

# INDIAN CONTRACT ACT, 1872

Applicable to the whole of India, except J and K.

↓  
Effect  
↓  
Sept. 1872.

## \* Definition of Contract [Sec 2(h)]

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

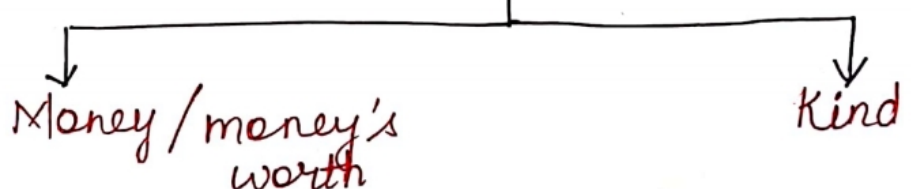
## \* Promise [Sec 2(b)]

- ① One person makes offer/proposal
- ② Other accepts it.
- ③ Proposal → accepted → promise

## \* ① Agreement [Sec 2(e)]

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

Consideration = Something in return



## ② Enforceability by law

(i) All conditions of Section [10]

(ii) Legal obligation [Balfour V. Balfour]  
one of the most imp element

### Balfour V. Balfour

→ Husband and Wife



England from Ceylone

→ Wife got ill → admitted

→ Husband and wife via domestic arrangement decided that husband will send 30 pounds a month as maintenance

→ Husband failed and wife sued

Decision : Suit not maintainable due to lack of legal obligation.

It was mere domestic arrangement.

## \* Conditions of section 10

- ① Two Parties :- Two diff parties not joint owners.

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

[Gujarat V. Ramarlal Sand co.]

- ② Intention to create legal relations :-  
social or domestic type of agreements are not enforceable.

- ③ Other formalities in certain cases :-  
Writing, registered and stamped

→ Insurance contract

→ Immovable property

- ④ Certainty of meaning  
(Clarity)

- ⑤ Possibility of performance agreement for impossible act is not enforceable.

- ⑥ Agreement

## (7) Consensus ad idem

↓  
Meeting of minds (consent).

## (8) Free consent :-

Consent is free if not obtained via

- (a) coercion (forced)
- (b) Undue influence (mentally pressurized)
- (c) Fraud (on purpose).
- (d) Misrepresentation (not on purpose/unintentionally).
- (e) Mistake.

If consent is obtained by (a) (b) (c) (d) above, Contract voidable at the option of <sup>victim</sup> aggrieved party. If by mistake → void

## (9) Capacity of Parties

- (a) major
- (b) sound mind (at the time of contract).
- (c) not otherwise disqualified

Disqualification :- <sup>(not a citizen of our country)</sup> Alien enemy, <sup>ambassadors/ supreme power</sup> foreign sovereigns, convicts, insolvent, deserter, etc.

(10) consideration :- Quid Pro Quo / can be in cash or kind

⑪ <sup>imp</sup> Lawful consideration & Object

⑫ Not expressly declared void

i.e. illegal or void → Agreement is restraint of marriage, trade, etc.  
↓  
murder, smuggling, killing

\* Types of Contract (Based on enforceability)

1) Valid Contract :-

It has all essential elements of contract.

→ Enforceable by law.

2) Void Contract :- (Void agreement → void ab initio)  
↓  
void from the very beginning

→ Does not have any legal effect.

→ Not enforceable by law.

3) Voidable Contract :-

→ Enforceable at the option of aggrieved party.

4) Illegal Contract :-

→ Forbidden by law

→ Not enforceable.

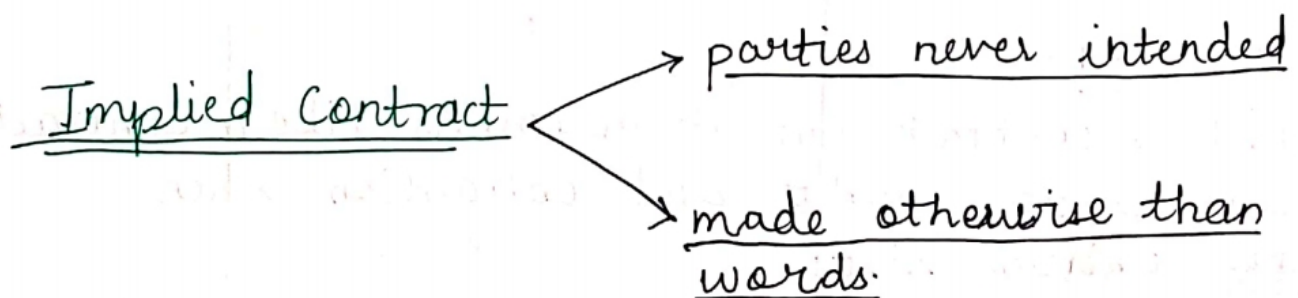
## 5) Unenforceable Contract

- Good in substance (Sec 10 all elements covered)
- But suffer from technical defect.

Basis	Void	Voidable
<u>Meaning</u>	Ceases to be enforceable by law.	Enforceable at option of aggrieved party
<u>Cause</u>	Subsequent illegality or supervening impossibility.	If consent of party is not free
<u>Performance of contract</u>	Cannot be performed	Can be avoided by A.P within reasonable time, otherwise performed
<u>Rights</u>	Does not grant any right to any party.	A.P can rescind the contract.

Basis	Void Agreement	Illegal Agreement
<u>Scope</u>	Not necessary illegal	Always void.
<u>Nature</u>	Not <del>forbidden</del> <sup>forbidden</sup> by law.	Forbidden by law
<u>Punishment</u>	Parties cannot be liable for punishment	Parties liable for punishment
<u>connected/ collateral</u>	Agreements connected/ collateral to void agreement may also be void.	Connected/ collateral agreements are always void.

### \* Types of Contract Based on Formation



## Tacit Contract :-

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

## \* Types :- Based on Performance

### Executed Contract :-

Contract which is wholly performed.

### Executory Contract :-

Which is partially performed, or wholly unperformed.

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### Unilateral contract :-

One sided contract in which only one party performs <sup>his</sup> obligation.

### Bilateral Contract :-

Where obligation of both parties is outstanding.

## \* Quasi Contract :- (Contract based on Formation).

Not a contract but it resembles like a contract. Law creates rights and obligation when no contract exists.



## \* 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 the intention

→ to obtain assent of other party

→ For such act or abstinence

Willingness + with intention to obtain assent = offer


## \* Essential of Proposal

① → Offeror - Offeree

→ Promisor - Promisee

→ Proposer - Acceptor

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

③ Offer 

④ Offer must be made with intention to obtain assent.

## \* Kinds of Offers :-

### General Offer

- Offer made to public at large
- Anyone can accept the offer

### Case law :- Carlill v. Carbolic Smokeball Co.

- Anyone performing the condition of offer can be said to have accepted the offer until offer is withdrawn.

### Specific Offer

- When offer is made to specific person

OR

- ascertained person

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

### Cross Offer

- When two parties exchange
- Identical offers → exactly same (no diff even in amt).
- In ignorance of time of each other
- No contract comes into picture.

## Counter Offer

- When a person to whom offer is made accepts the offer by modifying terms and condition of offer.
- Also known conditional acceptance.

## Standing or continuing or open offer

- Which remained open
- over a period of time.

