

# **B.Com (H & G) under CBCS system**

**Study Material  
Year I : Semester 1**

**Business Laws  
CC 1.1 Chg  
MCQ Paper**

**6 CREDIT HOURS**

**UNIT 1:  
INDIAN CONTRACT ACT 1872  
30 marks**

# **INDIAN CONTRACT ACT 1872**

- 1. Indian Contract Act 1872**
- 2. Meaning and essentials of contract, characteristics**
- 3. Kinds of Contract: Based on Validity, formation & performance, law relating to offer and acceptance (definition, rules, communication and revocation of offer and acceptance)**
- 4. Consideration (definition, elements, types, rules, communication and revocation), No consideration no contract and its exceptions, capacity to parties( definition and types)**
- 5. Consent, free consent, coercion, undue influence, fraud, misrepresentation, mistake)**
- 6. Legality of objects and consideration**
- 7. Void and voidable agreements---definition, types and distinction**
- 8. Discharge of a contract—modes of discharge, breach and remedies against breach of contract.**
- 9. Specific Contract- Quasi Contract of indemnity, guarantee, bailment , pledges{to be continued in part 2 of the Presentation}**

# INDIAN CONTRACT ACT 1872



```
graph TD; A[INDIAN CONTRACT ACT 1872] --> B[1ST SEPTEMBER 1872 APPLICABLE TO ALL THE STATES OF INDIA EXCEPT THE STATE OF JAMMU & KASHMIR]; B --> C[1. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them.  
2. Each contract creates some right and duties upon the contracting parties.  
3. Indian Contract Act deals with the enforcement of these rights and duties upon the parties in India.];
```

**1<sup>ST</sup> SEPTEMBER 1872 APPLICABLE TO ALL THE STATES OF INDIA EXCEPT THE STATE OF JAMMU & KASHMIR**

1. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them.
2. Each contract creates some right and duties upon the contracting parties.
3. Indian Contract Act deals with the enforcement of these rights and duties upon the parties in India.

# IMPORTANT ASPECTS OF INDIAN CONTRACT ACT

Important rights:

1. Right in rem
2. Right in personem

## **RIGHT IN REM:**

This right protect the right on any object and it is available against the world at large

*Eg: X has money in his pocket and he can use the money as he likes*

## **RIGHT IN PERSONEM:**

This right help the parties to the contract who can exercise their contractual rights against each other only.

*Eg: Mr. Rahim let his house to Ram, a tenant. Rahim has a the right to receive the rent from his tenant. The rest of the world is not concerned about his right*

# CONTRACT

**IN A CONTRACT THERE MUST BE TWO IMPORTANT ASPECTS:**

1. An agreement
2. The agreement must be enforceable by law

## **SECTION 2(e): Agreement:**

Every promise and every set of promise, forming consideration for each other, is an agreement.

Agreement:

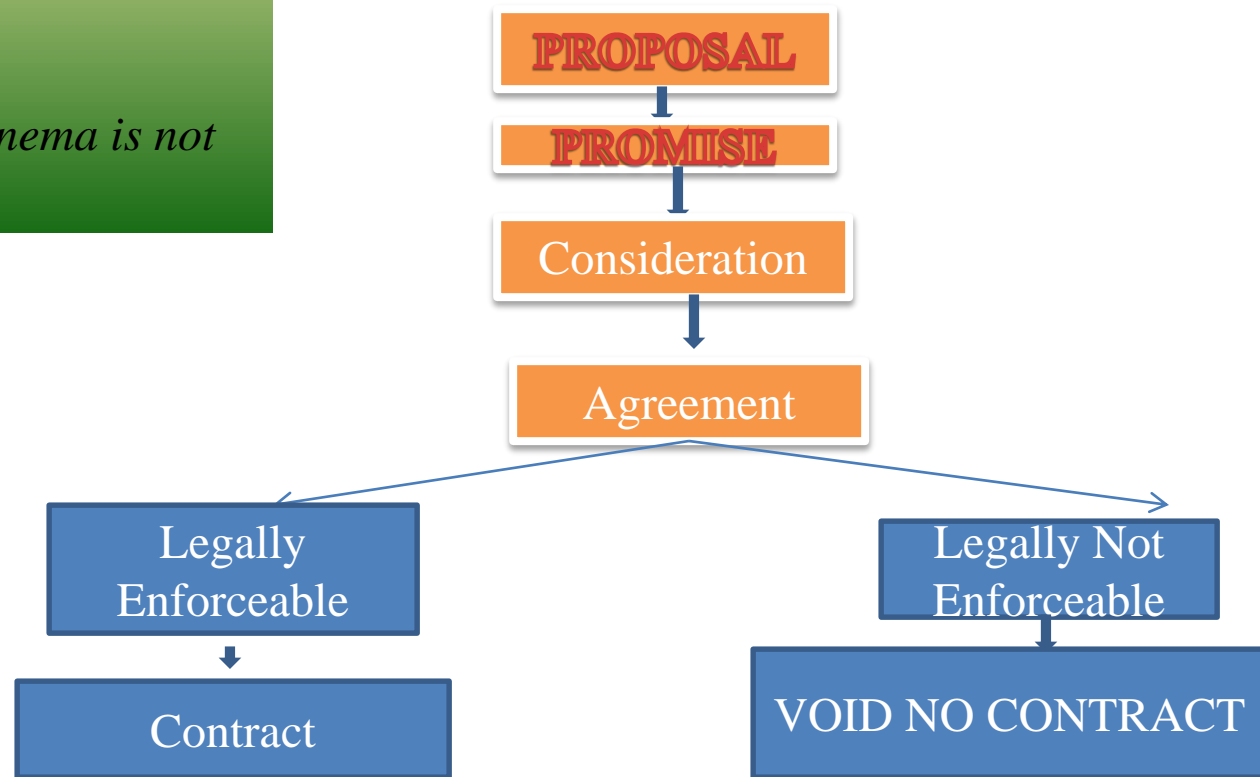
1. Legal obligation
2. Enforceability by law

