



"Key points that are help to write law in a ranker style"

- ① Question number in the ~~center~~ centre of Answersheet
- ② Write answer in point wise form instead of paragraphs.
- ③ Try to give example, in case of direct question.
- ④ Leave one line space between each point.
- ⑤ Section Number is beneficial to write but not mandatory.
- ⑥ Don't write section number unless you are 100% sure that section number is correct.
- ⑦ Use a, b, c, d as bullet while writing points instead of 1, 2, 3...
- ⑧ Solve the question within the time allocated for each question based on the marks
- ⑨ In question of "difference between two concept" Also add column of 'Basis of difference' only when you are sure that you remember all the headings of the column.
- ⑩ for case study questions follow the following format.
(a) Relevant Provision (b) facts of case (summary)
(c) Analysis and conclusion.



INDIAN CONTRACT ACT, 1872

Applicable to the whole of India. Effect - 1 Sep 1872

Unit - 1 Nature of contract.

* Offer - [Section 2 (a)]

- When one person Expresses to another
- His willingness
- to do, or (Positive act)
- to abstain from doing anything [Negative Act]
- with a view (Intention)
- To obtain assent of other party
- for such act or abstinence he is set to make a Proposal.
- willingness + with intention to obtain assent = Offer.

अभिव्यक्ति

* Essential of offer/Proposal

- ① Offeror ↔ offeree
Promisor ↔ Promisee
Proposer ↔ Acceptor.

② Party must express his willingness to do or not to do something

- ③ Offer
 - Positive - doing
 - Negative - not doing

④ offer must be made with intention to obtain assent of the offeree

* kinds of offers :- 1.14

- ① General offer → offer made to public at large.
Anyone can accept the offer.

Case law :- Carlill vs carbolic smokeball Co.

→ Anyone performing the condition of offer can be said to have accepted the offer until offer is withdraw.

② Specific offer :-

→ When offer is made to specific person or ascertained person

→ It can be accepted only by person to whom offer is made

③ Cross offer :-

→ When two parties exchange

→ Identical offers (exactly same - no difference even in amount)

→ In ignorance of time of each other

→ No contract come into picture

④ counter offer

→ When a person to whom offer is made accepts the offer by modifying terms and condition of offers.

→ Also known as conditional acceptance

⑤ standing or continuing or open offer

→ which remained open

→ over a period of time

* Essentials of valid offer - 1.14

① It must be capable of creating legal relations.

→ offer does not intend.

→ to give rise to legal consequences

↓
Right to file case against each other
legal 4120114

→ and creating legal relations

→ It is not considered as a valid offer in the eyes of law.

(2) It must be certain, definite and not vague ;

→ Terms of an offer must clear

→ complete and not confusing

→ If it is vague then it cannot create legal relationship.

(3) It must be communicated to the offeree :-

→ An offer, to be complete

→ must be communicated

→ to the person to whom it is made.

case law :- Lalman Shukla vs Gauridutt.

Acceptance of offer in ignorance of offer is no acceptance.

(4) It must be made with a view to obtaining the assent of the other party :-

(5) It may be conditional :

- Offer can be made.

- subject to any term and conditions by the offeror.

(6) offer should not contain a term the non compliance - condition of which would amount to acceptance. This is not valid.

(7) The offer may be either specific or general.

- It made to either public at large.

- or to the any specific person

⑧ The offer may be express or implied.

- may be made by words
- or by conduct

⑨ offer is different from - mere statement of intention, prospectus and advertisement, invitation to offer

* Examples of invitation to offer - 1.17

- ① Display of goods for sale in window shop
- ② Advertisement Auction sales.
- ③ Quotation of Price sent in reply to a question

* Acceptance [section 2(b)] 1.18

- "when the person to whom the proposal is made
- signifies his assent there to
- Proposal is said to be accepted
- The Proposal
- when accepted
- become a promise "

* Relationship between offer and acceptance 1.18

According to "sir William Anson".

Acceptance is a lighted ~~match~~ match to a train of gun powder (offer)

Significance

offer in itself cannot create any legal relationship

conclusion

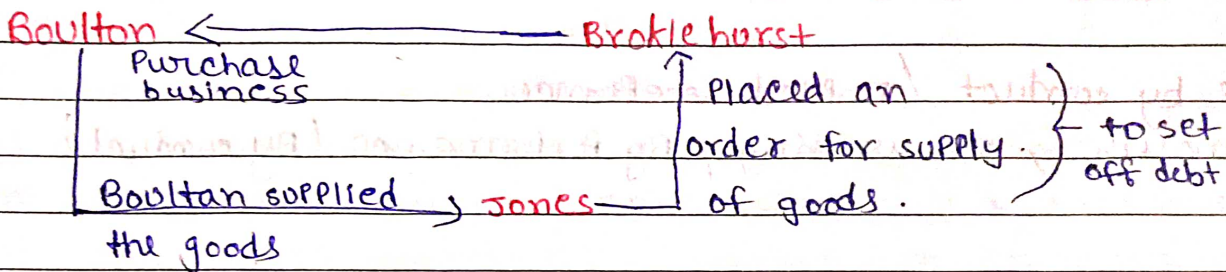
- Once offer is accepted it becomes promise and cannot be withdrawn or revoked
- offer becomes contract when accepted

* Legal rules regarding valid Acceptance 1.19

① 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.

Case laws :- Boulton vs Jones.



Decisions :- offer was not made to Boulton No contract between Boulton and Jones.

② Acceptance must be absolute and unqualified → unconditional

- As per section 7 of the act. in this context
- Acceptance is valid only
- when it is absolute and unqualified.

③ Acceptance must be communicated :

- When the proposal is accepted,
- the offeree must have knowledge of the offer made to him.

Case law:- [A] Brogden vs Metropolitan Railway company.

[B] Neale vs Merret

(4) Acceptance must be in Prescribed mode :

- If mode of acceptance is prescribed in the offer
- It must be accepted in that manner.

(5) Time.

- must be given in prescribed time OR
- within the reasonable time.

(6) mere silence is not acceptance.

Case laws : Felthouse vs Bindley

(7) Acceptance by conduct / Implied acceptance.

- word or mouth , In writing , By Performance (By conduct)

Unit - 2 consideration {something in return}

* Definition of consideration [sec. 2(d)] 1.35

- WHEN AT THE DESIRE OF PROMISOR
- THE PROMISEE OR ANY OTHER PERSON
- HAS DONE OR ABSTAINED FROM DOING OR - Past consideration
- DOES OR ABSTAIN FROM DOING - Present consideration
- PROMISES TO DO ABSTAIN FROM DOING SOMETHING - future
- SUCH AN ACT OR ABSTINENCE OR PROMISE IS CALLED CONSIDERATION.

- ① consideration is an act.
- ② consideration is abstinence
- ③ consideration must move at the desire of promisor
- ④ consideration may move from promisee or any other person
- ⑤ consideration may be past, present, or future.

* Legal rules regarding consideration 1.35

- ① consideration must move at the desire of the promisor.
- The act must be done at the desire or request of the promisor.

case law :- [Durga Prasad v/s Baldeo]

Act done at the desire of a third party is not a consideration

- ② consideration may move from promisee or any other person.

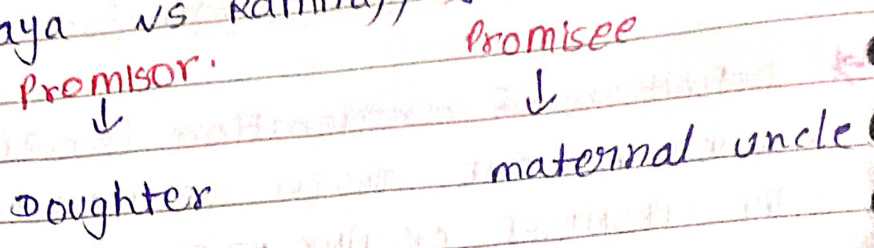
→ The act may be done by the promisee himself or any other person.

Case law :-

[chinmaya vs Rammyya]

Three Party

- ① old lady
- ② daughter
- ③ maternal uncle.



Other person :- old lady.

• Decision :- There was sufficient consideration for uncle by old lady to recover money from daughter.

③ Executed and executory consideration :

- (i) Executed. → consist in performance
- (ii) Executory → consist in promise.

Performance is done in advance is called executed consideration / pending promise is executory consideration.

④ consideration may be past, present and future.

→ for consideration to be treated as past, it must move by previous request

⑤ consideration need not be adequate - sufficient.

→ i.e. It can be inadequate.

Promise 1 \neq Promise 2.

⑥ Performance of what one is legally bound to perform :
consideration must not be performance of existing duty.

⑦ consideration must be real and not illusory - can not impossible.

⑧ must not be unlawful, immoral, or opposed to public policy.

Unit - 4

* Definition of contract [sec 2(h) - 1.2]

- ① An agreement
 - ② Enforceable by law
- } contract

* Promise [sec 2(b)]

- ① One person makes offer / Proposal
- ② other can accept it
- ③ Proposal → Accepted → Promise.

* ① Agreement [sect ece]

→ Every promise and Every set of promise } forming consideration for each other.

consideration ⇒ something in return?

money / money's worth

kind

② Enforceability by law

- (i) All conditions of section [10]
 - (ii) legal obligation [Balfour v/s Balfour]
- one of the most element.

case law :- Balfour v/s Balfour.

→ Husband and wife.

↓ - England from London.

→ wife got ill → admitted.

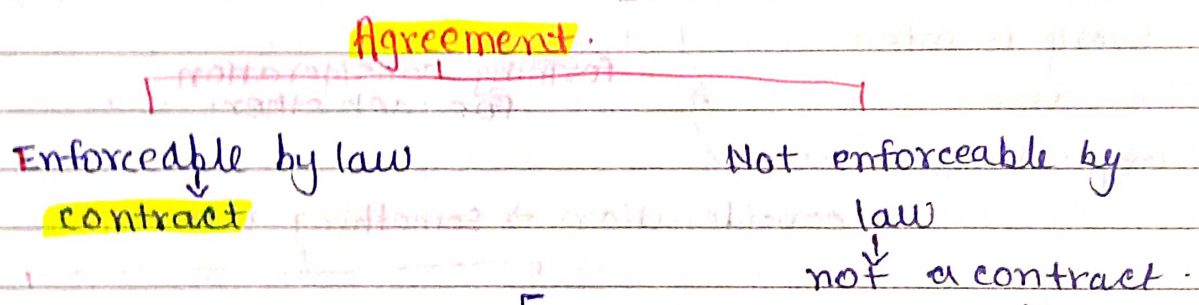
decided that husband will sent 30 pounds a month as maintenance.

husband failed and @wife sued

Decision :- It is the case of social agreement due to lack of legal obligation. \rightarrow wife not case to husband. in this case.

Agreement are wider term / contract are narrow term

- ① offer + acceptance \Rightarrow Promise
- ② Promise/set of promise of one party = consideration of Promise. set of Promise \rightarrow other party
- ③ Agreement \Rightarrow Promise + consideration.
- ④ **contract** \Rightarrow **Agreement** + **Enforceability by law**.



Example of social agreement. [not enforceable by law].

- ① A and B Promise to pay for the studies of their maid's son.
- ② father promised to pay his son a sum of Rs 1 lakh. if his son pass an examination.

Example of illegal agreement. [I + I] Example - Page No. 15

- ① A agreed to sell 2 killo of heroine drugs to Mr. B for Rs 1 crore
- ② A agreed to kill Mr. C if B pays him 10 lakh.

- ① All agreement are contract. - Incorrect X
- ② All contract are agreement. correct \checkmark
- ③ Agreement enforceable by law are contract. correct \checkmark

* Essentials of valid contract :- 1.5

① Two parties

→ One making offer and other party accepting it.

→ contract may be made by :-

- (a) Natural person (b) Other person

(having legal existence)

Note :- At the time of dissolution of Partnership Partners distributing Property is not a sale.

