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BUSINESS LAW

UNIT-I

**INTRODUCTION - DEFINITION AND SCOPE OF MERCANTILE
LAW -GROWTH AND SOURCES OF MERCANTILE LAW - NATURE
AND KINDS OF CONTRACTS - OFFER AND ACCEPTANCE -
CONSIDERATION - CAPACITY OF PARTIES - FREE CONSENT -
LEGALITY OF OBJECT, VOID AGREEMENTS - CONTINGENT
CONTRACTS.**

Introduction

business law refers to those rules and regulations which govern the formation and execution of business transactions made by various persons in the society.

“law is a rule of conduct imposed and enforced by the sovereign”

“Ignorantia juris non excusat”(ignornance of law is no excusion)

The sources of Indian Mercantile law

- **English Mercantile law**

The law merchant

Statute law or acts of parliament

Common law

Principles of equity

- **Statutes law**
- **Customs and usages**
- **Past judicial decisions**

MERCANTILE LAW

Mercantile property



Transaction



Commercial persons



Rights obligations



Mercantile Law

PART OF MERCANTILE LAW

- **INDIAN CONTRACTS ACT-1872**
- **THE SALE OF GOODS ACT-1932**
- **INSURANCE ACT-1938**
- **CARRIAGE OF GOODS ACT - 1965**
- **NEGOTIABLE INSTRUMENTS ACT-1881**
- **INDIAN PARTNERSHIP ACT-1932**
- **THE COMPANIES ACT-1956**

Statutes of the Indian legislatures

The Statute law means Acts of Parliament. These are the most efficient and the most usual way of bringing about changes in law today. The legislature is the main sources of law in modern times. In India, the Central and State legislatures possess law making powers and have exercised the powers extensively. The greater part of Indian Commercial Law is statutory. The Contract Act, 1872 , the Sale of Goods Act, 1930, the Partnership Act, 1932, the Companies Act, 1956, are instances of the Statute law.

ENGLISH MERCANTILE LAW

Many rules of English Mercantile law have been incorporated into Indian Law through statutes and judicial decisions. Indian mercantile law is, in the main, an adaptation of the English Law. It is incorporated in a number of Acts, which follow to a considerable extent the English mercantile law with some reservations and modifications necessitated by the peculiar conditions prevailing in India. To ascertain the sources of Indian Mercantile law, we have, therefore, to trace the sources of the English Mercantile law. The sources of English Mercantile law are (a) Common Law (b) Equity (c) The Law Merchant, and (d) The Statute Law.

OTHER SOURCES OF ENGLISH MERCANTILE LAW

Roman Law: If for any particular case the existing law fails to suit, a reference to Roman law is made.

Case Law: This law is build upon previous judicial decisions. i.e. on the principle that what has been decided in an earlier case is binding in a similar future case, unless there is a change in the circumstances.

COMMON LAW

The common law consists of principles based on immemorial customs and principles enforced by courts. It is traditionally unwritten law, developed in English courts during the period beginning with the thirteenth century and brought to our country by the British rule of India. In simple, we can say Common Law is nothing but Rules developed by custom in England.

EQUITY

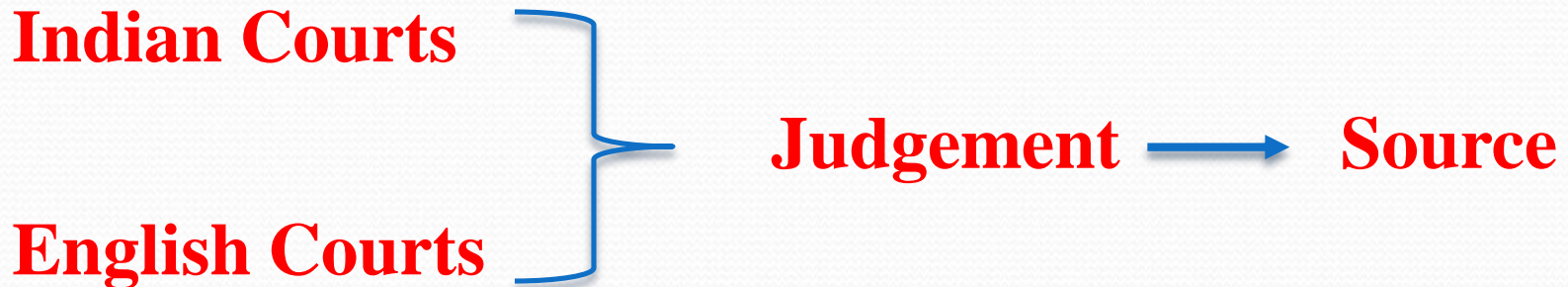
Equity Law is also unwritten and grew as a system of Law supplementary to the Common Law. It is based upon concepts of justice developed by judges. As the Common Law was too stereotyped and very harsh the Law of Equity was developed in English courts. In a sense, Equity covered the deficiencies of Common Law, especially where the Common Law worked very rigidly.

INDIAN STATUTE LAWS

The Statute Law refers to the Law passed in the Parliament. It is superior to any rule of the Common Law of Equity. The authority of the Parliament being supreme. It can pass any law it pleases, and is not bound by any of its previous Acts.

