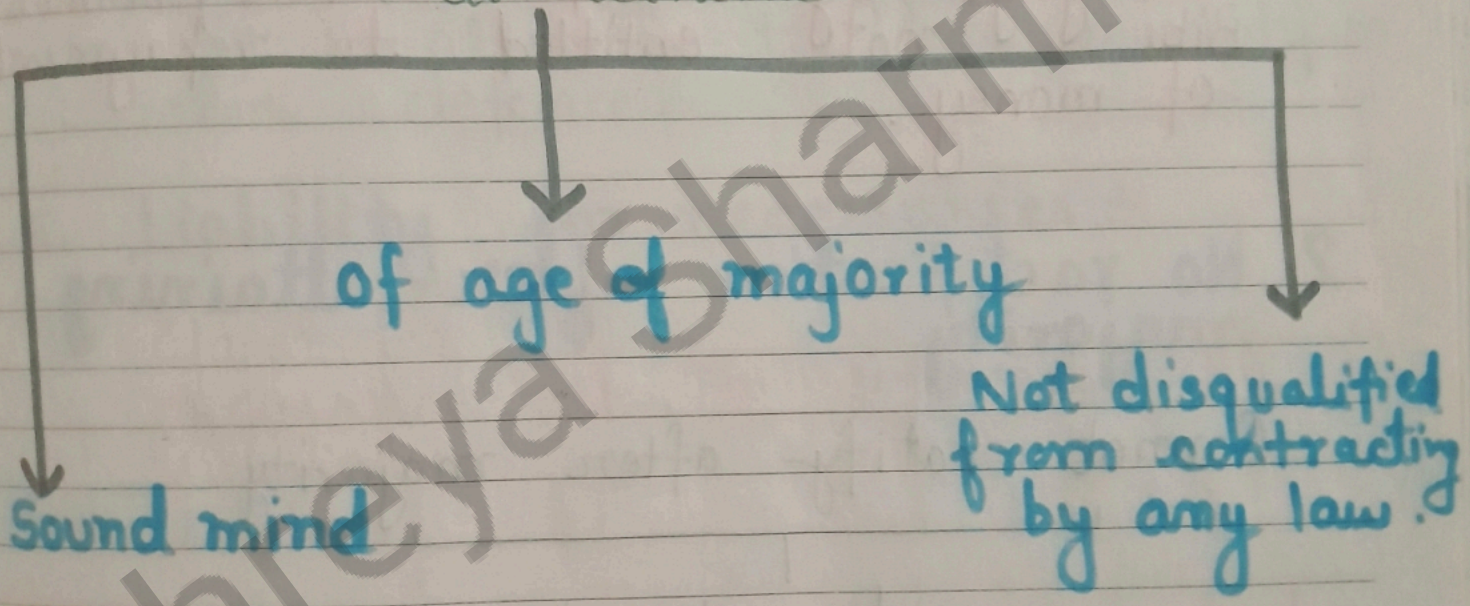


Unit - 3 [OTHER ESSENTIAL ELEMENTS OF A CONTRACT]

Capacity to contract / Who is competent to contract [Sec 11]

Every person who is competent to contract.



A Age of majority :-

Law relating to minor's agreement / position of minor :-

1. A contract made with or by minor IS

VOID - AB - INITIO

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Case law ÷

Mohin Bibi Vs Dharmo Das Ghose

Minor

Mortgage by minor was void, Mohan Bibi not entitled to repayment of money.

2. No ratification after attaining majority.

Cannot ratify after majority

void - ab - initio

01 3. Minor can be a beneficiary:
SUND → Can take benefit out of contract

A promissory note duly executed in favour of minor is not void

He can accept a benefit

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Minor cannot be a partner in partnership firm, but he can be a beneficiary

4. Minor can always plead minority

- Rule of estoppel cannot be applied against a minor.
- He is allowed to plead minority in his defence.

5. Liability for necessaries :-

→ Claim for necessaries supplied to minor] is enforceable by law.

→ Minor not personally liable] Only his property is liable.

