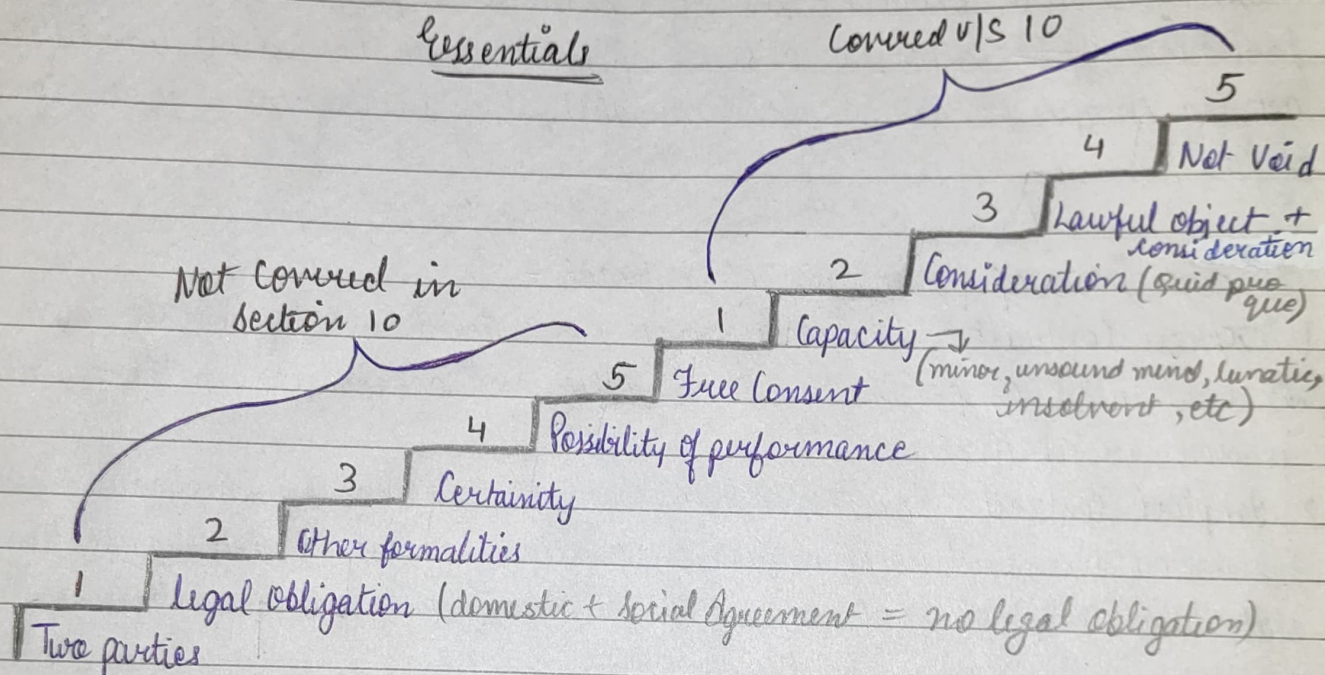


Indian Contract Act, 1872

Why - Transactions $\left\{ \begin{array}{l} \text{Cheating} \\ \text{Fraud} \end{array} \right\}$ stop (Documentary evidence)
When - 1st September 1872
Where - Whole of India



Types of Contract

On the basis of Validity -

1. **Valid Contract** - An agreement which is binding and enforceable is a valid contract. It must consist of all elements of a valid contract.
2. **Void Contract** - [Section 2(j)] A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
Void is not a contract it is an agreement.
3. **Voidable Contract** - [Section 2(i)] defines that, an agreement which is enforceable by law at the option of one or more parties and not at the option of other party it is a voidable contract.

Situations under which contract is voidable:

- Absence of free consent
- Prevention of a party by other party in performing the contract.
- When work is not performed within specified time.

4 Illegal Contract - It is not a contract it is a agreement forbidden by law. All illegal agreements are void but all void agreements are not illegal.

Any collateral contract to the illegal agreement is also void.

5. Unenforceable Contract - where a contract is ~~the~~ formed under some technical ~~defect~~ defect i.e absence of writing or barred by limitation act (eg cheque postdated i.e after 3 months), it is unenforceable in the court of law.

On the basis of formation of Contract -

1. Express Contract - Contracts which are entered into by words spoken or written i.e as per section 9 the offer and acceptance in the promise is done in words.

2. Implied Contract - These contract come into existence by implication i.e by action or conduct of parties or regular course of dealing, section 9 states that implied contracts are formed without words spoken or written.

3 Tacit Contract - Tacit means silent. Tacit contracts are inferred through the conduct of the parties, example a ATM machine, use of hammer in auction, etc.

4 Quasi Contract - Quasi is not a contract it is a obligation created by law. It is the contract which the law creates in the absence of any agreement based on the principal of unjust enrichment.

In this contract both parties have no intention of entering a Contract.

5 E-Contracts - Contracts which are formed by electronic data interchange are known as e-contracts.

On the basis of Performance -

1. Executed Contract - where consideration or forbearance from an act is received from both the parties to the contract it is executed.

2 Executory Contract - where consideration or forbearance is to occur at a future date it is executory in nature.

Unilateral Executory
 where any of the party is yet to perform their end of the promise while the other has completed.

Bilateral Executory
 where both of the parties to the contract are yet to discharge the consideration in the contract, the same is bilateral executory.