Eg: *An agreement to go to cinema is not enforceable by law .*

## **SECTION 2(h): CONTRACT**

“An agreement enforceable by law is a contract”

**Contract = Agreement + Enforceable by law**



Contd/...

For a contract the following points are required:

1. There must be two or more persons having capacity to enter into the contract.
2. There must be agreement enforceable by law
3. There must be obligation between the parties to the contract.

*Example:*

*A wants to sell his house at a price of Rs 60 Lakh to B and B agrees to purchase the same.*

## ESSENTIAL FEATURES OF A CONTRACT

Terms	Features
Offer	An expression of willingness to be bound on terms. Terms established by the offeror form part of the contract.
Parties	Two parties( Offeror and Offeree)
Acceptance	The party to whom the offer has been made communicates a full and unconditional acceptance of the terms of the offer.
Consideration	The bargain element of the contract also known as the <i>price of a promise</i> .
Intention	The parties must intend that the agreement is to establish a legal binding contract rather than simply a social arrangement.
Certainty	The terms of the contract must be sufficiently clear and precise to be enforceable.
Obligation	Obligation is the legal duty to do or abstain from doing something. An agreement to a contract should give rise to some legal obligation
Enforceable	The terms of the contract must be enforceable by law.

# CLASSIFICATION OF CONTRACT

CONTRACT

CREATION

EXPRESS

IMPLIED

TACIT

QUASI

E-  
CONTRACT

VALIDITY

VALID

VOID

VOIDABLE

UNENFORCEABLE

ILLEGAL

EXECUTION

EXECUTED

EXECUTORY

PARTLY  
EXECUTED

PARTLY  
EXECUTORY

LIABILITY

Bilateral

Unilateral



## ON THE BASIS OF CREATION

### 1. **Express Contract: Oral or written**

Eg: A says to B will you purchase my car for Rs 5 Lakh? B says to A “yes”. This is an expressed contract.

**2. Implied Contract:** May not be oral be written. From the circumstatances of cases, such contract is know as implied contract.

Eg: Boarding a bus for a destination means that the commuter will be obliged to pay for the Journey.

**Tacit Contract:** A contract is said to be tacit when it has to be inferred from the conduct of the Parties.

*Eg: When a person enters into an ATM counter for withdrawing his money a tacit contract is formed.*

**Quasi Contract:** No formal contract but rights and liabilities exists between the parties. The law creates this obligation to **maintain justice and fairness among the parties**. The law does not allow a person to enrich himself at the expense of the others. If the rights and obligations are not allow a person to enrich himself at the expense of the other.

*Eg: X Forgets that he has kept some goods at Y's place. Y's is under the legal obligation to restore the goods of X. This show that Y cannot enrich himself at the expense of X.*

## On the basis of validity

i) **Valid Contract**: If a contract is formed satisfying all the elements of a contract, such contract is known as Valid Contract.

*Eg: X offers to Y to sell his car at a price of Rs 5 lakh and Y agrees to buy the same at the said price. This is a valid Contract.*

**Void Contract**: An agreement may be enforceable at the time when it was entered into but later on, due to certain reasons, for **example impossibility or illegality of the contract, it may become void or unenforceable.**

*Eg: X by exercising coercion over Y, make him agree to sell his house worth Rs 6 Lakh for a mere sum of Rs 1 Lakh. The agreement is voidable at the option of Y. In case Y decides to rescind the contract, it becomes void.*

**Voidable Contract**: An agreement which is enforceable at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract

**Unenforceable Contract**: These are contracts which cant be enforced in a court of law because of some technical defects. These contracts become fully enforceable if the technical defects are removed.

**Illegal Contract**: Void agreements but all void agreements are not illegal

## On the basis of liability

**Bilateral:** if the obligation of both the parties are outstanding at the time of formation of the contract

**Unilateral:** At the time of formation the obligation to perform the contract is due on the part of one party only.

## All Contracts are Agreements but all Agreements are not Contracts

- An agreement **enforceable by law is a contract**
- For a contract **agreement is obligatory**. Without agreement there can be no contract.  
{where there is smoke there is fire}
- An **agreement may be written or oral** and lies upon the parties for its fulfillment. It is enforceable by law.
- **Promise** forming the consideration for each other is an agreement
- A **proposal when accepted becomes a promise**.
- For an agreement a proposal is made by one party and the other party signifies his assent.
- **An agreement which is not enforceable by law is not a contract**
- **An agreement becomes a contract if:**
  1. **Free consent**
  2. **Competence of the parties**
  3. **Lawful consideration**
  4. **Lawful object**

