

# INDIAN CONTRACT ACT 1872

## PRELIMINARY

Sec 1 deals with the Preamble or Preliminary Part

- Short Title – The Indian Contract Act, 1872
- Extent – Whole of India
- Commencement – September 1, 1872
- Applicability – All types of Contract taken place in India & Indian Territory

## PROPOSAL OR OFFER

The term 'proposal' has been defined in the Indian Contract Act as

- ❖ 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. [Sec.2(a)]

### BASIC CHARACTERISTICS OF A PROPOSAL

- 1) At least two parties
- 2) A proposal may be positive or negative
- 3) A proposal must be made to obtain assent
- 4) Proposal must be made with an intention to create relations
- 5) It must be signified or communicated

### TYPES OF OFFERS

- |                   |  |
|-------------------|--|
| 1) Specific Offer | Made to a specific person                    |
| 2) General Offer  | Can be accepted by performance of conditions |
| 3) Express Offer  | words either oral / written                  |
| 4) Implied Offer  | inferred from conduct of parties             |

### ON THE BASIS OF NATURE OF OFFER

- |                   |                             |
|-------------------|-----------------------------|
| 1) Cross offer.   | Identical offer             |
| 2) Counter offer  | Rejection of original offer |
| 3) Standing offer | A continuous offer.         |

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**WHAT IS NOT PROPOSAL?**

- 1) Intention to put a proposal
- 2) Invitation to proposal
  - a) Catalogue or price list
  - b) Menu card
  - c) Quotation of price
  - d) Time table of a carrier
  - e) Prospectus of a company

**ACCEPTANCE**

- ❖ Acceptance must be absolute / unqualified/ unconditional
- ❖ Acceptance may be given by performance of conditions (General offer)
- ❖ It must be given within specified or reasonable time
- ❖ It must not precede an offer.
- ❖ It must be given by the person to whom offer is made
- ❖ Acceptance must be communicated

