

UNIT -1

NATURE OF CONTRACT

WHAT IS A CONTRACT?

The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-

“An agreement enforceable by law”

The contract consists of two essential elements:

1. an agreement, and
2. its enforceability by law.

a) **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”.

Section 2 (b) defines promise as-“when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise”.

The following points emerge from the above definition:

- when the person to whom the proposal is made
- signifies his assent on that proposal which is made to him
- the proposal becomes accepted
- accepted proposal becomes promise

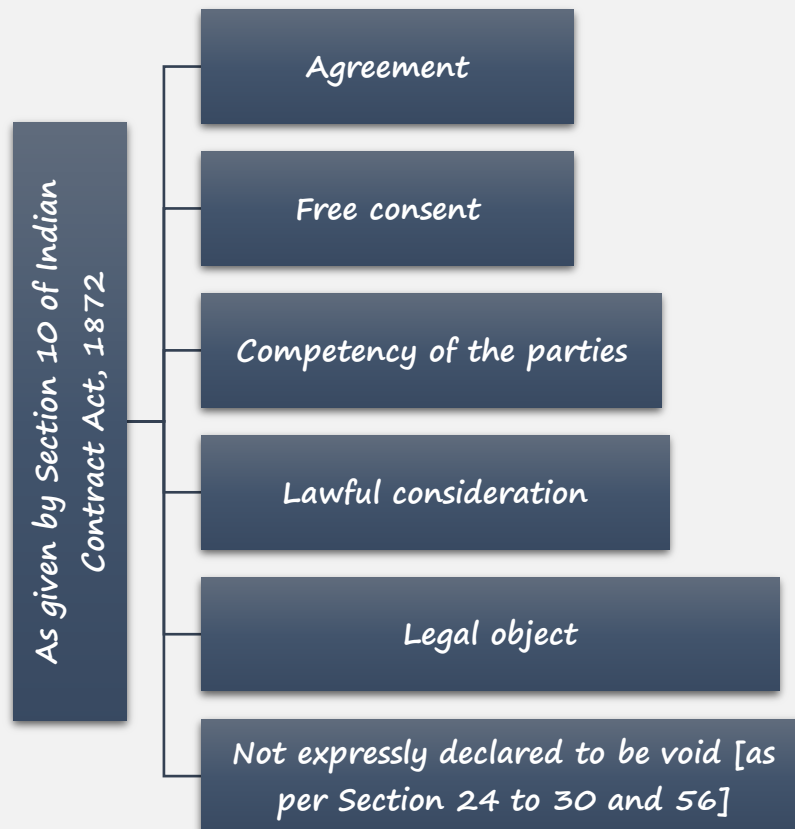
Agreement = Offer/Proposal + Acceptance

a) **Enforceability by law -**

An agreement to become a contract must give rise to a legal obligation which means a duly enforceable by law.

Contract = Accepted proposal/Agreement + Enforceability by law

ESSENTIALS OF A VALID CONTRACT



Not given by Section 10 but are also considered essential

- ❖ Two parties
- ❖ Intention to create legal relationship
- ❖ Fulfilments of legal formalities
- ❖ Certainty of meaning
- ❖ Possibility of performance

Essential elements of a valid contract

According to Section 10 of the Indian Contract Act, 1872, the following are the essential elements of a Valid Contract:

J Offer and Acceptance or an agreement:

J Free Consent:

J Capacity of the parties:

J Consideration:

J Lawful Consideration and Object:

J Not expressly declared to be void:

On the basis of the validity

J Valid Contract:

An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

J 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.

J 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".

J Illegal Contract:

It is a contract which the law forbids to be made. The court will not enforce such contract but also the connected contracts. All illegal agreements are void but all void agreements are not necessarily illegal. Despite this, there is similarity between them is that in both cases they are void ab initio and Cannot be enforced by law.

J

Unenforceable Contract:

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

On the basis of the formation of contract

- **Express Contracts:**

A contract would be 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.

- **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.

- **Tacit Contracts:**

The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM]. Another example of tacit contract is where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale. It is not a separate form of contract but falls within the scope of implied contracts.

- **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.

- **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.

On the basis of the performance of the contract

- **Executed Contract:**

The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.

- **Executory Contract:**

In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

a) **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.

b) **Bilateral Contract:**

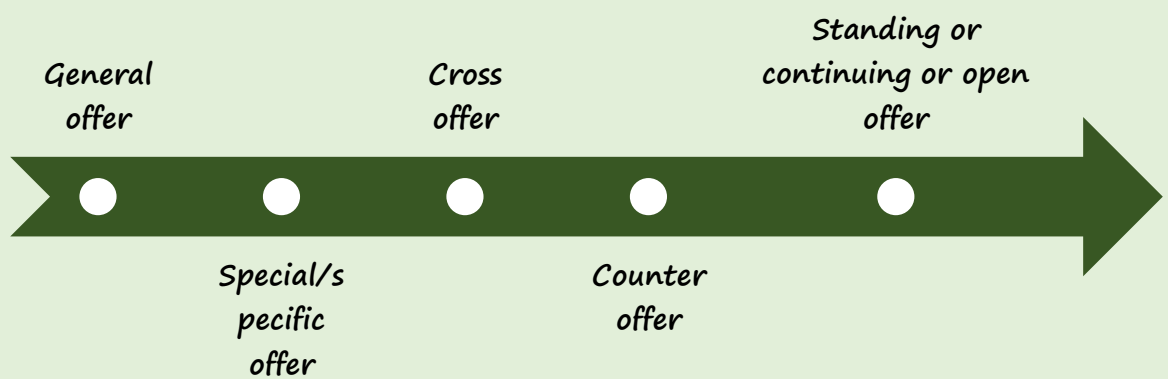
A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

PROPOSAL / OFFER [SECTION 2(a) OF THE INDIAN CONTRACT ACT, 1872]

Definition of Offer/Proposal: 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".

