

11/2/11

ratify → subsequent approval

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Unit 3 → 3

Capacity of Contract →

- Capacity refers to competence of parties to make contract. Every person is competent to contract who is of age of majority, & who is of sound mind & not disqualified from contracting by any law to which he is subject.

① Age of Majority →

- 18 yrs of Age
- When you are not a minor.

① A contract made with or by a minor is void - ab - initio →

- Null (Zero) in the eyes of law.
- A mortgage by a minor is void.
- Agreement void.

② No ratification after attaining majority →
to subsequent approval

- A void agreement cannot be ratified

③ Minor can be a beneficiary or can take benefit out of a contract →

④ A minor can always pledge minority →

Specific Performance \rightarrow By the order of the Contract you compell a person to perform his part under a contract that he undertook to discharge on entering the contract

⑤ Liability for necessaries \rightarrow

- necessaries \rightarrow food, shelter, clothes, education as well as medical expenses the minor is legally bound to pay the other person. If the other person has supplied him with necessaries.
- Minor is not personally liable his estate will be liable to pay this amount to the other party.

⑥ Contract by guardian - How far enforceable \rightarrow

- Guardian is entering into a contract on behalf of minor [only he has power to act on the behalf of minor] and through this minor is getting benefits then this contract is valid.

⑦ No specific performance \rightarrow

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⑧ No Insolvency liabilities $>$ Assets

\rightarrow Court declared Insolvent

- A minor can never be declared as insolvent. Because he is not liable on any contract.
- liability = Zero (always)

⑨ Partnership \rightarrow

⑩ Minor can be an Agent \rightarrow

- But he will not be liable to his principal for his acts.

(11) Minors cannot bind parents or guardian

(12) Joint Contract by Minors & Adult :-
• Adult will be liable

(13) Surety for a minor :-
↳ Guarantee

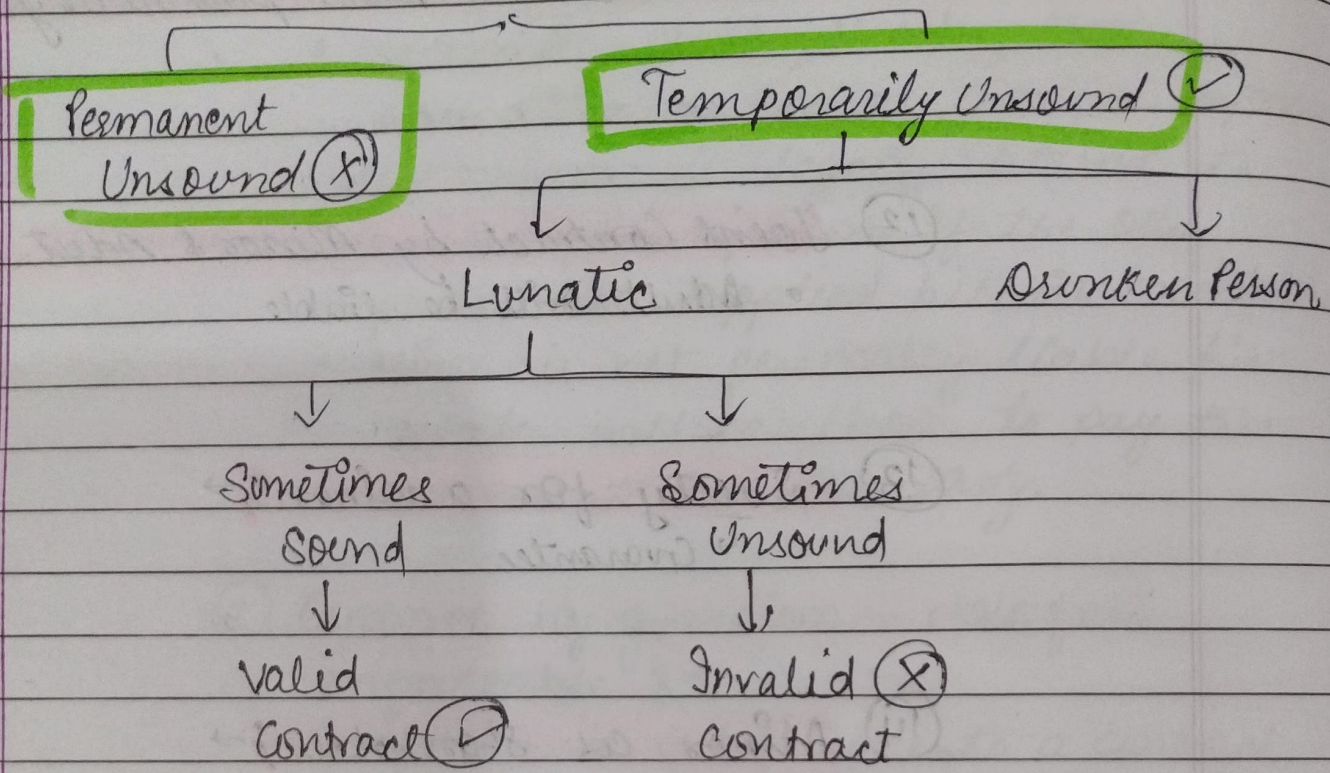
(14) Minors as Shareholders :-
• fully paid up share

