

## UNIT - 3 : Other Essential Elements of a Contract

### 3.1 \* Capacity to Contract

Competence of the party to make contract.

\* Who is competent? PPT 1.4.

- Major [A] Sec 11 → completed 18 years of age.
- Sound Mind [B] Sec 12
- Not 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 karne se to usse nahi maan jayega kyun ki n-azar me)

Case law :- Mohori Bibi vs. Dharmo Das Ghose

Decision :- Mortgage by minor was void.

B was entitled for repayment.

② No Ratification after attaining majority: PPT. 1.14  
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 sakta hai).

↑ request  
 (4) A minor can always plead minority: PPT. 1.13

→ Rule of estoppel cannot be applied against him

→ He is allowed to plead minority in defence.

(Koe minor galti 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. [sec 68]

→ 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 no 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.

(minor agent ho sakta hai lekin agar vo kuch galat karega to principal liable hoga)  
 ⑩ Minor can be an agent:  
 → Minor can act as an agent  
 → But he will not be liable to his principal 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 koe transaction kiya or paise nahi diya hai to guardian liable nahi hai iske liye. minor liable hoga)

⑫ Joint contract by minor and adult:  
 → the adult will be liable on the contract and not the minor.

Case law:- Saip Das vs. Ram Chand

(jab minor or major milke kisi ke saath contract karte hai or minor pay na kare to 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 to)

⑭ Minor as Shareholder: ~~Civil Wrong~~

→ 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 shares 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.

### 3.2 \* Free Consent [sec 14]

Consent → Section 13

Consensus-ad-idem → agree upon the same thing in the same sense.  
(meeting of minds)

### 3.3 Elements vitiating Free Consent

#### I Coercion [Section 15]

Act

- a) Committing  
or  
threatening to  
commit

} Any Act  
forbidden  
by IPC  
Indian Penal Code

with the.  
c) Intention of  
causing any  
person to enter  
into an  
agreement

OR

- b) Unlawful detaining  
or  
threatening to detain

to keep in custody

} Any property to  
the prejudice of  
any person

#### \* Effect of Coercion / Consequences [Section 19]

- a) Voidable at the option of the aggrieved party.
- b) Repay money or thing obtained under coercion.  
(Section 72)

\* Note:-

- 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]

- 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 <sup>jo dhamki deta hai</sup>
  - 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 :-

### a) 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 of
  - age → mental or
  - illness → bodily distress

### d) Unconscionable bargains:

- Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.
- (zyada interest charge kar raha hai jo market se bhi high hai)
- e.g. lender and customer

### 3. The object must be to take undue advantages:

- object to take advantage of the other.

### 4. Burden of proof:

- burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other

\* 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 vs. Sami-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 terms as court deems fit.

**III. Fraud [Section 17]**

• Fraud means & includes

Commission of following acts	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) ACTIVE CONCEALMENT of fact by one having knowledge of fact	b) by any person with the connivance of party to contract or
c) Promise made without an intention of performing it.	c) agent of party to contract



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

- Rescind the contract in reasonable time.
- Sue for damages.
- 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

Word vs. Hobbs

Silence = Fraud.

### 1. Duty of person to speak :-

- ~~where~~ Where party stand in Fiduciary Relationship:
- Contracts of Insurance
- Contracts of marriage
- Contracts of family settlement
- Share Allotment contracts

Memory Trick :-

Relationship share karne se marriage hoti 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

#### IV. Misrepresentation [Section 18]

Misrepresentation means and include -

- 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 repudiate 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 the 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.

## V. 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

Foreign law.

→ 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.

→ Sec. 21:

Treated as a mistake of Fact

→ Agreement is void.

→ excusable

## Mistake

### Mistake of fact

#### Unilateral

- Only one party is under a mistake about —
  - subject matter, or
  - Expressing or Understanding terms or legal effect of agreement
- Unilateral mistake is not allowed as a defence to avoid a Contract.
- However, Contracts under unilateral mistake are void in certain cases.

#### Bilateral

- **Section 21:** Both parties are under a mistake as to a matter of fact essential to agreement.
  - There is no agreement as there is absence of consensus. Hence, the agreement is void.
- Bilateral mistake may relate to —
  - A. subject Matter —
    - Existence, Identity, Quantity, Quality, Price, Title.
  - B. Possibility of Performance
    - Physical impossibility
    - Legal Impossibility
- But erroneous opinion as to value of subject matter is not a Mistake of Fact.

### 3.4 Legality of object and consideration

- Which considerations and objects are lawful, and those which are not (Section 23)
  - The consideration or object of an agreement is lawful, unless—
    - 1 It is forbidden by law; or
    - 2 Is of such a nature that, if permitted, it would defeat the provisions of any law; or
    - 3 Is fraudulent; or
    - 4 Involves injury to the person or property of another, or
    - 5 The court regards it as immoral; or
    - 6 Opposed to public policy.
  - In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.
  - Section 10 of the Indian Contract Act provides for the legality of consideration and objects thereto. Section 23 of the act also states that every agreement of which the object or consideration is unlawful is void.
  - The following is an example of the agreement which is void because of unlawful consideration.  
example 39: A promises to obtain for B an employment in the public policy services and B promises, in return, to pay ₹ 100,000 to A. The agreement is void. The consideration, being opposed to public policy, is unlawful.