Classification of offer

An offer can be classified as general offer, special/specific offer, cross offer, counter offer, standing/ open/ continuing offer.



Essential of a valid offer

1. *It must be capable of creating legal relations:*
2. *It must be certain, definite and not vague:*
3. *It must be communicated to the offeree:*

This can be illustrated by the landmark case of Lalman Shukla v. GauriDutt

4. *It must be made with a view to obtaining the assent of the other party:*
5. *It may be conditional:*
6. *Offer should not contain a term the non-compliance of which would amount to acceptance:*
7. *The offer may be either specific or general:*

8. The offer may be express or implied:

9. Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, a prospectus and Advertisement.

10. A statement of price is not an offer

What is invitation to offer?

An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to a offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

Basis	Offer	Invitation to offer
Meaning	Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.	Where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.
Intention of the parties	If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.	If a person has the intention of negotiating on terms it is called invitation to offer
Sequence	An offer cannot be an act precedent to invitation to offer	An invitation to offer is always an act precedent to offer

ACCEPTANCE

Definition of Acceptance: In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows

"When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Legal Rules regarding a valid acceptance

- *Acceptance can be given only by the person to whom offer is made: In case of a specific offer, it can be accepted only by the person to whom it is made. [Boulton vs. Jones (1857)]*
- *Acceptance must be absolute and unqualified*
- *The acceptance must be communicated*
- *Acceptance must be in the prescribed mode*
- *Time*
- *Mere silence is not acceptance*
- *Acceptance by conduct/Implied Acceptance*

COMMUNICATION OF OFFER AND ACCEPTANCE

The importance of 'offer' and 'acceptance' in giving effect to a valid contract was explained in the previous paragraphs. One important common requirement for both 'offer' and 'acceptance' is their effective communication. Effective and proper communication prevents avoidable revocation and misunderstanding between parties.

Communication of offer: In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made"

Communication of acceptance: There are two issues for discussion and understanding. They are: The modes of acceptance and when is acceptance complete?

COMMUNICATION OF PERFORMANCE

We have already discussed that in terms of Section 4 of the Act, communication of a proposal is complete when it comes to the knowledge of person to whom it is meant. As regards acceptance of the proposal, the same would be viewed from two angles. These are:

from the viewpoint of proposer and the other from the viewpoint of acceptor himself

From the viewpoint of proposer, when the acceptance is put into a course of transmission, when it would be out of the power of acceptor. From the viewpoint of acceptor, it would be complete when it comes to the knowledge of the proposer.

- an offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted;*
- an offer may be made either to a particular person or to the public at large,
And*
- if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer*

REVOCATION OF OFFER AND ACCEPTANCE

If there are specific requirements governing the making of an offer and the

acceptance of that offer, we also have specific law governing their revocation
In term of Section 4, communication of revocation (of the proposal or its acceptance) is complete.

- ❖ as against the person who makes it when it is put into 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, and
- ❖ as against the person to whom it is made, when it comes to his knowledge.

Contract through post-

As acceptance, in English law, cannot be revoked, so that once the letter of acceptance is properly posted the contract is concluded. In Indian law, the acceptor or can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

Contract over Telephone-

Revocation of proposal otherwise than by communication:

When a proposal is made, the proposer may not wait indefinitely for its acceptance. The offer can be revoked otherwise than by communication or sometimes by lapse.

Modes of revocation of offer

- ✚ By notice of revocation:
- ✚ By lapse of time:
- ✚ By non-fulfilment of condition precedent:
- ✚ By death or insanity:
- ✚ By counter offer
- ✚ By the non-acceptance of the offer according to the prescribed or usual mode
- ✚ By subsequent illegality

UNIT-2:

CONSIDERATION

WHAT IS CONSIDERATION?

Consideration is the price agreed to be paid by the promisee for the obligation of the promisor. The word consideration was described in a very popular English case of *Misa v. Currie* as:

“A valuable consideration in the sense of law may consist either in 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).”

Section 2(d) defines consideration as follows: “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

LEGAL RULES REGARDING CONSIDERATION

i. *Consideration must move at the desire of the promisor:*

Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies “return” element of consideration. Contract of marriage in consideration of promise of settlement is enforceable.

An act done at the desire of a third party is not a consideration. In *Durga Prasad v. Baldeo*, D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the

	<p>desire of the D. D was not bound to pay as it was without consideration and hence void.</p>
ii.	<p>Consideration may move from promisee or any other person:</p> <p>In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in Section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.</p>
lii	<p>Executed and executory consideration:</p> <p>A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.</p>
iv.	<p>Consideration may be past, present or future:</p> <p>The words "has done or abstained from doing" [as contained in Section 2(d)] are a recognition of the doctrine of past consideration. In order to support a promise, a past consideration must move by a previous request. It is a general principle that consideration is given and accepted in exchange for the promise.</p>
v	<p>Consideration need not be adequate:</p> <p>Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. It can be considered a bad Bargain of the party.</p>
vi	<p>Performance of what one is legally bound to perform:</p> <p>(Consideration must not be performance of existing duty) The performance of</p>

an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration.

vii **Consideration must be real and not illusory:**

Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

viii **Consideration must not be unlawful, immoral, or opposed to public policy.**

Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

SUIT BY A THIRD PARTY TO A CONTRACT

Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

Thus, the concept of stranger to consideration is a valid and is different from stranger to a 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:

- a. In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- b. In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement

- c. In the case of certain marriage contracts/arrangements, a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.
- d. In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.
- e. Acknowledgement or estoppel – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
- f. Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

The general rule is that an agreement made without consideration is void (Section 25). In every valid contract, consideration is very important. A contract may only be enforceable when 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.

