

# Chapter 2- Indian Contract Act, 1872

## Unit – 6: Contingent and Quasi Contracts

### Contingent Contracts

*In this unit, we shall briefly examine what is called a 'contingent contract', its essentials and the rules regarding enforcement of this type of contracts.*

*The Contract Act recognises certain cases in which an obligation is created without a contract. Such obligations arise out of certain relations which cannot be called as contracts in the strict sense. There is no offer, no acceptance, no consensus ad idem and in fact neither agreement nor promise and yet the law imposes an obligation on one party and confers a right in favour of the other. We shall have a look on these cases of 'Quasi-contracts'.*

*A contract may be absolute or a contingent. An Absolute contract is one where the promisor undertakes to perform the contract in any event without any condition.*

### Definition of 'Contingent Contract' (Section 31)

*"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".*

*Contracts of Insurance, indemnity and guarantee fall under this category.*

*Example: A contracts to pay B 10,00,000 if B's house is burnt. This is a contingent contract.*

*Example: A makes a contract with B to buy his house for 50,00,000 if he is able to secure a bank loan for that amount. The contract is contingent contract.*

*Meaning of collateral Event: Pollock and Mulla defined collateral event as "an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise".*

*Example: A contracts to pay B 10,00,000 if B's house is burnt. This is a contingent contract. Here the burning of the B's house is neither a performance promised as part of the contract nor it is the consideration obtained from B. The liability of A arises only on the happening of the collateral event.*



*Example: A agrees to transfer his property to B if her wife C dies. This is a contingent contract because the property can be transferred only when C dies.*

### **Essentials of a contingent contract**

*(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent*

*Example: 'A' promises to pay 50,000 to 'B' if it rains on first of the next month.*

*(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a 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 1,00,000 if he marries C, it is not a contingent contract.*

*(iii) 'A' agreed to construct a swimming pool for 'B' for 20,00,000. And 'B' agreed to make the payment only on the completion of the swimming pool. It is not a contingent contract as the event (i.e. construction of the swimming pool) is directly connected with the contract.*

*(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.*

*Example: If A promises to pay B 100,000, if he so chooses, it is not a contingent contract. (In fact, it is not a contract at all). However, where the event is within the promisor's will but not merely his will, it may be contingent contract*

*Example: If A promises to pay B \$100,000 if it rains on 1st April and A leave Delhi for Mumbai on a particular day, it is a contingent contract, because going to Mumbai is an event no doubt within A's will, but raining is not merely his will.*

*(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.*

*Example: 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfilment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.*



## **Rules Relating to Enforcement**

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

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| <p><b>(a) Enforcement of contracts contingent on an event happening:</b></p>   | <p>Section 32 says that "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".</p> <p><b>Example:</b> A contracts to pay B a sum of money when B marries C. C dies without being married to B. The Contract becomes void.</p>   |
| <p><b>(b) Enforcement of contracts contingent on an event not happening:</b></p>   | <p>Section 33 says that "Where a contingent contract is made to do or not 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".</p> <p><b>Example:</b> Where 'P' agrees to pay 'Q' a sum of money if a particular ship does not return, the contract becomes enforceable only if the ship sinks so that it cannot return.</p> <p>Where A agrees to pay sum of money to B if certain ship does not return however the ship returns back. Here the contract becomes void.</p>   |
| <p><b>(c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.</b></p> | <p>Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, 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".</p> <p><b>Example:</b> Where 'A' agrees to pay 'B' a sum of money if 'B' marries 'C'. 'C' marries 'D'. This act of 'C' has rendered the event of 'B' marrying 'C' as impossible; it is though possible if there is divorce between 'C' and 'D'.</p> <p>In <i>Frost V. Knight</i>, the defendant promised to marry the plaintiff on the death of his father. While the father was still alive, he married another woman. It was held that it had become impossible that he should marry the plaintiff and she was entitled to sue him for the breach of the contract.</p> |
| <p><b>(d) Contingent on happening of specified</b></p>   | <p>Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time,</p>  |



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| <p><i>event within the fixed time:</i></p>                                       | <p><i>becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.</i></p> <p><i>Example: A promises to pay B a sum of money if certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes ship is burnt within the year.</i></p>  |
| <p><i>(e) Contingent on specified event not happening within fixed time:</i></p> | <p><i>Section 35 also void if the says that "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".</i></p> <p><i>Example: A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.</i></p> |
| <p><i>(f) Contingent on an impossible event (Section 36):</i></p>                | <p><i>Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.</i></p> <p><i>Example: 'A' agrees to pay 'B' one lakh if sun rises in the west next morning. This is an impossible event and hence void.</i></p> <p><i>Example: X agrees to pay Y 1,00,000 if two straight lines should enclose a space. The agreement is void.</i></p>  |