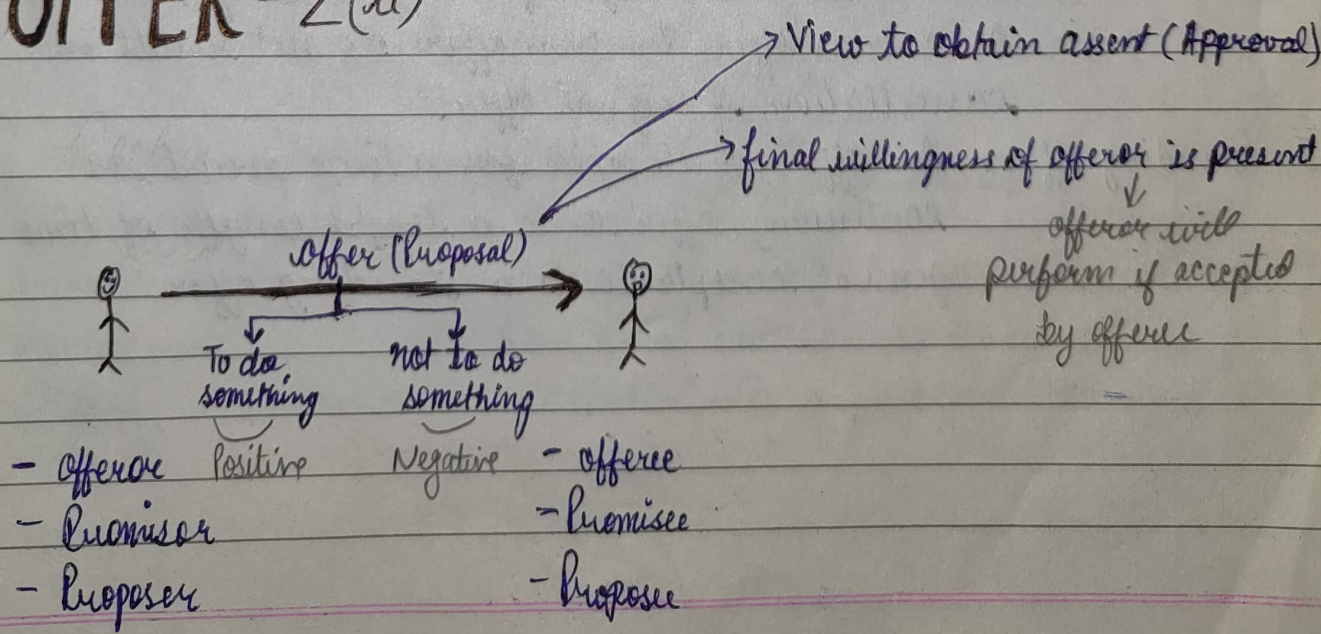
10 Valid essentials →

- 1 I - Introduction
- 2 O - offer & Acceptance
- 3 C - Consideration
- 4 C - Competent party
- 5 F - Free Consent
- 6 L - Lawful object & Consideration
- 7 V - Void Agreement
- 8 P - Performance
- 9 D - Discharge
- 10 B - Breach

Anonym -

Indian Oil Corporation wanted to set up [CFL] lights for which they took loan from SBI Bank & permission from Vice President

OFFER - 2(a)



Kinds of offer (on some basis)

To whom it is made?

General offer
(offer to general public)

Specific offer
(Target group)
eg-DTP code for
sign in Discount

How it is made?

Express
(offer given by
words written
or spoken)

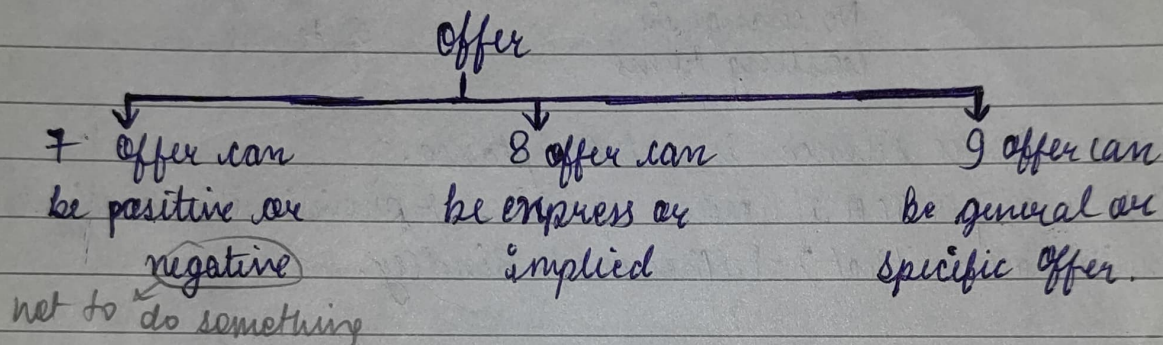
Implied
(offer given by
action, conduct,
dealing)

Types of offer

1. General offer - An offer which is made to public at large and is open for acceptance by any person is known as general offer.
CASE LAW: "Carl v/s Smokeball."
2. Special offer - Offer made to an ascertained person or a group of people together is known as special offer.
3. Counter offer - Counter offer or Bargain offer is an offer which is made to alter or modify the existing term of the offer. (i.e. - Bargain offer) In case of counter offer, original offer ~~is~~ lapse.
4. Cross offer - When two or more offer are made, which are, identical in all respects, made simultaneously to each other, without the knowledge of the other party, it is known as a cross offer. The cross offers do not result in cancellation of original offer.
5. Standing offer - An offer which open for a time period or continuing offer over a ~~length~~ length of time with general acceptance is a standing offer.

Essentials of Offer :-

1. Offer to create or result in creation of legal obligations
2. Offer needs to be communicated to offeree
3. Offer needs to be clear, definite and not vague. ^{not clear}
4. Offer is made with a view to obtain the assent (Approval) of the other party to whom offer is made.
5. The offeror can add terms & conditions to the offer.
6. Any mention of the fact that, no communication of acceptance shall amount to automatic acceptance is not valid.



10 What is an offer?

- Statement of intention to do something on a future date is not an offer.