- **Indian Contract Act**
- **Negotiable Instrument Act**
- **Indian Partnership Act**
- **Companies Act**
- **Sales of goods Act**

JUDICIAL DECISION



This is source of law based upon previous judicial decisions which have to be followed in similar future cases. Judges interpret and explain statutes. Rules of equity and justice are incorporated in law through judicial decision. Whenever the law is silent on a point, the judge has to decide the case according to his idea of what is equitable

CUSTOMS AND USAGES

A customary rule is binding where it is ancient, reasonable, and not opposed to any statutory rule. A custom becomes legally recognized when it is accepted by a court and is incorporated in a judicial decision.

“Nothing contained there in shell affects usage of custom of trade.....”

INDIAN CONTRACT ACT

- **NATURAL RELATIONS**
- **SOCIAL RELATIONS**
- **CONTRACTUAL RELATIONS**

LAW OF CONTRACT

The Indian Contract Act which was passed on 25th April, 1872, came into effect from 1st Sep. 1872. It applies to the whole of the country except the State of Jammu and Kashmir.

MEANING

The word contract, derived from Latin "contractum" meaning "drawn together". It therefore denotes a drawing together of two or more minds to form a common intention giving rise to an agreement.

INDIAN CONTRACT ACT 1872

A contract must fulfil two conditions

Contract= An Agreement + Its enforceability(legal)

AGREEMENT

According to Section 2(e) “Every promise and every set of promise forming the consideration for each other, is an agreement.”

Agreement= Offer + Acceptance

PROMISE

According to Section 2(b) “a proposal when accepted becomes a promise”

KEY DEFINITIONS IN THE INDIAN CONTRACT ACT

- **Sec.2(h) of the Indian Contract Act, provides that “An agreements enforceable by law is a contract. There are various social religious and moral obligations which are not enforceable by law as contracts.**

Proposal + Acceptance = Promise

- **PROPOSAL**

According to Section 2(a) “a proposal as “when one person signifies to another his willingness from to do or abstain from doing anything with a view to obtaining the assent of the other person to such act or abstinence he is said to make proposal”

DIFFERENT TYPES OF CONTRACT

Void Contract : There are certain agreements which are valid in the beginning and subsequently it becomes void due to impossibility of performance, change of law or other reasons. as per Sec 2(j)

Example: A contract to export coffee to USSR. It may subsequently become void if the exporting country bans the product from being exported.

voidable contract : as per Sec.2(i) Contracts brought about by coercion, under undue influence, misrepresentation etc.

Example: 'P' threatens 'Q' to enter into a contract for the sale of 'Q's landed property to 'P'. This contract can be avoided by 'Q'. 'P' cannot enforce the contract. But 'Q', if he so desires, can enforce it against 'P'.

ELEMENTS OF VALID CONTRACT

- **Offer and Acceptance**
- **Legal relationship**
- **Lawful consideration**
- **Capacity of parties**
- **Free consent**
- **Legality of the object**
- **Legal formalities**
- **Certainty**
- **Possibility of performance**
- **Not expressly declared void.**

Offer and acceptance

- All contracts are made by the process of a lawful offer by one party and the lawful acceptance of the offer by the other party.

Example: If 'X' says to 'Y' "will you buy my house for Rs. 5,00,000"? It is an offer. If 'Y' says "Yes", the offer is accepted and a contract is formed.

Legal relationship

The parties to the agreement must intend to create legal relations between them. Mere social or domestic agreements are not contracts because they are not intended to be binding i.e., an agreement to have a cup of tea at a friend's house is simply a social obligation.

Example: “X” offers to play cards with “Y” for pleasure and “Y” accepts. If later on, “X” refuses to do so, “Y” cannot go to the court for enforcing the promise.

Lawful consideration

Subject to certain exceptions an agreement legally enforceable only when each of the parties to it gives something and gets something. An agreement to do something for nothing is generally not enforceable at law. The something given or obtained is called consideration

Example:“ X” agrees to sell his car to “Y” for Rs.1,00,000. For “X”’s promise, the consideration is Rs.100,000. For “Y”’s promise the consideration is the car.

CAPACITY OF PARTIES

The parties to an agreement must be legally capable entering into an agreement; otherwise it cannot be enforced by a court. Want of capacity arises from minority, lunacy, idiocy, drunkenness are similar other factors

Example: A lends Rs.1,000 to B, a minor. A cannot take legal action against B for repayment, as an agreement with a minor is void.

FREE CONSENT

The consent of parties not be affected by any flaw.

The consent is said to be free when it is not used by coercion, undue influence, fraud, mistake or misrepresentation.

Example: 'A' threatens to beat "B" if he does not sell his land for a low price agrees to do so. The agreement has been brought about by coercion.

Legality of the object

The object of the agreement must not be illegal, immoral or opposed to public policy.

Example: 'A', 'B' and 'C' enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void.

