

SUMMARY CONTACT ACT, 1872

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MIKGUPTA

CA

EDUCATION

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• **SUMMARY NATURE OF CONTRACT**

1. A law is a rule of conduct imposed and enforced by the Government.
2. Mercantile law is that branch of law which governs and regulates mercantile or business transactions.
3. The law of contract is the foundation of the mercantile law. All business transactions are founded on the law of contract. The object of law of contract is to introduce *certainty & definiteness* in business transactions. It ensures that the expectations created by promises of the parties are fulfilled and obligations created by agreements are enforced :
4. The sources of the law of contracts are the Indian Contract Act, 1872, judicial decisions or precedents and customs and usages of trade.
5. The Contract Act is not exhaustive. It does not apply to all types of contracts. There are certain contracts. There are separate Acts which deal with contracts relating to negotiable instruments, transfer of property, sale of goods, partnership, insurance, *etc.*
6. The Indian Contract Act, **1872**, came into force on **1st September, 1872** and it applies to the whole of India.
7. This law is *ubi jus, ibi remedium i.e. where there is a right there is a remedy.*
8. The **general principles** of Law of Contract are contained in **Sections 1 to 75** of the Indian Contract Act, 1872.
9. Only those agreements, which are enforceable by law, are contracts. According to **Section 2(h)** of the Act, the term contract is defined as "*an agreement enforceable by law*".
10. Agreement is the genus of which contract is the species. An Agreement is a wider term than a contract. It may be a legal agreement (*i.e.* enforceable by law) or a social agreement (*i.e.* not enforceable by law).
11. 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*".
12. **Section 2(b) defines promise** "*when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise*".
13. Agreement=Offer/Proposal + Acceptance
14. Contract=Accepted proposal + Enforceability by law
15. The law of contract is essentially the law of obligations. Obligations may arise from numerous sources such as (a) torts or civil wrong, (b) judicial decisions, (c) trust, (d) decree, (e) agreements. However,

the law of contract deals only with those obligations which arise from agreements. It excludes all those obligations which are not contractual in nature.

16. According to Section 10, *"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."*

17. Social agreement did not intend to create any legal relations. (**Balfour v. Balfour**)

18. Consideration is a technical word meaning thereby **quid pro quo i.e. something in return.**

19. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided,

(a) is of the age of majority according to the law to which he is subject, and

(b) who is of sound mind, and

(c) is not disqualified from contracting by any law to which he is subject.

20. A person of **unsound mind can enter** into a contract during his **lucid intervals.**

21. The parties to an agreement must agree upon the **same thing in the same sense.** This means that there must be **consensus ad idem.**

22. The consent of a party is not free when it is caused by coercion, undue influence, fraud, misrepresentation of facts and mutual mistake of fact. In such cases, **the contract becomes voidable at the option of the party whose consent is not free.**

23. An agreement the meaning of which is uncertain, is void.

24. An agreement to do an act impossible in itself, is void.

Note: *Collateral Agreements do not become void.*

25. On the basis of the validity

- ***Valid Contract:*** It contains all the essential elements of a valid contract.
- ***Void Contract:*** Section 2(j) defines a void contract as *"a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"*.

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

- **Unenforceable Contract :**An unenforceable contract is one, *which is perfectly valid, but cannot be enforced by law due to some defects*, such as under stamping. If the defect is removed, the contract can be enforced.

- **Illegal or unlawful agreement :** An illegal agreement is one, which is contrary to law. According to section 23 an agreement is illegal and void if its object or consideration
 - i. Is forbidden by law, or
 - ii. Is of such a nature that, if permitted, it would defeat the provisions at any law, or
 - iii. Is fraudulent, or
 - iv. Involves or implies injury to the person or property of another, or
 - v. The court regards it as immoral or opposed to public policy (Sec. 23).

An illegal agreement may attract punishment and prosecution under criminal law. An agreement which is collateral to an illegal agreement also becomes illegal. It is like an infectious disease and is fatal not only to the main contract but to collateral transactions as well.

26. On the basis of the formation of contract

- **Express Contracts:** A contract which is made by words **either spoken or written** is said to be an express contract.
- **Implied Contract:** such proposal or acceptance is made **otherwise than in words**, the promise is said to be implied.
- **Tacit Contract** is said to be tacit when it has to be **inferred from the conduct of the parties**.
- By implied contract means implied by law (i.e.) the law implies a contract though parties never intended.
- **Quasi-Contract:** A quasi-contract is not an actual contract but it resembles to 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.

22. On the basis of the performance of the contract

- **Executory Contract:**

An executory contract is a contract, in which neither of the parties has performed their obligation

- **Unilateral Contract:**

Where only one of the parties to the contract has performed its obligation, at the time of formation of contract or before it is called 'unilateral contract.' These contracts are known as 'Partly executed and partly executory contract.'