- **Natural Love and Affection:** Conditions to be fulfilled under section 25(1)
 - a) It must be made out of natural love and affection between the parties.
 - b) Parties must stand in near relationship to each other.
 - c) It must be in writing.
 - d) It must also be registered under the law. A written and registered agreement
- **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past

voluntary services be binding, the following essential factors must exist:

1. The services should have been rendered voluntarily.
2. The 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.

- **Promise to pay 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 without consideration [Section 25(3)].
- **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency
- **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
- **Bailment:** No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment.
- **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

UNIT-3:

OTHER ESSENTIAL ELEMENTS OF A CONTRACT

CAPACITY TO CONTRACT

Meaning: Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract.

Who is competent to contract (Section 11)

“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”.

A. **Age of Majority:** Mohori Bibi vs. Dharmo Das Ghose (1903)

Law relating to Minor's agreement/Position of Minor

It is especially provided in Section 10 that a person who is incompetent to contract cannot make a contract within the meaning of the Act.

- ♣ No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.
- ♣ Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents the minor from making the other party bound to him r. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.
- ♣ A minor can always plead minority: A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be

applied against a minor. It means he can be allowed to plea his minority in defence.

- ♣ *Liability for necessaries: The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act. A claim for necessaries supplied to a minor is enforceable by law. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.*
- ♣ *Contract by guardian - how far enforceable: Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor's behalf. 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.*
- ♣ *No specific performance: A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.*
- ♣ *No insolvency: A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he shall never be held personally liable.*
- ♣ *Partnership: A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.*
- ♣ *Minor can be an agent: A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.*
- ♣ *Minor cannot bind parent or guardian: In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.*
- ♣ *Joint contract by minor and adult: In such a case, the adult will be liable on the contract and not the minor. In Sain Das vs. Ram Chand, where there was a joint purchase by two purchasers, one of them was a minor, it was held that*

the vendor could enforce the contract against the major purchaser and not the minor.

♣ Surety for a minor: In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party.

♣ Minor as Shareholder: A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

♣ Liability for torts: A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only he was held liable when he lent the horse to one of his friends who jumped and killed the horse. Similarly, a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.

B. **Person of sound mind:**

According to Section 12 of Indian Contract Act, "a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests."

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

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

✚ **Contract by disqualified persons:**

Besides minors and persons of unsound mind, there are also other persons who

are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc. The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc.

FREE CONSENT

Definition of Consent according to Section 13:

“two or more persons are said to consent when they agree upon the same thing in the same sense.”

Definition of ‘Free Consent’ (Section 14)

Consent is said to be free when it is not caused by:

1. Coercion, as defined in Section 15; or
2. Undue Influence, as defined in Section 16; or
3. Fraud, as defined in Section 17; or
4. Misrepresentation, as defined in Section 18 or
5. Mistake, subject to the provisions of Sections 20, 21, and 22.

When consent to an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. When the consent is vitiated by mistake, the contract becomes void.

ELEMENTS VITIATING FREE CONSENT

I. Coercion (Section 15)

“Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 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.”

Effects of coercion under section 19 of Indian Contract Act, 1872

- ❖ Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- ❖ As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- ❖ A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 72)

II. Undue influence (Section 16)

According to section 16 of the Indian Contract Act, 1872, "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 he uses that position to obtain an unfair advantage over the other".

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

- A. Where he holds a real or apparent authority over the other; or
- B. Where he stands in a fiduciary relationship to the other; or
- C. 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 for example, an old illiterate person.

iii.	Fraud (Section 17)
	<p>Definition of Fraud under Section 17: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:</p>
A.	the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
B.	the active concealment of a fact by one having knowledge or belief of the fact;
C.	a promise made without any intention of performing it;
D.	any other act fitted to deceive;
E.	any such act or omission as the law specially declares to be fraudulent.
iv.	Misrepresentation (Section 18)
	<p>Misrepresentation means and includes -</p>
❖	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;
❖	any breach of duty which, without an intent to deceive, gains an advantage to 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;
❖	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.
	<p>Legal effects of agreements without free consent - (Section 19)</p>

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Explanation to Section 19 - A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practiced, or to whom such misrepresentation was made, does not render a contract voidable.

Mistake:

Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral.

- φ Bilateral mistake is when both the parties to a contract are under a mistake.
- φ Unilateral mistake is when only one party to the contract is under a mistake.

Effect of mistake on validity of a contract:

φ **Mistake of Law:**

A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake.

φ **Mistake of fact:**

Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. 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.

LEGALITY OF OBJECT AND CONSIDERATION

Which considerations and objects are lawful, and those which are not (Section 23):

The consideration or object of an agreement is lawful, unless

- A. It is forbidden by law; or
- B. Is of such a nature that, if permitted, it would defeat the provisions of any law;
- C. Is fraudulent; or
- D. Involves injury to the person or property of another; or
- E. The court regards it as immoral; or 6. Opposed to public policy

Under Section 23 of the Indian Contract Act, in each of the following cases the consideration or object of an agreement is said to be unlawful:

- i. When consideration or object is forbidden by law
- ii. When consideration or object defeats the provision of law
- iii. When it is fraudulent
- iv. When consideration defeats any rule for the time being in force in India.
- v. When consideration involves injury to the person or property of another: The
- vi. When consideration is immoral: The following are the examples of agreements where the object or consideration is unlawful, being immoral.
- vii. When consideration is opposed to public policy

Agreements opposed to public policy

Some of the agreements which are held to be opposed to public policy are-

ϕ Trading with enemy

ϕ Stifling Prosecution

- φ Maintenance and Champerty
- φ Trafficking relating to Public Offices and titles
- φ Agreements tending to create monopolies
- φ Marriage brokerage agreements
- φ Interference with the course of justice
- φ Interest against obligation
- φ Consideration Unlawful in Part

VOID AGREEMENTS

- A. Agreement in restraint of marriage (Section 26):
- B. Agreement in restraint of trade (Section 27):
- C. Agreement in restraint of legal proceedings (Section 28):
- D. Agreement – the meaning of which is uncertain (Section 29):
- E. Wagering agreement (Section 30)

Transactions similar to Wager (Gambling)

- φ Lottery transactions:
- φ Crossword Puzzles and Competitions:
- φ Speculative transactions:
- φ Horse Race Transactions:

Transactions resembling with wagering transaction but are not void

- Chit fund:
- Commercial transactions or share market transactions:
- Games of skill and Athletic Competition:
- A contract of insurance:

UNIT – 4:

PERFORMANCE OF CONTRACT

OBLIGATIONS OF PARTIES TO CONTRACTS (SECTION 37)

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.

