

Last Minute Revision

(Dr. Shonal John)

13 Marks Questions

1. Essentials of a valid Contract

1. Two parties
2. Intention to create legal relationship (**Balfour vs Balfour**)
3. Legal proposal (**Carlill vs Carbolic Smokeball, Bumper Hall Pen**)
4. Legal acceptance (**Lalman Shukla vs Gauri Dutt**)
5. Communication of offer and acceptance
6. Capacity to Contract (**Mohiri Bibi vs Dharmodas Ghosh**)
7. Free Consent (**Derry vs Peek**)
8. Lawful object
9. Lawful consideration (**Chinnaya vs Rammaya**)
10. Agreement should not explicitly void

2. All agreements are not Contracts

- S. 10 – Agreements who are enforceable by law are contracts
1. Capacity to Contract (S. 11, 12) (**Mohiri Bibi vs Dharmodas Ghosh**)
 2. Free Consent (S. 13 – S. 22) (**Derry vs Peek – S. 18**)
 3. Lawful object and Lawful consideration (S. 23 – S. 25) (**Chinnaya vs Ramaya**)
 4. Agreement should not explicitly void (S. 26 – S. 30)

Sections:

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. “Consent” defined.
14. “Free consent” defined.
15. “Coercion” defined.
16. “Undue influence” defined.
17. “Fraud” defined.
18. “Misrepresentation” defined.
19. Voidability of agreements without free consent.

- 19A. Power to set aside contract induced by undue influence.
- 20. Agreement void where both parties are under mistake as to matter of fact.
- 21. Effect of mistakes as to law.
- 22. Contract caused by mistake of one party as to matter of fact.
- 23. What considerations and objects are lawful, and what not.
- 24. Agreement void, if considerations and objects unlawful in part.
- 25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.
- 26. Agreement in restraint of marriage, void.
- 27. Agreement in restraint of trade, void.
Saving of agreement not to carry on business of which good-will is sold.
- 28. Agreements in restraint of legal proceeding void.
Saving of contract to refer to arbitration dispute that may arise.
Saving of contract to refer questions that have already arisen.
Saving of a guarantee agreement of a bank or a financial institution.
- 29. Agreements void for uncertainty.
- 30. Agreements by way of wager, void.
Exception in favour of certain prizes for horse-racing.
Section 294A of the Indian Penal Code not affected.

3. Quasi contract (certain relations resembling contract)

68. Claim for necessities supplied to person incapable of contracting, or on his account.—If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities 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.

Illustrations:

- (a) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.
- (b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

69. Reimbursement of person paying money due by another, in payment of which he is interested.—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

Eg: 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 such 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.

70. Obligation of person enjoying benefit of non-gratuitous 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 make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations: (a) 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. (b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. Responsibility of finder of goods.—A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations: (a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B. (b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive

4. Doctrine of Frustration

5. Discharge of Contract

6. Injunctions. Perpetual Injunctions. When court can refuse to grant injunction.

7. Specific performance (S. 10, S. 11(1), S.12). Which contracts cannot be specifically enforced (S. 11(2), S. 14). Who cannot be sued (S. 16). Who cannot obtain specific performance? (S. 20)

8. Breach of Contract. Remedies

Specific Relief Act

1. State different reliefs granted under the Specific Relief Act

The various specific reliefs provided for in the Act are as follows:

- i) Recovery of possession of immovable property
- ii) Recovery of possession of movable property
- iii) Specific performance of contracts
- iv) Rectification of instruments
- v) Rescission of a contract
- vi) Cancellation of instrument
- vii) Declaratory decrees and
- viii) Preventive reliefs i.e., injunctions they are Temporary, perpetual and Mandatory injunctions

2. Recovery of possession of possession of immovable property

The specific relief act in Section. 5 & 6 provide for the recovery of specific immovable property by a person who is entitled either as an owner or as a possessor.