LEGAL FORMALITIES

- The agreement may either be oral or in writing. But there are certain agreements which are required to be in writing e.g., lease, gift, sale, mortgage of immovable property, negotiable instruments, certain matters under the Companies Act, 1956. Such agreements must be in writing, attested and registered, if so required by law. Registration of agreements or deeds is compulsory in cases of documents falling within the scope of Sec. 17 of the Indian Registration Act, 1980. it must comply as to writing, stamp duty, registration, certification, witness

CERTAINTY OF THE TERMS OF THE CONTRACT

The terms of the agreement must be definite and certain and it must not contain any ambiguous information.

Example: ‘A’ agrees to sell to ‘B’ a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for want of certainty.

POSSIBILITY OF PERFORMANCE

The terms of the agreement must also be such as are capable of performance. An agreement to do an act which is impossible in practice cannot be enforced.

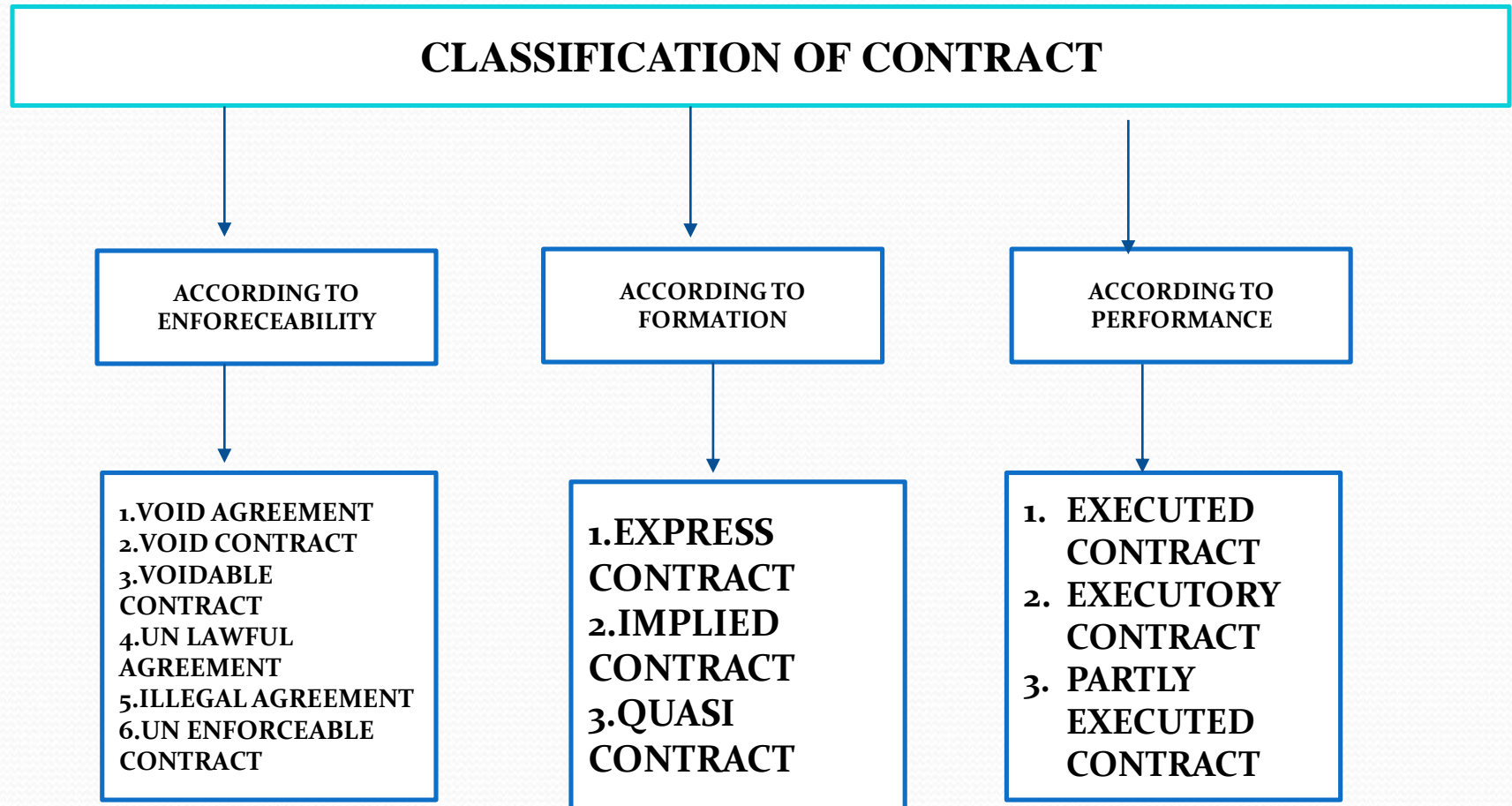
Example: When A agrees with B to find a treasure the agreement is void as it is impossible of performance.

NOT EXPRESSLY DECLARED VOID

The agreements must not have been expressly declared to be void. Following agreements are expressly declared to be void under the Indian Contract Act:

- **Agreement in restraint to marriage (Sec.26)**
- **Agreement in restraint to trade (Sec.27)**
- **Agreement in restraint to legal proceedings (Sec.28)**
- **Agreement having uncertain meaning (Sec.29)**
- **Wagering agreement (Sec.30)**

CLASSIFICATION OF CONTRACT



CLASSIFICATION ACCORDING TO ENFORCEABILITY

- **VOID AGREEMENT**
- **VOID CONTRACT**
- **VOIDABLE CONTRACT**
- **UNLAWFUL AGREEMENT**
- **ILLEGAL AGREEMENT**
- **UNENFORCEABLE CONTRACT**

VOID AGREEMENT

“An agreement not enforceable by law is said to be void”- Sec. 2(g). A void agreement has no legal effect. It confers no rights on any person and creates no obligations.