- **Bilateral Contract:**

Bilateral Contracts are contracts in which both the parties either have performed their obligations or have to perform their obligations. These are of the following two types:

a) Executed Contract

b) Executory Contract

Scope of Law of Contract

Not Whole Law of Agreements	The law of contracts is not the whole law of agreements because it is concerned with only those agreements (e.g. Business <i>or</i> Commercial Agreements) where parties have the intention to create legal obligations and is not concerned with those agreements (e.g. Social <i>or</i> Domestic Agreements) where parties do not have the intention to create legal obligations.
Not Whole Law of Contracts	The law of contracts is not the whole law of obligations because it is concerned with only those obligations which arise out of agreements and is not concerned with those obligations (e.g. obligation to maintain wife & children) which do not arise out of agreements.

• SUMMARY OFFER AND ACCEPTANCE

1. *The words proposal and offer are used interchangeably and it is defined under Section 2(a).*
2. *“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”.*
3. *For a valid offer, the party making it must express his willingness ‘to do’ or ‘not to do’ something.*
4. *The person making the proposal or offer is called the ‘promisor’ or ‘offeror’, the person to whom the offer is made is called the ‘offeree’ and the person accepting the offer is called the ‘promisee’ or ‘acceptor’.*
5. **General Offer:** It is an offer made to the public in general and hence anyone can accept and do the desired act. (*Carlill v. Carbolic Smoke Ball Co.*) & (*Lalman Shuklav. Gauri Dat*)
6. **Special Offer:** When offer is made to a definite person, it is known as specific offer and such offer can be accepted only by that specified person.
7. **Cross Offers:** When two parties exchange identical offers in ignorance at the time of each other’s offer, the offers are called cross offers. There is not binding contract in such a case, as one’s offer cannot be construed as acceptance by the other.
8. **Counter Offer:** When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer.
Counter-offer amounts to rejection of the original offer.
9. **Standing, open or Continuing offer:** An offer is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer. Tender for supply of goods is a kind of standing offer.

10. Rules as to offer:

- a) The offer must be capable of creating legal relation.
- (b) The offer must be certain, definite and not vague.

(c) The offer may be **expressed or implied.**

(d) The offer must be **distinguished from an invitation to offer.**

(e) An offer may be **specific or general.**

(f) The offer must be **communicated.**

(g) The offer must be made with a **view to obtaining the consent/assent of the offeree.**

(h) An offer **may be conditional:** An offer can be made subject to any terms and conditions by the offeror. The offeree will have to accept all the terms of the offer, otherwise the contract will be treated as invalid.

(i) The offer **should not contain a term the non compliance of which would amount to acceptance.** Thus a man cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

11. A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something [**Section 2 (b)**].

12. Acceptance converts the offer into a promise and then it is too late to remove it. Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone

13. The rules regarding acceptance are:

1. Acceptance must be **absolute and unqualified.**

2. **Communicated to Offeror:** It must further be remembered that an acceptance must be communicated to the person who made the offer.

(Bhagwandasv. Girdharilal)

3. Acceptance must be **in the mode prescribed.**

(a) **Acceptance in a prescribed manner.**

If the offeror prescribes a particular method or type of acceptance, it should be given in that manner. Ex. if the offeror insists that acceptance should be given by telegram, then that method should be followed.

(b) **Acceptance in usual and reasonable manner.**

If the offeror does not prescribe any particular method of acceptance in that case according to sec. 7(2), the acceptance must be expressed in some usual and reasonable manner.

(c) **Consequences of not following the prescribed manner.**

If the offeree fails to follow the prescribed mode of acceptance, the offeror may accept or reject such acceptance. If the offeror wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance because it is not in the prescribed manner. If he does not inform the offeree, he is deemed to have accepted the acceptance although it is not in the desired manner.

4. Time: Acceptance must be given **within the specified time limit**, if any, and **if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.**

5. **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, **unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.**

Example: 'A' subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also 'A' continued to use the magazine but denied to pay the bills sent to him. 'A' would be liable to pay as his continued use of the magazine was his acceptance of the offer.

6. Acceptance by conduct:

For *example*, when a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the tradesman subsequently by sending the goods. It is a case of acceptance by conduct.

14. Communication of offer:

The communication of an offer is complete **when it comes to the knowledge of the person to whom it is made (Section 4).**

15. Communication of acceptance: Communication of an acceptance is complete:

- (i) as against the proposer, when it is put in course of transmission to him so as to be out of the power of the acceptor to withdraw the same;
- (ii) as against the acceptor, when it comes to the knowledge of the proposer.

16. Acceptance over telephone or telex or fax: When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received
(Entores Ltd. v. Miles Far East Corporation)

17. Meaning of Revocation

The term 'revocation' means 'taking back' or 'withdrawal'

Under Section 5, a proposal may be revoked at any time, before the communication of its acceptance is complete as against the proposer.

This means that offer can be revoked at any time before the letter of acceptance is posted by the acceptor.

18. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

This means that an acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer.

19. The Communication of Revocation as against the person who makes it is Complete...

When it is put in a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it.

The Communication of Revocation as against the person to whom it is made is Complete...