## \* ESSENTIALS OF VALID OFFER

- ① Capable of creating legal obligation.  
clear complete not confusing
- ② Certain, definite and not vague.
- ③ Communicated to offeree

## Case Law :- Lalman Shukla V. Gauridutt

Acceptance of offer in ignorance of offer is no acceptance.

- ④ Offer must be made with intention to obtain assent.
- ⑤ It may be conditional.

⑥ Offer should not contain a term, non-compliance of which amounts to acceptance

⑦. Specific or General offer

⑧. Offer is different from -

→ Mere statement of intention.

→ Prospectus and Advertisement

→ From an answer to question [Harvey v. Facey]

→ Invitation to offer

\* Examples of Invitation to offer

① Display of goods in window shop.

② Advertising Auction Sales

③ Quotation of Price sent in reply to a question.

\* Relation between Offer and Acceptance [William Anson]

Acceptance is a lighted match to a train of gunpowder (offer).

Significance

Offer in itself cannot create any legal relationship.

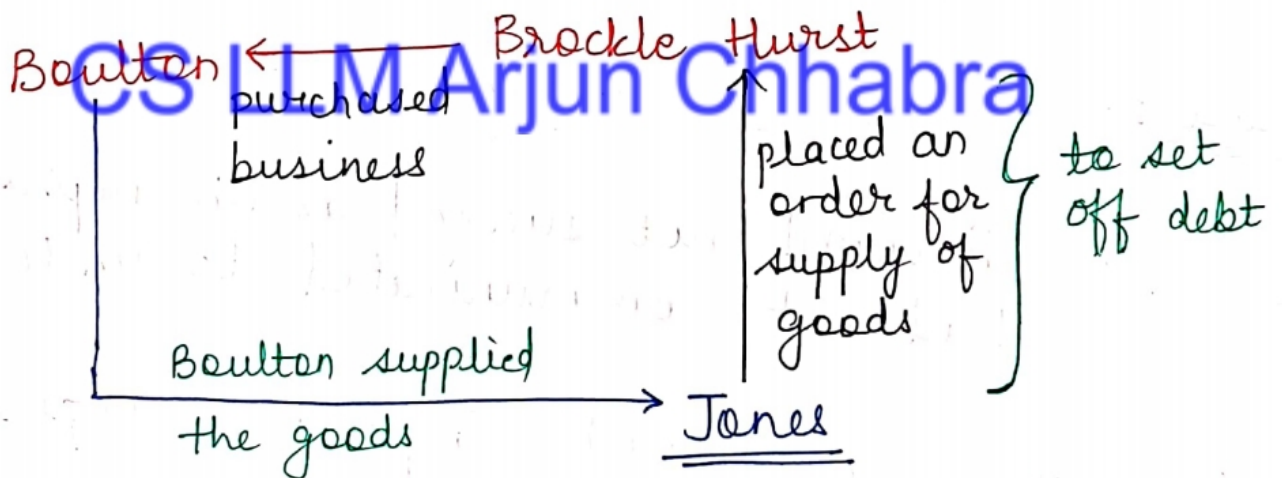
## Conclusion

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

## \* Legal Rules regarding Valid Acceptance

1) Acceptance can be given only by the person to whom offer is made.

Case Law :- Boulton v. Jones



Decision :- Offer was not made to Boulton.  
∴ No contract between B and J.

2) Acceptance must be Absolute and Unqualified unconditional in this context.

3) Acceptance must be communicated.

Case Law :- [A] Brogden V. Metropolitan Railway Company.

[B] Neale V. Merrret.

4) Acceptance must be in prescribed mode.

5). Time

→ Must be given in prescribed time

OR

→ within reasonable time.

6) Mere silence is not acceptance.

Case :- Felthouse V. Bindley

Decision :- F could not succeed as his nephew had not communicated to uncle.

7) Acceptance by conduct / Implied Acceptance.

A] Word or mouth

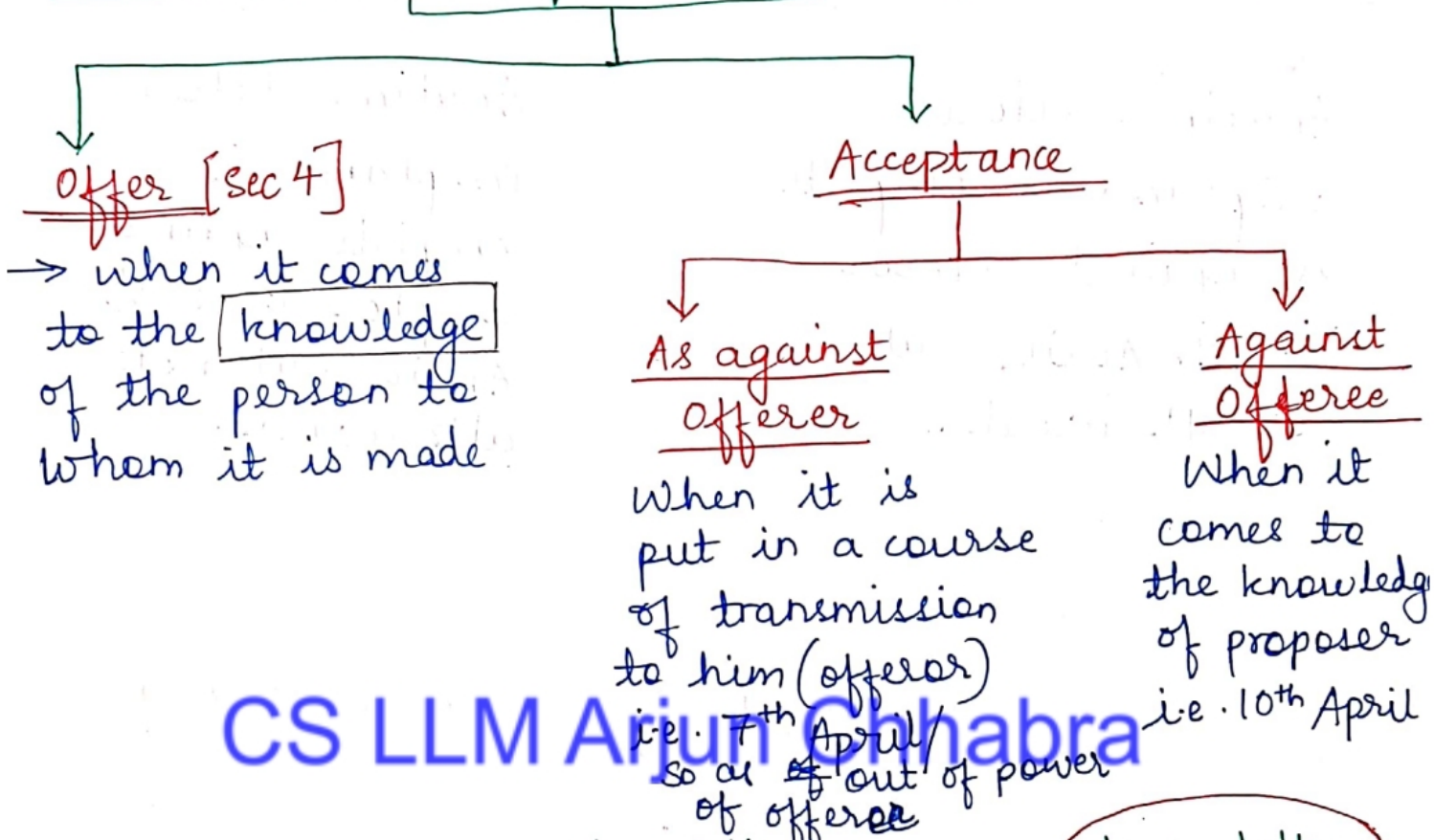
B] In writing

C] By Performance [By Conduct].