(i) Contract must be for goods : Necessary for support] Condition to satisfy to make minor's estate liable

(ii) Minor must not have sufficient supply of these necessaries.] ↑

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6. Contract by Guardian - How far enforceable :-

Guardian of minor can enter into contract on minor's behalf & for benefit of minor

7. No specific performance

8. No insolvency

9. Partnership

10. Minor can be an agent :

But not liable to his principal for his act.

11. Minor cannot bind parent or guardian.

12. Joint contract by Minor & Adult

Case law : Sain Das v/s Ram Chand.

13. Surety for minor.

14. Minor as shareholder

15. Liability for torts: Minor liable for torts.

• Person of sound mind :

A person is of sound mind if at time of making contract he is

→ Capable of understanding it

&

forming a rational judgement as to its effect upon his interests

• Contract by disqualified persons :

- Foreign sovereigns & ambassadors
- Alien Enemy
- Convicts
- Insolvents

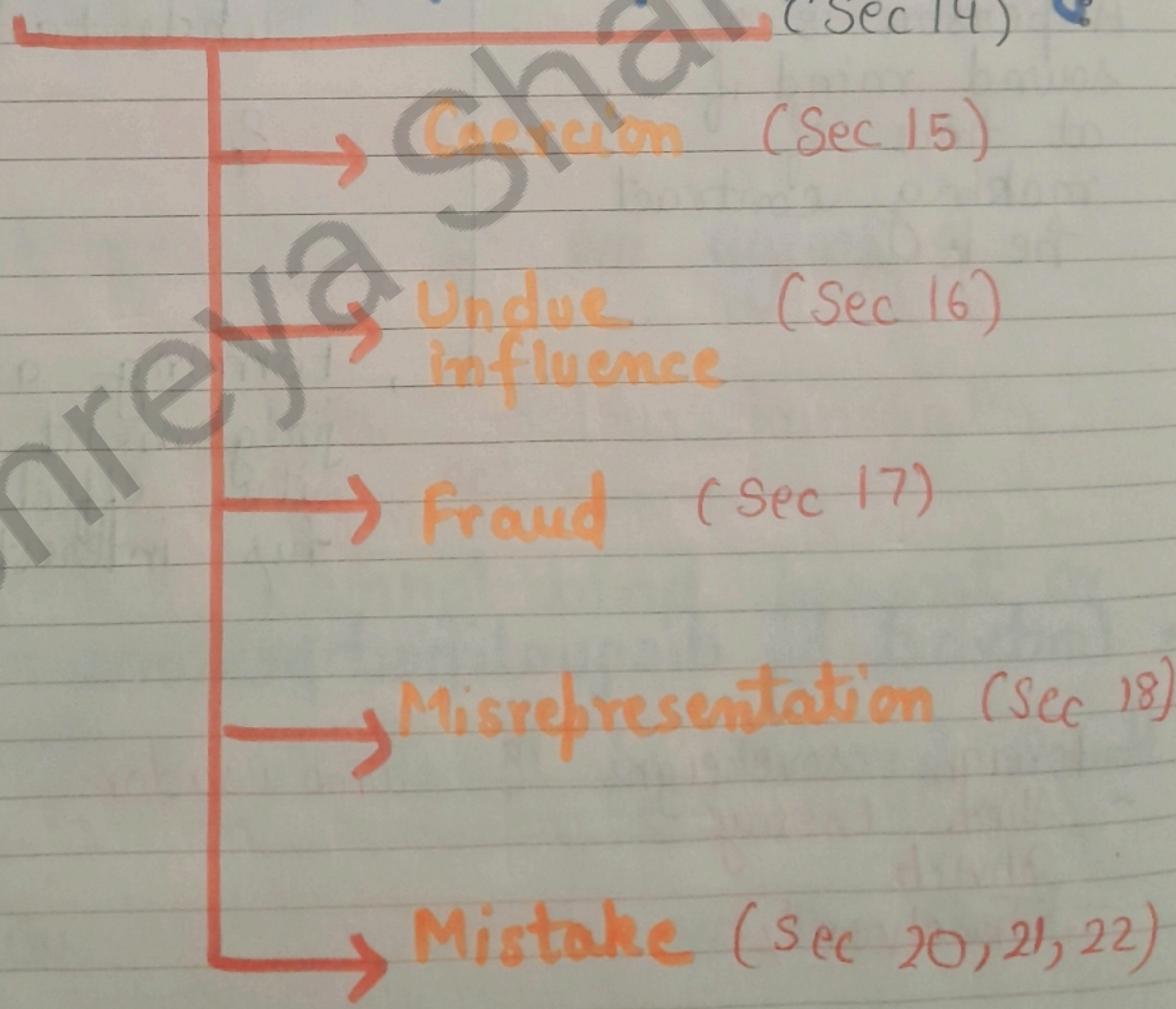
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* Free consent :

