

Disclaimer:

These are the compilation notes on Indian contract act 1872 [Module-1] for the courses of **BFM, BAF & B.COM (TCSC)**.

**Do refer the syllabus to check the topics contained for your particular course.*

REFERENCES: -

- **Indian Contract Act 1982**
- **Indian Contract Act by Jhabwalla and co.**
- **Ipleaders blogs**
- **Dr. S Gopal & others – Business law core course**

(Recommended reading for students- optional)

- *Anson- Law of contract*
- *Avtar Singh- The law of contract*
- *Prof. Pithawalla- Leadin Cases on the Law of Contracts*

*(in case of queries regarding alterations or errors in these notes *after cross-checking* contact the author, 11jidnyasamhatre@gmail.com)*

INDIAN CONTRACT ACT 1872

NOTES

CONTRACT

Definition: section 2(h) defines contract as an agreement enforceable by law:

- Agreement is defined in section 2(e) as every promise and every set of promises, forming the consideration for each other.
- A promise is when a proposal is accepted it becomes a promise as defined in section 2(b).
- The person who makes the proposal is called the promisor and the person accepting is called the promisee as defined in section 2(c).

Thus, the definition of contract can be compiled as follows:

When a proposal made by the promisor is accepted by the promisee and a promise is established between them forming a consideration for each other this becomes an agreement and when this agreement is enforceable by law it becomes a contract.

Contract = Agreement + Enforceability

Essentials of a Valid Contract

Section 10 of the contract enumerates certain points that are essential for valid contracts like Free consent, Competency Of the parties, Lawful consideration, etc.

1] Two Parties

{So you decide to sell your car to yourself! Let us say to avoid tax or some other sinister purpose. Will that be possible? Can you have a contract with yourself? The answer is no, unfortunately. You can't get into a contract with yourself.}

A Valid Contract must involve at least two parties identified by the contract, i.e. promisor/ promisee or proposer/proposee. One of these parties will make the proposal and the other is the party that shall eventually accept it. Both the parties must have either what is known as a legal existence e.g., schools, organizations, etc. or must be natural persons.

2] Offer and acceptance

The offer by one party to another must be lawful. The offer should be lawful and the acceptance should be absolute.

3] Intent Of Legal Obligations

The parties that are subject to a contract must have clear intentions of creating a legal relationship between them. What this means is those agreements that are not enforceable by the law e.g. social or domestic agreements between relatives or neighbors are not enforceable in a court of law and thus any such agreement can't become a valid contract.

Therefore, suing your mother for not providing you with "gajar ka halwa" on your first salary or suing your sister with non-compliance of agreed item, would be social agreements without any intention to seek legal remedy (elaborate).

4] Certainty of Meaning

Consider this statement "I agree to pay Mr. X a desirable amount for his house at so and so location". Is this a valid contract even if all the parties agree to this term? Of course, it can't be as "desirable amount" is not well defined and has no certainty of meaning. Thus we say that a valid contract must have certainty of Meaning.

5] An Agreement Enforceable by Law is a Contract

An agreement to become a contract must be coupled with obligation. An obligation is the legal duty to do or abstain from doing something. All contracts are agreements but all agreements are not contracts. All agreements are not contracts. An agreement may or may not create a legal obligation. If no legal binding is intended, a contract does not arise.

Suppose two people decide to get into an agreement where a person A agrees to bring back the person B's dead relative back to life. Even when all the parties agree and all other conditions of a contract are satisfied, this is not valid because bringing someone back from the dead is an impossible task. Thus the agreement is not possible to be enforced and the contract is not valid.

6] Free Consent

Consent is crucial for an agreement and thus for a valid contract. If two people reach a similar agreement in the same sense, and same time wavelength, they are said to consent to the promise. However, for a valid contract, we must have free consent which means that the two parties must have reached consent without either of them being influenced, coerced, misrepresented or tricked into it. In other words, we say that if the consent of either of the parties is vitiated knowingly or by mistake, the contract between the parties is no longer valid.

Now Free Consent has been defined in Section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following,

1. Coercion (S. 15)
2. Undue Influence (S. 16)
3. Fraud (S. 17)
4. Misrepresentation (S. 18)
5. Mistake (S. 21-22)

7] Competency Of the Parties

Section 11 of the Indian Contract Act, 1872 is:

“Who are competent to contract — Every person is competent to contract who is (1) of the age of majority according to the law to which he is subject, and who is (2) of sound mind and is (3) not disqualified from contracting by any law to which he is subject.”