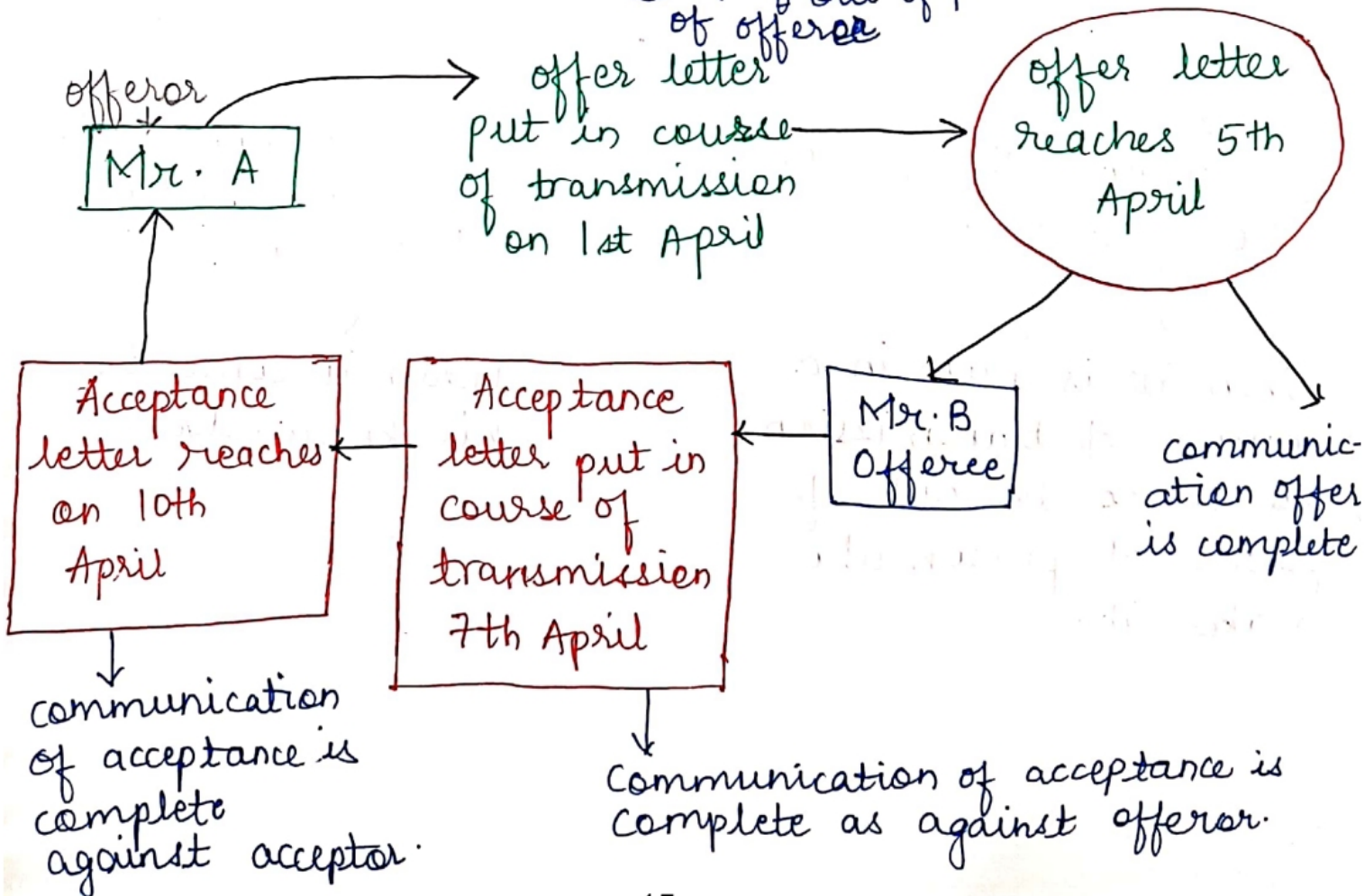
# \* Communication Of Offer and Acceptance /

## When complete ?

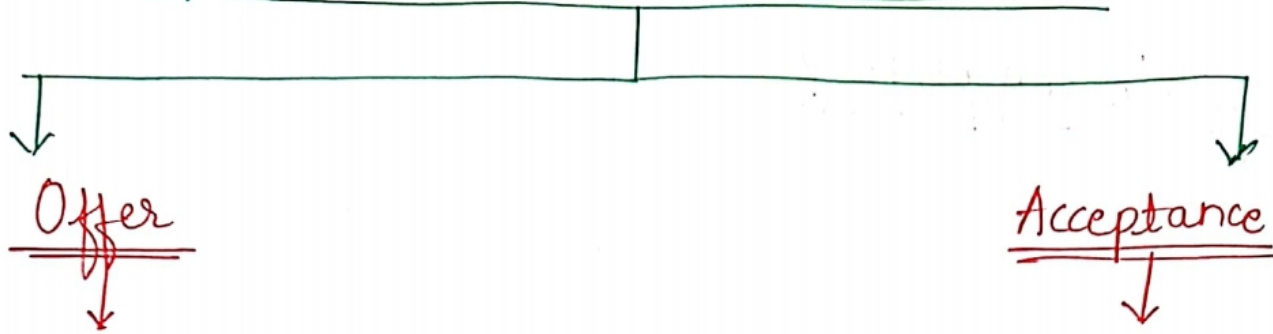
### Communication of Offer & Acceptance / When Complete ?



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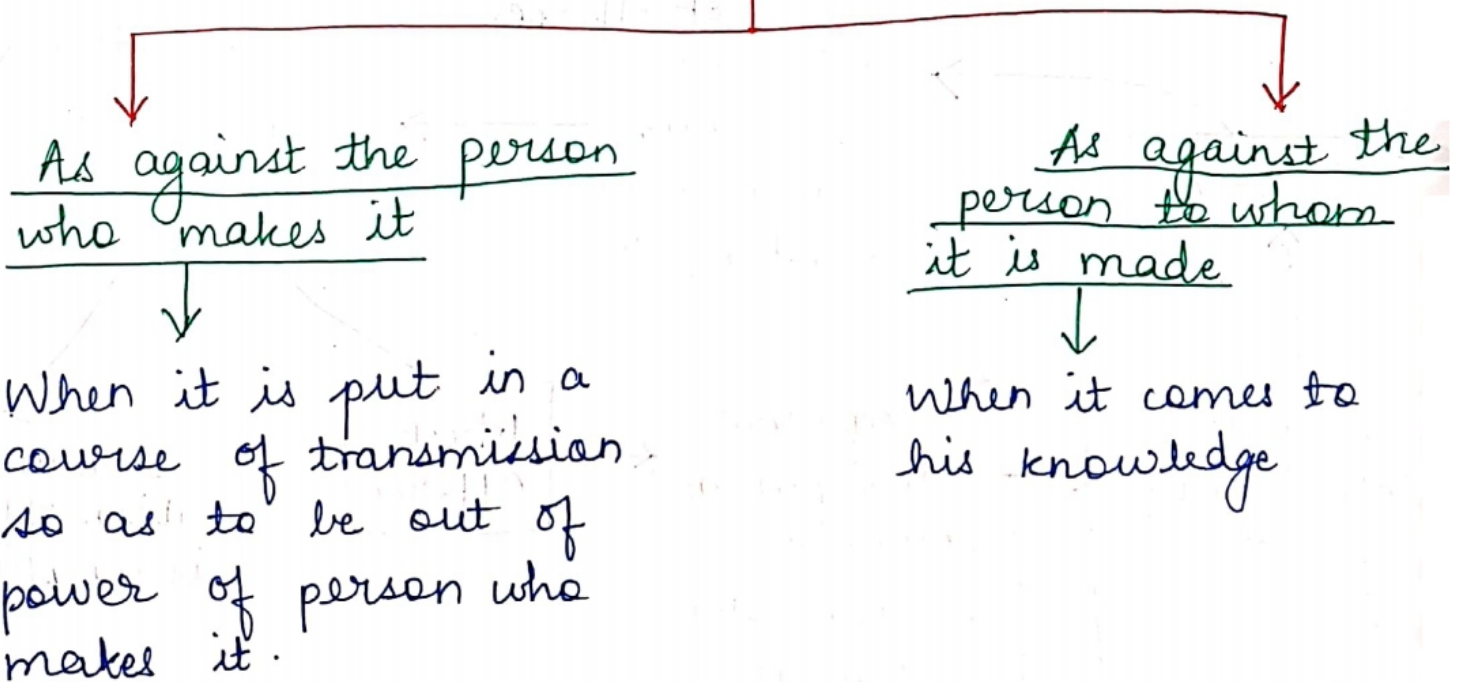
\* Upto when Revocation can be done?