Actual Performance:

Where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed.

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.

EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE (SECTION 38)

According to Section 38 of the Act - where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, then the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill certain conditions which are as follows, namely:

- ♣ it must be unconditional;
- ♣ it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of

ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;

- ♣ if the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

EFFECT OF REFUSAL OF PARTY TO PERFORM WHOLLY (SECTION 39)

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance.

BY WHOM A CONTRACT MAY BE PERFORMED (SECTION 40, 41 AND 42)

Person by whom promise is to be performed- Section 40 If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

LIABILITY OF JOINT PROMISOR & PROMISEE

Devolution of joint liabilities (Section 42) When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of last survivor, the representatives of all jointly, must fulfil the promise.

Effect of release of one joint promisor- Section 44

The effect of release of one of the joint promisors is dealt with in Section 44 which is stated below:

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

Rights of Joint Promisees

The law relating to Devolution of joint rights is contained in Section 45 which is reproduced below:

“When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly”.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

The law on the subject is contained in Sections 46 to 50 explained below:

- φ Time for performance of promise, where no application is to be made and no time is specified - Section 46
- φ Time and place for performance of promise, where time is specified and no application to be made
- φ Application for performance on certain day to be at proper time and place
- φ Place for the performance of promise, where no application to be made and no place fixed for performance - Section 49
- φ Performance in manner or at time prescribed or sanctioned by promisee -

PERFORMANCE OF RECIPROCAL PROMISE

The law on the subject is contained in Sections 51 to 58. The provisions thereof are summarized below:

- Ω Promisor not bound to perform, unless reciprocal promise ready and willing to perform- Section 51
- Ω Order of performance of reciprocal promises- Section 52
- Ω Liability of party preventing event on which the contract is to take effect – Section 53
- Ω Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Section 54)
- Ω Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Section 55)
- Ω Agreement to do Impossible Act

APPROPRIATION OF PAYMENTS

Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts. In such cases, the payment is appropriated (i.e. adjusted against the debts) as per Section 59 to 61 of the Indian Contract Act.

- ♣ Application of payment where debt to be discharged is indicated (Section 59):
- ♣ Application of payment where debt to be discharged is not indicated (Section 60):
- ♣ Application of payment where neither party appropriates (Section 61):

CONTRACTS, WHICH NEED NOT BE PERFORMED – WITH THE CONSENT OF BOTH THE PARTIES

- ❖ Effect of novation, rescission, and alteration of contract (Section 62)
- ❖ Promisee may waive or remit performance of promise (Section 63):

- ❖ Restoration of Benefit under a Voidable Contract (Section 64)
- ❖ Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65)
- ❖ Communication of rescission (Section 66)
- ❖ Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67)

DISCHARGE OF A CONTRACT

Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

- (1) Actual performance; or
- (2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

- ✓ Discharge by mutual agreement
- ✓ Discharge by lapse of time
- ✓ Discharge by operation of law
- ✓ Discharge by breach of contract
- ✓ Promisee may waive or remit performance of promise
- ✓ Effects of neglect of promisee to afford promisor reasonable facilities for performance
- ✓ Merger of rights

UNIT – 5:

BREACH OF CONTRACT AND ITS REMEDIES

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

- a) Actual breach of contract
- b) Anticipatory breach of contract

ANTICIPATORY BREACH OF CONTRACT

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:

1. Expressly by words spoken or written, and
2. Impliedly by the conduct of one of the parties.

ACTUAL BREACH OF CONTRACT

In contrast to anticipatory breach, it is 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.

Actual breach of contract may be committed

- a) At the time when the performance of the contract is due

a) *During the performance of the contract: Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.*

Remedies for Breach of Contract

Remedies Available

- *Suit for Damages*
- *Rescission of Contract*
- *Suit for specific performance*
- *Suit for Injunction*
- *Suit upon quantum meruit*

SUIT FOR DAMAGES

Compensation for failure to discharge obligation resembling those created by contract:

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Remedy by way of Damages or Kind of Damages

A *Ordinary damages:*

B *Special damages:*

C *Vindictive or Exemplary damages*

D *Nominal damages:*

E *Damages for deterioration caused by delay:*

F *Pre-fixed damages:*

PENALTY AND LIQUIDATED DAMAGES (SECTION 74)

The parties to a contract may provide before hand, the amount of compensation payable in case of failure to perform the contract. In such cases, the question arises whether the courts will accept this figure as the measure of damage.

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available:

- ❖ Rescission of contract:
- ❖ Quantum Meruit:
- ❖ Suit for specific performance:
- ❖ Suit for injunction:

Party rightfully rescinding contract, entitled to compensation (Section 75)

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

UNIT – 6:

CONTINGENT AND QUASI CONTRACTS

CONTINGENT CONTRACTS

“A contract to do or not to do something, if some event, collateral to such contract, does or does not happen”.

Contracts of Insurance, indemnity and guarantee fall under this category.

Meaning of collateral Event:

Pollock and Mulla defined collateral event as “an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise”.