## Difference between Agreement & Contract

AGREEMENT	CONTRACT
<b>Promise</b> and set of promise for a consideration is agreement	An agreement <b>enforceable by law</b>
Acceptance of an offer	<b>Agreement + enforceability = contract</b>
May not create <b>legal rights</b> between the parties	<b>Legal right</b> is compulsory
Agreement does not require the contract	Valid agreement is necessary
Agreement is <b>not concluding and no legal binding</b>	Contract is a narrow concept and specific of an agreement

## Offer and acceptance

- **Offeror:** A person who makes an offer
- **Offeree:** A person to whom the offer is made

## Essentials of offer

1. **Two parties**
2. **Must be communicated** to the offeree
3. **Willingness of the offeror** must be specified
4. **Assent** of the offeree must be made
5. An offer may involve for **doing the act**

## Kinds of an offer

1. **Express offer**: Offeror expressly communicates the offer
2. **Implied offer**: An offer implied from the conduct of the parties
3. **Specific offer**: An offer made to a **particular person** and to be accepted by that person.
4. **General Offer**: An offer made to the **general public**
5. **Cross offer**: two parties **exchange identical offers** in ignorance at the time of each other's offer.
6. **Counter offer**: Offeree gives **qualified acceptance** of the offer subject to modification and variation in the terms of the original offer. Counter offer amounts to rejection of the original offer.
7. **Standing, open and continuous offer**: an offer is allowed to remain open for **acceptance over a period of time**.

## Legal rules of offer

1. The terms of an **offer must be clear and certain**
2. Offer may **be expressed or implied**
3. The offer must be **communicated to the offeree**
4. An offer must be made with an **intention of creating legal obligation**
5. **Offer may be conditional:** an offer can be subject to **condition and can be accepted only subject to condition**. If the condition is not accepted the conditional offer lapses.
6. **Invitation to an offer is not an offer: quotations, catalogues of goods, advertisements for tender** are not actual offer. They are invitation to offer.
7. **Offer may be specific and general:** offer made to particular individual or organization



## Revocation of offer

1. **By lapse of time:** when the offer is not accepted within the time the offer comes to an end automatically.
2. **By communication of notice of revocation:** By communication of notice of revocation by the offeror. Revocation can happen only before acceptance is complete.
3. **By the death or insanity of the offeror:** when the offeror dies or becomes insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance.
4. **By failure to accept condition precedent:** when the offer requires that some conditions must be fulfilled before the acceptance of the offer, the offer lapses.
5. **By rejection of the offer by the offeree**
6. **By counter offer by the offeree**
7. **By change of law**
8. **Offer lapses by subsequent illegality or destruction of the subject matter**

## Acceptance

Proposal or offer is said to have been accepted when the person to whom the proposal is made gives his assent to the proposal.

OFFER → ACCEPTED → PROMISE

## Legal Rules as to acceptance

1. Acceptance must be **final and unconditional**
2. Acceptance must be **as per the mode prescribed by the offeror**
3. Acceptance must be **communicated** and **mental acceptance is no acceptance**
4. **Acceptance of the offer must be made by offeror**
5. **Acceptance must be communicated by the offeree himself** or by a person who has the authority to accept it
6. **Acceptance must be given within the prescribed time**
7. **Acceptance may be expressed or implied** that is it may be either spoken or written
8. **Silence does not considered as acceptance**
9. **Contracts can be over telephone or through email**

## Revocation of acceptance

A valid contract comes into existence the moment the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

## Consideration and capacity to parties

- **Consideration: “Quid pro quo” {something in return}**
- Consideration is an essential element for a contract to be valid
- **Consideration moves from the promisee to the promisor**
- **Consideration is the implied or express request of the promisor, in return for his promise.**

### Essential of consideration

1. **Consideration must move at the desire of the promisor**
2. **Consideration may move from the promisee or any other person**
3. **Consideration may be past, present or future**
4. **Consideration need not be adequate** that is it is not necessary that the value of promise should be equal to the value of consideration
5. **Consideration must be lawful:**
  - a. **If it is not forbidden by law**
  - b. **It must not be fraudulent**
  - c. **It must not cause injury to the person**
  - d. **It must be regarded by the court as criminal offence**
  - e. **It must not be against public policy**

## Types of consideration

1. **Past consideration**: value or benefit given prior to the date of promise
2. **Present consideration**: when consideration is given simultaneously with promise
3. **Future consideration**: when consideration from one party to the other is to pass subsequently to the making of the contract it is said to be future consideration

## Legal rules for consideration

1. Consideration **must be at the desire of the promisor**
2. **Consideration may be given by the promisee or any other person**
3. Consideration **need not be adequate**
4. Consideration **should be real not illusory**
5. Consideration **must be lawful**

## A stranger to a contract or privity of contract

Privity of contract states that the contract confers right and obligation on contracting parties only.

