified by law

In addition to minors and persons of unsound mind, there are other persons who are disqualified by law

from contracting; because of their political position, profession or legal status; either wholly or partially, so that the agreements made by such persons are void. These are: Alien enemy, foreign sovereigns and diplomatic representatives, President of India, Governor of states and their agents, Incorporated bodies, Public authorities, Convicts and insolvents.

4. Legal provisions related with free consent

Section 13 of Contract act defines “Consent” as “Two or more persons are said to be consent when they agree upon the same thing in the same sense.” For a legal contract, consent is necessary. “No Consent, No Contract”.

Free consent is the real consent which is required to make a valid contract. According to section 14 of the contract act, “Consent is said to be free when it is not caused by 1. Coercion 2. Undue influence 3. Fraud 4. Misrepresentation and 5. Mistake.”

For example: Jai threatens to kill Vijay if he does not agree to sell his car to Jai for Rs. 25,000. Fearing death, Vijay enters into an agreement with Jai for the sale of his Car for Rs. 25,000 only. This agreement is voidable at the option of Vijay.

A. Provisions related to Coercion

1. section 15 of the Indian contract act defines “coercion” is the committing or threatening to commit, any act forbidden by the Indian penal code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”
2. The coercion must be the committing of any act forbidden by the Indian Penal Code, like killing or beating another person, entering into freedom of another person etc.
3. The coercion must be the threatening to

commit any act forbidden by the Indian Penal Code.

4. The coercion must be the unlawful detaining or threatening to detain any property.
5. The acts of coercion must be done with the intention of causing the other party to enter into a contract.
6. The Indian Penal Code may or may not be in force where the coercion is committed.
7. The acts of coercion may be initiated by any person: even by a stranger. Similarly, it may be directed against any person including a stranger.
8. The coercion may be by way of threat to commit suicide.
9. Threatening of strike to employer, by employees, for their legal demands, is not considered as coercion.

B. Provisions related to Undue influence

According to section 16 of Indian Contract Act, A contract is said to be induced by undue influence'where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. These following types of relations can use undue influence (i) Solicitor and client. (ii) Doctor and patient. (iii) Spiritual adviser and devotee. (iv) Parents and child. (v) Guardian and ward. (vi) Trustee and beneficiary.

C. Provisions related to Fraud

According to Section 17 of the Indian Contract Act - Fraud simply means intentional or willful misrepresentation of fact. When a wrong representation is made by a party, with the intention to deceive the other party or to cause him to enter into a contract, it is said to be a fraud.

Any of the following act will be considered as fraud:

1. A representation or assertion of a fact which is not true
2. To deceive another person
3. To perform any act which is declared as deceiving activity by law.
4. Sometimes silences is also considered as fraud.
5. Active concealment of fact by one having knowledge.

D. Provisions related to Misrepresentation

According to Section 18 of The Indian Contract Act, 1872 - Misrepresentation means a false representation which is made innocently. A representation means a statement of facts made by one party to the other with a view to induce the other party to enter into the contract. The representation must relate to some fact, which is material to the contract.

E. Provisions related to Mistake

According to section 20 of Indian contract act, Mistake is a misconception or misunderstanding or erroneous belief about something. When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake. For example: A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

5 Legal provisions related with consideration

The term consideration is generally used in the sense of quid pro quo i.e. something in return. It is

the price that one party to contract pays for the promise or performance of the other party.

For eg. Sudha offers Madhuri to sell her car for rs. 90,000 and Madhuri accepts. Sudha's consideration is rs. 90,000 and Madhuri's consideration is car.

According to Blackstone: "Consideration is the recompense given by the prty contracting to the other."