Anytime before acceptance is complete as against offeror ie. 7th April, but not afterwards.

Anytime before acceptance is complete against acceptor ie. 10th April but not afterwards.

\* When communication of revocation is complete



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



→ If 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 it 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. v. Miles East Co.

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

## \* Communication of special condition

→ Special conditions are conveyed tacitly and they <sup>are</sup> accepted ~~are~~ also tacitly.

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

CASE LAW :- Mukul Dutta v. Indian Airlines

### Ticket conditions :-

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

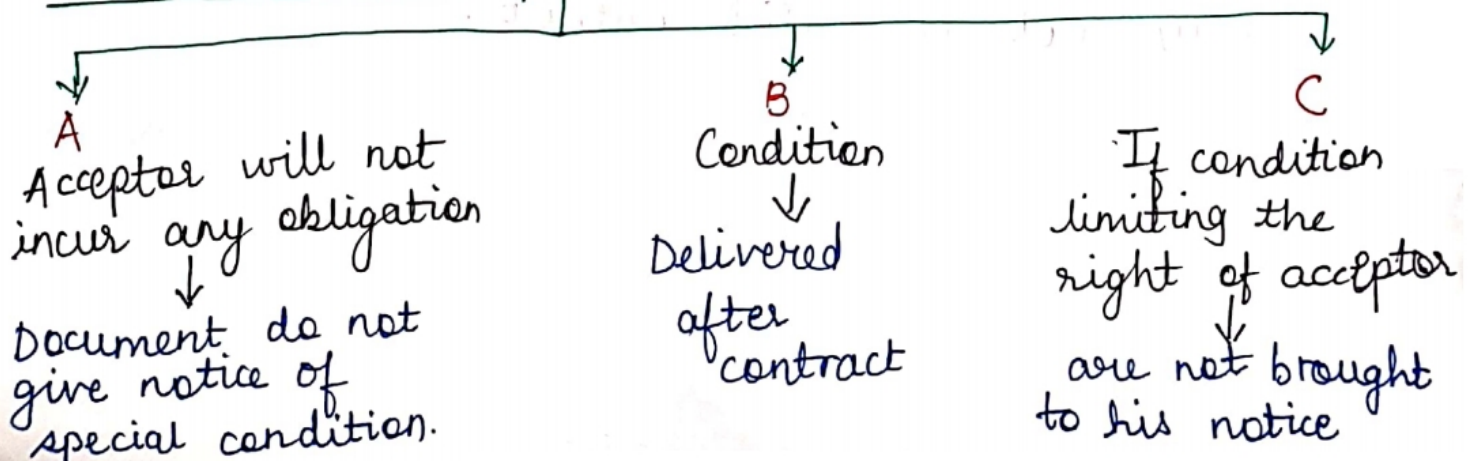
CASE LAW :- Lilly White v. Mannuswamy

### Notice of condition mandatory

→ Words 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 :- Raipur transport Company. V. Ghanshyam

### Facts :-

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

Decision :- Since S.C. <sup>special condition</sup> not communicated prior to contract, not binding to owner.

### \* Communication of Performance

- If offer made in form of promise.
- In <sup>return</sup> of an act.
- Performance of an Act even without any communication be treated as acceptance of offer.

# CONSIDERATION → UNIT - II

## \* Definition of consideration [sec 2(d)]

- When AT THE DESIRE OF PROMISOR
- THE PROMISEE OR ANY OTHER PERSON
- <sup>past consideration</sup> has done or abstained from doing
- <sup>present consideration</sup> OR does or abstain from doing
- <sup>future consideration</sup> OR promises to do abstain from doing something.
- such an act or abstinence or promise.
- is called consideration.

- ① Consideration is an act.  
(may be)
- ② Consideration is abstinence.
- ③ Consideration must move at the desire of promisor

CASE LAW :- Durga Prasad V. Baldeo.

- ④ Consideration may move from promisee or any other person.

\* CASE LAW :- Chinnaya V. Rammayya (4 marks practical ques)

Three parties

- ① Old lady
- ② Daughter
- ③ Maternal uncle

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

⑤ Consideration

(i) executed → consist in performance

(ii) executory → consist in promise

⑥ Consideration may be past, present or future

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

⑦ Consideration need not be adequate. i.e. it can be inadequate.

\* Explanation to Section 25

→ Agreement in which consent of party is freely given.

→ is not void.

→ just because consideration is inadequate.

Note :- To determine whether consent of promisor is freely given, inadequacy of consideration may be taken into account, if party pleads that his consent was not free.

⑧ Performance must be more than what one is legally bound to perform.

⑨ Consideration must be real and <sup>not</sup> illusory.

⑩ Must not be unlawful, immoral or opposed to public policy.

### \*~~★~~ Suit by a third party to a contract

- 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".

### \* Exception to the above rule :-

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#### ① In case of trust

- Beneficiary can enforce his right.

#### ② In case of family settlement

- If terms of contract in writing
- Member of family who was not a party to contract can enforce the same.

#### ③ In case marriage contract

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

#### ④ In case Assignment of Contract

- When benefit assigned under contract.
- Assignee can enforce it.

#### 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.

#### ⑦ In case covenant running with 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 [Section 25]

① Natural love and affection.

Conditions Agreement [25(1)]

- (i) Must be made by natural love and affection.
- (ii) Parties — Near relation.
- (iii) Writing.
- (iv) Registered.

② Compensation for past voluntary service  
Conditions [Sec 25(2)]

- (i) Service — Voluntary.
  - (ii) Service — Promisor
  - (iii) Promisor — intended to compensate.
- ③ Promise to pay time barred debt.

Conditions

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

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 (1) to Sec 25

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

## ⑥ Bailment

Sec 148

## ⑦ Charity

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- If promisee takes liability
- on promise of person
- to contribute ~~or~~ to charity
- contract shall be valid.