The object is to provide for a special and speedy remedy for dispossession. If a person is dispossessed of his immovable property without consent and not under a court order, such a person may file a suit to recover the possession of specific immovable property. The court will not enquire here into the title of the person. There is no review or appeal from the decision of the court.

Essentials:

- 1. Have been in possession of immovable property
- 2. Have been dispossessed out of the property
- 3. The dispossession should without his consent
- 4. Dispossession should have been otherwise than in due course of law
- 5. Dispossession should not have been made by Government.
- 6. Suit file – within 6 months of dispossession.

Eg : A is tenant and D is the owner of a premises. A sub-leases to B. At the time of vacating, B delivers the premises to C who is the purchaser of the premises from D. A dispossess C. Held : C was entitled to recover possession from A.

3. Recovery of possession of movable property

The Specific Relief Act, in Sns. 7 and 8 deal with the recovery of possession of specific movable property. The procedure provided in the Civil Procedure Code may be followed.

- i) A trustee may sue and recover movables, to protect the interest of the beneficiary.
- ii) Further, under this section, a special or temporary right to the present possession of movable property is sufficient.

If a person who is not a owner is in possession of having control over specific movable property, he may be compelled specifically to deliver it to the person who is entitled to its immediate possession

The circumstances are as follows:

- 1) When the thing is held by the defendant who is an **agent or trustee** of the plaintiff.

Eg: A gave his special diamond necklace to B to put on A's daughter for the wedding. B pledged it with C who sold to K. Held, A may recover the specific necklace which was with K.

- 2) When compensation in money **would not be adequate relief** for the loss of the thing claimed, the court will grant specific relief. (eg: an ancient statue, Hindu family Idol, etc.).

- 3) When it would be extremely difficult to ascertain the actual damage caused by the loss. (eg: Paintings of Leonardo do Vinci, etc.)

- 4) When the possession of an article has been wrongfully transferred from the plaintiff.

The burden of proving the contrary is on the defendant

4. Specific Performance of Contract

As specific performance is an equitable relief, the specific relief act, provides for the relief in specific circumstances, specific performance means the actual execution according to the contractual stipulations and terms. Remedy is provided at the discretion of the court.

When Specific Performance is granted:

- 1) When the act agreed upon is in the performance of a trust.

Eg: A holds certain goods in trust for B. A wrongfully sells the goods to C. A is obliged to restore the same quantity of goods to B, and therefore B may enforce specific performance of this obligation. But, if the trustee has acted in excess or breach of his office, then there is no specific performance. S. 11 (2). However, damages may be claimed.

- 2) The court will grant specific performance, if there is no standard to find out the actual damage caused by non-performance of the contractual obligation.

Eg: A agrees to buy and B agrees to sell a picture painted by a deceased-painter, and two rare China vases. A may compel B to perform this specifically because it is not possible to estimate the damage

caused by non-performance.

- 3) There is specific performance if the act is of such a nature that pecuniary compensation is not an adequate relief.

Eg: In a partition deed among A, B and C the family God was agreed to be given to A. B, who is in possession of it refuses to give. Specific performance will be granted.

- 4) Specific performance is granted when it is probable that pecuniary compensation cannot be got for non-performance.

Eg: A transfers without endorsement, but for value, a promissory note to B. A becomes insolvent and C becomes the official assignee. B may compel C to make the endorsement because C has succeeded legally to the liabilities.

When specific performance is not granted:

According to Section 10 of the Specific Relief Act, specific performance is not granted in conditions specified under S. 11(2), Section 14, Section 16

1. A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced. **S. 11(2)**

Eg: T, a trustee has power to lease a building for one year. He leases out for ten years. These are not enforceable specifically

2. Where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
3. For a contract which involves the performance of continuous duties extending beyond 3 years, the court will not grant specific performance.
4. a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms;

Eg: A an author contracts with B a publisher, to complete a story book. A fails to do so.

5. A contract which is by nature avoidable in nature cannot be specifically enforced.
6. A contract made by a company in excess of its powers.