**Stranger to a contract cannot sue on the contract**

### Exception to the rule that a stranger to a contract cannot sue

1. **Beneficiary of a trust:** beneficiary can sue to enforce his rights under the trust, though he is not a party to a contract
2. **Contracts through an agent:** Principal can file suit against third party or can be sued by third party
3. **Marriage settlement, partition or other family arrangement:** Person who is beneficiary in the agreement can file a suit.
4. **Estoppels to acknowledgement:** Liability would continue towards third party. He will be stopped from doing so.
5. **Agreement creating charge on immovable property** in favour of third party for his benefit can be enforced by third party.

## No consideration no contract

**“Ex nudo pacto oritur action” an agreement without consideration is void**

### No consideration no contract --- Exception to this rule

1. **Agreement made on account of natural love and affection**: an agreement made without consideration is valid if it is made on account of natural love and affection.
2. **Compensation for past voluntary service**: if something has been done voluntarily for the promisor and further such promisor, promises to do something he is bound to perform.
3. **Promise to pay time barred debt**: a promise by a debtor to pay a time barred debt is enforceable provided it is made in writing and signed by the debtor or his agent authorised in that behalf.
4. **Completed gift**: a gift already given does not require consideration
5. **Agency**: No consideration is necessary to create an agency
6. **Bailment**: Consideration is not necessary to effect a valid bailment of goods.

## Capacity to parties

### **Competent to contract:**

1. Must attained the age of majority
2. He is of sound mind
3. He is not disqualified from contracting by any other law to which he is subject

## Legal rules relating to Minors agreements

1. **An agreement by a minor is absolutely void**. A minor is neither liable to perform what he has promised under an agreement.
2. **Minor can be a promisee or beneficiary**: a minor cannot be stopped from getting benefits in an agreements.
3. **Minor as an agent**: minor can be appointed as an agent. But minor is not responsible for any negligence and for the voluntary mistake committed by him.
4. **Minor as a joint promisor**: a minor can be a joint promisor with a major but minor cannot be held liable.
5. **Ratification on attaining the majority is not allowed**: the original agreement if void ab initio, validity cannot be given afterwards.
6. **A minor is always allowed to plead minority**
7. **Minor is not bound to return the benefits received**



8. **Gurantee for and by the minor:** A contract of gurantee in favour of a minor is valid. A minor cannot be surety in a contract of gurantee.
9. **No specific performance:** A contract made by a minor is void court cannot direct for specific performance.
10. **Minor cannot be adjudged as insolvent**
11. **Minor and doctrine of estoppel:** A minor cannot be stopped by a false representation, as there can be no estoppel against a status.
12. **Minor can enter into contracts of apprenticeship, services, education**

### Persons of Unsound Mind

1. Mental incompetency
2. Incompetence through status

#### **Mental Incompetency**

1. Idiots
2. Lunatic
3. Drunkard
4. A senile Person: unable to enter into contract because of age or poor health

## **Incompetence through status**

1. Alien enemy
2. Foreign sovereigns and ambassadors
3. Insolvents
4. Corporations

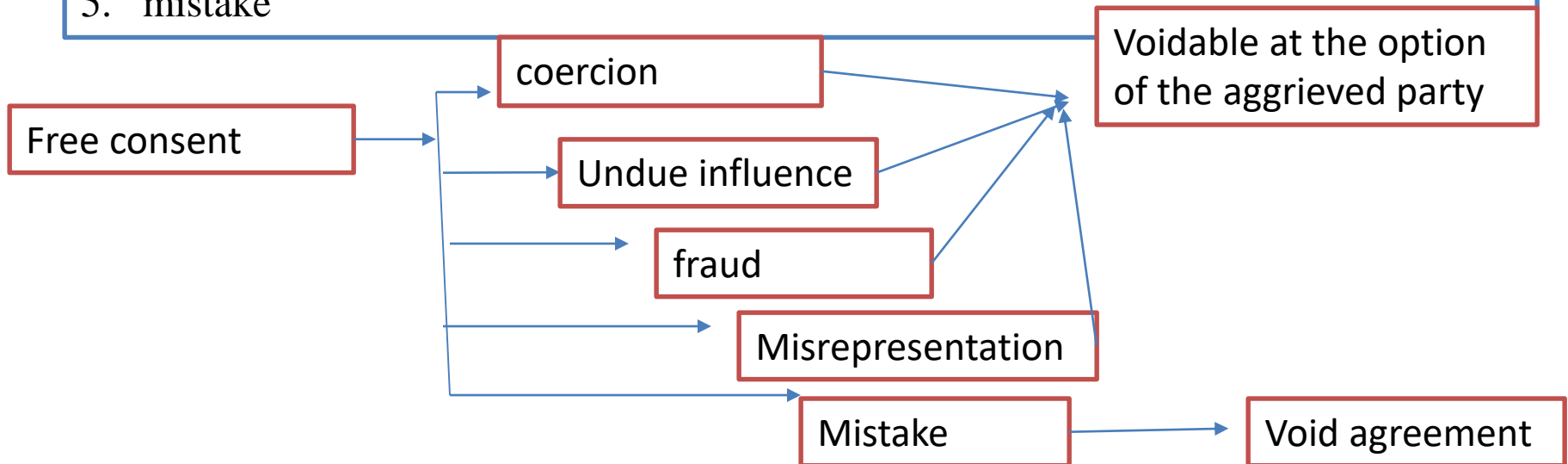
A contract made by persons of Unsound Mind is void.