- **Agreement in restraint to marriage (Sec.26)**
- **Agreement in restraint to trade (Sec.27)**
- **Agreement in restraint to legal proceedings (Sec.28)**
- **Agreement having uncertain meaning (Sec.29)**
- **Wagering agreement (Sec.30)**

VOID CONTRACT

Sec 2(J).A contract may be valid at the time when it is entered into. But due to certain subsequent happenings it may become void.

Example: P agrees to sell his car to Q and receives from him Rs.10,000 as advance .before the sale is effected, the car is lost. The contract becomes void and P shall return the advance money.

VOIDABLE CONTRACT

A voidable contract is one which can be avoided by some of the parties to the agreement. Until it is avoided, it is a good contract. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract as per Sec.2(i)

Example: "X" at Knife –point obtains Y 's consent for the sale of the latter's house worth Rs.15lakhs for Rs.51lakhs ."Y" can avoid the contract by applying to the court for relief but should be able to prove that his consent has been obtained by using force.

UNLAWFUL AGREEMENT

An agreement is void from the very beginning and therefore, is not enforceable in a court of law

Example: An agreement in restraint of trade, an agreement that restricts a person's right to choose his/her profession or occupation .An agreement between P an Q that P's son will work in Q's concern is a void agreement.

ILLEGAL AGREEMENT

An illegal agreement is one which is against a law in force in India. An agreement to commit murder, theft or cheating.

Example: A employs B to kill C and promises B a sum of Rs.10,000 for doing the job. If B kills C ,he cannot claim payment from A and if A has already paid the amount and B does not kill C. A cannot recover the amount.

UNENFORCEABLE CONTRACT

The term unenforceable agreement is used in English law. It means an agreement which cannot be forced in a court of law by one or both of the parties, because of some technical defect.

Example: want of registration or non-payment to requisite stamp duty or for want of written form.

CLASSIFICATION ACCORDING TO FORMATION

- **EXPRESS CONTRACT**
- **IMPLIED CONTRACT**
- **QUASI CONTRACT**

EXPRESS CONTRACT

Express contracts are those in which the fact of the agreement can be proved by words written or spoken which express the intention of the parties. Thus contracts in writing and oral (by spoken words) can be collectively called “express contracts.”

Example: “X “offers to sell his house to “Y” for Rs.15Lakhs.”Y” accepts “X “s offer and they both sign the sale agreement prepared on a stamp paper of the appropriate value and is duly signed by the witnesses. This results in a contract between “X” and “Y”.

IMPLIED CONTRACT

An implied contract does not arise out of express promise by the parties but is inferred from their acts or from the circumstances of a particular case.

Example: Mr. A takes a public bus or enters into a restaurant for a cup of coffee or obtains a ticket from an automatic machine.

QUASI CONTRACT

A Quasi-contract is not actually entered into by the parties but is something imposed on a party by law.

Example: 'A' a shopkeeper supplied groceries to 'B' by mistake. 'B' used the items as his own. 'B' is bound to pay.

In the above case there is no consensus, no offer, no acceptance; still the law implies a contract. This is known as quasi-contract.

CLASSIFICATION ACCORDING TO PERFORMANCE

- **EXECUTED CONTRACT**
- **EXECUTORY CONTRACT**
- **PARTLY EXECUTED CONTRACT**

EXECUTED CONTRACT

An executed contract is one wherein both the parties have performed their obligations under the contract.

EXAMPLE: “X”, a carpenter, agrees to make a table for “Y” for a sum of Rs.2000/-. The contract becomes executed the moment “X” makes the table and “Y” pays the agreed sum.

EXECUTORY CONTRACT

An executor contract is one where both the parties are yet to perform their obligations.

Example: if 'A' has not yet delivered his motorbike and 'B' has not paid the price, the contract is executed as to 'A' and executory as to 'B'.

PARTLY EXECUTED CONTRACT

It is a contract in which one party has already fulfilled his obligation and the other is yet to fulfil his obligation.

Example: A departmental store supplies goods to a customer who pays by cheque. Thus, although the departmental store has fulfilled its obligation. The customer's obligation is fulfilled only upon the realisation of his payment.

TYPES OF OFFER

- **Express offer**
- **Implied offer**
- **Specific offer**
- **General offer**
- **Cross offer**
- **Counter offer**
- **Standing offer**

EXPRESS OFFER

An offer made by express words - spoken or written is known as express offer.

Example: A writes to B "I want to sell my house for Rs.20lakhs"

M tells N "Will you buy my fridge for Rs.2000?"

IMPLIED OFFER

An offer that is to be inferred or understood from the conduct of the parties or the circumstances of each particular case .