② Intention to create legal relations :-

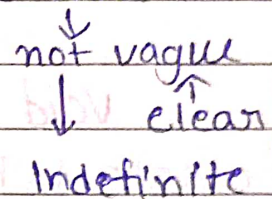
Social or domestic type of agreements are not enforceable

③ Other formalities to be complied with in certain.

cases :- A contract may be written or spoken writing, Registered and stamped — In certain case

- Insurance contract
- Immovable Property.

④ certainty of meaning :- Agreement → certain.
(Clarity)



⑤ Possibility of Performance agreement

for impossible act is not enforceable.

* TYPES OF CONTRACT (BASED ON ENFORCEABILITY)

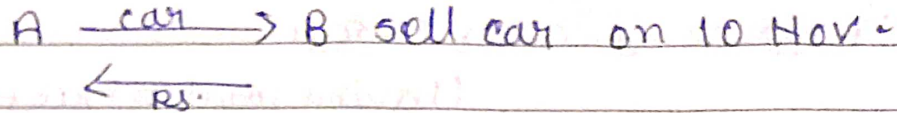
① Valid contract :-

It has all essential element of contract.

→ Enforceable by law

② Void contract :- (void agreement → void ab initio)
 → Does not have any legal effect / Impossibility to
 → Not enforceable by law / complete the promise

Ex → [8 Nov] contract:



But in 9 Nov. the car was destroyed in fire / IT can automatically void.

③ Voidable contract :- Perforce by other Party.
 (जबरदस्ती)

Enforceable at the option of aggrieved Party.

④ Illegal contract :- Example Page no. 15
 → Forbidden by law. / Not enforceable.
 (विधि विरुद्ध)

⑤ Unenforceable contract.

→ good in substance (see to all elements covered).
 → But suffer from technical defect.

Basis	Void	Voidable.
meaning	ceases to be enforceable by law	Enforceable at option of aggrieved party.
cause	Subsequent illegality or supervening impossibility.	It consent of Party is not free.
Performance of contract	cannot be performed	can be avoided by aggrieved Party within reasonable time otherwise performed.

Right does not grant any right. Aggrieved party can rescind the contract.

* Types of contract on the basis of formation.

- ① Express offer
 - spoken
 - written
- ② Implied contract
 - made otherwise than words
 - Parties never intended
 - Term and condition are not known
- ③ Tacit contract :- Tacit means silent

→ It is a situation where a contract has to be understood from conduct of parties.

→ Term and condition are known

→ no use of word spoken or written.

Example :- cash withdraw from ATM.

④ Quasi-contract

- Not an actual contract
- created by law under certain circumstances.

⑤ E-contracts

- contract is entered by two or more parties
- using electronic means
- such as e-mails
- is known as e-commerce contract.

* Types of contract on the basis of performance

① Executed contract.

contract which is wholly performed

Both parties are performed in advance. (contn.)

② Executory contract

which is partially performed, or wholly unperformed.

a) unilateral contract :-

one sided contract in which only one party performs his obligations.

b) Bilateral contract :-

where obligation of both parties is outstanding.

Difference between void agreement and Illegal agreement

Basis	void agreement	Illegal agreement.
scope	Not necessary illegal	Always void
nature	not forbidden by law	forbidden by law
Punishment	Parties cannot be liable for punishment	Parties liable for punishment
connected collateral	Agreement connected / collateral to void agreement may also be void. It may valid also	connected / collateral agreements are always void.



Difference between Illegal contract and Illegal Agreement

Illegal contract	Illegal agreement
Jab contract kiya tha tab wo illegal nahi tha lekin performance date se pehle wo illegal ho gya.	wo agreement Jo beginning se hi illegal tha.

Example of Illegal contract.

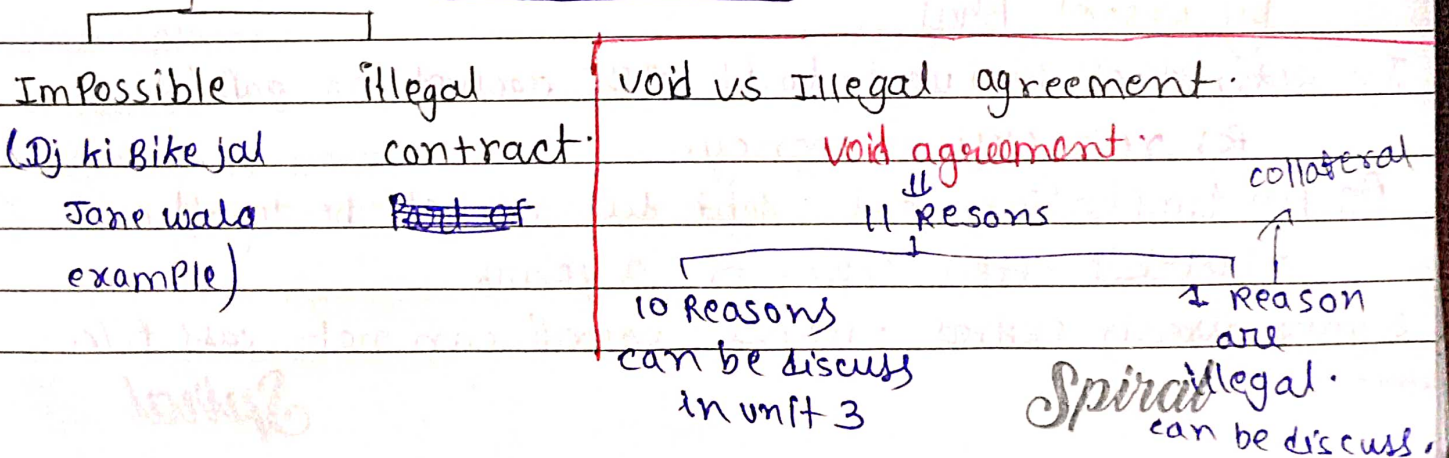
- section 2(1) - it is a contract which a law forbids to be made.
- Mr. Honey Singh agreed to sell 4 liquor bottles for Rs 10000 on 5 Jan 2022 - contract date.
- Delivery of liquor was scheduled on 10 Jan 2022 → Performance date
- Govt. Bans liquor on 7 Jan 2022.

This contract can automatically can be illegal.

Example of Illegal agreement.

- Govt. Bans liquor on 7 Jan 2022
- Mr. Honey Singh agreed to sell 400 liquor bottles to Mr. Kabir for Rs. 100000 on 8 Jan 2022 (After Ban).
- Delivery of liquor was scheduled on 10 Jan 2022.
- This will be treated as illegal agreement.

Void contract vs illegal contract - it is the part of void contract



Note :- Saare illegal contracts void contracts hotay hai lekin saare void contract illegal nahi hotay

saare illegal agreement void agreement hotay hai lekin saare void agreement illegal nahi hote hai

* collateral Agreement (Supporting) → loan etc.

collateral security can be used in illegal work this can be convert in illegal agreement and void.

Example :- A can borrow/taken loan from B to give this money to y so y can kill the c.

In this case lender/B koo yaa bat-pata thi ki a-c koo manne kee liya rupees laa raha haa. too lawyer ke hisad see yaa illegal agreement mana jayega.

* Unenforceable contract.

Section 2(i) - where a contract is good in substance but because of some technical defects i.e. absence in writing or barred by limitation etc. One or both the parties cannot sue upon it it is described an unenforceable contract.

Ex → Mr. Gopal has taken goods of Rs. 2 lakh from Vasooli Bhal in 2015 on credit → valid contract.

But no payment has been received since 2015 by Vasooli Bhal

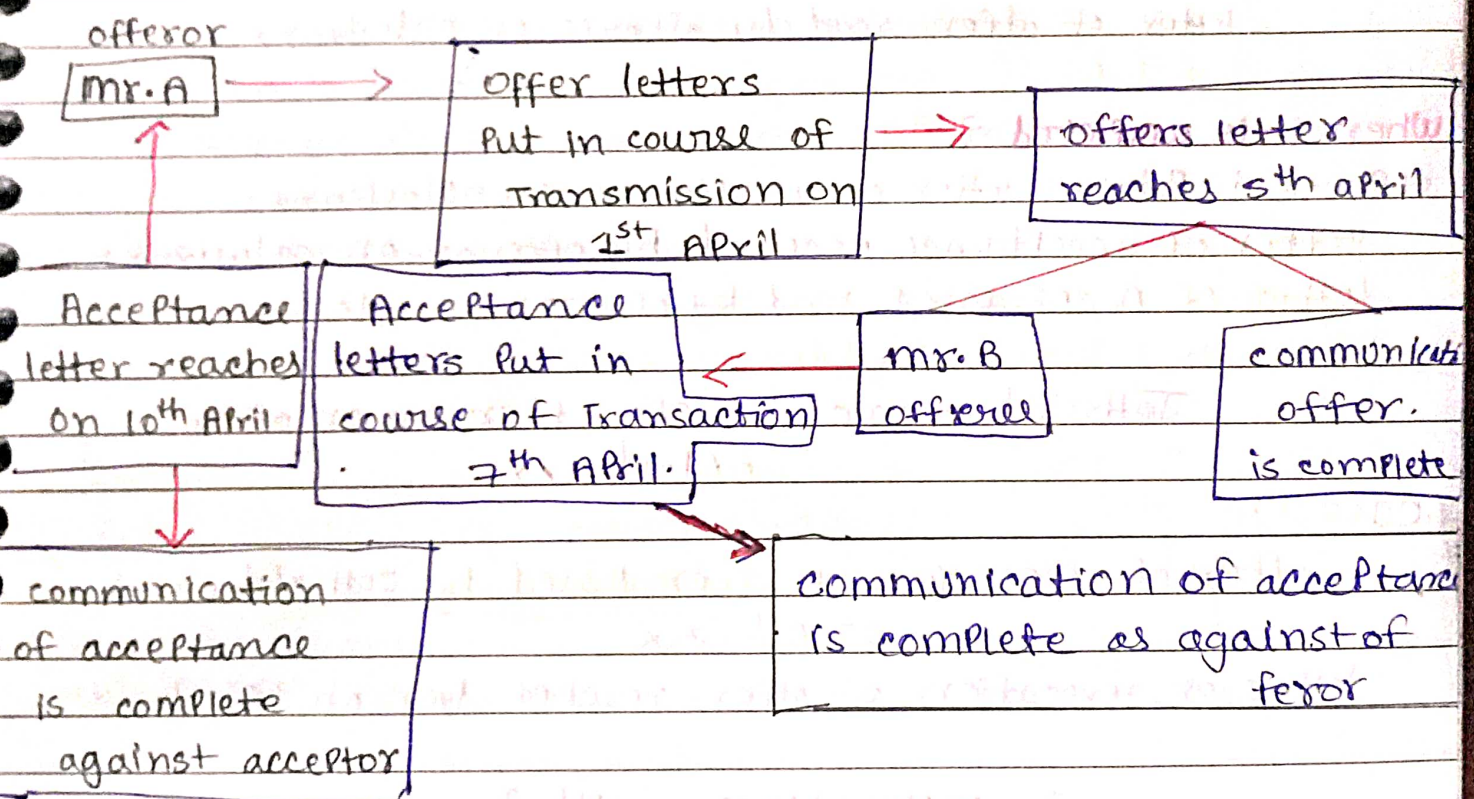
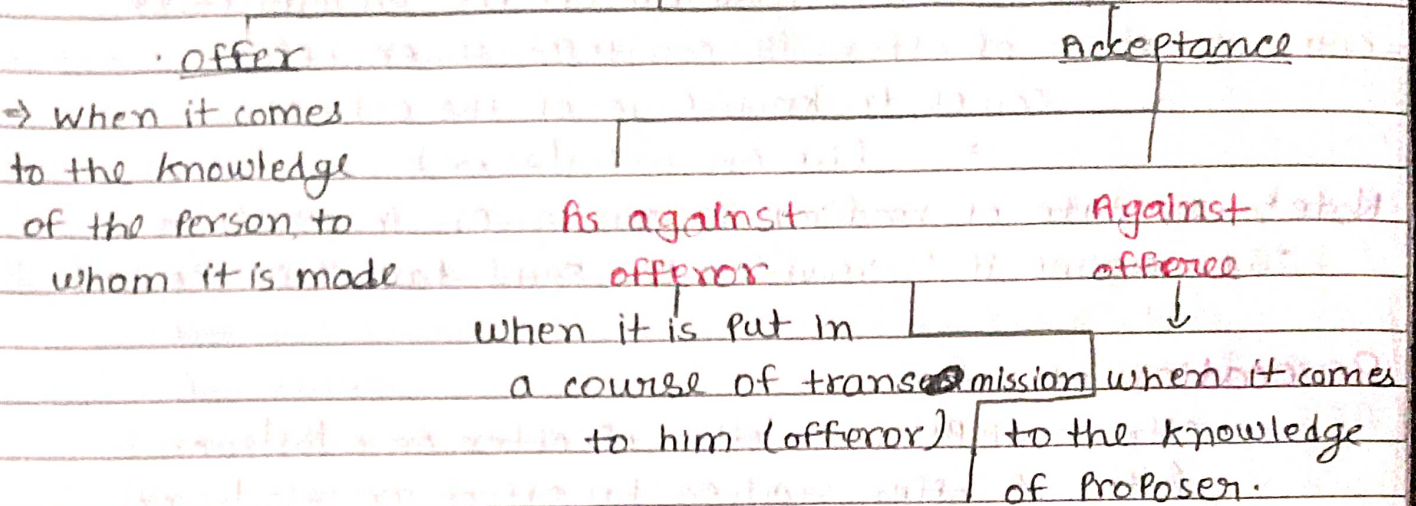
In 2018, Vasooli Bhal wants to file case against Mr. Gopal for recovery of money.

