UNIT II

VOID AGREEMENTS

A void agreement is one which is not enforceable by law [Sec. 2] Such an agreement does not give rise to any legal consequences and exaused ab initio.

The following agreements have been expressly declared to be void by the Contract Act.

1) Agreements by incompetent parties (Sec. 11)
2) Agreements made under a mutual mistake of fact [Sec. 20].
3) Agreements the consideration or object of which is unlawful (Sec. 23)
4) Agreements the consideration or object of which is unlawful in part (Sec. 24)
5) Agreements made without consideration (Sec. 25)
6) Agreements in restraint of marriage (Sec. 26).
7) Agreements in restraint of trade (Sec. 27)
8) Agreements in restraint of legal proceedings (Sec. 28)
9) Agreements the meaning of which is uncertain (Sec. 29)
10) Agreements by way of wager (Sec. 30)
11) Agreements contingent on impossible events (Sec. 36)
12) Agreements to do impossible acts (Sec. 56)
13) In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement (Sec. 57)

WAGERING AGREEMENTS OR WAGER

A wager is an agreement is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen. Thus if A and b enter into an agreement that A shall pay B Rs. 100 if it rains on Monday, and that B shall pay A the same amount if it does not rain, it is a wagering agreement.

Essentials of Wagering Agreement:

(1) Promise to pay money or money's worth: The wagering agreement must contain a promise to pay money or money's worth.
(2) Uncertain event: The promise must be conditional on an event happening or not happening.
(3) Each party must stand to win or lose: Upon the determination of the contemplated event, each party should stand to win or lose.
(4) No control over the event: Neither party should have control over the happening of the event one way or the other

(5) No other interest on the event: Neither party should have nay interest in the happening or non-happening of the event other sum or stake he will with or lose

CONTINGENT CONTRACTS

'Contingent' means that which is dependent on something else. A Contingent Contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen (Sec. 31). For example, goods are sent on approval the contract is a contingent contract depending on the act of the buyer to accept or reject the goods.
There are three essential characteristics of a contingent contract.

1. Its performance depends upon the happening or non-happening in future of some event. It is this dependence on a future event which distinguishes a contingent contract from other contracts.
2. The event must be uncertain. If the event if bound to happen, and the contract has got to be performed in any case it is not a contingent contract
3. The event must be collateral, i.e. incidental to the contract

Contracts of insurance, indemnity and guarantee are the commonest instances of a contingent contract.

RULES REGARDING CONTINGENT CONTRACTS

1. Contingent contracts dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void (Sec. 32)

Example: A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

2. Where a contingent contract is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible. (Sec. 33)

Example: A agrees to pay B a sum of money, if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

3. If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, of otherwise than under further contingencies (Sec. 34)

Example: A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must not be considered impossible, although it is possible that D may die and that C may afterwards marry B.

4. Contingent contracts to do r onto to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry of that time.
5. Contingent agreements to do or not to do anything, if an impossible event happens are void, whether or not the fact is known to the parties (Sec. 36).

PERFORMANCE OF CONTRACT

Performance of a contract takes place when the parties to the contract fullfil their obligations arising under the contract within the time and in the manner presented.

OFFER TO PERFORM

Sometimes it so happens that the promisor offers to perform him obligation under the contract at the proper time and place but the promise does not accept the performance. This is known as "attempted performance" or "tender".

REQUISITES OF A VALID TENDER

1. It must be unconditional. It becomes conditional when it is not in accordance with the terms of the contract.
2. It must be of the whole quantity contracted for or of the whole obligation. A tender of an installment when the contract stipulates payment in full is not a valid tender.
3. It must be by a person who is in a position, and is willing, to perform the promise.
4. It must be made at the proper time and place. A tender of goods after the business hours or of goods or money before the due date is not a valid tender.
5. It must be made to proper person, i.e. the promise or his duly authorized agent. It must also be in proper form.
6. It may be made to one of the several joint promises. In such a case it has the same effect as a tender to all of them.
7. In case of tender of goods, it must give a reasonable opportunity to the promise for inspection of goods.
8. In case of tender of money, the debtor must make a valid tender in the legal tender money.

