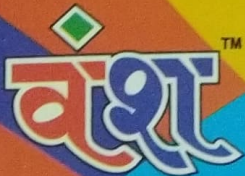




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Subject: \_\_\_\_\_

# Reference cases

\* The Indian Contract Act 1872

Unit - 1 Nature of contract.

⇒ A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount. Here, in the case, wife could not recover as it was a social agreement and the parties did not intend to create any legal relations.

## "Balfour vs Balfour"

⇒ When on dissolution of a partnership, the assets of the firm were divided among the partners the sales tax officer wanted to tax this transaction. It was held that it was not a sale. The partners being joint owner of these assets cannot be both buyer and seller.

## "State of Gujarat vs. Ramnath S & Co."

(2)

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Subject \_\_\_\_\_

(General offer)

⇒ In the famous case, Carbolic smoke Ball Co. advertised in several newspapers that a reward of \$ 100 would be given to any person who contracted influenza after using the smoke balls produced by the carbolic smoke Ball Co. according to printed directions. One lady, Mrs. Carlill used the smoke Balls as per the directions of company and even then, suffered from influenza. Held, she could recover the amount as by using the smoke balls she had accepted the offer.

Carlill vs. Carbolic smoke Ball Co. (1893)

⇒ Gausidott sent his servant Dalman to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. A traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward, as he did not know the offer.

Dalman shukla v. Gausidott

(It must be communicated to the offeror.)

Subject \_\_\_\_\_

⇒ Boulton bought a business from Brocklehurst. Jones who was Brocklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boulton for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore there was no contract between Boulton and Jones.

### Boulton vs. Jones

⇒ P delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, P lost her new saree. Held, the terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner.

In the cases referred above, the respective documents have been accepted without a protest and hence drycleaner amounted to tacit acceptance.

### Dilly White vs. Mannusamy (1970)

Subject \_\_\_\_\_

Chapter → 1.

The Indian Contract Act 1872

App. marks 3.

Unit → 1. Nature of contract.

Contract :-> An agreement enforceable by law. (sec 2(b))

Agreement + Enforceability by law => Contract

Agreement :->

When the person to whom the proposal is made and signifies his assent on that proposal which is made to him the proposal becomes accepted, accepted proposal becomes promise.

sec 2(a)      sec      sec 2(d)      sec 2(e)  
Offer + Acceptance => Promise + consideration => Agreement

Offer :-> When one person signifies his willingness to do something or to abstain from doing something so as to abstain the assent of another person. To such an act or abstinence such person as making an offer.

or.  
Offer :-> When one person signifies → his willingness to do something or abstain from doing something so that gives assent.

## Difference between Agreement and Contract.

S. No.	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Offer + Acceptance).	Agreement enforceable by Law. Agreement + legal enforceability
Scope	It is a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties.	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

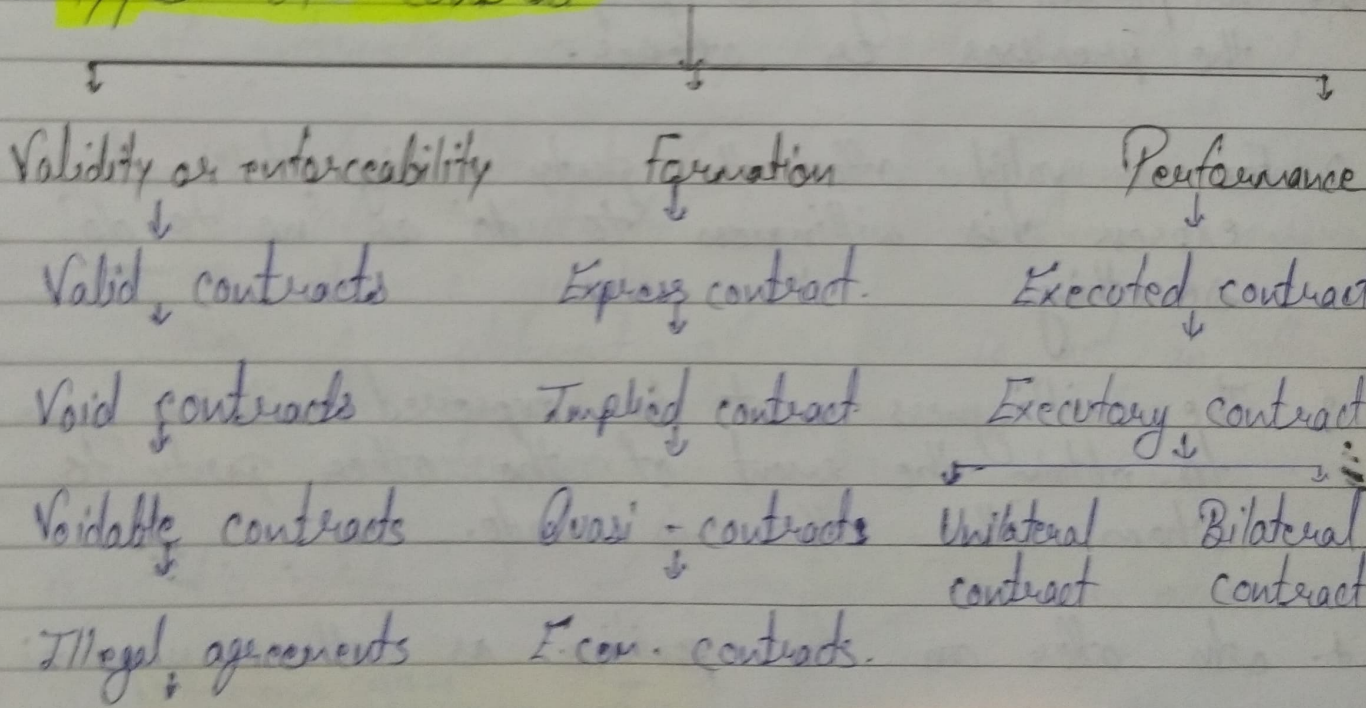
## Essentials of a valid contract.