As per Limitation act; debt due cannot be legally collectable after expiry of 3 years

3 years already expired. Hence Vasooli can not case file.

* Communication of offer and acceptance

communication of offer and acceptance / when complete?



communication of offer - when it is complete by post?

Offeror dispatched letter of offer on 02/01/20xx

letter of offer received by offerree on 03/01/20xx

letter of offer read by offerree on 04/01/20xx

communication of offer is completed when offer

comes to knowledge of the offerree

(i.e. on 04/01/20xx)

Note:- If date of reading is not given in question.

Then assume it is read on the same day it is received.

Revocation of offer:

Offeror dispatched letter of offer on 01/01/20xx

letter of offer received by offerree on 03/01/20xx

letter of offer read by offerree on 04/01/20xx

When it is completed?

offerree dispatched letter of acceptance on 06/01/20xx

letter of acceptance received by offeror on 09/01/20xx

letter of acceptance read by offeror on 10/01/20xx

Jethalal cannot revoke offer on or after
06/01/20xx

Case ①

letter of revocation of offer posted by Jethalal on
02/01/20xx

letter of revocation of offer reached Iyer on 05/01/20xx

Is revocation valid?

Yes

Case - 2

Letter of revocation of offer posted by Jethalal on
02.01.20xx

Letter of revocation of offer reached Iyer on 07.01.20xx

Is revocation valid?

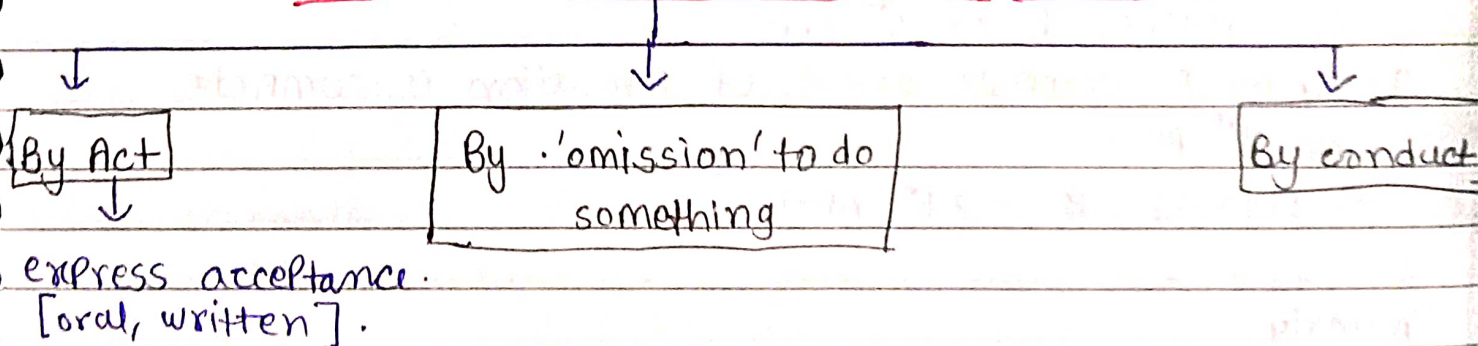
NO

Modes of revocation of offer. 1.26

Note: In English law, only revocation of offer is allowed but revocation is not allowed. But in India, both are allowed.

- Notice of revocation
- Lapse of time
- Non-fulfilment of condition precedent.
- Death or insanity.
- counter offer [conditional acceptance.]
- subsequent illegal
- non-acceptance of offer as per usual / prescribed mode.

Modes of communication of acceptance. 1.27



* Upto when Revocation can be done ? 1-22.

↓ Offer

Anytime before acceptance is complete as against offeror but not afterwards.

↓ Acceptance

Anytime before acceptance is complete against acceptor but not afterwards.

* when communication of Revocation is completed.

↓

↓

As against the person who makes it

As against the person to whom it is made

when it is put in a course of transmission so as to be out of power of person who makes it

when it comes to his knowledge.

इसके बाद acceptor acceptance की Revocation नहीं कर सकता।

letter को acceptor post करेगा है इसके बाद offeror offer को Revocation कर सकता।

Example :- Mr. A revokes his offer on 4th April and it reaches B on 6th April.

Then, Mr. A communication of revocation is complete on 4th April.

→ Against B → 6th April.

Similarly

B send revocation of acceptance on 8th April, reaches to A on 9th April, then -

→ Against B → 8th April

→ Against A → 9th April

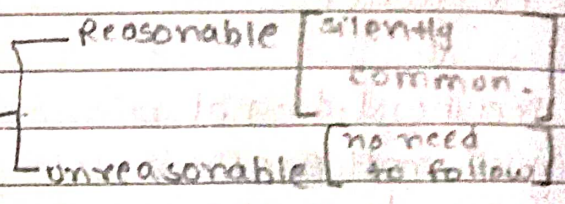
* Acceptance over telephone or telax or fax or email.

→ contract is complete only when acceptance received from offeree.

Note :- [Entores Ltd vs Miles forecast co.]

→ call drops and disturbance in line, there may not be valid contract.

* communication of special condition



→ special condition are ~~not~~ conveyed tacitly - silently and they accepted also tacitly.

Note :- In any event, acceptor is treated as having accepted special condition.

case law :- mukul datta vs Indian Airlines

Ticket conditions :-

- ① self responsible for any damage
- ② If delay, we are not responsible.

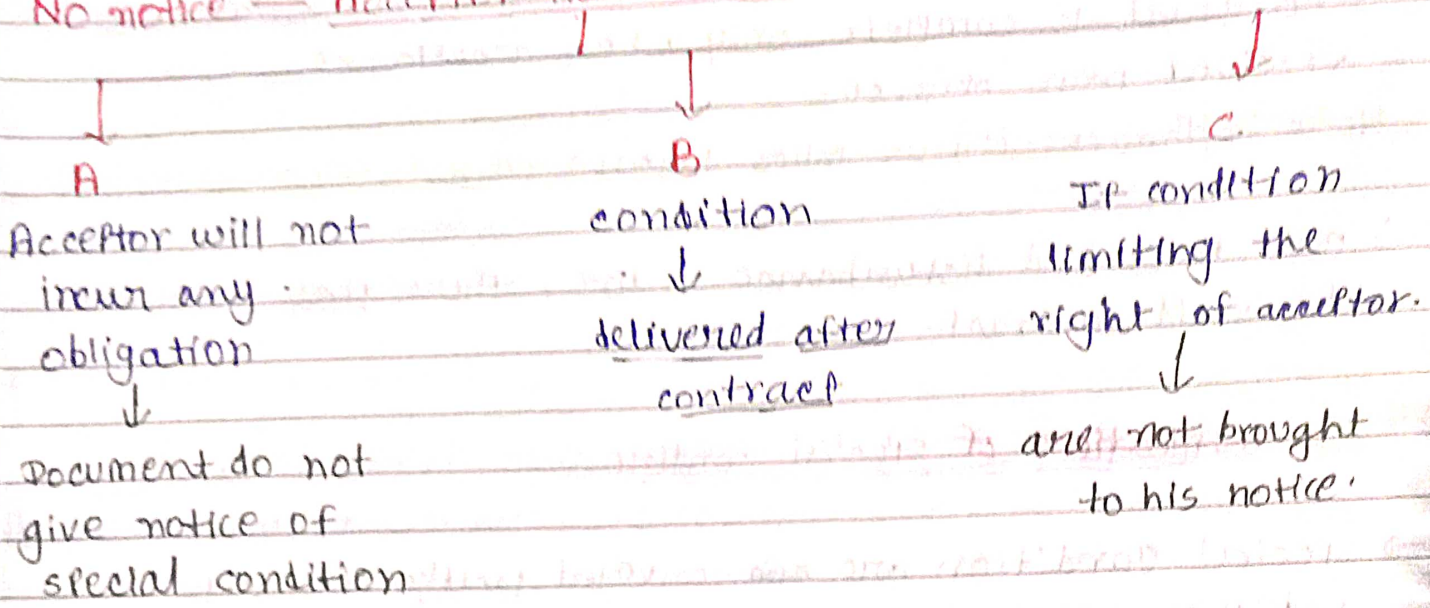
case law :- Lily white vs R. Mannuswamy

Notice of condition mandatory.

→ word like see back for conditions, please turn over, subject to terms and conditions are indicative of reasonable notice.

→ conditions are binding, even if the acceptor could not understand it.

No notice — Acceptor not bound.



case law :- [Railway transport co. vs Ghanashyam A. Hg]

facts :-

- Transport carrier accepted goods without conditions
- subsequently issued circular to owner limiting his liability

Decision :- Since special condition not communicated prior to contract, not binding to owner.

Example of standard form of contracts.

A can buy some goods to supplier B on 4th April. on this date any type of condition can't be in force in Bill. after 6th April supplier can msg. to A to follow new condition. give answer kya A koo condition follow karne hogi - According to law.

[The answer is NO]

* Basic concepts are not in book but important to concept clarity.

- Party to contract
- stranger to contract
- stranger to consideration

Example :-

Three parties :- Salman, Aishwarya and Abhishek.

Salman can ask to aishwarya kya tum mera Flat Rs 5 crore mal loge on 10th Jun

Aishwarya reply yes.

On 10th June Salman cancelled the promise. In this case only aishwarya can be sued against Salman.

- Party to contract → Salman and Aishwarya.
- Stranger to contract → Abhishek other party can not sue against party to contract (diffident)
- stranger to consideration → No party to contract jiski consideration kisi aur ki taraf se hai.

* Some important concepts for related to upcoming concepts.

① What is special contract.

There are two types of contract

- (i) General contract - To applicable to all.
- (ii) special contract - these are those contract which are applicable to the special case. (this contract are deeply communicated in inter).