# FREE CONSENT

**Free consent= valid contract**

Consent is not said to be free when it is caused by any of the following:

1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation
5. mistake



## Coercion section 15

Coercion is :

Committing or threatening to commit any act which is

1. Forbidden by Indian Penal Code
2. Unlawful detaining or threatening to detain, any property,
3. With an intention of causing any person to enter into an agreement

### **Characteristics of coercion:**

1. Committing or threatening to commit any act forbidden by Indian Penal Code amounts to coercion.

Eg: A gave severe assault to B and caused him to sign a gift deed in his favour. The assault amounts to coercion

2. Detaining or threatening to detain unlawfully the property of another person also amounts to coercion.

3. The purpose or aim of coercion should be to induce or force other person to enter into contract.

Eg: A takes the possession of B's house by threatening him. This is not coercion as no contract just a mere threat.

4. Person to whom coercion is directed can be a third party who has nothing to do with the contract.

Eg: if Q threatens A in selling a land to B. Q's threat will amount to be coercion even Q is not a party to the contract between A and B.

## **Threat to commit suicide----Does it amount to coercion?**

A threat to commit suicide is no offence but under Indian Penal Code an attempt to commit suicide is an offence. A consent obtained by threatening to commit suicide does not amount to coercion.

Eg: If A induces B to sign a contract at the gunpoint or threaten to kill him. A has used coercion.

An act “forbidden by the Indian Penal Code” is broader than the term punishable by the Indian penal code, simply because a man escapes punishment, does not mean that the act is not forbidden by the Indian Penal Code.

Eg: A person by giving a threat to commit suicide induces his wife and son to execute a release deed in favour of his brother in respect of certain property. It was held that the deed was obtained by coercion.

## **Essentials of coercion**

1. An act which is forbidden by the Indian Penal Code must also be punishable under the Indian Penal code
2. The act must have been done with the intention of causing any person to enter into an agreement.
3. It includes physical compulsion fear.
4. It does not matter whether the Indian Penal Code is or not in force in the place where the coercion is employed.
5. Coercion may proceed from anybody even the person who is not a party to the contract.

## **Consequence or effects of coercion**

1. The contract is voidable at the option of the party whose contract was so caused.
2. A person to whom money had been paid or anything delivered under coercion must repay or return it.
3. He may rescind the contract.

## **Undue Influence**

A contract is said to be induced by undue influence:

1. Where the relation subsisting between the parties such that one of the parties is in a position to dominate the will of the other
2. uses that position to obtain an unfair advantage over the other.

### **Relationships where presumptions of undue influence exists**

1. Parent and child
2. Guardian and ward
3. Doctor and patient
4. Solicitor and client
5. Trustee and beneficiary
6. Religious advisor and disciple

### **Relationships where presumption of undue influence does not exists**

1. Landlord and tenant
2. Debtor and creditor
3. Husband and wife

## **Burden of proof**

A person who is in a position to dominate the will of another, enters into a contract with him and the transaction appears on the face of it or on the evidence induced to be unconscionable,

The burden of proving lies on the person whose will is been dominated.

## **Undue influence with respect to contracts with Pardanashin Woman**

A contract with a pardanashin woman is presumed to have been induced by undue influence.

The burden of proof therefore, lies on the party to show that:

1. The terms of the contract are fair and equitable
2. The transaction Is real and bonafide.
3. The lady had an independent advice in the matter
4. She acted at an arms length from the other party to the contract.
5. The deed was explained to her
6. She understood it



## **FRAUD**

### **Fraud:**

Fraud includes any act committed by a party to a contract with the intent to deceive another party thereto or his agent or to induce him to enter into the contract:

1. Any fact which is not true or which does not believe to be true
2. An active concealment of the fact by one having knowledge or believe of the fact.
3. A promise made without the intention of performing it
4. Any other act fitted to deceive
5. Any such act or omission as the law specially declared to be fraudulent.
6. There must be a false representation of the fact
7. The party so induced must have acted upon it and suffered loss

## **Silence as Fraud**

Silence without any legal duty to speak will not amount to fraud except:

1. The circumstances of the case is as such that it is the duty of the person to speak
2. Silence in itself equivalent to speech.

## Person knowing material facts must speak (Duty to speak)

1. **Contracts of Uberrimie Fidei** {absolute good faith} :
  - i. **Contracts of insurance**
  - ii. **Contracts for the sale of immovable property** : seller is bound to disclose all defects.
  - iii. **Allotment of shares in companies**: information regarding all important matters
  - iv. **Family settlement**: full disclosure of all material facts
  - v. **Contracts of marriage**: likely to disclose all material facts which might affect both the parties.
2. **Contracts of partnership**: mutual trust and confidence is the basis of the partnership
3. **Contracts of guarantee**: any guarantee which the creditor has obtained by means of keeping silence as to the material facts is invalid.
4. **Fiduciary relationship**: the parties sharing the fiduciary relation with each other are duty bound to disclose all material facts which are likely to affect the party.

## **Consequence of fraud**

In case fraud aggrieved party has the following remedies:

1. He can cancel the contract within reasonable time
2. He can sue for damage
3. He can insist on specific performance of the contract.