Essentials of a contingent contract

- The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
- The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
- The contingent event should not be a mere ‘will’ of the promisor. The event should be contingent in addition to being the will of the promisor.
- The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

RULES RELATING TO ENFORCEMENT

- a) Enforcement of contracts contingent on an event happening
- b) Enforcement of contracts contingent on an event not happening

- c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.
- d) Contingent on happening of specified event within the fixed time
- e) Contingent on specified event not happening within fixed time
- f) Contingent on an impossible event (Section 36)

QUASI CONTRACTS

Quasi contracts are based on principles of equity, justice and good conscience. A quasi or constructive contract rest upon the maxims, "No man must grow rich out of another person's loss".

These relations are called as quasi-contractual obligations. In India it is also called as 'certain relation resembling those created by contracts.

Salient features of quasi contracts:

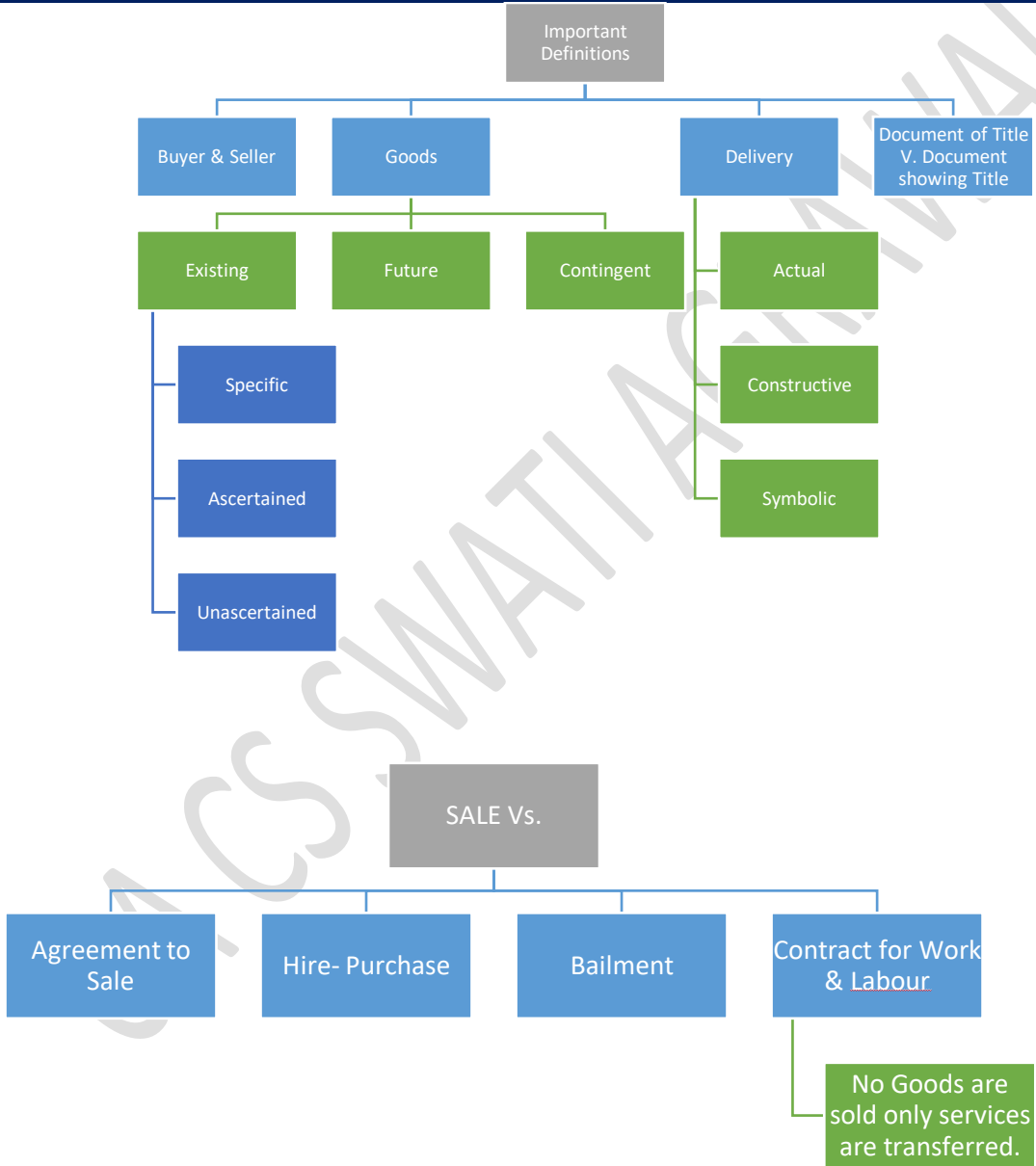
- a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
- c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right

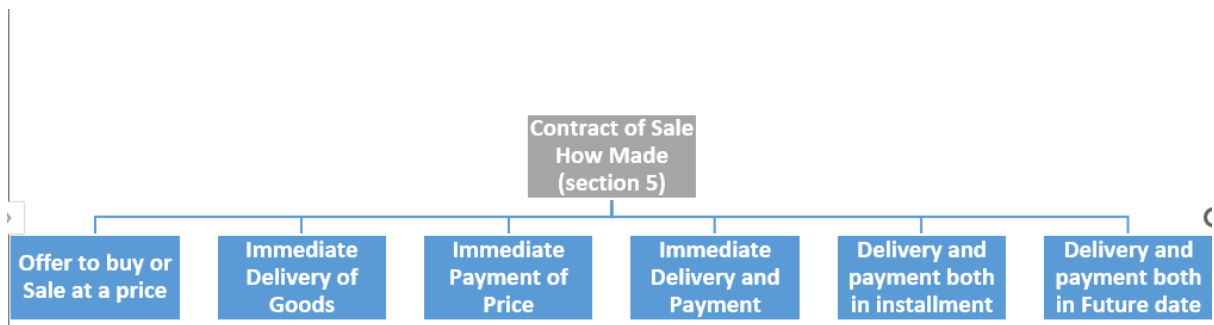
Under the provisions of the Indian Contract Act, the relationship of quasi contract is deemed to have come to exist in five different circumstances which we shall presently dilate upon