Eg: Directors of a company agree to sell, without authority, certain properties of the company to B. B cannot specifically enforce the contract.

7. A contract in which the subject matter does not exist at all. In such a case, there is no specific performance.

Eg: A contracts to sell his horse, which is in his stable, to B. The horse is dead at the time of the contract.

8. A contract which contains certain terms which the court finds that they are uncertain

9. Specific performance is not given if payment of compensation is an adequate remedy

Who can claim for specific performance

1. any of the parties
2. Representative in interest of the principal
3. In case of a marriage contract, family member
4. In case of contract for tenant for life, remainderman
5. In case of agreement in regards to a covenant, reversioner in possession
6. In case of agreement in regards to a covenant, reversioner in remainder
7. In case of Amalgamation of Limited Liability Partnership, the LLP or other party
8. In case of Amalgamation of company, the company or other party
9. In case where promoters of company enter into a contract, the company or other party

5. Rectification of instruments

(Sn. 26 of Specific Relief Act)

Rectification means correction of an error in an instrument with a view to giving effect to the real intention of the parties.

Essentials:

1. An error may creep in due to fraud or mistake of fact or law.
2. The instrument will not then express the real intention of the parties.

In some cases, both parties may be innocent, but the mistake may have crept in. In such cases, one of the parties may bring a suit to rectify the instrument. If the court is satisfied that there is fraud or common mistake in framing the instrument, and that the instrument does not speak to the real intention of the parties, it may in its discretion direct the correction of the instrument.

Exception:

1. If the rectification affects the interests of third parties who have acquired rights in good faith and for valuable consideration, no correction is allowed.
2. When a decree has been obtained on an unrectified instrument and in its execution money is recovered, correction is not allowed.
3. The Rule contained in section 26 is not applicable to Memorandum of Association (MoA) and Articles of Association (AoA) of a company.

A intends to sell to B his "House and godown". The sale deed shows three godowns of A. This is introduced by the fraud of B. B subsequently allows the use of one godown by C and leases the others to D. C and D are innocent.

Held : That the instrument may be duly rectified so as to include only the one godown which was intended by the parties. C and D are innocent and hence the court will not allow to rectify the sale deed to affect the interest of C and D.

6. Cancellation of instruments

(S. 31 of the Specific Relief Act)

The principle relating to cancellation of the instrument is based on administration of protective justice.

Essentials:

1. The remedy is available in respect of void or voidable instrument.
2. The party must have a reasonable apprehension that the instrument if left uncanceled, may cause serious injury.

In such cases the party affected may file a suit and get a declaration from the court so that the instrument may be delivered up and cancelled. If the instrument had been registered, the court will send a copy of the order to the Registrar. That officer shall make a note of cancellation of the instrument.

- a. A is the owner of a ship. He induced B to insure the ship as 'Sea-worthy'. Later, B may obtain cancellation of the insurance under this section.
- b. A deed is registered by force and in the face of opposition. The affected party may sue for cancellation of such a spurious deed.
- c. A finds that his title is affected, as B who is in possession of the property, has set up and registered a document. A may sue to get the declaration from the court that the registered deed be cancelled.

Partial cancellation is allowed, but this may be done by the court in a case where there is proper evidence to show that when a part is cancelled, the other part may stand on its own. In the case of cancellation of an instrument, the court may issue a decree stating what compensation is to be paid to the party affected.

7. Rescission of Contract

(Sn. 27 of the Specific Relief Act)

Rescission means the right of a party to exercise his right of action to terminate the contract.

Essentials: (When rescission can be granted and to whom)

1. When a contract is voidable because of fraud, misrepresentation or undue influence or coercion, (where the consent of the parties is vitiated) he should terminate the contract by taking recourse to court. The court will look to the circumstances and if it is satisfied, will help him to terminate the contract.
2. When the contract is unlawful for causes not apparent on the face of the contract and when the defendant is more to be blamed. A contract to stifle a pending prosecution is unlawful and may be set aside.
3. Rescission may be granted when a decree for specific performance of a contract of sale has been made and the purchaser makes default in payment of purchase money.