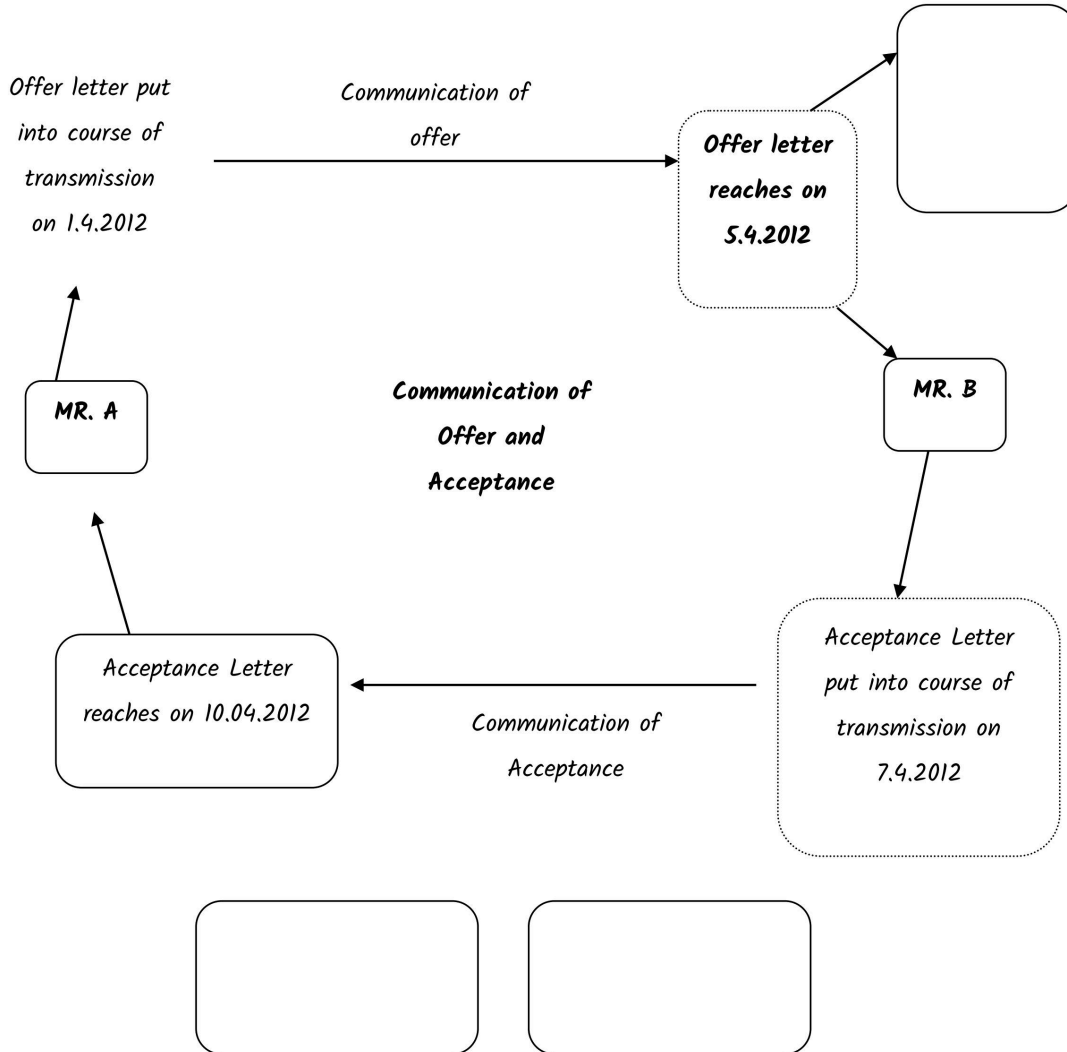
**COMMUNICATION**

**COMMUNICATION OF PROPOSAL/OFFER**

An offer is complete when it is properly communicated to the offeree. The communication of offer is complete when it comes to the knowledge of the person to whom it is made

**COMMUNICATION OF ACCEPTANCE**

- a) **As against the proposer/offeror:** The communication of an acceptance is complete as against the offeror when it is put into a course of transmission to him so as to be out of the power of the acceptor.
  
- b) **As against the acceptor:** The communication of acceptance as against the acceptor is complete when it comes to the knowledge of the offeror.


**COMMUNICATION OF REVOCATION**

QUESTIONS		
What can be revoked?		
Who will revoke?		
Till which date can it be validly revoked?		

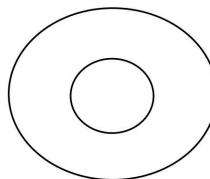
**CONTRACT**

**CONTRACT = AGREEMENT + ENFORCEABILITY BY LAW**

**SECTION 10:** "All agreements are contracts if they are made by the free consent of parties competent to contract, for lawful consideration & with a lawful object, & are not hereby expressly declared to be void"

1. Proposal & acceptance (i.e. agreement).	2. Intention to create legal relations
3. Contractual Capacity. I. He is a major. II. He is of sound mind; & III. He is not disqualified by any law	4. Free consent. Consent is said to be free when it is not caused by coercion, undue influence, fraud, or mis-representation, or mistake. (Sec.14).
5. Consideration. a) Consideration means something b) It may be in cash or kind c) Must be lawful & real & not illusory d) It may not be adequate	6. Lawful objects or consideration i. If it is forbidden by law; or ii. If it is of such a nature that if permitted, would defeat the provisions of any law; or iii. If it is fraudulent; or iv. If it involves or implies injury to the person or property of another; v. If the Court regards it as immoral;
7. Agreements not declared void	

**EVERY CONTRACT IS AN AGREEMENT  
BUT  
EVERY AGREEMENT NEED NOT BE  
CONTRACT**



**CONSIDERATION**

- ❖ May be in CASH or KIND
- ❖ Something in return (*quid pro quo*)
- ❖ May be adequate or inadequate
- ❖ Should at desire of promisor
- ❖ Must be lawful
- ❖ Past, present, future

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- ❖ Act which promisor is anyway bound to do is not consideration
- ❖ Can be given to or by 3rd Person (Stranger to consideration)

*Rule: Contract without consideration is void*

*Exceptions: Contract without consideration is VALID*

1. Writing + registered + account of natural love & affection
2. Promise to compensate a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do;
3. Promise + writing + signed + to pay wholly or in part time barred debt
4. Gifts actually made i.e. Completed gift
5. Agency contract (partnership)

**PRIVITY OF CONTRACT:** *Stranger to contract cannot sue parties to contract*

*Exception to the rule*

- a) Beneficiary can sue
- b) Assignee of contract
- c) Devolution by operation of law
- d) Insurance company can sue
- e) Principal can enforce contract entered into by Agent