When it comes to his knowledge.

20. Under the English Law, both the offeror and acceptor become bound by the contract when the letter of **acceptance is posted.**

21. The acceptor may revoke his acceptance by a speedier mode of communication which reaches earlier than the acceptance itself.

22.Modes of revocation: A proposal may be revoked by any of the following methods:

1. By notice revocation.
2. By lapse of specified time or reasonable time.
3. By the death or insanity of the offeror or the offeree.
By death or insanity of the offeror *if the fact of the death or insanity is known to acceptor.*
4. In case of non fulfilment of conditions of offer.
5. In case of counter offer.

• SUMMARY CONSIDERATION

- It is a term used in the sense of **quid pro quo, i.e., 'something in return'**.
- Consideration is, in a sense, the price agreed to be paid by the promisee for the obligation of the promisor.
- According to Pollock "Consideration is the price for which the promise of the other is bought". Consideration is also defined as the 'element of exchange in a contract'.
- Consideration has, therefore, been defined in an English judgment as "some right, interest, profit or benefit accruing to one party (i.e. promisor) or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (i.e., the promisee)" at the request of the promisor.

The word **consideration** was **described** in a very popular **English case of Currie v. Misa.**

- ◆ Section 2(d) of the Contract Act define consideration as follows:

(a) "When, at the desire of the promisor,

(b) the promise or any other person,

(c) 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".

- consideration is the doing or not doing of something which the promisor desires to be done or not done.
- Consideration must be at the desire of the promisor.
- Consideration **may move from promisee or any other person.**
- In other words, **there can be a stranger to a consideration but not stranger to a contract. (Chinnayya v. Ramayya)**
- **Difference between the right of a stranger to a contract and of a stranger to the consideration.** A stranger to a contract, i.e. one who is not a party to it, cannot file a suit to enforce it. A contract between P and Q cannot be enforced by R. But a *stranger to the consideration can sue to enforce it* provided that he is a party to the contract. A contract between P, Q and R whereby P pays money to Q for delivering goods to R can be enforced by R although he did not pay any part of the consideration.
- Consideration may be past, present or future.
- Consideration need not be adequate, but should be real and **should not be Performance of what one is legally bound to perform:**
- *Consideration must not be unlawful, immoral, or opposed to public policy.*
- Concept of stranger to consideration is a valid and is different from stranger to a contract which means contract by the person who is not a party to the contract.
- The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions.
- In other words, even a stranger to a contract may enforce a claim in the following cases:

- ✓ **T**rust, a beneficiary
 - ✓ **F**amily settlement, if the terms of the settlement are reduced into writing
 - ✓ **A**ssignment, the assignee
 - ✓ estoppel **O**r acknowledgement
 - ✓ covenant running with the **L**and
 - ✓ Contracts made by the **A**gent:
 - The **general rule** is that an agreement made ***without consideration is void*** (Section 25).
 - A contract may only be enforceable when an adequate consideration is there. However, the Indian Contract Act contains certain **exceptions to this rule**.
 - In the following cases, the agreement though **made without consideration, will be valid and enforceable**.
 - ✓ **Compensation for past voluntary services:**
 1. The services should have been rendered voluntarily .
 2. Services must have been rendered for the promisor.
 3. The promisor must be in existence at the time when services were rendered.
 4. The promisor must have intended to compensate the promisee.
 - ✓ **Natural Love and Affection**
- Written and registered agreement + natural love and affection + the parties standing in near relation
- ✓ **Time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid.
 - ✓ **Agency: sec 185**
 - ✓ **Gift:**
 - ✓ **Gratuitous bailment**
 - ✓ **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (**Kadarnath v. Gorie Mohammad**)
 - ✓ **Remission.** Sec. 63. Where a person agrees to receive less than what is due to him, such an agreement is said to be an agreement of remission. No consideration is required for a contract of remission.
 - ✓ **Guarantee.** Sec. 127. Under the contract of guarantee, no consideration is received by the surety, even then the contract of guarantee is valid.
- Under the **English Law, past consideration is not regarded as good consideration except in cases of past act at request**, promise to pay a time-barred debt and a negotiable instrument issued for past consideration

• SUMMARY Capacity to contract

1. Capacity refers to the competence of the parties to make a contract
2. It is one of the essential element to form a valid contract.
3. **Minors, persons of unsound mind and persons disqualified by law are not competent to contract [Section 11]**
4. In India, the age of majority is regulated by the Indian Majority Act (Act IX of 1875). **a minor is a person who has not completed the age of eighteen years.**
5. **A contract made with or by a minor is void-ab-initio i.e., void from the very beginning.**
6. In the leading case of **MohoriBibi v. DharmodasGhose** held that in minor's contracts are absolutely void.
7. **No restitution:** A minor cannot be directed to return benefit obtained under a void agreement (because section 64 and 65 which deal with restitution do not apply to a minor).

However, **under the Specific relief Act, 1963** the Court may, however, in certain cases, while ordering for the cancellation of an instrument, at the instance of a minor, require the minor plaintiff to make compensation to the other party to the instrument.

