

IMPORTANT LONG AND SHORTS

ON

LAW OF CONTRACT - I

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2.	CONSIDERATION – MEANING AND ESSENTIAL ELEMENTS OF CONSIDERATION (SECTION 2(D)) EXCEPTIONS OF CONSIDERATION – (SECTION 25)	VIEW
3.	CAPACITY TO CONTRACT – MINOR'S AGREEMENT, PERSON OF UNSOUND MIND, PERSON DISQUALIFIED FROM CONTRACTING, LIABILITY FOR NECESSARIES (SECTIONS 11, 12, 68)	VIEW
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TOPIC:

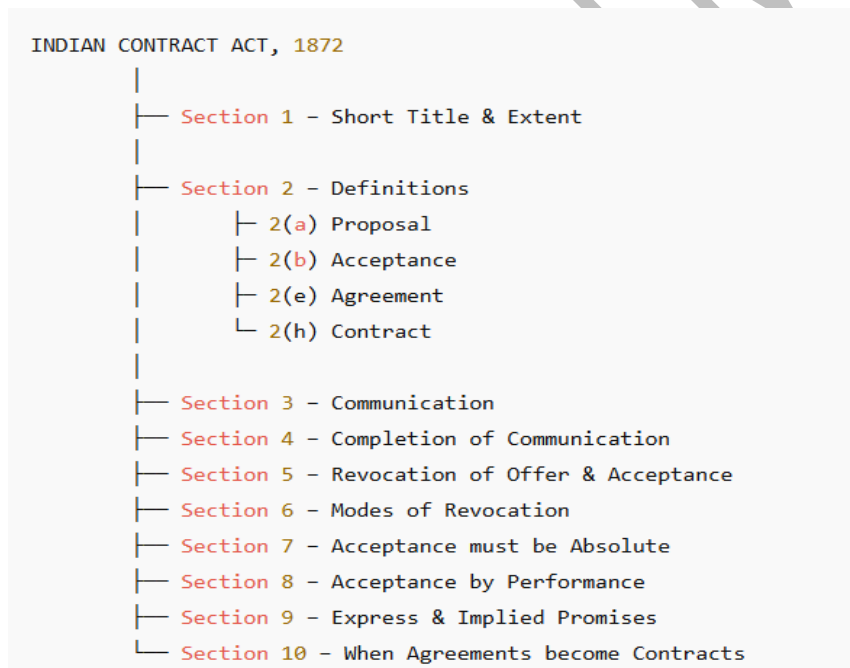
Agreement – Proposal and Acceptance (Sections 1 to 10)

Answer:

Introduction

The Indian Contract Act, 1872, lays the foundational Principles governing the law of contracts in India. Sections 1 to 10 of the Act constitute the general Principles relating to the formation of contracts—how an agreement is made, when it becomes legally binding, and what elements must exist to make it enforceable by law. The word “agreement” signifies a meeting of minds between two parties, achieved when one party makes a **proposal (offer)** and the other gives **acceptance**, thereby creating a **promise** that the law recognizes.

Section 1 provides the short title, extent, and commencement of the Act, marking **1 September 1872** as the date on which this comprehensive statute came into force. Sections 2 to 10 elaborate the essential framework of contractual relations—beginning with the definitions of *proposal*, *acceptance*, *agreement*, *consideration*, and *contract*, and culminating in the Principle that only agreements made by free consent of competent parties for lawful consideration and lawful object are enforceable.



Section 2 – Interpretation Clause (Definitions)

Section 2 serves as the dictionary of the Act, defining crucial terms that recur throughout: *proposal* (S. 2(a)), *acceptance* (S. 2(b)), *promisor* and *promisee* (S. 2(c)), *consideration* (S. 2(d)), *agreement* (S. 2(e)), *reciprocal promises* (S. 2(f)), *void* and *voidable agreements* (S. 2(g–j)). These definitions collectively clarify that an **agreement** is a promise supported by consideration, and a **contract** is an agreement enforceable by law.

The logical relationship between them is expressed by the formula:
Offer + Acceptance = Promise; Promise + Consideration = Agreement; Agreement + Legal Enforceability = Contract.

Section 2(a) – Proposal (Offer)

A proposal arises when one person signifies to another his willingness to do or abstain from doing something with a view to obtaining the other's assent. Its essentials are: (1) clear expression of willingness, (2) intention to create legal relations, and (3) proper communication to the other party.

Case – *Pharmaceutical Society of Great Britain v. Boots Cash Chemists* (1952 2 QB 795)

Facts: Boots operated a self-service pharmacy where customers picked medicines from shelves and paid at the counter. The Pharmaceutical Society contended that the sale occurred the moment the customer picked the goods, violating regulations requiring a pharmacist's supervision.

Held: The display of goods was merely an **invitation to offer**, not an offer. The offer was made by the customer at the cashier's desk and accepted under the pharmacist's supervision.

Principle: A display or advertisement inviting negotiation does not constitute an offer; it is only an invitation to treat.

Section 2(b) – Acceptance

Acceptance is the act of the offeree signifying assent to the proposal, converting it into a promise. The essentials are that acceptance must be **communicated**, **absolute**, and **unconditional**, and it must conform to the mode prescribed or, if none, to a reasonable mode.

Case – *Carlill v. Carbolic Smoke Ball Co.* (1893 1 QB 256)

Facts: The company advertised that anyone who used its smoke ball as directed and still contracted influenza would receive £100; it even deposited £1000 in a bank to show sincerity. Mrs Carlill used the product, caught influenza, and claimed the reward.

Held: This was a **unilateral offer** to the world at large. Mrs Carlill accepted the offer by performing the conditions. The deposit proved the company's intention to be bound.

Principle: An offer may be accepted by performance; advertisements showing serious intent can create binding obligations.

This case remains the cornerstone of modern law on **unilateral contracts**, where performance itself amounts to acceptance.

Section 2(c) – Promisor and Promisee

The person making the proposal becomes the **promisor**, and the person accepting it becomes the **promisee**. For instance, if A offers to sell his house to B and B accepts, A is the promisor and B the promisee. This relationship is the nucleus around which rights and obligations revolve.

Section 3 – Communication of Proposal, Acceptance and Revocation

Section 3 provides that communication may be made by any act or omission intended to convey it—oral, written, electronic, or by conduct. A proposal is not complete until communicated to the other party.

Case – Lalman Shukla v. Gauri Dutt (1913 11 All LJ 489)

Facts: A servant searched for his master's missing nephew before hearing of a reward later announced. He found the boy and then claimed the reward.

Held: Since he was unaware of the offer when acting, there was **no valid acceptance** and hence no contract.

Principle: Knowledge of the offer is essential; one cannot accept an offer of which one has no knowledge.

This decision illustrates that **communication is the foundation** of contractual consent.

Section 4 – When Communication is Complete

This section determines when communication of proposal, acceptance, and revocation becomes complete. In postal correspondence, a proposal is complete when it reaches the offeree; acceptance is complete against the proposer when it is posted, and against the acceptor when it is received; revocation is complete when it reaches the other party.

Case – Adams v. Lindsell (1818)

Facts: The defendants offered to sell wool to the plaintiffs by post but mis-addressed the letter, causing delay. The plaintiffs posted acceptance immediately on receiving it. Meanwhile, the defendants sold the wool to another.

Held: A contract is formed the moment the acceptance is **posted**, not when received.

Principle: This “postal rule” ensures certainty—once the offeree posts acceptance, the contract becomes binding on the proposer.

Case – Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas (AIR 1966 SC 543)

Held: In instantaneous communications such as telephone, telex, or modern electronic means, the contract is formed where acceptance is **received** or heard by the offeror, not where it is spoken.

The distinction between postal and instantaneous communications remains vital in determining jurisdiction and timing.

Section 5 – Revocation of Proposals and Acceptances

Section 5 allows the proposer to revoke the offer any time before acceptance is complete as against him, and permits the acceptor to revoke acceptance before it becomes complete as against himself.

Case – Byrne v. Van Tienhoven (1880)

Facts: An offer was posted on 1 October from Cardiff to New York. On 8 October the offerors posted a revocation letter, which reached the offerees only on 20 October, whereas acceptance had already been telegraphed on 11 October.

Held: The revocation was ineffective because it was not **communicated** before acceptance. The contract was valid.

Principle: Revocation takes effect only upon receipt by the offeree.

This **Principle** has been affirmed in Indian cases such as *Shri Ram Pistons & Rings Ltd. v. Chandrawati* (2002 6 SCC 725).

Section 6 – Modes of Revocation

A proposal may be revoked (i) by notice, (ii) by lapse of prescribed time, (iii) by failure of condition precedent, or (iv) by death or insanity of the proposer if known to the acceptor before acceptance.

Case – *Dickinson v. Dodds* (1876)

Facts: Dodds offered to sell a house, keeping the offer open till a fixed time, but sold it earlier to another. The offeree learned of the sale from a third person and still attempted to accept.

Held: The offer was effectively revoked; communication through a reliable third party sufficed.

Principle: An offer can be withdrawn anytime before acceptance; indirect but reliable notice is valid.

The Indian Supreme Court in *Hulas Rai v. State of Punjab* (AIR 1971 SC 1067) observed that revocation may even be implied if the offeree becomes aware of the offeror's changed intention.

Section 7 – Acceptance Must Be Absolute and Unqualified

Acceptance must mirror the offer without variation. A conditional or qualified acceptance amounts to a counter-offer, not acceptance. Silence never constitutes acceptance.

Case – *Hyde v. Wrench* (1840)

Facts: Offer to sell farm for £1000; offeree replied offering £950, which was rejected; he later tried to accept the original offer.

Held: The counter-offer destroyed the original offer; there was no contract.

Principle: A counter-offer amounts to rejection; once rejected, the original offer cannot be revived unless renewed.

Case – *Powell v. Lee* (1908 99 LT 284)

Held: Communication of acceptance must come from an authorized person. An unauthorized third party's communication is ineffective.

Case – *Felthouse v. Bindley* (1863 142 ER 1037)

Facts: An uncle wrote to his nephew offering to buy a horse and stating that silence would mean acceptance. The nephew remained silent.

Held: Silence is not acceptance; acceptance must be clearly communicated.

These cases establish the rule that **acceptance must be absolute, communicated, and authorized.**

Section 8 – Acceptance by Performing Conditions

Performance of the conditions of a proposal or acceptance of consideration offered constitutes acceptance.

Carlill v. Carbolic Smoke Ball Co. again illustrates this **Principle**, as Mrs Carlill's act of using the smoke ball as instructed amounted to acceptance by performance.

In *State of Bihar v. Lalji Raja & Sons* (AIR 1957 SC 389), the Supreme Court **Held** that where the government invited tenders and the contractor performed the tender conditions, the performance itself amounted to valid acceptance.

Section 9 – Express and Implied Promises

Promises may be **express**, when made in words (spoken or written), or **implied**, when inferred from conduct. Both are equally valid if they show an intention to create legal relations.

Case – *Brogden v. Metropolitan Railway Co.* (1877 2 App Cas 666)

Facts: An unsigned draft agreement was exchanged between parties who nevertheless acted upon its terms.

Held: Their conduct amounted to implied acceptance; a valid contract existed.

Principle: Acceptance can be inferred from conduct; formal execution is not always necessary.

Indian authority *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* (1981 1 SCC 80) reiterated that actions and communications may suffice to prove contractual consent.

Section 10 – What Agreements Are Contracts

Section 10 provides that **all agreements are contracts if made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and not expressly declared void.**

Thus, the essentials of a valid contract are:

1. Offer and acceptance,
2. Intention to create legal relations,
3. Lawful consideration,
4. Capacity of parties,
5. Free consent,
6. Lawful object, and
7. Certainty and possibility of performance.

The celebrated maxim “All contracts are agreements, but all agreements are not contracts” arises from this section.

Case – *Mohori Bibee v. Dharmodas Ghose* (1903 30 IA 114 PC)

Facts: A minor mortgaged property to the defendant for a loan.

Held: An agreement with a minor is void ab initio; competence under Section 11 is essential.

Principle: A contract must be between parties legally competent; absence of capacity renders it void.

Conclusion

Sections 1 to 10 of the Indian Contract Act, 1872, together form the cornerstone of contract formation. They transform moral promises into legally binding obligations through the mechanism of **offer and acceptance**. The statutory sequence—proposal, acceptance, communication, revocation, and performance—ensures clarity, certainty, and fairness in transactions.

In essence, an **agreement** represents consensus between parties, and a **contract** transforms that consensus into enforceable duty. In the digital age, these classical Principles continue to apply to electronic communications, ensuring that the spirit of mutual consent and legal enforceability endures. The framework of Sections 1 to 10 thus remains the living core of the Indian law of contracts—simple in structure, profound in effect, and indispensable to the working of modern legal and commercial life.