**THERE CAN BE STRANGER TO CONSIDERATION  
BUT  
THERE CANNOT BE STRANGER TO CONTRACT**

#### CLASSIFICATION OF CONTRACTS

TYPE	DEFINITION	EFFECTS
<b>Valid agreement</b>	Having all essential element of section 10	<ul style="list-style-type: none"> <li>❖ Creates legal rights &amp; obligations</li> <li>❖ Enforceable by law</li> </ul>
<b>Void agreement</b>	An agreement not enforceable by law is said to be void.	No restitution
<b>Void Contract</b>	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable	<ul style="list-style-type: none"> <li>❖ Restitution,</li> <li>❖ Payment or compensation for performance</li> </ul>
<b>Voidable</b>	An agreement which is enforceable	❖ Valid till rescinded

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<b>contract</b>	by law at the option of one or more of the parties thereto, but not at the option of the others, is a voidable contract	<ul style="list-style-type: none"> <li>❖ Restitution.</li> <li>❖ Voidable at the option of aggrieved party</li> </ul>
<b>Illegal Agreement</b>	An agreement, which is expressly or impliedly prohibited by law, is an illegal agreement	<ul style="list-style-type: none"> <li>❖ Void agreement</li> <li>❖ Legal part enforceable</li> <li>❖ Collateral agreement becomes void</li> </ul>
<b>Unenforceable contract</b>	Technical defects in a contract may be due to non-compliance of some of the legal formalities.	

#### CLASSIFICATION ACCORDING TO EXTENT OF EXECUTION

- 1) **Executed contract**      performed by ALL the parties
- 2) **Executory contract**      both or one of the parties have still to perform
- 3) **Bilateral contract**      both the parties are yet to perform their obligations
- 4) **Unilateral contract**      one party has to perform his obligation

### VOID AGREEMENTS

#### AGREEMENTS OPPOSED TO PUBLIC POLICY

1. Trading with the enemy.
2. Stifling (suppressing) prosecution:
3. Champerty & maintenance - When a person helps another in litigation
  - ❖ Does not share in the proceeds of the action, it is called MAINTENANCE.
  - ❖ Exchange of a promise to h& over a portion of the fruits of the litigation, if any, it is called CHAMPERTY.
  - ❖ VOID if litigation is of a gambling character
4. Marriage brokerage, Sale of public offices, titles & appointments.
5. To create monopolies.
6. Restraining personal liberty, parental rights
7. Restraint of marriage / trade / legal proceedings

**Rule : AGREEMENTS IN RESTRAINT OF TRADE = VOID**

#### Exceptions to rule:

- ❖ Sale of goodwill

- ❖ Partner's competing business
- ❖ Rights of outgoing partner
- ❖ Partner's similar business on dissolution
- ❖ An agreement between any partner and the buyer of the firm's goodwill
- ❖ Trade Combinations
- ❖ Negative stipulations in service agreements
- ❖ Sole Selling Agent's Agreement

**Rule: AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS = VOID**

**Exceptions to rule:**

- ❖ any dispute between them in respect of any subject shall be referred to arbitration (present disputes)
- ❖ To refer to arbitration any question between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing. (agreement to refer past & future disputes to arbitration)
- ❖ Referring disputes to court in particular jurisdiction

**WAGERING Agreements = VOID**

(One party is to win and the other to lose)

- ❖ Share market transactions in which there is clear intention to give and take delivery share is not wagering
- ❖ Contract of insurance is not wagering
- ❖ An agreement by way of wager is void.
- ❖ In the State of Maharashtra and of Gujarat wagering agreement are not only void but also illegal. Hence, Collateral agreement will also become VOID

<b>FREE CONSENT</b>		
Type	Definition	Imp Points
<b>COERCION</b>	<ul style="list-style-type: none"> <li>❖ Committing, or threatening to commit,</li> <li>❖ Any act forbidden by the Indian Penal code, or</li> <li>❖ The unlawful detaining, or threatening to detain any property,</li> <li>❖ To the prejudice of any person whatever,</li> </ul>	<ul style="list-style-type: none"> <li>❖ Voidable</li> <li>❖ It is immaterial whether the IPC is or is not in force in the place where the</li> </ul>