Consent (Sec 13) → Agree upon same thing in the same sense

(Consensus ad idem)

Consent is not free if caused by (Sec 14)



Shreya Sharma

COERCION ÷

- 1. Committing or threatening to commit } Any act forbidden by Indian Penal code } With intention of causing any person to enter into a agreement.
- 2. OR
- 3. Unlawful detaining or threatening to detain } Any property to to prejudice of any person }

Effects of coercion ÷

- Voidable contract at option of aggrieved party.
- Party rescinding a void contract should restore benefit to other party } if received any
- Money paid / anything delivered } repaid / returned...

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* Undue influence : (Sec 16)

Contract is said to be induced by undue influence.

where relation subsisting between parties are such that

(i) One party is in a position to [Dominate will of other]

(ii) Uses that position to obtain [Unfair advantage]

08 Essential ingredients :

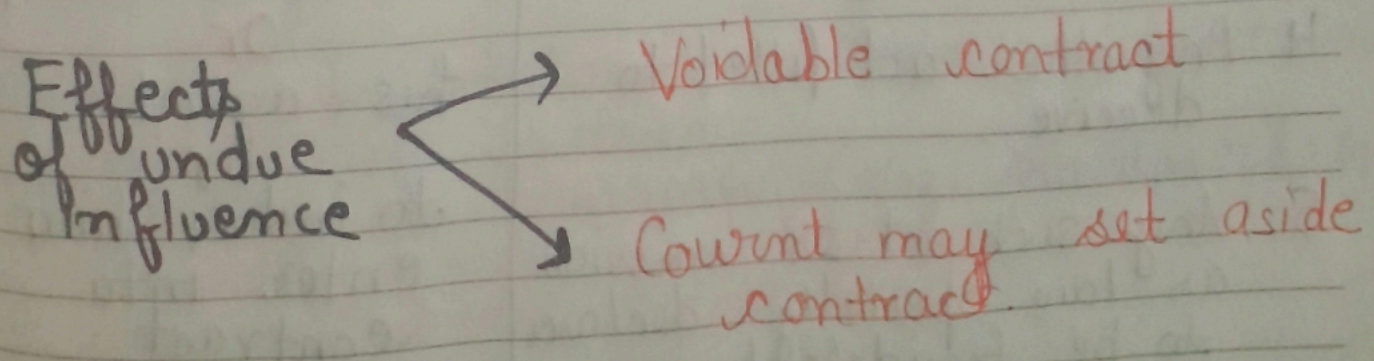
1. Relation b/w parties → [Near relation exists]

2. Position to dominate will of another.

- a) holds real or apparent authority
- b) stands in fiduciary relation
- c) Mental Distress
(Mental / Body stress / illness / old age)
- d) Unconscionable bargains.

[Case law : Kirpa Ram Vs Sami Ud-din Ad-Khan]

- 3. Object must be to take undue advantage.
- 4. Burden of proof : Lies on party who is in dominant position (who dominates other's will)



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Fraud (Sec 17)

Fraud means & includes

- Commission of following acts
- Committed by

Commission of following acts

Committed by

1. Suggestion of a fact of that which is not true by person who does not believe it to be true.

Party to contract
Or
his convenience

2. Active concealment of fact having knowledge or belief.

Or
by his agent
with intent to

3. Promise made without intention of performing it.

deceive another party

4. Any other act fitted to deceive.

Or
his agent

5. Any such act or omission as law specially declares to be fraudulent.

Or
to induce him to enter into contract

Explanation to Sec 17 ÷

Mere silence as to facts likely to affect willingness of a person to enter into contract → NOT FRAUD

UNLESS] Circumstances of such case such that → it is duty of person keeping silence or to speak

UNLESS] → His silence is in itself equivalent to speech.