(15) Liability for torts :-
↳ Civil wrong
• A minor will be liable for civil wrong.

II. Sound Mind :-

- a person is said to be of sound mind for the purposes of making 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.

Unsound mind

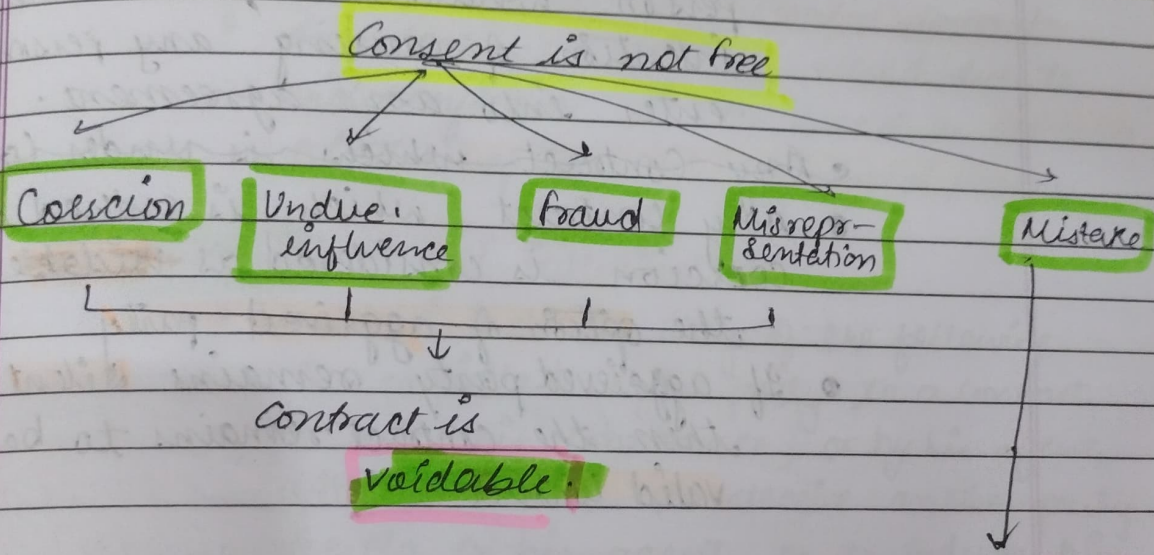


III. Not disqualified by law: →

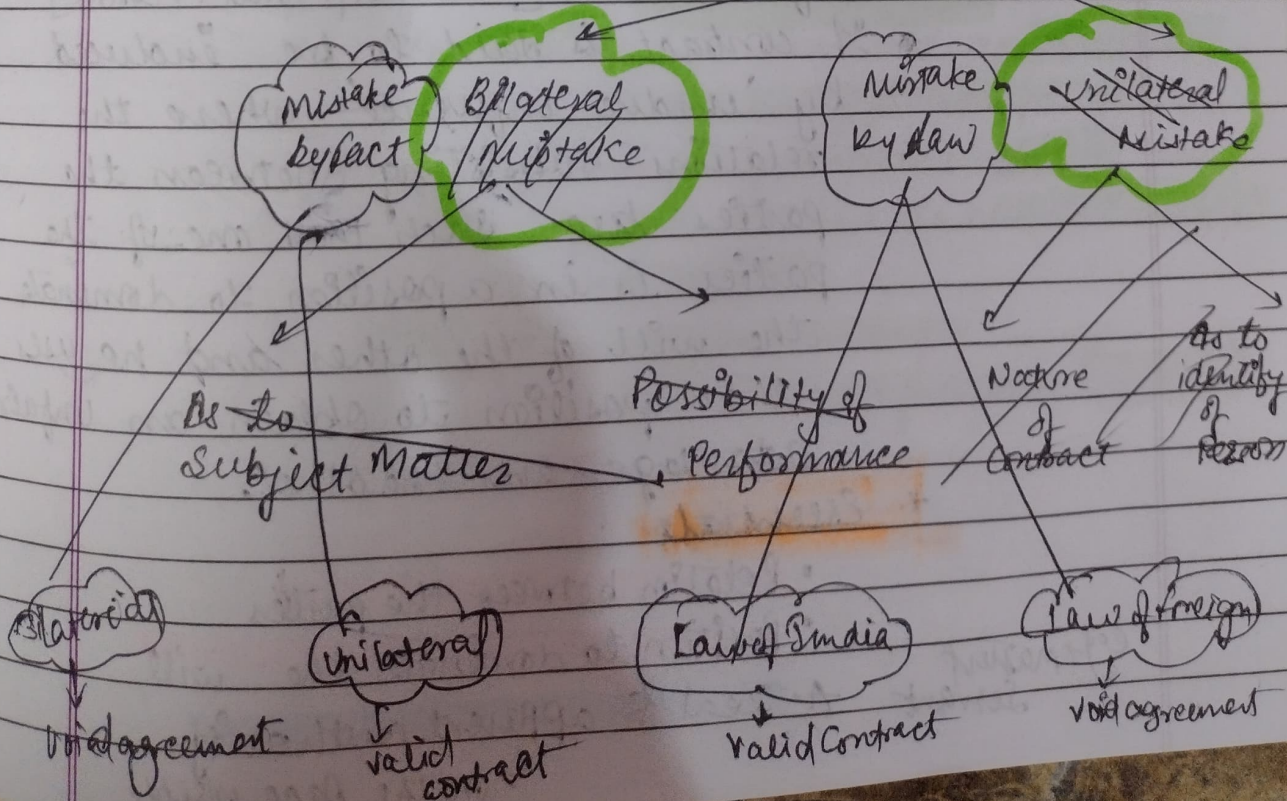
- Cannot enter into a valid contract like Insane (L > A), Convicts (भूखी), foreign sovereign (king/queen), Ambassadors (दूत), Alien enemy (विवादी) Corporation (e.g. → with China X because)

Free Consent :- [meeting of minds]

Consent is said to be free when two or more persons are said to consent when they agree upon the same thing in the same sense on the same time.



Contract is valid



forbidden → Banned by law.

detain → जपकर लेना [Holding Back]

Prejudice

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opinion → You B
[may d

e.g. → Solicitor &
C
e.g. → old grand

① Coercion → [Physical Pressure]

- It is the committing, or threatening to commit, any act forbidden by the Indian Penal Code / the unlawful detaining / threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
- Any contract which is under Coe
- Any contract which is entered due to coercion is considered as voidable at the option of aggrieved party.
- If aggrieved party remains silent then the contract remains to be a valid contract.

② Undue Influence → [Mental / Moral Pressure]

- 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.