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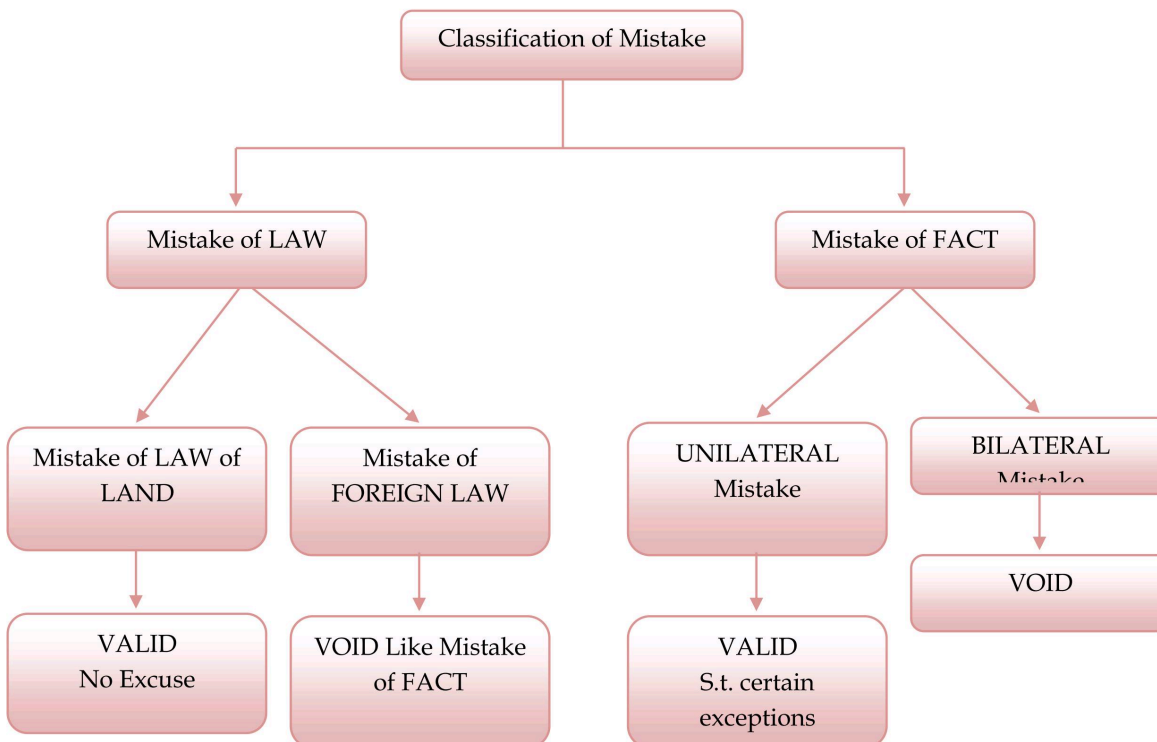
	<ul style="list-style-type: none"> <li>❖ With the intention of causing any person to enter into an agreement.</li> </ul>	<p>coercion is employed</p>
<b>UNDUE INFLUENCE</b>	<ul style="list-style-type: none"> <li>❖ Where the relations subsisting between the parties are such</li> <li>❖ That one of the parties is in a position to dominate the will of the other</li> <li>❖ &amp; uses that position to obtain an unfair advantage over the other</li> </ul> <p><b>Presumption of UE:</b> Parent &amp; child, guardian &amp; ward, trustee &amp; beneficiary, doctor &amp; patient, solicitor &amp; client, Religious adviser &amp; disciple.</p> <p><b>No presumption:</b> Landord &amp; tenant, Creditor &amp; debtor, Husband &amp; Wife.</p>	<ul style="list-style-type: none"> <li>❖ Voidable</li> <li>❖ The burden of proving that the contract is not induced by undue influence lies on the party who is in a position to dominate the will of the other.</li> </ul>
<b>FRAUD</b>	<ul style="list-style-type: none"> <li>❖ The suggestion, as a fact, of that which is not true, by one who does not believe it to true.</li> <li>❖ The active concealment of a fact, by one having knowledge or belief of the fact;</li> <li>❖ A promise made without any intention of performing it;</li> <li>❖ Any other act fitted to deceive; and</li> <li>❖ Any such act or omission as the law specially declares to be fraudulent</li> </ul>	<ul style="list-style-type: none"> <li>❖ Voidable</li> <li>❖ Damages can be claimed</li> </ul>
<b>SILENCE ≠ FRAUD</b>	<ul style="list-style-type: none"> <li>❖ Silence will not amount to fraud unless there is a duty to speak</li> <li>❖ There's duty to speak in the following cases &amp; hence silence will amount to fraud:               <ol style="list-style-type: none"> <li>1. Contract of utmost good faith                   <ul style="list-style-type: none"> <li>• Insurance contract, sale of immovable property, marriage contract, allotment of shares contract of family settlement.</li> </ul> </li> <li>2. Contract of partnership</li> <li>3. contract of guarantee</li> <li>4. Contract by parties having fiduciary relation</li> <li>5. change in facts before conclusion of contract</li> </ol> </li> </ul>	



