

Contingent Contracts under Indian Contract Act

Introduction

The word contingent means when an event or situation is contingent, i.e. it depends on some other event or fact.

For example, making money is contingent on finding a good-paying job.

Now, the 'contingent contract' means enforceability of that contract is directly depends upon happening or not happening of an event.

[Section 31](#) of the **Indian Contract Act, 1872** defines the term 'Contingent Contract' as follows:

'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'.

In simple words, contingent contracts, are the ones where the promisor perform his obligation only when certain conditions are met. The contracts of insurance, indemnity, and guarantee are some examples of contingent contracts.

Illustration:- A contracts to pay to B Rs. 20,000 if B's house is burnt. This is a contingent.

Case laws

- [Chandulal Harjivandas v. CIT](#)– In this case, it was held that all contracts of insurance and indemnity are contingent.

How is it different from wagering agreement?

1. A wagering agreement is absolutely void ([S.30](#)) while on the other hand contingent contract is a valid contract.
2. In a contingent contract, the future uncertain event is merely collateral whereas in a wagering agreement the uncertain event is a sole determining factor of the agreement.
3. In a wager, the parties are not interested in the occurrence of the event except for winning or losing the best amount while in a contingent contract the parties have a real interest in occurrence or non-occurrence of the event.
4. All wager contracts are contingent contracts, but all contingent contracts are not by way of the wager.

Essential elements of the contingent contract

After examining the definition of the contingent contract given under [section 31](#) of the Act, the essentials of the term contingent contract are as follows:

There must be a valid contract to do or abstain from doing something

[Section 32](#) and [33](#) of the Act talks about enforcement of the contingent contract on the happening or not happening of the events respectively. The contract will be valid only if it is about performing or not performing an obligation.

Illustration 1: X makes a contract with Y to buy Y's dog if X survives Z. This contract cannot be enforced by law unless and until Z dies in X's lifetime.

Illustration 2: X agrees to pay Y a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Performance of the contract must be conditional[i]

The condition for which the contract has been entered into must be a future event, and it should be uncertain. If the performance of the contract is dependent on an event, which is although a future event, but certain and sure to happen, then it'll not be considered as a contingent contract.

The said event must be collateral to such contract

The event on whose happening or non-happening of the event on which the performance of the contract is dependent should not be a part of the consideration of the contract. The happening or non-happening of the event should be collateral to the contract and should exist independently.

Illustration: X enters into a contract with Y and promises to deliver 10 books to him. Y promises to pay Rs. 2000 upon delivery. This is not a contingent

contract since Y's obligation depend on the event which is a part of the contract(delivery of 10 Books) and not a collateral event.

The event should not be at the discretion of the promisor

The event so considered as for contingency should not at all to be dependent on the promisor. It should be totally a futuristic and uncertain event.

Illustration: X promises to pay Y, Rs. 10,000 if Y leaves Delhi for London on 31st March 2019. This is a contingent contract. Going to London can be within Y's will but is not merely his will.

Enforcement of contingent contract

Provisions related to the enforcement of the contingent contract are given under section 32 to 36 as follows:

Condition #1- enforcement of contract contingent on the happening of an event

The contingent contracts to do or abstain from doing something if an uncertain future event happens. However, the contract cannot be enforced by law unless the event takes place. If the event becomes impossible, such contracts become void.[[Section 32](#)]

Illustration: X promises to pay Y, Rs. 100,000 if he marries Z, the prettiest girl in the neighbourhood. This is a contingent contract. Unfortunately, Z dies in a

car accident. Since the happening of the event no longer possible, the contract is void.

Condition #2- enforcement of contract contingent on an event not happening

The contingent contracts to do or abstain from doing something if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible. If the event takes place, then the contingent contract is void.[[Section 33](#)]

Illustration: X promises to pay Y a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. On the other hand, if the ship returns, then the contract is void.

Condition #3- when an event on which contract is contingent to be deemed impossible if it is the future conduct of a living person

If a contract contingent upon how a person will act at a future time, the event shall be considered impossible when such person does anything which makes it impossible for the event to happen.[[Section 34](#)]

Illustration: X agrees to pay Y, Rs. 100,000 if Y marries Z. However, Z marries A. The marriage of Y to Z must now be considered impossible, although it is possible that A may die and that Z afterward marry Y.

Condition #4- contracts contingent on an event happening within the fixed time

Contingent contracts to do or not to do anything if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time lapses. It is also void if before the time fixed, the happening of the event becomes impossible.[[Section 35\(para 1\)](#)]

Illustration: X promises to pay Y a sum of money if a certain ship returns before 1st April 2019. The contracts may be enforced if the ship returns within the fixed time. On the other hand, becomes void if the ship sinks.

Condition #5- contracts contingent on an event not happening within the fixed time

Contingent contract to do or not to do anything if an uncertain event does not happen within a fixed time may be enforced by law when the fixed time 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.[[Section 35\(para 2\)](#)]

Illustration: X promises to pay Y a sum of money if a certain ship does not return before 31st March 2019. The contract may be enforced if the ship does not return before 31st March 2019. Also, if the ship burnt before the given time, the contract is enforced by law since the return is impossible.

Condition #6- contract contingent of impossible event void

If an agreement to do or not to do is based on the impossible event, then such agreement is void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. [[Section 36](#)]

Illustration: X promises to pay Y, Rs 500 if two straight lines should enclose a space. The agreement is void.

Conditions when a contingent contract becomes void

- **Section 32-** if the event on the happening of which the contract is contingent becomes impossible, the contract becomes void.

Illustration: Mohan contracts to pay Ram a sum of Money when Ram marries Geeta. Geeta dies without being married to Ram. The contract becomes void.

- **Section 35-** contingent contract to do or not to do something, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Illustration: Saurbh promises to pay Servesh if a certain ship returns within the year. The contract becomes void if the ship is burnt within the year.

- **Section 34-** if the future event on which a contract is a contingent is the way in which 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, or otherwise than under further contingencies.

- Section 36- contingent agreement 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.

Illustration: X agrees to pay Y, Rs. 10,000 if Y will marry X's daughter P. P was dead at the time of the agreement. The agreement is void.

Commercial applications of contingent contracts

1. Insurance is a contract to do something if the future event occurs that will be contracted by the parties and liability will be taken by the offeror. In all Insurance like Life Insurance, Marine Insurance, Fire Insurance, and other Insurances, the Offeror promises to take the risk of the offeree against the incident to do or not to do something and for that the offeree agrees to pay a certain amount of money.
2. The contingent contract can be used in the contract of guarantee as well as the contract of warranty. Contingent guarantees generally are used when a supplier does not have a relationship with a counterparty.
3. We can use a contingent contract in negotiation. Contingent contracts normally occur when negotiating parties fail to reach an agreement.
4. We can use the contingent contract in mergers and acquisitions (M&A) as well. Depending on the M&A deal, contingent payments such as earn-outs, Seller notes, and Buyer stock may be part of the Seller's proceeds. After the deal is finalized, these contingent payments will need continuous contact between Buyer and Seller.
5. It can also be used in the contract of indemnity.

Conclusion

What is described as 'contingent contract' in this topic is familiar to English law as 'conditional contract'. For a contingent contract, there is a certain event which needs to be fulfilled. The term of these contract are certain and depend on the occurrence or non-occurrence of a future event.