UNIT-3- Contingent contract, Quasi contracts, Wagering Agreement, Discharge of a Contract, Remedies for Breach of Contract.

CONTINGENT CONTRACT

According to Section 31 of the contract Act, contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen. Contracts of insurance are of this class. Example: A contracts to pay B Rs. 1,00,000 if B's house is destroyed by fire. This is a contingent contract.

Essentials of a Contingent Contract:

The following are the essentials of contingent contract:

(1) The performance of a contingent contract is made dependent upon the happening or non-happening of some event. A contract may be subject to a condition precedent or subsequent.

(2) The event on which the performance is made to depend, is an event collateral to the contract, i.e., it does not form part of the reciprocal promises which constitute the contract. Thus, the event should neither be a performance promised, nor the consideration for a promise.

Thus (i) where A agrees to deliver 100 bags of wheat and B agrees to pay the price only afterwards, the contract is a conditional contract and not contingent; because the event on which B's obligation is made to depend is part of the promise itself and not a collateral event.

(ii) Similarly, where A promises to pay B Rs. 1,00,000 if he marries C, it is not a contingent contract.

(3) The contingent event should not be the mere will of the promisor. For instance, if A promises to pay B Rs. 10,000, if he so chose, it is not a contingent contract (In fact, it is not a contract at all).

Rules Relating to Enforcement:

Enforcement of contracts contingent on an event 'happening'**:** Where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Enforcement of contracts contingent on an event 'not-happening'**:** Where a contingent contract is made to do or not to do anything if an uncertain future event does not happen it can be enforced only when the happening of that event becomes impossible and not before.

When shall an event on which contract is contingent be deemed impossible, if it is the future conduct of a living person**:** Suppose, the future event on which a contract is contingent is the way in which a person will act at an unspecified time? In such a case, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

Agreement contingent on impossible event (Section 36): A contingent agreement to do or not to do anything, if an impossible event happens, is void.

QUASI-CONTRACT

In the case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit of another even in the absence of a contract. Such cases are known as quasi contracts. The obligation created in either of the cases is identical. Quasi contracts are based on principles of equity, justice and good conscience.

The salient features, of quasi contractual right, are as follows:

Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
Secondly, it is a right which is available not against the entire world, but against a particular person or persons only.

Types of Quasi-Contracts

Under the provisions of the Indian Contract Act, the relationship of quasi contract is deemed to have come to exist in five different circumstances. These are:

(a) Claim for necessaries supplied to persons incapable of contracting (Section 68): If necessaries are supplied to a person who is incapable of contracting, e.g., minor or a person of unsound mind, the supplier is

entitled to claim their price from the property of such a person. Accordingly, if A supplies to B, a lunatic, necessaries suited to B's status in life, A would be entitled to recover their price from B's property. He would also be able to recover the price for necessaries supplied by him to his (B's) wife or minor child since B is legally bound to support them. However, if B has no property, nothing would be realizable.

(b) Right to recover money paid for another person: A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.

(c) Obligation of a person enjoying benefits of non-gratuitous act (Section 70): Such an obligation arises under the provision of Section 70. It is:

"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 benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

It thus follows that for a suit to succeed, the plaintiff must prove: (i) that he had done the act or had delivered the thing lawfully; (ii) that he did not do so gratuitously; and (iii) that the other person enjoyed the benefit.

(d) Responsibility of a finder of goods: Such a responsibility arises under Section 71. "A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee". He is, therefore, required to take proper care of things found, not to appropriate it to his own use and, when the owner is traced, to restore it to the owner. Further, he must take as much care of the goods found as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quantity and value as those of the goods found.

(e) Liability for money paid or thing delivered by mistake or under coercion: Such liability arises under Section 72 of the Contract Act. "A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it." In each of the above cases, contractual liability is the creation of law and does not depend upon any mutual agreement between the parties.

WAGERING AGREEMENT

Wager means a bet. It is a game of chance where the probability of winning or losing is uncertain. The chance of either winning or losing is wholly dependent on an uncertain event.

Agreements entered into between parties under the condition that money is payable by the first party to the second party on the happening of a future uncertain event, and the second party to the first party when the event does not happen, are called Wagering Agreements or Wager. There should be mutual chance of profit and loss in a wagering agreement.

Generally wagering agreements are void. Parties involved in a wagering contract mutually agree upon the nature of the agreement that either one will win. Each party stands equally to win or lose the bet. The chance of gain or the risk of loss is not one sided. If either of the parties may win but not lose, or may lose but cannot win, it is a wagering contract.

Essentials of a Wager Agreement are:

1. Dependence on Uncertain Event:

One of the important essentials of a wagering agreement is that it must depend upon an uncertain event. Event may be past, present or future, but the parties must be unaware of its future or the time of its results or the time of its happening.