1. Claim for necessaries supplied to persons incapable of contracting (Section 68)
2. Payment by an interested person (Section 69)

3.	Obligation of person enjoying benefits of non-gratuitous act (Section 70)
4.	Responsibility of finder of goods (Section 71)
5.	Money paid by mistake or under coercion (Section 72)

	Sale of Goods Act, 1930
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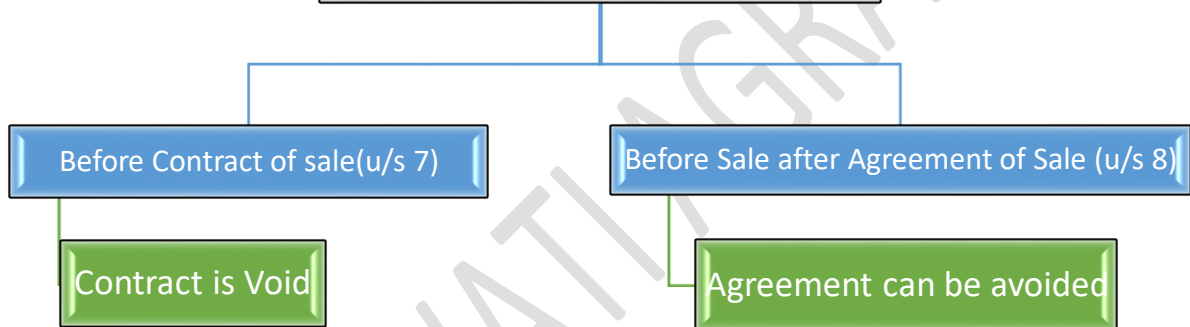




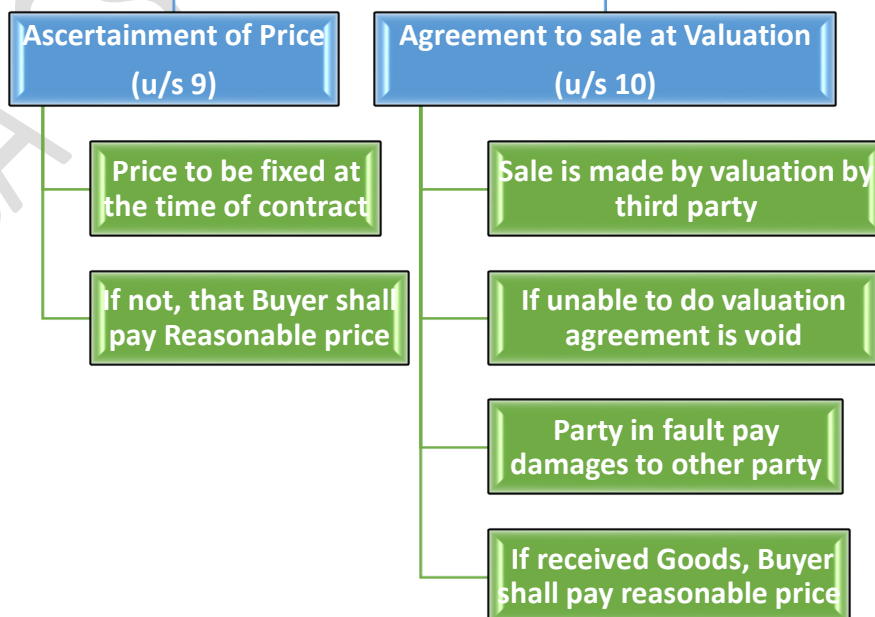
Subject Matter of contract of sale(u/s 6)