As given by section 10 of Indian Contract Act, 1872	Not given by section 10 but are also considered essential
1. Agreement	1. Two parties.
2. Free consent	2. Intention to create legal relations.
3. Competency of the parties	3. Fulfilment of legal formalities.
4. Lawful consideration	4. Certainty of meaning
5. Legal object.	5. Possibility of Performance
6. Not expressly declared to be void (as per section 24 to 30 and 56).	

→ All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void.

- i) Two Parties.
- ii) Parties must intend to create legal obligations
- iii) Other formalities to be complied with in certain cases:
- iv) Certainty of meaning
- v) Possibility of performance of an agreement.

### \* Types of contract



Unenforceable contracts.





Subject: \_\_\_\_\_

### \* Essential of a valid offer \*

1. It must be capable of creating legal relations.
2. It must be certain, definite and not vague.
3. It must be communicated to the offeree.
4. It must be made with a view to obtaining the assent of the other party.
5. It may be conditional.
6. Offer should not contain a term the non-compliance of which would amount to acceptance.
7. The offer may be either specific or general.
8. The offer may be express or implied.
9. Offer is different from mere statement of intention, an invitation to offer, a mere communication of information, a prospectus and Advertisement.

- (a) A statement of intention and announcement.
- (b) Offer must be distinguished from an answer to a question.
- (c) A statement of price is not an offer.
- (d) An invitation to make an offer or do business.

10. A statement of price is not an offer.

Reference cases :-

- Dalman shukla vs. Gauri Dutt
- Harris vs. Nickerson (1873).
- Mac Pherson vs. Appanna (1957)
- Hansley vs. Facie

## Acceptance

Acceptance :-> When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise.

### \* Legal Rules regarding a valid acceptance :->

- 1) Acceptance can be given only by the person to whom offer is made.
- 2) Acceptance must be absolute and unqualified
- 3) The acceptance must be communicated.
- 4) Acceptance must be in the prescribed
- 5) Time
- 6) Mere silence is not acceptance

### \* Acceptance by conduct / Implied Acceptance.

Reference cases (1893) • Union of India vs. Bahulal AIR 1968 Bombay 294.  
 • Carlill vs. Carbolic smoke Ball Co  
 • Neale vs. Merret [1930] W.M.18 • Brogden vs. Metropolitan Railway Co (1877)  
 • Boulton vs. Jones (1857) • Heyworth vs. Knight (1864) 144 ER 120

• Felthouse vs. Bindley (1862)  
 Page No. 1-19, 1-20, 1-21

### \* Communication of offer and acceptance.

#### Communication of offer :-

the communication of offer is complete when it comes to the knowledge of the person to whom it is made.

Subject \_\_\_\_\_

### Communication of acceptance :-

two issues for discussion and understanding.

- i) Communication by act.
- ii) Communication of acceptance by 'omission' to do something.