RECIPROCAL PROMISES

Promises which form the consideration or part of the consideration for each other are called: reciprocal promises" [Sec. 2(f)]. Where, for example: A promises to do or not to do something and consideration of B is promise to do or not to do something the promises are reciprocal.

These promises have been classified is follows:

(1) Mutual and Independent: Where each party must perform his promise independently and irrespective of the fact whether the other party has performed or is willing to perform his promise or not the promises are mutual and independent.

Example: In a contact of sale, B agrees to pay the price of goods on of instant. S promises to supply the goods on 2nd instant. The promises are mutual and independent.

(2) Conditional and Dependent: Where the performance of the promise by one party depends on the prior performance of the promise by the other party the promises are conditional and dependent.

Example: A promises to remover certain debris lying in front of B's house provided B supplies him with the cart. The promises in this case are conditional and dependent. A need not perform his promise if B fails to provide him with the cart.

(3) Mutual and Consent: Where the promises of both the parties are to be performed simultaneously they are said to be mutual and concurrent. The example of such promises may be sale of goods for cash.

Rules Regarding Performance of Reciprocal Promises

1) Simultaneous performance of reciprocal promises
2) Order of performance of reciprocal promises
3) Effect of one party preventing another from performing promise
4) Effect of default as to promise to be performed first.
5) Reciprocal promise to do things legal and also other things illegal

TIME AS THE ESSENCE OF THE CONTRACT

The expression "time is of the essence of the contract " means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract.

Sec. 55 deals with the question of "time as the essence of the contract" and provides.

1. When time is of the essence: In a contract, in which time if of the essence of the contract, if there is a failure on the part of the promisor to perform his obligation within the fixed time. The contract (or so much of it as remains unperformed becomes voidable at the option of the promise (Sec. 55 para 1). If, in such a case the promise accepts performance of the promise after the fixed time, he cannot claim compensation for nay loss occasioned by the non-performance of the promise at the agreed time. But if at the time of accepting the delayed performance he gives notice to the promisor of his intention to claim compensation, he can do so (Sec. 55 para 3)

In commercial or mercantile contracts which provide for performance within a specified time, time is ordinarily of the essence of the contract. This is so because businessmen want certainty.

Example: In a contract for the sale or purchase of goods the prices of which fluctuate rapidly in the market, the time of delivery and payment are considered to be of the essence of the contract.

2. When time is not of the essence: In a contract, in which time is not of the essence of the contract, failure on the part of the promisor to perform his obligation within the fixed time does not make the contract voidable, but the promise is entitled to compensation for any loss occasioned to him by such failure (Sed. 55 para 2)

Intention to make time as the essence of the contract, if expressed in writing, must be in a language which is unambiguous and unmistakable. The mere fact that a certain time is specified in a contract for the performance of a promise does not necessarily make time as the essence of the contract. If the contract includes clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of time provided in the contract, such clauses are construed

as rendering ineffective the express provision relating to the time being of the essence of the contract.

TERMINATION AND DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e. when the rights and obligations created by it come to an end.

A contract may be discharged

1. By Performance
2. By Agreement or Consent
3. By impossibility
4. By Lapse of Time
5. By operation of Law
6. By Breach of Contract

1. Discharge by Performance

Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill then obligations arising under the contract within the time and in the manner prescribed.

Performance of a contract is the most usual mode of its discharge. It may be

(1) Actual Performance: When both the parties perform their promises the contract is discharged. Performance should be complete precise and according to the terms of the agreement.

(2) Attempted Performance or Perfer: Tender is not actual performance but is only an after to perform the obligation under the contract.