Mere silence is not Fraud

Case law: Word Vs. Hobbs

1. Duty of person to speak.

Contracts of Ubessimae fidai (Contracts of utmost good faith.

- Fiduciary relationship (Regler Vs Campbell stant)
- Contracts of Insurance
- Contracts of marriage (Hazi Ahmed Vs Abdul Gani)
- Contracts of family statement
- Share allotment contracts.

12

THURSDAY

APRIL

2018

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2. Where silence itself is equivalent to speech.

$A \rightarrow B \quad [=]$

Eg: If you don't deny it, I shall presume horse to be mine.

(A says nothing, his speech is silence)

Exception to Sec 19.

In case of fraudulent silence contracts are not voidable if party whose consent was so obtained had means of discovering truth with ordinary diligence.

Effects of fraud ÷

→ When contract is caused by fraud, contract is voidable at aggrieved party's opinion.

And he has following remedies

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1. He can rescind (consideration) contract in a reasonable time.
2. He can sue [for damages]
3. He can insist on performance of contract on condition that he shall be put in position he would have been, if representation had been true.

MISREPRESENTATION ÷ (SEC-18)

Means & includes

1. Positive Assertion
 - of fact which is false though he believes it to be true.
 - Made in manner not warranted by info of person making it.
2. Any breach of duty
 - without an intention to deceive
 - gains an advantage
3. Causing other person to make mistake
 - as to substance of subject of agreement.

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Effects : Injured party entitled to

Repudiate
the
contract

sue
for
restitution

Cannot
claim
damages
(bcz there is
no intention
to deceive)

Explanation to Sec 19

[Contract not voidable]

→ When consent is caused by

1 :-> Silence amounting to fraud consent of party to agreement.