{Following are qualifications in detail:

- i. refers to the fact that the person must be at least 18 years old or more.
- ii. means that the party or the person should be able to fully understand the terms or promises of the contract at the time of the formulation of the contract.
- iii. states that the party should not be disqualified by any other legal ramifications. For example, if the person is a convict, a foreign sovereign, or an alien enemy, etc., they may not enter into a contract. }

8] Lawful Consideration

Quid Pro Quo means ‘something in return’ which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable “consideration”. The consideration has to always be lawful in nature for it to be legally enforceable.

{In Section 23 of the Act, the unlawful considerations are defined as all those which:

- i. it is forbidden by law.
- ii. is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent.
- iii. involves or implies, injury to the person or property of another
- iv. the Court regards it as immoral or opposed to public policy

These conditions will render the agreement illegal. }

Therefore, a contract which has illegal object like selling leaked papers for 50k will be rendered unenforceable (elaborate).

9] The Object Of Consent Should Be Lawful

Section 23- What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— —The consideration or object of an agreement is lawful, unless—" it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

10] Agreement must not be declared to be void;

Expressly void Agreements:

- Agreement where both the parties are under mistake of FACT- Section 20
- Agreements void, if considerations and objects unlawful in part – Section 24
- Agreement in restraint of marriage void- Section 26
- Agreement in restraint of trade void- Section 27
- Agreements in restraint of legal proceedings void- Section 28
- Agreements void for uncertainty – Section 29
- Agreements by way of wager, void- Section 30

All contracts are agreements

But

All agreements are not contracts

Different kinds of Contracts

1. **Valid Contract:** An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

Example 17: A ask B if he wants to buy his bike for Rs.10,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.

2. **Void Contract:** Section 2 (j) states as follows: “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. Thus a void contract is one which cannot be enforced by a court of law.

3. **Voidable Contract:** Section 2(i) defines that “an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract”.

It takes its full and proper legal effect until its set aside.

4. **Unenforceable Contract:** Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation, lack of registration/stamping etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract.

5. **Express Contracts:** A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words, the promise is said to be express.

6. **Implied Contracts:** Implied contracts in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. One of the examples can be sitting in public transportation like Bus where there is an implied promise to purchase the ticket.

7. **Unilateral Contract:** Unilateral contract is a one sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.

8. Bilateral Contract: A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

9. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through EDI – Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

10. Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

12. Contingent Contract: Section 31 of the act defines it as, 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.

Other types of contracts also include, Specialty contract (under seal), Contracts of record, etc.

AGREEMENTS-

Agreement - The term 'agreement' given in Section 2(e) of the Act is defined as- "every promise and every set of promises, forming the consideration for each other".

To form an agreement, the following ingredients are required:

- **Parties:** There need to be two or more parties to form an agreement.
- **Offer/ Proposal:** When a person signifies to another his willingness of doing or omitting to do something with a view to obtain other's assent. [Section 2(a)]
- **Acceptance:** When the person to whom the proposal is made signifies his assent for the same thing in the same sense as proposed by the offeror. [Section 2(b)]
- **Promise:** When a proposal is accepted, it becomes a promise. [Section 2(b)]
- **Consideration:** It is the price for the promise. It is the return one gets for his act or omission. [Section 2(d)]

Agreement = Promise or set of promises (offer + acceptance) + Consideration (for all the parties)

Types of Agreements

1. Valid Agreement- Valid Agreement is enforceable by law and is in accordance with intentions of parties, thus it is equivalent to valid contract.
2. Void Agreement- Section 2(g)- an agreement not enforceable by law is said to be void.
3. Voidable Agreement- Capable of being voided, and can be referred to as a formal agreement between two parties that can be declared void for reasons such as- (refer class notes)
4. Unenforceable Agreement- same as contract
5. Illegal Agreement- Always VOID

Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Offer + Acceptance)	Agreement enforceable by law. (Agreement + Legal enforceability)
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

PROPOSAL / OFFER

The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.