Harvey v/s Face

Answer to a question is not an offer

Statement of price is not an offer

Invitation to offer

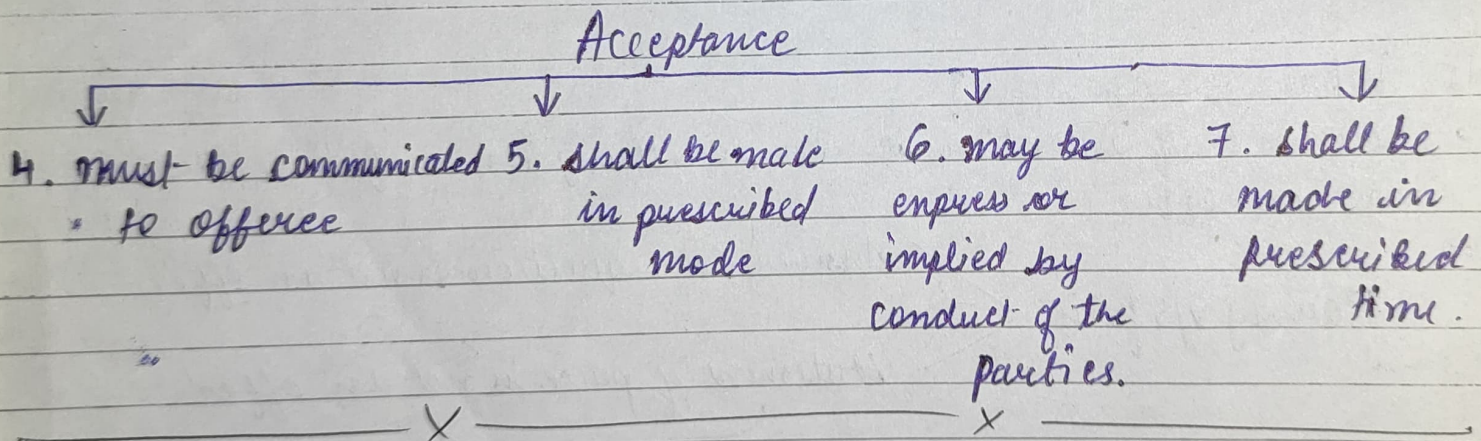
1. Shares in market (Prospectus)
2. Advertisement
3. Menu Cards
4. List price on clothes or other

It's an invitation to offer - An invite is not an offer it is a invitation to receive an offer, an invite does not have final willingness, hence can be cancelled. It's a precedent to offer.

Acceptance ^[U/S 2(b)] - It is giving assent to the proposal by the offeree, to create a promise i.e. a proposal when accepted becomes a promise.

Essentials of a valid Acceptance -

1. Offer shall be accepted by the person to whom it is made - Only for specific offer. (Beulton v/s Jones)
For general offer anyone can accept (Caril v/s ~~Smith~~ Smokeball)
2. Acceptance should be Unqualified and Absolute.
No change in existing terms & no ~~change~~ addition of terms.
3. ~~Acceptance~~ Mere silence is not Acceptance.
(Note: This is as per ICA if under specific Act provisions are different we will follow that) - Felthouse v/s Bindley.



Communication of offer & Acceptance -

1. Communication of offer: It is complete when it comes to the knowledge of person for whom it is made.
2. Communication of Acceptance: It must be reaches to person offered by conduct or by omission.

Note: If the letter of Acceptance is properly stamped and dated even if lost in transit OFFEROR is LIABLE.

Revocation of offer - It is complete when the letter containing revocation reaches before the letter of acceptance is posted.

Note: If revocation and offer reach at the same time revocation is absolute.

Note: If letter of revocation is received after the date when letter of acceptance is posted, then revocation is of no use and offer remains valid.

Revocation of Acceptance - An acceptance can be revoked when the letter containing revocation is posted by speed post and reaches the offeror prior to letter of acceptance.

Revocation (offer / Acceptance)

for sender

complete when he posts it in course of transit

for Receiver

complete when it comes to the knowledge of the other party.

Special Conditions

The offeror is bound by any special conditions which form the part part of the agreement made by offeror, whether read by him or not unless the same is unreasonable or ~~is~~ unlawful.

→ enforceable

Reasonable Conditions are applicable - Mukul Dutta v/s Indian Airlines

Unreasonable conditions are not applicable - Lily White v/s Manu Swamy

→ unenforceable

Lapse of offer -

1. Revocation of offer by a notice sent by a offeror, prior to the letter of acceptance posted by offeror.
2. Death or insanity of the offeror which is known to the offeror.
3. Lapse of time stated in the offer, where no time is stated at the expiry of the reasonable time.

4. Subsequent illegality, due to change in law or circumstances.
5. Non-fulfilment of any condition precedent to the offer, essential for the acceptance of the offer.
6. By counter offer, the original offer lapses.
7. ~~By~~ Where the offer is not accepted in the mode prescribed

Communication of Performance —

At times the acceptance of an offer involves performance of an act, unless otherwise provided for, such performance should be communicated to the offeror in order to establish the completion of Agreement.

Ex - Carlil v/s Smokeball

- 2(a) - offer
- 2(b) - Acceptance
- 2(c) -
- 2(d) - Consideration

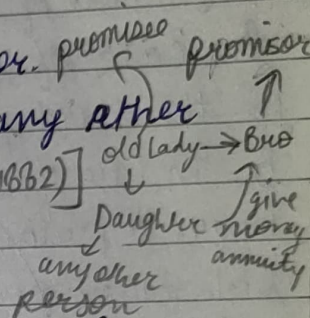
Something in Return
 → Quod Pro Quo - Latin term

Unit 2 - Consideration

Sec 2(d) - when at the desire of the promisor, the promisee or any other person, has done something or abstained from it or doing or abstaining from it or will ~~do~~ do or abstain from it, is the Consideration for the promise.