Case Law :- Kedarnath V. Gorie Mohammad

Defendant → Agreed to subscribe ₹ 100 for construction of ~~sect~~ Secretary of townhall of Howrah.

## Unit Three :- Other Essential Elements of a Contract

\* Capacity <sup>to</sup> of a contract

↓  
Competence of the party to make contract.

\* Who is competent?

→ Major [A] [Sec 11]

→ Sound mind [B] [Sec 12]

→ Not disqualified by law.

\* Law relating to minor's agreement

① Contract with minor or by minor is  
VOID - AB - INITIO.

C.L. :- Mehiri bibi V. Dharmadas Gose

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

②. No ratification after attaining majority.

③. Minor can be a beneficiary.

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

→ Contract act do not prevent minor from taking benefit.

④ Minor can always plead minority.

→ Rule of estoppel cannot be applied against him

→ He is allowed to plead minority in defence.

⑤ <sup>\*\*\*</sup> 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 prop.):

(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

→ which is within his competence

and

→ for benefit of minor

→ valid contract.

⑦ No specific performance

⑧. No insolvency.

⑨ Partnership.

⑩ Minor can be agent.

→ but not liable to his principal for his acts.

⑪ Minor cannot bind parent or ~~children~~ guardian.

→ In the absence of <sup>authority,</sup> liabilities - minor cannot bind parent even for necessities.

→ Parent is liable for authorised act of minor.

⑫ Joint contract by minor and adult.

C.L.:- Sain Das V. Ramchand

⑬ Surety of a minor.

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⑭ Minor as shareholder.

⑮ Liability for torts → Civil wrong.

→ Minor is liable for torts.

→ But not liable for breach of contract.

[B] Person of sound Mind [Sec 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 person

- Alien enemy.
- Insolvent
- Convict under imprisonment
- Foreign sovereign.

## \* Free Consent [sec 14]

Consent → Section 13

↓  
Consensus-ad-idem  
(meeting of minds)

## \* Coercion [section 15]

Act  
(a) committing or threatening } Any Act forbidden by IPC Indian Penal code

OR to keep in custody ~~forcibly~~  
(b) unlawful detaining } Any property to the prejudice of any person.  
or threatening to detain

Intention

Causing any person to enter into an agreement

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

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

### \* 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.

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## \* Undue Influence [Section 16]

- Any contract is said to be induced/made by undue influence
- Where relation subsisting 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

Person is deemed to be in dominating position:-

(a) He holds REAL OR APPARENT AUTHORITY OVER OTHER OR

(b) <sup>Trust relation</sup> Fiduciary Relation

(c) He makes a contract with the person whose mental capacity is temporary or permanently affected by reason of

→ age → mental or

→ illness → bodily stress

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 :- Kirparam V. Sami-ud-din Ad Khan

\* Power to set aside contract made  
by undue influence. [Sec 19(A)]

Such contract may be set aside <sup>by court</sup> either

→ Absolutely  
OR

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→ If party has received some benefit.

→ On such terms as court deems fit.



## \* Fraud [Sec 17]

Fraud means & includes

Commission of following acts

(a) Suggestion as a fact, of something which is not true by a person who does not believe it to be true

(b) ACTIVE CONCEALMENT of fact by one having knowledge of fact.

(c) Promise made without an intention of performing it.

(d) Any other act fitted to deceive.

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

Committed by

(a) a party to contract or

(b) By any person with the ~~convenience~~ <sup>connivance</sup> of party to contract or

(c) Agent of party to contract.

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.

## \* Remedies available to party

(a) Rescind the contract in R.T. (reasonable time)

(b) Sue for damage.

(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

Word V. Hobbs.

### Silence = Fraud

#### Duty to speak

- (a) Where party stand in fiduciary relation.
- (b) Contract of insurance.
- (c) Contract of marriage
- (d) Contract of family settlement.
- (e) Share allotment contracts.

## \* Misrepresentation [sec 18]

### Means and includes

#### Positive assertion

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

→ made in a manner not warranted by ~~for~~ 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~~ CLAIM DAMAGES
- Because there is no intention to deceive.

\* Contract Not Voidable [Explanation to Sec 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.

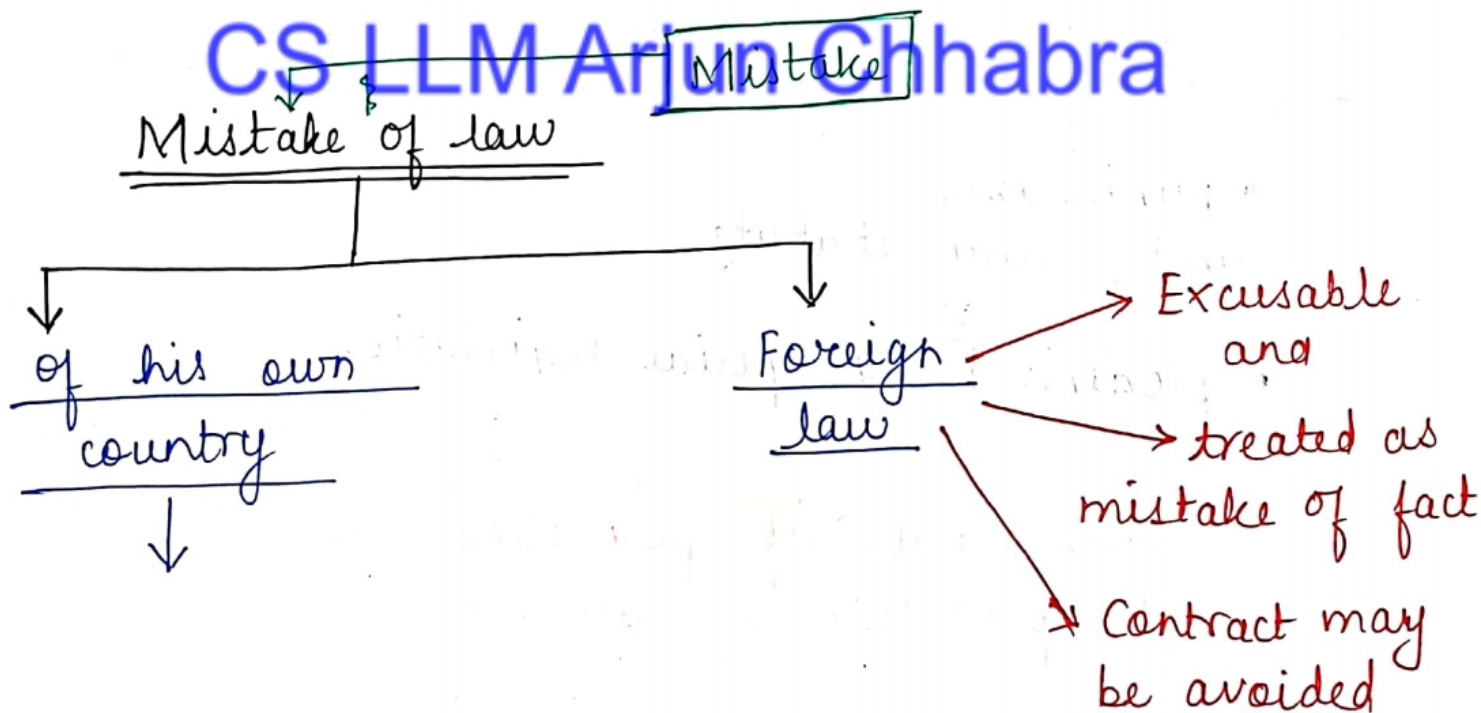
C]. Where the party enters into a contract in ignorance of fraud.