BY AJTABH MISHRA

TOPIC:

**Consideration – Meaning and Essential elements of Consideration (Section 2(d))
Exceptions of Consideration – (Section 25)**

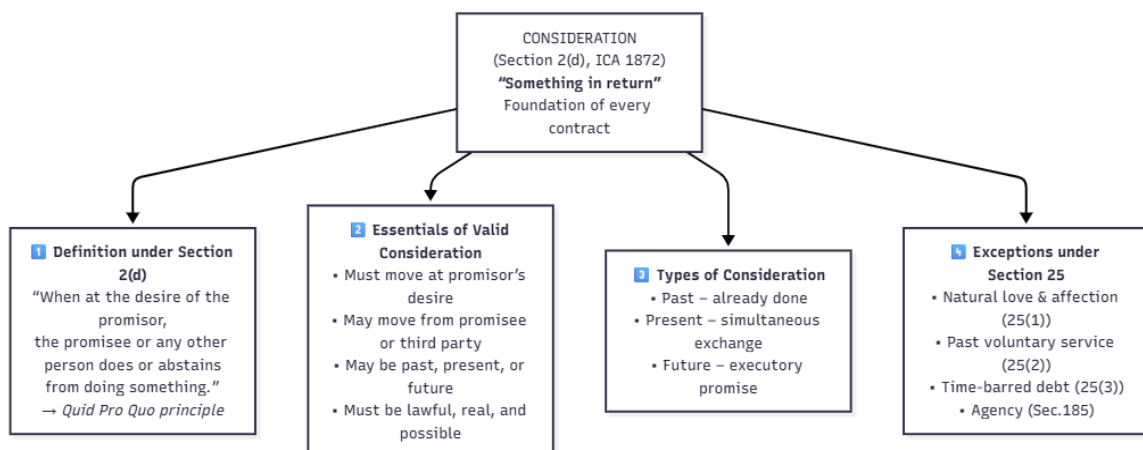
Answer:

Introduction

The law of consideration forms the very foundation of all enforceable contracts under the **Indian Contract Act, 1872**. Section 2(d) defines the term “consideration” and gives legal recognition to the maxim *quid pro quo*—that is, “something in return.” Consideration converts a purely moral obligation into a legal obligation by ensuring that each party to a contract either confers a benefit or suffers a detriment.

The general rule in Indian contract law is embodied in the phrase “**No consideration, no contract.**” Unless something of value is exchanged between the parties, a promise remains gratuitous and therefore unenforceable. The rationale is that law only enforces bargains, not gifts or moral promises. However, this general rule is subject to a few well-defined exceptions under **Section 25** and other provisions of the Act, where the absence of consideration does not invalidate a contract.

Consideration, therefore, acts as the **backbone of contractual relationships**—it is the price paid for a promise. It establishes reciprocity and mutuality of obligation, which distinguishes a contract from a mere social or moral arrangement. The Indian law of consideration, while derived from English principles, is broader in scope: it recognizes **past, present, and future consideration**, and even permits consideration to move from a **third party**—features not recognized in English law.



I. MEANING AND DEFINITION OF CONSIDERATION (Section 2(d))

Section 2(d) of the Indian Contract Act defines consideration as follows:

“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 act or abstinence or promise is called a consideration for the promise.”

This statutory definition reveals the broad nature of consideration under Indian law. It may consist of:

1. **An act** – doing something,
2. **An abstinence** – forbearing from doing something, or
3. **A promise** – to do or not to do something in the future.

It must be performed **at the desire of the promisor**, and it can move not only from the promisee but also from **any other person**, making Indian law more liberal than English law. Moreover, consideration may be **past, present, or future**, provided it possesses **some legal value**, however small.

II. ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

To be valid and enforceable under Section 2(d), consideration must satisfy the following essentials:

1. Must move at the desire of the promisor

Acts done voluntarily or at the instance of a third person do not constitute valid consideration.

Case – Durga Prasad v. Baldeo (1880 3 All 221)

Facts: The plaintiff constructed shops under the Collector's orders. The defendants, shopkeepers, promised to pay him a commission but later refused.

Held: Since construction was not at the defendants' desire, there was **no valid consideration**.

Principle: An act done without the promisor's request cannot create legal obligation.

2. May move from the promisee or any other person

Unlike English law, India allows consideration to move from a **third party** if done at the promisor's desire.

Case – Chinnaya v. Ramayya (1882)

Reiterated that consideration need not proceed solely from the promisee.

3. May be past, present, or future

- **Past Consideration:** Something already done before the promise.
Valid in India if done at the promisor's desire.
 - *Example:* Saving another's goods at his request.

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- *Case: Sindha Shri Ganpatsinghji v. Abraham* (1896 Bom 150) – voluntary services later acknowledged are valid consideration.
- **Present (Executed) Consideration:** Simultaneous exchange of acts.
 - *Case: Carlill v. Carbolic Smoke Ball Co.* (1893) – performance of condition = present consideration.
- **Future (Executory) Consideration:** Mutual promises for future performance.
 - *Case: Abdul Aziz v. Masum Ali* (1914 36 All 268) – unenforceable when work not begun; both must be bound for reciprocity.

4. Must be real and possible

Consideration must not be illusory or physically impossible.
A promise to bring down the stars is void.

5. Must be lawful

Governed by **Section 23**, consideration cannot be unlawful, immoral, or opposed to public policy.

Case – P. Subburaj v. V. Balraj (2022 Mad HC) held that payment in demonetized currency was invalid—consideration must be **lawful and legal tender**.

6. Adequacy is immaterial

The law does not weigh the fairness of consideration. Even nominal consideration is sufficient.
Case – Thomas v. Thomas (1842 2 QB 851) held that payment of £1 yearly rent was sufficient consideration.

III. TYPES OF CONSIDERATION

Type	Explanation	Validity in Indian Law	Leading Case
Past	Act done before promise; recognized if at promisor's desire	Valid	<i>Kedarnath Bhattacharji v. Gorie Mahomed</i>

Present (Executed)	Simultaneous exchange (e.g., cash sale)	Valid	<i>Carlill v. Carbolic Smoke Ball Co.</i>
Future (Executory)	Promise for promise; mutual obligations	Valid	<i>Abdul Aziz v. Masum Ali</i>

IV. EXCEPTIONS TO THE RULE “NO CONSIDERATION, NO CONTRACT” (Section 25)

Section 25 embodies five statutory exceptions where a contract is valid even without consideration.

1. Agreement made out of natural love and affection (Sec. 25 (1))

A written and registered agreement made on account of **natural love and affection** between parties standing in near relation is valid without consideration.

Case – Rajlukhy Dabee v. Bhootnath Mookerjee (1900)

Facts: Husband promised maintenance to wife by a registered document citing natural love and affection. The couple lived separately.

Held: No genuine love and affection existed; promise unenforceable.

Principle: Love and affection must be **real**, not merely recited.

Case – Tekchand v. Mt. Lachhmi (AIR 1926 Lah 342)

Held: Registered document between brother and sister upheld; affection genuine and thus enforceable.

2. Promise to compensate for past voluntary services (Sec. 25 (2))

A promise to compensate for something voluntarily done for the promisor in the past is binding even without consideration.

Case – Sindha Shri Ganpatsinghji v. Abraham (1896)

Facts: The plaintiff managed defendant’s estate voluntarily; later the defendant promised payment.

Held: Promise enforceable as it recognized a moral obligation.

Principle: Voluntary services followed by acknowledgment create a valid obligation.

Case – Union of India v. Kishorilal Gupta (1959 SCR 493) confirmed that voluntary acts later recognized are enforceable.

3. Promise to pay a time-barred debt (Sec. 25 (3))

A written and signed promise to pay a debt barred by limitation is valid and enforceable.

Case – A.V. Murthy v. B.S. Nagabasavanna (2002 2 SCC 642)

Held: Acknowledgment of liability before expiry of limitation revives enforceability.

4. Creation of Agency (Sec. 185, ICA)

No consideration is necessary to create an agency relationship.

Case – P. Ratnam v. M.S. Krishnamachari (AIR 1961 Mad 450) upheld validity of agency without remuneration.

Case – Seth Loon Karan Sethiya v. Ivan E. John (1969 1 SCC 554) confirmed that Section 185 expressly exempts agency from consideration.

5. Completed Gifts

A gift once made and accepted is valid even without consideration.

Case – Venkataswamy v. Rangaswamy (1903) held that a registered gift cannot be revoked for want of consideration.

Case – Sonia Bhatia v. State of UP (1981 2 SCC 585) reaffirmed that completed gifts are valid under Section 25.

V. DISTINCTION BETWEEN ENGLISH AND INDIAN LAW

Basis	English Law	Indian Law
Past consideration	Invalid	Valid (Sec. 2(d))
Consideration by third party	Invalid	Valid if at promisor's desire
Necessity of writing	Generally not	Required only for exceptions (Sec. 25)
Moral obligation	Not enforceable	May be enforceable under exceptions

VII. CONCLUSION

The doctrine of consideration under the Indian Contract Act, 1872, remains the cornerstone of contractual enforceability. Section 2(d) establishes the requirement of reciprocity—each promise must be supported by something of value given or promised in return. It ensures that only serious, deliberate promises intended to create legal relations are enforceable.

The essentials outlined—desire of promisor, movement from promisee or third party, temporal flexibility, reality, lawfulness, and irrelevance of adequacy—collectively guarantee both fairness and certainty. At the same time, **Section 25** ensures that justice and equity are not defeated by rigid technicalities. Promises made out of genuine love and affection, voluntary acts later acknowledged, revival of time-barred debts, agencies, and completed gifts remain enforceable even without fresh consideration.

Indian courts have harmonized traditional principles with modern realities. The expansion of electronic contracts and reliance-based promises continues to rest upon the same foundation: **mutual exchange and lawful intention.**

In conclusion, **consideration is the life-blood of contracts**, ensuring that every legal obligation arises from a reciprocal exchange rather than mere goodwill. Yet, through its well-crafted exceptions, the Indian Contract Act maintains a humane balance—upholding moral fairness alongside legal certainty.

BY AJITABH MISHRA

TOPIC:

Capacity to Contract – Minor's Agreement, Person of Unsound Mind, Person disqualified from contracting, Liability for necessities (Sections 11, 12, 68)

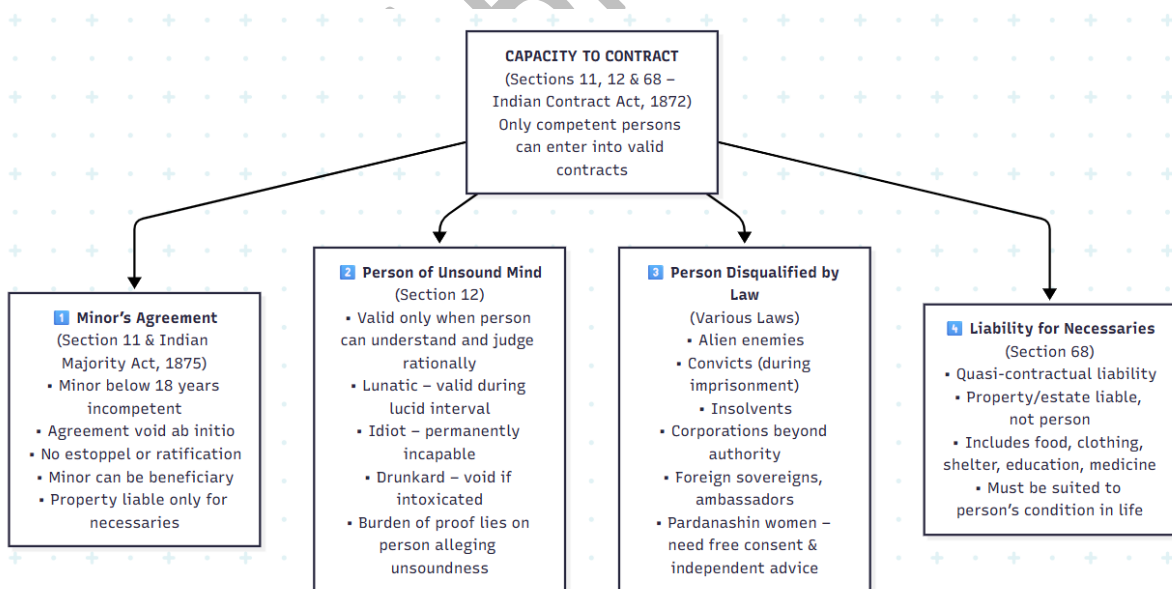
Answer:

Introduction

The law of contract recognizes that not every person possesses the ability to bind themselves by a legal agreement. The concept of **capacity to contract** determines *who* can enter into a valid and enforceable agreement. Under the **Indian Contract Act, 1872**, the governing provisions are **Sections 11, 12, and 68**, which together lay down that only a person who is **of the age of majority, of sound mind, and not disqualified by any law** is competent to contract.

This doctrine rests upon the principle that a contract requires **free and informed consent** between parties capable of understanding its implications. A contract made by an incompetent person is either **void** or **unenforceable**, as the law seeks to protect those who cannot protect themselves—particularly minors and persons of unsound mind.

The rule ensures fairness and prevents exploitation of those who, due to age, mental condition, or legal disability, lack the judgment to assess the consequences of contractual obligations. Moreover, **Section 68** provides equitable protection to those who supply “necessaries” to such persons, by granting limited reimbursement from their estate.



I. SECTION 11 – WHO IS COMPETENT TO CONTRACT

Text of Section 11:

“Every person is competent to contract who is of the age of majority according to the law to which he is subject, who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

This provision identifies **three essential qualifications** for contractual capacity:

1. **Age of majority** (attained at 18 years; 21 if under guardianship).
2. **Soundness of mind.**
3. **Not disqualified by any law.**

If any of these conditions is absent, the agreement is void.

II. MINOR'S AGREEMENT (Section 11 & Indian Majority Act, 1875)

Meaning

A **minor** is a person who has not completed **18 years of age** (or 21 years if a guardian of property is appointed). A minor is *incompetent* to contract.

Rule: Minor's Agreement is Void ab Initio

A contract with a minor is **void from the very beginning**, as held in the landmark case **Mohori Bibee v. Dharmodas Ghose (1903) 30 Cal 539 (PC)**.