Goods Perishing



Price



Stipulation with Reference to Goods

Condition

Essential to main purpose of the contract

Breach-repudiation

Warranty

Collateral to main purpose of the contract

Breach-claim for damages

Stipulation as to Time

Time of Payment is not Essence

Delivery of goods Must be made without Delay

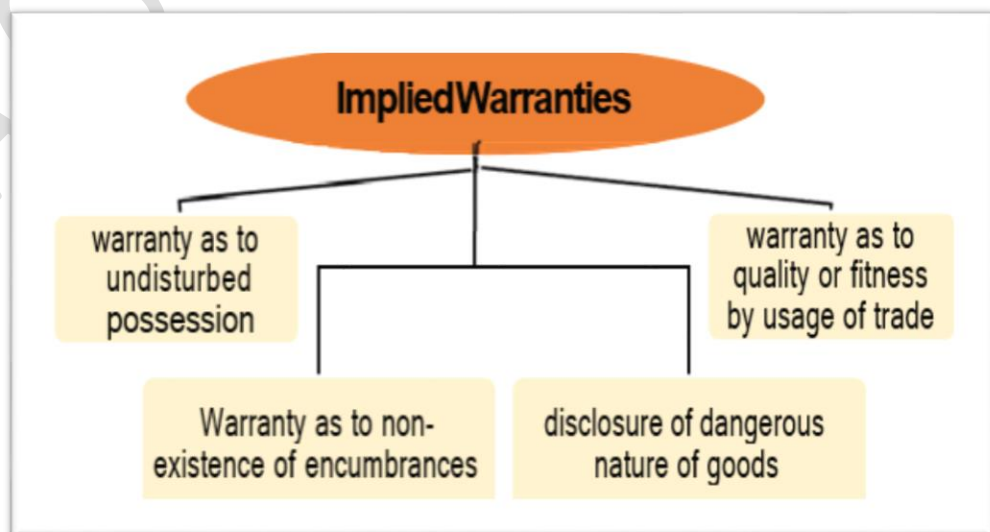
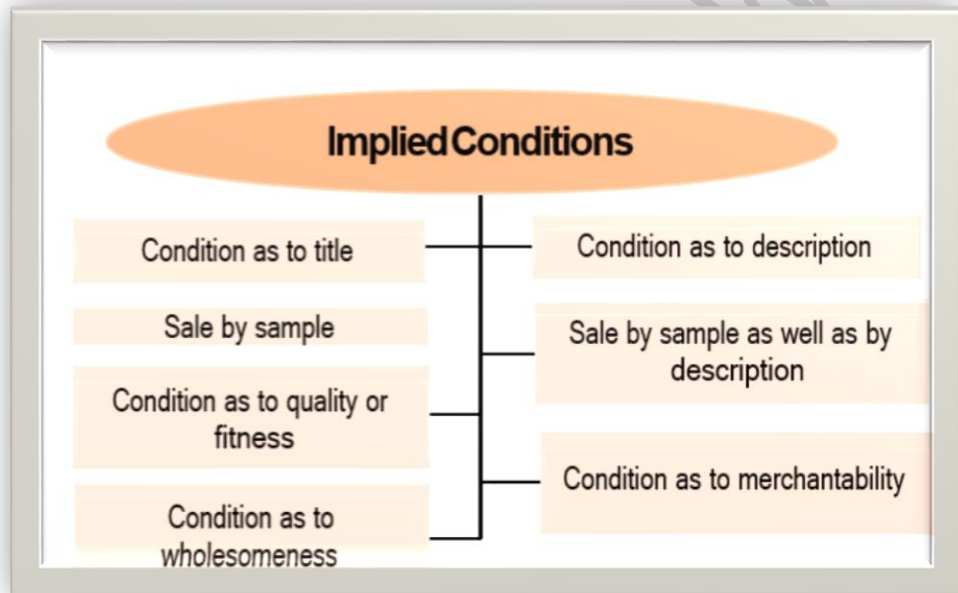
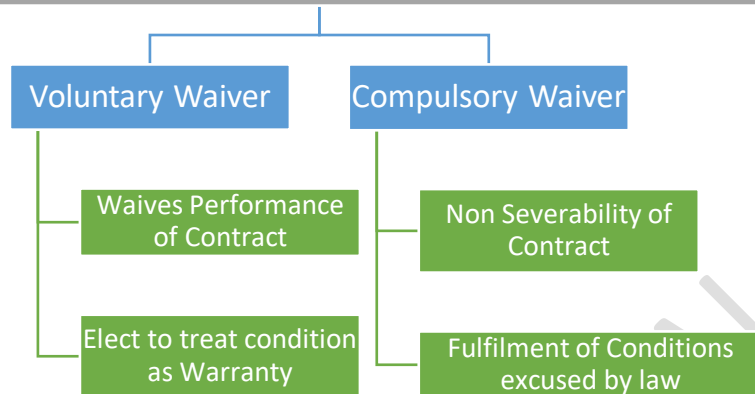
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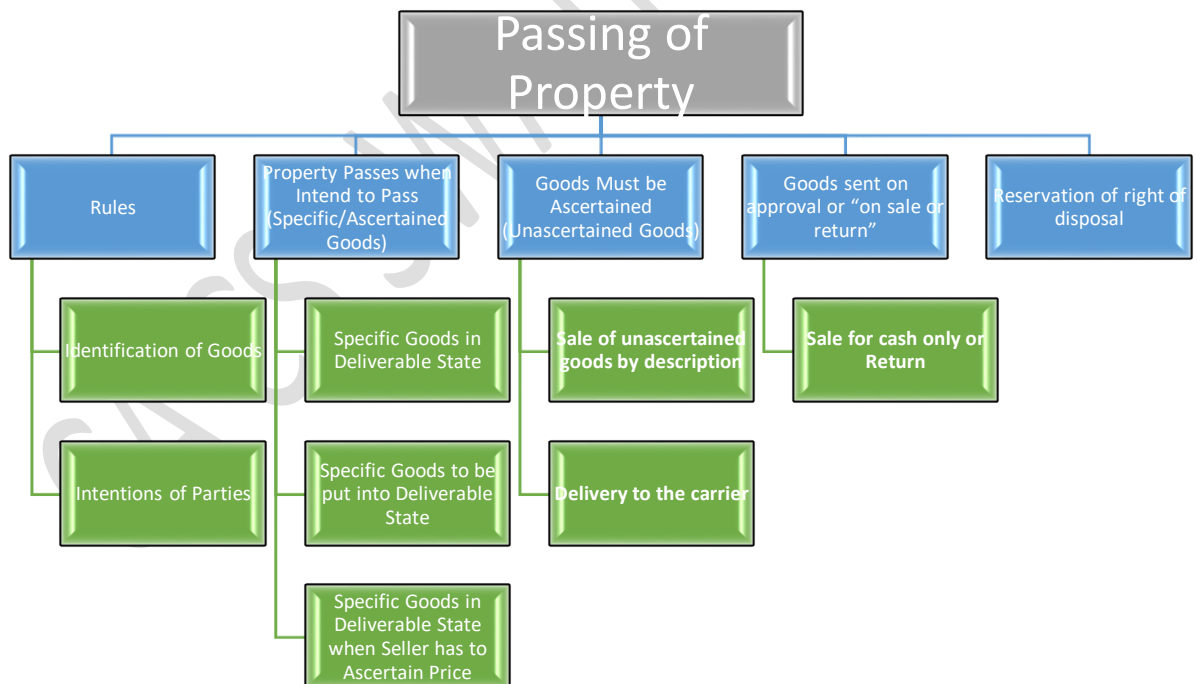
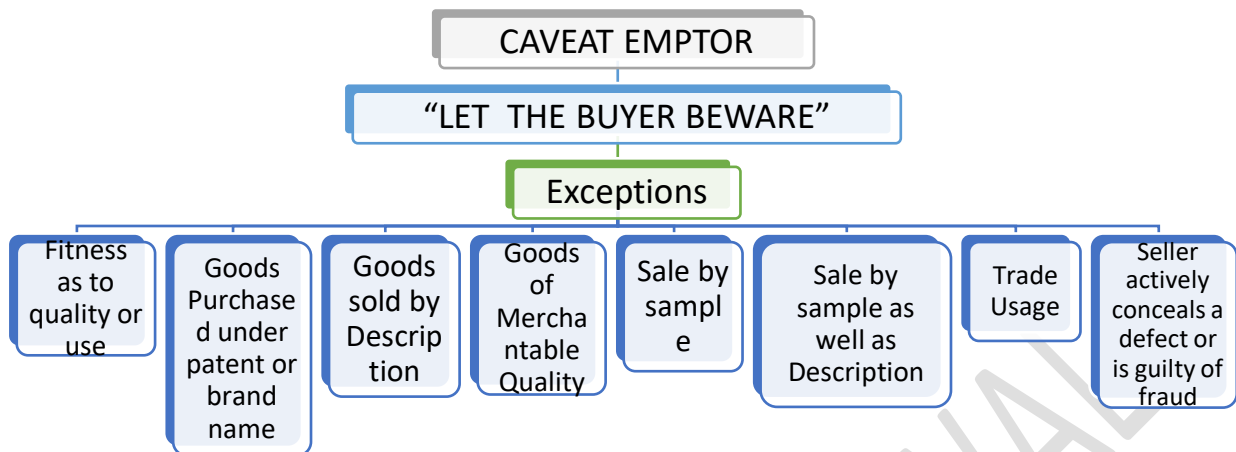
Condition