- According to Section 2(a) of the Indian Contract Act, 1872, “when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”.
- Synonymous with OFFER used in English law, and covers up as both positive and negative.
- The offer to do or not to do anything must be made for purpose agreed to. Thus, statements like, “I’m willing to die for my country” or “I would like to become the president of India” are mere indications to do a particular act. While a proposal of marriage or an offer to sell an item at particular price would be proposal.
- However, in order to give rise to contract the proposal must be made with intention of creating legal relations between parties. (mention the examples used in class discussion for social contract). Thus, invitation for dinner (Kalai Haldar vs. Sheikh) or proposal for walk aren’t proposals per se as they don’t have legal intentions.

Essentials of a proposal/offer

1. There have to be at least two parties.
2. Must contain definite terms, should not be ambiguous or uncertain in nature or else it would be termed no-binding.
3. There should be an intention to give rise to legal obligation.
4. Must be distinguished from Invitation To Offer.
{ Although Invitation to Offer is not a type of offer *per se*, it is imperative to distinguish both to even construe what an actual offer is. An invitation to offer

is an offer to negotiate with purpose of entering an offer whose ultimate result is offer. While an offer is a final expression of willingness to get into a contract upon those following terms. }

5. It can be made to individual or public at large.
6. Offer must be communicated to offeree.
7. Offer must be kept open until its either, accepted or rejected or revoked or lapsed.
8. Offer may be accepted until its revoked or lapsed.

Types of Offer

An offer can be of many types, ranging across the spectrum. There are basically 7 kinds of offers:

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

Lapses and revocation of an offer

- An offer lapses after a defined or reasonable time.
- An offer lapse by not being accepted in the specified mode
- An offer lapses by rejection.

- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer lapses by revocation before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

Cases discussed: -

- BALFOUR VS. BALFOUR
- MCGREGOR VS. MCGREGOR
- CARLILL VS. CARBOLIC SMOKE BALL
- LALMAN VS. GAURIDUTT

VALID ACCEPTANCE

The Indian Contract Act 1872 defines acceptance in **Section 2 (b)** as “When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.” An offer can be revoked before it is accepted.

{**Section 2 (c)** The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promise” }

As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance. When the offer is accepted it becomes a promise.

Essentials of Valid Acceptance

- It must be communicated in usual and reasonable manner.
- Acceptance must be absolute and unqualified as well as it should correspond with terms of offeror. (Sec 7) { The offeree’s approval cannot be conditional. For example, ‘A’ wants to sell her car to ‘B’ 200k, ‘B’ can’t come back and says that she accepts the offer but will buy the same for 100k. }
- It may be made by express words, spoken/written or by conduct of parties i.e. by doing any act amounting to acceptance according to the terms of the offer.
- Usually any method can be prescribed for communication of acceptance but only silence can never be prescribed
- Acceptance should be made before the offer lapses or is rejected.
- Modes of acceptance- written- spoken- post- telegram- conduct- prescribed manner.

Cases discussed: -

HYDE VS. WRENCH

LALMAN VS. GAURIDUTT

CARLIL VS. CARBOLIC SMOKE BALL CO.

CONSIDERATION

Section 2 (d) - 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 to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(if, A promises to give B a car without B doing or abstaining to do anything for it, makes the promise unenforceable. This will be a gift and not a contract per se)

Basically means something in return and in simpler terms can be defined as, price offered by one party for which the promise of the other is bought and the promise therefore given for value is enforced.

SYNONOMOUS WITH “QUID PRO QUO”

It's one of the essential features of a contract- also a promise for promise is consideration.

Legal requirements/ Essentials of consideration:

- Must proceed at the desire of the promisor- thus acts done voluntarily or at request of third parties do not constitute a valid consideration.
- Can move from the promisee or another person- the consideration can also move at the desire of the third party but only in the condition where he is the beneficiary of the contract.
- Can be past, present or future- (write examples discussed)
- Consideration need not be adequate, but should be relevant and not undervalued- It is not necessary that the consideration is equal or adequate for the promise made. However, it is mandatory that the consideration should be something in which the law attaches some value.
- Consideration should be real and not illusory/ imaginary.
- Should not immoral, or against the public policy of the state- under Section 23 of the Indian contract it is given that consideration should not be illegal, immoral or against public policy.