Case: Mohori Bibee v. Dharmodas Ghose (1903)

- **Facts:** Dharmodas Ghose, a minor, mortgaged property to a moneylender. The lender's agent was aware of the minority.
- **Held:** The Privy Council declared the mortgage **void ab initio**. The contract could not be enforced against the minor.
- **Principle:** A minor's agreement is void from inception; there is **no estoppel** even if the minor misrepresents age.

Effects of Minor's Agreement

Effect	Legal Position
1. Void and inoperative	Minor's contract cannot be ratified upon attaining majority.
2. No Estoppel	Minor can always plead minority even if he misrepresented his age.
3. Restitution limited	If property or goods are traceable, they may be returned; money cannot be recovered once spent.
4. Minor not liable for insolvency	Minor's estate cannot be attached for debts.

5. Minor can be a beneficiary	Can receive benefits like scholarship, trust income, or insurance.
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Case: Ajudhia Prasad v. Chandan Lal (AIR 1937 All 610)

- **Facts:** Minor misrepresented age, borrowed money, later refused repayment.
- **Held:** Contract void; lender cannot recover amount. No estoppel.
- **Principle:** Law protects minors even from their misrepresentation.

Minor as Beneficiary

A minor may **receive benefits** under a contract but cannot incur obligations. He can be:

- A **beneficiary in trust**,
- A **partner entitled to profits** (Sec. 30, Partnership Act),
- A **donee or insured person**.

Guardian's Contracts

Contracts made **by a guardian on behalf of a minor** are valid only when:

- For **minor's benefit**, and
- Within guardian's legal authority.

They are void if beyond authority or against interest.

Ratification and Fresh Promise

A minor cannot ratify a void agreement after attaining majority. Any new promise must have **fresh consideration**.

Liability for Necessaries (Sec. 68, in Minor's Context)

A minor is not personally liable, but property can be made liable for **necessaries** supplied.

Necessaries = things essential for life, education, health, and status.

- Food, clothing, shelter, medical aid, education.
- Luxuries \neq necessities unless suited to minor's lifestyle.

III. PERSON OF UNSOUND MIND (Section 12)

Definition (Section 12):

A person is of sound mind if:

- Capable of understanding the contract, and
- Capable of forming a rational judgment about its effect.

Categories of Unsoundness

Type	Legal Effect
Idiot (permanent incapacity)	Always void; cannot contract at any time.
Lunatic (periodic insanity)	Valid during lucid intervals; void otherwise.
Drunkard/Intoxicated person	Void if incapable of judgment while drunk; valid if sober.

Case: Inder Singh v. Parmeshwardhari Singh (AIR 1957 Pat 491)

- **Facts:** Inder Singh entered into property contract, later claimed insanity.
- **Held:** Presumption of sanity stands; burden of proof lies on person alleging unsoundness.
- **Principle:** Law presumes sanity; unsoundness must be strictly proved.

Liability for Necessaries (Unsound Mind – Section 68)

If necessaries are supplied to a person of unsound mind, the supplier can claim reimbursement from that person's estate, not personally.

✦ *Example:* Supplying medicines and food to a lunatic → reimbursement claim allowed from property.

Doctrine: Creates *quasi-contractual* obligation — ensures fairness without treating the act as a real contract.

IV. PERSONS DISQUALIFIED BY LAW

Even a person who is major and of sound mind may be **disqualified by law** from contracting to protect public policy or legal order.

Common Disqualifications:

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Category	Legal Effect	Illustration
Alien Enemy	Contracts void during war; valid with Government sanction.	A citizen trading with enemy country during war → void.
Convict	Cannot contract during imprisonment; capacity revives post-release.	Convict in jail signing sale deed → void.
Insolvent	Property vests in Official Receiver; cannot deal with estate.	Insolvent mortgaging vested property → invalid.
Corporation/Company	Limited by Memorandum & Articles; ultra vires acts void.	Company investing beyond MoA → unenforceable.
Foreign Sovereign/Ambassador	Enjoy immunity under international law.	Suit against ambassador without sanction → barred.
Pardanashin Women	Historically protected; contract valid only with free consent & independent advice.	Widow transferring property under undue influence → voidable.

Case: *Kanhaiyalal v. D.R. Banaji* (AIR 1958 SC 725)

- **Held:** A person disqualified by law cannot validate a contract through consent; legal incapacity prevails over agreement.

Legal Restrictions and Public Policy

- **Statutory prohibitions:** Judges, legislators, advocates, or officials cannot enter contracts conflicting with their duties.
- **Corporations:** Bound by their constitutional documents; cannot exceed powers.
- **Public interest:** Disqualification maintains fairness and prevents misuse of authority.

✦ *Example:* Lawyer drafting client's will in which he is beneficiary → void.

V. LIABILITY FOR NECESSARIES (Section 68)

Text of Section 68:

“If a person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person

who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.”

Key Points

- Applies to **minors and persons of unsound mind**.
- Creates **quasi-contractual** obligation (not a true contract).
- **No personal liability**; only estate/property liable.
- Ensures **fairness** to supplier while protecting the incompetent person.

Essentials:

1. Goods/services supplied must be **necessaries suited to status and condition of life**.
2. Must be supplied to a person **incapable of contracting** or dependent on him.
3. Claim lies against **property/estate**, not person.

Case: Nash v. Inman (1908) 2 KB 1

- **Facts:** Tailor sued minor student for clothes.
- **Held:** Clothes were not necessities; minor not liable.
- **Principle:** Supplier must prove goods are *necessaries suited to lifestyle and need*.

Conclusion

Capacity to contract forms the **foundation of enforceability** under the Indian Contract Act, 1872.

Only persons who are:

- **Majors,**
- **Of sound mind,** and
- **Not disqualified by law,**
are legally competent to contract.

A **minor's agreement** is *void ab initio*, and cannot be ratified after majority. However, minors may be **beneficiaries** and **liable for necessities** (Sec. 68). Persons of **unsound mind** can contract only when they understand and judge rationally (lucid intervals).

Those **disqualified by law** (alien enemies, convicts, insolvents, corporations, foreign sovereigns, etc.) cannot contract due to legal restrictions.

Section 68 ensures equitable balance — safeguarding incapacitated individuals while compensating those who supply essential goods or services.

Thus, the doctrine of capacity to contract reinforces the broader principle of **justice, fairness, and protection of vulnerable persons**, ensuring that contractual freedom operates within limits of responsibility and legal competence.

BY AJITABH MISHRA

TOPIC:

- 1. Standard form of contract**
- 2. Cross offer**
- 3. Minor's agreement**
- 4. Revocation of proposal**
- 5. invitation to treat**
- 6. Agreements opposed to public policy**

Answer:

1. STANDARD FORM OF CONTRACT

Introduction

In modern commerce, agreements are often made using **pre-drafted or printed terms** prepared by one party, usually the stronger one such as corporations, transport companies, banks, or insurance firms. Such contracts are known as **Standard Form Contracts (SFCs)**. They represent a “take it or leave it” situation where the weaker party has no real bargaining power.

Meaning and Nature

A Standard Form Contract is a **ready-made agreement** containing general terms and conditions applicable to all customers. The party offering it merely fills in names, amounts, or dates. The other party merely assents by signing or clicking “I agree”. Examples include insurance policies, railway tickets, online service agreements, etc.

Features

- **One-sided terms** drafted by a dominant party.
- **Lack of negotiation or equality.**
- **Implied consent** through use or acceptance.
- **Used for convenience and efficiency** in large-scale business operations.

Judicial Control

Courts intervene to protect weaker parties from unfair clauses using doctrines like:

- **Reasonableness and public policy.**
- **Contra proferentem rule** – ambiguous terms interpreted against the drafter.
- **Notice and consent requirements** for exclusion clauses.

Case Law – Central Inland Water Transport Corporation v. Brojo Nath Ganguly (1986)

- **Facts:** A public corporation's employment contract allowed termination at will.
- **Held:** The Supreme Court struck down the clause as **unconscionable** and opposed to **Article 14** principles.
- **Principle:** Unfair terms in standard contracts can be invalidated if they defeat fairness or public interest.

Conclusion

Standard Form Contracts are essential in modern transactions but must be checked by principles of **equity and fairness**. Courts ensure they do not become tools of exploitation against weaker parties.

2. CROSS OFFER

Introduction

A **cross offer** occurs when **two parties make identical offers to each other in ignorance of each other's offer**. Although the terms match, there is **no acceptance**, and hence, **no contract** arises.

Meaning

In contract formation, an offer must be followed by acceptance. A cross offer lacks this sequence—each party merely proposes, but neither accepts.

✦ *Example:* A offers to sell his car to B for ₹1,00,000. On the same day, B sends an offer to buy A's car for ₹1,00,000. The offers cross in post—no contract is formed.

Legal Effect

- A cross offer **cannot constitute acceptance**.
- There is **no consensus ad idem (meeting of minds)**.
- The moment one party accepts the other's offer after knowledge, then and only then does a valid contract arise.

Case Law – Tinn v. Hoffman & Co. (1873)

- **Facts:** Tinn offered to buy iron from Hoffman; at the same time Hoffman made an identical offer to Tinn without knowing it.
- **Held:** There was **no contract**, since neither party had accepted the other's offer.
- **Principle:** **Cross offers do not create legal obligation**—mutual communication of acceptance is essential.

Conclusion

A contract requires offer plus acceptance. Cross offers lack that meeting of minds; hence, they are mere expressions of willingness, not binding agreements.

3. MINOR'S AGREEMENT

(Section 11, Indian Contract Act, 1872)

Introduction

A **minor** is a person who has not attained **18 years of age** (or 21 if under court-appointed guardianship). Under **Section 11**, a minor is **incompetent to contract**, and any agreement with a minor is **void ab initio**.

Legal Effects

- **Void from inception** – not enforceable by or against minor.
- **No estoppel** – minor may plead minority even after misrepresenting age.
- **No ratification** – cannot confirm contract after attaining majority.
- **Can be a beneficiary** – valid if for benefit (e.g., trust, scholarship, gift).
- **Liability for necessities** – estate liable under Section 68, not personal.

Case Law – *Mohori Bibee v. Dharmodas Ghose* (1903)

- **Facts:** A minor mortgaged property; lender knew his minority.
- **Held:** The Privy Council held the agreement **void ab initio**.
- **Principle:** A minor's agreement is **absolutely void** and cannot be ratified; law protects minors even from their own fraud or misrepresentation.

Conclusion

The rule protects minors from exploitation while maintaining fairness for others through Section 68 (necessaries). It forms the foundation of contractual competency under Indian law.

4. REVOCATION OF PROPOSAL

(Section 5, Indian Contract Act, 1872)

Introduction

A **proposal (offer)** can be **revoked** before it is accepted. Section 5 provides that an offer may be withdrawn at any time before acceptance is complete as against the proposer, but not afterwards.

Modes of Revocation (Section 6)

1. **Notice to the offeree.**

2. **Lapse of time.**
3. **Failure of condition precedent.**
4. **Death or insanity of offeror (if known to offeree).**
5. **Counter-offer** destroying original offer.

Rules

- Revocation must **reach the offeree before acceptance.**
- Once acceptance is posted (postal rule), revocation becomes ineffective.
- In instantaneous communication (telephone, email), revocation is valid only when received.

Case Law – Byrne v. Van Tienhoven (1880)

- **Facts:** Defendants posted letter revoking offer; plaintiff posted acceptance before receiving revocation.
- **Held:** Revocation ineffective since acceptance was already posted.
- **Principle: Revocation is complete only when communicated**, while acceptance is complete when posted.

Conclusion

Revocation upholds the principle of free consent, ensuring that parties remain bound only upon effective communication of acceptance, not merely by intention to withdraw.

5. INVITATION TO TREAT

Introduction

An **invitation to treat** (or invite to offer) is a **preliminary communication** indicating willingness to receive offers, not to make one. It invites negotiation but does not constitute an offer itself.

Examples

- Display of goods with price tags.
- Advertisements in newspapers.
- Prospectuses, tender notices, catalogues.
- Railway or bus timetables.

Legal Position

- Offer arises only when the other party responds affirmatively.

- The person making invitation is not bound to accept any offer made in response.
- Converts into offer when specific terms are accepted by another.

Case Law – Pharmaceutical Society of Great Britain v. Boots Cash Chemists (1953)

- **Facts:** Boots displayed medicines on shelves with prices. Customer picked up items and took them to counter.
- **Held:** Display was **invitation to treat**, not offer. Contract formed only at cashier's counter.
- **Principle:** Display of goods is not offer; it merely invites customers to make an offer to buy.

Conclusion

An invitation to treat preserves business flexibility. It helps distinguish between mere willingness to negotiate and a binding contractual offer.

6. AGREEMENTS OPPOSED TO PUBLIC POLICY

(Section 23, Indian Contract Act, 1872)

Introduction

Contracts must have a **lawful object and consideration**. Under Section 23, an agreement is **void if its object or consideration is opposed to public policy**—i.e., it injures public welfare, justice, or morality.

Meaning of Public Policy

“Public Policy” refers to **principles ensuring public welfare and good morals**. Courts interpret it flexibly to meet social needs.

Types of Agreements Opposed to Public Policy

1. **Trading with enemy.**
2. **Interference with administration of justice.**
3. **Marriage brokerage or restraint of marriage.**
4. **Restraint of trade (Sec. 27).**
5. **Maintenance and champerty.**
6. **Agreements tending to corruption or immorality.**

Case Law – Gherulal Parakh v. Mahadeodas Maiya (1959)

- **Facts:** Parties entered wagering agreement.

- **Held:** Supreme Court held wagering contracts not immoral but **void as against public policy** under Section 23.
- **Principle:** Courts can strike down agreements harmful to public welfare, even if not expressly illegal.

