

Law of Contract

Proposal: Proposal is the initial stage of a contract. Section 2(a) of the Indian Contract Act defines a proposal as, "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".

"A proposal is a statement (by one party) of a willingness to enter into a contract on stated terms provided that it is accepted by party to whom it is addressed".

"A proposal is a promise to be bound on particular terms". For e.g. M says to N, "I am willing to sell my motorcycle to you for Rs.14,000" is a proposal.

Essential Elements of a Proposal:

1. **The Test of Intention:** The test of a person's intention in making a proposal is an objective one. In other words, it would be reasonably construed / interpreted by a person in the position of the offeree. A person can be said to have made an offer though he did not subjectively have the intention to make one, or even if it has been made under a mistake. If A's conduct is such as to induce B to reasonably believe that A had that intention.
2. **Proposal must be certain:** A proposal must be sufficiently definite to permit the conclusion of the contract by mere acceptance. Since a contract is concluded by the mere acceptance of an offer, the terms of the intended or proposed agreement must be indicated with sufficient definiteness in the offer itself. The terms of an offer must therefore be definite and certain. A proposal is certain if it can be made certain as by reference to something certain.
3. **Communication of proposal:** The definition lays emphasis upon the requirement that the willingness to make a proposal should be signified. To signify means to indicate or declare. It means that the proposal should be communicated to the other party. The process of making a proposal is completed by the act of communicating it. A proposal may be made in anyway which has the effect of laying before the offeree willingness to do or abstain.
4. Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even it is accepted, does not create legal relations because it is not so intended. An offer, therefore, must be such as would result in a valid contract when it is accepted.

Kinds of Proposal:

1. **Express Proposal:** A proposal which is made either verbally or in written form is called express proposal.
2. **Implied Proposal:** A proposal which is made neither verbally nor in writing is an implied proposal. It is made by conduct of the party. A common example is taking goods to the cash desk in a super-market which is an implied offer to buy those goods.
3. **Specific Proposal:** An offer made to an individual, or to a specific group of persons is a specific proposal. It can only be accepted by the person to whom it is made.
4. **General proposal:** An offer need not to be made to an ascertained person. It may be made to the public at large. It may be accepted by anyone who complies with the terms of the offer. In the case of **Carlill v/s. Carbolic Smoke Ball Company** the advertisement published by the defendant company in a newspaper was held to be a general proposal. It also applies to reward cases.

5. **Counter proposal:** A statement (by the offeree) which does not accept all the terms and conditions proposed by the offerer but which in fact introduces a new term is a new proposal and is called a counter proposal. A counter proposal is capable of being accepted or rejected. A request for supply of further information is not a counter proposal. The legal effect of a counter proposal is that it terminates the original proposal. So after termination, the question of acceptance or rejection of the original proposal does not arise because it is no more operative.

6. **Cross Proposal:** For the parties to be in agreement there must be a definite offer which is mirrored by a definite acceptance. For the same reason, cross offers which are identical do not create a contract. Two manifestations of willingness to make the same bargain are said to be cross proposal if the following conditions are fulfilled:

- i) subject matter of both the offers must be same.
- ii) terms of both the offers must be same.
- iii) they must be made simultaneously.

The legal effect of cross proposal is that they cancel each other.

7. **Tender and Standing/ Continuing Proposal:** A tender for supply of goods as may be required without the quantity being specified is not an offer which may be accepted generally so as to form a binding contract. It is a continuing offer, which is accepted from time to time whenever an order is given for any of the goods specified in the tender. "If you will send me orders for coal, I shall supply it to you for a period of 12 months at a particular rate". This is merely a proposal from A to B. If in reply to such a proposal, B says to A, "I agree", it does not constitute an acceptance of the proposal. An acceptance can take place only by sending an order to A. The acceptance of such tender merely amounts to an intimation that the offer will be considered to remain open during the specified period and that it will be accepted from time to time by giving orders of specified quantities and does not bind either party until and unless such orders are given. Failure to supply the goods without placing any order would not amount to breach of contract.

Promise: A proposal when accepted becomes a promise. In other words, a promise is an accepted proposal. A liability under a contract cannot arise unless the contract has been concluded. Once a proposal is accepted, a contract is established binding both the proposer and the acceptor allowing both of them to enforce their respective promises.