EXCEPTIONS;

Under Section 25 of Indian Contract Act, one can find provision- 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. —An agreement made without consideration is void, unless— — An agreement made without consideration is void, unless—"

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation 1. —Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

{write examples discussed and can elaborate exceptions relevantly in own terms as well}

Cases discussed: -

CURRIE VS. MISA LUSH J

DURGA PRASAD VS. BALDEO

CHINNAYA VS. RAMAYYA

SECTION 10- FULLFILMENT LEADING TO A CONTRACT

(legality of contract)

Section 10 in The Indian Contract Act, 1872 tells about what agreements can constitute a contract. “All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Note:-(this particular section which was discussed in initial lecture along with the examples discussed can be used in all relevant subsequent sections like competent parties, free consent etc. along with all the examples of social and illegal contracts discussed)

Extra reading (optional): *A contract comes into existence only when all the terms and conditions are satisfied and fulfilled by the parties to the contract. If any of the conditions is not fulfilled by any of the parties that agreement will be void. We can also say that contracts are self-regulated and no one else other than yourself is forcing you to enter into a contract. It's upon your discretion that you want to enter into a contract or not and no one in any condition can force you to enter into any contract and if does so that agreement will be void. Later, the duties after entering into an agreement are defined by the state and if not followed be punished but entering into a contract is not forced by anyone else other than yourself. According to the Section 10 of the Indian Contract Act, 1872 there are mainly four conditions which have to be satisfied to form a valid contract, i.e. free consent of parties to the contracts, competent to contract, for a lawful consideration and with a lawful object.*

COMPETENCE OF PARTIES

Section 11 in The Indian Contract Act, 1872

Who are competent to contract. —Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. — Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Minors Agreement;

In India, the age of majority is governed by the Indian Majority Act, 1875. As per Sec. 3 of the Indian Majority Act, 1875, an Indian citizen is said to have attained the age of majority upon completion of eighteen years of age. In the USA (the majority of the states) and the UK, the age of majority is 18 years as well. But, if a minor has a guardian or Court of Ward looking after him, his age of majority becomes 21 years. Hence, any contract with a party below the age of 18 years is invalid as per the Act.

A contract with a minor is void and, hence, no obligations can ever arise on him thereunder. VOID-AB-INITIO.

Important rules relating to minor's agreement,

- A contract with a minor is void and, hence, no obligations can ever arise on him thereunder.
- The minor party cannot ratify the contract upon attaining majority unless a law specifically allows this.
- No court can allow specific performance of a contract with minors because it is void altogether.
- The Partnership Act also prohibits minors from becoming partners in a firm. They can, however, receive the benefits of partnership and ratify the same upon attaining majority.

- The rule of estoppel under evidence law does not apply to minors under contractual obligations. In other words, even if a minor forms a contract claiming majority age, legal obligations cannot arise against him.
- Parents or guardians of minors can name them in contracts only if it benefits them. But even in this case, the minor cannot be personally liable.
Minor can be made liable under law of TORTS, but if action in tort means indirect enforcement of contract then minor cannot be held liable

Cases discussed: -

MOHIRI BIBEE VS. GHOSH DHARMODAS

BURNARD VS. HAGGIS

Unsound Mind- state of mind where a person is incapable to take rational decisions, i.e. Incapable to understand contract in real sense.

As per Sec. 12 of the Act, a person can be said to be of sound mind when he can assess, understand his actions and realize the consequences of obligations imposed on him at the time of entering into a contract.

- Idiots- An idiot, in medical terms, is a condition of mental retardation where a person has a mental age of less than a 3-year-old child. Hence, idiots are incapable of understanding the nature of the contract and it will be void from the very beginning.
- Lunatic- A person who is of sound mind for certain duration of time and unsound for the remaining duration is known as a lunatic. When a lunatic enters into a contract while he is of sound mind, i.e. capable of understanding the nature of the contract, it is a valid contract. Otherwise, it is void.

Therefore, a person may be of sound mind but sometimes become unsound mind (temporary) when,

- i. Under influence of drugs or alcohol
- ii. Suffering from high fever
- iii. Suffering from epilepsy

Cases discussed: -

INDER SINGH VS. P. SINGH

Persons disqualified by law

- Convicts.
- Insolvent Person.
- Alien enemy.
- Foreign Sovereigns & Ambassadors.
- Company going Ultra Vires.
- Pardanashin Women.