Conclusion

Public policy acts as a safeguard to ensure that freedom of contract does not subvert morality, justice, or societal interest. Agreements contrary to it are void, protecting the legal and moral fabric of society.

BY AJITABH MISHRA

TOPIC:

FREE CONSENT – FOCUS ON COERCION AND UNDUE INFLUENCE

(Sections 13–16, Indian Contract Act, 1872)

Answer:

Introduction

Consent forms the essence of every valid contract. Under **Section 13 of the Indian Contract Act, 1872**, consent means that two or more persons agree upon the same thing in the same sense (*consensus ad idem*). However, mere consent is not sufficient — it must be **free**.

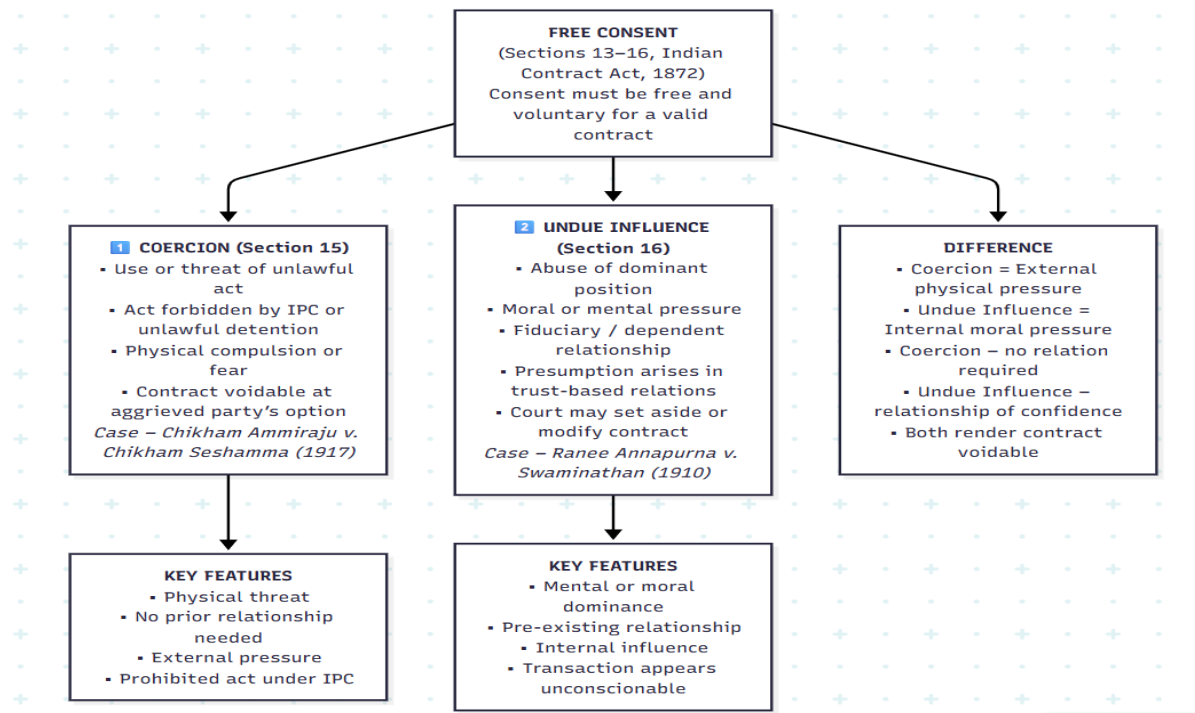
According to **Section 14**, consent is said to be free when it is not caused by:

1. Coercion (Section 15)
2. Undue Influence (Section 16)
3. Fraud (Section 17)
4. Misrepresentation (Section 18)
5. Mistake (Sections 20–22)

If consent is caused by coercion or undue influence, the contract becomes **voidable** at the option of the party whose consent was not free (Section 19).

The doctrine of free consent ensures that every contract is the result of genuine choice and mutual understanding, not exploitation or pressure. The two most significant vitiating factors are **coercion** (physical pressure) and **undue influence** (moral or mental pressure). Both destroy the element of voluntariness essential for contractual validity.

NOTES ON LAW OF CONTRACT - I



COERCION (SECTION 15, ICA 1872)

Definition

“Coercion” means committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawfully 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.”

Essentials of Coercion

- 1. Act forbidden by the Indian Penal Code (IPC):**
Includes acts such as assault, wrongful confinement, or suicide threats.
- 2. Unlawful detention of property:**
Retaining another's property unlawfully to force consent amounts to coercion.
- 3. Intention to cause person to contract:**
There must be intent to induce the other party into an agreement.
- 4. Effect – Contract becomes voidable:**
The aggrieved party may rescind the contract under Section 19.

Key Points

- The act need not be directed at the contracting party; it may be directed toward **any person**.
- Coercion can also occur **beyond India's territory** if the act is forbidden by IPC.
- Consent obtained by coercion \neq free consent.

Illustrations

- A threatens to harm B unless B sells his car — coercion.
- A unlawfully detains B's goods until B signs a bond — coercion.

Case Law – *Chikham Ammiraju v. Chikham Seshamma* (1917)

Facts:

A husband threatened to commit suicide unless his wife and son executed a release deed of property.

Held:

The Madras High Court held that threat of suicide, though an act against oneself, is **forbidden by IPC (Section 309)** and amounts to **coercion**.

Principle:

A threat to commit any act forbidden by the Penal Code constitutes coercion, even if the act is directed against oneself.

Effect of Coercion

- The contract is **voidable** at the option of the coerced party (Section 19).
- The aggrieved party may rescind and demand restitution of any benefits transferred under coercion.

Case Law – *Ranganayakamma v. Alwar Setti* (1889)

Facts:

A widow was forced to adopt a boy under threat that her husband's body would not be cremated.

Held:

Adoption voidable — consent was obtained by coercion.

Principle: Threat to withhold a lawful act to obtain consent = coercion.

UNDUE INFLUENCE (SECTION 16, ICA 1872)

Definition

A contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Essentials

1. **Existence of a dominant position** – one party has influence or authority over the other.
2. **Use of that position** – the dominant party must use the position to obtain an **unfair advantage**.
3. **Unfair transaction** – the resulting contract must appear unconscionable on the face of it.

Persons Presumed to Dominate Will

Under Section 16(2), a person is deemed to dominate another's will:

- When he holds **real or apparent authority** (e.g., master–servant, employer–employee).
- When he stands in **fiduciary relation** (e.g., lawyer–client, trustee–beneficiary, parent–child).
- When the other's **mental capacity is temporarily affected** by illness, distress, or age.

Burden of Proof

- When a relationship of trust or authority exists, the **burden shifts** to the dominant party to prove that no undue influence was exercised.

Case Law – *Ranee Annapurna v. Swaminathan* (1910)

Facts:

A poor widow mortgaged her property to a moneylender at an exorbitant interest rate.

Held:

The court presumed undue influence because of her dependent condition and financial distress.

Principle:

When one party is in a position to dominate and the transaction appears unconscionable, **undue influence is presumed**.

Other Illustrations

- Spiritual guru persuades disciple to gift property.
- Lawyer drafts will naming himself as beneficiary.
- Doctor charges patient unfair fees due to dependency.

Judicial Application

1. *Mannu Singh v. Umadat Pandey* (1890): Spiritual adviser induced disciple to gift property – contract set aside.
2. *Allcard v. Skinner* (1887): A nun gifted property to religious superior; court found undue influence due to spiritual domination.

Effect of Undue Influence

Under Section 19A:

- Contract is **voidable** at the option of the influenced party.
- Court may set aside the entire contract or **modify it equitably**.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis	Coercion (Section 15)	Undue Influence (Section 16)
Nature of Pressure	Physical or threat-based compulsion.	Moral, mental, or emotional domination.
Type of Force	External – physical threat or unlawful act.	Internal – psychological domination due to relationship.
Relationship between Parties	No relationship necessary.	Exists prior to contract (fiduciary or dependent).
Object	To compel consent by fear.	To obtain an unfair advantage.
Effect on Contract	Voidable at the option of coerced party (Sec. 19).	Voidable/modifiable at the option of influenced party (Sec. 19A).
Burden of Proof	On aggrieved party to prove coercion.	On dominant party to disprove undue influence (once presumption arises).
Examples	Threat of suicide, unlawful detention of property.	Gift by disciple to guru, loan to dependent widow.
Key Case	<i>Chikham Ammiraju v. Seshamma</i> (1917).	<i>Ranee Annapurna v. Swaminathan</i> (1910).

CRITICAL ANALYSIS

While coercion directly violates the person's free will through threats, undue influence erodes autonomy subtly through **psychological dependence**. Indian courts recognize both as threats to **individual liberty and contractual fairness**.

- In **coercion**, consent is *forced externally*.
- In **undue influence**, consent is *manipulated internally*.

Both doctrines reinforce the **principle of voluntariness**, ensuring that contracts are not instruments of domination but of equality.

The flexibility under Section 19A allows equitable remedies — setting aside or modifying unfair terms — reflecting the **equitable roots** of Indian contract jurisprudence.

CONCLUSION

The concept of **free consent** ensures that agreements arise from true intention, not fear or exploitation.

Both **coercion** and **undue influence** vitiate consent by destroying the mental freedom necessary for valid agreement.

- **Coercion** = external force; governed by fear of unlawful act.
- **Undue Influence** = internal pressure; arises from abuse of trust or dependence.

The **Indian Contract Act, 1872** through Sections **15 and 16**, provides a balance between contractual liberty and social fairness. By making such contracts **voidable**, it protects the victim without invalidating the entire system of contract law.

In a modern context, courts have extended these principles to **economic duress**, **unfair trade practices**, and **unconscionable bargains**, ensuring that the doctrine of free consent continues to evolve with changing times.

Ultimately, **freedom of contract cannot mean freedom to exploit** — and that is the enduring spirit behind Sections 15 and 16 of the Indian Contract Act.

TOPIC:

VOID AGREEMENTS – WITH SPECIAL FOCUS ON AGREEMENT BY WAY OF WAGER

(Sections 23–30, Indian Contract Act, 1872)

Answer:

Introduction

A valid contract, under **Section 10 of the Indian Contract Act, 1872**, must fulfill certain essential elements — free consent, lawful object and consideration, and competency of parties. However, even when these essentials are apparently present, some agreements are **declared void** by law because they are **opposed to public policy, immoral, impossible, or against the principles of justice**.

A **void agreement** is one that is **unenforceable in the eyes of law**. It creates **no legal rights or obligations** between the parties. Unlike an illegal agreement, a void agreement is not necessarily punishable, but it cannot be enforced in court.

Sections **24 to 30** of the Indian Contract Act list various kinds of **void agreements**, including:

- Agreements with unlawful consideration or object,
- Agreements without consideration,
- Agreements in restraint of marriage,
- Agreements in restraint of trade or legal proceedings, and
- **Agreements by way of wager.**

Among these, **wagering agreements (Section 30)** have acquired special significance because they lie on the borderline between lawful speculation and unlawful gambling.

MEANING OF VOID AGREEMENT

Definition

A **void agreement** is defined in **Section 2(g)** as:

“An agreement not enforceable by law is said to be void.”

Such agreements are void **ab initio** — i.e., from the very beginning. They have no legal effect, and courts will not assist either party in enforcing or recovering benefits arising out of them.

Characteristics

- No legal relationship arises between parties.
- No rights, obligations, or remedies exist.
- Collateral transactions may remain valid (unless tainted by illegality).

Examples

- Agreements in restraint of marriage (Sec. 26).
- Agreements in restraint of trade (Sec. 27).
- Wagering agreements (Sec. 30).
- Agreements with uncertain terms (Sec. 29).

CATEGORIES OF VOID AGREEMENTS (SECTIONS 24–30)

Section	Nature of Agreement	Reason for Voidness
24	Unlawful consideration or object	Opposed to law, fraudulent, or immoral
25	Agreement without consideration	No consideration = no contract (except exceptions)
26	Restraint of marriage	Interferes with personal liberty
27	Restraint of trade	Opposed to public policy of free trade
28	Restraint of legal proceedings	Prevents access to justice
29	Uncertainty	Terms too vague or indefinite
30	Wagering agreements	Based on chance, not intention to perform

AGREEMENT BY WAY OF WAGER (SECTION 30)

Definition

“Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event.”
(Section 30, Indian Contract Act, 1872)

Thus, a **wagering agreement** is one in which parties agree that **money or money's worth** shall be paid depending on the occurrence or non-occurrence of an **uncertain future event**.

Essential Elements of a Wagering Agreement

1. **Uncertain Event:**
The event on which the wager depends must be uncertain, such as the outcome of a match, rainfall, or election.
2. **Mutual Chances of Gain or Loss:**
Each party must stand to win or lose depending on the event's result — neither should have control over it.
3. **No Other Interest:**
Parties should not have any genuine interest in the event apart from the chance of winning or losing.
4. **Promise to Pay Money or Money's Worth:**
The stake must be monetary or capable of monetary valuation.
5. **Event Must Be Future:**
The wager cannot relate to past or existing facts (must be contingent).

Legal Nature

- **Void but not illegal** under the Indian Contract Act (except in certain States like Maharashtra and Gujarat).
- **Collateral agreements** (e.g., loans for betting) are valid unless expressly prohibited by local law.

DISTINCTION BETWEEN WAGER AND OTHER CONTRACTS

Basis	Wagering Agreement	Contingent Contract
Nature of Event	Depends purely on chance.	Depends on collateral event which may or may not happen.
Intention	To win or lose money; no real interest.	Genuine commercial purpose.
Control over Event	No control; purely speculative.	Event beyond parties' control but relevant to performance.