Promisor: The person making the proposal is called a promisor. In other words, a proposer whose proposal is accepted is called promisor and he becomes bound by his promise contained in his proposal. Every promisor is a proposer but every proposer is not a promisor.

Promisee: The person accepting the proposal is called the promisee. In other words, one to whom a promise has been made and he accepts it is called the acceptor. An acceptor of a proposal who becomes bound by his promise which is contained in his acceptance.

Acceptance: Section 2(b) of Indian Contract Act states that "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted". "A proposal when accepted becomes a promise".

Rules of Acceptance:

1. **Absolute and Unconditional:** The acceptance must be absolute, unqualified and without conditions. The offer and acceptance must correspond. This is sometimes called Mirror Image Rule i.e. the acceptance must match with the terms of the offer. An acceptance with a variation is no acceptance. It is simply a counter offer which terminates the original offer.

2. **Mode of Acceptance:** In order to convert a proposal into promise, the acceptance must be made in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. The offerer being the master of his proposal may prescribe a manner or mode of acceptance, but if the acceptance is not made in such a manner the proposer may (within a

reasonable time after acceptance is communicated to him) insist that his proposal shall be accepted in the prescribed manner and not otherwise, but if the proposer fails to do so he accepts the acceptance.

3. **Acceptance by performing condition:** Performance of the conditions of a proposal is an acceptance of the proposal. This principle recognizes the fact that in the cases in which the offerer invites acceptance by the doing of an act. It is sometime impossible for the offeree to accept his acceptance otherwise than by performance of his part of the contract. The most obvious example is where the reward is publicly offered to any person or to the first person who will recover a lost object, produce certain evidence or the like. Here the party claiming the reward has not to prove anything more than that he performed the conditions on which the reward was offered, which conditions may or may not include communication by him to the proposer.

4. **Who can accept (Acceptance in ignorance of the offer):** There cannot be acceptance of a proposal which has not come to the knowledge of the offeree. In other words acceptance can only be made by the person to whom the proposal is made i.e. the offeree. The knowledge of the offer is not necessary in Reward cases if the requested act is performed by the other party. In case of a bilateral contract which imposes mutual obligations upon the parties, the knowledge of proposal is required because the effect would be to subject the 'accepting party' to obligations of which he was not aware.

5. **Acceptance by silence:** The general rule is that acceptance of an offer will not implied from mere silence on the part of the offeree. Law does not cast a duty on the person to whom the proposal is made to reply to that proposal. Silence is not an effective expression of intention nor is inaction. The reason is that silence and inaction are by their nature equivocal as there can be more than one reason for a person to be silent and inactive. Moreover, lack of any outward expression of assent would effectively enable the offeree to deny or assert the fact of acceptance to suit his own convenience. Since it is the proposer who takes the initiative by proposing for conclusion of the contract, the offeree is free to accept or not to accept but also to simply ignore it. An offerer cannot impose a contractual obligation upon the offeree by stating the unless the offeree expressly rejects the offer otherwise he will be held to have accepted it. The rationale behind this rule is that it is thought to be unfair to put an offeree to time and expense, to avoid that imposition of an unwanted contractual obligation.

In Nutshell: An offeree cannot incorporate any term in his proposal, the non-compliance of which (on the part of the offeree) amounts to an acceptance.

6. **Time Period:** A proposal must be accepted within the time prescribed in the proposal for his acceptance or if no time is so prescribed, within the reasonable time.

7. **Communication of Acceptance:** The general rule is that an acceptance must be communicated to the offerer. The acceptance is generally only validly communicated when it is actually brought to the attention of the offerer.

Termination of Proposal:

1. **By Revocation:** A proposal may be terminated by communication of notice of revocation by the proposer to the other party i.e. the offeree.

A proposal may be revoke at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

2. **By Lapse of Time Period:** A proposal is terminated, by the lapse of the time prescribed in such proposal for its acceptance. (If no time is so prescribed) by the lapse of the reasonable time, without communication of acceptance.

3. **By failure of Condition precedent:** A proposal is terminated by the failure of the acceptor to fulfill the condition precedent to acceptance.

4. **By death / Insanity of the offerer:** A proposal is terminated by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

5. **By death / Insanity of Offeree:** A proposal is terminated by the death or insanity of the offeree but before communication of acceptance takes place.

