

D.N.R.COLLEGE, (AUTONOMOUS): BHIMAVARAM
DEPARTMENT OF MANAGEMENT STUDIES



CORPORATE LEGAL FRAMEWORK
III SEMESTER

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CP - 303, CORPORATE LEGAL FRAMEWORK MBA III SEMESTER eNOTES

UNIT-- I: Significance of Business Laws—Indian Contract Act, 1872: Meaning and classification of contracts—Essential of a valid contract—Performance of a contract Discharge of contract—Remedies for breach of contract.

Introduction:

Commercial law or Business law is the body of law which governs business and commerce and is often considered to be a branch of civil law and deals both with issues of private law and public law. Commercial law regulates corporate contracts, hiring practices, and the manufacture and sales of consumer goods. Many countries have adopted civil codes which contain comprehensive statements of their commercial law. In the United States, commercial law is the province of both the Congress under its power to regulate interstate commerce, and the states under their police power. Efforts have been made to create a unified body of commercial law in the US: the most successful of these attempts has resulted in the general adoption of the Uniform Commercial Code.

Indian Contract Act 1872

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

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

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

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

The Indian Contract Act codifies the way we enter into a contract, execute a contract and implement provisions of a contract and effects of breach of a contract.

Contract:

A **Contract** is a voluntary arrangement between two or more parties that is enforceable by law as a binding legal agreement. Contract is a branch of the law of obligations in jurisdictions of the civil law tradition. Contract law concerns the rights and duties that arise from agreements.

Definitions:

“Every agreement and promise enforceable by law is a Contract.”

----Pollock

“A Contract is an agreement creating and defining obligations between the parties.”

----Salmond

Contract = Agreement + Enforceability by Law

ESSENTIALS OF A VALID CONTRACT

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

The analysis of the provisions of Section 10 shows that a valid contract must have the following essential elements:

1. Agreement (Proper Offer and Acceptance)

There must be at least two parties- one making the offer and the other accepting it. Such offer and acceptance must be valid. An offer to be valid must fulfil certain conditions, such as it must intend to create legal relations, its term, must be certain and unambiguous, it must be communicated to the person to whom it is made, etc. An acceptance to be valid must fulfil certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner, it must be communicated by an authorised person before the offer lapses.

2. Intention to Create Legal Relationship

There must be an intention among the parties to create a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Example: X invited Y to a dinner Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement. Similarly, if Y fails to attend the dinner, X cannot go to the courts of law for enforcing the agreement.

But even a business agreement may not be enforceable by law where the agreement so provides **e.g.** in *Rose & Frank Co. v. Crompton Bros. (1925) A.C. 445*, the agreement entered into stated that it will not be subject to legal jurisdiction in the law courts, the agreement was not enforceable by law as the parties never agreed to create legal obligations despite being a business agreement.

3. Lawful Consideration

An agreement must be supported by lawful consideration. Consideration means something in return. According to **Section 23** of the Indian Contract Act, 1872, “**the consideration is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy.**”

Example: X agrees to sell his car to Y for Rs. 1,00,000. Here Y’s promise to pay Rs. 1,00,000 is the consideration for X’s promise to sell the car and X’s promise to sell the car is the consideration for Y’s promise to pay 1,00,000.

4. Capacity to Contract

The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract. According to **Section 11** of Indian Contract Act, 1872. “every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”

In other words, the person must be major, must be of sound mind and must not be declared disqualified from contracting by any law to which he is subject. If the parties to agreement are not competent to contract, then no valid contract comes into existence.

Example: X a minor borrowed Rs 8,000 from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract. Therefore, the mortgage was not valid and the money advanced to minor could not be recovered.

5. Free Consent

There must be free consent of the parties to the contract. According to **Section 14**, “Consent is said to be free when it is not caused by (i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) mistake”. If the consent of the parties is not free, then no valid contract comes into existence.

Example: X threatens to kill Y if he does not sell his house to X. Y agrees to sell his house to X. In this case, Y’s consent has been obtained by coercion and therefore, it cannot be regarded as free.

6. Legality of Object

The object of an agreement must be lawful. According to **Section 23** of the Indian Contract Act, 1872, “the object is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy.”

Example 1: X, Y and Z enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void because its object is unlawful.

Example 2: X lets a flat on hire to Y a prostitute, knowing that it would be used for immoral purposes. The agreement is void because its object is for immoral purposes.