FREE CONSENT in Contracts

(VOIDABLE CONTRACTS)

- Definitions - Section 13 (Consent) and 14 (Free consent)
- Coercion- Section 15
- Undue influence- Section 16
- Fraud- Section 17
- Misrepresentation- Section 18
- Mistake- Section 20-22

(Note- use examples discussed in class in own words for all the above mentioned sections)

Section 13 — Consent, two or more persons are said to consent when they agree upon the same thing in same sense (also same time wavelength)

Section 14 — Consent is said to be free when it's not caused by coercion, undue influence, fraud, misrepresentation, mistake.

Section 15 —COERCION

- When a person is compelled to enter into a contract by use of force by the other party or under threat coercion takes place.
- It can also be caused through any person including the one who isn't party to the contract.
- It is immaterial whether IPC is or isn't in force in the place where coercion is employed.
- Remedies for voidability of agreement without free consent is contained in section 19 of the act.

(Section 503-Criminal intimidation— offence committed in which an individual endangers or threatens another harm or reputation or property)

Section 16 — Undue Influence

A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

A person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

The burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

S.No.	Coercion	Undue Influence
1.	The consent is obtained under the threat of an offence.	The consent is obtained by a person who is in a position to dominate the will of another.
2.	Coercion is mainly of a physical character. It involves mostly use of physical or violent force.	Undue influence involves use of moral force or mental pressure to obtain the consent.
3.	There must be intention of causing physical harm to any person to enter into an agreement.	Here the influencing party uses its position to obtain an unfair advantage over the other party.
4.	It involves a criminal act.	It involves unlawful act.

Section 17 — Fraud

Fraud means and includes any of the following acts committed by a party to a contract, with intent to deceive another party or to induce him to enter into the contract: —

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation. —Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, it is the duty of the person keeping silence to speak or unless his silence, is, in itself, equivalent to speech.

Essentials of fraud

Exists when false representation is made

- knowingly
- Without belief in its truth
- Recklessly not caring whether it's true or false
- With intention to make other party act upon it

Remedies for voidability of agreement without free consent is contained in section 19 of the act.

Section 18— Misrepresentation

“Misrepresentation” means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

The major difference between fraud and misrepresentation are as under:

- Fraud is a deliberate misstatement of a material fact. Misrepresentation is a bonafide representation of misstatement believing it to be true which turns out to be untrue.
- Fraud is done to deceive the other party, but Misrepresentation is not done to deceive the other party.
- Fraud is defined in Section 17 and misrepresentation is defined in Section 18 of the Indian Contract Act, 1872.
- In fraud, the party making representation knows the truth however in misrepresentation, the party making representation does not know the truth.
- In fraud, the aggrieved party can claim damages for any loss sustained. On the other hand, in misrepresentation, the aggrieved party cannot claim damages for any loss sustained

Mistake 20, 21 & 22

Section 20— Bilateral mistake

Agreement void where both parties are under mistake as to matter of fact.—Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Mistake of fact which is material to contract affects free consent.

Section 21— Effect of mistakes as to law.

A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

Mistake of law explanation,

“*Ignorantia juris non excusat*” ignorance of law is no excuse- well settled rule.

Argument is that, a citizen who is unaware of a law may not escape liability for violating that law merely by being unaware of its content, i.e. you should know the law of your country or you are presumed to know that but mistake of law of foreign country is mistake of fact.

Section 22— Unilateral Mistake

Contract caused by mistake of one party as to matter of fact. —A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

LEGALITY OF OBJECT AND CONSIDERATION (SECTION 23)

Another essential feature of a valid contract is that the object and the consideration must be lawful and not against the provisions by law. The object and the consideration of the object need to be lawful otherwise the contract will be declared void. In some cases, the object for which the parties entered into an agreement is lawful but the consideration for the same is defeating the provisions of a lawful consideration and which will lead the agreement to be termed as void and vice versa. So, for an agreement to be a valid one both the object and consideration should be lawful. The court will not enforce any agreement if its object and consideration are not lawful. The term “object of an agreement” is used to define the purpose of design. Section 23 of the Indian Contract Act, 1872 clearly states about what object and consideration are lawful and what are not. These are-

- If that object or consideration is forbidden by law specifically.
- Act of that nature which will defeat the very basic purpose of the law.
- If the object or consideration is fraudulent.
- If that involves or results in injury to any living person or the property of the person.
- If the court has regarded any special objects and considerations as immoral.
- Those objects and considerations which are against the policy of the public and can cause harm to the public.

If a contract shows any of these elements, then it is unlawful and void u/s 23.