6. **By Rejection:** A proposal is terminated by rejection. It is an act of the offeree by which he turns down the offer.

7. **By Counter Offer:** A proposal is terminated by a counter offer.

8. **By Destruction of subject matter:** A proposal is terminated if the subject matter of the proposer is destroyed before the communication of acceptance.

9. **By subsequent impossibility / Illegality:** A proposal is terminated if the performance to such proposal subsequently becomes either impossible or unlawful due to the happening of an event, but before the communication of acceptance.

10. **By mode of acceptance:** A proposal is terminated if the acceptance is not made into some usual and reasonable manner. A proposal is terminated if the acceptance is not made in manner prescribed in such proposal for its acceptance and also insist upon by the proposer.

Communication: Section 3 of the Indian Contract Act indicates that, "Communication is deemed to be made by any act or omission of party by which he intends to communicate or which has the effect of communicating it". In other words, offer, acceptance or revocation may be communicated by words spoken or written, or by conduct.

1. **Communication of proposal:** The communication of proposal is complete when it comes to the knowledge of the person to whom it is made i.e. offeree.

2. **Communication of acceptance:** The communication of an acceptance is complete as against the proposer when it is put in the course of transmission to him so as to be out of the power of the acceptor, as against the acceptor when it comes to the knowledge of the proposer.

Example: B accepts A's proposal, by a letter sent by post on 13th instant. The letter reaches A on 15th instant. The communication of the acceptance is complete, as against A, when the letter is posted i.e., on 13th, as against B, when the letter is received by A, i.e., on 15th.

3. **Communication of revocation:** The communication of a revocation is complete as against the person who makes it when it is put into a 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 as against the person to whom it is made when it comes to his knowledge. In other words, a revocation becomes effective when it comes to the knowledge of the person to whom it is made.

Example: A proposes, by a letter, to sell a house to B at a certain price. The letter is posted on 15th May. It reaches B on 19th May. A revokes his offer by telegram on 18th May. the telegram reaches B on 20th May. The revocation is complete as against A when the telegram is dispatched i.e., on 18th. it is complete as against B when he receives it i.e., on 20th.

General Principle of Communication of Acceptance: The acceptance is generally only validly communicated when it is actually brought to the attention / notice of the proposer.

Exception: The postal Rule, Unilateral Contract, Waiver of Communication

1. **Postal Rule:** The offeror may expressly or by implication indicate that he expects acceptance by means of a letter sent through the post. The postal rule states that, acceptance is deemed to be complete as soon as the letter properly addressed and stamped is posted. The contract is concluded on posting even if the letter subsequently fails to reach the proposer. The postal rule may be expressly excluded by the proposer.
2. **Unilateral Contract:** A contract in which promise is made by only one party and on the other side there is an act or condition of promise, then this contract is called unilateral contract. Communication of acceptance is not necessary in this contract. Unilateral contract may be general or specific contract.
3. **Waiver of Communication:** When the proposer releases the offeree from obligation of communication of acceptance to his knowledge but instead asks him to do a certain act, then this is called waiver of communication. In other words, the proposer voluntarily waived the offeree to bringing the acceptance in the notice of the proposer.

Revocation: Revocation means "taking back", "recalling" or "withdrawal".

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

Example: A proposes by a letter sent by post to sell his house to B. The letter is posted on the 1st of the month. B accepts the proposal by a letter sent by post on the 4th. The letter reaches A on the 6th. A may revoke his offer at any time before B posts his letter of acceptance, i.e., 4th, but not afterwards.

B may revoke his acceptance at any time before the letter of acceptance reaches A i.e., 6th, but not afterwards.

Invitation to treat / Offer

Offer: An offer is a promise to be bound on particular terms. It may (if it is accepted by an offeree) result in a legally enforceable contract. Acceptance is necessary for the formation of a contract, but once the offeree has assented to the terms offered a contract comes into effect and both parties are bound. The offerer can no longer withdraw his offer nor the offeree can withdraw his acceptance.

Invitation to treat: An invitation to treat is simply an expression of willingness to enter into negotiations which, it is hoped will lead to the conclusion of a contract at a later date. The distinction between the two is said to be primarily one of intention that is, did the maker of the statement intend to be bound by an acceptance of his terms without further negotiations or did he only intend his statement to be part of the continuing negotiating process?