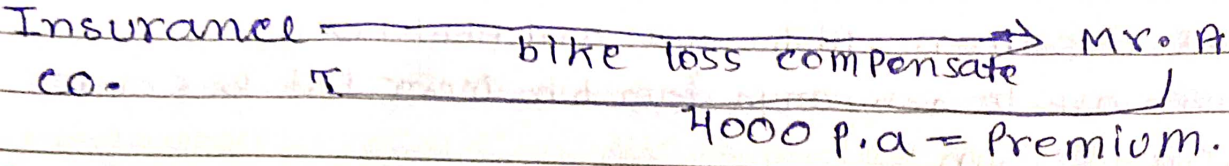
Example :- In the school the boys all rules are 100. 90 rules are applicable to all but the remaining 10 rules are applicable to this boys only. This 10 boys case are [special].

② what is contract of indemnity ??

Promise to save from losses

Insurance company best example.

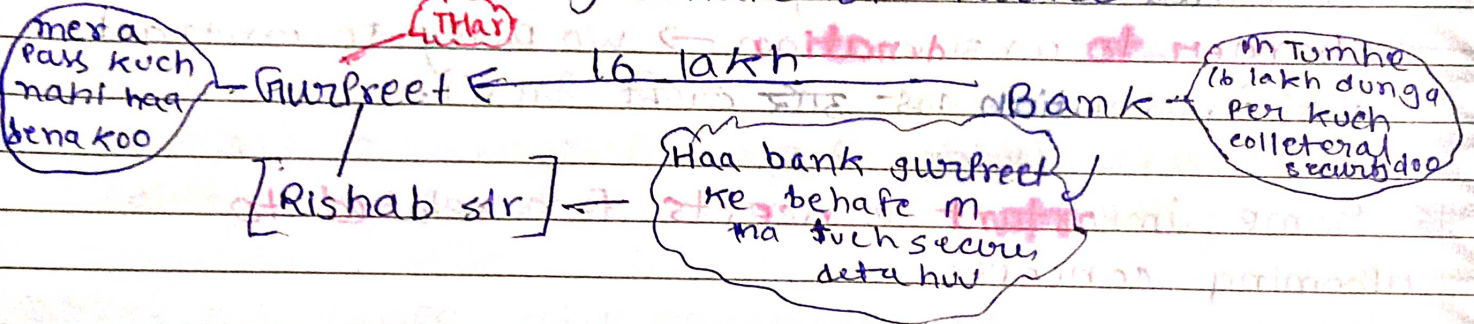
[Mr. A ko dar tha ke uski bike chori naa ho jaya]



③ what is contract of Guarantee ?

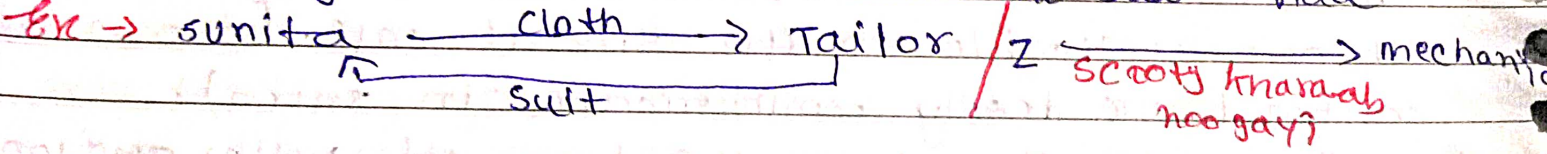
Example :- Three Parties

- ① Bank → Paise doo loan 100 (creditor)
- ② Gurpreet → Debtor Bank se Paise laker Thar car lauga.
- ③ Rishab → security behafe of Gurpreet.

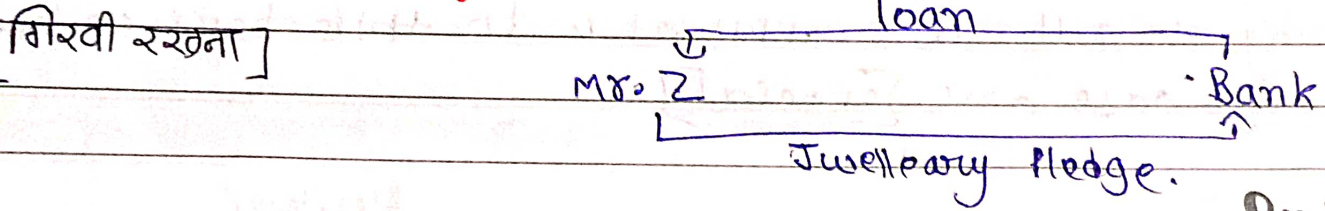


④ what is contract of bailment ?

Owner aane goods kisi aur person ko kisi bhi purpose ke liye deta hai and wo purpose complete hone ke baad goods owner ko return ho saate hai



⑤ contract of Pledge (Goods)



⑥ Contract of Agency : [Agent rakhlana]

love sir — (ghar sale) after love sir appointed a agent for help in selling the house.
(Bhondee) agent — sale —> shyam

* Suit by a third party to a contract 1.37

- consideration may come from third party.
- Only a person who is party to a contract can sue on it.
- The above rule is "doctrine of Privity of contract."
- Stranger to a contract cannot sue is known as a doctrine of Privity of contract.

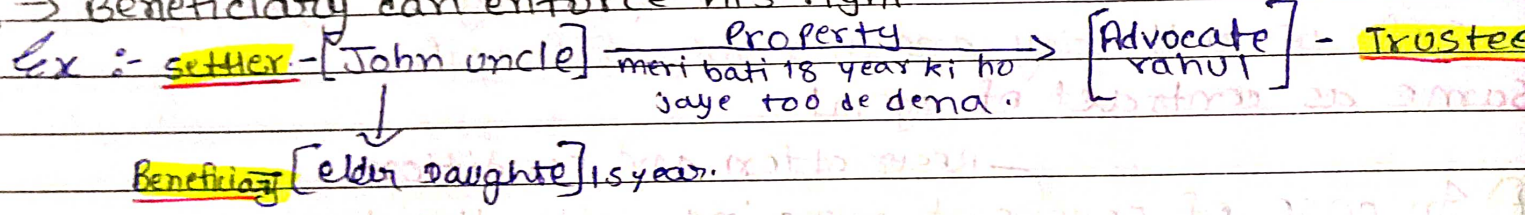
Exceptions:

→ जैत कर contract पर stranger to contract parties to कर सकत है।

* Exception to the above rule :-

① In case of trust .

→ Beneficiary can enforce his right .



② In case of a family settlement . [Property kaa Partition blw fam mem]

- If term of contract in writing
- members of family who was not a Party to contract can enforce the same.

③ In case of certain marriage contracts / arrangements.

- Provision may be made for benefit of person
- He/she may file suit even though not party to a contract.

Mr. A and Miss X husband - wife / Mr. Z - Miss X father.

Mr. A hamesa Miss X ko ill treatment karta tha after

Mr. A promised Simran father that he will treat his wife (X)

properly or else he will pay her monthly allowance after Mr. A no
Issa waise kiya → can Miss X sue Mr. A for ill treatment

yes.

④ In case of Assignment of contract.

- when benefit assigned under contract

→ Assignee can enforce it

Apne Right ko hisi aur ko
Transfer karna

⑤ Acknowledgement or estoppel

- when a person represent himself as an agent of third party.

→ It would result into binding obligation towards third party.

⑥ Contract entered through an agent.

- Principal can enforce the contract if agent acted in scope of authority and in name of Principal.

Same as contract of agent.

Restriction and condition.

⑦ In case of covenant running with the land

- Person who purchase land with notice that owner of land is bound by certain duties.

→ covenant may be enforced by successor of seller.

* Validity of an agreement without consideration 1.38

No consideration, No contract.

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.

① Nature love and affection:

condition agreement [25(1)] - section.

- (i) must be made by natural love and affection.
- (ii) Parties - near relation
- (iii) writing
- (iv) Registered

② compensation for past voluntary services:

conditions [sec 25(2)]

- (i) services - voluntarily
- (ii) services - promisor
- (iii) promisor - intended to compensate
- (iv) promisor must be in existence

case (1) Shyam (ka wallet khogya) ← Anuradha (Reward 500).
(no general offer)

case (2) shyam (ka wallet khogya) ← Anuradha (shyam cam promise to annu)
(no general offer)

③ promise to pay time barred debt..

- promise → writing
- signed → by person or his authorised agent to pay time barred debt / valid.

Ex :- Mr. Gopal has taken goods of Rs 2 lakh from Vasooli Bhai in 2015 on credit.

But no payment has been received since 2015 by Vasooli Bhai

In 2022, Vasooli Bhai wants to file case against Mr. Gopal for recovery of money

As per limitation Act, debt due cannot be legally collectable after expiry of 3 years.

Vasooli can not recover the amt because time barred debt

④ Agency.

→ As per section 185 of ICA, 1872

→ No consideration is necessary for agency.

⑤ Completed Gift

Rule :- No consideration, no contract.

does not apply to completed gift

Explanation section (1) to (25)

Section 25 does not affect the validity as between donor and donee of any gift actually made

[gift writing me lekh ke dena completed gift nahi hota or practice gift (real mai) dena ke completed gift hota he]

⑥ Bailment.

→ Bailment as the delivery of goods

→ from one person to another for same purpose

→ this delivery is made upon a contract

→ that post accomplishment of the purpose,

→ goods either return or disposed of.

according to the direction of the person. delivering them.

→ No, consideration is required to affect a contract of bailment.

eg- gave a bike to friend for some time

⑦ charity.

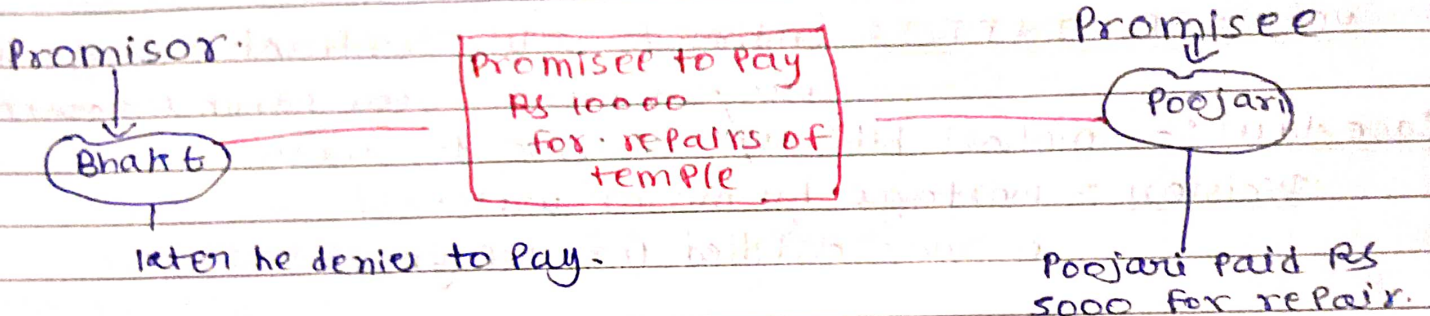
→ If promisee takes liability

→ on promise of person

→ to contribute to charity

→ contract shall be valid.

Case law :- [kedarnath vs gorie mohammad]



Poojari can recover the amt from promisee?

→ yes

It is valid contract.

material on the faith of promisee by Bhakt.

UNIT - 3 : Other Essential Elements of a contract.

3.1 * Capacity to contract

Competence of the Party to make contract.

* Who is competent?

- major/minor. [A] → major - 18 year com. minor - less than 18 year
- sound mind [B] [sec. 12]
- No disqualified by law

[A] * law relating to minor's agreement / position of minor:

① A contract made with minor or by a minor is void - AB - INITIO: (minor ke saath contract karenge to usse void mana jayega karon ki nazam)

Case law :- Mohori Bibi v/s Dharmo Das Ghose.

Decision :- mortgage by minor was void
B was entitled for repayment.

② No Ratification after attaining majority:
subsequent approval.

Pehle hum minor the tab contract kiya tha or ab hum major ho gaye, to pehle jo contract banaya usse hum ratify nahi kar sakte.

③ minor can be a beneficiary or can take benefit out of a contract.

→ It means Promissory note executed in favour of minor is valid.