Legal Rules Regard Consideration -

- 1) The Consideration must move at the option of promisor.
- 2) The Consideration may move from the promisee or any other person on behalf of the promisee. [Chinnayya v/s Ramayya (1882)]
- 3) Consideration may be executed or executory.
- 4) Consideration may be past, present or future.
- 5) Consideration cannot be a performance of what one is legally bound to perform - (ex - a police officer asking for money in order to provide protection).
- 6) It is need not to be adequate - i.e it is not required to be of real value.
- 7) Consideration must be real and not imaginary or illusory.
- 8) It should not be immoral or against public interest.
- 9) It may or may not be monetary only - (i.e Consideration can be in kind ex - Scholarship).



Privity of Contract

The law of privity states that in a contract a person can be stranger to consideration but the stranger cannot sue the parties to the contract.

Exceptions -

1. In case of trust -

The beneficiary to the trust can sue the seller or the trustee even though he is not a party to the contract.

2. In case of family settlement -
where the terms of settlement are reduced to writing, all parties are to abide by the same even the ones who were not the participant of such settlement.
3. In case of marriage contract -
Any agreement entered for the benefit of the third party, where such benefit is not attained the contract can be repudiated by such party.
4. In case of assignment -
In case of assignment the benefit under the contract can be assigned to the third party unless it involves any personal skill.
5. In case of acknowledgement or Estoppel -
where a person by his conduct appoints another person as his agent such other person is prevented from denying of such responsibility.
6. In case of covenant attached to land -
where any conditions are attached to any property by a third party, en-government shall be equally liable to be followed by the successor whether or not duly discussed.
7. Contracts entered by agent -
Any contracts entered by the agent on behalf of the principal, the principal can sue the third party.

No Consideration - No Contract

The general rule is that every contract shall contain a consideration, contracts absent of consideration are void. The following are contracts formed under section 25 which are valid in Nature.

a) Natural Love & Affection -

where any contract is formed b/w

- parties in close relationships
- out of natural love & affection
- written
- registered under law

Such contracts are valid and enforceable under law.

2. Past Voluntary Services -
Any services provided voluntarily for which compensation is awarded to the promisee is valid provided that

- i) services are rendered voluntarily
- ii) Services are used by the promisor
- iii) promisor was in existence
- iv) the reward is intended as a compensation

3 Promisor to pay time barred debt -

Where any debt which is barred by limitation act, any promisory note in writing evidencing such debt, will ~~not~~ make the same legally recoverable.

4 Agency -

Agency does not required any consideration b/w principal & agent still valid.

5. Completed Gift -

Any gift which is legally made is valid and enforceable under law.

6. Bailment -

Transfer of possession when made without consideration is still valid and the bailee is responsible to take care of the goods and for any loss incurred to the bailor.

7. Charity

Any liability undertaken by a promisee as charity is legally enforceable under law and can be duly recovered by the promisor.

Unit - 3

Void ab Initio
Void from the
start

Void
Valid
↓ - due to event /
occur
Task - Impossible
↓
Void

Section 11 - Capacity to Contract -

It refers to the capacity or competence of the parties to enter under a contract.

Who is Competent to Contract?

- A person who is a major
- A person of Sound Mind
- A person not disqualified by law

a) Majority

- minor means a person ≤ 18 years of age
- Any agreement with a minor is Void-ab-Initio.

Nature of Minor's Agreement -

1. Any agreement with a minor is void-ab-initio
2. There is no ratification of minor's agreement i.e. a contract formed during minority cannot be enforced in majority.
3. A minor cannot be a party to the contract but can derive benefit under a contract i.e. he shall be eligible to be appointed as a beneficiary

4 Liability for Necessity -

Any necessaries provided in relation to health, education or funeral services to the minor, the same can be recovered from the estate of the minor i.e. only from his property.

5. Contract entered by a Guardian -

Guardian can enter contracts on behalf of minor unless those contracts involving use of immovable property.

6. Minor as Agent of Parents -

Any contract where the minor represents the parents in capacity of an agent, he shall render the ~~parent~~ parents liable for his acts.

7. Minor as a Partner -

A minor cannot be admitted as a partner in firm, but can be admitted to the benefit of firm.

8. Minor as an Agent -

If the principal is a person of sound mind i.e. capable of entering a contract, he shall be regarded as an agent and the principal shall be liable for all activities of the minor.

9. Minor cannot be an Insolvent -

A minor is not responsible and capable of contracting any debts nor he is responsible to engage in any contract where he is personally liable.

10. Minor & Adult Joint Contract -

In a joint contract b/w ~~to~~ minor & the adult member, the adult shall be liable for the contracted debts.

11. Minor as a Shareholder -

A minor is incompetent of contract hence cannot be appointed as a shareholder, however his guardian can be appointed in his place as a shareholder.

12. Minor can be the Principal ~~holder~~^{debtor} -

minor can be a part of a contract where liability is guaranteed by the surety who is capable of contract.

(Minor cannot be the Surety in Contract).

13. Minor can always plead for Minority -

A minor during any time under a contract can plead minority and deny payment of any liability related to the same, there is no rule of estoppel against the minor even if he falsely represents himself to be a major.

14. Minor liability for torts -

Tort is a civil wrong, any offence against public at large, in this case the minor will be held liable as this is outside the scope of contract.

b) Person of sound Mind

A person shall be treated of sound mind where he has the capability to -

- i) Understand
- ii) Rational (Sensible)
- iii) Judgement

of the content of such Contract and its effect on him.

Unsound Mind - Idiot (Permanently Unsound), Lunatic (fits of Unsound status), drunkard, intoxicated (drugs)

Any person with unsound mind and a ~~an~~ agreement with him is VOID -

c) Person Disqualified by law

Persons who are not allowed to enter into ~~into~~ contract as they are disqualified by law eg. alien enemy, convict, insolvent, ~~Foreigner~~ Ambassador, etc.

Section 13 - Consent

- Consent refers to parties in the Contract agreeing to the same thing in the same sense.
- It creates "consensus ad idem" i.e. meeting of the minds, i.e. both parties to the contract should have clarity of object and the purpose of the contract.