### \* 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



Note :- If mistake is caused by inducement of other <sup>person</sup>, contract may be avoided.

## \* Mistake of fact

- Both Parties → Agreement
- Mistake (bilateral mistake).
- Matter of fact - essential to agreement
- Agreement is void.

Case Law :- Herkel V. Page

Griffith V. Brymer

## \* Legality of Object and consideration [Sec 23]

① Is forbidden by law ← Unlawful if it is

• punishable under any statute

• prohibited by special legislation

② Is of such nature if permitted would defeat the provision of law.

③ Is fraudulent.

④ Involves injury to person or property <sup>movable, immovable & even intellectual</sup> of another.

⑤ When consideration is immoral.

## ⑥ Oppose to public policy

### Agreement opposed to public policy

① Trading with enemy at times of war illegal and void.

② Stifling of prosecution

Principle → One should not make trade of felony.

Note :- Compromise of any public offence is generally illegal.

I.P.C

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→ Statutory list of <sup>compromisable</sup> compoundable offences

AND

→ Agreement - Drop prosecution of such offence

→ With or without permission of court → Not opposed to public policy.

③ Maintenance and Champerty (both are allowed and not opposed to public policy)

↓  
promotion of litigation in which a person has no interest of his own

↓  
in which person assist ~~another~~ <sup>another</sup> in litigation in exchange to hand over portion of proceeding.

\* Exception :- (opposed to public policy)

① If made for sole motive of gambling or in litigation.

② Injuring or oppressing other by encouraging unholy litigation.

④ Traffic relating to public offices

→ Because it interferes with appointment of person best qualified for service of public.

⑤ Agreement to create monopoly

⑥ Marriage agreements brokerage agreements

→ Agreement to negotiate marriage for reward.

→ Is: M.B.A. and void.

⑦ Interference with course of justice

Agreement → object is to induce any judicial officer or any executive officer of state or country to act partially or corruptly is void.



⑧ Interest against obligation.

⑨ consideration unlawful in part.

Any part of single consideration is unlawful for one or more object or vice-versa.

### Test of Severability

(a) If illegal part cannot be severed from legal → contract altogether void.

(b) Possible to sever → Bad part alone may be rejected and good retained.

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### \* Expressly declared void agreements

- ① Agreement in restraint of marriage. [Sec 26]  
→ other than a minor
- ② Agreement in restraint of trade. [Sec 27]  
→ A → which restrained any person exercising an ~~lawful~~ lawful profession, trade or business of any kind.  
→ is to that extent void.

### \* Exceptions :-

- ① Sale of Goodwill [Exp. 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 within specified limit or specified period.

③ Agreement between partners not to carry on competing business during continuance of partnership.

④ Agreement of service

- Employee bind himself not to compete during the term of service with employer is not restraint of trade.

⑤ Agreement in restraint of legal proceeding [sec 28]

- By which any party is

- Restricted absolutely

- From enforcing his right through court

- Which limits <sup>OR</sup> usual period for starting legal proceeding.

### \* Exceptions

① Agreement to submit dispute to arbitration

AND  
only amount awarded by arbitration is recoverable is void.

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

Note :- Agreement must be in writing.

⑥ Agreement the meaning of which is uncertain.

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

⑦ Wagering Agreements [sec 30]

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

\* Essentials of Wager

- 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.

\* Transaction similar to wager (gambling)

- ① Lottery transaction  
Game of chance  
and  
not of skill or knowledge.

## Valid competitions

- Crossword puzzles.
- Picture competitions
- Athletic competition
- Where prize are awarded on basis of skill and intelligence are valid.
- If prize amount does not exceed ₹ 1000.

## ③ Speculative transaction.

### Agreement

- where parties intend to settle difference between contract price or market price of goods or shares on a specified day.
- is gambling and void.

\* Transaction resembling with wagering transaction but are not void.

## ① Chit fund

- Where number of persons decide to contribute
  - fixed sum
  - for a specified period
  - and amount so contributed
  - paid to lucky winner
  - is not void.

② Commercial transactions

OR

Share market transactions in which delivery of goods or services is intended to be given → not void.

③ Games of skill and athletic competition.

Where award price <sup>does not</sup> exceed ₹ 1000.

④ A contract of insurance

→ is a type of contingent contract.

→ ~~void~~ <sup>valid</sup> <sup>And</sup> under law.

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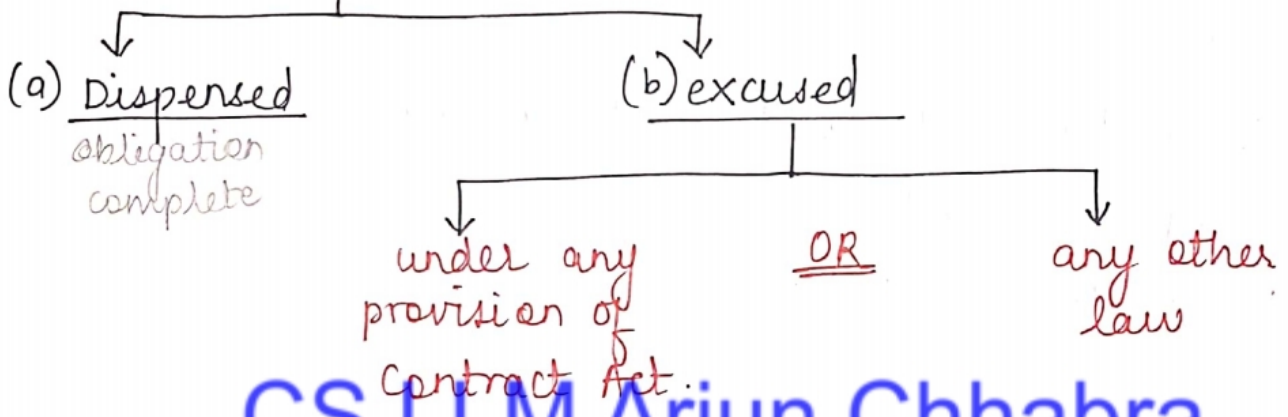
	<u>Insurance</u>	<u>Wagering</u>
Legal or illegal	Legal	Illegal and void.
Beneficial for public	✓	Opposed to public policy.
Indemnity	✓	X
Interest	Insurable	No interest except for stake.
Protection of Subject	Both parties interested	Only one party interested.

# UNIT - 4 → PERFORMANCE OF CONTRACT

## \* Obligation of Parties to Contract

- ① Parties to contract must either
- (a) perform or
  - (b) OFFER TO PERFORM
- } Respective promise

② No performance



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- ③ Obligation continues even after death of PROMISOR.
- Representative of promisor will be bound by promise.
  - Unless otherwise agreed.

### Exception :-

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

# Performance

Actual performance  
↓  
Both parties fulfilled their obligation as per contract.

Offer to perform  
(Tendered <sup>OR</sup> performance)  
Attempted Performance  
↓  
When promisor offers to perform but promisee refuses to accept the performance.

☆☆  
\* By whom contract may be performed  
[Sec 40, 41 and 42]

(1) Only by promisor.

(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 others.

Case other than ①.