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SUNDAY

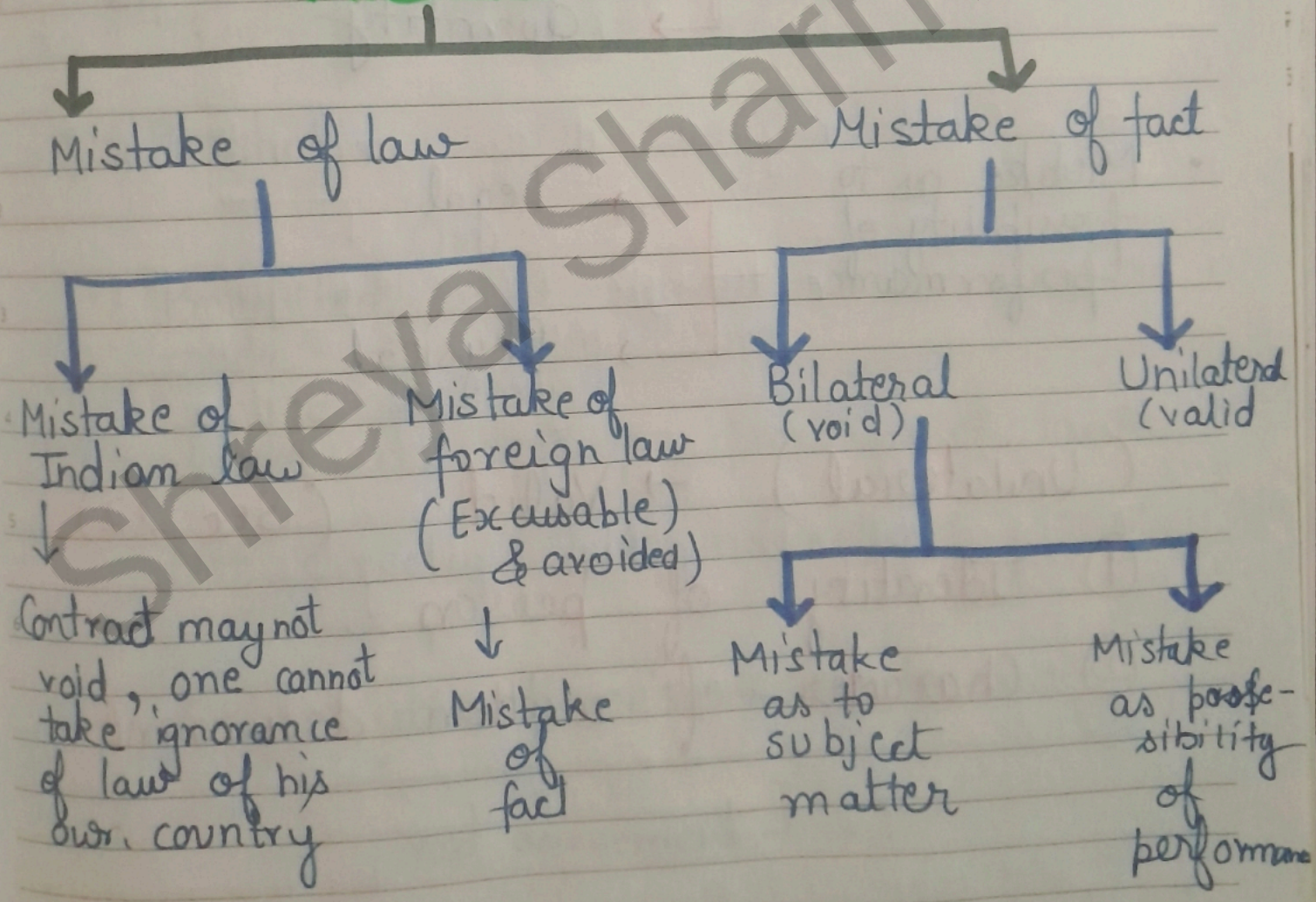
2 :-> A fraud / representation which did not cause consent of party to agreement.

3 :-> Where the party enters into contract in ignorance of fraud.

MISTAKE :-

Innocent Or Enormous belief] Leads party to misunderstand others

Mistake



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• Mistakes as to subject matter

- Quality
- Existence
- Identity
- Title
- Price
- Quantity

• Mistake as to possibility of performance

- Legal
- Physical

(Unilateral) → Valid (Sec 22)

① Identity of person

② Character of written document

→ Legality of object & consideration (Sec 23)

Consideration or object of an agreement is lawful unless.

1. It's forbidden by law

- Punishable under any statute

- Or Prohibited by regulations or orders made by legislature

2. When it defeats provision of law

Not directly but indirectly

Defeat the provisions of the law

Void agreement

3. When it's **fraudulent** :] To promote fraud
 Void

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4. When consideration defeats any rule for time being enforce in India.

5. Involves injury to the the person or property of anothes

Means] Criminal or wrongful harm

6. Court regards it as immoral.

for eg: Arrange a girl for marriage I will give give Rs 50000

7. Opposed to public policy.

Till then Scope is restricted

freedom to contract becomes illusory

Agreements opposed to public policy:

1. Trading with enemy: (At times of war)

A person owing support to a Govt

Void

2. Stifling Prosecution:

An agreement to stifle prosecution tends to

per version or an abuse of justice
(Void)

The principle is that one should not make a trade of felony & the compromise of any public offence is generally illegal.

Under Indian Criminal Procedure Code !!!

Compoundable

Uncompoundable.

Not opposed to public policy

opposed to public policy

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SATURDAY

APRIL

2018

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MAR 2018	4	5	6	7	8	9	10
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3. Maintenance & champerty

Person promises to maintain suit in which he has no interest

Person agrees to assist another in litigation in - exchange of promise to hand over portion of proceeds of action.

4. Trafficking related to public offices & titles.

Interferes with the appointment of a person best qualified for the service of the public.