2. Discharge by agreement or consent

(a) Sec. 62 lays down that if the parties to a contract agree to substitute a new contract for it or to rescind or to alter it the original contract is discharged and need not be performed.

The various cases of discharge of contract by mutual agreement are dealt with in Sec. 62 and 63 are given below.

Rescission Sec. 62: Novation takes place when a new contract is substituted for an existing one between the same parties.

Example: A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. the old debt of A to B is at an end and a new debt from C to B has been contracted.

(b) Rescission Sec. 62: Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur

(i) By mutual consent of the parties or

(ii) Where one party fails in the performance of his obligation in such a case the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract.

Example: A promises to supply certain goods to B six months after date. By that time, the goods go out of fashion. A and B may rescind the contract.

(c) Alteration (Sec 62): Alteration of a contract may take place when one or more of the terms of the contract is are altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged.

Example: A enters into a contract with B for the supply of 100 bales or cotton at his Godown No. 1 by the first of the next month. A and B may after the terms of the contract by mutual consent.

(d) Remission Sec. 63) Remission means acceptance of a lesser fulfilment or the promise made, i.e. acceptance of a lesser sum than what was contracted for the discharge of the whole of the debt.

Example: A owes B Rs. 50,000. A pays to B and B accepts in satisfaction of the whole debt. Rs. 20,000 paid at the time and place at which Rs. 50,000 were payable. The whole debt is discharged.

(e) Waver: Waver takes place when the parties to a contract agree that gdfsg shall no longer be bound by the contract. This amounts to a mutual thandonment at rights by the parties to the contract.

(f) Merger: Merger tales place when an inferior right accuring to a party under a contract merger into a superior right accruing to the same party under the same on some other contract.

Example: P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

3. DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

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

1. *Impossibility existing of the time of agreement:* Sec. 56 lays down that can agreement to do an impossible act 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 a contract (which could be performed at the time when the contract was entered into) is called post-contractual or supervening impossibility.

Discharge by Supervening Impossibility

A contract is discharged by supervising impossibility in the following cases

1. Destruction of subject-matter of contract: When the subject-matter of a contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged.

Example: C let a music hall to T for a series of concerts on certain days. The hall was accidentally burnt down before the date of the first concert. Held the contract was void.

2. Non-existence or Non-occurrence of a particular state of things: Sometimes, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. If there is any change in the state of things which ought to have occurred does not occur, the contract is discharged.

Example: A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

3. Death or Incapacity for personal service: Where the performance of a contract depends on the personal skill or qualification of a party, contract is discharged on the illness or incapacity or death of that party. The man's life is an implied condition of the contract.

Example: An artist undertook to perform at a concert for a certain price. Before she could do so, she was taken seriously ill. Held she was discharged due to illness.

4. Change of law: When subsequent to the formation of a contract change of law takes place, and the performance of the contract becomes impossible the contract discharged.

Example: D enters into a contract with P on 1st March for supply of imported goods in the month of September of the same year in June Parliament the import of such goods is banned. The contract is discharged.

5. Outbreak of war : A contract entered into with an after enemies during war is unlawful and therefore impossible for performance. Contracts entered into before the outbreak of war are suspended during the war and may be revived after the war is over.

4. DISCHARGE BY LAPSE OF TIME

The Limitation Act 1963 laws down that a contract should be performed within a specific period called period of limitation. If it is not performed and if no action is taken by the promise within the period of limitation he is deprived of his remedy at law. For example the price of goods sold without any stipulation as to credit should be paid within three years of the delivery of the goods. If the price is not paid and creditor does not file a suit against the buyer for the recovery of price within three years the debt becomes time-barred and hence irrecoverable.

5. DISCHARGE BY OPERATION OF LAW

A contract may be discharged by operation of law. This includes discharge

(a) By Death: In contracts involving personal skill or ability, the contract is terminated on death of the promissory. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

(b) By Merger: When an inferior right accruing to a party merges into a superior rights accruing to the same party under the same or some other contract the inferior right accruing to the party is said to be discharged.