Example: The offer by a cinema theatre to screen films is always an implied offer.

SPECIFIC OFFER

An offer made to a definite persons or a definite class of person is called a specific offer.

Example: 'X' offers to sell his motor cycle to 'Y' for Rs.10,000. This is a specific proposal. This proposal is specifically given to 'Y'. Only 'Y' can accept this proposal.

GENERAL OFFER

An offer sent to all persons (the world of public at large) is called a General offer or Public offer.

Example : “X” offers a reward of Rs.50,000 to anyone who traces out his missing son, “Y”, who is aware of the offer, finds the boy. he can claim the reward.

CROSS OFFER

An offer made two persons make identical offers to each other with respect to the same subject matter and without knowing the intention of the other.

Example : A, by a letter, offers to sell his car to B. Without knowing A's intention to sell and before receiving his letter, B too writes to A expressing his willingness to buy A's car. Thus, A and B have made an identical offer and neither of them has given acceptance

COUNTER OFFER

Offer takes place when the person to whom the offer is made, instead of accepting the terms of the offeror, desires modification of the same.

Example : X offer his car to Y for Rs.10,00,000 and wants Y to pay the full amount within one week. Y wants the car for Rs.9,00,000 and also four weeks time to pay. there is no acceptance of the offer by Y and it only amounts to a counter-offer.

STANDING OFFER

An offer made a continuous nature. It is not restricted to a single transaction. It applies to a series of future transactions.

Example : X, an edible oil merchant, offers to supply edible oils to a hotel as and when required for the next two years. The offer by X is a standing offer.

ACCEPTANCE

Examples

- 'A' proposes by letter to sell a house to 'B' at a certain price. The communication of the proposal is complete when 'B' receives the letter.
- 'B' accepts 'A's' proposal by a letter sent by post. The communication of the acceptance is complete as against 'A'. When the letter is posted, as against 'B', when the letter is received by 'A'.



REVOCAION OF OFFER AND ACCEPTANCE

under the following cases-Sec.6

- **1. Lapse of time.**
- **2. After expiry of reasonable time.**
- **3. An offer lapses by the failure of the acceptor to fulfil a condition precedent to acceptance, where such a condition has been prescribed.**
- **4. An offer lapses by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.**
- **5. When the counter-offer is given, the original offer lapses.**
- **6. A proposal once refused is dead and cannot be revived by its subsequent acceptance.**

Revocation of Acceptance

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor but not afterwards.

Example: 'A' proposes by a letter sent by post to sell his house to 'B'. 'B' accepts the proposal by letter sent by post. 'A' may revoke his proposal at any time before or at the moment when 'B' posts his letter of acceptance but not afterwards. 'B' may revoke his acceptance at any time before or at the moment when the letter communicating it reaches 'A' but not afterwards.

TYPES OF CONSIDERATION

- **Past consideration**
- **Present consideration**
- **Future Consideration**

Past consideration

When the consideration of one party was given before the date of the promise, it is said to be past.

For Example, 'X' does some work for 'Y' in the month of January and 'Y' promised him to pay some money during February. The consideration of 'X' is past consideration.

Under English law past consideration will make the contract invalid. But under Indian law a past consideration is good consideration because the definition of consideration in **Sec.2(d)** includes the words "has done or abstained from doing."

Present consideration

Consideration which moves simultaneously with the promise is called present consideration or executed consideration.

EXAMPLE: “X”, a gold smith, agrees to make a jewellery for “Y” for a worth of Rs.50000/-. The contract becomes executed the moment “X” makes the jewellery and “Y” pays the agreed worth.

Future Consideration

When the consideration is to move at a future date it is called future consideration or executory consideration.

Example: 'A' agrees to sell his motorbike to 'B' for Rs.10,000.

if 'A' has not yet delivered his motorbike and 'B' has not paid the price, the contract is executed as to 'A' and executory as to 'B'.



ESSENTIALS OF VALID CONSIDERATION

Consideration Must Move at the Desire of the Promisor

The act done or loss suffered by the promisee must have been done or suffered at the desire of the promisor. An act done without any request is a voluntary act and does not come within the definition of consideration.

Example: The collector of a district asked 'D' to spend money on the improvement of a market and he did so. 'D' cannot demand payment from the shopkeepers using the market for having improved the market. (Durga Prasad Vs Baldeo)

It must be a real consideration

The consideration must have some value in the eyes of law. It must not be illusory. The impossible acts or non-existing goods cannot support a contract. A contribution to charity is without consideration. A promise to pay an existing debt within due date if the creditor gives a discount is without consideration and the discount cannot be enforced.

PUBLIC DUTY

“Where the promise is already under an existing public duty, an express promise to perform or performance of that duty will not amount to consideration.

Example: A contract to pay a sum to a witness who has already received some money to appear at a trial is invalid.

Promise to a stranger

A promise made to a stranger to perform an existing contract, is enforceable because the promisor undertakes a new obligation upon himself which can be enforced by the stranger.