### \* Communication of Performance

- i) from the viewpoint of proposer and
- ii) the other from the viewpoint of acceptor himself.

### \* Revocation of offer and acceptance.

- i) cts against the person who makes it.
- ii) cts against the person to whom it is made, when it comes to his knowledge.

### ⇒ Modes of revocation of offer.

- i) By notice of revocation.
- ii) By lapse of time.
- iii) By non-fulfilment of condition precedent.
- iv) By death or insanity (प्राणहान)
- v) By counter offer.
- vi) By the non-acceptance of the offer according to the prescribed or usual mode.
- vii) By subsequent illegality.

Agreement :-> Every promise and every set of promises, forming consideration for each other, is an agreement.

Consideration :-> When, at the desire of the promisor, the promisee.

- has done or abstained from doing something;
- does or abstains from doing something; or any other person.
- Promises to do or abstain from doing something, Such act, abstinence or promise is called a consideration for the promise.

Void agreement :-> An agreement not enforceable by law is said to be void. A void agreement is not enforceable from the very beginning, i.e. it is void-ab-initio.

Voidable contract :-> An agreement is a voidable contract if.

- it is enforceable by law at the option of one or more of the parties thereto,
- it is not enforceable by law at the option of the other or others.

Void contract :->

- a contract
- which ceases to be enforceable by law
- becomes void when it ceases to be enforceable.

↓  
रौकनी

## Unit - 2. Consideration (मेरा + मा फमदा) (सोच - विचार करना)

Consideration is when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

### Analysis of Definition of consideration

- i) Consideration is an act - doing something.
- ii) Consideration is abstinence - abstain from doing something.
- iii) Consideration must be at the desire of the promisor.
- iv) Consideration may move from promisee or any other person.
- v) Consideration may be past, present or future.

### \* Legal Rules Regarding Consideration.

- i) Consideration must move at the desire of the promisor.
- ii) Consideration may move from promisee or any other person.
- iii) Executed and executory consideration.
- iv) Consideration may be past, present or future.
- v) Consideration need not be adequate. - परफिट
- vi) Performance of what one is legally bound to perform.
- vii) Consideration must be real and not illusory.
- viii) Consideration must not be unlawful, immoral, or opposed to public policy.

Durga Basud v. Baldeo  
Chimayya vs. Ramayya.  
(1882)  
Page No. 1-35, 1-36.

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\* Suit By a Third Party to a contract.

- i) In the case of trust
- ii) In the case of a family settlement.
- iii) In the case of certain marriage contracts/arrangements.
- iv) In the case of assignment of a contract.
- v) Acknowledgement or estoppel.
- vi) In the case of covenant running with the land.
- vii) Contracts entered into through an agent.

\* Validity of an agreement without consideration.

- i) Natural love and Affection. (रक्त)
- ii) Compensation for past voluntary services. (स्वैच्छित् सेवा)
- iii) Promise to pay time barred debt. (कालांतर कर्ण)
- iv) Agency
- v) Completed gift. (उपनिषान की व्यवस्था)
- vi) Bailment
- vii) Charity

Kadarnath vs. Gracie  
Mohammad.  
Page No. :-> 1-39.

Unit-3. Other essential elements of a contract.  
 (अनुबंध के अन्य आवश्यक तत्व)

Essential Elements of a valid contract.

Capacity to Contract

Free consent

Lawful Consideration & object

Not Expressly declared void

<ul style="list-style-type: none"> <li>→ Major</li> <li>→ Sound Mind</li> <li>→ Not Disqualified</li> </ul>	<p>Not caused by.</p> <ul style="list-style-type: none"> <li>→ Coercion (दबाव)</li> <li>→ Undue Influence (अवैध प्रभाव) Sec. 15.</li> <li>→ Fraud (धोखा) Sec. 16.</li> <li>→ Misrepresentation (बहुमति) Sec. 17.</li> <li>→ Mistake (गलती) Sec. 18.</li> </ul>
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$\Rightarrow$  A contract must satisfy the following conditions:

- 1) the parties must be competent to contract;
- 2) it must be made by the free consent of the parties;
- 3) it must be made for a lawful consideration and with a lawful object;
- 4) it should not have been expressly declared as void by law.