* Essentials

- Relation between the parties
- Position to dominate the will

A. real & apparent authority.

↳ on the face visible

e.g. → master
servant

fact → stated fact
opinion → You Believe
[may true or not]

deceive → धोखा (cheat)

Rescind → तोलना

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eg → Solicitor & Client
and grandfather & son

B. fiduciary relationship (Trust & Confidence)

C. Mental distress (mentally weak)

D. Unconscionable bargain.

- The object must be to take undue advantage
- Burden of Proof.
- If aggrieved party remains silent then the contract remains to be valid contract.
- Any Contract which is entered due to undue influence is considered as voidable at the option of aggrieved party.

③ Fraud → [intentional]

- Means & 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.
- ~~If~~ Any Contract which is entered due to fraud is considered as voidable at the option of aggrieved party.
- If aggrieved party remains silent then the contract remains to be valid contract.
- Power → rescind
(remedies) Claim Damages
Insist of Performance (on same terms)

* Mere Silence is not fraud :->

① Relationship share होने से Marriage
होती है और तो family होती है and
then एम Insurance लेते हैं।

memory ←
technique.

④ Duty of person to speak :->

• and you remains silent that
times your silence will amount
to fraud.

:- These are the cases -

Duty of person to speak :->

① Fiduciary Relationship :->

• relationship is based on
trust & confidence.
make full disclosure of
all material facts concerning
the agreement

② Contract of Insurance :->

• implied condition - full
disclosure of material
facts should be made.

③ Contract of Marriage :->

④ Contract of family settlement :->
अवसर

② Where silence
itself is
equivalent to speech :-
fraudulent silence

erroneous belief → गलत केंसी (गलती से समझा)

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⑤ Share allotment Contract :-
• all facts in prospectus.

④ Misrepresentation :- [not intentionally / innocently]

- When you disclose some facts in believing that it is true in nature known as a misrepresentation.
- Any Contract which is entered due to misrepresentation is considered as a voidable at the option of aggrieved party.
- If aggrieved party remains silent then the contract remains to be valid contract.
- remedies → repudiate Contract
Perform the Contract
Cannot claim damage.

~~Difference between Coercion~~

⑤ Mistake :-

- It is defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may either Bilateral or Unilateral. Bilateral mistake is when both the parties to a contract are under mistake. Unilateral mistake is when only one party to the contract is under a mistake.

Mistake

mistake of fact

Mistake of law

Unilateral

Bilateral

Law of Land

foreign law

Valid Contract

void-ab initio
[void agreement]

valid contract

void ab initio
[void agreement]**B. Mistake of Law :->****① Law of Land :->**

- Contract is **valid**.
- You should be knowing the laws of your land and mistake of **Indian law is no excuse**.
- Ignorance of law of land is no excuse.
"Ignorantia juris non excusat"

② Foreign law :->

- Agreement is **void**.
- **Mistake of foreign law is treated as Mistake of fact.**

void
agree
(void
ini

A ■ Mistake of fact :->

- When the parties to the contract are under mistake as to relating to a material fact which is essential to the contract it is known as mistake of fact.

① Unilateral :->

- Contract is **valid**.
- Only one party to the contract is under a mistake.
- **notable to rescind the contract**

② Bilateral mistake :->

- Agreement is **void**
- When both the parties to a contract are under a mistake.

Lawful Object and Lawful Consideration :->

(Legality of object & consideration)

- Object + Purpose -> lawful
- Consideration -> something in return -> lawful

* Consideration or Object is unlawful

void agreement
(void-ab-initio)

- ① **Forbidden by law**.
- ② **Nature of contract is defeat the provision of any law**
- ③ **fraudulent**. (cheating)
- ④ **Involved injury to person/property of another**.
- ⑤ **Immoral**.
- ⑥ **Opposed to public policy**.

Agreements opposed to Public Policy :-

① Trading with Enemy :-

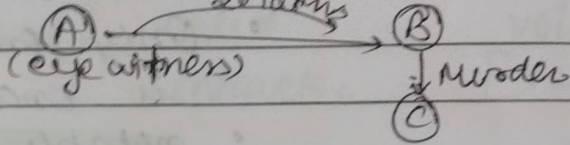
• void-ab-initio

• If you are entering into a contract with any person belonging to a country with which India is at war it will be considered as if entered into a contract which is opposed to Public Policy.