## **Matters which doesn't lead to fraud**

1. A party who at the time of agreement knows that a false representation is been made and yet enters into the contract
2. If an element or negligence creeps
3. When a party who enters into the contract is ignorant
4. Where a party deceives takes the benefit of the contract

## **Misrepresentation**

### **Misrepresentation:**

1. A statement which is not true but the belief is that it is true
2. Non disclosure of a material fact or facts without any intent to deceive the other party
3. It must represent a material fact. Mere expression of opinion does not amount to misrepresentation even it turns out to be wrong.
4. It must be made before the conclusion of the contract with a view to induce the other party to enter into the contract.
5. It must be wrong but the person who made it honestly believed it to be true.
6. It must be made without any intention to deceive the other party.
7. It must be made with the intention that it should be acted upon by the person to whom it is addressed.

### **Consequences of misrepresentation**

1. He can avoid the contract
2. Rescind the contract within the reasonable time
3. He may accept the contract provided he shall be placed in the position if the representation is considered to be true

# MISTAKE

## “Error in Causa”

Mistake means either one or both of the parties donot properly understood the matters relating to the contract and have done something wrong.

## Mistakes are of two types

Mistake of law	Mistake of fact
<p>Mistake of Indian law: a contract is not voidable because it was caused by a mistake as to any law in force in India.</p> <p>Ignorance of law is no excuse (<i>ignorantia juris nemi nem excusat</i>)</p>	<p><b>Bilateral Mistake:</b></p> <ul style="list-style-type: none"><li>• Mistake committed by both the parties</li><li>• Said mistake must relate to some essential fact</li><li>• Mistake as to the possibility of performance of the contract (both the parties are unaware about the existence</li><li>• Mistake as to the subject matter (existence, identity, title, price, quantity and quality of the subject matter</li></ul>
<p>Mistake of foreign law: contract is avoided</p>	<p>Unilateral mistake: (mistake from one side of the party)</p> <ul style="list-style-type: none"><li>• Mistake as to the nature of the transaction</li><li>• Mistake as to the person contracted with</li><li>• Mistake about identity of parties</li><li>• Mistake as to the nature of the transaction</li></ul>

## Consequences of mistake

1. A person who has received any advantage **is bound to restore it**
2. A person to whom money has been paid or anything delivered by mistake **must repay it**

## Consideration or object is unlawful

Consideration is not lawful in the following cases:

1. **Forbidden by law:** if the object or the consideration of an agreement is forbidden by law.
2. **Defeat the provisions of law:** if the consideration of an agreement defeat the provisions of law then such agreement is void.
3. **Fraudulent:** an agreement for fraudulent purpose is void.
4. **Injurious to person or property of another:** an agreement between two persons to injure the person or property of another is unlawful and void.
5. **Immoral:** any agreement whose object and consideration are immoral is illegal and therefore void.
6. **Opposed to public policy:** any agreement which is opposed to public policy is unlawful

## Agreements opposed to public policy

1. **Trading with enemy**
2. **Agreement for stifling prosecution:** No one can be allowed to make a trade of a crime.
3. **Agreement of maintenance and champerty:** maintenance means an agreement in which a person promises to help another by money or otherwise to continue legal action in which he is not himself interested.
4. **Agreements in restraints of marriage**
5. **Agreements creating interest opposed to duty.**
6. **Traffic in public offices**
7. **Agreements restricting personal liberty:** agreements which unduly restrict the personal freedom of the parties are void.
8. **Agreements in restraint of legal proceedings:** an agreement which prohibits a person from taking judicial proceedings in respect of any right arising from a contract is void.
9. **Agreements in restraints of parental right:** an agreement in which a father agreed to transfer custody or guardianship of his minor child in favour of other lady is void.
10. **Agreements in restraint of trade:** an agreement which interferes with the liberty to deprive any person from any lawful trade , profession or vocation is called agreement in restraint of trade.