Eg : A sells his land to B. There is a right of way over the land in favour of C. A has cancelled this.
B may get a court decree to rescind the contract.

When does the court refuse to grant rescission

The court may refuse to rescind:

- (i) If plaintiff has ratified the contract
- (ii) If due to change of circumstances which has taken place since the date of contract, the parties cannot be restored back. Rescission of contract is not available for mere mistakes, unless a party against whom it is given has to be substantially restored to the same position as if the contract had not been made. Hence where there is no restoration, there is no rescission.
- (iii) If third parties, without notice but in good faith & for value, have acquired rights.
- (iv) Partial rescission when it is not severable from contract.

8. Declaratory Decree

The object of a declaratory decree is to strengthen the testimony regarding the title of the plaintiff, so that the decree may not weaken it. The principle is that if a cloud is cast on the title or legal character of a person, he is entitled to dispel that cloud through the court.

Eg : A is the owner of a house, B is in possession of it. B is alleging that he is the owner of the house. A may obtain a declaratory decree that he i.e., A is the owner.

Essentials:

1. The plaintiff must be entitled to legal character or to a right to the property,
2. The defendant must have denied or must be interested in denying the character or title of the plaintiff.
3. There must be some present danger or detriment to the interest of the plaintiff.

In such cases, the court may issue a declaratory decree declaring that the plaintiff is entitled to the legal character or title to the property.

Exception:

1. The court will not issue the decree, if the plaintiff is able to seek further relief than a declaratory decree but, omits to do so.
2. Further relief means a remedy which is available to the plaintiff which may be more appropriate and effective under the circumstances.
3. No decree will be given for a claim of the plaintiff to receive his 'Dakshina', at a temple.

© Copyrighted Last Minute Revision – Dr. Shonal John

Eg : A buys a property in the name of the defendant B. later B claims the property. A may ask for a declaratory decree that A is the owner and B is a benamidar.

A decree may be given declaring status in 1) Marriage 2) Divorce 3) Adoption 4) Legitimacy 5) Right of franchise 6) Right to contest for election 7) Right of being elected as a municipal councillor 8) Right to remain in service against an illegal order etc.

10. Injunctions. When injunctions cannot be granted

An injunction is a specific order or command of the court preventing a party from doing that which he is under a legal obligation not to do, or directing him the performance of a particular act or thing.

An injunction is granted when the court finds that it is just, equitable and convenient that the order of injunction is to be given as a remedy.

Injunctions may be Prohibitory or Mandatory

A **prohibitory injunction** forbids a defendant from doing a wrongful act which would infringe some legal or equitable right of the plaintiff. It takes the form 'let the defendant be restrained'.

Eg : Not to build any wall to affect the plaintiff's right to light and air.

A **mandatory injunction** forbids the defendant to permit the continuance of a wrongful state of things that already existed at the time when the injunction is issued. It takes the form 'Let the defendant be restrained from permitting the continuance of the building of any wall to affect the plaintiff's right to light and air'. This injunction calls the defendant to do some positive act.

Eg : To pull down a wall, to cut off the branches of a tree. The purpose of mandatory injunction is to restore order from a wrongful state of things.

Temporary	Permanent
It is passed during pendency of suit	It is passed at the end of the suit
Remain in force for a specified time period	Remain in force for the all-time to come
Preserve status quo	Preserve the rights of the plaintiff
Governed by Order 39 of CPC	Governed by S. 38-42 of SRA

Perpetual Injunctions:

It may be granted to prevent a breach of an obligation which is in favour of the plaintiff. If the defendant invades or threatens to invade the right of the plaintiff the court may grant a perpetual injunction. The circumstances for granting are specified:

- i) Where the defendant is the trustee of plaintiff's property
- ii) Where the actual damage cannot be estimated
- iii) Where money compensation is not adequate
- iv) Where injunction is necessary to prevent multiplication of judicial proceedings

Miles V. Thomas

A, B and C are partners of a firm. A threatens to destroy some property of the firm. B and C may ask for an injunction.