\* Capacity to contract:

Every person is competent to contract who-

- (A) has attained the age of majority,
- (B) is of sound mind and
- (C) is not disqualified by law

(A) Age of majority:-

According to Indian majority act 1875 is above 18<sup>th</sup> years of age

⇒ Law relating to minor's agreement / Position of Minor

1. A contract made with or by a minor is void-ab-initio.
2. No ratification after attaining majority
3. Minor can be a beneficiary or can take benefit out of a contract.
4. A minor can always plead minority.
5. Liability for necessaries.
6. Contract by guardian - how far enforceable.
7. No specific performance
8. No insolvency
9. Partnership.
10. Minor can be an agent.
11. Minor cannot bind parent or guardian
12. Joint contract by minor and adult
13. Surety for a minor
14. Minor as shareholder
15. Liability for torts.

Bind ⇒ (अवैध)

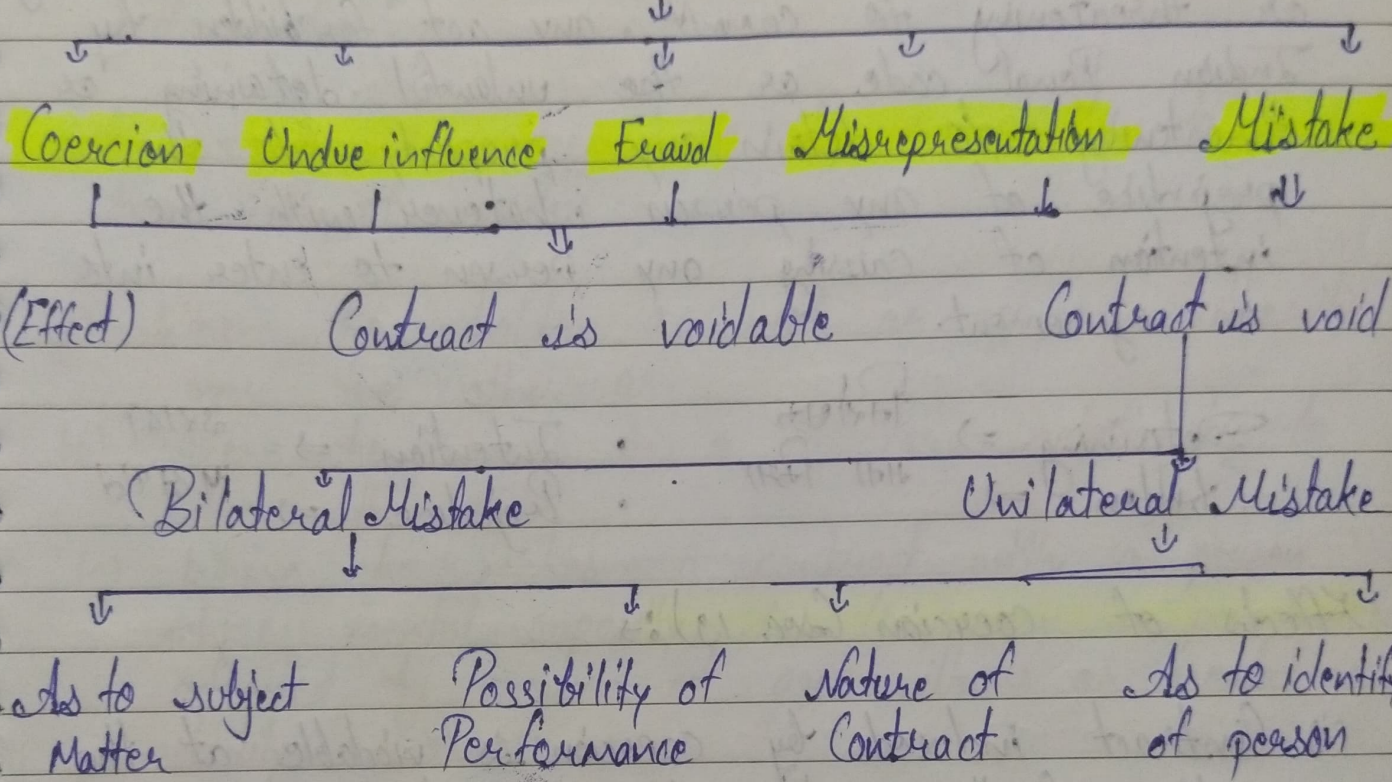
Mohari Bibi vs. Dhanno Das Ghose  
(1903)  
Sain Das vs. Ram Chand.  
Page No.



Subject \_\_\_\_\_

### \* Free consent

Consent is not free when it is caused by.



Consent :-> When two or more persons are said to consent when they agree upon the same thing in the same sense. (consensus ad-idem)

Free consent :-> section 14  
Consent is said to be free when it is not caused by: Coercion, undue influence, Fraud, Misrepresentation and Mistake.