8. **No ratification after attaining majority:** Minor's agreement cannot be ratified by the minor on attaining the age of majority, for, an agreement void ab initio cannot be made valid by subsequent ratification.
9. **The rule of estoppels does not apply to a minor.** A minor is not stopped (prevented) from pleading his infancy in order to avoid a contract, even if he has entered into an agreement by falsely representing that he was of full age.
10. **Minor can be a beneficiary or can take benefit out of a contract:**
11. A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the India Partnership Act, 1932).

12. **A minor can always plead minority:**
13. **Contract for supply of Necessaries:** Minor is liable to pay out of his property for the necessaries supplied to him by the other.(Section 68).
14. **A minor is not personally liable for the necessaries supplied to him.**
15. **Specific performance.** Since an agreement by a minor is absolutely void, the court will never direct 'specific performance' of such an agreement by him.
16. **Minor Agent.** A minor can be an agent (Sec. 184).
17. **Minor and insolvency.** A minor cannot be adjudicated an insolvent, for, he is incapable of contracting debts. Even for necessaries supplied to him, he is not personally liable, only his property is liable (Sec. 68).
18. **Minor as a shareholder.** A minor can become a shareholder of fully paid of shares through transfer, if he applies for registration of transfer through his guardian.
19. Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on the minor's behalf.
20. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.
21. For instance a guardian can make an enforceable contract of marriage for a minor. Similarly, when the father of the bridegroom contracts with the father of the bride to pay the bride an allowance, there bride can sue her father-in-law to recover arrears of the allowance.
22. But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable Property.
23. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

24. Minor's Liability in Tort

A minor may be held liable in Tort (civil wrong). But if in the course of doing what he is entitled to do under the contract, he is found guilty of negligence, he cannot be made liable on tort if he is not liable on the contract.

25. Who is a Person of Unsound Mind?

A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, is capable—

- (a) To understand the terms of the contract,
- (b) To form a rational judgment as to its effect upon his interests.”

26. A person who is usually of unsound *mind, but occasionally of sound mind may make a contract when he is of sound mind [Section 12,].*

27. A contract by a person who is not of sound mind is void.

28. Under the **English Law,an agreement with a person of unsound mind is not void, but voidable at the option of the person of unsound mind.**

29. A lunatic can enter into a valid contract during lucid intervals i.e., during the period when he is of sound mind.

30. A person who is usually of sound mind, but occasionally of unsound mind may not make a contract when he is of unsound mind [Section 12,].

31. A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract,or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

32. The liability for necessities of life supplied to persons of unsound mind is the same as increase of minors. (Section 68)

33. An **idiot cannot enter into a valid contract as his incapacity is permanent.**

34. Foreign Soverigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc. are disqualified by law from entering into valid contract.

35. Insolvent. When a debtor is adjudged insolvent, is entire property vests in the official receiver or official assignee. Thus he cannot deal in that property.

36. **Joint-stock company and corporation incorporated under a Special Act.** (Like LIC, RBI, etc.) A company/Corporation is an artificial person created by law. It cannot enter into contracts outside the powers conferred upon it by its Memorandum of Association or by the provisions of its special Act, as the case may be

- **SUMMARY Quasi contracts**

- ‘Quasi-contracts’. Are those contracts in which there is **no offer, no acceptance and no consensus-ad-idem and in fact neither agreement nor promise and yet the law imposes an obligation on one party and confers a right in favour of the other.**
- Quasi contracts are based on principles of equity, justice and good conscience.
- A quasi or constructive contract rests upon the maxims, **“No man must grow rich out of another persons loss”**.
- The quasi-contractual obligations are based on the equitable principle of **nemo debet locupletari ex aliena iustua i.e., no person shall enrich himself at the expense of another.**
- In India it is also called as ‘certain relation resembling those created by contracts’.
- The salient features, of *quasi contractual* right, are as follows:
 - Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
 - Secondly, it is a right which is available not against the entire world, but against a particular person or persons only.

Types of quasi-contracts	Important points to remember
Claim for necessities supplied to persons incapable of contracting (Section 68)	<ul style="list-style-type: none"> • <u>Reimbursed from the property</u> of such Incapable person • To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at <u>the time of the sale and delivery.</u>
Right to recover money paid for another person	<ul style="list-style-type: none"> • Entitled to be reimbursed by that other person provided the payment has been made by him to <u>protect his own interest.</u>
Obligation of a person enjoying benefits of non-gratuitous act (Section 70):	<ul style="list-style-type: none"> • A person who enjoys the benefit of a <u>non-gratuitous act is bound to make compensation.</u> • The plaintiff must prove: (i) that he had done the act or had delivered the

	thing lawfully; (ii) that he did not do so gratuitously; and (iii) that the other person enjoyed the benefit.
Responsibility of a finder of goods:	<ol style="list-style-type: none"> 1. The finder of goods has the same responsibilities as that of a bailee [Section 71]. 2. when the owner is traced, to restore it to the owner 3. <u>Where a true owner cannot be found, the finder of goods can sell the goods found if these are of perishable nature.</u>
Liability for money paid or thing delivered by mistake or under Coercion	<u>Apply principle of Restitution.</u>