→ contract act do not prevent minor from taking benefit. (Agar minor ko benefit ho raha hai to vo valid contract ho.)

request

④ A minor can always plead minority:

→ Rules of estoppel cannot be applied against him

→ He is allowed to plead minority in defence.

(Koe minor galte se contract kar leta hai fir vo baad me request kar sakta hai ki vo minor hai)

⑤ liability for necessities:

→ liabilities for necessities to minor is enforceable by law.

→ minor is not personally liable, only his property is liable.

Two conditions (to liable minor's property)

(a) contract must be for goods.

→ reasonably necessary

→ for his support

→ in station in life.

(b) minor must not have already sufficient supply of necessities.

⑥ contract by guardian - how far enforceable:

→ which is within his competence.

and.

→ for benefit of minor

→ valid contract.

(Agar guardian contract kar rahi hai minor ke liye or usse minor ko sirf benefit milega tab vo valid contract hoga).

⑦ No specific performance : (Jo promise kiya hai vo nibhana nahi padega minor ko)

→ A minor's agreement being absolutely void

→ no specific performance of such an agreement.

⑧ No Insolvency :- (minor insolvent nahi ho sakta hai)

→ A minor cannot be declared insolvent.

⑨ Partnership :- (minor partner nahi ban sakta lekin beneficiary ban sakta hai)

→ cannot be a partner in a partnership firm but

→ can be admitted to the benefits of partnership.

⑩ minor can be an agent :- (minor agent ho sakta hai lekin agar voo kuch galat karega to principle liable hoga)

→ minor can act as an agent

→ But he will not be liable to his principle for his acts.

⑪ minor cannot bind parent or guardian :

→ In the absence of authority / liabilities. - minor cannot bind parent Even for necessities.

→ Parent is liable only when the child is acting as an agent for parents.

(minor ne koi transaction kiya or paisa nahi diya hai to guardian liable nahi hai. iske khye minor liable hoga)

⑫ Joint contract by minor and adult :

→ the adult will be liable on the contract and not the minor

Case law: Sain Das vs Ramchand

(jab minor or major milke kisi ke saath contract karite hai or minor pay na karne ke liye major liable hota hai minor liable nahi hota)

(13) surety for a minor:

(minor ke liye surety ho sakta hai jab koe major guarantee le ke)

(14) minor as shareholder

→ A minor cannot be a shareholder of the company

→ A minor, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid share to him.

(minor shareholder nahi ban sakta lekin unke guardian fully paid shares unke naam par transfer kar sakte hai)

(15) liability for torts: civil wrong (mara-mari).

→ minor is liable for tort

→ But not liable for breach of contract.

[B] * Person of sound mind - section 12

→ A person is of sound mind

If → At the time of making contract.

→ capable of understanding the contract.

and

→ of forming rational judgement about terms of contract.

[C] * [contract by disqualified persons:]

→ Alien enemy, Insolvent, convicts under imprisonment, foreign sovereign etc.

*** Free consent [sec 14] 1.48**

Consent → section 13

consensus - ad - idem → agree upon the thing
(meeting of minds) In the same sense

3.3 Elements vitiating free consent

I [coercion] - section - 15

Act

a) committing
or
threatening to
commit

करना, उरना Act forbidden
दुसकाना by IPC
की कर [Indian Penal
देता। code]

(c) Intention of
causing any
person to enter
into an
agreement

(b) Unlawful detaining
or

Threatening to detain
उरना

to keep in case study
Any property to
the prejudice of
any person.

*** [Effect of coercion / consequences / section 19]**

At the time in the contract the coercion can find in contract this effects are taken into force

(a) voidable at the option of the aggrieved party

(b) Reply money or thing obtained under coercion. (section 72)

Notes:-

It is not necessary that coercion must not proceed from a party to the contract.

- It is not necessary that coercion must be made with other contracting parties
- It may be directed against third person.
- It is immaterial whether IPC is in force or not in the place of coercion.

II Undue Influence [Section 16]

mental Pressure

- "Any contract is said to be induced/made by undue influence
- where relation subsisting (exists) between parties are such that.
 - (a) one party → position to dominate the will of other
And
 - (b) uses that position to obtain unfair advantage over other.

• essential ingredients under this provision are :

① Relation between the parties:

- near relation between the two person.

② Position to dominate the will :

- relation between the parties exists in such a manner
- that one of them is in a position to dominate the will of the other.

- A person is deemed to be in dominating position in the following circumstances:

① Real and apparent authority :-

- He holds real or Apparent authority over other
- In the case of master and servant, doctor and patient and etc.

(b) fiduciary relationship :-

→ Relation of trust and confidence

eg. such type of relation exists between father and son, solicitor and client; husband and wife, creditor or debtor.

(c) mental distress :-

→ He makes a contract with the person whose mental capacity is temporary or permanently affected by ~~reason~~ reason of.

→ age → mental or illness → bodily distress

(d) unconscionable bargains :-

→ Unconscionable bargains are witnessed mostly in money-tending transaction and in gifts.

→ Zyada interest charge kar raha hai jo market se bhi high hai.

eg. lender and customer

(3) The object must be to take undue advantages; objective to take advantage of the other

(4) Burden of Proof :-

→ burden of providing 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

* Note

- ① No undue influence in the ordinary course of business
- ② Object must be to take unfair advantage.

- ③ Burden of Proof is on a person who is in a dominant position
- ④ Unconscionable bargain.
→ where contract is apparently unconscionable.
→ It is presumed by law that contract is made by undue influence.

Case law: Kirpa Ram ~~and~~ v/s Same - ud - din Ad Khan

* Power to set aside contract induced/made by undue influence [sec 19 (A)]

such contract may be set aside by court either:

- Absolutely
- OR
- If Party has received some benefit.
- on such term as court deems fit.

III Fraud [Section 17]

Fraud means and includes

commission of following act	committed by
(a) Suggestion as a fact / of something which is not true by a person who does not believe it to be true	(a) a party to contract or (b) any person with the connivance of party to contract
(b) Active concealment of fact by one having knowledge of fact -	or (c) agent of party to contract.
(c) promise made without an intention of performing it	

ऐसा वादा जो आप निभाकरा है
नहीं करते तो

(d) Any other act fitted to deceive

(e) Any act or omission specifically declared by law to be fraud.

Intention

- to deceive another Party or
- To induce another Party to enter into contract.

* Essential elements of fraud Representation

(a) false (b) Relate → material fact (c) made before conclusion (d) intention :- to deceive.

(e) other party.

→ Relied

→ Induced to act

→ suffered some loss

* Explanation to section 17

(A) mere silence as to facts likely to affect the willingness of the person to enter into contract is not fraud.

(B) Exception → silence = fraud.

(a) Having regard to the case it is duty of person keeping silence to speak.

(b) where silence is = speech

Effect :- Voidable at the option of aggrieved party.

* Effect of fraud upon validity of a contract.

(a) Rescind the contract in reasonable time.

(b) Sue for damages

(c) Insist / force performance of contract on condition in

which he would have been in the position if representation had been true.

* mere silence is not fraud 1.53

word v/s hobbs.

Silence = fraud.

1. Duty of person to speak.

- (a) where party stand in fiduciary relationship ^(Trust) - near relation
- (b) contracts of Insurance
- (c) contracts of marriage
- (d) contracts of family settlement
- (e) share allotment contracts.

memory Technic :-

Relationship share karme se marriage not? hai fir family banti hai jiske baad hum Insurance lete hai.

2. where the silence itself is equivalent to speech.

→ In case of fraudulent silence, contracts is not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence.
[exception to section 19.] common sense

* MISREPRESENTATION [section -18] - 1.54

• Positive assertion

→ of such fact which is not true, though he believes it to be true.

→ made in a manner not warranted by information of the person making it.

- Any breach of duty
 - made without an intention to deceive.
 - But bringing gains and advantage to person committing it.
- Causing other person to make mistake:
 - As to substance of subject matter of agreement.

Note:- In case of misrepresentation injured party is entitled to -

- to renege the contract.
- sue for restitution
- But cannot claim damages.
- Because there is no intention to deceive.

• Distinction between coercion and undue Influence.

Basis	coercion	undue Influence.
1. Section	Defined in sec. 15	Defined in sec. 16
2. Nature	Involves physical force or Threat.	Involves moral pressure
3. Relationship	Relationship between parties is not necessary	Some sort of relationship must exist between the parties
4. consent obtained	consent is given under the threat of an offence	consent is obtained by dominating will, no offence is committed.
5. exercise by whom	It may move even from a stranger	It employed by the party to contract.

* Distinction between fraud and misrepresentation.

Basis	fraud	misrepresentation
1. Section	Defined in sec. 17	Defined in sec 18.
2. Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
3. Knowledge of truth	The person making the suggestion believes that the statement is untrue	The person making the statement believes it to be true, although it is not true.
4. claim of damage	The injured party can repudiate the contract and claim damages	The injured party can repudiate the contract but cannot claim damages.
5. means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	party can always plead that the injured party had the means to discover the truth.

* legal effects of agreements without free consent - contract not voidable [section 19]

(A) where consent caused by:
→ Silence amounting to fraud [OR] By misrepresentation.

If the party whose consent was so caused had the means to discover the truth with ordinary diligence.

(B) A fraud or misrepresentation which did not cause the consent of party to the agreement.

(C) where the party enters into a contract in ignorance of fraud.



IV) Mistake

- If two parties enter into a contract thinking about different subject matter.
- No contract will arise.

Result / Effect :- Mistake may lead / cause a contract towards voidness.

• Effect of mistake on validity of a contract

Mistake

Mistake of law

- ↳ law of his own country / land
- Ignorantia juris non-excusat
i.e. ignorance of law of land is no excuse.
- Such mistake will not affect the validity of the contract.
- Sec 21. Contract is not voidable
- But, contract is voidable when one party was induced by another.

- ↳ foreign law
- Sec: 21
- Treated as a mistake of fact
- Agreement is void
- Excusable.

Mistake

mistake of fact

Unilateral

- only one party is under a mistake ↓
- subject matter, or
- Expressing or understanding terms or legal effect of agreement.

Bilateral

- Section-21 Both parties are under a mistake as to a matter of fact essential to agreement

3.4 Legality of object and consideration

• which considerations and objects are lawful, and those which are not (section 23) void unless -

• The following is an example of the agreement which is void because of unlawful

Example 31 :- A Promises to obtain for B an employment in the public services and B Promises in return, to pay 10000 to A. The agreement is void the consideration, being opposed to public Policy, is unlawful

(i) when consideration or object is forbidden by law :

→ vo hai, jo kanun ke nazam me Prohibited / ~~can~~ banned hai consideration or object

Ex :- A jo hai vo B ke saath chori ka contract karta hai To yee contract forbidden by law hai — void

violate / tadna

(ii) when consideration or object defeats the provision of law :

→ aise contract jo lawful hai lekin kanne ka taridta galat hai / Rule tadna / koe act ka section ka paalan na karna.

Ex :- Purchase laptop without making the payment of GST

(iii) when it is fraudulent : (irada hi dhoka dena hai)

Ex :- out of country ke saath smuggling karna ye apne country ko dhoka dena hua aise contract void hote hai.

(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: [kisi ko ya uske property ko harm karna ye unlaful hai.]

Ex :- A, B ke saath contract karta hai c ka ghar jalane ke liye isme jo contract hua vo c ke property ko harm kar raha hai isliye ye contract unlaful hai or void hai
void - ab - initio hai.

(vi) when consideration is immoral [hamare value ke against OR] against principle

-> also len-den nhi hona chahiye contract me jo kisi ke agay ho
Ex - jaise ki, kisi ko paise dete kisi ki shaadi tod vana
[void - ab - initio hai]

(vii) where consideration is opposed to public policy :-

-> also consideration jo against public pol hai.