As per section 2(d) of Indian contract Act, "When at the desire of the promisor, the promise or any other person has done or obtained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

Essentials of valid consideration in Indian Contract Act are as follows:

1. Consideration must move at the desire of the promisor. Acts done or services rendered voluntarily, or at the desire of third party, will not
2. The consideration need not benefit the promisor himself.
3. Consideration may be given by the promise or any other person.
4. Consideration may be positive or negative. An act of promise at the desire of the promisor is positive consideration and if not, then it is negative consideration.
5. Consideration may be past, present or future.
6. Contract without consideration is void. The consideration need not to be adequate.
7. Consideration must be real and competent. If the consideration is misleading, deceptive, impossible and illusive then it cannot be considered as a real and competent

consideration.

8. Consideration must be lawful. Unlawful consideration renders the agreement void.
9. Consideration must be possible and certain.
10. According to section 25 of Indian Contract Act, "An agreement without consideration is void." Following are the exceptional cases, under which agreement is valid and enforceable even without consideration:
 - a. When a written and registered agreement is made on account of natural love and affection by the parties standing in near relation.
 - b. When an agreement is to compensate past voluntary services
 - c. When an agreement is for payment of a time barred debt
 - d. Gifts actually given and taken
 - e. Promise to charities where liability has been created by the donee on the hope of it
 - f. Gratuitous bailment
 - g. Agency, since no consideration is necessary to create an agency.

1. Legal provisions related with legality of objective and consideration –

Both the objective and consideration of valid contract should be valid. If anyone is unlawful or illegal, then it becomes void. According to the Indian Contract Act, in following circumstances, agreement becomes unlawful:

1. If it is forbidden by law
2. If permitted, it would defeat the provisions of any law.
3. If it is fraudulent
4. If it involves injury to another person, property or country
5. If the court regards it as immoral
6. If the court regards it as opposed to public

policy. An agreement harmful to the social, political, economic and other interest and welfare of the public is said to be against public policy.

7. Legal Provisions related with Void Agreement

An agreement which is not enforceable by Law of court is a void agreement. A void agreement does not create any legal rights and obligations. Such a party will not be able to compel the other party to obey his promise. Following are the agreements which have been expressly declared as void under the Act:

- (a) Agreements by persons who are not competent to contract e.g. minors, persons of unsound mind and persons disqualified by law of the land.
- (b) Agreements under a mutual (bilateral) mistake of fact material to the agreement.
- (c) Agreements under the mistake of foreign laws.
- (d) Agreements with unlawful consideration or object.
- (e) Agreements in restraint of marriage of any person other than a minor, is void. The law regards the marriage as the right of every person, so person has the freedom to marry.
- (f) Agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The Constitution of India guarantees the citizens of this country the fundamental right to freedom to exercise any profession, trade or business.
- (g) Agreements in restraint of legal proceedings are void.
- (h) Agreements, the meaning of which is not certain or capable of being made certain, are void. The courts will not enforce a vague or

uncertain agreements. For example- Ram agreed to sell his Horse to Shyam for Rs. 5000 or Rs.10000. The agreement is void as there is no certainty about the price.

8. Legal Provisions related with Contingent Contracts

A contingent contract is a contract which is dependent on the happening or non- happening of some event. The performance of contingent contract becomes due only upon the happening or non happening of some future uncertain event. It is a conditional contract. For example If Ram contracts to pay Rs. 1Lakh to Ramesh if his (Ramesh's) house is burnt. This is a contingent contract as its performance is dependent upon an uncertain event (i.e. burning of Ramesh's house). Following are the main provisions of contingent contract:

- a. The performance of a contingent contract depends upon the happening or non- happening of some future events.
- b. The event upon which performance of a contingent contract depends must be collateral or incidental to the contract, not a part of consideration of the contract.
- c. A contingent contract must have all essential elements of a valid contract.
- d. Contract of Indemnity, Guarantee and Insurance are also a contingent contract. Wagering agreements are basically contingent agreements but keeping the public interest in mind, it has been declared a void in the Act.