② Stifling Prosecution :-

• void-ab-initio

• Case fill होने के पक्षेदि वाले को दबाया गया है।



③ Maintenance & Champerty :-

④ Trafficking relating to Public offices and titles :-

⑤ Agreements tending to Create monopolies :-

⑥ Marriage Brokerage Agreement :-

⑦ Interference with course of Justice :-

₹ 50 lakh.
 → Judge
 • void-ab-initio

• Interfering in the course of Justice by offering some consideration to not give verdict against him

⑧ Interest against Obligation :-

~~⑨~~ Consideration unlawful in Part :-

Void Agreements →

- void-ab-initio
- Agreements which is void right from Beginning.
- Yeh kabhi contract Bna he nhi.

① Agreement in restraint of Marriage →

- Every agreement in restraint of marriage of any person other than minor, is void.

21yrs

- So if person, being major, agrees for good consideration not to marry, promise is not binding considered as void agreement.

- void-ab-initio

② Agreement in restraint of Trade →

- When a person is restricted from exercising a legal profession, Trade or business, then such an agreement is void-ab-initio.

- void-ab-initio

Exceptions →① Sale of Goodwill →

- Where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits,

So long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid.

② Outgoing Partner:-

- EPA, 1932: if an outgoing partner makes an agreement with the continuing partners that he will not carry on an business similar to that of the firm within a specified period or within specified local limits, such an agreement is valid, if the restrictions imposed are reasonable.

eg → D
Outgoing Partner

③ Service Agreement:-

- An service agreement which is entered by employee with employer binds himself during the term of agreement not to compete with the employer. Such an agreement is valid.

eg →
Senior & Junior
doctors

arbitration → Judge
(अभिज्ञ) abridges

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③ Agreement in restraint of legal proceedings →

- Party is restricted absolutely from enforcing his rights under Contract through Court or which abridges usual period for starting legal proceedings.
- void-ab-initio

Exceptions →

① Contract by which parties agree that dispute between them in respect of any subject be referred to arbitration & that only amount awarded in such arbitration shall be recoverable as valid contract.

② Contract by which parties agree to refer to arbitration any question between them which has already arisen or which may arise in future, is valid, but such contract must be in writing.

④ Agreement the meaning of which is uncertain →

- void-ab-initio
- But where meaning is capable of being made certain, agreement is valid.

⑤ Wagering Agreement :-

- void-ab-initio
- An agreement involving payment of a sum of money upon the determination of an uncertain event.

e.g - Betting [win or lose]

Essentials :-

- Promise to pay money by both the parties.
- Uncertain event.
- No Party has control over the event.
- Equal chances of winning/losing
- No Party has any interest a part from the amount of wages.

* Transaction similar to Wager (Gambling)

① Lottery transaction :-

- Game of chance and not of skill & knowledge it is considered as gamble
- void-ab-initio

② Crossword Puzzles & Competitions :-

- Types of Crossword Puzzles which depends on correspondence of the competitor solution with previously prepaid solⁿ is considered as gamble
- void-ab-initio

③ Speculative Transaction :->

valid

void ab initio
wagering agreement

- If initially your intention was not to settle the price but later on ^{the condition} was in your favour. So, you settle the difference.

In any transaction where the intention is only to settle the price right from the beginning such transaction are considered as wagers & are not allowed.

④ Horse Race Transaction :->

- It is wager if it is less than ₹ 500.
- otherwise it is valid
- less than ₹ 500 - void ab initio

* Transactions resembling with wagering transactions but are not void :->

- They are valid in nature.
- Based on skill

① Chit fund

② Commercial transactions / Share market transaction

③ Game of skill & Athletic competition

④ A contract of Insurance

Difference b/w Contract of Insurance & Wagering Agreement