Cases Discussed: -

FOSTER VS. DRISCOLL

VOID CONTRACTS

The term “void” is given under Section 2(g) of the Act which states as follows: “An agreement not enforceable by law is said to be void.” A void agreement is not enforceable at the option of either party

Sections which contain void contracts not being enforceable are as follows: -

- **Section 23. What consideration and objects are lawful, and what not –** (*refer page 26 of these notes*)
- **Section 24. Agreements void, if considerations and objects unlawful in part-** *If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void*
- **Section 26. Agreement in restraint of marriage, void -** *Every agreement in restraint of the marriage of any person, other than a minor, is void.*
- **Section 27. Agreement in restraint of trade, void -** *Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception here is Saving of agreement not to carry on business of which goodwill is sold*
- **Section 28. Agreements in restraint of legal proceedings, void-** *Every agreement by which any party is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which extinguishes the rights of any party is void. Exceptions are Saving of contract - to refer to arbitration dispute that may arise and to refer questions that have already arisen.*
- **Section 29. Agreements void for uncertainty -** *Agreements, the meaning of which is not certain, or capable of being made certain, are void.*
- **Section 30. Agreements by way of wager, void -** *Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide the result of any game or other uncertain event on which any wager is made.*

Note- write all the examples discussed along with relevant cases.

CONTINGENT CONTACT— (Section 31-36)

Under Section 31 of the Indian Contract Act, 1872, contingent contracts are defined as follows: “If two or more parties enter into a contract to do or not do something, if an event which is collateral to the contract does or does not happen, then it is a contingent contract.”

Contract dependent on the happening or non-happening of a future uncertain event. The term contingent means something that may or may not happen in future and thus a contingent contract isn't enforceable on the parties until the specified event does or doesn't happen.

Sections 32 – 36 of the Indian Contract Act, 1872, list certain rules for the enforcement of a contingent contract.

- Section 32– Contracts Contingent on the happening of an Event
- Section 33 – Contracts Contingent on an Event not happening
- Section 34 – Contracts contingent on the conduct of a living person who does something to make the event or conduct as impossible of happening
- Section 35 – Contracts Contingent on an Event happening or not happening within a Specific Time
- Section 36 – Contracts Contingent on an Impossible Event

(Sections 32-36 are explained at great length during lectures, thus self-made examples will be appreciated appreciated)

Therefore, a contract of insurance is a contingent contract as in a life insurance contract the insurer pays a certain amount if the insured dies under certain conditions. Or in a contract of guarantee the surety does repayment only when the principal debtor fails to pay the creditor.

QUASI CONTRACTS

- Also known as constructive contracts, it resembles a contract despite not having the essential specified in section 10 of the act.
- The Court recognizes it as a valid contract, thus even in absence of a contract certain social relations give rise to certain specific obligations to be performed by “specific persons”.
- These are therefore known as quasi contracts as they create the same obligations as in the case of regular contracts.
(Remedies for quasi contract are same as that of real contract entered by the parties)
- Based on the principles of EQUITY, JUSTICE & GOOD CONSCIENCE.
- Based on maxim (Nemo debet locupletari ex aliena jactura) - no man should grow rich out of another’s loss.

Section 68 – Necessaries Supplied to Persons Incapable of Contracting

(Imagine a person incapable of entering into a contract like a lunatic or a minor. If a person supplies necessaries suited to the condition in life of such a person, then he can get reimbursement from the property of the incapable person)

Section 69 – Payment by an Interested Person

(If a person pays the money on someone else’s behalf which the other person is bound by law to pay, then he is entitled to reimbursement by the other person.)

Section 70 – Obligation of Person enjoying the benefits of a Non-Gratuitous Act

(Imagine a person lawfully doing something or delivering something to someone without the intention of doing so gratuitously and the other person enjoying the benefits of the act done or goods delivered. In such a case, the other person is liable to pay compensation to the former for the act, or goods received. This compensation can be in money or the other person can, if possible, restore the thing done or delivered.)

Section 71 – Responsibility of Finder of Goods

(If a person finds goods that belong to someone else and takes them into his custody, then he has to adhere to the following responsibilities

Firstly, to take reasonable efforts to find true owner, then duty to take reasonable care of the goods as his own, then duty to not mix those up with his own goods, followed by lastly duty to return the original goods as well as any increase caused in due process of taking care)

Section 72 – Money paid by Mistake or Under Coercion

(If a person receives money or goods by mistake or under coercion, then he is liable to repay or return it.)