Examples:

- a. A leases out his vacant land to B on condition that he should not dig therein. If B digs, he may ask the court to issue a perpetual injunction.
- b. D is the doctor of P. P may ask the court to restrain the doctor from disclosing
- c. A continuously rings the bells and also creates other types of deafening noise interfering materially with the comfort of B. B may sue for an injunction
- d. A infringes the copy right of B. B may ask for a perpetual injunction

When court will not issue injunctions (Refusal of injunctions – S. 41)

In the following circumstances, the court will not issue an injunction to the party to the dispute.

- a) Injunction is not granted to stay judicial proceedings pending in other courts, at the time of the institution of the suit in which an injunction is prayed for. However, to prevent multiplicity of proceedings, an injunction may be granted
- b) Injunction is not granted to stay proceedings in a court not subordinate to the court in question.
- c) Injunction is not granted to restrain persons from applying to legislative powers (Parliament or State Legislature)
- d) It is not granted to interfere with the public duties of the Union or State Govt. or with foreign Govt. (Sovereign) functions.
- e) It is not granted to prevent proceedings in any criminal matter.
- f) It is not granted to prevent a nuisance which is not reasonably clear (contingent nuisance).
- g) It is not granted to prevent a breach of contract which is specifically unenforceable
- h) It is not granted when other remedies equally powerful are available.
- i) It is not granted to prevent a continuing breach.

j) It is not granted in circumstances which come under 'He who seeks equity must do equity' i.e., the plaintiff must go with clean hands. He himself should not be in the wrong.

k) It is not granted when the plaintiff has no personal interest in the subject matter

Case Laws:

Henderson v. Stevenson

The plaintiff bought a steamer ticket on the face of which was these words only: "Dublin to Whitehaven"; on the back were printed certain conditions one of which excluded the liability of the company for loss, injury or delay to the passenger or his luggage. The plaintiff did not see the back of the ticket, nor was there any indication on the face about the conditions on the back. The plaintiff's luggage was lost in the shipwreck caused by the fault of the company's servants. This was laid down by the House of Lords that the plaintiff is entitled to recover the loss which he suffered from the company in spite of the exemption clauses

Krell v Henry [1903] 2 KB 740

The defendant hired a flat on Pall Mall for the sole purpose of viewing King Edward VII's coronation procession. The price agreed was £75 for two days. The defendant paid £25 deposit. Due to illness of the King the coronation was cancelled. Consequently, the defendant did not use the flat. The claimant sought to claim the outstanding £50.

Held: The contract was frustrated as cancellation of the procession deprived it of its commercial purpose. The claimant's action for breach of contract was thus unsuccessful.

Taylor vs Caldwell

Defendants contracted to allow plaintiffs to use their gardens and music hall for a series of "concerts" (big parties), but between the formation of the contract and the first night of the concert, the music hall burned down without the fault of either party. In contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse the performance

Balfour v. Balfour (1919)

The 1919 case of Balfour v. Balfour was the foundation for the contract law as it gave birth to the purpose behind the creation of the legal reaction theory in contract law. Legal reaction theory means that one lawful act will be responsible for a subsequent legal act to take place. Lord Justice Atkin observed that agreements that are made between a husband and his wife, specifically personal family relationships, to provide maintenance costs, and other related capitals are generally not categorized as contracts because in general, the parties to the agreement do not intend to enter into an agreement that should be attending legal ends. Therefore, a contract cannot be enforceable by nature if the parties to the same do not intend to create legal relations with each other.