	6. Required by law 7. In case of latent defects	
<b>MIS-REPRESENTATION</b>	❖ Innocent or Unintentional False Statement ❖ WITHOUT Intention to Deceive	❖ Voidable ❖ Damages cannot be claimed
<p><b>Exceptions:</b> In the following cases, the contract is not voidable or contract cannot be rescinded:</p> <ol style="list-style-type: none"> <li>1. If the Aggrieved party had the means of discovering the truth with ordinary diligence.</li> <li>2. A fraud which did not cause the consent of the party.</li> <li>3. Where the party after becoming aware of the fraud affirms or ratifies the contract.</li> <li>4. The right of rescission can be claimed within a reasonable time after discovery of fraud.</li> <li>5. If a third party acquires rights or interest in the subject matter of the contract for value &amp; in good faith.</li> </ol>		

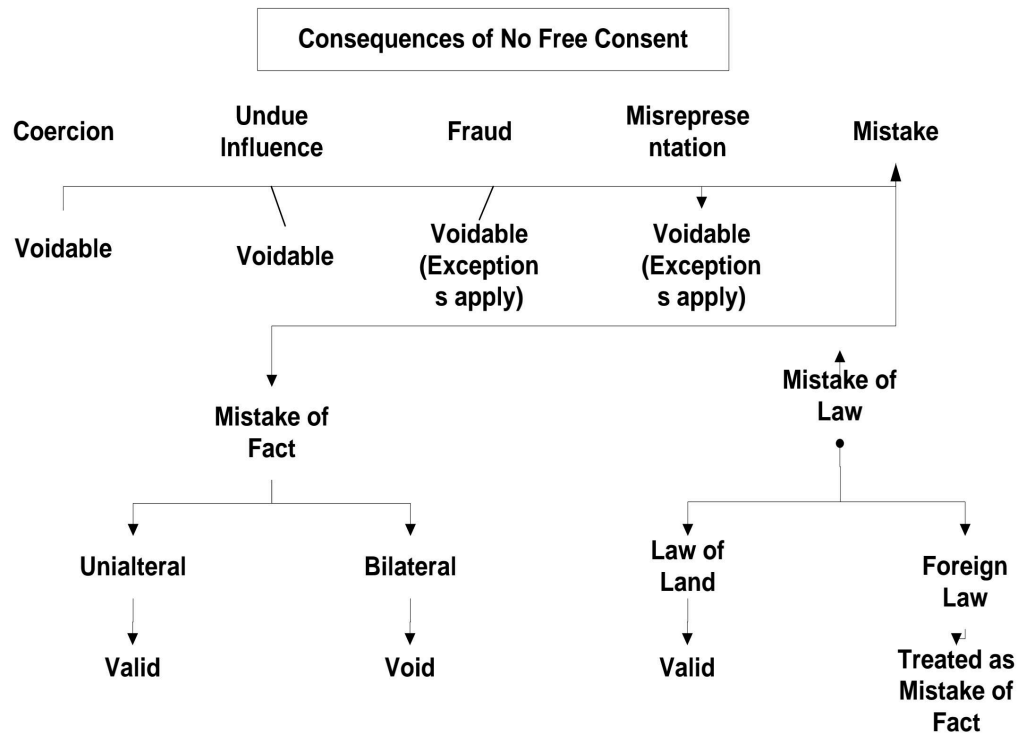
**Mistake**

Misconception or Misimpression or Misunderstanding or Erroneous belief \Usually, mistake does not affect the validity of a contract