• **SUMMARY Free Consent**

1. According to **Section 13**, “two or more persons are said to have consented when they agree upon the same thing in the same sense (**Consensus-ad-idem**).
2. A contract cannot arise in the absence of consent.
3. In the **case of fundamental error**, there is really **no consent** whereas, in the case of mistake, there is no real consent.
4. The cases of complete absence of consent are described by **Salmondas error in consensus**, and no valid contract results in such cases.
5. The cases of 'no free consent' i. e. when the consent is there but the same is not free, are described by **Salmondas error in cause, and in such cases the contract is voidable**.
6. Consent may be free or not free. Only free consent is necessary for the validity of a contract.
7. **Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake (Section 14)**.
8. **When consent is not free due to mistake, the agreement is void but in all other cases, the contract is voidable at the option of the party whose consent was obtained by coercion, etc.**
9. **Coercion (Section 15):** “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
10. The consent obtained by an act forbidden by the Indian Penal Code (IPC) amounts to consent by coercion **whether or not the IPC is in force in the place where the act amounting to coercion is committed**.
11. The threatening act amounting to coercion may be initiated by any person or even by a stranger.
12. **The threatening act amounting to coercion may be directed against any person including a stranger**.
13. An agreement induced by coercion is voidable and not void. That means it can be enforced by the party coerced, but not by the party using coercion.
14. A person to whom money has been paid or anything delivered under coercion, must repay or return it. (Section 71).
15. The threat of suicide amounts to coercion within Section 15.
16. **Undue influence (Section 16):** The essential ingredients under this provision are: near relation, Position to dominate the will, The object must be to take undue advantage.
17. A person is **deemed** to be in such position in the following circumstances: **Real and apparent authority, Fiduciary relationship and mental distress**.

18. There is no presumption of existence of a power to dominate the will of another in the following cases : (a) Landlord and tenant, (b) Creditor and debtor, (c) Husband and wife. It has been held by judicial decisions that in all these cases, the party alleging undue influence must prove that undue influence existed.
19. The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.
20. **Fraud (Section 17):** Fraud means such act committed by a party to a contract or by his agent with intent to deceive another party or his agent to induce them to enter into contract.
21. The fraud, which results into a contract, is only covered by this section. Any fraud committed by a party which does not lead the other party to enter into a contract is not covered by this section.
22. The important *case of Derry v. Peek deals with fraud.*
23. *Mere silence is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.*
24. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

Misrepresentation Section 18 of the Contract Act classifies cases of misrepresentation into three groups as follows :

1. *Unwarranted Assertion*
 2. *Breach of duty.* “Any breach of duty, without an intent to deceive, which brings an advantage to the person committing it, by misleading another to his prejudice”.
 3. *Innocent Mistake.*
25. The party whose consent was obtained by misrepresentation *has the option either to rescind the contract or to affirm the contract. However, the option once made would be final.*
26. But if the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence, he has no remedy – Sec. 19.
27. *Coercion involves physical force whereas undue influence involves moral or mental pressure.*
28. *Relationship is not compulsory in coercion but must in undue influence.*
29. *In case of fraud, false statement is intentional, whereas in case of misrepresentation, it is unintentional.*
30. In case of fraud person making a statement knows that he is telling untrue statement but in misrepresentation The person making the statement believes it to be true, although it is not true.
31. *In case of fraud the injured party can cancel the contract and can also claim damages but in case of misrepresentation The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.*

32. A person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation or silence amounting to fraud.
33. Where a party to a contract commits fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter.
34. **Mistake as per Section 20:** When both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, then such an agreement is altogether void.
35. A contract is not a 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.
36. A unilateral mistake, that is to say, mistake of one party, does not render the agreement void.
37. A and B wrongly believe that a particular debt is not barred by the Law of Limitation and on the basis of such belief enter into a contract. The contract is valid, mistake being not of fact but of law.
38. *A question of foreign law is, however, a question of fact.*
39. Further, the mistake must be as to an essential fact. Whether the fact is essential or not depends on whether a reasonable man would regard the fact as an essential in the circumstances. A mere wrong opinion as to the value is not an essential fact.
40. Unilateral mistake is considered **void** in the following **two cases:**
Case - (a) Mistake as to the identity of the persons contracted with:
Case - (b) Mistake as to the nature of contract: Where in signing a document, the mind of the signer does not go with the signature, there is a mistake which would vitiate the contract.