Gibson v/s. Manchester City Council: The House of Lords held that the letter written by the Council (to Gibson) which stated that the council may be prepared to sell the house was not an offer as it did not finally commit the council to selling the house. It was simply an expression of their willingness to enter into negotiations for the sale of the house and was not an offer which was capable of being accepted.

Examples of Common Situations of Invitations to treat:

1. **Display of goods for sale:** The display of goods constitutes an invitation to treat and that the offer is made by the customer when he presents the goods at the cash desk, where the offer may be accepted by the shopkeeper. Fisher v/s. Bell: A shopkeeper was prosecuted for offering offensive weapons for sale, by having flick-knives on display in his window. It was held that the shopkeeper was not guilty as the display in the shop window was not an offer for sale but only an invitation to treat.
2. **Tenders:** Tenders are another example of invitation to treat. They occur where someone wishes particular work to be done and issues a statement asking interested parties to submit the terms on which they are willing to carry out the work. The person who invites the tender makes an invitation to treat. The person who submits a tender is the offerer, and the other party is at liberty to accept or reject the offer as they please.
3. **Auction-Sales:** The general rule is that an auctioneer (by inviting bids to be made) makes an invitation to treat. The offer is made by the bidder which in turn is accepted when the auctioneer strikes the table with his hammer. The advertisement of an auction-sale is generally only an invitation to treat and does not bind the auctioneer to hold the auction and the respective bidders have no legal right to complain if they have wasted their time and money, in coming to the advertised place of the auction sale. (Harris v/s. Nickerson).
4. **Advertisement:** An advertisement made in newspaper or through a medium is also an "invitation to treat". By publishing advertisement, the trader is inviting offers from who ever is willing to contract with him within specified parameter. It is up to the trader, which ever of many offers, to accept or to reject all of them and he is not liable to anyone. Partridge v/s. Crittenden: A person was charged with offering a wild bird for sale contrary to the Protection of Birds Act 1954, after he placed an advertisement relating to the sale of such birds in a magazine. It was held that he could not be guilty of offering the bird for sale as the advertisement amounted to an invitation to treat. NEVERTHELESS, there are certain cases where an advertisement may be interpreted as an offer rather than an invitation to treat. The classic example is the case of Carlill v/s. Carbolic Smoke ball Company, where the advertisement published by the defendant company was held to be a general proposal.

Certain statements which do not amount to proposal:

1. **Supply of Information:** A statement by which a person supplies information with reference to any thing / property does not create any legal obligation or liability towards the maker of the statement to be bound by what he has communicated. In Harvey v/s. Facey, a telegram indicating the lowest price at which a person was prepared to sell his property was not regarded as an offer.
2. **A Statement of intention / Wish:** A statement by which a person communicates his (present) intention or wish does not create any legal obligations towards the maker of the statement to be bound by what has communicated. Harris v/s. Nickerson: An advertisement that an auction of certain articles will take place on a certain day does not bind the auctioneer to sell the goods. Nor does it make the auctioneer liable upon a contract to indemnify persons who have incurred expenses in order to attend the sale.

Consideration (Quid Pro Quo, Something for something): Sir Fredrick Pullock defines Consideration as "Consideration is the price by which the promise of the other party is bought".

Section 2(d) defines consideration as follows: "When at the desire of the promisor, the promisee (or any other person) has done or abstained from doing (Past consideration), or does or abstains from doing (Present Consideration), or promises to do or to abstain from doing (Executory Consideration), something, such act or abstinence or promise is called a consideration for the promise (by the promisee to the promisor).

The rules / characteristics of consideration: (Rules Governing Consideration, Legal Rules as to Consideration):

1. **It "must" move at the desire of promisor:** An act consisting consideration must have been done at the desire or request of the promisor. If it is done at the instance of a third party or without the desire of a promisor, it will not be a good consideration.

Example: A saves B's goods from fire without being asked to do so. A cannot demand payment for his services.]

2. **Kinds: It may be Past, Present or Future:** The words "has done or abstained from doing, or does or abstain from doing, or promises to do or to abstain from doing", used in the definition of consideration clearly indicate that the consideration may consist of either something done or not done in the past, or done or not done in the present, or promised to be done or not done in the future. To put it briefly, consideration may consist of a past, present or future act or abstinence.