Legality	Void under Section 30.	Valid and enforceable under Sections 31–36.
Example	Betting on cricket match.	Insurance contract, share futures (if bona fide).

CASE LAW ANALYSIS ON WAGERING AGREEMENTS

1. Gherulal Parakh v. Mahadeodas Maiya (1959 SC)

Facts:

The appellant entered into a partnership to carry out wagering transactions in cotton.

Issue:

Whether a wagering agreement is merely void or also illegal.

Held:

The Supreme Court held that a wagering agreement is **void but not illegal** under Section 30 of the Contract Act.

However, if the local law (like the Bombay Prevention of Gambling Act) declares wagering as illegal, it becomes punishable.

Principle:

A wager is void and unenforceable but not necessarily unlawful; collateral transactions are valid unless expressly prohibited.

3. K.R. Lakshmanan v. State of Tamil Nadu (1996)

Facts:

The Tamil Nadu government banned horse racing under gambling laws.

Held:

The Supreme Court held horse racing involves **substantial skill**, not mere chance, and thus is **not a wager**.

Principle:

Games of skill (like horse racing, chess, rummy) are distinct from gambling and not void under Section 30.

EXCEPTIONS AND SPECIAL CASES

1. Horse Racing (Explanation to Section 30)

Section 30's Explanation provides that:

“An agreement to contribute a sum toward a plate or prize of the value of ₹500 or more to be awarded to the winner of a horse race is not unlawful.”

Hence, betting on horse races above ₹500, conducted under recognized authority, is **valid**.

2. Share Market Transactions

If the intention is genuine **delivery of shares**, the contract is valid. However, if the intention is merely to settle differences based on price variation, it becomes a **wager**.

✦ *Case: Badridas Kothari v. Meghraj Kothari (1967)* – Share contracts without intention of delivery = wagering.

EFFECTS OF WAGERING AGREEMENTS

1. **Unenforceable:** No action lies to recover winnings or stake.
2. **No Restitution:** Money paid under a wager cannot be reclaimed.
3. **Collateral Agreements:** Valid unless local law forbids.
4. **Skill-based Competitions:** Not wagers (horse racing, rummy, crossword contests, etc.).
5. **Online Betting:** Many modern laws and judicial opinions treat it as illegal gambling.

MODERN CONTEXT: ONLINE BETTING AND ESPORTS

With the advent of digital platforms, **online betting** and **fantasy sports** raise questions of legality under Section 30.

- **Games of Skill (e.g., Fantasy Cricket, Rummy, Chess):** Recognized as *not wagers* by Indian courts.
- **Pure Chance Games (e.g., online casino, lottery, betting apps):** Fall within the prohibition of Section 30.

✦ *Case: Avinash Mehrotra v. State of Rajasthan (2020)* – Rajasthan High Court held Dream11 fantasy gaming as **game of skill**, not wager.

CONCLUSION

Void agreements form an important safeguard within contract law, ensuring that transactions contrary to justice, morality, or public welfare are not legally recognized. Among these, **wagering agreements** stand out as a unique category where the law draws a moral and economic boundary between **legitimate speculation** and **unlawful gambling**.

- They are **void** — no party can enforce or recover under them.
- They are **not illegal**, except where prohibited by specific legislation.
- **Collateral contracts** remain valid unless directly tainted.

The law, however, respects **games of skill** and **commercial contingencies** as valid activities. Thus, the distinction between **chance and skill** becomes the legal test for modern disputes, especially in **digital betting and e-sports**.

Ultimately, Section 30 reflects the legislature's intent to **discourage gambling without criminalizing speculation**, maintaining a delicate balance between **freedom of contract** and **public morality**.

BY AJTABH MISHRA

TOPIC:

- 1. Lawful Object (Sections 23 to 24)**
- 2. Agreement in Restraint of Marriage,**
- 3. Agreement in Restraint of Trade,**
- 4. Agreement in Restraint of Legal Proceedings,**
- 5. Agreement void for uncertainty,**

Answer:

1. LAWFUL OBJECT (Sections 23–24)

Introduction

For a contract to be valid under **Section 10 of the Indian Contract Act, 1872**, it must have a **lawful consideration and object**. Sections **23 and 24** specify when the object or consideration of an agreement is unlawful, thereby rendering it **void**.

Lawful Object – Meaning

An **object** refers to the purpose or design of an agreement. According to **Section 23**, the consideration or object is unlawful if:

1. It is **forbidden by law**,
2. It is of such a nature that, if permitted, it would **defeat the provisions of any law**,
3. It is **fraudulent**,
4. It involves or implies **injury to the person or property of another**, or
5. It is regarded by the court as **immoral or opposed to public policy**.



Example:

An agreement to smuggle goods or to defraud creditors is void because its object is unlawful.

Case Law – Gherulal Parakh v. Mahadeodas Maiya (1959)

Facts: Parties entered into a partnership for wagering transactions in cotton.

Held: The Supreme Court held that though wagering agreements are void under Section 30, they are not illegal unless expressly prohibited by statute.

Principle: An agreement is void if its object or consideration is unlawful under Section 23.

Conclusion

A contract must pursue a lawful object to be enforceable. Agreements with objects that are fraudulent, immoral, or against public welfare are void, ensuring that private contracts align with the broader principles of law and morality.

2. AGREEMENT IN RESTRAINT OF MARRIAGE (Section 26)

Introduction

Marriage is a fundamental social and personal right. Under **Section 26 of the Indian Contract Act, 1872**, any agreement that restricts a person's right to marry is **void**, as it interferes with personal liberty and public policy.

Explanation

The section states:

“Every agreement in restraint of the marriage of any person, other than a minor, is void.”

Key Points:

- Applies only to **major persons**; restraint on minor's marriage is valid if for welfare.
- **Total or partial restraint**—both are void.
- Applies to both **males and females**.



Example:

A agrees with B not to marry for five years — such an agreement is void.

Case Law – Lowe v. Peers (1768)

Facts: The defendant promised not to marry anyone except the plaintiff and agreed to pay damages if he did.

Held: The agreement was void as it was in restraint of marriage.

Principle: Restraining a person's freedom to marry violates public policy and is therefore void.

Conclusion

Freedom to marry is a personal right protected by law. Agreements imposing restrictions on marriage are void as they hinder social welfare and violate the principle of personal liberty.

3. AGREEMENT IN RESTRAINT OF TRADE (Section 27)

Introduction

The Indian Contract Act upholds the principle of **free trade and competition**. **Section 27** declares every agreement that restrains a person from carrying on a lawful profession, trade, or business as **void**, being opposed to public policy.

Provision

“Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.”

Key Points

- Applies to **both partial and absolute restraints**.
- Objective: Protect **freedom of trade** and **economic liberty**.
- Certain **exceptions** exist, such as:
 - **Sale of goodwill** (seller may agree not to compete within reasonable limits).
 - **Partnership Act exceptions** (Section 11(2), 36, and 54).



Example:

A doctor agrees not to practice within a city after selling his clinic — valid if reasonable.

Case Law – Madhub Chander v. Raj Coomar (1874)

Facts: A trader agreed not to open another shop in the same locality in exchange for money.

Held: The agreement was void as it restrained lawful trade.

Principle: Any restraint on freedom of trade is void, irrespective of reasonableness, except where expressly allowed by law.

Conclusion

Freedom of trade is vital to public welfare. Section 27 prevents monopolies and promotes competition, balancing private contracts with economic justice.

4. AGREEMENT IN RESTRAINT OF LEGAL PROCEEDINGS (Section 28)

Introduction

The right to seek justice through legal proceedings is a fundamental right. **Section 28 of the Indian Contract Act, 1872**, declares void any agreement that restrains a party from enforcing their legal rights through courts of law.

Provision

“Every agreement by which any party is restricted absolutely from enforcing their rights under or in respect of any contract by the usual legal proceedings in ordinary tribunals, is void.”

Key Points

- **Absolute restrictions** on approaching courts are void.
- **Partial restrictions** (like arbitration clauses) are valid as per Arbitration and Conciliation Act, 1996.
- Any clause limiting the **time period** to file a suit (less than the Limitation Act period) is also void.



Example:

A contract stating “no party shall sue in any court for breach” is void under Section 28.

Case Law – Food Corporation of India v. New India Assurance Co. Ltd. (1994)

Facts: Insurance contract limited claim period to 12 months, contrary to the Limitation Act.

Held: Clause void; parties cannot contract out of statutory limitation period.

Principle: Agreements restricting or extinguishing legal remedies are void.

Conclusion

Section 28 ensures access to justice by preventing private agreements from overriding statutory legal rights. While arbitration is a valid alternative, absolute restraint on legal action is void.

5. AGREEMENT VOID FOR UNCERTAINTY (Section 29)

Introduction

Certainty is essential to contract formation. **Section 29** of the Indian Contract Act, 1872, declares that agreements whose meaning is uncertain or not capable of being made certain are void.

Provision

“Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

Key Points

- **Certainty of terms** like price, quantity, subject matter, and parties is essential.
- If ambiguity can be resolved by reference to previous dealings or objective standards, the contract is valid.
- *Uncertain* = vague, indefinite, or dependent on future discretion.

✦ Examples:

- A agrees to sell “a reasonable quantity of oil” — void (uncertain).
- A agrees to sell all oil produced from a specific field — valid (certainty possible).

Case Law – Scammell v. Ouston (1941)

Facts: Parties agreed to buy a van on “hire-purchase terms” without specifying details.

Held: Agreement void; terms too uncertain to enforce.

Principle: Contract must be clear and definite in its essential terms.

Conclusion

Certainty ensures enforceability. Section 29 protects contractual clarity by invalidating vague or ambiguous agreements, reinforcing the principle that the law cannot enforce what it cannot understand.

TOPIC:

PERFORMANCE OF CONTRACT – OFFER OF PERFORMANCE, JOINT PROMISES, TIME FOR PERFORMANCE, AND ANTICIPATORY BREACH OF CONTRACT

(Sections 37–55, Indian Contract Act, 1872)

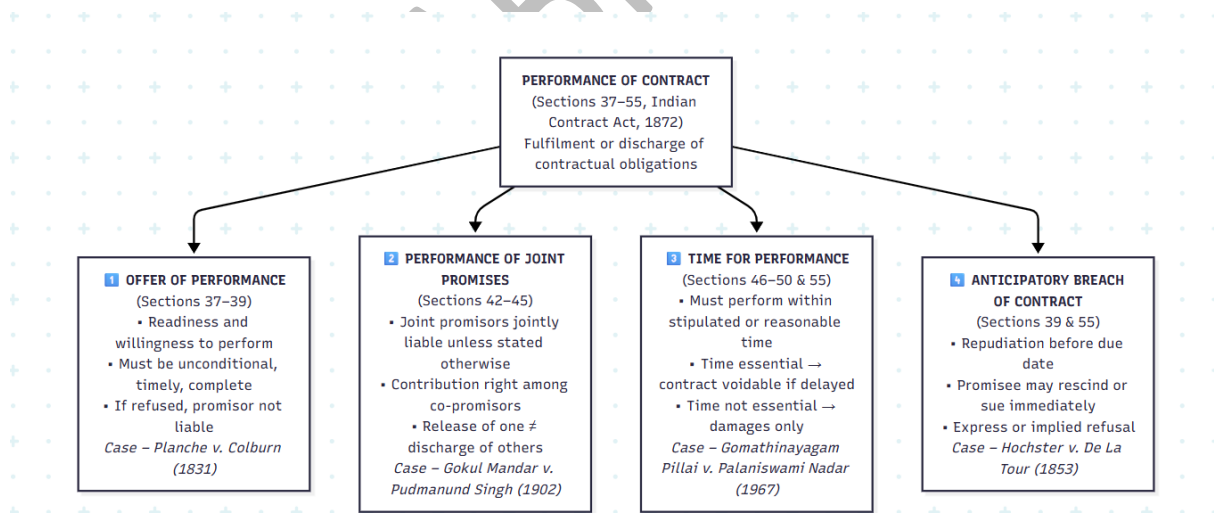
Answer:

Introduction

Performance of contract forms the **foundation of contractual obligations**. A valid contract imposes legal duties upon the parties, and fulfillment of these duties constitutes performance. When both parties perform as agreed, the contract is discharged, and rights and liabilities come to an end.

Sections **37 to 55** of the Indian Contract Act, 1872, deal comprehensively with the **rules of performance**, including who must perform, how and when performance should be made, and the legal consequences of failure or refusal to perform.

Thus, performance ensures the transformation of a promise into a legally recognized act — the ultimate goal of every contract.



Meaning of Performance

Performance of a contract means the **fulfillment of obligations** undertaken by the parties under the contract. The promisor must do or abstain from doing what he has promised, and the promisee must accept such performance when duly made.

Performance may be of two types:

1. **Actual Performance** – When the promisor fulfills the contract completely.
2. **Attempted or Tender of Performance** – When an offer to perform is made, but the promisee refuses to accept it.

Section 37 – Obligation of Parties to Perform

Section 37 provides that:

“The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under this Act or any other law.”

Thus, every party must either perform or be ready to perform unless performance is excused by impossibility, waiver, or discharge.

Case Law – *Union of India v. Chaman Lal Loona & Co.*, AIR 1957 SC 652

Facts: The government refused to accept coal as per contract despite supplier's readiness.

Held: The supplier was deemed to have performed by making a valid offer (tender).

Principle: A valid tender is equivalent to performance if refused by the promisee.

Section 38 – Offer or Tender of Performance

Meaning

An **offer of performance** or **tender** is a manifestation of the promisor's willingness to perform his obligation under the contract. It must be unconditional and made at the proper time and place.