Lalman Shukla v. Gauri Datt (1913)

The importance of knowledge and communication, in formation of a contract, was highlighted by the Allahabad High Court in this landmark judgment. The Hon'ble Court observed that the fundamental necessity of a valid contract is the knowledge and assent of a proposal in order to convert the concerned proposal into an enforceable agreement. In the present case, none of the criteria discussed are being fulfilled as the plaintiff was unaware and there was an absence of assent about the particular act. This is also an important principle governing general offers in contract law, and a classic example of a general offer is offering a reward by means of an advertisement for finding a lost article. Only the person completing the required task is said to be accepting the offer.

Harvey v. Facey (1893)

The difference between an “invitation to offer”, and “offer” has been laid down by the Lords of Judicial Committee of the Privy Council on the appeal in the case of Harvey v Facey (1893). While the case surrounded an issue that arose regarding the offer to sell a Bumper Hall Pen, the Privy Council observed that there never existed an agreement between the parties to the case. The Council went further to state that for a contract to be valid, a proposal and an acceptance are needed and to make the contract binding. Further, acceptance of the proposal must be notified to the individual who is proposing because a legally enforceable agreement requires sureness to hold from both the parties to the contract

Pharmaceutical Society of Great Britain v. Boots Cash Chemist (1953)

The case of Pharmaceutical Society of Great Britain v. Boots Cash Chemist (1953) revolves specifically around the concept of “invitation to offer”. The case which appeared before the Courts of Appeal of England and Wales involved the defendant, a pharmaceutical company who introduced a new method of displaying the drugs for the shoppers, which could be used for purchasing drugs, and the plaintiff objecting to the same. The Court of law observed that “goods on a display are an invitation, not an offer” instead, the customers make an offer when they take the medicines to the register with the cashier being under the shopkeeper to accept the offer proposed. The Court reasoned that displaying medicines to the customers will be treated as an “invitation to treat”, and not as an “offer”

Durga Prasad v. Baldeo (1880)

The two-Judge Bench of Allahabad High Court comprising Justices Pearson, and Oldfield decided on the validity and legitimacy of a contract in the well-known case of Durga Prasad v. Baldeo (1880). In this case, the Court referred to the doctrine of rule of law that is inherently related to Section 2(d) of the Indian Contract Act, 1872. Section 2(d) read with Section 25 of the Act of 1872 states that “any agreement without consideration is void”. Thus when the legislation itself clears the necessities of a valid agreement, there cannot exist any case which walks against the statutory rules

Mohori Bibee v. Dharmodas Ghose (1903)

A bench of Judges Lord McNaughton, Lord Davey, Lord Lindley, Sir Ford North, Sir Andrew Scoble, and Sir Andrew Wilson considered the ambit of minor’s agreement in the well-known case of Mohori Bibee v. Dharmodas Ghose (1903). The Privy Council expressly barred any person below the age of eighteen years to enter into a contract, and take major decisions in relation to the same. Thus in the present case where the plaintiff and the defendant had entered into a mortgage deed, the same was held to be void as the mortgage execution was carried out by a minor individual

Leslie Ltd v. Sheill (1914)

The English Court of Appeal in the well-known case of Leslie Ltd v. Sheill (1914) took into account the issue as to whether the defendants, in the case, are entitled to equitable restitution against a loan provided to a minor or not. Explaining the doctrine of equitable restitution, the Court viewed that, “If an infant obtains property or goods by misrepresenting his age, he can be compelled to restore it so long as the same is traceable in his possession”. The Court went further to state that restitution stops whenever the repayment begins, and the principles of equity do not enforce any kind of contractual obligations against a minor.

Dunlop Pneumatic Tyre Co Ltd. v. Selfridge & Co (1915)

In the case of Dunlop Pneumatic Tyre Co Ltd. v. Selfridge & Co (1915), the House of Lords delivered a judgment that accompanied the understanding of the concept of “construction of contract”. Dismissing the appeal in the present case, the Court held that as there existed no contract between the plaintiff and the defendant, therefore, the plaintiff, in this case, can no way sue the defendant. Taking a cue on the aspect of privity of contract, the Court observed that only the parties to a contract can sue each other over breach of the contract entered into, and the only exception to this general rule will be in case of a principal-agent relationship where the agent was unnamed by the party under whom he/ she was appointed.