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

③ Performance of promise by third party [Sec 41]

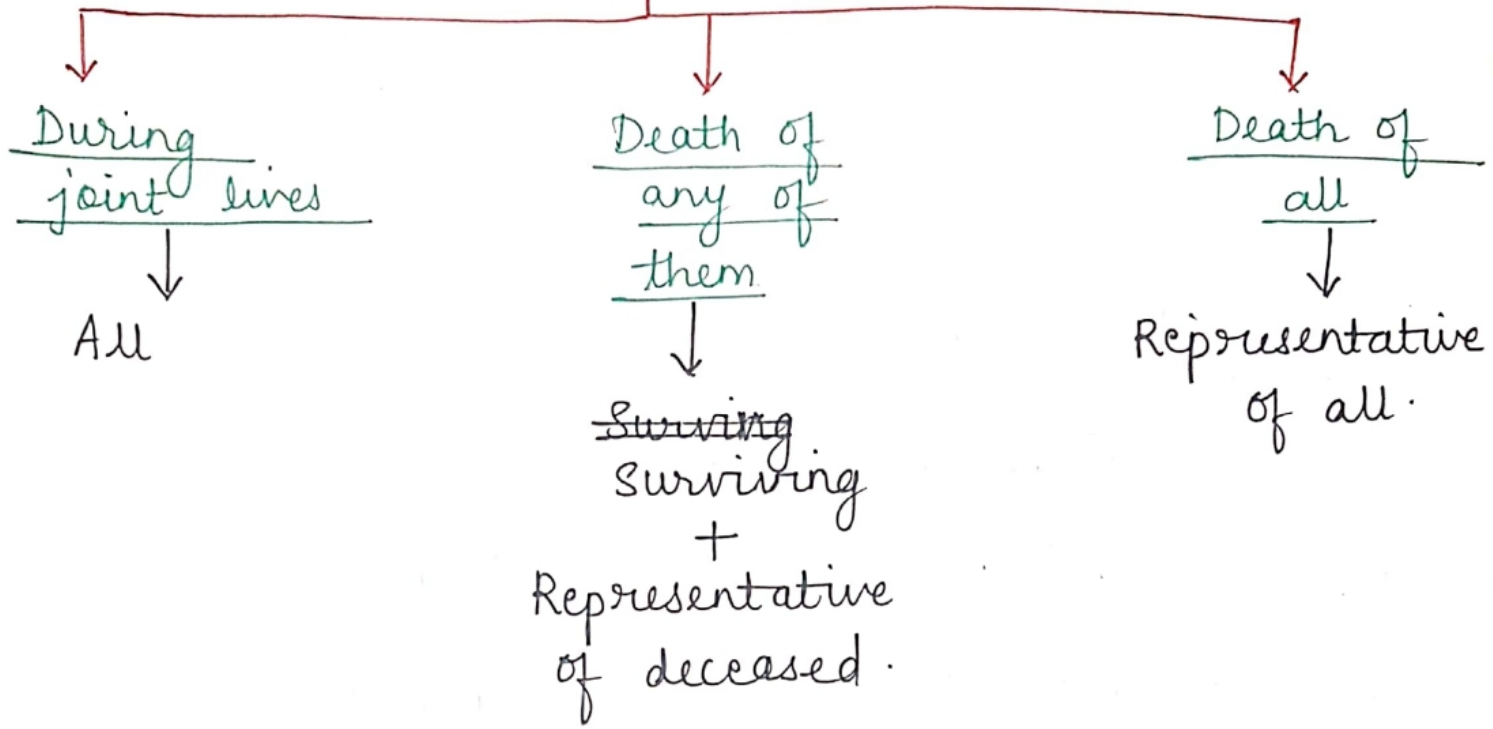
- Promisee may accept performance by third party.
- In such case, promisee cannot afterwards enforce the performance against the promisor.

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

④ Performance by joint promisors.  
Unless otherwise agreed.



# Performance



## Succession

Liabilities of successor would be limited to the extend of property inherited/ transferred.

V.

## Assignment

only benefit can be assigned. Where benefit is coupled with liability, benefit cannot be assigned.

\* Non Performance / Part Performance  
and Non-Acceptance

	Default by Promisee	Default by Promisor
	Refusal to accept performance	Part Performance
	Section 38	Section 39
Default	Promisee	Promisor
Description	Refusal to accept	Part Performance
Situation	a). Promisor offered to perform his promise (i) to the promisee (ii) one of joint promisee b). Promisee <u>AND</u> 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 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.

## \* Joint Promisor and Joint Promisees

more than one promisor

① <sup>Transfer</sup> Devolution of Joint Liabilities [Sec 42]

② Demanding performance from any of the Joint Promisors [Sec 43]

(a) Unless otherwise agreed, promisee may compel / force any one or more Joint Promisor to perform the whole of promise.

(b) Liability — Joint Promisors — Joint & several.

③ Rights and Duties of Joint Promisors [Sec 43]

(a) Unless otherwise agreed, each Joint Promisor may compel every other Joint promisor to contribute equally with himself to performance of promise.

(b) If any of them make default remaining Joint Promisors must equally share the loss arising on such default.

④ Release of Joint Promisor [Sec 44]

(a) In Joint Promise, release of one <sup>of</sup> Joint Promisor  $\neq$  by the Promisee does not discharge the other Joint Promisor.

(b) Such discharge does not free such promisor from other Joint Promisors.

\* Contracts which need not be performed :-

By mutual consent of parties

① Novation :- Parties to a contract agrees to  
"Substitute a new contract for old contract."

- It may take place  
→ between same parties  
or  
→ different parties

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

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② Original contract rescinded.

② Rescission :-

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

③ Remission :-

- (a) • Acceptance of lesser sum instead of what was contracted for  
OR  
lesser fulfilment of promise made

(b) Sec 63 promisee may

(a) remit the whole or part of promise.

(b) extend time OR of performance

(c) accept other OR satisfaction

\* Impossibility of Performance :-

(i) Initial impossibility i.e. at time of making contract.

(ii) Subsequent impossibility i.e. arising subsequent to contract.

Initial Impossibility

(a) Agreement void [Sec 56]

→ Agreement to do impossible act is void ab initio.  
→ Whether fact of impossibility was known or not is immaterial.

(b) Promisor's knowledge ~~only promisor's know~~  
Only promisor's know.

→ He shall compensate promisee for loss suffered for non-performance.

~~Sup~~ \* Supervening <sup>Impossibility</sup> or Subsequent <sup>Illegality</sup> ~~Impossibility~~

(a) Contract becomes void [Sec 56]

When the contract was good at the time of making it, but subsequently due to some event beyond control of promisor, performance becomes unlawful or impossible, contract becomes void. And parties discharged from their obligation.

England :- Above concept called Doctrine of Frustration.

(b) Restoration of benefit [Sec 65]

\* Reasons for Subsequent Impossibility

① Death or Personal Impossibility :-

When performance of contract depends upon personal skill or ability

Contract discharged :- On death or incapacity of person.

② Destruction of subject matter :-

If subject matter destroyed after formation of contract without knowledge of both parties.

③ Non-existence of ~~contracts~~ & certain things :-

Certain things necessary for performance ceases to exist.

④ Change of law :-

Subsequent to contract.

⑤ Declaration of war between countries :-

Subsequent to contract.

☆☆  
\* 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 an advantage

→ under such agreement or contract.

→ is bound to restore it.

→ to the person from whom he received it.

\* Effect of Neglect of promisee to afford promisor reasonable facilities for performance  
[Sec 67].