Legal Effects

- If a **valid tender** is made and refused, the promisor is **discharged from liability**.
- The promisee cannot later demand performance or damages.

Essentials of Valid Tender

1. Must be **unconditional**.
2. Must be made at **proper time and place**.
3. Must be made to the **proper person**.
4. Promisor must be **ready and willing** to perform.
5. Offer must be of **full performance**, not partial.

Section 40 – Who Must Perform the Promise

Performance must be made by:

1. The promisor himself (especially in personal skill contracts), or
2. His agent or legal representative (where nature permits).

Example: A contracts to paint a portrait of B. A must personally perform; it cannot be delegated.

Case Law – *Taylor v. Caldwell* (1863)

If performance depends on personal skill or existence of a particular thing, death or destruction excuses performance.

Sections 42–45 – Performance of Joint Promises

Contracts may involve **multiple promisors or promisees**, and Sections 42–45 outline their rights and liabilities.

Section 42 – Joint Liabilities

When two or more persons make a joint promise, they must perform it jointly unless the contract provides otherwise.

Section 43 – Joint and Several Liability

A promisee may compel **any one or more joint promisors** to perform the whole promise. The promisor who performs can recover contribution from others.

Section 44 – Release of One Joint Promisor

Releasing one joint promisor does not discharge others from liability.

Section 45 – Joint Promisees

When a promise is made to several persons jointly, performance must be made to all jointly unless otherwise agreed.

Case Law – *State of Punjab v. Ralla Ram*, AIR 1961 SC 828

Held: Liability of joint promisors is joint as well as several; any one may be sued for full performance.

Section 46–50 – Time and Place of Performance

1. Time for Performance

- When the **time is fixed**, performance must be made at that time.
- When **no time is specified**, performance must be within a reasonable time (Section 46).
- If performance depends on **demand by the promisee**, promisor must perform within a reasonable time after demand (Section 47).

2. Place of Performance

If no place is specified, the promisor must request the promisee to fix a reasonable place (Section 49).

3. Performance on Certain Day

Under Section 48, if performance is to be on a specific day, it must be done during usual business hours.

Section 55 – Effect of Failure to Perform at Fixed Time

Time can be **of the essence** or **not of the essence** depending on the nature of the contract.

(a) When Time is of the Essence

If time is essential (e.g., commercial contracts, delivery of goods), delay in performance **renders the contract voidable** at the option of the promisee.

(b) When Time is Not of the Essence

If time is not vital (e.g., property transactions), the promisee can claim **compensation for delay** but cannot rescind the contract.

Case Law – *Hind Construction Contractors v. State of Maharashtra*, AIR 1979 SC 720

Facts: Delay in completion of construction due to administrative issues.

Held: Time was not of the essence; the contractor entitled to payment with reasonable delay.

Principle: Whether time is essential depends on the intention of the parties and nature of contract.

Section 51–54 – Reciprocal Promises

Reciprocal promises are those which form the **consideration or part of consideration for each other**.

- **Section 51:** Promises to be performed simultaneously (e.g., sale and payment).
- **Section 52:** Promises to be performed in a certain order as agreed.
- **Section 53:** When one party prevents performance, the other is excused.
- **Section 54:** Failure to perform one of several reciprocal promises prevents the other from enforcement.

Case Law – *K.C. Natarajan v. State of Tamil Nadu*, AIR 2003 SC 1344

Held: A party who prevents performance of reciprocal promise cannot claim damages for non-performance by the other.

Anticipatory Breach of Contract

Meaning

Under **Section 39**, an anticipatory breach occurs when a party **refuses or disables** itself from performing before the due date.

Options of Aggrieved Party

1. Treat contract as **rescinded** and sue for damages immediately.
2. Treat it as **subsisting** until the date of performance.

Case Law – *Hochster v. De La Tour* (1853)

Held: The injured party can sue immediately after repudiation without waiting for the date of performance.

Effect of Proper and Improper Performance

1. **Proper Performance** discharges the contract.
2. **Refusal of Valid Tender** absolves the promisor.
3. **Delay or Failure** gives rise to damages or rescission under Section 55.

Conclusion

The performance of contract is the **fulfillment of legal promises**, ensuring trust and certainty in commerce. Sections 37–55 establish a clear framework defining how, when, and by whom performance must be made.

The doctrines of **tender, joint promises, and time of performance** ensure that obligations are carried out equitably and efficiently. The law also provides flexibility through the principles of **reasonable time** and **excuse from performance** where justice demands it.

Ultimately, the performance of contract under the Indian Contract Act preserves the sanctity of agreements while balancing fairness and practicality — reinforcing that **the law protects diligent performance and penalizes willful neglect**.

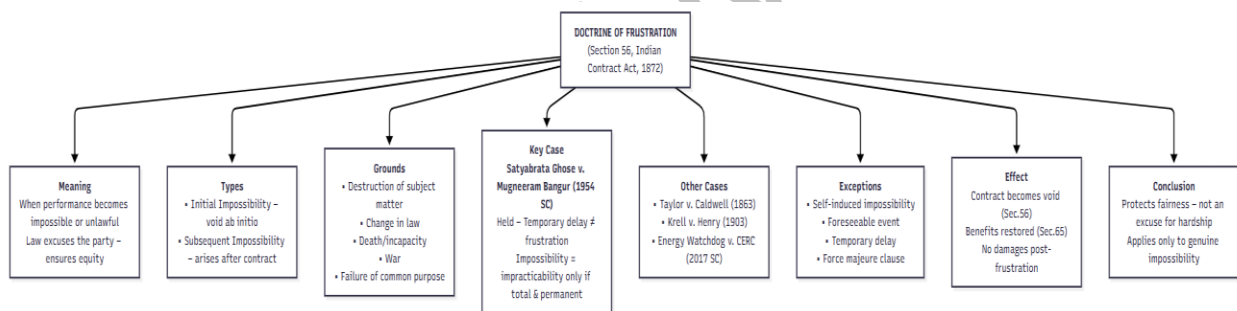
TOPIC:

Impossibility of Performance – Doctrine of Frustration Appropriation of Payments (Sections 56 to 61)

Answer:

Introduction

The law of contract aims to ensure that agreements voluntarily entered into are fulfilled. However, situations may arise when performance becomes impossible due to circumstances beyond the control of the parties. Section 56 of the Indian Contract Act embodies this principle through the **Doctrine of Frustration**, which excuses performance when a contract becomes impossible or unlawful after it has been made. The concept is rooted in the maxim *lex non cogit ad impossibilia* (the law does not compel a man to do what he cannot possibly perform). The doctrine balances the sanctity of contracts with fairness in cases where unforeseen events destroy the foundation of the agreement.



What and Why is “Impossible”?

The term **“impossible”** in Section 56 is not limited to physical or literal impossibility. It also includes **practical impossibility**, where performance, though physically possible, becomes **pointless, unlawful, or commercially futile** due to a fundamental change in circumstances. For example, if the object for which a contract was made ceases to exist, or if government intervention or war renders performance illegal, the purpose of the contract is frustrated.

The rationale behind the doctrine is **justice and equity**—no party should suffer for an act that has become impossible due to no fault of theirs.

Types of Impossibility

1. Initial (Pre-contractual) Impossibility

When the act promised is impossible at the time of contract formation. Such agreements are **void ab initio** under the first paragraph of Section 56.

Example: A agrees to discover treasure by magic—impossible from the outset.

2. Subsequent (Post-contractual) Impossibility or Illegality

When a contract, valid at its inception, becomes impossible or unlawful due to some **supervening event**. This forms the basis of the **Doctrine of Frustration** under the second paragraph of Section 56.

Theory of Frustration

The doctrine evolved from English common law and is founded on the “**implied term theory**” and “**just and reasonable solution**” theory.

In India, Section 56 gives **statutory recognition** to the principle, making it a **rule of positive law**, not merely an implied term.

Evolution through English Cases

- **Taylor v. Caldwell (1863)** – A music hall hired for concerts was destroyed by fire before the event. Held: Contract frustrated; parties excused.
- **Krell v. Henry (1903)** – A room hired to view the King’s coronation parade became purposeless when the parade was canceled. Held: Object of the contract failed → frustration.

Indian courts have adopted these principles but within the scope of Section 56, which **does not depend on implied intention but on statutory impossibility**.

Grounds of Subsequent Impossibility / Doctrine of Frustration

Section 56 (2) states that a contract to do an act which becomes impossible or unlawful after it is made becomes **void** when the act becomes impossible or unlawful. Common grounds include:

1. **Destruction of Subject Matter**
When the existence of a specific thing is essential to performance and it perishes.
Example: Contract to lease a theatre that later burns down → impossible to perform.
2. **Change of Law or Government Order**
Subsequent legislation or executive order may render performance illegal.
Case: *HPA International v. Bhagwandas Fateh Chand Daswani* (2004 SC) – Export contract frustrated by change in government policy banning export of goods.
3. **Death or Incapacity of Party**
When personal skill or qualification is central, the death or incapacity of a party frustrates the contract.
4. **Outbreak of War or Change in Political Condition**
If performance becomes illegal or impossible due to war or political severance between nations.

5. Failure of the Common Object

When the fundamental purpose for which the contract was entered into is destroyed, even though performance is not physically impossible.

Landmark Case: **Satyabrata Ghose v. Mugneeram Bangur & Co. (1954 SC)**

Facts:

The defendants, a housing company, undertook to develop a housing estate and allot plots to the plaintiff. Due to the outbreak of World War II, the government requisitioned the land for military use, causing indefinite delay. The company claimed that the contract was frustrated under Section 56.

Held:

The Supreme Court, per Justice Mukherjea, held that the contract was **not frustrated** since requisition was temporary and performance was not rendered permanently impossible. The court clarified that “impossible” under Section 56 includes **impracticable** or **useless** acts considering the object and purpose, but the impossibility must be total and permanent.

Principle:

Section 56 applies not only to physical impossibility but also to situations where the object of the contract becomes impracticable or purposeless. However, temporary hindrances or delays do not constitute frustration unless they fundamentally alter the nature of the obligation.

Other Important Case Laws

1. **Taylor v. Caldwell (1863)**

Facts: Music hall destroyed by fire before event.

Held: Performance impossible; contract frustrated.

Principle: Destruction of subject matter frustrates contract.

2. **Krell v. Henry (1903)**

Facts: Room hired to view coronation; parade canceled.

Held: Object of contract failed.

Principle: Frustration due to failure of common purpose.

3. **Alopi Parshad & Sons Ltd. v. Union of India (1960 SC)**

Facts: Contractor sought extra payment due to war-time inflation.

Held: Mere commercial hardship or rise in price does not frustrate a contract.

Principle: Doctrine does not apply to mere inconvenience or increased expense.

4. **Naihati Jute Mills Ltd. v. Khyaliram Jagannath (1968 SC)**

Held: When performance becomes unlawful due to government prohibition, contract becomes void under Section 56.

5. **Energy Watchdog v. CERC (2017 SC)**

Facts: Power producers claimed frustration due to escalation in coal prices and

change in Indonesian export law.

Held: Economic hardship does not constitute frustration; commercial contracts must contain force-majeure clauses to address such contingencies.

Principle: Frustration applies only where performance is **legally or physically impossible**, not merely onerous.

Exceptions to Doctrine of Frustration

Section 56 does not apply in the following situations:

1. **Self-induced Impossibility**

A party cannot claim frustration if impossibility is due to its own default.

Case: Maritime National Fish Ltd. v. Ocean Trawlers Ltd. (1935) – Self-induced failure, no frustration.

2. **Foreseeable or Contemplated Events**

If the parties contemplated the possibility of the event and provided for it, frustration cannot apply.

3. **Alternative Modes of Performance Available**

If the contract can still be performed in another reasonable manner, it is not frustrated.

4. **Temporary Impossibility**

Mere delay or temporary restraint does not frustrate unless the delay defeats the purpose entirely (*Satyabrata Ghose, supra*).

5. **Contracts with Force Majeure Clauses**

Where the contract itself provides for contingencies, parties are bound by its terms, not by Section 56.

Effect of Supervening Impossibility

When a contract becomes void under Section 56:

- Both parties are **discharged from further performance**.
- Under **Section 65**, any advantage received must be **restored or compensated**.
Example: Advance payments must be refunded.
- No claim for damages for non-performance can arise after frustration since the contract ceases to exist.

Critical Analysis

The Indian law, through Section 56, adopts a **broader and equitable approach** compared to English law. It merges both “implied term” and “just result” theories into statutory form. However, courts have consistently maintained that the doctrine must be **applied within narrow limits**, as excessive invocation may destroy commercial certainty. Recent judgments (*Energy Watchdog*, 2017; *South East Asia Marine Engineering v. Oil India Ltd.*, 2020) emphasize that frustration cannot be claimed merely on grounds of **economic impracticability** or **COVID-19 disruptions**, unless performance was truly impossible or prohibited by law.

Conclusion

The **Doctrine of Frustration** under Section 56 provides a just and equitable relief when unforeseen events render a contract impossible or unlawful to perform. It safeguards parties from liability in cases beyond human control, while maintaining the sanctity of contractual obligations.

However, its scope is carefully confined to avoid misuse—commercial inconvenience, hardship, or rise in cost are not grounds for frustration. As observed in *Satyabrata Ghose v. Mugneeram Bangur & Co.* (1954 SC), impossibility includes not only physical but practical impossibility that strikes at the root of the contract. Yet, the impossibility must be **total, real, and not self-induced**. Thus, Section 56 stands as a fine balance between “**pacta sunt servanda**” (contracts must be kept) and “**rebus sic stantibus**” (contracts hold only while circumstances remain the same), ensuring fairness and justice in contractual relationships in modern India.