7. Writing and Registration

The agreement must comply with the necessary formalities as to writing, registration, stamping etc. if any required in order to make it enforceable by law.

Example: An oral agreement ‘for arbitration is unenforceable because the law requires that arbitration agreement must be in writing.

8. Certainty

The terms of the agreement must be certain and unambiguous. According to **Section 29** of the Indian Contract Act, 1872, “agreements the meaning of which is not certain or capable of being made certain are void.”

Example: X a dealer in different types of oils agreed to sell 100 tonnes of oil to Y. This agreement is void on the ground of uncertainty because it is not clear what kind of oil is intended to be sold. If, however, the meaning of the agreement could be made certain from the circumstances of the case, it will be treated as a valid contract.

Example: X who is a dealer in mustard oil, agreed to sell 100 tonnes of oil to Y. This agreement is valid because the meaning of the agreement could be easily ascertained from the circumstances of the case.

9. Possibility of Performance or Doctrine of Frustration

The terms of the agreement must be such as are capable of performance. According to **Section 56**, “an agreement to do an impossible act is void.”

Example: X agrees with Y to discover treasure by magic and Y agrees to pay Rs 1,000 to X. This agreement is void because it is an agreement to do an impossible act. Example II: X agrees with Y to enclose some area between two parallel lines and Y agrees to pay Rs 1,000 to X. This agreement is void because it is an agreement to do an impossible act.

10. Agreement not Declared Void or Lawful Agreement

The agreement must not have been expressly declared void under the provisions of **Sections 24 to 30** of the Indian Contract Act, 1872. Under these provisions, agreement in restraint of marriage, agreement in restraint of legal proceedings, agreement in restraint of trade and agreement by way of wager have been expressly declared void.

Example: X promised to marry none else except Y and in default pay her Rs 1,00,000. X married to Z and Y sued X for the recovery of Rs 1,00,000. It was held that Y was not entitled to recover anything because this agreement was in restraint of marriage and as such void.

CLASSIFICATION OF CONTRACTS

Contracts can be classified on the basis of different aspects, which are as follows:

1. On the Basis of Enforceability
2. On the Basis of Formation
3. On the Basis of Performance
4. On the Basis of Obligation

1. Contracts on the Basis of Enforceability:

a) Valid contract: A contract which satisfies all the conditions prescribed by law is a valid contract. **Section 2(h)** of the Indian Contract Act, 1872 defines a contract as an “agreement enforceable by law”. An agreement is a valid contract if it fulfils all the essential requirements of a contract under Section 10.

E.g. X offers to marry y. y accepts X offer. This is a valid contract.

b) Void Contract: The term void contract is described as under **Section 2(j)** of Indian Contract Act, 1872, “A contract which ceases to be enforceable by law” becomes void when it ceases to be enforceable. In other words, a void contract is a contract which is valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.

E.g. X offers to marry Y, Y accepts X offer. Later on, Y dies this contract was valid at the time of its formation but became void at the death of Y.

E.g. Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

c) Void Agreement: According to **Section 2(g)**, “an agreement not enforceable by law” is said to be void. Such agreements are void- ab- initio which means that they are unenforceable right from the time they are made.

E.g. An agreement with a minor or a person of unsound mind is void ab-initio because a minor or a person of unsound mind is incompetent to contract.

d) Voidable contract: According to **Section 2(i)** of the Indian contract act, 1872, “an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others, is a voidable contract”. In other words, A voidable contract is one which can be set aside or avoided at the option of the aggrieved party. Until the contract is set aside by the aggrieved party, it remains a valid contract. For **example**, a contract is treated as voidable at the option of the party whose consent has been obtained as a result of Undue influence or Fraud or Misinterpretation.

E.g. X threatens to kill Y, if he does not sell his house for Rs. 1 lakh to X. Y sells his house to X and receives payment. Here, Y consent has been obtained by coercion and hence this contract is voidable at the option of Y the aggrieved party. If Y decides to avoid the contract, he will have to return Rs. 1 lakh which he had received from X. If Y does not exercise his option to repudiate the contract within a reasonable time and in the meantime, Z purchases that house from X for 1 lakh in good faith. Y cannot repudiate the contract.

e) Illegal Contract: It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All Illegal agreements are void but all void agreements are not necessarily illegal. Contract to commit crime, contract that is immoral or opposed to public policy are Illegal in nature.