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

i. When consideration or object is forbidden by law:

→ Vo has ~~contract~~ jo karun ke nazari me prohibited/ consideration or object banned hai

→ contract ka object (irada) or consideration prohibited hota hai

ex. A jo hai vo B ke saath chori ka contract karta hai. To ye contract forbidden by law hai or 'aise' contract void hote hai.

ii. When consideration or object defeats the provision of law: violate/todna

→ aise contract jo lawful hai lekin karne ka tarika galat hai / Rule todna / koe act ka section ka paalon 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:



wrongful harm, criminal

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Date

iv. When consideration involves injury to the person or property of another:

→ kisi ko ~~pa~~ ya uske property ko harm karna ye unlawful 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 unlawful hai or void hai. void-ab-initio hai

v. When consideration is immoral <sup>↑ hamare vasul ke against</sup> or <sup>↑ against principle</sup>

→ aisa ~~contract~~ len-den nahi hoga chahiye contract me jo kisi ke vasulo ke against ho.

ex. jaise ki kisi <sup>ko</sup> paisa deke kisi ki shaadi tod vana

→ paisa deke galat kaam karvana vo unlawful hai or void-ab-initio hai.

vi. Where consideration is opposed to public policy:

→ aise consideration jo against public policy hai

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

① Trading with enemy <sup>jab nya trade</sup>  
→ dusmaan ke saath agreement karna ye against hai public policy ke

ex. china ke saath trade karna jab unse hamara war ho raha ho ye against p.p ke.

## ② Stifling Prosecution:

- kabhi shuru hone se pehle hi khatam kar dena
- case file karne se pehle hi case over kar dena
- kisi ko court me jaane se rokna.

eg. A ne B ka murder kar diya or C witness tha is case ka lekin A jo hai vo C ko case na karne liye darata hai dhamakta hai, <sup>or paise dekar chup rehne bolta hai</sup> jo public policy ke against hai lekin vo C chup rehta hai to valid contract ho jayega or agar vo

## ④ Trafficking related to Public offices and titles:

- koe public service ke post ko paisa deke uski post apne naam karna ye against hai public policy ke.

ex. Jaise vaise agreement jisme me paise dekar mujhe Padma Vibhushan reward देने bol rahi hu aise agreement void hote hai.

ex. Aap forest department ke officer ko paise diye taki vo apna job uske son ke naam karde.

## ⑤ Agreements tending to create monopolies:

- single sellers create karna

ex. Mac.D & Burger King do ne baat liya hai country ko business karne ke liye. to aise agreement opposed to public policy hai or void-ab-intio hai.



### ⑨ Consideration Unlawful in Part:

→ Consideration ek taraf se Unlawful hai to vo agreement void-ab-intio hai.

ex. hum ghar khrid rabe hai B se or B ko hum drugs de rabe hai

## 3.5 Void Agreements.

Expressly declared Void Agreements.

- 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 ~~un~~ unlawful in parts (Sec 24)
- 5 Agreement made without consideration (Sec 25)
- 6 Agreement in restraint of marriage (Sec 26)
- 7 Agreement in restraint of trade (Sec 27)
- 8 Agreement in restraint of legal proceedings (Sec 28)
- 9 Agreement the meaning of which is uncertain (Sec 29)
- 10 Wagering Agreement (Section 30)
- 11 Agreements to do impossible Acts (Section 56)

① Agreement in restraint of marriage. (Section 26)

- major ko rok<sup>nahi</sup> sakte hai bhale vo sign bhi karde
- other than minor.

② Agreement in restraint of trade (Section 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 Indian Partnership Act, 1932)

(jo company chod ke ja rahe hai onko rok sakte hai business karne se)

3) Agreement of service:

(jaha job kar rahe hai vaha ka business hum nahi kar sakte)

③ Agreement in restraint of legal proceedings (Section 28):  
 → the one by which any party thereto is  
 → restricted absolutely  
 → from enforcing his right through court

OR

→ which limits usual period for starting legal proceeding.  
 koe bhi contract ke dwara hum kisi ko rokhte hai court me jaane 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 judge banne ke kabil hai.

② Dispute/Question already arise or which may arise in future can be referred.

Note: It is valid & agreement must be in writing

④ Agreement — the meaning of which is uncertain (Sec 29)

→ However if meaning is capable of being made certain, agreement is valid.

Imp

⑤

## 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 Wager (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 & Gujarat wagering agreements have been declared illegal.

• Suit to recover money deposited under Wagering Agreements: Money deposited with a person (called stakeholder) 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

- 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 (KBC)
- ④ A contract of insurance.

### \* 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 deal in the goods but later on there was an settlement of price

↓  
Valid

- \* **Collateral Transaction**: The validity of collateral transaction cannot be challenged because the main contract which is a wager & have void.  
Eg. in a wagering contract the broker is entitled to collect his brokerage



	Insurance	Vs	Wageeung
legal or illegal	Legal		Illegal & void
Beneficial for public	✓		Opposed to public policy
Indemnity	✓		X *
Interest	Insurable		No interest except for stake.
protection of subject	Both parties interested		Only one party interested.

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