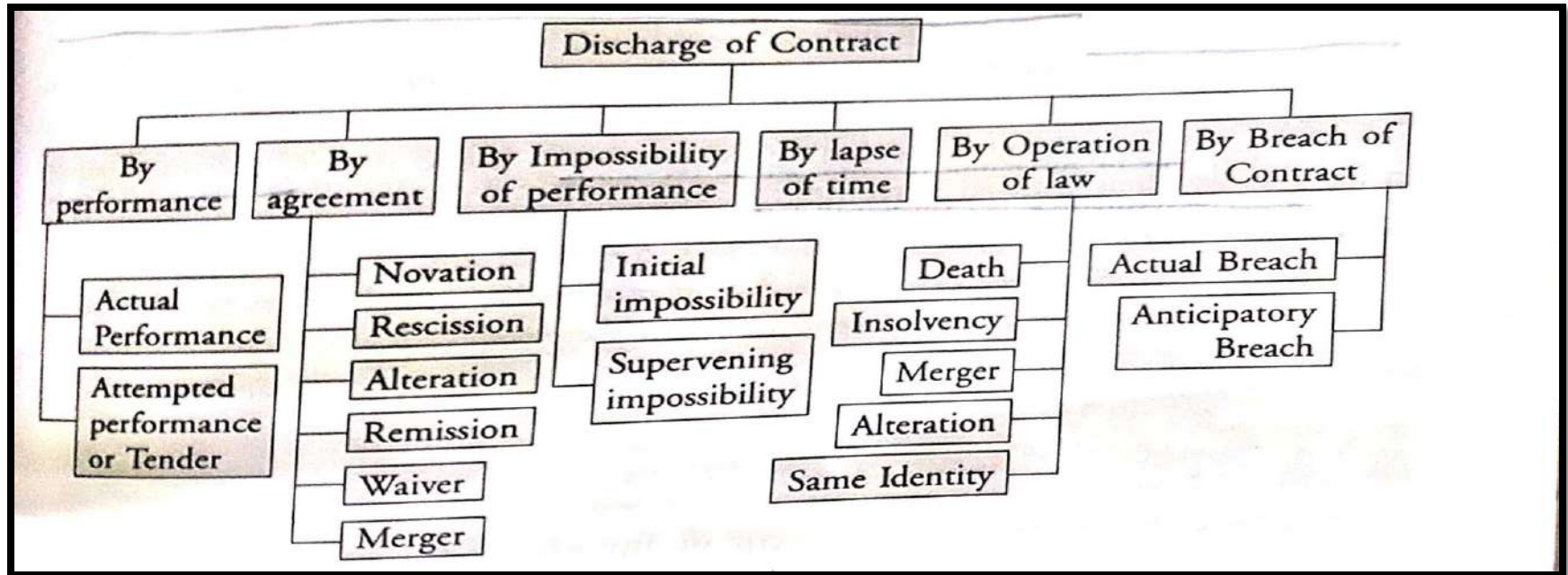
## Void and Voidable Agreements

Void agreements	Voidable agreements
A void contract is considered to be an illegal contract and is invalid from the starting date of signing of the contract	A voidable contract is a legal contract which is declared invalid by one of the two parties for certain legal reasons
A void contract becomes invalid at the time of its creation	A voidable contract only becomes invalid if it is cancelled by one of the two parties who are engaged in the contract
No performance is possible	Performance is possible in a voidable contract
Void contract is not valid at face value	A voidable contract is valid but can be declared invalid at any time
A void contract is non existent and can not be upheld by any law	A voidable contract is an existing contract and is binding to at least one party involved in the contract

## **Agreements declared void**

1. Agreements made by incompetent parties (minor/ incapacitated person)
2. Agreements made under bilateral mistake as to material fact is void.
3. Agreements which have unlawful consideration and object are void
4. Agreements with unlawful consideration and objectives in past.
5. Agreements made without consideration is void except
  - i. It is made out of natural love
  - ii. A promise to pay a time barred debt
  - iii. Agreements to agency
  - iv. Agreements for donations and gifts
  - v. Agreements to bailment without charge
6. Agreement in restraint of marriage of any major person is void.
7. An agreement the terms of which are uncertain is void.
8. An agreement by way of wager is void
9. An agreement in restraint of legal proceedings is void
10. An agreement contingent upon the happening of an impossible event is void
11. Agreement to do impossible acts is void.

# Discharge of a contract



### **Discharge by performance:**

A contract is discharged when both the parties performs the contract and the contract comes to an end.

1. Actual performance: fulfils all the obligations and the contract comes to an end.
2. Attempted performance: when the promisor offers to perform his obligation but is unable to do so because the promise does not accept the performance.

### **Discharge by Agreement**

Substitution of a new contract for the original contract or to refund or remit or alter it, the original contract need not be performed

New contract is created by the parties and the old contract comes to an end.

#### **Types of discharge by agreement**

### **Novation:**

1. cancellation of original contract and creation of new contract
2. Must take place before dew date
3. May take place between different parties or between same parties.

### **Recession:**

1. All or some terms of the contract are cancelled
2. Contract is put to an end without performing it
3. Recession involves only dissolution of the original contract

**Alteration:**

1. When one or more of the materials terms of a contract are changed it is called alteration.
2. Material alteration will alter the legal effect of the contract
3. Parties to the contract are not changed

**Remission:**

Acceptance of the lesser amount for the lesser fulfilment of the promise made.

**Waiver:**

Deliberate leaving of the rights by the parties to the contract. No parties are bound by the terms of the contract.

**Merger:**

1. Inferior right merges with the superior right.
2. The subject matter must be same
3. Parties must be same.

**Discharge by impossibility of performance**

Not possible to perform

1. **Initial impossibility:** absolute impossibility
2. **Unknown impossibility:** at the time of making the contract both the parties are ignorant of the impossibility of the performance.

## **Supervening Impossibility**

1. The act should have become impossible
2. The impossibility should be by reason of some event which the promisor could not perform
3. The impossibility should not be self induced or due to the negligence.

## **Cases where supervening impossibility can be applied**

1. Destruction of the subject matter
2. Non existence of the state of things
3. Death or personal incapacity
4. Change of law
5. Declaration of war
6. Difficulty of performance
7. Action of a third party
8. Commercial impossibility
9. Strikes, lock outs, civil disturbances
10. Partial impossibility

## **Discharge by Lapse of Time**

Contract is discharged if it is not performed within a specified time.