Section 14 - Free Consent -

exists when there is NO

- i) fraud
- ii) Misrepresentation
- iii) Undue influence
- iv) Coercion (force)
- v) Mistake

5/4/24

Section 15 - Coercion

Coercion is committing an unlawful act or threatening to commit a crime under Indian penal code or unlawful detaining or threatening to detain a person improperly to his prejudice by entering an agreement with such party.

Effect - The contract is voidable i.e. it is valid but can be declared void only when enforced by the aggrieved party.

Until such fact is proved the agreement is valid.

Threat to commit a suicide to enter a contract is also coercion and is voidable.

Section 16 - Undue Influence

where a person is in dominant position, uses his dominant position to make the subordinate enter into contract where the party in the dominant position benefits in a agreement at the loss of the subordinate.

Essential elements under Undue Influence -

1. Parties are in a close relation with other
2. Position to dominate will of the other party
 - Mental Distress - where the other party is suffering from any mental illness.
 - Unconscionable bargains - where the terms of the contract are unfair.
 - Real or Apparent authority - b/w the parties like doctor-patient, master-servant, etc.
 - Fiduciary Relationship - the contract must have a mutual relation i.e. both the party are under confidence & trust like Husband-wife, etc.
3. Objective of the agreement is to take advantage of the other party.
4. The burden of proof lies on the Plaintiff to prove that undue influence exist, in the absence of the same he cannot avoid the contract.

Coercion can be done by or done on any third party | fraud is always done in first person.

Section 17 - Fraud

Fraud occurs intentionally where the person has complete knowledge of falsity to deceive the other party by entering into contract.

Active concealment of facts is also fraud.
hide

Essentials elements -

- i) Is silence fraud? - No mere silence is not fraud provided that silence will be considered as fraud if it includes the following:
 - (1) Duty to speak (eg - witness box)
 - Seller is not bound to disclose defects in goods.
 - But if the same sale is made under fiduciary relation then disclosure is compulsory.
 - (2) Silence is equivalent to speech (eg - sale of goods on approval basis)
- (ii) There should a representation of any particular fact by the promisor or the person doing the fraudulent activity.
- (iii) The representation was made before the contract to induce the other party to enter the contract.
- (iv) The representation of fact i.e. the falsity of the same is known to the person making the statement.
- (v) Party relied on the same and entered into a contract.
- (vi) Loss was suffered by such party.

Effect of Fraud [Sec 19(A)]

- a) Contract is voidable - can rescind the contract
 - can claim damages on the contract
 - insist on performance of contract any restoring the same place had the person been if the contract was performed.

effect of absence of free consent
 Sec 19
 Coercion
 Sec 19(A)
 fraud,
 Undue influence
 Misrepresentation, Mistake

- b) Not Voidable if -
- not rescind in reasonable time ~~(means to die)~~
 - means to discover the truth present
 - Did not rely on the fraud for consent in the agreement

Section 18 - Misrepresentation

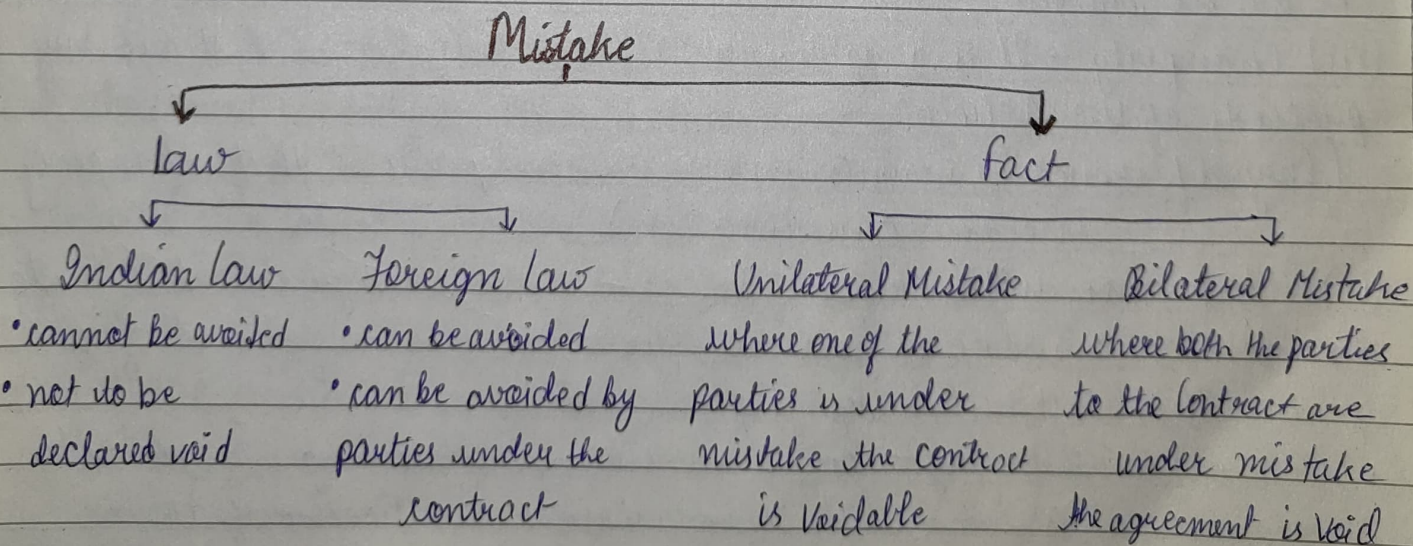
- refers to the statement of facts on which the person making the statement believes it to be the truth.
- where without the intention to deceive the other party, it brings advantage to the party making the statement.
- enters into an agreement based on such misrepresentation.

Key Pointers (For case study) -

1. Misrepresentation has the means to be discovered in an agreement.
2. If buyer identified misrepresentation and avoided such delay for damages cannot later cancel contract on the basis of misrepresentation

Section 20 - MISTAKE

Mistake is ~~refers~~ referred as innocent or erroneous statement of facts which is mis understood by each other. Mistake includes mistake of fact or mistake of law.