2. Mutual Chance of Gain or Loss:

Another element of wagering agreement is that each party to the agreement should stand to win or lose as per the result of the uncertain event.

3. No Other Interest in the Event:

Neither party should have any interest in happening or non-happening of the event other than the sum he will win or lose. If either party has some other interest other than the sum he will win or lose, it will not be a wager.

4. No Control Over the Event:

The parties to the contract should not have any control over the happening of the event one way or the other. If one party has the events in his hands, the transaction will not be a wager.

5. Promise to Pay Money or Money's Worth:

The wagering agreement must contain a promise to pay money or money's worth.

Distinctions Between Wagering Agreement and Contingent Contract:

The points of distinction between the two may be noted as follows:

1. A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event. A contingent contract, on the other hand, is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
2. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
3. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
4. A wagering agreement is void whereas a contingent contract is valid.
5. In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.

DISCHARGE OF A CONTRACT

A contract may be discharged either by an Act of the parties or by an operation of law in the different base set out below:

(**i) Discharge by performance**:

It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be (1) actual performance or (2) attempted performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

(ii) Discharge by mutual agreement:

Section 62 of the Indian Contract Act provides if the parties to a contract agrees to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed.

(a) Effect of novation: The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation. On novation, the old contract is discharged and consequently it need not be performed. Thus, it is a case where there being a contract inexistence some new contract is substituted for it either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. For example, A owes B Rs.100. A, B and C agree that C will pay B and he will accept Rs. 100 from C in lieu of the sum due from A. A's liability thereby shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.

(b) Effect of rescission: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. It is needless to point out that novation also involves rescission. Both in novation and in rescission, the contract is discharged by mutual agreement.

(c) Effect of alteration of contract: As in the case of novation and rescission so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

(d) Promisee may waive or remit performance of promise: The law on the subject is contained in Section 63 reproduced below: "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of its any satisfaction which he thinks fit". In other words, a contract may be discharged by remission. Thus, where A, a party to a contract, has done all that he was required to do under the contract and the time for the other party, X, to perform his promise has not yet arrived, a bare waiver of his claim by A would be an effectual discharge to X.

(iii) Discharge by impossibility of performance: The impossibility may exist from the very start. In that

case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to: (a) an unforeseen change in law, (b) the destruction of the subject-matter essential to that performance; (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady; (e) the declaration of a war (Section 56).

(iv) Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promising within the specified period of limitation, he is deprived of remedy at law. For example, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time–barred and hence irrecoverable.

(v) Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

(vi) A promise may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction (Section 63).

(**vii**) **When a promise neglects** or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

(**viii) Discharge by breach of contract**: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64)

Breach of contract may be actual breach of contract or anticipatory breach of contract:

Anticipatory breach of contract: It is an important concept under the law of contractual relationship. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. A promisee, instead of putting an end to the contract forthwith may keep the contract alive up to the time when the contract is to be executed. But the amount of damages in one case may be different from that in the other.

Actual breach of contract: In contrast to anticipatory breach, it is a case of refusal to perform the promise on the scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

REMEDIES FOR BREACH OF CONTRACT

The Contract Act, in Section 73, has laid down the rules as to how the amount of compensation is to be determined. On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach. Compensation can be claimed for any loss or damage which naturally arises in the usual course of events. Compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach.

The following are the remedies available in case of breach of contract:

(i) Rescission of contract

(ii) Suit for damages

(iii) Suit for specific performance

(iv) Suit for injunction

(v) Suit for quantum meruit.

(i) Rescission of contract: When a contract is broken by one party, the other party may treat the

contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

(ii) Suit for damages: Remedy by damages is the most common remedy for the agreed party. This entitles the injured party to recover compensation for the loss suffered due to the breach of contract. The injured party can claim the following types of damages

(a) Liability for special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

(b) Liability to pay vindictive or exemplary damages: These damages may be awarded only in two cases, viz. (i) for breach of promise to marry; and (ii) wrongful dishonour by a banker of his customer's cheque. In a breach of promise to marry, exemplary damages may be awarded to the other party taking into consideration the injury caused to his or her feelings. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonour of his cheque may be quite heavy, depending upon the loss of credit and reputation suffered on that account.

(c) Liability to pay nominal damages: Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. Now you may ask why such damages are at all awarded. The answer is simple. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.

(d) Damages for deterioration caused by delay: In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

(iii) Suit for specific performance: Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.

(iv) Suit for injunction: Injunction is an order of a court restraining a person from doing particular act. It is a mode of securing the specific performance of the negative terms of the contract. Where a party to a contract is negativating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do. Injunction relief is appropriate to prevent an action, to put a stop on the conduct that violates person's rights or causes injury.

(v) Suit upon Quantum Meruit: The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.

He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise:

(a) Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

(b) Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e., non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

(c) The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.