## **Discharge by operation of Law**

1. By death
2. By insolvency
3. By merger
4. Unauthorized alteration of terms of agreement
5. Same identity

## **Breach of Contract**

A breach of contract occurs when a party to a contract does any of the following things:

1. Fails or refuses to perform its obligation under the contract
2. Disables himself from performing his part of the contract
3. Maker makes the performance of contract impossible by his own acts

## Actual breach of contract

At the time when the performance is actually due { actual breach on the due date}

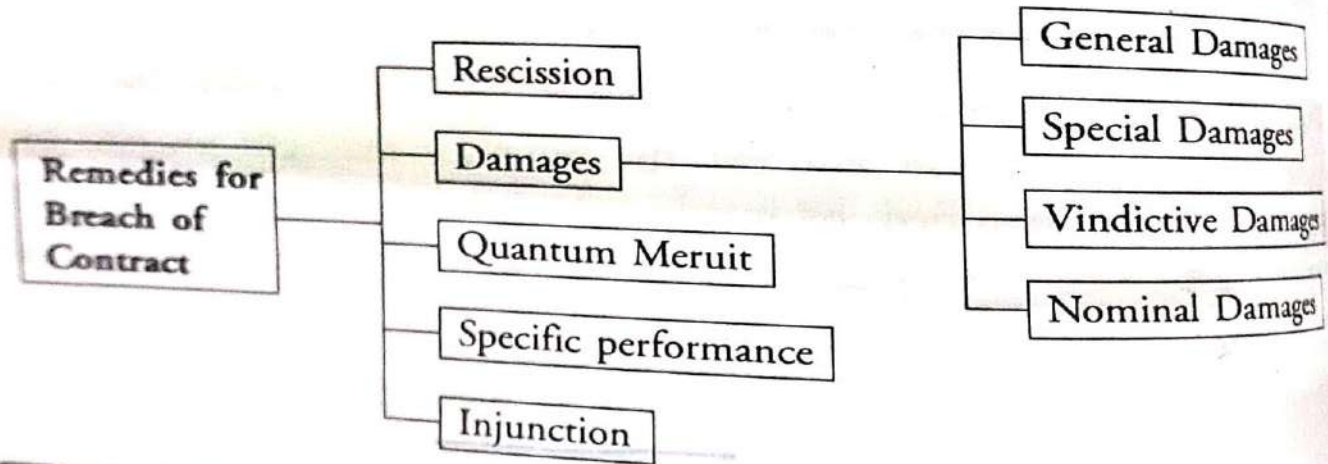
## Anticipatory breach of contract

- Premature destruction of the contract before the due date
- The aggrieved party may bring an immediate action to claim damages or may wait till the due date to declare the contract as discharged.
- **Anticipatory breach:**
  - 1. denial of the contract (express renunciation before the due date)
  - 2. by impossibility of the performance (implied renunciation by one party)



## Remedies for breach of contract

The different types of remedies are shown in the following chart.



### Rescission

Right not to perform obligation.

If contract is rescinded then the benefit derived by the other party must be restored

#### When the court does not allow rescission:

1. Where the party wishing to set aside the contract
2. Where one part is separated and the other part cannot be separated from the rest
3. Where with the fault of the their party there is a change in the contract and the contract cannot be substantially restored.
4. Where the third party has acquired the right in the subject matter in good faith

## Suit for damages

Where a contract has been broken the party who suffers such breach is entitled to receive compensation

### Different types of damages:

1. **General damages:** these damages include the direct loss suffered by the aggrieved party and is calculated on the date of the breach of the contract.
2. **Special damages:** these damages are those which arises from the breach of the contract under special circumstances.
3. **Vindictive damages:** it arises to punish the defaulting party who injured the feelings of the others
4. **Nominal damages:** nominal damages are awarded in cases where the injured party is able to prove a breach of contract, but he has not suffered any real and substantial loss

## Quantum Meruit

To be restored as much as earned or in the proportion to the work done. The first party must be compensated for the part he has performed.

The claim for quantum meruit arises in the following cases:

1. When an agreement is discovered to be void.
2. In case of non gratuitous act: the obligation to pay arises if the following three condition are satisfied:
  - A. things have been done or delivered lawfully
  - B. The person must not have done gratuitously
  - C. The person for whom the act is done must have enjoyed the benefit

Contd/.....

- In case of act preventing the completion of contract: if the party does not complete the contract the aggrieved party can sue the other party for quantum meruit
- In case of divisible contract: the party at default can sue on a quantum meruit if it is divisible and if the party not at default has enjoyed benefits for the part performance.
- If the contract is indivisible: the party at default may claim the lumpsum less deduction for bad work if
  - a. The contract is indivisible
  - b. If the contract is for the lump sum
  - c. If the contract is completely performed
  - d. If the contract is performed badly

## Specific performance

Court can grant specific performance when they perceive that the damages will be inadequate

1. When there exists no standard for ascertaining the actual damages
2. When pecuniary compensation is not adequate

When the court will not grant specific performance:

1. When the damages are adequate
2. When the court is not certain or is inequitable to either party
3. When the trustee in breach of their trust
4. When the contract is of personal nature
5. When the contract is made by a company in excess of its power as laid down in memorandum and articles.

## **Injunction**

Injunction is an order of the court which prevents a wrongful act or restrains the performance of a particular contract.

An injunction may be filed against an act which is involved in a breach of contract

**Thank You**