<p>(a) Ignorantia juris non excusat, i.e. Ignorance of law of land is no excuse.</p> <p>(b) Such mistake will not affect the validity of the Contract.</p> <p>(c) Sec. 21: Contract is not voidable.</p> <p>(d) But, contract is voidable when one party was induced by another.</p> <p><b>Example:</b> A and B make a contract on erroneous belief that a particular debt is time-barred by Indian Law of Limitation. Contract is valid and not</p>	<p>(a) Sec. 21: Treated as a Mistake of Fact</p> <p>(b) Agreement is void.</p>	<p>(a) Only one party is under a mistake about –</p> <ul style="list-style-type: none"> <li>• Subject matter, or</li> <li>• Expressing or understanding legal effects of agreement.</li> </ul> <p>(b) Sec.21: Contract is not voidable.</p> <p>(c) Unilateral mistake is not allowed as a defence to avoid a Contract.</p> <p>However, Contracts under unilateral mistakes are void in certain cases.</p> <p><b>IMP: Unilateral Mistake</b></p> <p><b>WILL MAKE CONTRACT VOID:</b></p> <ol style="list-style-type: none"> <li>1. Mistake as to the identity of the party contracted with.</li> <li>2. Mistake as to identity of attributes of contracting party</li> <li>3. Mistake as to the</li> </ol>	<p>(a) Sec. 20: Both parties are under a mistake as to a matter of fact essential to the agreement.</p> <p>(b) There is no agreement as there is absence of consensus. Hence, the agreement is void.</p> <p>(c) Bilateral mistake may relate to –</p> <p><b>A. Subject Matter–</b></p> <ul style="list-style-type: none"> <li>• Existence</li> <li>• Identity</li> <li>• Quantity</li> <li>• Price</li> <li>• Title</li> </ul> <p><b>B. Possibility of Performance –</b></p> <ul style="list-style-type: none"> <li>• Physical Impossibility</li> <li>• Legal Impossibility</li> </ul> <p>But, erroneous opinion as to value of subject matter is not a Mistake of Fact.</p>
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voidable.		nature of the contract	
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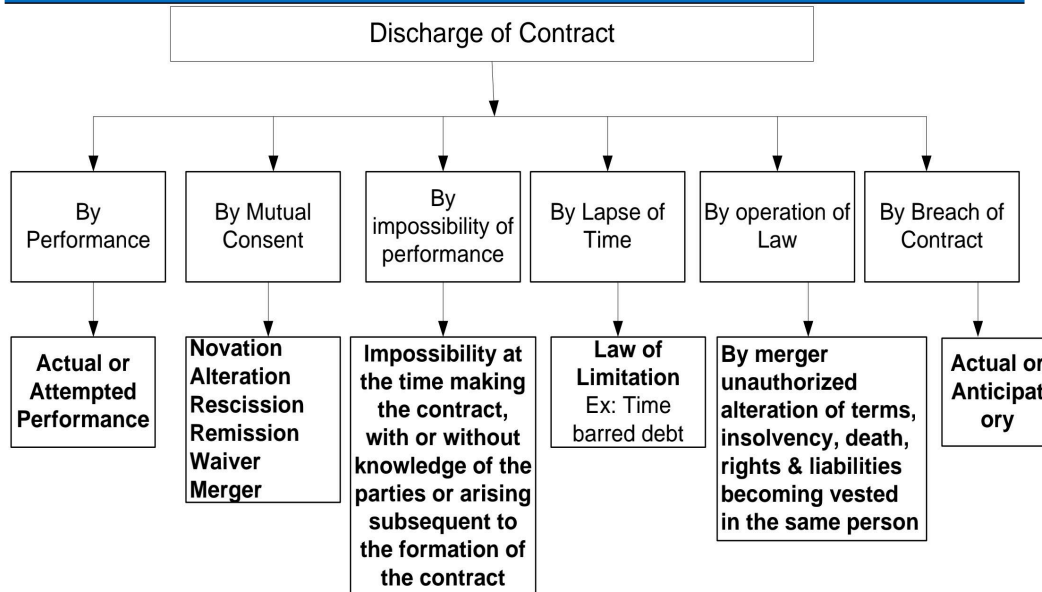
## CAPACITY TO CONTRACT