• SUMMARY Lawful object and the consideration

- **The limits to contractual freedom** are set out in Section 23 of the Act. An agreement, the object or consideration of which is unlawful is void.
- All agreements are contracts if they are made for lawful consideration and with lawful object [Section 10].
- The seven circumstances which would make consideration as well as an object unlawful are discussed below:

- (i) **Forbidden by law:**
- (ii) **Defeat of the provision of law:**
- (iii) **Defeat of any rule for the time being in force in India:**
- (iv) **Fraudulent:**
- (v) **Injury to the person or property of another:** The general term “injury” means criminal or wrongful harm.
- (vi) **Immoral:**
- (vii) **Agreement opposed to public policy:**

- In the following cases agreements are considered to be opposed to public policy:

i) **Trading with enemy**

ii) **Stifling Prosecution**

iii) **Champerty and maintenance**

✓ **Maintenance** means promotion of litigation in which one has **no interest**.

✓ **Champerty** means an agreement by which one party agrees to assist the other party in recovering property in the suit and **share proceeds**.

iv) **Interference with the course of justice**

v) **Marriage Brokerage Contracts**

vi) **Sale of Public Offices.**

vii) **Interest against obligation**

viii) **Agreement for the creation of monopolies**

ix) **Agreement in restraint of marriage (Section 26) Exception : Minor**

x) **Agreement in restraint of trade (Section 27**

Exception to Restraint of trade is

Sale of goodwill ,Partner's Agreement ,Other Service agreements and Trade Combinations

xi) **Agreement in restraint of legal proceedings. (Section 28) Exception is Arbitration.**

- **SUMMARY Agreements expressly declared void**

1. Certain agreements have been expressly declared void by the Contract Act. **These are void ab initio and do not give rise to any legal consequences.**
Examples:
 - Agreements by incompetent parties (Section 11);
 - Agreements with an unlawful object or consideration (Section 23);
 - Agreement made under a mutual mistake of fact (Section 20);
 - Agreements without consideration (Section 25)
2. Where an agreement consists of two parts, one legal and the other illegal, and the legal part is **separable** from **the illegal one, then only legal part is enforceable.**
3. If the legal and illegal part of an agreement **cannot be separated, then the whole agreement is illegal and unenforceable.**
4. **Agreement-the meaning of which is uncertain (Section 29):** An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.
5. **Wagering agreement:** An agreement by way of a wager is **void.**
6. **Speculative transactions:** Though wagering transactions are void, **speculative transactions are generally valid.**
7. A speculate transaction essentially, must have two elements, namely, (1) mutual intention of the contracting parties **to acquire or deliver,** as the case may be, the commodities; and (2) the **undertaking or risk** arising from movement in prices.
8. Under Section 30 of the Act, a wagering contract is void, the reason being that such a contract is opposed to public policy.
9. **Though a wagering contract is void, transactions incidental to wagering transactions are not void. Thus, a broker in a wagering transaction can recover his brokerage.**
10. **A collateral transaction to an illegal agreement is also illegal, and thus void.**
11. **When a transaction is simply void but not illegal, the collateral transaction would be valid.**

- **SUMMARY performance of contracts**

- The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.
- Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract (Section 37).
- **Performance may be actual or offer to perform.**
- **Offer to perform or attempted performance or tender of performance:** It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but **the promisee refuses to accept the performance.**
- The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.
- The **contracts involving personal skills or personal consideration of the promisor must be performed by the promisor himself. If the promisor dies before performance, such contracts come to an end.**
- **In Any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract . But their liability under a contract is limited to the value of the property they inherit from the deceased.**
- When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor although the promisor has neither authorised nor ratified the act of the third party.
- When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise.
- If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise.
- If all of them die, the legal representatives of all of them must fulfill the promise jointly (Section 42).
- **The liability of joint promisors is joint and several,** and the promisee may compel any one or more of the joint promisors to perform the whole of the promise.
- The promisee may release one of the joint promisors, and in such a case the remaining joint promisors remain liable to pay the entire amount.
- **Under the English Law, the release of one of the joint promisors is the release of all the promisors.**
- **The right of joint promisees is only joint.**
- When on the death of the person, **his rights and liabilities arising from the contract entered into by him are devolved on his legal heir under the process of law. it is termed as succession.** In succession liability of the successor will be limited to the value of property inherited by him.

- Assignment means transfer of rights arising from the contract by party to the contract to the other person, who is not a party to the contract. In the case of assignment only rights can be assigned **and not the liabilities**. Assignment can take place either by the act of parties or by operation of law.
- Promisor has made an offer of performance to the promisee and the promisee does not accept the performance it is a **case of attempted performance**.
- Promisor is not responsible for non performance and he can sue the promisee for breach of contract. Any such offer of performance made by the promisor must satisfy the following conditions:
 - ✓ Offer must be unconditional
 - ✓ It must be made at proper time and place.
 - ✓ It must be a person who is willing to perform his part of promise
 - ✓ If offer involves delivering of something to the promisee by the promisor, promisee must have a reasonable opportunity of inspecting the goods to ascertain that goods offered are the same as contracted.
- If the promisor refuse to perform promise wholly, promisee can put an end to the contract or he can continue the contract if he has given his consent either by words or by conduct in its continuance.
- In either case, the promisee would be able to claim damages that he suffers as a result on the breach.
- The provisions relating to time and place of performance of promise are contained in section 46 to 50.
- IF No Time Specified for performance, within a reasonable time.
- IF Time Specified but hour not mentioned, at any time during usual business hours on specified day.
- No place is fixed, duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise
- A reciprocal promise is legally defined in Section 2(f) in the words reading as: "Promises which form the consideration or part of consideration for each other are called reciprocal promises "
- Reciprocal promises can be, Mutual and independent, .Mutual and dependent and Mutual and concurrent.