Public policy requires that there should be no money consideration for the appointment to an office in which public is interested

22

SUNDAY

5. Agreements tending to create monopolies

Are opposed to public policy

Therefore void

6. Marriage brokerage agreements ÷

Agreement to negotiate marriage for reward which is known as a marriage brokerage contract.] Void

7. Interference with the course of justice

An agreement whose object is to induce any judicial officer of the state to act partially or corruptly is void as it is opposed to public policy

8. Interest against obligation ÷] Only Eg. under this

for eg. An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

9. Consideration unlawful in part ÷ (By Virtue of Sec 24

If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

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TUESDAY
APRIL

2018

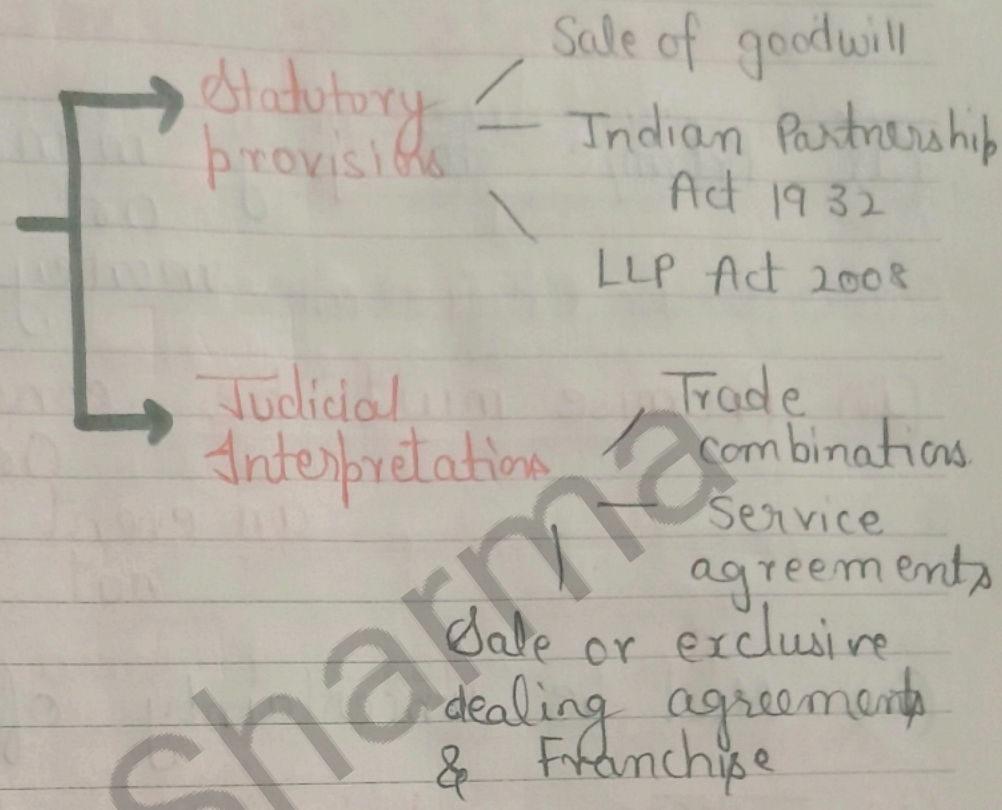
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VOID AGREEMENTS ÷

1. Made by incompetent parties (Sec 11)
2. Agreements made under bilateral mistake of fact (Sec 23)
3. Agreements - Consideration or object
Unlawful (Sec 23)
4. Agreements - Consideration or objects
Unlawful in parts (Sec 24)
5. Agreements made without consideration (Sec 25)
6. Agreements in restraint of marriage (Sec 26)
7. Restraint of trade (Sec 27)

Exceptions ÷ Continued

Exceptions to agreement in restraint of trade is void



8. Agreement in restraint of legal proceeding (Sec 28)

Exceptions :

- (i) Dispute referred to arbitration.
- (ii) Parties agree to refer to arbitration] Writing

9. Agreement meaning of which is uncertain

10. Wagering agreement (Sec 30)

↓
Continued

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THURSDAY

APRIL

2018

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Essentials of wager :-

(i) Promise to pay money
or
money worth.