E-CONTRACT

An e-contract is a contract where the offer and acceptance, and consideration etc., are done by electronic means. An E-contract is also a valid form of contract but there is just one important factor involved is that the E-contracts come into force with the help of the Internet or digital mode of communication. We use electronic contract signing to make such types of contracts. With the help of e-contracts, now we are able to make contacts worldwide. It provides the best opportunity for sellers to reach their consumers without any help from agents or middlemen. The person can buy the goods from the USA by sitting in India just by doing a few clicks on his electronic gadget.

- E-contract is an agreement that is enforceable under law and is in all respect drafted, negotiated and executed digitally, it simply is a contract created by using electronic means.
- Essentials are all same as normal contract (section 2(h)) and goes as follows-
 - Offer (where consumer usually browses the goods)
 - Acknowledgement (where you usually click on “I agree”/ “I accept”)
 - Legal consideration
 - Intention to create legal relation
 - Competent Parties
 - Free Consent
 - Lawful Object
 - Performance
- Types include- Click-Wrap Agreements, Shrink- Wrap Agreements, Browse-Wrap Agreements. Also includes, E-mail contracts, E-Commerce contracts.

(Section 10A of the Information Technology Act, 2000, gives recognition to the electronic contracts and so does the Indian Contract Act 1872)

DISCHARGE OF CONTRACT

The discharge of a contract is characterized as the end of an agreement or an arrangement made by a couple of parties, which results in either complete performance or the failure in performing or playing out the obligations referenced at the hour of making a contract with the acknowledgment of all the parties with free consent.

{Basically there is no obligation between the parties any longer i.e. the contract has ended}

Modes of Discharge of Contract:

1. **Discharge by Performance** (*obligation is fulfilled by the parties*)
2. **Discharge by Agreement** (Section 62)
 - i. Novation (*fundamental change i.e. new partner/name change*)
 - ii. Alteration (*slight modifications relating to terms and conditions but has nothing to do with parties*)
 - iii. Rescission (*mutual cancellation*)
3. **Discharge by Remission** (Section 63) (*acceptance of lesser fulfillment of the promise made*)
4. **Discharge by Waiver** (Section 63(a)) (*intentional abandonment of a right by a party*)
5. **Discharge by Subsequent Impossibility** (Section 56)
 - i. Destruction of the subject matter to Contract (*contract discharged by frustration*)
 - ii. Non-existence of Particular state of thing
 - iii. Death/Incapacity for personal service
 - iv. Change of law
 - v. Outbreak of war
6. **Discharge by Lapse of Time** (*if a contract isn't performed within the time prescribed in the limitation act 1963 and the promise takes no cognizance then he will be deprived of his remedy*)
7. **Discharge by Operation of law**

- i. By Merger (*the acceptance of higher security in place of lesser security*)
- ii. By Insolvency (*an insolvent can be discharged from his liability once his insolvency is proved, and his assets can be distributed to the affected parties i.e. creditors by official assignee*)
- iii. By Material Alteration (*unauthorized alteration of terms, done without consent of other party*)

8. Discharge by Breach of contract

(write basic gist of actual and anticipatory breach given below)

(Note- all the 8 modes as well as sub-parts are discussed through examples so one can explain and elaborate examples in own words as long as they are relevant)

Cases Discussed:

TAYLOR VS. CALDWELL

FRELL VS HENRY

BREACH OF CONTRACT

When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract.

Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:

- (1) Actual breach of contract
- (2) Anticipatory breach of contract

(1) Actual breach of contract- A case of refusal to perform the promise on the scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

(2) Anticipatory breach of contract- **Section 39** of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: “When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.”

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and

(b) Impliedly by the conduct of one of the parties.

Remedies available: -

1. Rescission of Contract
2. Suit for Damages
3. Suit for Specific Performance
4. Injunction
5. Quantum Meruit

- Rescission of Contract- When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations. As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a rescission.

- Suit for Damages- Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business. Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business.

{There are two types of damages according to the Act,

Liquidated Damages: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.

Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.}

- Suit for Specific Performance- This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement. So if any of the

parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

- Injunction- An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act. So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.
- Quantum Meruit - Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit. So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

*Drafted and prepared by,
Assistant Prof. Jidnyasa Mhatre (Law Department- TCSC).*