### 1. **MINORS:**

#### Effects of contract with minor:

1. Void - ab - initio (*mohribibi v. Dharmodasghose*)
2. No ratification
  - A minor had not completed a transaction during his minority & continues to complete the same on majority, he will be liable for the whole transaction. [*managanlalv.ramanlal*]
1. No estoppel & can plead minority
2. No restitution / compensation
3. No specific performance
4. Minor agent/ partner
5. Liabilities of necessities of life
6. No liability of parents



**DISCHARGE OF CONTRACTS**

**Discharge by agreement or consent**

1. **NOVATION**                      *Substitution Of New Contract*
2. **ALTERATION**                      *Changes In One / More Terms*
3. **RESCISSION**                      *All Or Some Terms Cancelled*
4. **REMISSION**                      *Lesser Fulfillment*
5. **WAIVER**                      *Giving Up Some Right*
6. **MERGER**                      *Superior Right Accruing*

**SUPERVENING IMPOSSIBILITY:** 'A contract to do an act which after the contract is made becomes impossible, or by reason or some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful.'

A contract is discharged by supervening impossibility in the following cases:

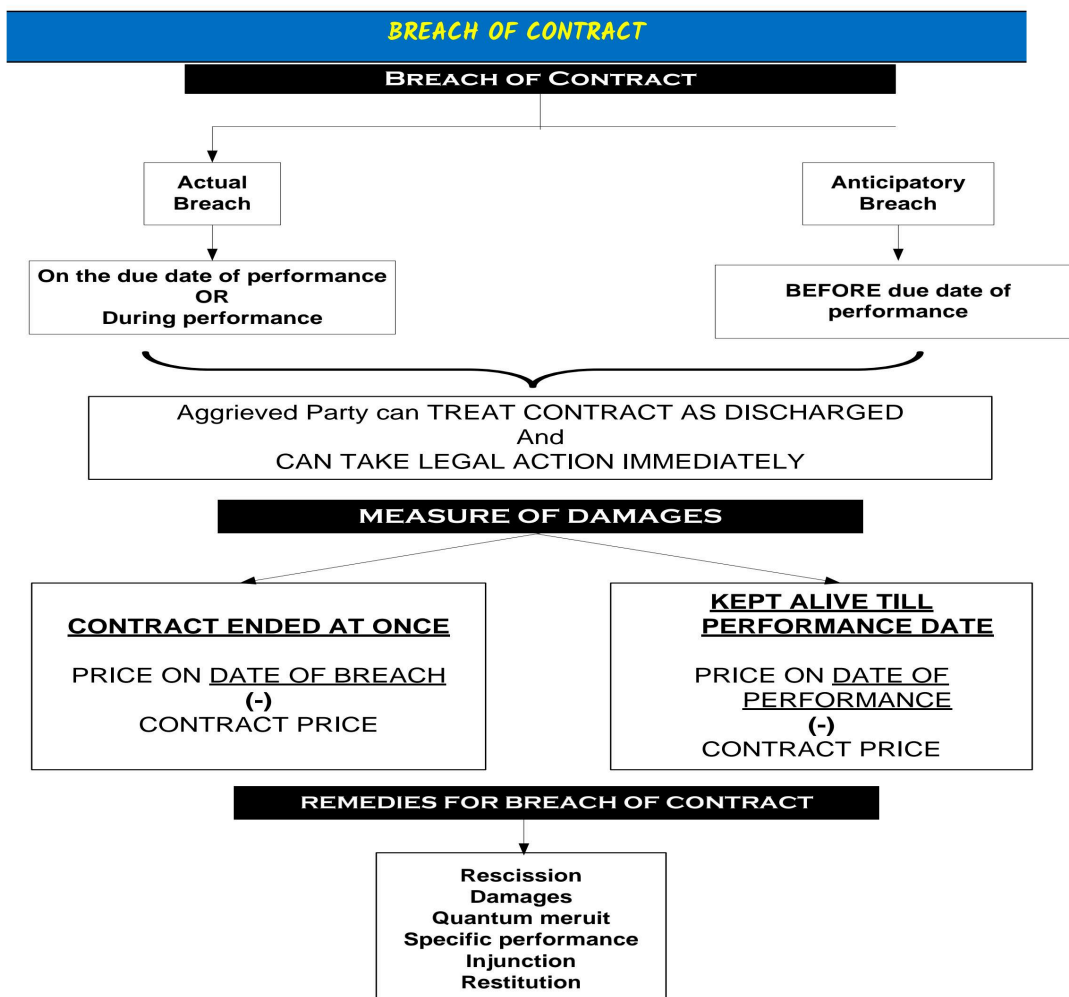
- ❖ Destruction of subject matter of contract
- ❖ Nonexistence or non-occurrence of particular state of things.
- ❖ Death or incapacity of a person, where the contract depends on the personal skill or qualification.
- ❖ Government or legislative intervention
- ❖ Outbreak of war