9. Wagering Agreements

The nature of the Wagering agreements is such that there is a gain or win of a party of the

agreement and the loss or defeat of the other party. So these agreements treated as void. For example if Ram agree with Shyam that if it rains today he will pay Rs. 10000. If there is no rain Shyam will pay Ram Rs. 10000. The agreement is a wagering agreement and void. Keep in mind that there are some agreements which look wegering by nature, but it is not really so that such agreements have been considered valid agreements. Agreements of Horse race, Chit fund schemes, Contract of insurance, commercial transactions, Crossword or literary competitions are not considered as wegering agreements so these all are valid agreements.

10. Agreement contingent on impossible event

is also void. For example if Kamal agree to pay Rs. 5000 to Deepak if Deepak will marry with Reeta. Reeta was dead at the time of the agreement. The agreement is void.

11. These agreements are void which are impossible to do at the time of agreement. For example if Pandit Gyaneshwar agree with a King to discover treasure by magic. The agreement is void.

12. Legal provisions related with performance of Contract

When the parties of contract perform their respective obligations, the object is fulfilled and the liability of the parties comes to an end, it is called performance of a contract. In case of death of promisor before performance, his representatives are bound to prform the promise unless a contrary intention appears from the contract and contract not depends on personal skill or ability.

Contract may be performed in either of the two ways: (i) Actual Performance - Actual performance

take place when both the parties to a contract perform their respective promises and nothing remains to be performed in future by them. (ii) Offer or Tender of performance- When a party offers performance of his obligation to the other party, it is called a tender of performance.

The performance of a contract is not required in case of (1) When performance becomes impossible, (2) When a contract is rescinded, (3) When agreement becomes unlawful.

13. Legal provisions related with end of Contract

When the parties fulfil their respective obligations, their liability under the contract, comes to an end and the contract is said to be discharged. Parties are no more liable under the contract. In other words, a contract is said to be discharged when both the parties either perform or extinguish their respective obligations under the contract and contractual relations comes to an end. Following are the various moes in which a contract may be discharged:

- (i) By performance
- (ii) By Mutual agreement or consent
- (iii) By lapse of time
- (iv) By Operation of law i.e. Death of Party, Insolvent of party, Material alteration ect.
- (v) By breach of contract
- (vi) By Impossibility of performance

14. Legal provisions related with Breach of Contract

If a party refuses to perform his respective obligations, the breach of contract takes place. And the other party (i.e. the aggrieved or injured party) is not liable to perform his obligations and he has right to rescind the contract. For example, If A

agreed to sell 10000 bags of cement at the rate of Rs.230 per bag. On certain date A does not deliver the cement bags. B is entitled to rescind the contract. An injured or aggrieved party has one or more of the following remedies:

- (i) Suit for rescission of the contract
- (ii) Suit for damages
- (iii) Suit for quantum meruit
- (iv) Suit for specific performance
- (v) Suit for injunction

15. Legal provisions related with Quasi Contract

Contract is the result of an agreement enforceable by law. But in some case there is no offer, no acceptance, no consensus, no intention on the part of parties to enter into a contract and still the law, from the conduct and relationship of the parties, implies a promise imposing obligation on the one party and conferring a right in favour of the other. Such obligations imposed by law are referred to as 'Quasi-Contracts' or 'Constructive Contracts'. A Quasi contract is not a real contract it imposed by law on the ground of principle of equity. It is not created by any agreement. A quasi contract does not possess all the essentials of a valid contract, but person liable for breach will held liable in the same way as in case of breach of an ordinary contract.

Kinds of Quasi Contracts

Following are the Quasi Contract contained in Section 68 to 72 of the Indian Contract Act:

1. Supply of necessities to persons incompetent to contract. For example if Vimal supplied to Rekha, a lunatic, the necessities suitable to his condition in life. In this case, Vimal is entitled to be reimbursed from Rekha's property.
2. If a person makes the payment which is the legal

duty of another person. In such cases, the person who made the payment can recover such money from the person who is legally bound to pay. For example if Ram agreed to purchase certain mills from Shyam. Certain municipal taxes were due on the mills. In order to save the mills from being sold in execution of the decree, Ram paid the due municipal taxes. It was held that Ram was entitled to recover the amount of municipal tax from Shyam. In this case by agreeing to purchase the mills, Ram had acquired sufficient interest in the mills.

3. Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefits thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered. For example Jai a tradesman, left certain goods at Vijay's shop by mistake. Vijay treated the goods as his own and used them. In this case, Vijay is bound to pay for the goods to Jai.

4. If a person finds certain goods, belonging to some other person, In such cases, the goods do not become the property of the finder.

5. If a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

SPECIAL CONTRACTS:

1. Legal provisions related with Contract of Indemnity

According to section 124 of Indian contract act- A contract of indemnity is a contract in which one person promises to protect or compensate the other for the loss suffered by him due to the conduct of the promisor or any other person. For example Ram

parked his scooter at the college scooter stand. He lost his token given by the scooter stand contractor. The scooter stand contractor refuses to return the scooter to Ram unless he (Ram) gives him an indemnity bond against any loss which he may suffer if any other person claims the scooter from the contractor.

The party who promises to save other from loss is known as 'indemnifier'. The party who is promised to be saved or protected against loss is known as the indemnity-holder or indemnified. In this contract the indemnity-holder is entitled to recover all damages, all costs which he had paid, from the indemnifier.

2. Legal provisions related with Contract of Guarantee

Today the construction of buildings, business establishments, jobs, cars, scooters and vehicles, loans given by financial institutions, are conducted as guarantee contracts. So, guarantee contracts not only a necessity but it is essential at present. According to section 126 of Indian contract act- A contract of Guarantee is a contract in which a person promises to discharge the liability of a third person in case the third person fails to discharge his own liability.

The party who gives the guarantee is known as surety. The party on whose behalf the guarantee is given is known as a principal debtor and the party to whom the guarantee is given is known as creditor.

Example: Ram advanced a loan of Rs. 5000 to Shyam at the request of Sita. And Sita promised to Ram that if Shyam does not repay the amount then she (Sita) will pay. This is a contract of guarantee. In this case Ram is the creditor, Shyam is the principal debtor and Sita is the surety.

Contract of Guarantee generally fulfill three objectives- (i) for payment of debt or loan, (ii) for payment of the price of the goods to be sold on credit, and (iii) honesty or good conduct of a person employed.

Main features of Guarantee Contract:

1. Guarantee is given by the surety at the request of the principal debtor.
2. The surety has secondary liability. Surety becomes liable only when the principal debtor fails to perform his promise.
3. All the material facts which are likely to affect the degree of surety's responsibility and his decision for giving guarantee must be disclosed to the surety before he enters into the contract.
4. The contract of guarantee may be either oral or in writing. Generally bank related guarantee should be in written.
5. The liability of the surety is co-extensive with that of the principal debtor. It means that the surety will be liable to the same extent as the principal debtor is towards the creditor.
6. In some cases if original contract is void or voidable but surety is held liable.
7. Death of surety operates as a revocation of a continuing guarantee as regards future transaction, but remain liable for the transactions already taken place.
8. Any variance made without the surety's consent, in the terms of the contract between the principal-debtor and the creditor, discharges the surety as to transactions subsequent to the variance.
9. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
10. Any guarantee which the creditor has obtained

by means of keeping silence as to material facts of circumstances, is invalid.

11. Upon payment of debt or discharge of the liability of the principal debtor, the surety becomes entitled to all the rights which the creditor could have enforced against the principal debtor.

3. Legal provisions related with bailment

A bailment is the delivery of goods by one person to another for a definite purpose and upon the agreement that they shall be returned or disposed, according to the directions of the deliverer when the purpose is accomplished. The person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee. Examples of bailment include: giving car or scooter for repairing, delivery of clothes to laundryman for washing, parking a cycle, scooter or car at parking stand, taking material from tent house, hiring cab or taxi for travelling, getting books from library etc.