Hadley v. Baxendale (1854)

Consequential damage over breach of contract was determined by the English Court in the well-known case of Hadley v. Baxendale (1854). When the defendant made an error in carrying out his work which was assigned to him by the plaintiff in his mill, the latter claimed professional negligence on the latter's part. The issue before the Court was whether the claim that was made by the plaintiff was disproportionate to the damages caused or not. Observing that losses can be claimed if it can be reasonably viewed to have been the outcome of the defendant's actions, the Court ruled out that the defendant will not be liable to compensate the plaintiff for his losses on grounds that the plaintiff had not reasonably foreseen the consequences of the delay caused by the defendant

Powell v. Lee (1908)

A well-known case of offer and acceptance was the case of Powell v. Lee (1908) which involved the plaintiff filing a suit against the defendant over breach of contract. The question that the King's Division Bench considered was whether a person who acted in an unauthorized capacity, communicated an offer's acceptance? Ruling that for an acceptance to be valid, the same should be communicated, and the same should be carried out by the person offering in an authorized capacity, the Court dismissed the plea of breach of contract between the plaintiff, and the defendant.

Merritt v. Merritt (1970)

The Master of the Rolls decision in the case of Merritt v. Merritt (1970) plays a significant role in framing the contract law jurisprudence. Although the present case walks in the same line as the case of Balfour v. Balfour (1919), the Court distinguished both these cases on the grounds that the present involves parties who are separated from their marital ties, whereas in the 1919 case, the parties where the couple was married. In the present case, the husband had signed an agreement with his wife of £40 per month in connection to their mortgage house. When the payment was made, the wife claimed the property to be hers. The Court of Appeal held the agreement to be binding in nature as against the decision made in the Balfours' case.

Carlill vs Carbolic Smoke Ball

The defendant sold a medicine which they called a 'Carbolic Smoke Ball'. When they advertised the product, they stated that they would pay a sum of money to any person who used it and still caught influenza. They claimed that they had already deposited money with a local bank in preparation to meet such claims. The claimant saw one of these adverts and bought the product. However, despite using it properly, the claimant still caught the flu. The defendant refused to pay the money promised in the advert. Held: The Court of Appeal held in favour of the claimant. The advert was an offer which the claimant accepted by purchasing the medication and using it as directed. The defendant was therefore bound to pay the claimant the money

Derry v Peek (1889) 5 T.L.R. 625

In a company prospectus the defendant stated the company had the right to use steam powered trams as oppose to horse powered trams. However, at the time the right to use steam powered trams was subject of approval of the Board of Trade, which was later refused. The claimant purchased shares in the company in reliance of the statement made and brought a claim based on the alleged fraudulent representation of the defendant.

Held:

The statement was not fraudulent but made in the honest belief that approval was forthcoming.

Lord Herschell defined fraudulent misrepresentation as a statement which is made either:

- i) knowing it to be false,
- ii) without belief in its truth, or
- iii) recklessly, careless as to whether it be true or false.

Chinnaya vs Ramayya

A lady transferred her property to her daughter (defendant), by a deed of gift. Such deed was registered. One of the terms of the gift deed was that the daughter would pay a sum of Rs. 653/- every year to the lady's sister (plaintiff). The defendant executed an agreement in favour of the plaintiff promising to do the same. The defendant failed to pay the annual amount to the plaintiff. Hence, the plaintiff sued the defendant for the recovery of the same

As per section 2(d) of the Indian Contract Act (1872), "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. From this definition, it is clear that in a valid contract the consideration need not flow from the promisee only. It could flow from any other person who is not a party to such contract thus, the decision was in favour as this was a valid consideration