① Trading with enemy - China ke saath sale and purchase

② stifling prosecution -> kisi ko court mee jaane se rokna

Ex - A ne B ka murder kar diya or C witness tha is case ka lekin A so hai vo C ko case na karne ke liye darata hai dhamketa hai or paise detar chup rehne bolta hai yaa public policy ke against hai lekin vo C chup rehta hai to valid contract hai.

③ Trafficking related to public offices and titles:

-> ko public service ke post ko paise dete uski post apne naam karna ye against hai public policy ke including padma vibhushan reward

④ Agreements tending to create monopolies:

single sellers create kamma

commission
⑤ marriage brokernage agreements:

→ kisi ki shadi ke ladai ya ladya deha paise lekar

⑥ Interference with the course of Justice:

→ isme case hone ke baad interference karke hai

→ jaise ki judge ko paise dekar apni taraf kar lena

⑦ interest against obligation :- Zimedari

jo karama zimedar hai uske liye paise nahi maang sakte

⑧ maintenance and champerty.

no interest

kuch exchange me maangte hai

malafidi hai (intention are not good) → valid hai
bonafide (genuine) (यथार्थ) → valid hai
void.

⑨ consideration unlawful in part.

Ex:- hum ghar khrid rah hai B se or B ko hum drugs de rah hai

3.5 Void Agreements

Expressly declared void Agreements.

These five agreements are ~~also~~ already covered.

1. made by incompetent parties (section 11)
2. Agreements made under Bilateral mistake of fact (sec 20)
3. Agreements the consideration or object of which is unlawful (sec 23)
4. Agreement the consideration or object of which is unlawful in part (sec 24)
5. Agreement made without consideration (sec 25)

⑥ Agreement in restraint of marriage (section 26)

→ major ko rok nahi sakte hai bhale vo sign bhi karde , → other than minor.

⑦ Agreement in restraint of trade (sec 27)

→ A which restrained any person exercising a lawful profession / trade or business of any kind.

→ Is to that extent void.

koe bhi lawful kaam karne se rok nahi sakte hai

* Exceptions :-

(1) sale of Goodwill (exception to sec 27)

→ seller of goodwill may agree with buyer.

→ Not to carry on similar business

→ within specified limits

→ limit and conditions must be reasonable.

(2) Outgoing Partner agreeing not to carry on similar business with specified limit or specified period.

(sec 36 of I PA 1932) - Jo company chod ke ja rahi hai unko rok sakte hai business karne se.

(3) Agreement of service :- (jaha job kar rahi hai vaha ka business huni nahi kar sakte)

→ breach karna

(4) Agreement in restraint of legal Proceedings (section 28)

→ the one by which any party there to is.

→ restricted absolutely.

→ from enforcing his right through court.

OR

→ Which limits usual period for starting legal proceeding
 ke bhi contract ke dwara hum iski ko rokne hai
 cont mee janne se vo void contract hai.

* exceptions

- ① Agreement to subject dispute to arbitration And
 only amount awarded by arbitration is recoverable
 is valid contract. high court banne ke kabil hai
- ② Dispute / question already arise or which may arise
 in future can be referred.

Note :- It is valid and agreement must be in writing.

⑤ Agreement - the meaning of which is uncertain (see 33)
 → However if meaning is capable of being made
 certain, agreement is valid.

Imp

shart lagana.

⑥ Wagering Agreements (section 30)

- Agreement involving payment of sum of money upon
 determination of an uncertain event.

* Essentials of wages.

- ① Promise to pay money or money's worth
- ② Promise → conditional on uncertain event.
- ③ each party - must stand to win or lose.
- ④ common intention of agreement → Bet.
- ⑤ Parties have no interest in event except for stake.

* Transactions similar to wagen (gambling)

- ① Lottery transactions.
- ② crossword puzzles & competitions.
- ③ speculative transactions.
- ④ Horse Race transactions.

* Effect of wagering agreements: Wagering agreements are void but not illegal. However in Maharashtra and Gujarat wagering agreements have been declared illegal.

* Suit to recover money deposited under wagering agreements: money deposited with a person (called stake holder) to be paid to the party winning upon a wager cannot be recovered by the winner. on the other hand, the loser can recover his deposit from the stakeholder. But where the stakeholder pays the money to the winner, the loser cannot recover it from him.

* Exceptions similar.

• Transaction resembling with wagering transaction but are not void (valid)

- ① Chit fund (kitty parties)
- ② commercial transactions or share market transactions.
- ③ Games of skill and Athletic competition.
- ④ A contract of insurance. (KBC)

* Settlement of Price.

Intention of the parties is to settle the price right from the beginning.

↓
wager

↓
void-ab-intio

Intention of the parties it was to deals in the good but later on their was an settlement of price.

valid

Spiral



★ Collateral Transaction :- The validity of collateral transaction can not be challenged because the main contract which is a wager and have void .
 Eg. in a wagering contract the broker is entitled to collect his brokerage.

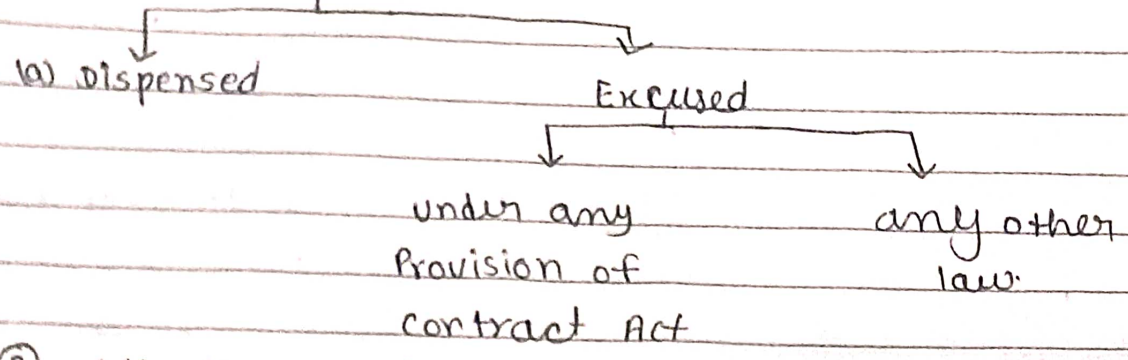
<u>Basis</u> legal or illegal	<u>Insurance</u>	<u>wagering</u>
<u>Beneficial for Public</u>	✓	opposed to Public Policy
<u>Indemnity</u>	✓	✗
<u>Interest</u>	Insurable	No interest except for stake.
<u>Protection of subject</u>	Both parties Interested	only one party interested.

UNIT : 4 Performance of a contract

4.1 Obligations of parties to contracts (section 37)

- ① Parties to contract must either
 - 1a) perform or
 - 1b) offer to perform
 } reflective promise

② No [Performance]



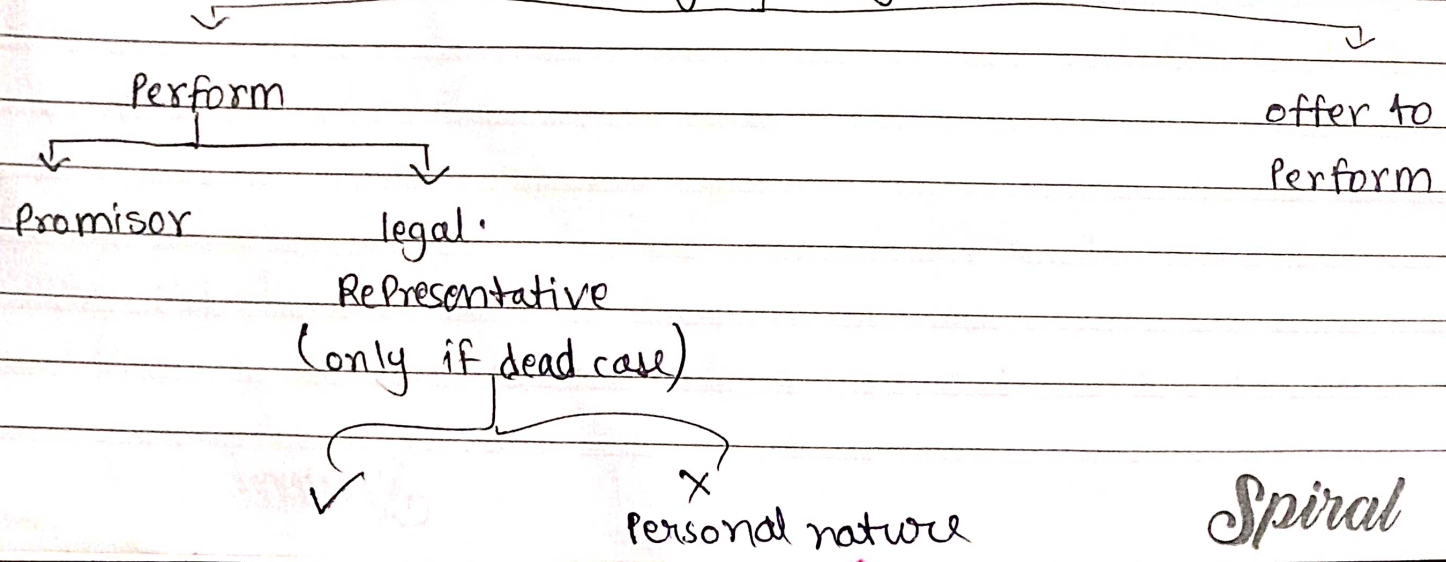
- ③ obligation continues even after death of Promisor
 - Representative of promisor will be bound by promisee
 - Unless otherwise agreed.

• Exceptions :-

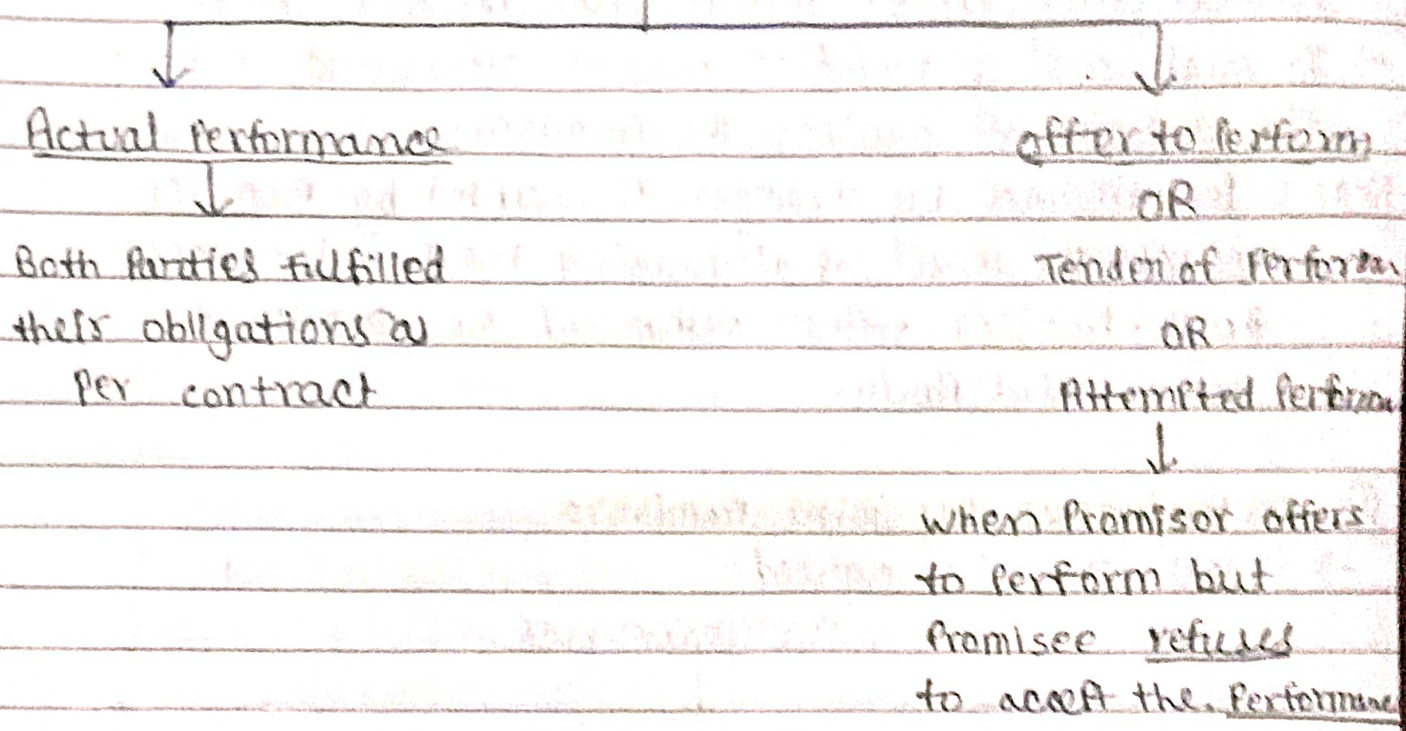
- a) Involves personal skill of promisor
- b) No provision in contract.