Mistake of TITLE - identity, quality, quantity, price, existence

Legality of Object & Consideration - (23 March)

1. Where object or Consideration is forbidden by law:
This states that the object or consideration is against the law formulated in that country.
2. Where the object or Consideration defeats the provisions of the law -
i.e. exploitation of the weakness in drafting the provisions of law.
3. When the agreement entered is fraudulent in nature.
4. Where the object or Consideration results in any injury to a person or his property.
5. Where the object is immoral and causes harm to the values of a community or group of people.
6. Agreements Against Public Policy -
The term public policy is very ~~narrow~~ wide in meaning and the scope shall be restricted to extract any object which is against the interest of the society.
 - (i) Stifle Prosecution - It refers to the creating an obstruction in the regular course of law by bribe placed on the witness or the lawyer, etc.
 - (ii) Maintenance - It is an agreement which is made to ensure payment to a person to maintain suit against a third party where he has no interest.
 - (iii) Champerty - It is an agreement to file a litigation and share any proceeds of the action.
(Only difference in maintenance and champerty is that champerty includes consideration)
 - (iv) Interference with course of Justice - Where an agreement is made to obstruct or induce a judicial officer to rule in favour of a person it is obstruction of justice & void.
 - (v) Trading with Enemy - Any trade with person owing allegiance to a government at war with India without the licence of the government of India is void against interest of the state at time of war.

(vi) Trafficking in public offices & titles - Bribes paid to attain employment in government offices, in place of specified skilled employees, or receiving any reward or recognition by payment of bribe is against public policy and is void in nature.

(vii) Creation of Monopolies - Any agreement in nature of monopoly which hampers the situation of competition in the country is void.

(viii) Interest Against Obligation - Suppression of obligation over own interest is void if the same is unauthorised.

Example - Collection of agency fees from a person other than the agent makes contract of agency invalid.

VOID AGREEMENTS

1. Agreement in restraint of Marriage - A restraint by way of an agreement on a minor is valid however complete or partial restraint on a major is void.

2. Agreement in restraint of Trade - Any agreement with a restraint i.e. invalid or unreasonable shall be void i.e. performing competing business outside local limits is valid.

Similarly, restraint in course of employment is valid only if the same is reasonable.

Unreasonable = Void

3. Agreement - meaning to which is uncertain - Any agreement the ~~the~~ meaning of which is uncertain shall be void where as the meaning where the object is certain valid.

4. Agreement in restraint of legal proceedings - Any agreements restricting right to appear in court or pursue a legal proceeding is void unless (i) the parties have mutually agreed to enter in a arbitration and (ii) to dissolve and future matters arising out of arbitration in the same manner provided that same is in writing under the contract.

5. Wagering - Wagering as an agreement is void in nature. It is an agreement based on uncertain event, where the parties to the event do not have any control over such event and there is wager involved.

Note:

1. ~~Wager~~ Crosswords & puzzles where the amount is upto 1000 is not wager, if exceeds 1000 (Wager).
2. Speculative transaction are similar to wagering but they are not void.
3. Betting amount (Wager) in case of horse race:
Bet \leq 500 = Wagering (VOID)
Bet $>$ 500 = Not Wagering (VALID)

Crosswords	Race Horse
Wager (VOID) $>$ 1000	\leq 500
Not Wager (VALID) \leq 1000	$>$ 500

Transactions not Regarded as Wagering

- ① Hit fund
- ② Commercial transactions on Share Market
- ③ Contract of Insurance
- ④ Games of skill & Athletic Competitions (Within 1000)

Unit - 4

Performance of Contract

(3 April)

Section 37 - Obligations of parties to Contract

Both promisor and promisee shall perform the contract unless the same is excused by law or nature of the contract.

Types of Performance

Actual Performance

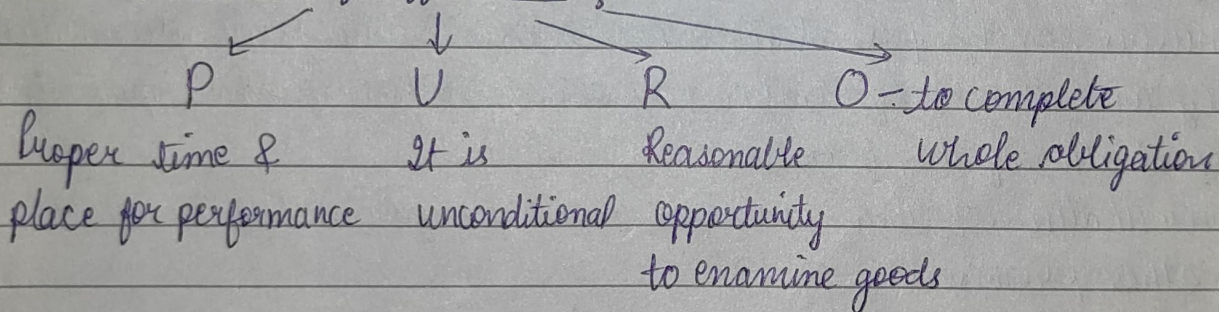
Where both parties have completed their obligation under the contract.

Attempted Performance

Where the promisor has offered to perform the contract but the promisee fails to complete his obligation. The promisor is discharged.

Section 38 - Tender of Performance - It refers to a valid offer of performance should be made by the promisor.

When is tender of offer valid?



Section 39 - Effect of Refusal of party to perform wholly

where a party to the contract has refused to perform the contract or disabled himself to execute the contract, the promisee may put an end to contract.

OR

can accept by words or conduct his approval to continue the contract in such a case subsequent cancellation shall not be available.

In both the cases promisee can recover any loss incurred due to non-performance.

Ought - required to be

Section 40 - Who can perform a Contract?

1. Promisor Himself -

Primarily the promisor shall himself perform the contract where the contract involves use of personal skill, attributes, knowledge the contract is discharged on the death of the promisor.