TOPIC:

- 1. Satyabharta Ghose vs Mugneeram Bangur & Co., AIR 1954 SC 44**
- 2. Contingent Contracts (Sections 31 to 36)**
- 3. Anticipatory breach of Contract**
- 4. Appropriation of Payments**
- 5. Ganga Saran vs Ram Charan Ram Gopal, AIR 1952 SC 9**

Answer:

- 1. Satyabrata Ghose vs Mugneeram Bangur & Co., AIR 1954 SC 44**

Introduction

The case of *Satyabrata Ghose v. Mugneeram Bangur & Co.* (1954) is a landmark judgment of the Supreme Court of India on the **Doctrine of Frustration** under **Section 56** of the Indian Contract Act, 1872. It clarified when a contract becomes void due to supervening impossibility or change of circumstances.

Explanation

Under **Section 56**, a contract becomes void when its performance becomes **impossible or unlawful** after formation. The doctrine of frustration applies when an unforeseen event completely destroys the foundation or object of the contract.

In this case, the government requisitioned the land subject to the development agreement between the parties, delaying the project. The plaintiff claimed that the contract was frustrated, while the defendants argued it was not.

The Court observed that “impossible” in Section 56 does not mean **literal impossibility** — it includes **practical or legal impossibility**, where performance becomes impracticable or useless due to a change in circumstances.

Case Law – Judgment

The Supreme Court (Justice Mukherjea) held that requisition of land was **temporary**, not making performance permanently impossible. Hence, the contract was **not frustrated**. The Court emphasized that frustration should apply **only when the performance becomes impossible in a legal and practical sense**, not merely because it is delayed or difficult.

Conclusion

This case established that frustration does not depend on subjective inconvenience but on **objective impossibility**. The decision harmonized Indian law with English precedents while maintaining flexibility, making it the **leading authority on Section 56** and the scope of contractual discharge due to impossibility.

2. CONTINGENT CONTRACTS (Sections 31–36)

Introduction

A **contingent contract** is a conditional agreement dependent on the occurrence or non-occurrence of an uncertain future event. It is governed by **Sections 31–36** of the Indian Contract Act, 1872.

Explanation

According to **Section 31**, a contingent contract is:

“A contract to do or not to do something if some event, collateral to such contract, does or does not happen.”

Thus, performance depends on a collateral uncertain event. For example, *A* agrees to pay *B* ₹10,000 if *B*’s ship returns safely — a contingent contract.

Key Provisions:

- **Section 32:** Enforceable only on the happening of the event.
- **Section 33:** Enforceable only on the non-happening of the event.
- **Section 34:** If the event becomes impossible, contract void.
- **Section 35–36:** Rules for events happening within fixed time and impossible events.

Case Law – Ganga Saran v. Ram Charan Ram Gopal (1952)

The Supreme Court held that for a contract to be contingent, the event must be **collateral** — not forming part of the consideration itself. If performance directly depends on an uncertain event within the contract, it is not contingent but conditional.

Conclusion

Contingent contracts balance risk and certainty. They are valid only when the event is collateral and uncertain. The provisions (Sections 31–36) ensure fairness by linking enforceability with external conditions, making them vital in insurance, commercial ventures, and risk-sharing agreements.

3. ANTICIPATORY BREACH OF CONTRACT

Introduction

An **anticipatory breach** occurs when a party refuses to perform or disables themselves from performing their contractual obligations **before the due date**. It gives the other party an immediate right to take legal action without waiting for the actual date of performance.

Explanation

Recognized under **Section 39** of the Indian Contract Act, 1872:

“When a party refuses to perform, or disables himself from performing, his promise in its entirety, the promisee may put an end to the contract.”

Types of Anticipatory Breach:

1. **Express Repudiation:** Explicit refusal to perform before due date.
2. **Implied Repudiation:** Doing an act making performance impossible (e.g., selling contracted goods to another).

Rights of Promisee:

- Rescind the contract immediately and sue for damages.
- Or treat the contract as subsisting until the due date.

However, if the promisee keeps the contract alive and an event like impossibility occurs before due date, he loses the right to claim damages.

Case Law – Hochster v. De La Tour (1853)

The defendant engaged the plaintiff as a courier for a tour but cancelled before the due date.

Held: The plaintiff could sue immediately — he need not wait till the date of performance.

Principle: Refusal before due date gives immediate right of action.

Conclusion

Anticipatory breach protects the innocent party's interests by allowing early relief. It reinforces the duty of readiness and prevents waste of time or resources in hopeless contracts.

4. APPROPRIATION OF PAYMENTS (Sections 59–61)

Introduction

When a debtor owes several debts to the same creditor and makes a payment without specifying which debt it relates to, **Sections 59–61** of the Indian Contract Act, 1872, determine how such payment is applied — known as **Appropriation of Payments**.

Explanation

Section	59	–	Debtor's	Choice:
If the debtor indicates which debt the payment should discharge, the creditor must apply it accordingly.				

Section	60	–	Creditor's	Choice:
If the debtor is silent, the creditor may apply the payment at his discretion — even to a time-barred debt .				

Section	61	–	By	Law:
If neither party makes appropriation, payment is applied to debts in order of time — oldest first.				

Illustration:

A owes B ₹1,000 from Jan, ₹2,000 from March. A pays ₹1,000 without specifying. Payment applies to January debt.

Case Law – Cory Bros & Co. v. Owners of Mecca (1913)

Held: If the debtor does not specify, the creditor may appropriate payment to any lawful debt due, even one barred by limitation.

Principle: Creditor's appropriation valid when debtor gives no direction.

Conclusion

Appropriation ensures orderly settlement of multiple debts. It balances debtor's autonomy with creditor's discretion and avoids future disputes — promoting clarity, fairness, and efficiency in financial dealings.

5. GANGA SARAN vs RAM CHARAN RAM GOPAL, AIR 1952 SC 9

Introduction

The Supreme Court's judgment in *Ganga Saran v. Ram Charan Ram Gopal* (1952) is a crucial authority explaining **contingent contracts** under **Sections 31–36** of the Indian Contract Act, 1872.

Explanation

The appellant agreed to pay commission to the respondent if a certain contract with a third party was secured. When the event did not occur, the respondent sued for payment.

The key question was: *Was this a contingent contract dependent on an uncertain collateral event?*

The Court clarified that for a contract to be **contingent**, the event must be **collateral** — i.e., **independent and external** to the contract. If the event forms part of the contract itself, it is a **conditional promise**, not contingent under Section 31.

Case Law – Judgment

The Supreme Court held that the event (obtaining third-party contract) was **collateral** to the promise to pay commission. Hence, it was a **contingent contract** enforceable only upon occurrence of that event.

Principle: The event must be external and uncertain; otherwise, the contract is not contingent.

Conclusion

This case is the leading authority distinguishing between **contingent** and **conditional contracts**. It reinforces that enforceability depends on an independent event, ensuring fairness in contractual risk allocation. Thus, *Ganga Saran* remains foundational in interpreting Sections 31–36 of the Contract Act.

TOPIC:

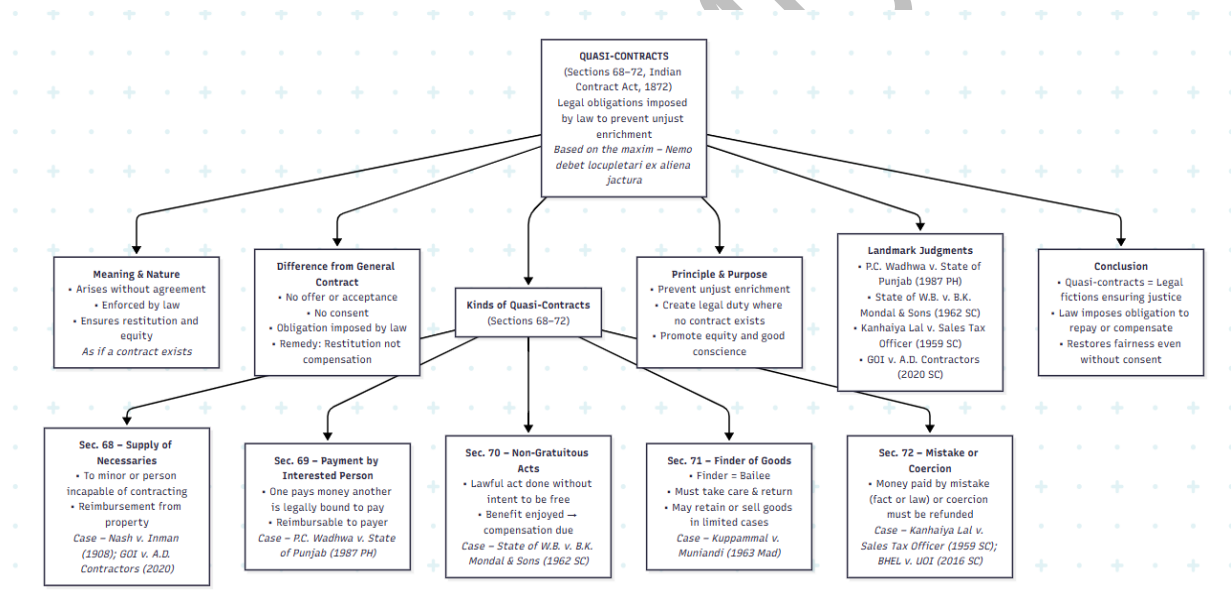
QUASI-CONTRACTS (Sections 68–72, Indian Contract Act, 1872)

Answer:

Introduction

Contracts generally arise from mutual consent — a proposal and its acceptance forming an agreement enforceable by law. However, the Indian Contract Act, 1872, also recognizes situations where one party, without any formal contract, is bound to compensate another to prevent unjust enrichment. Such obligations are called “**quasi-contracts.**”

Quasi-contracts rest upon the principle of **equity, justice, and good conscience**, ensuring that no one unjustly benefits at another’s expense. These obligations are statutory rather than consensual, imposed to restore fairness where a legal contract does not exist.



Meaning and Definition

The term “*Quasi*” means “*as if*” — hence, *quasi-contract* means “*as if a contract exists.*”

Section 68–72 of the Indian Contract Act define these situations, where law treats certain acts as contractual in nature to prevent **unjust enrichment**.

Definition (as per legal scholars)

- **Pollock & Mulla:** “A quasi-contract is a contract implied by law, arising not from agreement but from circumstances that impose a legal obligation similar to a contract.”

- **Salmond:** “A quasi-contract is an obligation resembling that created by a contract.”

Thus, although no offer, acceptance, or consideration exists, the law implies a duty to repay or compensate.

Difference between General Contract and Quasi-Contract

Basis	General Contract	Quasi-Contract
Origin	Arises from mutual agreement between parties.	Arises by operation of law, without agreement.
Consent	Based on free consent of both parties.	No consent — obligation imposed by law.
Intention	Intention to create legal relationship.	No such intention; imposed to prevent unjust gain.
Remedy	Breach leads to compensation or specific performance.	Remedy lies in restitution or reimbursement.
Example	Contract for sale of goods.	Payment by mistake or finder of goods (Sec. 72 & 71).

Essence: Every contract is an agreement, but every quasi-contract is a **legal obligation without agreement**.

Kinds of Quasi-Contractual Obligations

The Indian Contract Act (Sections 68–72) enumerates **five categories** of quasi-contracts, all based on **restitution** and **equitable liability**.

1 Supply of Necessaries to Persons Incapable of Contracting (Section 68)

“If a person incapable of entering into a contract, or anyone he is legally bound to support, is supplied with necessaries suited to his condition in life, the person who furnished such supplies is entitled to be reimbursed from the property of such incapable person.”

Explanation

This section applies to **minors, lunatics, and persons of unsound mind**, who cannot contract legally under Section 11. The supplier of essential goods or services — such as food, medicine, education, or shelter — is entitled to compensation **from the property** of such person, though not from personal liability.

Key Conditions

1. Recipient must be incapable of contracting.
2. Goods/services must be “necessaries” suited to his condition.
3. Claim lies against property, not the person.

Case Law – *Nash v. Inman* (1908) 2 KB 1

A tailor sued a minor for clothes supplied. Since the minor already had adequate clothing, the goods were held not “necessaries.”

Principle: Supplier must prove that goods were essential and not luxurious.

Indian Application – *Government of India v. A.D. Contractors*, AIR 2020 SC 1860

The Supreme Court reaffirmed that liability under Section 68 is limited to property, not personal obligation.

2 Payment by Interested Person (Section 69)

“A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.”

Explanation

If one person pays a debt or charge to protect his own interest that another is legally obliged to pay, he can recover it. The payment must be made **to protect one’s legal interest**, not voluntarily.

Conditions

1. Payment made by an interested person.
2. The other person is legally bound to pay.
3. The payment was necessary, not voluntary.

Case Law – *P.C. Wadhwa v. State of Punjab*, AIR 1987 PH 117

A government officer paid excess house rent under protest to prevent eviction. The Punjab & Haryana High Court held that the payment was recoverable under Section 69.

Principle: Payments made under compulsion to safeguard interest can be reimbursed.

Supporting Case – *M/s Pannalal v. State of Bombay*, AIR 1963 SC 1516

The Court held that where a person discharges another’s legal liability to protect his own right, reimbursement must follow.

3 Liability to Pay for Non-Gratuitous Acts (Section 70)

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other person enjoys the benefit thereof, the latter is bound to make compensation.”

Explanation

This section applies when:

1. The act is done **lawfully**,
2. **Without intention to act gratuitously**, and
3. The other party **accepts and enjoys** the benefit.