- If the contract provides for the order of performance of reciprocal promises then it must be performed in that order.
- If the contract does not provide for order of performance then the promises shall be performed in the order in which the nature of transaction requires.
- If one party is preventing other from performing his part of promise, then the contract becomes voidable at the option of the party so prevented.
- Where in a reciprocal promise, a person promises to do certain things which are legal and alternatively to do certain other things which are illegal, **then only the legal part can be enforced in a court.**
- If a party to the contract promises to do certain things at or before the specified time and fails to do any such thing at or before the specified time, the contract or so much of the contract as has not performed, before the specified time **becomes voidable at the option of the promisee, if the intention of the parties was that time should be essence of the contract.**
- **If time is not an essence of the contract, in that case contract cannot be avoided, but compensation can be claimed. Contract does not become voidable.**
- **In case of sale of immovable property, time is generally not considered to be the essence of the contract.**
- Even where time is essential the promisee ,may accept performance at any time other than that agreed. In such an event, he cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of acceptance of the performance he has given a notice to the promisor of his intention to claim compensation.
- **Where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that**

payment is to be applied to the discharge of some particular debt, the payment if accepted must be applied accordingly. (Section 59)

- If debtor has not intimated at the time of payment as to which debt payment is to be applied the creditor is entitled to appropriate same at his discretion to any lawful debt whether time barred or not. (Section 60)
- If neither party makes an appropriation the payment shall be applied in discharge of debts in order of time whether they are barred by law as to the limitation of suits or not. If debts are of equal standing, payment shall be applied in discharge of each proportionately. (Section 61)
- The Latin maxim is quicquid solvitur, solvitur secundum modum solventis. The meaning of the maxim is that whatever is paid, is paid according to the intention or manner of the party paying.
- According to this maxim, where a debtor owes several distinct debts to a creditor and makes payment it has been held in Clayton's case that the former enjoys the right of appropriation, and he may, at his pleasure, appropriate it to any debt; the creditor will be bound by such an appropriation.

- SUMMARY Discharge of contracts

- Discharge by Mutual Agreement(.....)

A contract can be discharged by mutual agreement between the parties. An agreement can be terminated by mutual consent by novation, alteration, rescission, remission and waiver.

Novation

- ✓ The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation.
 - ✓ *On novation, the old contract is discharged and consequently it need not be performed.*
 - ✓ Thus it is a case where there being a contract in existence some new contract is substituted for it either between the same parties or between different parties the consideration mutually being the discharge of old contract
- **Rescission**
 - ✓ In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.
 - ✓ It is needless to point out that novation also involves rescission.
 - **Alteration of contract:**
 - ✓ Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties.
 - ✓ But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
 - **REMISSION**
 - ✓ Promisee may dispense with or remit, wholly or in part, performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit.
- ❖ It should be noted that novation, rescission or alteration cannot take place without consideration. But in the case of partial or complete remission, no consideration is required. The promisee can dispense with performance without consideration and without a new agreement.

- ❖ The promisee under the Act can also extend the time for the performance of the promise. Time can be extended only for the benefit of the promisor and not for the benefit of the promisee.
- ❖ *When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received". (Section 64).*
- ❖ *"When an agreement is discovered to be void or when a contract becomes void, any person who received any advantage under such agreement or contract must restore it, makes compensation for it to the person from whom he received it" (Section 65).*
- ❖ Though generally the benefit received under an agreement which is subsequently found to be void, must be returned, such a course may not be necessary when the benefit has been received by the corporation. It is because contract with a corporation usually is required to be entered into a special form, in the absence where of the contract becomes void.
- ❖ The argument in support of this view is that the agreement in this case becomes void due to the negligence of the promisor.

1. Discharge by lapse of Time

- ✓ A contract can be discharged by lapse of time.
- ✓ A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law

2. Discharge by Operation of law

A contract can be discharged by operation of law by death or insolvency of the parties.

A contract of personal nature is discharged on the death of the promisor.