Section 37

contract
↓
legal obligation



Performance



4.4 By whom a contract may be performed (section 40, 41 and 42)

① only by promisor

- 1.76

- (a) if contract shows the intention of the parties that any promise contained in it should be performed by promisor himself.
- (b) in most cases :- it involves personal skill.
- (c) where promise is based on personal confidence between the parties.

② By the promisor or other.

case other than ①

- promisor himself
- His representatives or
- other competent person employed by promisor i.e representative or agent.

③ Performance of Promise by third party [sec. 41]

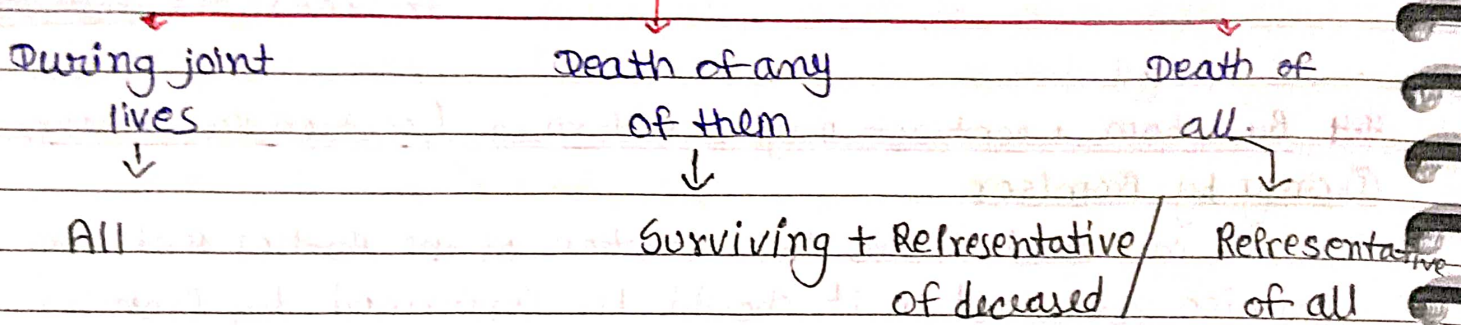
- Promisee may accept performance by third party
- In such case ; Promisee cannot afterwards enforce the performance against the promisor.

Note:- Performance by stranger if accepted by promisee produces the result of discharging the promisor even though promisor neither authorised nor satisfied act of third party.

④ Performance by joint promisors

→ unless otherwise agreed.

Performance



4.5 Distinction between Succession and assignment

	<u>Succession</u>	<u>Assignment</u>
Nature	Succession occurs by the process of law (i.e. compulsory by law).	Assignment occurs at the wish of the parties (i.e. voluntary in nature)
Transfer	Both the burden and benefits attaching to the the contract are transferred to legal heirs.	In assignment, only the benefit of the contract can be assigned.
Liability	The person who succeeds is liable only to the extent of properties inherited by him	⊙ There is no question of liability of the assignee as only benefits are assigned.

Eligibility	A successor must be a family member	Assignee can be any person.
Example	on death of father son succeeds his estate; but he is liable to the extent of his estate received	A assigns his right to recover money from B to C.

402 and 403

Non Performance / Part Performance and non-Acceptance

	Default by Promisee	Default by Promisor
	Refusal to accept Performance (Section 38)	Part Performance (Section 38)
Default	Promisee	Promisor
Description	Refusal to accept	Part Performance
Situation	a) Promisor offered to perform his promise i) to the promisee OR (ii) one of joint promisee AND (b) promisee refused to accept performance	a) promisee ready to accept the performance by promisor but. (b) promisor refused perform OR disabled himself from performing promise in completeness
Effect	a) promisor not responsible for non-performance b) promisor does not lose his right under the contract	(a) promisee may put an end to contract (b) where promisee expressly or impliedly consents for continuance he cannot put an end. (c) promisee is entitled for damages for non performance

4.6 Liability of Joint Promisor and joint Promisee 1.7.8

① Devolution of joint liabilities (obligations to perform joint promises): (section 42)

> Devolution means passing over from one person to another.

> When two or more persons have made a joint promise, they are known as joint promisors, unless a contrary intention appears from the contract; all joint promisors must jointly fulfill the promise. If any of them dies, his legal representative must, jointly with the surviving promisor, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.

• The rules regarding performance of joint promises are:

a) Anyone of the joint promisors may be compelled to perform.
sec 43 Ex :- A, B and C jointly promise to pay Rs 3000. I may compel either A or B or C or any two of them to pay him Rs 3000.

(b) Right of contribution:

Ex :- A, B and C are under a joint promise to pay Rs 3000. A is compelled to pay the whole. A can recover Rs 1000 each from B and C.

Note :- If any one of the joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such defaulting in equal share.

(c) Release of joint promisor: (section 44)

-> when two or more person have made a joint promise a release of one such joint promisors by the promisee

does not discharging the other joint promisor is responsible to the other joint promisor or promisors

② devolution of joint rights : [sec 45]

→ when a person has made a promise to two or more persons jointly these persons are known as joint promises.

4.7 Time and Place for Performance of the Promise - 1080

① Time for performance of promise, where no application is to be made and no time is specified - [sec 46]

→ Agar contract me koe specific time or notice nahi diya hai tab uss contract ko reasonable time per performe karna hai depends upon facts of the case.

② Time and place for performance of promise, where time is specified and no application to be made - [sec-47]

→ Time specified hai contract me lekin koe notice nahi hai to hum usse usual hours of business me perform karna hai.

10:00 to 7:00 → depend upon the business to business
agar business hours me nahi hai to hum use reject kar sakte hai

③ Application for performance on certain day to be at proper time and place - [sec-48]

→ Promisee ki duty hai ki promisor ko batana / his din or his samay or his place par aana hai promise ko perform karne ke liye.

(4) Place for the performance of promise, where no application to be made and no place fixed for performance - [sec. 49]

→ koe place nahi ~~h~~ bataya hai to hum promise ko reasonable place par jaake perform karina hai

(5) Performance in manner or at time prescribed or sanctioned by promisee - [sec. 50]

→ Agar dalke contract "kuch" kehta toh dalke kuch hi sunna hoga

4.9 Appropriation of Payments - 1.85

(1) Application of Payments where debt to be discharged is indicated [sec. 59]

→ Application of money where indicated → as per debtor indication.

(2) Application of Payments where debt to be discharge is no indicated (sec. 60).

→ Application not indicated

→ creditor may apply to any law full debt.

(3) Application of Payment where neither party appropriate [sec. 61]

→ No act done by anyone

→ apply chronological order (order of time)

→ similar day → proportionately.

ek hi jan vaada karne to use Promise bolte hai.



wada ke badle
wada milta hai wada
reciprocal promise bolte hai

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4.8 Performance of Reciprocal Promise

(i) Promisor not bound to perform unless reciprocal Promise ready and willing to perform - [sec-51]

⇒ ek haath se lena dusre haath se dena (saath-saath)

→ Same wala ready nahi hai to Promise kaise perform nahi ho sakta.

→ A or B ne contract kiya A goods deliver karne or B paise dega jab tak B goods deliver karne ke liye paise nahi dega tab tak goods kaise deliver hoga.

(ii) order of performance of reciprocal Promises :- [sec-52]

→ Pehle tum kuch karo fir hum kuch karenge.

Eg:- Pizza ki jab tak delivery nahi hoti tab tak hum use paise nahi dete Pizza pehle aayega tab na hum paise denge or same hotel me hum order karenge khana fir khayenge tab paise denge. khane se pehle paise nahi dete.

(iii) liability of party preventing event on which the contract is to take effect - [sec-53]

→ do person ke bich me contract ho raha hai or ek party ko roka ja raha hai Promise perform karne us case me party contract ko void bana sakta hai or vo losses bhi recover kar sakta hai.

(iv) Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises [sec-54]

→ Hamara kaam depend rehta hai promisor par.

Promise perform hoga tab naa reciprocal promise hoga.

→ Pehle aap perform karoge tab hum use mana karu.

Paayenge naa, aap perform hi nahi karoge to hum

kaise perform karenge / agar aap perform nahi karde

uske liye aalko hame compensation dena hoga or losses bhi

eg :- A or B ne contract kiya A → B ko bolta hai tu mujhe

diamond ka ring banake de Jo mene design bataya hai

use hisab se meek mahine baad lena aavunga B apna

paisa kharch karke diamond ring bana deta hai lekin

A lena se mana kar deta hai vo apna promise

perform nahi karta - B →

Point ③ ka example → A or B contract karite hai

A → B ko bolta hai kuch kaam karne 1000 rs

me or B ok bolta hai fir A mana karita hai contract

voidable hai B ke liye or vo compensation bhi le sakte hai

(V) Effects of failure to perform at a time fixed in a contract in which time is essential [section 55]

→ contract - Time essential element hai → or vo time pe

perform nahi hoti to hum contract ko - rescind kar

sakte hai or damages bhi claim kar sakte hai.

→ contract becomes voidable at the option of the promisee.

⇒ eg. shaadi ke liye jewellery ka order diya tha vo shaadi

ke din se pehle nahi aata to hum contract ko

rescind kar sakte hai or damages bhi claim kar sakte hai

(a) Effect of such failure when time is not essential.

→ agar time essential element nahi hai contract me to

vo valid contract hota hai or vo voidable nahi hota
 lekin hum compensation le sakte hai or losses bhi
 recover kar sakte hai.

(b) Effect of acceptance of performance at time other than
 agreed upon:

→ agar promisee waive off karta hai matlab usse maaf
 karke hai promise ka performance accept kar leta hai
 us case me vo compensation or losses claim nahi
 kar sakta or contract voidable nahi ho sakta kyuki
 usne accept kar liya promisee ka performance late time par
 bhi

(vi) Agreement to do Impossible Act [sec 56]

① Initial impossibility (impossibility existing at the time
 of contract):

→ shuruwat se hi impossible tha (void - ab initio)
 ex :- make ~~dead~~ dead person alive

(a) If know to the parties → void

ex :- ~~A or B contract~~ B promise karke hai ki agar aap Indian
 ocean from mumbai to Aden swim kar loge ek week
 me to vo 50000 Rupees dega

(b) If unknown to the parties → void

ex :- A or B contract karke hai A → B ko brown horse
 bechega Rs 50000 me lekin dono ko pata nahi hota
 ki horse agreement ke pehle hi mar gaya
 also agreement void hote hai.

(C) If known to the promisor only → void + damage claim

Ex :- A → B ko redmi ke phone apple ka sticker lagaker bechta hai • A ko pata rehta lekin B apna diligence use karta to vo nahi khridta B khrid leta hai fir B → A se uske losses recover kar sakta hai.

② subsequent or supervening impossibility (Becomes impossible after entering into contract.

- • Pehle valid hota hai lekin kuch ghatna hone ki wajah se vo void ho jata hai baad me.