→ The promisor is excused by such neglect or refusal as to any non-performance ~~ca~~ caused thereby.

\*\*\* Direct ques 7 mks.

\* Discharge of a contract

(i) Discharge by performance

(a) Actual  
(b) Attempted } Performance

(ii) Discharge by mutual agreement.

(a) Novation.

(b) Alteration

(c) Remission

(d) Rescission.

(iii) Discharge by impossibility of performance [Sec 56].

(iv) Discharge by lapse of time.

(v) Discharge by operation of Law  
E.g. death, insolvency, etc.



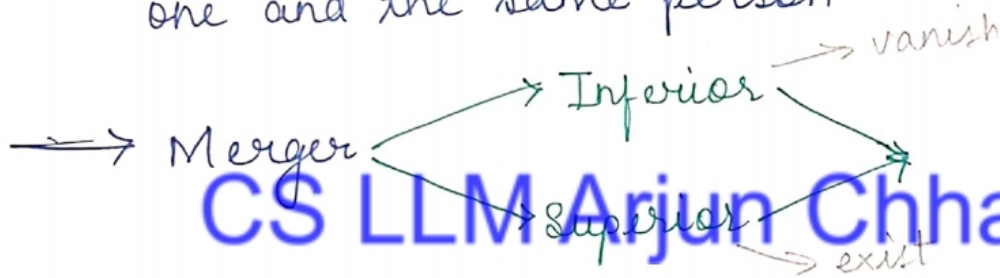
(vi) Discharge by breach of contract:

(vii) Promisee may waive or remit performance of promise

(viii) Negligence of promisee to provide reasonable facilities for performance:

(ix) Merger of rights

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



\* Breach of contract and its Remedies

→ Breaking of an obligation

Actual

• Party fails or refuses to perform his promise on

① Due date of performance or

② During course of performance.

Anticipatory.

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

• Refusal or failure may be express or implied

→ 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

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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 happen outside the power of promisor and promisor will be discharged.

° Promisee shall have no right of action against promisor.

(c) Amount of damage same as above.

### \* Suit for damages

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

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

(ii) Which the parties knew to be likely result of such breach. → (special damage).

② No compensation for remote loss or indirect loss

## \* Kinds of Damages

### ① Special damage

#### • Where

→ a party to a contract receives

→ a notice of special circumstances

→ affecting the contract

#### • He will be liable

→ not only for natural damages of breach.

→ but also for special damages

Note :- Special damage can be claimed only on a previous notice.

### ② Vindictive ~~of~~ or Exemplary Damage

Purpose :- To punish defendant and not compensation.

When awarded?

- (a) Breach of promise to marry.
- (b) Wrongful dishonour of cheque

## 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 damages.

### ③ Nominal damage

### ④ Damages 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.

### ⑤ Prefixed damage

- Liquidated damage
- Penalty

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

## Aggrieved party

Entitled for reasonable compensation not exceeding the amount so named.

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

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

## ③ Nominal damage

It is awarded where plaintiff proved breach of contract but in fact he has suffered any damage.

\* Other remedies :-

### 1) Rescission of contract

Contract → broken

Other party → may treat contract as rescinded.

Effect :-

Party not in fault is absolved from his obligation and entitled for compensation for any change.

## Quantum Merit



As much as merited (earned).

### \* General rule :-

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

### \* Exceptions :-

1) When a person has done some work under a contract, and other party either.

(i) Repudiates the contract.

(ii) Some unexpected event happens making further performance of contract impossible, then the party who performs the work, can claim remuneration for the work done.

2) When and to whom right arises.

(i) Original contract must be discharged by breach/non-performance.

(ii) Right of Quantum merit lies with party not at fault.

3). Quantum merit fails. i.e. no right to sue when —

(a) Contract indivisible into parts and lumpsum to be paid on completion of total work.

(b). Person claiming compensation is himself guilty.

(c) Work is performed gratuitously i.e. no evidence of promise to pay for work done.

Note :- Damages are compensatory  
Quantum merit → Restitutory (to restore)

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\* Quantum merit arises in following cases :-

(a) When agreement discovered to be void or when a contract becomes void.

(b). Something is done without intention to do so gratuitously.

(c). Express or implied contract to render service but there is no agreement as to remuneration.

(d). When one party abandons to perform or refuses to perform.



(e). Where a contract is divisible and the party not in fault enjoyed benefit of part performance.

(f). When an indivisible contract for a lumpsum is completely performed but badly

- The person who has performed the contract can claim the lumpsum but the other party can make a deduction for bad work.

### 3]. Suit for Specific Performance

Where,

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- Damages are not an adequate remedy.
- In the case of breach of contract
- The court by its own ~~distinction~~ discretion on a suit for specific performance.
- Direct the party in breach to carry out his promise according to terms of contract.

#### 4]. Suit for injunction :-

- When party to a contract negating the terms of a contract.
- Court may be issuing injunction order.
- Restrain him/her from doing what he/she promised not to do.

Party rightfully rescinding contract is entitled for compensation. [Sec 75]

#### CONTINGENT & QUASI CONTRACT

##### \* Contingent Contract [Sec 31]

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- a contract
- to do  
or  
→ not to do } something
- if some event
- COLLATERAL
- to such contract
- does or does not happen.

## \* Collateral event

Neither performance directly promised as part of contract

Nor the whole of the consideration for a promise.

Example :-

A → B  
to pay  
1 Lac

If B's house is burnt in fire.

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### \* Essentials of a Contingent Contract

(a) The performance of a contingent contract would depend upon the

→ happening

or

→ non-happening

} some event  
or  
condition.

↓  
precedent                      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  
→ bound to happen } not contingent.

### \* Quasi Contracts

Maxim → "No man must grow rich out of another person's loss."

Note:- It is a right <sup>available</sup> ~~avoidable~~ not against <sup>all</sup> the world but against a particular person or persons only.

### \* Deemed Quasi - Contract

(a) Claim for necessaries supplied to minor [Sec 68]

(b) Payment by an interested person. [Sec 69]

→ Which another is bound by law to pay

and

→ therefore pays it.

→ is entitled to reimbursed by other.

(c) Obligation of person enjoying benefit of non-gratious act [sec 70]

→ 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 benefit.

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C.L :- Shyam Lal Vs. State of U.P.

(d). Responsibility of finder of lost goods [sec 71]

→ if he takes it into his custody

→ he has same responsibility as bailee.

\* Responsibilities :- [C.L. :- Howlins Vs. Howler]

(i) To take proper care of property as man of ordinary prudence.

(ii) No right to appropriate goods (use)

(iii) Restore goods if owner found.

(e). Money paid by mistake or under coercion. [Sec 72]

→ A person to whom  
→ money is paid

or

→ anything delivered

→ by mistake or coercion

→ must repay or return it.

[Sales Tax Officer Vs. Kanhaiyalal]

Seth Khanjalek Vs. National Bank of India

Coercion → Interpreted to means and includes

(i) Oppression

(ii) Extortion

(iii) or such other means.

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Trikandas Vs. Bombay Municipal Corporation

Quasi Contract

V.

Contract

Essential for  
valid contract

Absent

Present

Obligation

By law

Created with  
consent of  
parties.

Wagering

V.

Contingent

Validity

X

✓

Game of chance

✓

Contingent upon happening or non-happening

Future event

Primary factor

Only collateral

Reciprocal promise

✓

X

Interchangeable

Every wager is essentially contingent

Every contingent contract is not necessarily wager.

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