2. Agent -

where the contract does not involve use of personal skill, can employ a third party to discharge the contract

3. Legal Representative -

On death or incapacity of the promisor to perform the contract the legal representative shall be liable for performance upto the value of the estate inherited by ~~the~~ him.

Section 41 - Performance by third Party

where the promisee accepts the performance by a third party the promisor is discharged.

Section 42/43/44 -

- Joint promisors can be present in a contract, all the joint promisors are jointly and severally liable for the activities of other promisors. In event of death of the promisor.
- Legal representative of such promisor shall perform the contract with the other promisors.
- If all promisors die, the legal representative of all promisors shall perform the contract.

Time and Performance of the promise (Sec 46 - Sec 50)

i) Time is not mentioned in contract, promisor not to apply to promisee.

Result → Perform the contract at reasonable time (Sec 46)

ii) Day is mentioned in the contract, promisor not to apply to promisee.

Result → Perform the contract at reasonable time (Business hours) (Sec 47)

(The key difference b/w (i) & (ii) is the mention of DAY)

- (iii) Day is mentioned in contract, promisee has to apply to promisor for performance (Sec 48) Result → Performance only possible at reasonable place + usual business hours
- (iv) Place is not mentioned under contract, Day is mentioned
Result → Performance during business hours at a reasonable place (Sec 49)
- (v) Performance to be made in a manner, prescribed in a contract by the promisee. (Sec 50)

Reciprocal Promise

where two promises are performed in exchange of one another they are known as reciprocal promise.

Types of Reciprocal Promise -

1. Simultaneously Reciprocal - where two promises are to be performed simultaneously and one stops the other from performing the contract, the other party is discharged from the obligation to perform.
2. Order by Contract - where the order of performance is fixed by the contract, the same shall apply in absence of any order stated in the contract, the nature of transaction shall decide the order.
3. Liability of a party preventing the other party from performing the contract - The contract shall be voidable at the option of the party denying or restricting the other party from performing a contract.

Section 53

One party is preventing the other party in performing his obligation.

Section 54

One party has not perform his duty because of which the other is failing to complete his own

Section 55 -

where time is an essential element in ~~contract~~ the performance of promise the same is voidable at the option of the party to contract, against whom performance has not been made in due time can claim compensation.

Provided that, where the contract is not dependent on time being the essential element in performance, the same can be allowed and

performance can be accepted.

Provided further that, the promisor if falls to perform within due time the promisee can accept delayed performance. under such circumstances no damages shall be recoverable for performance accepted, the right to claim compensation extinguishes.

Section 56 - Agreement to do Impossible Acts

The parties to the contract are unaware as to the impossibility of performance of the object of the contract, such contract is void. Provided that, where the promisor is aware of such impossibility. but fails to disclose the same to the promisee the contract is voidable and the promisee can recover compensation.

Initial Impossibility
(Void ab initio)



where the agreement is impossible from the date of its formation, it is void-ab-initio (eg - agreement with minor)

(i) If known to the parties - it is void.

(ii) If Unknown to the parties - If the material facts are unknown to the parties under contract - it is VOID from its formation

Subsequent Impossibility
(Void)



where on happening of any uncertain event or due to contemplation of law, which results in the object becoming impossible such impossibility is referred as subsequent or Post-Contractual Impossibility

(iii) If known to the Promisor only - the agreement is voidable at the option of the Promisee.

Sec 57 - Reciprocal promise where one part is valid other is illegal.
Where a contract has a part which is legal and the other part is illegal, the legal shall be valid while the illegal is void.

Sec 58 - Agreement with an alternative with one branch legal and the other illegal.

Where a contract has two or more alternative, the legal is void and the illegal alternative shall make the contract void.

APPROPRIATION OF PAYMENTS

There can be 3 situations for settlement of debt if debtor owns several debts to a same creditor

Sec 59

Payment to be discharged as specified by debtor

↓
where the debtor ~~fails to~~ ^{has} initiated the adjustment of his payment with a particular debt the compliance shall be from the creditor as per the instructions of the debtor

Sec 60

Application where the adjustment is not indicated

↓
where the debtor fails to indicate which debt be appropriated the creditor shall adjust the debt as per his own will however time barred or disputed debt can't be adjusted.

Sec 61

Application where neither party indicates

↓
where the debt has not been adjusted by either of the party the adjustment shall be in order of time, even time barred debt can be settled.

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

(i) Sec 62 - Effect of novation, rescission and alteration of Contract
- NOVATION - where the parties to the contract are changed or the terms of the Contract are changed with the mutual consent of all the parties to the Contract, the parties or the terms stand discharged after novation.

- RECISSION - where the Contract b/w parties comes to an end without reinforcement of a fresh contract the recission leads to discharge of Contract.

- ALTERATION - where the terms of the contract are altered without substituting with a new contract with the mutual consent of the parties, without changing the parties, the old terms stand discharged.

(ii) Sec 63 - Remission & Waiver -

when the promisee accepts any other satisfaction in place of performance of promisee it is termed as waiver or giving up claim.

(iii) Sec 64 - Restoration of benefit under a Voidable Contract -

where a contract is voidable at the option of one of the party and the same is declared void, the claim arising to both the parties under the contract shall be restored once the Contract is declared void.

(iv) Sec 65 - Restoration of benefit under a Void Contract -

A contract otherwise valid which becomes void on happening of an event, the parties shall have the right to be restored of any benefit arising under the contract or agreement.

(v) Sec 66 - Communication of Recission -

The fact of recission of Contract shall be communicated to the other party post communication the contract need not be performed ~~promisee fails to provide reasonable facilities to the promisee for performance of promise.~~

vi) Sec 67 - Promisee fail to provide reasonable facilities to the promisor for the performance of contract - then the promisor is discharged from performing the contract.