1. Coercion, section 15
2. Undue influence, section 16
3. Fraud, Section 17
4. Misrepresentation, section 18
5. Mistake, Section 20, 21, 22.

① Coercion (Sec 15) :->

Coercion is the committing or threatening to commit, any act forbidden by Indian Penal code or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

- Detaining => निरोधक
- Forbidden => मना मिया
- Intention => इरादा
- Prejudice => पक्षपात

Effects of coercion (Sec 19) :->

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) The party rescinding a void contract should if he has received any benefit, restore such benefit to the person from whom it was received.
- (iii) The person whom money has been paid or anything delivered under coercion must repay/return it.

② Undue Influence (Sec 16) :->

A contract is said to be induced by "undue influence" where the relations subsisting between the parties are

Subject: \_\_\_\_\_

such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

A person is deemed to be in position to dominate the will of another →

- (a) Where he holds a real or apparent authority over the other or.
- (b) Where he stands in a fiduciary relationship to the other or.
- (c) Where he makes a contract with a person whose mental capacity is temporary or permanently affected by reason of age, illness or mental or bodily distress.

for. e.g. old illiterate person.

Essential ingredients under this provision

i) Relation between the parties :->

A person can be influenced by the other when a near relationship between the two exists.

ii) Position to dominate the will:- e.g.

- (a) Real and apparent authority :-> e.g. i) Master and servant
- ii) Doctor and Patient

### (v) Fiduciary relationship :->

When relation of trust faith and confidence exists between the parties of a contract for e.g.

- (i) father and son
- (ii) Husband and wife.
- (iii) Debtor and creditor etc.

### (vi) Mental distress :->

for. eg. :-> A doctor is deemed to be in a position to dominate the will of his patient.

### (vii) Unfair Unconscionable bargains :->

e.g. Money - lending transactions

iii) The object must be fair and advantage.

### iv) Burden of Proof :->

The Burden of proving the absence of the use of dominant position to obtain unfair advantage will lie on the party who is in position to dominate the will of the other.

## 3. Fraud (Section 17)

दोष :->

Fraud means and includes any of the following acts committed by a party to a contract or by his agent, with an intent to deceive another party there to or his agent or to induce him to enter into the contract. [SAD - PF]

Subject: \_\_\_\_\_

- i) The suggestion as a fact, of that which is not true, by one who does not believe it to true.
- ii) The active concealment of a fact by one having knowledge or belief of the fact.
- iii) A promise made without any intention of performing it.
- iv) Any other act fitted to deceive.
- v) Any such act as law specially declares to be fraudulent. → (छोखा देना)

\* Explanation to sec 17: →

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak or unless his silence is, in itself, equivalent to speech.

\* Effect of fraud on validity of a contract: →

Where the agreement is caused by the fraud, the contract is voidable at the option of the party defrauded and he has the following remedies →

- ① He can rescind the contract within a reasonable time.
- ② He can sue for damages.
3. He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been if the representation made been true.

### \* Mere silence is not fraud:→

A party to the contract is under no obligation to disclose the whole truth to the other party. There is no duty to speak in such cases and silence does not amount to fraud eg. "Caveat Emptor" i.e. let the purchaser beware is the rule applicable to contracts.

i.e. let the purchaser

⇒ Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

### \* Silence is fraud when:

#### I. Duty of person to speak:→

Where the circumstances of the cases are such that it is the duty of the person observing silence to speak. For e.g. → In contracts of "uberrimae fidei" (contracts of utmost good faith) पूर्ण रूप से विश्वास

Subject \_\_\_\_\_

⇒ following contracts come within this category: (FIMFA)

- (a) fiduciary Relationship.
- (b) Contracts of Insurance
- (c) Contracts of Marriage.
- (d) Contracts of family settlement
- (e) Share allotment contracts.

II Where the silence itself is equivalent to speech: ⇒

⇒ for e.g. A says to B "if you do not deny it, I shall assume that horse is sound." A says nothing his silence amounts to speech.

4. Misrepresentation (sec 18) ⇒ [ABC]

Misrepresentation means and includes: ⇒

- ① The positive ascertain in a manner not warranted by the info of the person making it, of that which is not true, though he believes it to be true.
- ② Any breach of duty which, without any intent to deceive which brings an advantage to him.
- ③ Caused, innocently, the other party to the agreement to make a mistake as to the subject matter.