Explanation by example: Rakesh gives his books of chemistry and physics for a month to Suresh, for the preparation of the examination of the PMT. there is a bailment contract. Rakesh, who is delivering books, will be considered as bailor and Suresh will be considered as bailee.

Key points related to the bailment contracts:

1. Movable property is essential for the bailment.
2. Delivery of the goods is only for temporary purpose.
3. The bailment is done for a particular purpose.
4. Even after the change in the nature of the goods, delivery of goods can be done to bailor. Like getting gold ornaments in exchange of gold etc.
5. Money deposited in a bank account is not a bailment because bank does not guarantee to return

the same currency notes to the depositor. If a person keeps his valuable items, jewellery, bonds etc. in bank lockers and vaults, then it is a bailment contract.

6. If the bailment contract is damaged or destroyed due to accidental events such as earthquake, rains, storms, foreign invasion, then in such cases, there is no obligation of bailee.

7. There are two types of bailment:

- a. Gratuitous bailment – Where no consideration is passed or remuneration passes between the bailor and the bailee
- b. Non- Gratuitous bailment – Where at least consideration is passed or remuneration passes between the bailor and the bailee

8. Duties of a bailor include:

- a. Deliver the goods to bailee
- b. To disclose faults in the goods
- c. To pay remuneration or charges to bailee
- d. To receive back the goods or to give direction for its disposal.

9. Duties of a bailee include:

- a. To take care of the goods bailed.
- b. To indemnify in case of negligence
- c. Not to do any act inconsistent with the conditions
- d. Not to mix the goods with this own goods.
- e. To return the goods
- f. To pay compensation, in case of failure in returning goods.

10. Finder of the goods is a person who finds goods of another and takes them into his possession. He is subject to the same responsibility as the bailee.

11. The finder of the goods may retain the goods till the owner is found out and the finder get the reward and expenses incurred are repaid. When the

owner could not be found, finder may sell the goods.

4. Legal provisions regarding contracts of pledge

Pledge is a special kind of bailment. As per Indian contract Act, the bailment of goods as security for payment of a debt or performance of a promise is called pledge. The person pledging the goods as security for payment of a debt or performance of a promise is called as pledger and the person receiving the goods as security for payment of a debt or performance is called the pledge. Thus, a pledge is the delivery of goods by the pledger to the pledgee by way of security upon a contract that when the debt is discharged or promise is performed.

Essential conditions of pledge:

1. Only existing goods can be pledged. Pledged units must be divisible.
2. Rights of pledgee:
 - a. Right to retain the pledged good.
 - b. Right to receive extraordinary expenses
 - c. To sell the goods after giving reasonable notice
 - d. To sue against the pledgor
3. Duties of pledgee:
 - a. To take care of the goods pledged.
 - b. Not to use the goods pledged, personally.
 - c. To return the goods after payment of debt or performance of promise, along with necessary expenses.
 - d. To act according to the conditions of pledge.
4. Rights of pledgor:
 - a. A pledger has the right to get back the goods pledged, by the debt or performing the promise.

- b. Pledger may claim damages for any loss caused to the goods pledged.
 - c. Pledgor has the right to sell the goods, if the debt is not paid on time.
5. Duties of pledgor:
 - a. To disclose the defects in the goods pledged.
 - b. To pay the debt, interest and other expenses at the specified time.
 - c. To perform the promise and make payment to redeem the goods before sale.
6. In general legal principle, only the owner of goods can pledge his goods. In case of co-ownership of goods, any one of the co-owners can make a valid pledge of the goods, with the consent of other co-owners. But a non-owner of goods generally cannot pledge the goods. However, in exceptional cases, non-owner can also pledge the goods, like trade agent, person having limited interest in goods, etc.

5. Legal provisions related with agency

The term agency has not been defined in the Indian Contract Act. But the provisions relating to principal and agent are defined in sections 182 - 238. Thus, an agency is the relation between an agent and his principal.