(ii) Promise must be conditional
Or
an event happening or
not happening.

(iii) Must be uncertainty of event.

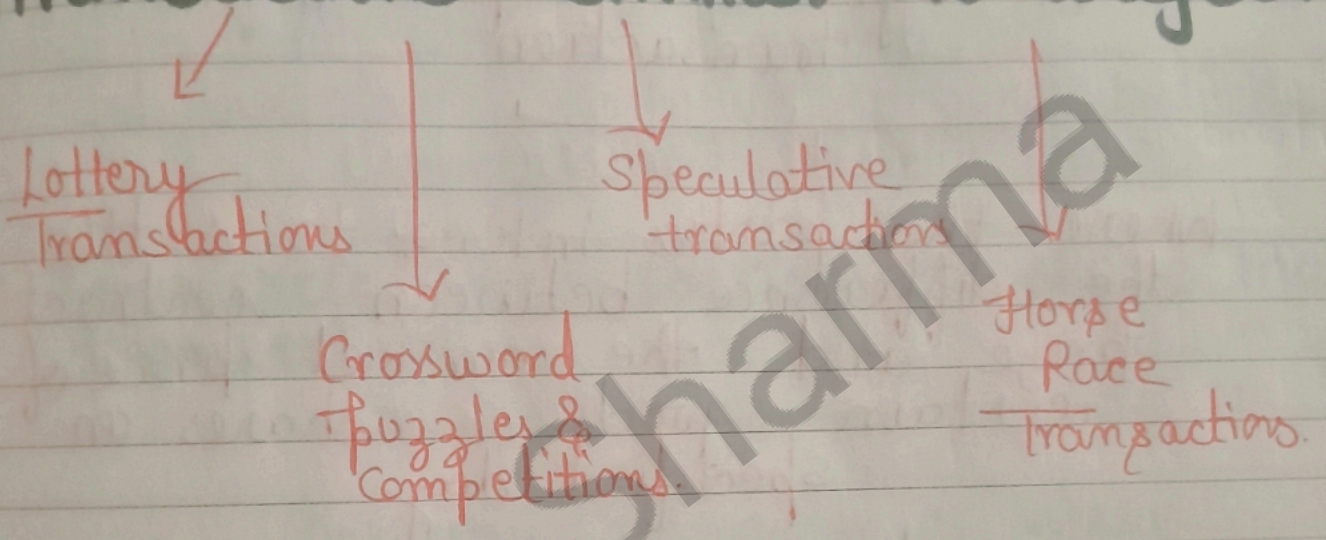
(iv) There must be 2 parties
Stand to win or lose.

(v) There must be
Common intention] to bet at the
timing of
making
such
agreement

(vi) Parties should have no interest in the
event] except for stake

11. Agreements to do an impossible acts (Sec 56)

Transactions similar to wager:-



★ Lottery Transactions] Game of chance
[Not of skill & knowledge]

★ Crossword puzzles & competitions.

Case law: State of Bombay vs. RMD Chamarbongwala AIR (1957)

- But if on basis of skill & intelligence + Valid
- Prize competition not wagers if prize 1000 or less

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★ Speculative transactions:

An agreement of a share market transaction.

Where the parties intend to settle the difference between contract price and the market price of certain goods or shares on specified day.

Hence void.

★ Horse Race Transactions.

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SUNDAY

If less than ₹ 500

Transactions resembling with wagering transaction

(1) Chit fund :] Does not come with scope of wager.

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In this a certain number of person decide to contribute a fixed sum for a specified person/ period

- At end of a month,
- paid / contribute amount to lucky winners, by lucky draw.

(ii) Commercial transactions or share market transactions.

Delivery of goods or shares is intended to be given or taken.

Do not amount to wagers

(iii) Games of skill and athletic competition =

When prizes are awarded on the basis of skill

valid

01

TUESDAY

MAY

2018

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	22	23	24	25	26	27	28
	29	30					

(iv) A contract of insurance.:

Type of contingent contract

Valid under law

Different from wagering agreements.

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