‘X’ wrote to his nephew ‘B’, promising to pay him an annuity of 150 pounds in consideration of his marrying ‘C’. ‘B’ was already engaged to marry ‘C’. Held that the fulfilment of B’s contract with ‘C’ was consideration to support X’s promise to pay the annuity. (Shadwell Vs Shadwell)

Consideration need not be adequate

Explanation 2 under Sec. 25 provides that “An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate.” Law requires the presence of consideration, but does not inquire into the adequacy.

Example: ‘P’ agrees to sell a house worth Rs.5,00,000 for Rs.1,00,000. P’s consent to the agreement was freely given. The agreement is valid in spite of inadequate consideration.

The consideration must not be illegal, immoral or opposed to public policy

If the consideration of the object of the agreement is illegal, immoral or opposed to public policy, the agreement to contract is invalid.

Example: 'X' agreed to pay Rs.50,000 to 'Y' if he kills 'C'.

The consideration may be past, present and future

In the past promise, consideration has already been taken place. In the present consideration, it simultaneously moves with promise. In the future consideration, it passes subsequently.

The consideration may move from the promisee or from any other person

A person has given some properties to his wife 'C' directing her at the same time to pay an annual allowance to his brother 'R'. 'C' also entered into an agreement with 'R' promising him to pay the allowance. This agreement can be enforced by 'R' even though no part of consideration received by 'C' moved from 'R'

Capacity of parties

Sec.10, '**capacity**' referred to here, means competence of the parties to enter into a valid contract. Capacity includes physical and mental capacity.

- A person who has not attained the age of majority.
- A person who is of unsound mind, e.g. lunatic or an insane person.
- Any other person who has been disqualified from contracting under any law, e.g. a person who has been adjudicated an insolvent.



THE LEGAL RULES REGARDING MINOR'S AGREEMENT

Minor's agreement is Void-ab-initio: (void from the very beginning)

Following the English law, it was held formerly that a minor's contract was voidable but not void. The issue came up again in the case of Mohori Bibee Vs Dharmadas Ghose (1903)

EXAMPLE: In this case, a minor executed an agreement for Rs.20,000 and received Rs.8,000 from a mortgagee by way of earnest money. He sued for setting aside the mortgage. The lender wanted refund of the sum which he had actually paid. Held an agreement by a minor was absolutely void and therefore, the question of refunding the money did not arise. under Sections 64 and 65 of the Act.

A Minor can be a Promisee or a Beneficiary

A minor cannot ratify the agreement on attaining the age of majority as the original agreement is totally void from the beginning, and, therefore, validity cannot be given to it later on.

Example: Indira Ramasamy V Anthiappa Chettiar. 'A' a minor makes a promissory note in favour of 'B'. on attaining majority, he makes out a fresh promissory note in place of the old one. Neither the original nor the fresh promissory note is valid.

If a Minor has Received any Benefit Under a Void Contract he Cannot be Asked to Refund the same

In that case, the lender could not recover the money paid to the minor. Also the property mortgaged by the minor in favour of the lender could not be sold by the latter for the realization of his loan. (Mohiri Bibee's case Vs. Dharmodas Ghose Case)

A Minor is Always Allowed to plead Minority

In the case of a fraudulent misrepresentation of his age by the minor, inducing the other party to enter into a contract, if money could be traced. The court may award compensation to that other party under Sections 30 and 33 of the Specific Relief Act, 1963.

Example: Leslie V Shiell (1914) In this case 'S', a minor, borrowed £ 400 from L, a money lender, by fraudulently misrepresenting that he was of full age. On default by 'S', 'L' sued for return of £ 400 and damages for the crime. Held, 'L' could not recover £ 400, and his claim for damages also failed. Even on equitable grounds, the minor could not be asked to refund £ 400, as the money was not traceable as the minor had already spent it.

A Minor Cannot be a Partner in a Partnership Firm

He cannot become a partner but for the benefit of the partnership with the consent of all the partners he can be admitted as a partner. Other partners cannot file a case against the minor partner if the latter commits any offence.

A Minor's Estate is Liable to a Person Who Supplies Necessaries of Life to a Minor

However there is no personal liability on a minor for the necessaries of life supplied.

The term 'necessaries' is not defined in the Indian Contract Act, 1872. but the English Sale of Goods Act defines necessaries as “goods suitable to the condition in life of the minor and to his actual requirements at the time of sale and delivery”.

From the above definition it is very clear that in order to entitle the supplier to be reimbursed from the minor's estate, the following conditions must be fulfilled:

- The goods are necessities for that particular minor having regard to his status. For example, Purchase of a car may be a necessity for a particular minor and may not hold good for the other person.
- The minor needs the goods both at the time of sale and delivery.

Example: Nash V Inman (1908): A minor, was studying B.C.S., in a college. He ordered 11 fancy coats for about £ 45 with N, the tailor. The tailor sued him for the price. His father proved that his son had already number of coats and had clothes suitable to his condition in life when the clothes made by the tailor were delivered. Held, the coats supplied by the tailor were not necessities and therefore, tailor cannot get the price.

MINOR CAN BE APPOINTED AS AN AGENT

Minor's parents or guardians are not liable to a minor's creditors for the breach of contract by the minor, whether the contract is for necessaries or not. But the parents are liable where the minor is acting as an agent of the parents or the guardian.