3. Discharge by Performance

- a) Actual Performance
- b) Attempted performance

4. Discharge by Impossibility of performance.

- ✓ **If a contract becomes impossible of performance, it stands discharged.**
- ✓ The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene.
- ✓ A contract is void on the ground of initial impossibility whether it is known or unknown to the parties at the time of agreement.
- ✓ Where at the time of entering into a contract, the promisor alone knows about the impossibility of performance, or even if he does not know though he should have known it with reasonable diligence, the promisee is entitled to claim compensation for any loss he suffered on account of non-performance.
- ✓ **Subsequent impossibility also makes the contract void when the impossibility is not self-induced and it has been caused by circumstances which were beyond the control of concerned parties.**
- ✓ **The term 'Frustration' used in the English Law is the parallel concept of subsequent or supervening impossibility.**
- ✓ **A contract is discharged on the ground of supervening impossibility in cases of, (a) destruction of the subject-matter, (b) failure of object due to non-occurrence of contemplated event, (c) death or incapacity of the promisor, and (d) change of law or change of government policy.**

- ✓ A contract is not discharged on the ground of supervening impossibility in cases of **(a) difficulty in performance, (b) commercial hardships, (c) impossibility due to conduct of a third person, (d) impossibility induced by the party himself, (e) strikes, lock-outs and civil disturbances, and (e) failure of one of the several objects.**

6. Discharge by breach of Contract.

- ✓ Breach of contract by one of the parties to the contract result in discharge of the contract. **Breach can be actual breach or anticipatory breach.**
- ✓ 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.
- ✓ In case of anticipatory breach of contract, **the aggrieved party may either treat the contract as discharged and may bring an immediate action for damages, or may treat the contract as operative and wait till the time for performance of contract.** But the amount of damages in one case may be

- ✓ **Actual Breach** is a case of refusal to perform the promise **on the scheduled date.**
- ✓ Actual breach of contract may be committed-
 - a) At the time when the performance of the contract is due.
 - b) During the performance of the contract:
- ✓ Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court.
- ✓ The law governing the payment of damages is based on the leading English case of **Hadley v. Baxandale, and is incorporated in Section 73 of the Indian Contract Act.**
- ✓ Thus the liability for the damages may be classified as under;
 - a) **Ordinary damages:** These damages arises in the ordinary course of events and thus **RECOVERABLE.**
 - b) Special damages are damages **other than ordinary damages if such damages were in knowledge of both the parties at the time of making contract.**
 - c) **Vindictive or exemplary damages:** These damages may be awarded only in **two cases**, viz (i) for breach of **promise to marry**(Depending on feelings hurt) and (ii) **wrongful dishonour by a banker of his customer's cheque**(depending on reputation lost). **They are also known as damages awarded by way of punishment. These are the damages which are claimed with the intention of punishing the party in default .As a general rule, such damages are not awarded as they are punitive in nature.**
 - d) **Nominal damages:** These damages are granted when the injured party has not suffered any material loss. They are awarded merely to establish a right of decree. **This is at the discretion of the court to award or not to award these damages.**
 - e) **Damages for deterioration caused by delay:** In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

- ✓ **Liquidated damages** are a sum fixed by the parties to the contract in advance, being a **fair and genuine estimate of the loss** that is likely to result from the breach of contract.
- ✓ **Penalty** is the sum mentioned in the contract at the time of making it and it is **disproportionate** to the loss that is likely to result from the breach of contract.
- ✓ **The remote or indirect damages are not recoverable.**

REMEDY FOR BREACH

1. Rescission of Contract

2. Suit for QUANTUM MERUIT

- ✓ **Quantum Meruit means according to work done or as much as earned.**
- ✓ Claim can be made by a party who is not in default. However in certain cases party in default can make a claim for quantum meruit.
- ✓ **QUANTUM MERUIT arises in the following cases**
 - A. Person receiving benefit under void agreement, or contract that becomes void.**
 - B. Person enjoying benefit of non gratuitous Act**
 - C. In the case of divisible contract party in default can file a suit for quantum meruit.**

3. Suit for Specific Performance

Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.

4. Suit for Injunction.

Where a party to a contract is negativating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

- SUMMARY Contingent contracts
- An Absolute contract is one where the promisor undertakes to perform the contract in any event without any condition.

- Whereas **Section 31 of the Act defines contingent contract as “a contract to do or not to do something, if some event collateral to such contract, does or does not happen”.**
- Contracts of insurance are of this class.
- **Essentials of a Contingent Contract**
 - ✓ Dependent upon the happening or non-happening of some event.
 - ✓ An event collateral to the contract, i.e., it does not form part of the reciprocal promises which constitute the contract.
 - ✓ The contingent event should not be the mere will of the promisor.
- **Rules for enforcement**
 - (a) If it is contingent on the happening of a future event, it is enforceable **when the event happens.** The contract becomes void if the event becomes impossible, or the event does not happen till the expiry of time fixed for happening of the event.
 - (b) If it is contingent on a future event not happening. It can be enforced when happening of that event **becomes impossible or it does not happen at the expiry of time fixed for non happening of the event.**
 - (c) If the future event is the act of a living person, any conduct of that person which prevents the event happening within a definite time renders the event impossible.
 - (d) If the future event is **impossible** at the time of the contract is made, the **contract is void ab initio.**
- **A wagering agreement is void whereas a contingent contract is valid.**
- **In a wagering agreement,** the parties have **no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager.** In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.

**ALL THE BEST
CHAK DE PHATTE
MAY GOD BLESS YOU**