According to a judicial decision – Agency is that, where an agent is authorized by his principal to represent him and establish contractual relations with third parties.

Essential elements for agency: An agency is created by an agreement between agent and principal, not necessarily by contract. So, a minor can become an agent. The principal must be competent to contract. No valuable consideration is necessary for agency contract. The person for whom an agent works as representative, is known

as principal, owner or employer.

Who can appoint an agent:

- a. Major persons
- b. Persons of sound mind
- c. Person who is competent to act for himself
- d. Appointed by any corporation or company
- e. Natural guardian or any guardian appointed by court.

Who can become an agent:

Any person whether or not, he is competent to enter into contract, may be appointed as an agent. So, a minor or a person of unsound mind may be appointed as an agent because only agreement is sufficient for establishment of agency. Contract is not compulsory, but to appoint a minor or person of unsound mind, as an agent is risky.

Difference between agent and servant:

- a. An agent has the authority to create contractual relationship between the principal and the third party whereas a servant has no such authority.
- b. An agent is paid commission or fees on the basis of work done whereas a servant is paid by the way of salary or wages.
- c. An agent may work for a number of principals at the same time but a servant usually serves under one master / employer.
- d. An agent cannot be a servant at the same time but a servant can become an agent, along with servant.

Difference between agent and contractor:

- a. An agent acts under the supervision or control of his principal whereas a contractor is liable to work according to his contract.
- b. Contractor may become agent in specific conditions but an agent cannot become a

contractor.

Creation or establishment of agency:

- a. Agency by express agreement when authority is conferred on an agent either by written or spoken words.
- b. Implied agency may be inferred from the conduct or relation of the parties.
- c. Sometimes a principal, by his conduct or words creates an impression that a certain person is his authorized agent. Such an agency is agency by estoppel.
- d. Agency by necessity comes into existence when certain circumstances compel a person to act as an agent for another without his express authority.
- e. Agency by ratification arises when some act is done by a person on behalf of another without his authority and the act is affirmed or ratified by the other i.e. purported principal.

Rights of an agent:

- a. Right to receive remuneration
- b. Right to claim compensation in case of injury due to principal's neglect.
- c. Right to be indemnified against the consequences of lawful acts within his authority.
- d. To perform necessarily in crisis.
- e. To become free from agreement after giving appropriate notice.
- f. To act according to business's usual manner.
- g. To appoint sub-agent and substituted agent.

Rights of Principal with agent:

- a. To direct the agent for the conduct of his business.

- b. To claim the benefits from a transaction without his consent or knowledge.
- c. To accept or reject the misconducts of agent.
- d. To increase, decrease or terminate the rights of agent.
- e. To refuse the payment of agent in case of misconduct.
- f. To demand proper accounts of the business of agency.
- g. To claim compensation for loss or damages caused by agent's neglect or misconduct.

Note: Rights of agent will be duties of principal and duties of agent will be rights of principal.

Agreement:

Every promise and every set of promise, forming consideration for each other, is an agreement.

A proposal, when accepted, becomes promise. An agreement is created by exchange of promises by the parties. So it can be stated that offer is an essential element of an agreement. Certain and enforceable agreement must be there among parties. For example: Ram proposes to purchase Shyam's bike for Rs. 20,000 and Shyam accepts this offer; then there is an agreement between both of them. Ram is promising to pay Rs. 20,000 and Shyam is promising to sell his bike. Both the promises are in consideration of each other.

Offer:

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 an offer.

Any offer represents the desire of one party to do or not to do any work, in front of another party.

Example: Ramesh tell Sunil that "I want to buy your shop for Rs. 5,00,000. Will you sell it?" This offer is made by Ramesh to Sunil with the intention that Sunil accepts the offer.