A minor can act as an agent and bind his principal by his acts without incurring any personal liability.

Company' shares to a minor

A minor cannot apply for and be a member of a company. If a minor has, by mistake, been recorded as a member, the company can rescind the transaction and remove the name from the register. But where a minor was made a member and, after attaining majority, he received and accepted dividends, he will be stopped from denying that he is a member. (Fazalbhoy V The Credit Bank of India)

No specific performance

An agreement by a minor being void, the court can never direct specific performance of such an agreement by him. A minor is liable for punishment for criminal offences committed by him (Ex : robbery, murder)

No Insolvency

A minor cannot be declared insolvent even though there are dues payable from the properties of the minor. This is because the minor cannot contract debts.

PERSONS OF UNSOUND MIND

- **LUNATIC**
- **IDIOT**
- **DRUNKEN PERSON**
- **CONVICTS**
- **INSOLVENTS**
- **FOREIGN AMBASSADORS**
- **ALIEN ENEMIES**

FREE CONSENT

Consent means “**Willingness**”. The willingness of the parties to a contract must come freely. Sec.14, consent is said to be free when it is not caused by

- **Coercion**
- **Undue influence**
- **Fraud**
- **Misrepresentation or**
- **Mistake**

COERCION

To “coerce” someone means to “force” or “compel” him or her to act . A person uses “coercion” against another if he threatens that other person.

EXAMPLE: (I) A Hindu widow is forced to adopt ‘X’ under threat that her husband’s dead body would not be allowed to be removed unless she adopts ‘X’. the adoption is voidable as having been induced by coercion. (Ranganayakamma Vs Alwar setti)

(II) ‘A’ threatens to kill ‘B’ if he does not transfer all his property in ‘A’s favour for a very low price. The agreement is voidable for being the result of coercion.

UNDUE INFLUENCE

An agreement caused by undue influence is a contract voidable at the option of the party whose consent was obtained by undue influence (Sec. 19-A). Sec. 16(2) provides that undue influence may be presumed to exist in the following cases:

1. Where one party holds a real or apparent authority over the other or where he stands in a fiduciary relationship to the other. Fiduciary relationship means a relationship of mutual trust and confidence, such a relationship is supposed to exist in the following cases – father and son; guardian and ward; solicitor and client; doctor and patient; saint and disciple; trustee and beneficiary etc.

2. Where a party makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

EXAMPLE

- **'F'** having advanced money to his son **'B'** during his minority, upon **B's** coming of age obtains by misuse of parental influence, a bond from **B** for a greater amount than the sum advanced. **'F'** employs undue influence.
- **'A'** applies to a banker for a loan at a time when there is an acute shortage in the money market. The banker declines to sanction the loan at the prevailing rate of interest. **'A'** accepts the loan for a very high interest rate. Held, this is a transaction in the ordinary course of business and the contract is not induced by undue influence.

Difference between Undue Influence and Coercion

In both undue influence and coercion, one party is under the influence of another.

- In **coercion** the influence arises from committing or threatening to commit an offence punishable under the IPC or detaining or threatening to detain property unlawfully. In **undue influence**, the influence arises from the domination of the will of one person over another.
- Cases of **coercion** are mostly cases of the use of physical forces. But in **undue influence** it is a question of mental pressure.

FRAUD

The term ‘fraud’ includes all acts committed by a person with a view to deceive another person. To “deceive” means to “induce a man to believe that a thing is true which is false” .

A party who has been induced to enter into an agreement by fraud has the following remedies open to him: (Section 19)

- He can avoid the performance of the contract.**
- He can insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.**
- The aggrieved party can sue for damages.**

EXAMPLE

(Reese River silver Mining Co., Vs Smith)

- A company issued a **prospectus** giving false information about the unbounded wealth of Nevada. A share broker who took shares on the faith of such information wanted to avoid the contract. Held he could do so since the false representation in the prospectus amounted to fraud.
- **'A'** a seller of a horse says that the horse is a 'Beauty' and is worth Rs.5000. it is merely **'A'**'s opinion. It is not a matter of fact.

MISREPRESENTATION

Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any desire to defraud the other party. There is no intention to deceive.

Example: 'A' informs 'B' that his estate is free from encumbrance. B' thereupon buys the estate in fact unknown to 'A', the estate is subject to mortgage. 'B' may either avoid the contract or may insist on its being carried out and the mortgage debt be redeemed.

- **In case of misrepresentation the aggrieved party cannot claim compensation or damages from the other person. This however, is subject to certain exceptions.**

Misrepresentation

1. The party making the false statement believes it to be true.

2. There is no active concealment of truth

3. The false representation made is without any intention to deceive the other party to the contract.

4. The party making the representation is innocent.

5. The affected party cannot claim damages.

Fraud

1. The party making the false statement does not believe it to be true.

2. There is active concealment of truth

3. The false representation made is with the intention of deceiving the other party to the contract.

4. The party making the representation is not innocent.

5. The affected party can claim damages.

MISTAKE

Mistake may be defined as an erroneous belief concerning something. Consent cannot be said to be 'free' when an agreement is entered into under a mistake.