Ex :- hamne Plastic bags bechne ka deal kari • lekin Plastic bags banned kar diya government ne to ab hum perform nahi kar sakte.

⑦ Reciprocal Promise to do certain things that are legal and also some other things that are illegal - [sec-57]

→ A or B contract karite hai, A → B ko house sell karta hai 50000 me agar B gambling ke liye use karega to A 75000 charge karega.

→ isme jo ghar sell kiya or B ne 50000 diya ye valid contract tha.

→ lekin jo A ne 75000 manga B se gambling ke use ke liye vo unlawful contract tha isliye ye contract void hoga.

⑧ 'Alternative promise' on branch being illegal - [sec-58]

→ A → 100000 → B

← 1000 kg rice → valid contract

OR

100 kg drugs → void contract.

4.10

Contracts, which need not be performed - with the consent of both the parties :-

① Effect of novation, rescission, and alteration of contract [sec. 62]

a) Effect of novation :- Parties to a contract agrees to 'substitute a new contract for old contract'

- It may take place.
- between same parties * Parties have changed
- OR * terms are the same
- different parties

Note :-

- ① Novation must be made with mutual consent of all the parties to original contract.
- ② original contract rescinded

(b) Rescission :- (cancellation)

- when parties to a contract agrees to rescind it, contract need not be performed.
- No new contract comes into existence.

(c) Alteration :- contract me kuch change karna

- parties are the same
- terms have changed (major)

② Promises may waive or remit performance of promise (sec. 63)

→ remit the whole or part of promise.

[OR]

→ Extend the time of performance

[OR]

→ accept other satisfaction.



② Restoration of Benefit under a voidable contract [sec 64]
 → aggrieved party job contract ko rescind karnega to use uska property mil jayega or badle m jo use mila hoga vo use btard hoga.

① Obligations of person who has received advantage under void agreement or contract that becomes void (sec 65)

Provision :-

When an agreement -

→ discovered to be void.

OR

→ when a contract becomes void

• Any person who has received any advantage

- under such agreement or contract.

→ is bound to restore it.

→ To the person from who he received.

Ex :- A → B ko 1 lakh pay karata hai. B ko A ke daughter se shadi karini hogi. lekin C mar jati hai promise ke time par. ye agreement void, lekin B must relay A Rs 100000

③ Communication of Rescission [sec-56]

→ Rescission must be communicated to the other party

→ In the same manner as a proposal is communicated under section 4 of the contract Act.

→ Similarly, a rescission may be revoked in the same manner as a proposal is revoked

③ Effects of neglect of Promisee to afford Promisor reasonable facilities for performance. [sec 67]

→ If any Promisee neglects or refuses to afford the Promisor reasonable facilities for the performance of his promise, the Promisor is excused by such neglect or refusal as to any non-performance caused there by.

→ reasonable facilities dena hai.
 → Ex: If student refuses to learn, the teacher cannot be held liable for not teaching.

4.11 Discharge of a contract

① Discharge by performance :-

- a) Actual Performance
- b) Attempted Performance

② Discharge by mutual agreement :-

- | | | |
|---|---|--|
| <ol style="list-style-type: none"> (a) Novation (b) Rescission (c) Alteration (d) Remission | } | <p>section 62 of the Indian contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.</p> |
|---|---|--|

③ Discharge by impossibility of performance :-

- ① Initial Impossibility
- ② Supervening impossibility.
 - an unforeseen change in law

the destruction of the subject matter essential to that performance

- > declaration of a war (section 56)
- > the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing.

④ Discharge by lapse of time: If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and irrecoverable.

⑤ Discharge by operation of law: -> by death of the promisor or by insolvency.

⑥ Discharge by breach of contract:
-> Breach of contract may be actual breach of contract
OR
-> anticipatory breach of contract.

⑦ Promisee may waive or remit performance of promise:
-> a contract may be discharged by remission (sec 63)

⑧ Effect of neglect of promisee to afford promisor reasonable facilities for performance:
The promisor is excused by such neglect or refusal as to any non-performance called there by.



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⑨ merger of Rights :-

- When inferior rights and superior rights meet in one and the same person.

→ merger $\begin{cases} \rightarrow \text{inferior} \rightarrow \text{vanish} \\ \rightarrow \text{superior} \rightarrow \text{exist.} \end{cases}$

Unit - 5 :- Breach of contract and its Remedies

↳ Breaking of an obligation

Actual Breach of contract

→ Party fails or refuses to perform his promise on

- (1) Due date of performance or
- (2) During course of performance
- Refusal or failure may be express or implied

Anticipatory Breach of contract

(a) When a Party declares his intention of not performing the contract before performance is due by

⇒ Refusing to perform his promise.

OR

→ By his act disabling himself from performing before due date of performance

(b) Expressly or impliedly

Remedies under anticipatory breach.

Aggrieved party → Party not at fault may.

1. Put an end to the contract and treat the anticipatory breach as actual breach.

(a) Promisee is excused from performing or further performance.

(b) Promisee can sue promisor immediately without waiting till date of performance

(c) Amount of damage = contract price - market price

2. Choose to keep the contract alive till date of performance

(a) Promisor may choose to perform and promisee is bound to accept it.

- (b) contract becomes void if some event happens outside the power of Promisor and Promisee will be discharged
 → Promisee shall have no right of action against Promisor
- (c) Amount of damage same as above

Suit for damages [sec 73]

1. Aggrieved party is entitled to receive compensation for loss which

(i) Arise naturally in the usual → (ordinary damage) course of things from such breach.

(ii) which are the parties know to → (special damage) be likely result of such breach.

2. No compensation for remote loss or indirect loss.

Kind of damage

1. Special damage -

where

- a party to a contract receives
- affecting the contract.
- He will be liable.
- not only for natural damages of breach
- but also for ~~special~~ special damages.

2. ordinary damage.

3. Vindictive or exemplary damage.

Purpose :- To punish defendant and not compensation when awarded.

(a) Breach of promise to marry.

(b) wrongful dishonour of cheques

manner of measuring

• depends upon severity of shock to the sentiments of aggrieved party :-

Rule :- smaller the amount of cheque, larger will be the amount of damage.

4. Nominal Damages-

→ Plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage.

→ It is awarded just to establish the right for the breach of contract.

→ The amount may be a rupee or even 10 paise

5. Damage for deterioration caused by delay :

(a) when goods get deteriorated due to delay damages can be recovered without notice.

(b) deterioration means.

→ Physical damage.

→ loss of special opportunity.

6. Prefixed damages :-

liquidated damage

penalty.

→ when a sum is named in a contract as amount to be paid in case of breach.

→ Aggrieved party

- entitle for reasonable compensation not exceeding

the amount (section 74)

Note: court will never allow more. But the court may allow less.

Exception :- Bond given by a person in ~~the~~ public duty shall be liable to pay the whole sum mentioned there.

Other remedies :-

1. Rescission of contract :

contract → broken

other party → may treat contract as rescind

Effect :- Party not in fault is absolved from his obligation and entitled for compensation for any change

2. Quantum merit

As much as merited (earned)

General Rule :-

Unless a party performs his performance in full, he cannot claim reformation from other party.



Unit - 6 Contingent and quasi contract.

Contingent contract [section 31]

meaning of happening of event with example.

Buyer :- I want to buy 1 tonne rice for Rs 500000

seller :- Yes, I will sell you rice if my ship carrying rice arrives in India.

→ main contract ←

sale of Rice collateral event :- ship Arrival in india

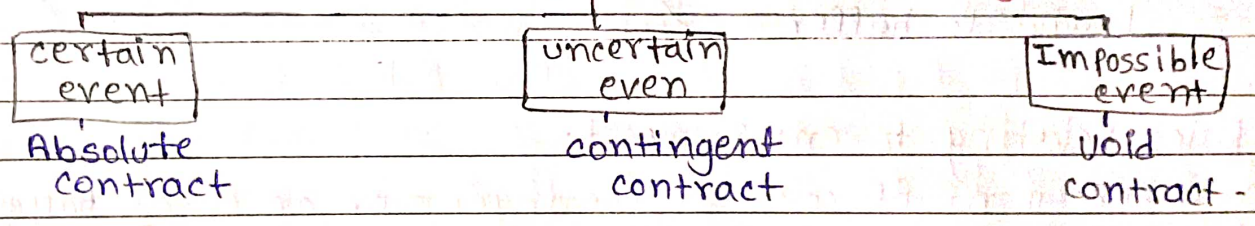
This is a contingent contract as contract depends on happening of an uncertain event.

Defination :- [sec 31]

A contract to do or not to do if some event collateral to such contract does or does not happen.

ship arrives

Contract dependent on happening of →



collateral event:

Neither performance directly promised as part of contract

Nor the whole of the consideration for a promise.



Essentials of a contingent contract.

(a) The performance of a contingent contract would depend upon the
 → happening or non-happening ↔ some event }
 or } Precedent
 condition } subsequent.

(b) Event referred must be collateral
 → event must not be a part of contract.
 event —→ neither performance
 → nor consideration

(c) contingent event should not be a mere will of the Promisor.
 will + uncertain event = contingent contract.

(d) Event must be uncertain
 → when event is certain }
 or } not contingent.
 bound to happen }

Rules Relating to enforcement.

(a) enforcement of contract contingent on an event happening.
 [agar ship Andia nahi aayi too seller rise nahi dega]

(b) enforcement

(b) enforcement of contract contingent on event not
 happening [sec 33]

(c) A contract would cease to be enforceable if it is contingent
 upon the conduct of a living person when that living person
 when that living person does something to make the 'event'
 or 'contract' as impossible of happening [sec 34]

- (d) contingent on happening of specified event within the fixed time [sec 35]
 (e) contingent on specified event not happening within fixed time [sec 36]
 (f) contingent on an impossible event (sec 36)

Difference b/w contingent and wagering contract

Basis	contingent contract.	wagering contract
meaning	A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening	A wagering agreement is a promise to give money or moneyworth with reference to an uncertain event happening or not happening
Reciprocal promises	contingent contract may not contain reciprocal promise	A wagering agreement consist of reciprocal promise
uncertain event	In a contingent contract the event is collateral	In a the wagering contract the uncertain event is the core factor
Nature of contract	contingent contract may not be wagering in nature	A wagering agreement is essentially contingent in nature
effect of contract	contingent contract are valid	wagering agreement is void

Quasi Contracts

- quasi contract are based on principles of equity justice and good conscience.
- under certain special circumstances, obligation resembling those created by a contract are imposed by law, although the parties have never entered into a contract.

Such obligation imposed by law are referred to as 'quasi contract'

Salient features of quasi contract :-

- (a) In 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.
- (c) Thirdly, it is a right available not against all the work, but against a particular person or persons only so that in this respect it resembles a contractual right.

Cases deemed as quasi-contract :-

(a) claim for necessaries supplied to person incapable of contracting (sec 68) :-

→ If necessaries are supplied to a person who is incapable to contracting; the supplier is entitled to claim their price from the property of such a person.

(b) Payment by an interested person :-

→ A person who is interested in the payment of money

→ which another is bound by law to pay.

therefore pays it is entitled to be reimbursed by other.

(c) Obligation of person enjoying benefit of non gratuitous act

→ Plaintiff must prove

(i) that he had done act or had delivered thing lawfully

And

(ii) He did not do so gratuitously And (iii) other person enjoyed

the benefit.

case law :- Shyam Lal vs stat of UP.



(d) Responsibility of finder of goods.
→ If he takes it into his custody
→ he has some responsibility as bailee.

* Responsibilities :- [case law :- *Hollins vs Fowler*]
(i) To take proper care of property as man of ordinary prudence
(ii) No right to appropriate the good.
(iii) Restore goods if owner found.

(e) money paid by mistake or under coercion [sec 72].
- must repay or return it

[sales tax officer vs *Kanhaiyalal*]
Seth Khanje vs national bank of India
money paid coercion is also recoverable.
(i) Oppression (ii) extortion (iii) or such other means.