(i) **Past Consideration:** When something is done or suffered before the date of the agreement, at the desire of the promisor, it is called past consideration.

(ii) **Present or Executed Consideration:** Consideration which moves simultaneously with the promise is called present or executed consideration.

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

3. **It may move from the promisee or any other person:** Consideration may move from the promisee or any other person i.e. even a stranger. This means that as long as there is consideration for a promise, it is immaterial who has furnished it. But the stranger to consideration will be able to sue only if he is a party to the contract.

4. **Need for consideration:** The reason why the law enforces only those promises which are made for consideration is that gratuitous or voluntary promises are often made rashly and without due deliberation. The law looks with disfavour upon an exchange of promises, which would result in one of the parties obtaining "something for nothing". It supplies no means nor affords any remedy to compel the performance of an agreement made without sufficient consideration.

Example: If A promises to pay B Rs.100 for nothing, B neither doing nor promising to do anything in return to compensate A for his money, A's promise has no force in law.

5. **Forms of Consideration:** Consideration can be in three forms:

(i) **An Act:** It is an act of doing something. In this sense consideration is in affirmative form. The act must not however, be one which one is under a legal duty to perform.

(ii) **Abstinence or Forbearance:** It means abstaining or refraining from doing something. In this sense consideration is in negative form.

(iii) **A Promise:** The promise and the return promise are the consideration by the promisee and promisors moved to each other.

6. **Consideration is always bilateral:** It implies that the consideration will be given by both parties to each other, except in exceptional cases.

7. **Promissory Estoppel:** Where one party has (by his words or conduct) made to the other party a clear and unequivocal promise which is intended to create legal relations knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact

so acted upon by the other party, the promise would be binding on the party making it and the promisor would not be entitled to go back upon his promise.

8. **It must be something which the promisor is not already bound to do:** A promise to do what one is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation. Likewise, a promise to perform a public duty by a public servant is not a consideration.

9. **It must not be illegal, immoral or opposed to public policy:** The consideration given for an agreement must not be unlawful. Where it is unlawful, the Courts do not allow an action on the agreement.

The doctrine of frustration **(Supervening Impossibility)**

When the performance of (a valid and binding) contract becomes impossible or unlawful (which could not be prevented) due to happening of an event, such a contract becomes void. This is known as the doctrine of frustration.

Instances of Frustration:

Destruction of subject-matter: Performance of a contract becomes impossible by destruction of the thing essential to that performance and consequently, the contract becomes void.

Non-occurrence of an agreed event: If the performance of a contract depends on the existence of occurrence of a particular state of things which forms the basis of the contract, such a contract becomes void if the common object (agreed event) is frustrated.

Contracts requiring personal performance (Death or disability): A contract for personal services which is to be performed by the promisor himself becomes void not only on the death of the promisor but also if (without default on the part of the promisor) he becomes physically incapable.

Subsequent legal changes: Impossibility of performance may arise through subsequent changes in the law. The parties to contract intend to contract with reference to the law as existing at the time when the contract is made. The impossibility arises because the changes in the law is such that it strikes at the basis of the contract.

Outbreak of War: An outbreak of war may be a cause of frustration.

Effects of Frustration:

Automatic Termination: Frustration terminates a contract automatically and independent of the volition of the parties at the time of the frustrating event. Supervening impossibility discharges both the parties from further performance for the future.

Restitution (Adjustment of Rights): Where a contract becomes void, the party who has received any advantage under it is bound to restore it or make compensation for it to the other party.

Limitation / Restriction of Frustration:

Self-Induced Frustration: It is the essence of frustration that the event which causes frustration must have occurred without the fault of either party. A state of facts brought about by the act of party cannot be used as an excuse for failure to perform a contractual obligation. In other words frustration must be genuine, natural, spontaneous and not artificial and man-made.

No discharge despite impossibility:

Absolute Obligation: A party who makes an absolute promise accepts the risk of performance being or becoming impossible.

Express provisions in the contract: Frustration is concerned with unforeseen, supervening events, not events which have been anticipated and provided in the contract itself. The parties may make full and complete provision for the supervening event foreseen by them, in which case the doctrine of frustration will have no application.

Forseeability: Where by reason of special knowledge, one party foresees the possibility of the event & conceals this from the other, the party with special knowledge will not be discharged.