Example: 'A' who owns three maruti cars of different colours, offers to sell his white colour car Rs.1,00,000. 'B' accepts the offer thinking 'A' is selling his green colour car. There is a mistake as to the identity of the subject-matter and hence no contract.

CONSEQUENCES OF MISTAKE

Mistake renders a contract void and as such in case of a contract which is yet to be performed the party complaining of the mistake may avoid it, i.e. need not perform it. If the contract is executed, the party who received any advantage must restore it or make compensation for it, as soon as the contract is discovered to be void.

EXAMPLE: 'A' buys an article thinking it is worth Rs.10,000 while it is actually worth Rs.500 only. The agreement cannot be avoided on the ground of mistake

VOID AGREEMENTS AND DISCHARGE OF CONTRACTS

The contract act specifically declares certain agreements to be void. A void agreement is one which is not enforceable by law [Sec.2 (g)]. Such an agreement does not give rise to any legal consequences and is totally void from the very inception.

The different kinds of void agreements under the Indian Contract Act, 1872 are given below:

- **Agreements made by incompetent persons.(Sec. 11)**
- **Agreements made where there is a mutual mistake as to a matter of fact (Sec.20)**
- **Agreements made where there is a mistake as to any law in force in India(Sec.21)**
- **Agreements of which consideration or object is unlawful (Sec.23)**
- **Agreements of which consideration or object is partly unlawful (Sec. 24)**
- **Agreements without consideration (Sec. 25)**
- **Agreements in restraint of marriage (Sec. 26)**
- **Agreements in restraint of trade (Sec. 27)**
- **Agreements in restraint of legal proceedings (Sec. 28)**
- **Agreements the meanings of which are uncertain or not capable of being made certain (Sec. 29)**

- **Agreements by way of wager (Sec. 30)**
- **Agreements contingent on the happening of an event (Sec. 32)**
- **Agreements contingent on the impossible events (Sec.36)**
- **Agreements to do an impossible Act (Sec. 56)**
- **In case of reciprocal promises to do things legal and also to do other things illegal, the first set of promises is a contract, but the second set of reciprocal promises is a void agreement (Sec. 57)**

It may be stated here that the agreement from 1 to 13 are void ab-initio. i.e., from the very inception while the remaining 14 to 15 become void by subsequent events.

WAGERING AGREEMENTS OR WAGER

(Sec. 30) “A contract between two parties to the effect that if a given event is determined in one way, one of them shall pay a sum of money to the other, and in the contrary event the later shall pay to the former.”

Example: ‘A’ and ‘B’ may wager regarding an uncertain event as to whether it would rain or not on a particular day. ‘A’ promising to pay ‘B’ Rs.100 if it rains and ‘B’ promising Rs.100 if it does not rain. Such agreements are void and are not enforceable at law. No suit can be initiated for recovering anything alleged to be won on any wager (Sec. 30)

The following contracts are not wagers:

- 1. A cross word competition involving a good measure of skill for its successful solution.**
- 2. Games of skill e.g. picture puzzles or athletic competitions.**
- 3. A subscription towards any prize or sum of money of the value of Rs. 500 or above to be awarded to any winner of a horse race.**
- 4. Share market transactions**
- 5. Contracts of insurance is not a contract of wagers because of the following reasons:**
 - a. In case of Insurance the assured has an insurable interest in the subject-matter.**
 - b. Both the parties are interested in protection of the subject matter.**
 - c. Except life insurance, the other contracts of insurance is a contract of indemnity.**
 - d. It is beneficial to the public.**
 - e. It is based on scientific and actual calculation of risks.**

Effects of Wagering Agreements

- **Wagering agreements have been expressly declared to be void in India. In certain States in India, they have been declared to be illegal. No suit can be initiated for recovering anything alleged to be won on any wager.**
- **Since the wagering agreements are void, transactions are void, transactions collateral to them are not affected. So excepting in the states of Maharashtra and Gujarat collateral transactions are valid.**

CONTINGENT CONTRACTS

[Sec.31]: 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.

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

- Life insurance, indemnity and guarantee are examples of contingent contract.
- Where 'A' agrees to deliver 100 bags of rice 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 a part of the promise itself and not a collateral event.

ESSENTIALS OF CONTINGENT CONTRACT

- **DEPENDENT ON A FUTURE EVENT** X agrees to sell certain goods to Y subject to the safe arrival of a ship from cochin carrying the goods. Y is to pay the price upon delivery. X's obligation to sell, thus, is dependent on the safe arrival of the ship
- **UNCERTAIN EVENT** C lends Rs.10,000 to p upon S guaranteeing the repayment of the amount by P. In this contract, the liability of S (the surety) will arise only if P defaults
- **EVENT COLLATERAL TO THE CONTRACT** P insures his house against loss due to damage. The insurer's liability to pay will arise only if there is any damage to the house

WAGERING AGREEMENT

It contains reciprocal promises(mutual)

It is not enforceable

It is of a contingent nature

One party wins and the other loses,as it is a game of chance

The future event determines the very fate of the agreement

CONTINGENT AGREEMENT

It may not contains reciprocal promises

It is enforceable

It is not of a wagering nature

It is not a game of chance

The future event is only collateral

Thank you