### **Difference between a contingent contract and a wagering contract**

| <i>Basis of difference</i> | <i>Contingent contract</i>   | <i>Wagering contract</i>   |
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| <i>Meaning</i>             | <i>A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.</i> | <i>A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening.</i> |
| <i>Reciprocal promises</i> | <i>Contingent contract may not contain reciprocal promises.</i>  | <i>A wagering agreement consists of reciprocal promises.</i>   |



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| <i>Uncertain event</i>                        | <i>In a contingent contract, the event is collateral.</i>                              | <i>In a wagering contract, the uncertain event is the core factor.</i>  |
| <i>Nature of contract</i>                     | <i>Contingent contract may not be wagering in nature.</i>                              | <i>A wagering agreement is essentially contingent in nature.</i>        |
| <i>Interest of contracting parties</i>        | <i>Contracting parties have interest in the subject matter in contingent contract.</i> | <i>The contracting parties have no interest in the subject matter.</i>  |
| <i>Doctrine of mutuality of lose and gain</i> | <i>Contingent contract is not based on doctrine of mutuality of lose and gain.</i>     | <i>A wagering contract is a game, losing and gaining alone matters.</i> |
| <i>Effect of contract</i>                     | <i>Contingent contract is valid.</i>   | <i>A wagering agreement is void.</i>                                    |

### Quasi Contracts

*A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent. But sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no genuine consent, lawful consideration, etc. and in fact neither agreement nor promise. Such cases are not contract in the strict sense, but the Court recognises them as relations resembling those of contracts and enforces them as if they were contracts. Hence the term **Quasi-contracts (i.e. resembling a contract)**. Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts as they create the same obligations as in the case of regular contract.*

*Quasi contracts are based on principles of equity, justice and good conscience. A quasi or constructive contract rest upon the maxims, "No man must grow rich out of another person's loss".*

***Example:** T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.*

***Example:** A pays some money to B by mistake. It is really due to C. B must refund the money to A.*



*Example: A fruit parcel is delivered under a mistake to R who consumes the fruits thinking them as birthday present. R must return the parcel or pay for the fruits. Although there is no agreement between R and the true owner, yet he is bound to pay as the law regards it a Quasi-contract.*

*These relations are called as quasi-contractual obligations. In India it is also called as 'certain relation resembling those created by contracts.'*

**Salient features of quasi contracts:**

- (a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.*
- (b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and*
- (c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.*

*Under the provisions of the Indian Contract Act, the relationship of quasi contract is deemed to have come to exist in five different circumstances which we shall presently dilate upon. But it may be noted that in none of these cases there comes into existence any contract between the parties in the real sense. Due to peculiar circumstances in which they are placed, the law imposes in each of these cases the contractual liability.*

**(a) Claim for necessaries supplied to persons incapable of contracting (Section 68)**

*If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.*

*Example: A supplies B, a lunatic, or a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.*

*To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his requirements at the time of the sale and delivery.*



**(b) Payment by an interested person (Section 69):**

*A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, entitled to be reimbursed by the other.*

*Example: B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of the sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.*

**(c) Obligation of person enjoying benefits of non-gratuitous act (Section 70):**

*In term of section 70 of the Act "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 pay 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.*

*The above can be illustrated by a case law where 'K' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and, in the meantime, government went on appeal. The appeal was decided in favour of the government and 'K' was directed to return the salary paid to him during the period of reinstatement. [Shyam Lal vs. State of U.P. A.I.R (1968) 130]*

*Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.*

**(d) Responsibility of finder of goods (Section 71):**

*A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.*



Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

*In Hollins vs. Howler L. R. & H. L., 'H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so. Held, 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.*

*Example: 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the weekend. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.*

**(e) Money paid by mistake or under coercion (Section 72):**

*"A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".*

*Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable. [Shivprasad Vs Sirish Chandra A.I.R. 1949 P.C. 297]*

*Example: A payment of municipal tax made under mistaken belief or because of mis-understanding of the terms of lease can be recovered from municipal authorities. The above law was affirmed by Supreme Court in cases of Sales tax officer vs. Kanhaiyalal A. I. R. 1959 S. C. 835*

*Similarly, any money paid by coercion is also recoverable. The word coercion is not necessarily governed by section 15 of the Act. The word is interpreted to mean and include oppression, extortion, or such other means [Seth Khanjelek vs National Bank of India].*



In a case where 'T' was traveling without ticket in a tram car and on checking he was asked to pay ₹5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him. The suit was decreed in his favour. [Trikamdas vs. Bombay Municipal Corporation A. I. R.1954]

In all the above cases the contractual liability arose without any agreement between the parties.

### Difference between quasi contracts and contracts

| <i>Basis of distinction</i>             | <i>Quasi- Contract</i>   | <i>Contract</i>   |
|---|--|---|
| <i>Essential for the valid contract</i> | <i>The essentials for the formation of a valid contract are absent</i> | <i>The essentials for the formation of a valid contract are present</i> |
| <i>Obligation</i>                       | <i>Imposed by law</i>  | <i>Created by the consent of the parties</i>                            |