E.g. X agrees to pay Rs. 1 lakh. Y kills Z. Y kills and claims Rs. 1 lakh. Y cannot recover from X because the agreement between X and Y is illegal and also its object is unlawful.

f) Unenforceable contract: It is a contract which is actually valid but cannot be enforced because of some technical defect (such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed.

E.g. An insurance policy, without proper stamp duty, cannot be produced as evidence of a contract in the court.

2. Contracts on the Basis of Creation or Formation:

a. Express Contract: Express contract is one which is made by words spoken or written.

Example No. 1: X says to Y; will you buy a car for Rs. 100000? Y says to X, I am ready to buy your car for Rs. 100000. It is an express contract made orally.

Example No. 2: X writes a letter to Y, I offer to sell my car for Rs. 100000 to you. Y sends a letter to X, I am ready to buy your car for Rs. 100000. It is an express contract made in writing.

b. Implied Contract: An implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstance of the particular case. Implied contracts come into existence by implication.

Example: X, a coolie in uniform picks up the bag of Y to carry it from railway platform to the house without being used by Y to do so and Y allows it. In this case there is an implied offer by the coolie and an implied acceptance by the passenger. Now, there is an implied contract between the coolie and the passenger is bound to pay for the services of the coolie.

c. Quasi or Constructive Contract: A Quasi-Contract is created by law. The term Quasi-Contract literally means 'semi-contract'. Quasi-Contracts are strictly not contracts as there is no intention of parties to enter the contract. In such a contract rights and obligations arise not by any agreement between the parties but by operation of law.

Example 1: where certain books are delivered to a wrong address the addressee is under an obligation to either pay for them or return them.

Example 2: Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

c. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. This helps in doing business transactions using electronic mode. These are known as **EDI** (Electronic Data Interchange) contracts or Cyber contracts or mouse click contracts.

3. Contracts on the Basis of Execution or Performance:

1.Executed contract: It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract. A contract which has already been performed.

Example: X offer to sell his car to Y for Rs. 1 lakh, Y accepts X offer. X delivers the car to y and Y pays Rs. 1 lakh to X. it is an executed contract.

2.Executory contract: It is a contract where both the parties to the contract have still to perform their respective obligations. A contract which has to be performed in future.

Example: X offers to sell his car to y for Rs. 1 lakh. Y accepts X offer. It the car has not yet been delivered by X and the price has not yet been paid by Y, it is an Executory contract.

4. Contracts on the Basis of Obligation:

1.Unilateral Contract: Unilateral contract is a one-sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding. (**performance is due from one party.**)

Example: M advertises payment of reward of Rs. 5000 to anyone who finds his missing boy and brings him. As soon as B traces the boy, there comes into existence an executed contract because B has performed his share of obligation and it remains for M to pay the amount of reward to B. This type of Executory contract is also called unilateral contract.

2.Bilateral Contract: A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties (**performance is due from both parties**).

Example: A promises to sell his plot to B for Rs.1 lac cash down, but B pays only Rs. 25,000 as earnest money and promises to pay the balance on next Sunday. On the other hand, A gives the possession of plot to B and promises to execute a sale deed on the receipt of the whole amount. The contract between the A and B is executory because there remains something to be done on both sides.**Executory contracts are also known as Bilateral contracts.**

PERFORMANCE OF CONTRACT [Section 37]

The term '**Performance of Contract**' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them.

For **instance**, A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price. The contract is said to have been discharged by mutual performance.

Types of Performance of a Contract

A contract is said to be performed in the following situations:

1. Actual Performance:

When a party has done what he agreed to do and there is nothing left for him to do, he is said to have performed his obligation. The performance of the contract, in order to be discharged, must, however, be made in accordance with the contents of the contract. In simple words, the party has done what he had undertaken to do. He must have fulfilled his obligations under the contract.

Example: A agrees to deliver 10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

2. Offer to Perform or Tender:

If it occurs that the promisor has to perform his obligation under the contract but the promisee does not accept. This is called an attempted performance or tender. If the promisor has made an offer of performance but the offer has been refused by the offeree, then the promisor is not responsible for non-performance. An offer to perform one's obligations under a contract is known as tender.

The position of the promisor is that:

- 1.He is free from obligation as he has performed his part legally
- 2.He does not lose his rights under the contract
- 3.He is not guilty of non-performance and
- 4.The performance is a lawful one perfectly valid in the eyes of law.

Example:A, the debtor, tenders money due under a debt. The result of that tender is to stop the running of interest on the amount payable but the debt is not discharged.