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

(d) By Authorised 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 parts, the other parts can avoid the contract. A material alteration is one which changes in a significant manner the legal identity or character of the contract or the rights and liabilities of the parties to the contract.

(e) B y Rights and Liabilities becoming visited of the Person: Where the rights and liabilities under a contract vested in the same person for example when a bill gets into the hands of the acceptor, the other parties are discharged.

6. DISCHARGE BY BREACH OF CONTRACT

Breach of contract means a breaking of the obligation which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfil his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action for damages on the injured party.

REMEDIES FOR BREACH OF CONTRACT

When a contract is broken, the injured party has one or more of the following remedies:

1. Rescission of the contract
2. Suit for damages
3. Suit upon quantum meruit
4. Suit for specific performance of the contract
5. Suit for injunction

1. RESCISSION

When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. In such a case, be is absolved of all his obligations under the contract.
Example: a promises B to supply 10 bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.
The Court may grant rescission.

(a) Where the contract is voidable by the plantiff of

(b) Where contract is unlawful to but apparent off its face and the defendant is more to blame that the \

When a party treats the contracts as rescinded be makes himself liable to any benefits he has of under the contract to the party from whom such benefits were received. But if a person rightfully rescinds a contract he is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract by the other party.

2. DAMAGES

Damages are a motors compensation allowed to the injured party by the Court for the loss or injurs suffered by him by the breach of a contract. The object of awarding damages for the search of a contract is to put the injured party in the same position, so far as money am the it, as if he had not been injured, i.e. in the position in which he would have been had there been performance and not breach. This is called the doctrine of restitution.

The rules relating to damages may be considered as under

1. Damages arising naturally – Ordinary damages

When a contract has been broken, the injured party can recover from the other party such damages as naturally and directly arose in the usual course of things from the breach. This means that the damages must be the proximate consequence of the breach of contract. These damages are known as ordinary damages.

Example: A contracts to sell and deliver 50 quintals of Farm Wheat to B at Rs. 1000 per quintal, the price to be paid at the time of delivery the price of wheat rises to Rs. 1200 per quintal and A refuses to sell the wheat B can claim damages at the rate of Rs. 200 per quintal.

2. Damages in contemplation of the parties – Special damages

Special damages can be claimed only under the special circumstances which would result in a special loss in case of breach of a contract. Such damages knows as special damages cannot be claimed as a matter of right.

Example: A. a builder, contracts to erect a house for B by the 1st of January. The order that B may give possession of it at that time to C to whom B has contracted to it. A is informed of the contract between B and C. A builds the house so badly that before the 1st January, it falls down and has to be rebuilt by B consequence loses the rent which be was to have received from C, and to make compensation to C favor the breach of the contract. A must make to for the cost of rebuilding the house for the rent lost, and for the compensation made to.

3. Vindictive or Exemplary damages

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishement for wrong inflicted. Hence vindictive or exemplary' damages have no place in the law of contract because they are punitive involving punishment by nature. But in case of (a) breach of a promise to marry and the dishonor of a cheque by a banker wrongfully when he possesses sufficient funds by the credit of the customer, the Court may award exemplary damages.

4. Nominal damages

Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal. These damages mere acknowledge that the plaintiff has proved his case and won.

Example: A firm consisting of four partners employed B for a period of two years. After six months two partners rebred the business being carried on by the other two B declined to be employed under the continuing partners. Held, he was only entitled to nominal damages as he had suffered no loss.

5. Damages for loss of reputation

Damages for loss of reputation on case of breach of a contract are generally not recoverable. An exempuon to this rule exists in the case of a banker who wrongfully refuses to honour a customer's cheque. If the customer happens to be a tradesman, he can recover damages in respect of any loss to his trade reputation byh the breach. And the rule of law is the smaller the amount of the cheque dishonoured the larger the amount of damages awarded. But if the customer is not a tradesman be can recover only nominal damages.