Portion of work: The doctrine of frustration is also not applicable if only a portion of the contract becomes impossible or difficult of performance.

Hardship: Hardship occurs where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of the disadvantaged party's performance has increased, or because the value of what it has to receive has decreased provided the events meet the following requirements:

- the events occur or become known to him after the formation of the contract.
- the events could not reasonably have been taken into account at the time of conclusion of the contract.
- the events are beyond its control and
- the risk of the events were not assumed by it.

Hardship entitles the disadvantaged party to request the other party to enter into renegotiation of the original terms of the contract with a view to adopting them to the changed circumstances. Such party must make a request for renegotiation without undue delay, indicating the grounds on which the request is sought. Such request does not entitle the disadvantaged party to withhold performance. The request for renegotiation as well as the conduct of both parties during the renegotiation process, are subject to the principle of good faith and the duty of co-operation. If the parties fail to reach agreement on the adaption of the contract to changed either party may resort to the court. The court may, when this is reasonable order the termination of the contract or adapt the contract with a view to restore its equilibrium. Invoking the provisions of hardship is relevant to executory performances and generally in long term contracts.

Contingent / Conditional Contracts:

Definition: A contract the performance of which independent upon the happening or non-happening of some event collateral to the contract is called a contingent contract.

Classification of Contingent Contracts	
Contract of Insurance	Contract of Indemnity
Where the liability of the insurer depends upon the occurrence of an event viz damage or destruction arising out of fire.	This is the contract to make good the loss arising out of the conduct of the indemnity holder, or any other person is a contract contingent upon the act of a party.

The Rules of Contingent Contracts:

Happening of event: A)

Uncertain future event: A contract the performance of which is contingent, on the happening of an uncertain future event cannot be enforced by law, unless and until that event has happened. If the happening of the event becomes impossible such a contract becomes void.

Specified Uncertain Event: A contract the performance of which is contingent, on the happening of a specified uncertain event within a fixed time becomes void. If the event has not happened at the expiry of the time fixed or if the happening of the event has become impossible before the time fixed.

Non-Happening of event: B)

Uncertain future event: A contract the performance of which is contingent on the non-happening of an uncertain future event can be enforced, when the happening of that event becomes impossible and not before.

Specified uncertain event: A contract the performance of which is contingent, on the non-happening of a specified uncertain event within a fixed time may be enforced by law, when the time fixed is expired and such event has not happened, or if (before the expiry of the time fixed) it becomes certain that such event will not happen.

Conduct of Person: If the future event on which the contract is contingent is the way in which the person will act at an unspecified time, the event shall be considered to become impossible, when such person does anything which makes it impossible that he should so act within any definite time.

Agreement Contingent on impossible event: If an agreement is contingent on the happening of an impossible event, that agreement is void. This is immaterial whether the impossibility of an event is or is not known to the parties at the time of formation of agreement.

Essential Elements of Contingent Contract:

Its performance depends upon the happening or non-happening in future of some event. It is the dependence on a future event which distinguishes a contingent contract from other contracts.

The event must be uncertain. If the event is bound to happen, and the contract has got to be performed in any case it is not a contingent contract.

The event must be collateral i.e. incidental to the contract. 3)

Difference between a wagering agreement and a contingent contract:

1 A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.

A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.

A wagering agreement is a void agreement whereas a contingent nature is valid.

In wagering agreement, the parties have no other interest in the subject-matter of the agreement except the winning or losing the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of contingent contract.

In a wagering agreement the future event is the sole determining factor while in a contingent contract the future event is only collateral.

Offer to Perform (Tender of Performance): A party who is bound to perform his obligation under a contract may make an offer to the other party to perform his obligation. An offer to perform contractual obligation is called tender of performance.

Essentials:

Unconditional: A valid tender of performance must be unconditional which means that it must be in accordance with the terms of the contract.

Proper Time and Place: A tender of performance must be made at a proper time and place. Generally the time and the place of performance are fixed by the parties in their contract. In such a case, the tender of performance must be made within the time and at the place so fixed.

Reasonable Opportunity: The tender must be made under such circumstances that the promisee may have reasonable opportunity of ascertaining that the promisor is able and willing to perform whole promise.