Warranty

Point of differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

When Condition is treated as warranty





RISK PRIMA FACIE PASSES WITH PROPERTY

Goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In case of Delay, Party in fault shall be liable

TRANSFER OF TITLE BY NON OWNERS

"Nemo dat quod non habet" which means that no one can give what he has not got

Exceptions

Sale by a Mercantile Agent

Sale by one of the joint owners

Sale by a person in possession under voidable contract

Sale by one who has already sold the goods but continues in possession thereof

Sale by buyer obtaining possession before the property in the goods has vested in him

Effect of Estoppel

Sale by an unpaid seller

Sale under the provisions of other Acts

Rights of an Unpaid Seller

Against Goods

Property in Goods has passed to the buyer

Lien

Stoppage in transit

Resale

Property in Goods has not passed to the buyer

With holding Delivery

Lien

Stoppage in transit

Resale

Against the Buyer

Suit for Price

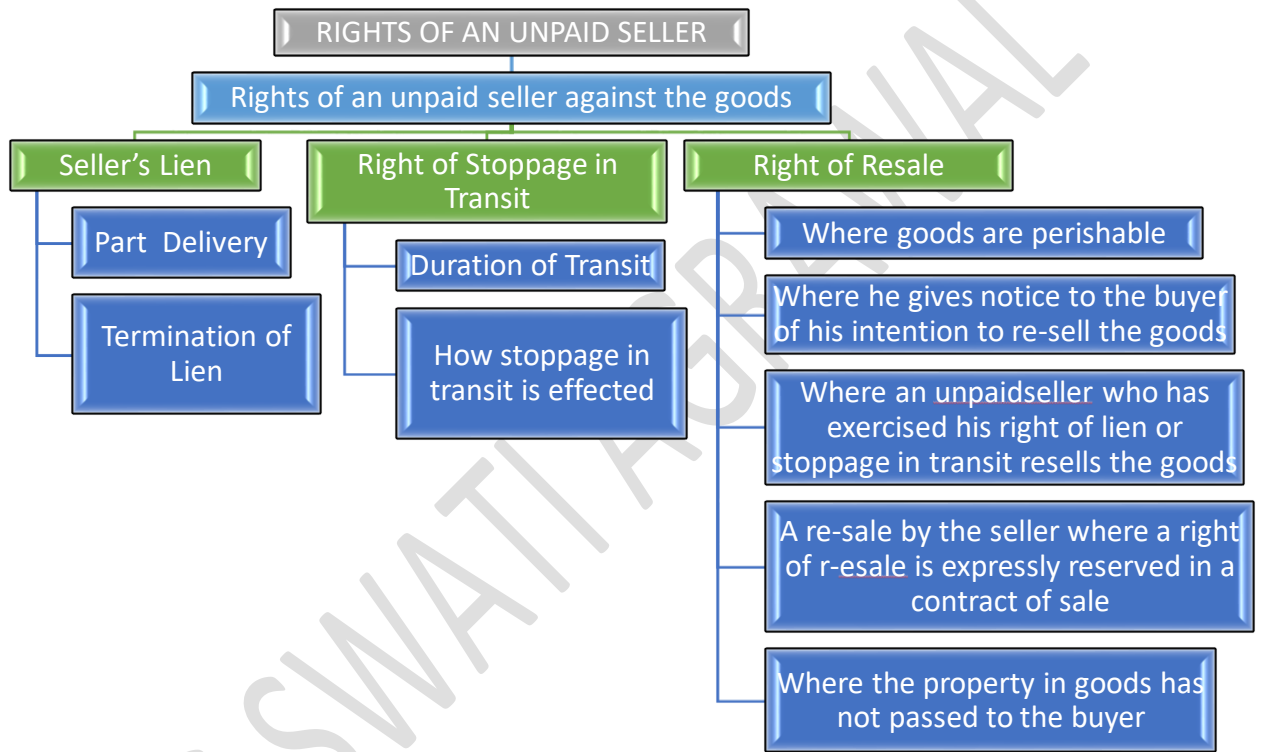
Suit for Damages

Suit for Interest

UNPAID SELLER

The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument



RIGHTS OF AN UNPAID SELLER

Rights of an unpaid seller against the Buyer

- Suit for Price
- Suit for Damages for Non-acceptance
- Repudiation of contract before due date
- Suit For Interest