6. Damages for inconvenience and discomfort

Damages can be recovered for physical inconvenience and discomfort. The general rule in this connection is that the measure of damages is not affected by the motive or the manner of the breach.

Example: A was wrongfully dismissed in a harsh and humiliating manner by from his employment. Held (a) A could recover a sum representing his wages for the period of notice and the commission which he would have earned during that period but (b) he could not recover anything for his injured feelings or for the loss sustained from the fact that his dismissal made it more difficult for him to obtain employment.

7. Mitigation of damages

It is the duty of the injured party to take all reasonable steps to mitigate the loss caused by the breach. He cannot claim to be compensated by the party in default for loss which the ought reasonably to have avoided. That is he cannot claim compensation for loss which is really due not to the breach, but due to his own neglect to mitigate the loss after the breach.

8. Difficulty of Assessment

Although damages which are incapable of assessment cannot be recovered the fact that they are difficult to assess with certainty or precision does not prevent the aggrieved party from recovering them. The Court must do its best estimate the loss and a contingences may be taken into account.

Example: H advertised a beauty competition by which of certain newspapers were to select fifty ladies. He himself was to select twelve out of these fifty. The selected twelve were to be provided theatrical engagements. C was one of the fifty and by H's breach of contract she was not present when the final section was made. Held C was entitled to damages although it was difficult to assess them.

9. Cost of Decree

The aggrieved party is entitled in addition to damages to get the cost of getting the decree for damages. The cost of suit for damages is in the discretion of the Court.

10. Damages agreed upon in advance in case of breach

If a sum is specified in a contract as the amount to be paid in case of its or if the contract contains any other stipulation by way of failure to perform the obligations the aggrieved party is entiled to from the has broken the contract a reasonable compensation not exceeding the named.

Example: A contracts with B to pay Rs. 1000 if he fails to pay given day. B is entitled to recover from A such compensation not exceeding Rs. -- as the Court considers reasonable.

Liquidated Damages and Penalty

Sometimes parties to a contract stipulate at the time of its formation that on the breach of the contract by either of them a certain specified sum be payable as damages. Such a sum may amount to either liquidated damages or a penalty. Liquidated damages represent a sum fixed or ascertained by the parties in the contract which is a fair and genuine pre-estimate of the probable loss that as a result of the breach. If it takes place. A penalty is a sum named in the contract at the time of its formation, which is dispropoetionate to the damages likely to fdgdfgd as a result of the breach. It is fixed up with a view to securing the performance of the contract.

Payment of Interest

The largest number of cases decided under Sec. 74 relate to stipulation if a contract providing for payment of interest. The following rules are observed with regard to payment of interest.

1. Payment of interest in case of default.
2. Payment of interest at higher rate
    a. From the date of the bond, and
    b. From the date of default
3. Payment of compound interest on default
    a. At the same rate as simple interest and
    b. At the rate higher than simple interest
4. Payment of interest at a lower rate, if interest paid on due date.

3. QUANTUM MERUIT

The phrase quantum meruit much as earned. A right to sue on a quantum meruit arises where a performed by one party has become discharged to the breach of the contract party.

4. SPECIFIC PERFORMANCE

In certain cases of breach of contract damages are not an adequate remedy. The Court may, in such cases direct the party in breach to carry out his promise according to the terms of the contract.

Some of the cases in which specific performance of a contract may in discretion of the Court be enforced are as follows:

(a) When the act agreed to be done is such that compensation in money for its non performance is not an adequate relief.
(b) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.
(c) When it is probable that the compensation in money cannot be got for the non-performance of the act agreed to be done.

5. INJUNCTION

Where a party is in breach of a negative term of a contract the where is doing something which he promised not to do, the Court may be issuing an order restrain him from doing what he promised not to do. Such an order of the Court is known as injunction'.
Example: W agreed to sing at L's theatre, and during a certain period to sing nowhere else. Afterwards W made contract with Z to sing at another theatre and refused to perform the contract with L. Held, W could be restrained by injunction from singing for Z.