Essentials of Offer to Performance or Tender of Performance

The Essentials of an offer to performance or tender of performance are:

1.Unconditional: It must be unconditional. Tender is said to be unconditional when it is made in accordance with the terms of the contract.

Example:X offers to deliver 100 bales of cotton to Y if Y sells his one machine to X. It is a conditional tender and hence invalid.

2.At proper Time:It must be at proper time, i.e., at the stipulated time (if there is an agreement as to time) or during business hours (if there is no agreement as to time). Tender of goods or money before the due date is also not a valid tender.

3.At Proper Place:It must be at proper place, i.e., at the stipulated place (if there is an agreement as to place) or at promisee's business hours (if there is business) or at promisee's residence (if there is no business place).

4.Reasonable Opportunity to Promisee:It must give a reasonable opportunity to the promisee of ascertaining that the goods offered are the same as the promisor is bound to deliver.

5.For Whole Obligation:It must be for the whole obligation and not for a part of the whole obligation. However, a minor deviation from the terms of the contract may not render the tender invalid.

Example: Delivery of 100.10 tonnes of wheat in a contract for 100 tonnes of wheat is a valid tender but delivery of 120 tonnes of wheat is invalid tender.

6.To Proper Person: It must be made to the promisee or his duly authorised agent. In case of several joint promises, a tender made to one of them has the same legal consequences as tender to all of them.

7.Of Exact Amount and in Legal Tender: In case of tender of money, it must be exact amount and in legal tender.

Who may Perform a Contract?

The promise under a contract may be performed, as the circumstances may permit, by the following:

1.Promisor Himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor [Section 40]. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

Example: X promise to paint a picture for Y. The promise must be performed by X himself.

2.Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it [Section 40].

3.Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract [Section 37, Para 2]. But their liability under a contract is limited to the value of the property they inherit from the deceased.

4.Third Persons: When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of third party [Section 41].

5. Joint Promisors: When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly [Section 42].

Who may Demand Performance?

The counterpart of a contractual obligation is a contractual right. Who is the person entitled to enforce the contractual rights? There is no direct provision on this matter in the Act.

A contract's performance may be demanded by any one of the following:

1. Promisee: The promisee, i.e., the person who was given the promise, is primarily the person who can demand the performance of the promise according to the terms of the contract.

2. Agent: An agent can always take necessary action to demand performance or enforce the contract on behalf of the promisee.

3. Third Person: Normally, a stranger to contract cannot sue on a contract even if he is a beneficiary under it. However, in some exceptional situations, a third person may also enforce a contract.

DISCHARGE OF A CONTRACT

Discharge of a contract implies **Termination of Contractual obligations or Relations**. This is because when the parties originally entered into the contract, the rights and duties in terms of **contractual obligations** were set up. Consequently, when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete.

Modes of Discharge of a Contract

1. Discharge by performance.
2. Discharge by Mutual Agreement or Consent
3. Discharge by Impossibility of Performance.
4. Discharge by lapse of time.

5. Discharge by Operation of law.

6. Discharge by Breach of Contract.

1. Discharge by Performance

Discharge by performance takes place when the parties to the contract **fulfill their obligations arising under the contract within the time and in the manner prescribed**. In such a case, the parties are discharged and the contract comes to an end. But if only one party performs the promise, he alone **is discharged**. Such a party gets a right of action against another party who is guilty of breach.

2. Discharge of Contract by Mutual Agreement or Consent

As it is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated. The general rule of law is **a thing may be destroyed in the same manner in which it is constituted**. This means a contractual obligation may be discharged by an agreement which may be expressed or implied.

Discharge by Mutual Agreement may arise in the following ways:

1. Novation

It means a new contract is entered into in consideration of the old contract. **Substitution of a new contract** for the original one between the same parties. The consideration for the new contract is mutually being the discharge of old contract. Novation should take place before the expiry of the time of the performance of the original contract.

Example: A owed Rs.100 to B, under contract. B owed Rs.100 to C. It was agreed among A, B and C that A would pay Rs.100 to C.

2. Alteration

Alteration means a change in one or more terms of a contract with mutual consent of the parties. In such a case the old contract is discharged and creates new contract.

Example: A agreed with B to supply 100 T.V. Sets at a certain price by the end of October. Subsequently, A and B mutually agree that the supply will be made by the end of November. This is an alteration in the terms of the contract by consent of both the parties.