If the offer is to deliver goods to the promisee, he must have a reasonable opportunity to examine whether the goods are in accordance with the terms and conditions of the contract.

Whole Obligation: A valid tender of performance must be of whole obligation. An offer to perform a promise in part is not a valid contract. Moreover a tender by installment is not a valid tender unless the contract so provides.

Tender to whom: A valid tender of performance must be made to a proper person. The proper person is the promisee or his duly authorized agent.

Joint Promisees: In case of joint promisees tender may be made to any one of them. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Effects of non-acceptance to tender (by promisee):

It discharges the promisor from performing his contractual obligations.

-- However it does not discharge the contract.

It gives to the promisee, an option to,

-- terminate the contract and

-- sue for damages.

Obligation of Parties to Contract:

(Sir Khalid Fareed pr.43)

By whom contracts must be performed:

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 for e.g. contract of personal services.

A competent person employed by the promisor: Where personal consideration is not the foundation of the contract, the promisor or his representatives may employ a competent person to perform it.

Legal representatives: A contract which involves use of personal skill or is founded on personal considerations comes to an end on the death of promisor. The rule of law is: *actio personalis moritur cum persona* i.e. a personal action dies with the person. As regards any other contract of general nature, his legal representatives are bound to perform it unless a contrary intention appears from the contract.

Third persons: When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Joint promisors

Time and Place of Performance:

Time for performance of Promise: Where, by the contract

- a promisor is to perform his promise without application by the promisee, and
 - no time for performance is specified.
- the engagement must be performed with in a reasonable time.

Time and place for performance of Promise: When:

- a promise is to be performed on a certain day and
- the promisor has undertaken to perform it without the application by the promisee the promisor may perform it
 - at any time during the usual hours of business on such day
 - at the place at which the promise ought to be performed

Application for Performance: When:

- a promise is to be performed on a certain day and
 - the promisor has not undertaken to perform it without the application by the promisee
- It is the duty of the promisor to apply for the performance at a proper place and with in the usual hours of business.

Place for Performance of Promise: When:

- a promise is to be performed without application by the promisee and
 - no place is fixed for the performance of it
- It is the duty of the promisor to apply to the promisee
- to appoint a reasonable place for the performance of the promise and
 - to perform it as such place

Mode of Performance: The performance of any contract may be made in the manner, or at any time which the promisee prescribes or sanction.

Joint Promisors (Devolution of Joint Liabilities):

<ul style="list-style-type: none"> • All such person during their joint lives (in the absence of any special cont 	<ul style="list-style-type: none"> • After the death of any of t
<ul style="list-style-type: none"> • representatives jointly with the survivors(s) 	<ul style="list-style-type: none"> • After the death of the last surv
<ul style="list-style-type: none"> • representatives of all jointly. 	

Joint and Several Liabilities:

The promisee may compel any of such joint promisors to perform the whole promise -- in the absence of express agreement to the contrary

Each promisor may compel contribution to the performance of the promise -- unless a contrary intention appears from the contract

Sharing of loss by default in contribution

Release of one joint promisor:

Effects:

It does not release or discharge the other joint promisors.

It does not affect the right of such others to claim contribution from joint promisor so released.

Joint Promisee (Devolution of Joint rights):

Unless a contrary intention appears by the contract

- The right to claim performance rests as between him and them, with them during their joint lives.
- After the death of any of them his representatives of such deceased person jointly with the survivors(s).
- After the death of the last survivor the representatives of all joint

Reciprocal Promises: Promises which form the consideration or the part of the consideration for each other are called reciprocal promises.

Independent Reciprocal Promises: Reciprocal promises are independent when the obligation of one party to perform his promise is absolute and not conditional on the performance by the other party of his promise.

Dependent Reciprocal Promises: Where one promise is dependent upon and must be performed after the performance of the other, they are called dependent reciprocal promise.

Concurrent Reciprocal Promises: Concurrent promises are those where the promise of one party is to be performed simultaneously with the promise of other party but depends upon the readiness and willingness of the other party to perform his promise. For e.g. goods to be delivered in exchange for cash.

If the promisor who has to perform his promise before the performance of other promise, he fails to perform it.

- he cannot claim performance of other promise
- he is also liable for compensation of any loss which the other party sustains by the non performance of the contract.