QUASI CONTRACTS

Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed quasi-contracts, because, although there is no contract or agreement between the parties, they are put in the same position as if there were a contract between them.

A quasi-contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. The principle of unjust enrichment requires:

- That the defendant has been 'enriched' by the receipt of a 'benefit'
- That this enrichment is at the expense of the plaintiff, and
- That the retention of the enrichment is unjust.

Law of quasi-contracts is also known as the law of restitution. Strictly speaking, a quasi-contract is not a contract at all. A contract is intentionally entered into. A quasi-contract, on the other hand, is created by law.

KINDS OF QUASI-CONTRACTS

1. **SUPPLY OF NECESSARIES** (Sec. 68)

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another 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, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. **PAYMENT OF INTERESTED PERSON** (Sec. 69)

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

Example: P left his carriage on D's premises. D's landlord seized the carriage as distress for rent. P paid the rent to obtain the release of his carriage. Held, P could recover the amount from D.

The essential requirements are as follows:

(a) The payment made should be bonafide for the protection of one's interest.
(b) The payment should not be voluntary one.
(c) The payment must be such as the other party was bound by law to pay.

3. **OBLIGATION TO PAY FOR NON-GRATUITOUS ACTS** (Sec. 70)

When 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.

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

Before any right of action under Sec. 70 arises, three conditions must be satisfied.

(a) The thing must have been done lawfully.
(b) The person doing the act should not have intended to do it gratuitously
(c) The person for whom the acts is done must have enjoyed the benefit of the act.

4. **RESPONSIBILITY OF FINDER OF GOODS** (sec. 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 bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value. he must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest in the finder and he can retain the goods as his own against the whole world (except the owner).

Example: F picks up a diamond on the floor of S's shop. He hands it over to S to keep it till true owner is found out. No one appears to claim it for quite some weeks in spite of the wide advertisements in the newspapers. F claims the diamond for S who refuses to return. S is bound to return the diamond to F who is entitled to retain the diamond against the whole world except the true owner.

The finder can sell the goods in the following cases:

- When the thing found is in danger of perishing.
- When the owner cannot, with reasonable diligence, be found out.
- When the owner is found out, but he refuse to pay the lawful charges of the finder, and
- When the lawful charges of the finder, in respect of the thing found amount to two-thirds of the value of the thing found. (Sec. 169)
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5. **MISTAKE OR COERCION** (Sec. 72)

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion. The word 'coercion' is used in Sec. 72 in its general sense and not as defined in Sec. 15.

Example: A and B jointly owe Rs. 100 to C. A alone pays the amount to C and B, not knowing this fact, pays Rs. 100 over again to C. C is bound to pay the amount to B.

QUANTUM MERUIT

'Quantum meruit' literally means 'as much as earned' or as much as it merited'. When a person has done some work under a contract, and the other party repudiates the contract, or some event happens which makes the further performance of the contract impossible, them the party who has performed the work can claim remuneration for the work he has already done. Likewise, where one person has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit, i.e. so much as the party rendering the service deserves. The right to claim quantum meruit does not arise out of contract as the right to damages does, it is a claim on the quasi-contractual obligation which the law implies in the circumstances.

The claim for quantum meruit arises only when the original contract is discharged. If the original contract exists, the party not in default cannot have quantum meruit remedy, he has to take resort to remedy in damages. Further the claim for quantum meruit can be brought only by the party who is not in default.

The claim for quantum meruit arises in the following cases

(a) When an agreement is discovered to be void (Sec. 65)

(b) When something is done without any intention to do so gratuitously (Sec. 70)

(c) When there is an express or implied contract to render services but there is no agreement as to remuneration

(d) When the completion of the contract has been prevented by the act of the other party to the contract

(e) When a contract is divisible

(f) When an indivisible contract is completely performed but badly.