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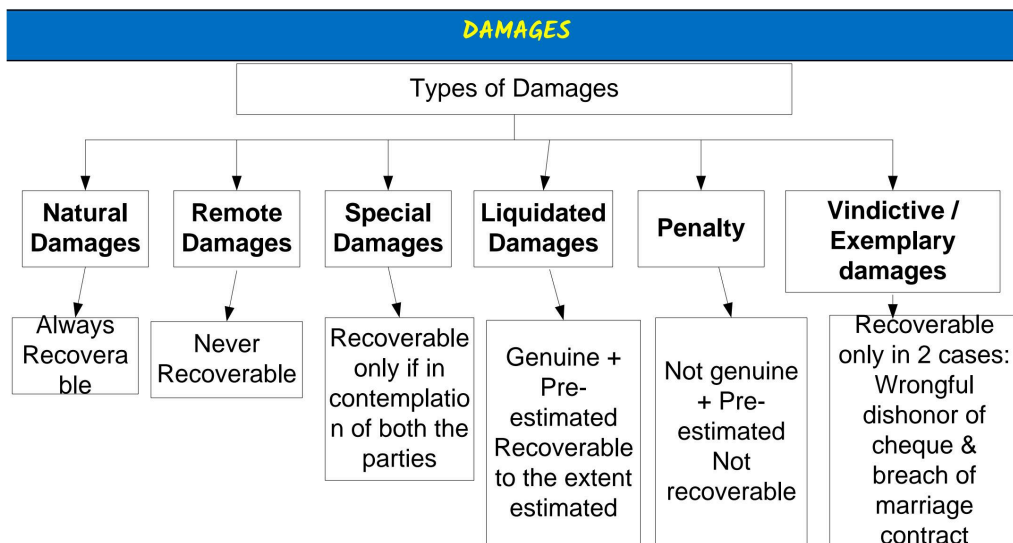
**IMPOSSIBILITY OF PERFORMANCE-NOT AN EXCUSE**

Impossibility of performance is, as a rule, not an excuse for non-performance of a contract. In the following cases a contract is not discharged on the ground of doctrine of supervening impossibility.

- ❖ *Difficulty of performance: A contract is not discharged by the mere fact that it has become more difficult to perform due to some non contemplated events or delay.*
- ❖ *Commercial hardship*
- ❖ *Impossibility due to failure of a third person on whose work the promisor relied*
- ❖ *Strikes, lock-outs and civil disturbances*
- ❖ *Failure of one of the objects*



IMP: If in case of anticipatory breach, promisee or party not in fault refuses to accept the discharge or repudiation by the other party, the contract remains in existence, but at the risk of the promisee. The promisor may subsequently perform it or if an event happens which discharges the contract legally (e.g. supervening impossibility), the promisor may take advantage of such discharge. In other words, the promisee loses his right to sue for the damages



**QUASI CONTRACTS - Doctrine of unjust enrichment**

The law implies from the circumstances of the case & from the conduct & relationship of the parties that there is a promise imposing an obligation on one party & conferring a right in favour of the other even though there is no offer & acceptance, consensus ad idem, & agreement. These cases, strictly speaking, are not contracts but the law recognizes them as 'relations resembling those created by contracts.'

Types of Quasi Contracts:

Sec. 68	Sec. 69	Sec. 70	Sec. 71	Sec. 72
Supply of Necessaries	Reimbursement of money due	Obligation to pay for benefit out of non-gratuitous act	Responsibility of finder of goods	Person receiving goods or money by mistake



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*Space for Notes*

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