Rules of Reciprocal Promise: When reciprocally promise

- firstly to do things which are legal and
- secondly, under specified circumstances to do certain things which are illegal
- the first set of promise is a contract, but the second is a void agreement.

Appropriation of Payment:

Appropriation by creditor: Where the debtor has neither intimated the application of a payment to a particular debt, nor there are any circumstances from which any intimation may be implied, the creditor may apply it to any lawful debt actually due whether if is or is not a time barred debt.

Appropriation by Debtor: Where a debtor, (owing several distinct debts to one person) makes a payment to him, either with express intimation under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, is accepted, must be applied accordingly.

Appropriation by Operation of Law: Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not

barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

Time of performance:

Time: Specified plus Essence: If time is essence of a contract and the promisor fails to perform at such fixed time, the contract or, (so much of it as has not been performed), becomes voidable at the option of the promisee.

Acceptance of delayed performance: The promisee is entitled for compensation of any loss caused by such delayed performance, only when he gives notice of intention to claim compensation at time of acceptance of such delayed performance.

Time: Specified but not Essence: Here if the promisor fails, the contract does not become voidable at the option of the promisee but the promisee is entitled to compensation from the promisor for any loss caused to him for such failure.

Quasi Contracts / Constructive Contracts (Contract implied-in-law) (Certain relations resembling those of contracts):

A quasi-contract is not a contractual at all. This is based on the principle of unjust enrichment which simply states:

- A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

The principle presupposes three things:

- that the defendant has been enriched by the receipt of benefits
- he must have been so enriched at the plaintiff's expense
- it would be unjust to allow him to keep the benefit.

Kinds of Quasi Contracts:

Supply of necessities: A person (a minor) incapable of making a contract or any one to whom incapable person is legally bound to support. The supplier is entitled to be reimbursed from the property of such incapable person.

Payment by interested person: A person who is interested in the payment of money (which another is bound by law to pay) and who therefore pays if it entitled to be reimbursed by the other.

Non-Gratuitous Act: Where a person does or deliver something to another without intending to do so gratuitously, he is entitled to receive compensation of the other has enjoyed the benefit of the thing done or delivered.

Finder of Goods: A person who finds goods of another and takes them into his custody, he is liable as the bailee of the goods.

Payment under mistake or coercion: Where a person has paid or delivered anything to another by mistake or coercion he is entitled to get repayment or return of it from the other.

Discharge of Contract (Contract which need not to be performed): When the rights and obligations of the parties come to an end, a contract is said to be discharged.

Modes of Discharge:

By Performance: It is the obvious and normal method of discharge of contract.

Actual Performance: When both the contracting parties perform their respective obligations according to the terms and conditions and the manner specified in the contract, this is actual performance, which discharges the contract.

Attempted Performance: When a promisor makes a valid offer of performance and which is not accepted by the promisee, the contract is discharged due to such unaccepted valid tender.

By Agreement: A contract is the result of an agreement. It may be brought to an end at any time at any stage by mutual consent of the contracting parties. Thus the contract may be discharged by an agreement.

Novation: When an existing contract is substituted by a new contract by mutual consent of the contracting parties, this is novation which discharges the contract.

Alteration: When the terms and conditions of an existing contract are changed by mutual consent of the contracting parties, this is alteration which discharges the original contract.

Remission: A promisee has the right to demand performance of the contract at the same time he has the right to release the promisor from his contractual obligations. This is remission which discharges the contract. Remission may be total or partial.

Satisfaction: A promisee has the right to demand the performance of the contract according to the terms and conditions of the contract. At the same time he has the right to accept something else in exchange of the original consideration of performance. This is satisfaction which discharges a contract.

Rescission of voidable contract: A voidable contract is discharged when it is rescinded by the party at whose option it is or become voidable.

Refusal to provide Reasonable facilities: When reasonable facilities are not provided by the promisee to the promisor for the performance of the contract, the contract is discharged due to such refusal/ neglect of the promisee.

By Frustration: When the performance of the contract subsequently become either impossible or unlawful due to the happening of an event the contract is discharged. In other words a contract is automatically terminated if it suffers frustration.

By Operation of Law: Sometimes the performance of a contract is excused by the law and consequently the contract is discharged. For e.g. a debtor released from his obligation:

- when he is declared insolvent by the court of law
- when the limitation period for the recovery of the debt expires.