3. Rescission

Rescission of a contract takes place **when all or some of the terms of the contract are cancelled**. It may occur:

1. By mutual consent of the parties
2. By a party whose consent was not freely obtained (voidable contract).
3. Where one party fails in the performance of his obligation. In such a case, the other party may rescind the contract without claiming compensation for the breach of contract.
4. In case of recession, only the old contract is cancelled and no new contract comes to exist in its place.

4. Remission

Remission means **acceptance of a lesser fulfillment of** the promise made or acceptance of a sum lesser than what was contracted for.

Example: A owes B Rs.5000. A pays Rs.2000 to B and B accepts the amount in satisfaction of whole debt. The whole debt is discharged.

5. Waiver

When a contracting party **fails to perform** his obligation under the contract, the other party may rescind the contract and may waive the promisor or release. This is called as Waiver.

It takes place when the parties to a contract agree that they shall no longer be bound by the contract.

Example: A promises to supply goods to Y. Later on, T exempts A from carrying out the Promise. It amounts as waiver of right of performance on part of Y.

3. Discharge by Impossibility of Performance

If an agreement contains an **undertaking to perform an impossibility, it is void.** This rule is based on the following:

- a. The law does not recognize what is impossible.
- b. What is impossible does not create an obligation.

According to **Sec. 56**, impossibility of performance may fall into either of the following categories:

1. Impossibility existing at the time of agreement
2. Impossibility arising subsequent to the formation of contract

1. Impossibility existing at the time of agreement

Sec. 56{1} lays down that an agreement to do an act **impossible in itself** is void. This is known as pre-contractual or initial impossibility.

2. Impossibility Arising subsequent to the Formation of contract

Impossibility which arises **subsequent to the formation of** contract (which could be performed at the time when the contract was entered into) is called post-contractual or supervening impossibility.

4. Discharge by lapse of time

The **Limitation Act, 1963** lays down that a contract should be performed within a specified period called **period of limitation**.

If it is not performed & if no action is taken by the promisee within the period of limitation, he is deprived of his remedy at law.

In other words, we may say that the contract is terminated.

5. Discharge of operation of law

A contract stands discharged by operation of law in the following circumstances.

1. By Death: If contracts involving personal skill or ability of the promisor, the contract is discharged/terminated on the death of the promisor.

2. By Insolvency: When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication.

3. By Merger: The conversion of the inferior right into superior right is called a merger. It is also called as vesting of rights and liabilities in the same person.

4. By Unauthorized Alteration of the terms of a written agreement:

Where a party to a contract makes any material alteration in the contract without the consent of the other party, the other party can avoid the contract.

5. By Rights and Liabilities becoming vested in the same person:

When the rights and liabilities under a contract vest in the same person, the other parties are discharged.

6. Discharge by Breach of Contract

Breach of contract means promisor fails to perform the promise or breaking of the obligations which a contract imposes. It occurs **when a party to the contract without lawful excuse does not fulfill his contractual obligation** (or) By his own act makes it impossible that he should perform his obligation under it.

Breach of Contract may be of two types:

1. Actual Breach of contract
2. Anticipatory Breach of contract

1. Actual Breach of Contract:

Actual breach means promisor's failure to perform the promise on due date of performance. When a promisor fails or refuses to perform the promise upon the due date for performance then it is called Actual Breach of Contract.

2. Anticipatory Breach of Contract:

It occurs when a party to executory contract declares his intention of not performing the contract before the performance is due. It may take place in two ways.

- a) Expressly by words
- b) Implied by the conduct

Ex: A person contracts to sell a particular horse to another on 1st of June and before the due date he sells the horse to somebody else.

Model Questions from UNIT -I

I. Short Notes

1. Define Contract
2. Agreement
3. Free Consent
4. Void Contract
5. Unenforceable Contract
6. Express Contract
7. Unilateral Contract
8. Define Actual Performance
9. Joint Promisors
10. Meaning of Performance of a Contract
11. Define Novation
12. Insolvency

II. Essays

1. Explain the Essentials of a Valid Contract.
2. Explain the Classification of Contracts based on Enforceability.
3. Explain the Classification of Contracts based on Formation.
4. Explain the Classification of Contracts based on Performance and Obligation.
5. Explain the Essentials of Offer to Performance or Tender of Performance.
6. Who may Perform a Contract? Explain in detail.
7. Explain in detail about the Discharge of a Contract.
8. Briefly explain about Discharge of Contract by Breach.