Discharge of Contract

Discharge of Contract means termination of contractual relationship b/w the parties to contract i.e. putting an end to contract.

i) Discharge by Performance - when the parties to contract fulfil their obligation arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Actual Performance - completion of task

Attempted Performance - attempted by promisor not responded by promisee.

ii) Discharge by Mutual Agreement - Sec 62 & sec 63 provides case of Novation, Rescission, Alteration, Remission & Waiver covering discharge of contract.

iii) Discharge by Impossibility - A contract may be discharged due to initial impossibility or due to subsequent impossibility.

iv) Discharge by lapse of time - where a contract is not executed within the time specified under the limitation act, the parties are deprived of any remedy of law.

v) Discharge by operation of law - where a contract is discharged by death or insolvency of the promisor.

vii) Discharge by Breach

- Actual Breach - on date of performance
- Anticipatory Breach - Before the due date of the performance

viii) Merger of Rights - where the inferior and superior rights of a contract rest in the same person, the inferior rights merge with the superior (i.e. inferior are discharged)

ix) Discharge by Waiver or Remission - Promisor remits or waives performance of promise in acceptance of some other satisfaction.

Promisor fails to provide reasonable facilities to the promisee, then the promisee is discharged.

Assignment v/s Succession

Assignment

- contract b/w parties
- ~~must~~ mutual agreement b/w parties
- can transfer authority (Asset) but not responsibility (Liability)

Succession

- operation of law
- Inheritance
- Both assets as well as liabilities upto the value of asset is transferable

Unit-5

Breach of Contract & its Remedies

Breach refers to extinguishment of Contract by refusal of any one of the party to perform the obligation in the Contract.

Anticipatory Breach - where the contract is repudiated prior to the due date of performance.

The promisor has the following two options :

- i) Treat the contract as repudiated immediately.
- ii) Continue the contract and fulfil his part of the promise, the promisor can reperform such contract or can have the benefit if the contract turns out to be Void.

Actual Breach - The contract is avoided on or after the due date of performance during the Continuation.

Suit for Damages -

Section 73 - Compensation for Loss or Damages

Where a party to the Contract has cancelled or refused to perform his obligation resulting in a loss occurring in natural course of Business, shall provide the right to the aggrieved party to recover damages from the promises.

In Addition to all the damages remedies is also available for :

1. Rescission of Contract -

when one party to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligation.

2. Suit for Quantum Merit -

It calls payment of Value upto the amount of goods and services provided for the suit for Quantum merit is available where -

- lawful recovery is permitted under the contract.
- Where the person suing is other than the party in default.

3. Suit for Specific Performance -

This is awarded by the Court depending upon the nature of the circumstances.

4. Suit for Injunction -

A party may bring an order of Injunction restraining ~~the use~~ the use of any property.

General - The person against whom contract is cancelled has the right to claim damages.

Exception (Unique) - If the person rescinds the contract does it rightfully he shall himself file a suit for damages.

Basis	Liquidated Damages	Penalty
Amount	Where the amount paid as compensation is equal to the loss caused it is damages.	Where the amount falling due is fairly large compared to loss caused it is a penalty.
Time	Amount of damages is not concerned with delay in Payment	Delay in payment leads to increase in compensation
Decision of Court	If sum is a reasonable estimate of loss caused.	If the same is extravagant or un unreasonable it is penalty.
Intention	To award compensation	To create fear of compliance (terrorem)

Note: The Indian law does not differentiate between damages and penalty, however the English law has a clear difference.

Types of Damages

1) Ordinary Damages: These are recoverable

- from party who has committed breach
- in the Ordinary Course of Business
- Occurs Naturally

2) Vindictive Damages: These are damages in relation to loss of reputation in promise to marry & failure to do so or in wrongful dishonour of cheque by banker.

3) Special Damages: Where the party is aware about any special circumstances that occur in course of contract failure of which leads to breach of Contract the same are recoverable.

4) Nominal Damages: These are the damages given to the party who has not actually incurred a loss but is a party to the ~~bre~~ breach, this can be 10 paise in a rupee.

5) Compensation for deterioration: If the goods are deteriorated due to delay of carrier, this breach provides right of recovery.

6)

6) Pre-fixed Damages

Liquidated Damages

- Reasonable
- Justified in the common nature of Business
- Fixed

Penalty

- Unreasonable
- Not Justified as per the party in Default
- Differ case to Case

The court shall decide on the final front that whether or not an amount payable is a damage or penalty

Unit - 6 Contingent & Quasi Contract

Contingent Contract - A contract to do or not to do something dependent upon happening or non-happening of a collateral event is contingent in Nature.

Contingent = Event Uncertain + Not in anyone's control + additional

The essentials of a contingent Contract are as follows:

- i) Dependent upon happening or non-happening of an event
- ii) Event should collateral and uncertain
- iii) The Contingent event shall not be the will of the promisor.

Rules Related to Contingent Contract:

- i) Enforcement of Contingent Contract dependent on happening of an event - becomes void if the occurrence of the event is impossible.
- ii) Enforcement of Contingent Contract dependent upon non happening of an event - becomes void when the event actually occurs.
- iii) Enforcement of Contingent Contract dependent upon happening of an event within specified time - is void if such event does not occur.
- iv) The performance of Contingent Contract dependent upon conduct of a living person becomes void where the happening of the event is impossible.
- v) Enforcement of a Contingent Contract based on Non-happening of a certain event - is void when such occurs within such time.
- vi) Contingent Contract based on an impossible event is Void.

Quasi Contract - A contract which is enforceable by law but does not have essentials of a valid contract.

Salient features of Quasi Contract:

1. Always a right to receive money
2. Does not arise from any agreement.
3. Not against entire world but against a particular person

Cases deemed as Quasi Contract / Types of Quasi Contract:

1. Claim for Necessaries supplied to persons incapable of contracting.
2. Payment by Interested person
3. Obligation of person enjoying benefits of Non-gratuitous Act.
4. Responsibility of finder of goods
5. Money paid by mistake or under coercion.