Acceptance:

When the person to whom, the proposal is made, signifies his assent thereto, the proposal is said to be accepted. Acceptance must be given in a usual (implied, written, oral or symbolic) manner unless some other special manner is given in the offer. Acceptance to any offer can only be 'yes' or positive. It cannot be given as 'no' or negative.

Example: In the above example, if Sunil says yes to Ramesh, then this will be acceptance to sell the shop for Rs. 5,00,000.

All contracts are agreements but all agreements are not contract.

According to Indian Contract Act 1872, there is clear distinction between nature, definition and explanation of agreement and contract. Above statement can be divided into two parts:

1. *All contracts are agreements.*
2. *All agreements are not contract.*
1. *All contracts are agreements – With a view to test the veracity of this statement, it is required to understand the definition of contract as well as agreement. Agreement is defined as "every promise and every set of promises forming consideration for each other, is an agreement."*

Contract is defined as "Contract is an agreement enforceable by law." Thus, the term contract includes agreement and its enforceability. Agreement which is not enforceable always remains agreement only and never becomes contract. A contract must include all the legal provisions which are stated in chapter-9. Every

contract possesses, all of the characteristics of agreement. Therefore, every contract is necessarily an agreement.

2. All agreements are not contract – Promise between parties is necessary for an agreement, but not its enforceability. Therefore, every agreement is not a contract. With mutual consent of parties, agreement may be enforceable but when enforced, it converts into contract and does not remain agreement.

So it can be said that all contracts are agreements but all agreements are not contracts.

By above definition it is clear that, only following persons / parties can enter into contract:

1. Major person
2. Person of sound mind
3. Person not disqualified by law, from contracting, by any law to which he is subject.

Following persons / parties cannot enter into contract:

1. Minor person
2. Person of unsound mind
3. Person disqualified by law, from contracting, by any law to which he is subject.

Case Name – MOHIRI BIBEE VS DHARMODAS GHOSH

In this case, a minor (Dharmodas Ghosh) mortgaged his house for Rs. 20,000 and received Rs. 10,000 from the mortgagee. Subsequently, the mortgageor sued for setting aside the mortgage on the ground of his minority at the time of execution of mortgage deed. . The Privy council held that according to section 11, a minor is incompetent to contract and therefore, minor's agreement was absolutely void, not merely voidable. Hence, mortgage was cancelled. Moreover, the mortgagee's request for refund of Rs. 10,500

(which he had advanced to the minor) was also turned down on the ground that minor's agreement was void from beginning and not void subsequently and therefore, mortgagee has no right of restitution under section 65.

EXERCISE

Very Short Answer Type

1. What is the difference between contract and Quasi contract?
2. Define Consideration.
3. Define Misrepresentation.
4. Define Coercion.
5. Is insurance contract is a Wagering agreement?
6. What do you mean by Quasi contract?
7. What is the guarantee contract?
8. Who can become an agent?
9. Who is the Bailor?
10. Who the Pawnor?
11. Define Void agreement.
12. Is threatening to suicide is Coercion?
13. How many parties are in the contract of Indemnity?
14. Is the ornaments deposits in the bank locker are bailment Contract?
15. What is the difference between agent and servant?

Short Answer Type

1. Describe the difference between the proposal and the intention to proposal.
2. What is the meaning of capacity to contract?
3. Explain the meaning of Fraud with example.
4. Write comment on contingent contract.

5. What are the significance of the Quasi contract?
6. Describe different types of Bailments.
7. Explain the essential elements of the contract of pledge.
8. What is the agency by necessity?"
9. "No consideration, no contract". Explain.
10. In what conditions the guarantee will be invalid?

Essay type

1. Explain the legal provisions regarding offer and acceptance?
2. What is the meaning of free consent? Explain its importance for the contract?
3. Explain the void agreements declared by the Indian Contract Act?
4. What are the special rights of a minor under the Indian Contract Act?
5. What is the bailment? Mention the duties of the bailor and the bailee?
6. What is the agency? Explain the rights and duties of an agent?