In such cases, the recipient must compensate, even without formal contract.

Case Law – *State of West Bengal v. M/s B.K. Mondal & Sons*, AIR 1962 SC 779

Facts: The contractor constructed a godown for the government without a formal agreement. The government accepted and used it.

Held: The government was liable to pay under Section 70, as it accepted benefit without any intention of gratuity.

Principle: Acceptance of benefit creates legal obligation to compensate.

Recent Case – *Union of India v. J.K. Gas Plant Manufacturing Co.*, (2019) SCC OnLine Del 10702

Delhi High Court reiterated that even if a contract is void, the benefiting party must pay reasonable value for services enjoyed.

Finder of Goods (Section 71)

“A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee.”

Explanation

When a person voluntarily takes possession of lost goods, he becomes a **bailee** by law and must:

- Take reasonable care,
- Make efforts to find the true owner, and
- Return goods upon identification.

He also enjoys rights similar to a bailee, such as:

1. Right to retain goods until lawful charges are paid.
2. Right to claim reward (if declared).

3. Right to sell goods in limited cases — when owner not found or expenses exceed two-thirds of value.

Case Law – *Kuppammal v. Muniandi*, AIR 1963 Mad 9

The Madras High Court held that a finder holds the goods in trust and must exercise due care as a prudent owner.

5 Mistake or Coercion (Section 72)

“A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.”

Explanation

Section 72 covers two situations:

1. **Payment by mistake** — whether mistake of fact or law.
2. **Payment under coercion** — where payment is compelled through threat, protest, or pressure.

Case Law – *Sales Tax Officer v. Kanhaiya Lal Mukund Lal Saraf*, AIR 1959 SC 135

The Supreme Court held that both *mistake of fact* and *mistake of law* fall within Section 72, allowing recovery of money paid erroneously.

Recent Case – *Union of India v. Bharat Heavy Electricals Ltd.*, (2016) 8 SCC 622

Held that coercive recovery by authorities under threat of penalty entitles refund under Section 72.

Conclusion

The concept of **quasi-contracts** bridges the gap between **morality and legality**. It ensures that individuals do not profit unjustly from another's loss and promotes restitutionary justice.

The cases of *P.C. Wadhwa v. State of Punjab* and *State of West Bengal v. B.K. Mondal & Sons* reaffirm that **law implies a promise where none exists in fact**, to prevent inequity.

Sections 68–72 thus convert moral obligations into enforceable duties, embodying the spirit of fairness and equity — a hallmark of modern Indian contract law.

In essence: “Even without agreement, equity demands that no one should be enriched unjustly at another's cost.”

TOPIC:

BREACH OF CONTRACT AND DAMAGES (Sections 73–75, Indian Contract Act, 1872)

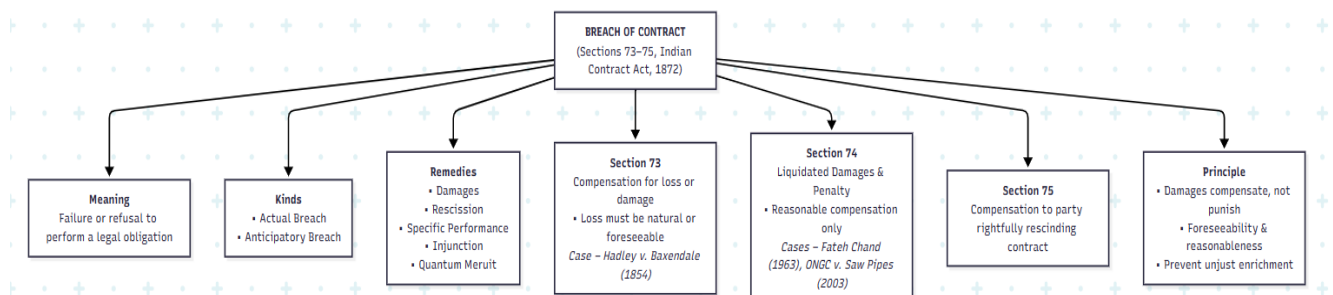
Answer:

Introduction

A contract is a legally enforceable agreement that binds parties to fulfill mutual promises. When one party fails to perform or refuses to perform its part of the obligation, it constitutes a **breach of contract**. The law of contract ensures that the aggrieved party is compensated for the loss suffered due to such breach.

Under the **Indian Contract Act, 1872**, Sections 73 to 75 provide the statutory framework governing compensation for breach, remoteness of damage, liquidated damages, and penalties. The objective is to place the aggrieved party, as far as money can do, in the same position as if the contract had been performed.

The underlying principle is rooted in **equity and restitution** — not to punish the defaulter but to **compensate the injured party**.



Meaning of Breach of Contract

A **breach of contract** occurs when a party fails to perform its obligations wholly or partially within the stipulated time or in the prescribed manner. The breach may be:

1. **Actual Breach** – When a party fails to perform on the due date or during performance.
2. **Anticipatory Breach** – When a party declares beforehand that it will not perform its obligation.

Kinds of Breach

1. **Minor Breach** – Slight deviation; does not defeat the whole contract but may allow claim for damages.

2. **Material Breach** – Strikes at the root of the agreement and allows the injured party to rescind the contract.
3. **Anticipatory Breach** – Declaration before performance due date (Section 39).
4. **Actual Breach** – Non-performance on due date or defective performance during execution.

Remedies for Breach of Contract

The Indian Contract Act provides both **substantive** and **compensatory** remedies:

1. Rescission of Contract

The aggrieved party may cancel (rescind) the contract and treat it as void. **Section 39** allows termination upon refusal to perform essential terms.

2. Suit for Damages

The most common remedy — monetary compensation for loss due to breach (Sections 73–75).

3. Suit for Specific Performance

Provided under the **Specific Relief Act, 1963**, compelling actual performance where damages are inadequate.

4. Suit for Injunction

To restrain the defaulting party from doing an act inconsistent with the contract (e.g., restraint in employment or trade).

5. Quantum Meruit

Where partial performance benefits the other party, compensation may be claimed on a “**quantum meruit**” basis (as much as earned).

STATUTORY PROVISIONS: SECTIONS 73 TO 75

Section 73 – Compensation for Loss or Damage Caused by Breach

Essentials:

1. There must be a valid and enforceable contract.
2. Breach must have occurred.
3. The aggrieved party must have suffered actual loss or damage.
4. Damages must not be remote or indirect.

Remoteness of Damage

The concept of **remoteness** limits compensation to losses that are the **natural and probable consequences** of breach. It prevents claims for speculative or unforeseen losses.

Landmark Case – *Hadley v. Baxendale* (1854) 9 Exch 341

Facts:

The plaintiffs, mill owners, contracted with the defendants to deliver a broken crankshaft to a repairer. Due to delay by the carrier, the mill remained shut longer, causing loss of profit.

Held:

The Court laid down two rules for assessing damages:

1. Damages must arise naturally from the breach (ordinary course of things).
2. Or must be within the contemplation of both parties at the time of contract.

Principle:

Loss too remote or unforeseeable cannot be claimed.

Indian Adoption:

Section 73 of the Indian Contract Act embodies this principle of **foreseeability** and **remoteness**.

Recent Application – *Kailash Nath Associates v. Delhi Development Authority* (2015) 4 SCC 136

The Supreme Court held that damages must be **proven losses** — not assumed or speculative. Even where the contract stipulates forfeiture, the amount can be claimed only if loss is actually suffered.

Measure of Damages under Section 73

The measure depends on the **nature of the contract**:

1. **For Sale of Goods** – Difference between contract price and market price on breach date.
2. **For Non-Delivery or Non-Acceptance** – Market value difference on due date.
3. **For Service Contracts** – Cost incurred in obtaining substitute service.
4. **For Building or Works Contracts** – Cost to complete the remaining work.

Case: *M.L. Jaggi v. Mahanagar Telephones Nigam Ltd.*, (1996) 3 SCC 119

The Supreme Court awarded damages for mental agony and inconvenience caused due to arbitrary breach, showing an expanded view of compensable loss.

Section 74 – Compensation for Breach of Contract where Penalty or Liquidated Damages are Specified

“When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual loss is proved, to receive reasonable compensation not exceeding the amount so named.”

Meaning:

- **Liquidated Damages:** Pre-estimated genuine compensation agreed upon by parties.
- **Penalty:** Sum fixed not as a genuine pre-estimate but to penalize the defaulter.

Under Section 74, the court will award **reasonable compensation**, not necessarily the entire stipulated amount.

Leading Case – *Fateh Chand v. Balkishan Dass*, AIR 1963 SC 1405

The Supreme Court held that even if a sum is fixed as penalty, **only reasonable damages** may be awarded, subject to proof of actual loss.

Modern Case – *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705

The Supreme Court expanded the principle:

If the stipulated amount is a **genuine pre-estimate** of loss, the entire amount can be awarded **without proof of actual damage**.

Held: Liquidated damages = enforceable if reasonable and not penal.

Recent Case – *Construction and Design Services v. DDA*, (2015) 14 SCC 263

The Court reaffirmed that the object is **compensation**, not punishment. If loss is quantifiable, courts may reduce the claimed sum to a reasonable level.

Section 75 – Compensation to Party Rightfully Rescinding Contract

“A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfillment of the contract.”

Explanation:

If a party cancels (rescinds) the contract lawfully due to the other's breach, he is entitled to damages for the loss suffered.

Case Law – *Ramakrishna Pillai v. Government of Kerala*, AIR 1973 Ker 90

The Court held that a person rescinding due to the opposite party's default is entitled to compensation for expenses and losses sustained in good faith performance before rescission.

Conclusion

The law of **damages and breach of contract** under Sections 73–75 harmonizes the principles of **justice, reasonableness, and restitution**. The doctrine in *Hadley v. Baxendale* continues to guide Indian courts — damages must be **natural and foreseeable**, not remote.

Modern Indian jurisprudence, led by *ONGC v. Saw Pipes* and *Kailash Nath Associates*, reflects a refined balance: while contractual autonomy allows fixing compensation, courts ensure it remains **reasonable and compensatory, not punitive**.

Thus, these provisions ensure that contractual promises are **backed by legal certainty**, and violations are **fairly compensated**, preserving the sanctity of contracts — the cornerstone of commercial law.

BY AJITABH MISHRA

TOPIC:

- 1. Contracts which need not be performed (Sections 62 to 67)**
- 2. P.C. Wadhwa vs State of Punjab, AIR 1987 PH 117**
- 3. Anticipatory breach of Contract**
- 4. Liability to pay for non-gratituous Act**
- 5. State of West Bengal vs M/S. B.K. Mondal and Sons, AIR 1962 SC 779**
- 6. Finder of Goods**

Answer:

1. Contracts Which Need Not Be Performed (Sections 62 to 67, Indian Contract Act, 1872)

Introduction

Contracts generally bind parties to perform their respective promises. However, the Indian Contract Act, 1872, under **Sections 62 to 67**, recognizes circumstances where contractual obligations are **discharged or altered**, relieving parties from performance. These provisions prevent unnecessary enforcement where the law or mutual consent excuses performance.

Explanation

Section 62 – Novation, Rescission, and Alteration:

When parties agree to substitute a new contract, rescind, or alter the existing one, the original contract need not be performed.

Example: A owes B ₹10,0000. B agrees to accept a car instead — the old contract is discharged.

Section 63 – Promisee's Dispensation or Remission:

The promisee may remit or extend performance without new consideration.

Section 64 – Restoration of Benefit on Rescission:

When a contract is rescinded, benefits received must be restored.

Section 65 – Obligation of Person Who Receives Advantage under Void Contract:

Benefits gained under void agreements must be refunded.

Section 66 – Communication of Rescission:

Rescission must be communicated like a proposal.

Section 67 – Effect of Neglect by Promisee:

If the promisee prevents performance, the promisor is excused.

Case Law – Union of India v. Kishorilal Gupta & Bros., AIR 1959 SC 1362

The Supreme Court held that once parties mutually agree to substitute a new contract, the earlier one is discharged, and cannot be revived.

Conclusion

Sections 62–67 embody the doctrine of **discharge by agreement**. They ensure contractual justice — that no one is bound to perform when obligations are lawfully altered, waived, or rendered impossible.

2. P.C. Wadhwa vs State of Punjab, AIR 1987 PH 117

Introduction

This case clarifies the principle under **Section 69** of the Indian Contract Act, 1872, dealing with **payment by an interested person**. It emphasizes the right to reimbursement when a person pays money that another is legally bound to pay to protect his own interest.

Explanation

Section 69 provides that if a person interested in paying money which another is bound by law to pay makes such payment, he is entitled to be reimbursed. This ensures equity and prevents unjust enrichment of the person legally liable.

Facts:

P.C. Wadhwa, a government officer, was allotted official quarters by the Punjab government. Due to a dispute, he paid excess rent under protest to avoid eviction. Later, he claimed refund, arguing that the payment was made under compulsion to protect his interest.

Issue:

Whether a person who makes payment under compulsion, to protect his legal interest, can claim reimbursement under Section 69?

Judgment:

The Punjab and Haryana High Court held that the payment was not voluntary but necessary to safeguard the petitioner's rights. The government, being legally bound to bear the expense, must reimburse the amount.

Principle:

A person who pays money on another's behalf to protect his lawful interest, where the other is bound to pay, is entitled to reimbursement.

Conclusion

This case reinforces Section 69's equitable intent — that law supports those who protect their interests through lawful payment, ensuring that no one unjustly benefits from another's compulsory act.

3. Anticipatory Breach of Contract

Introduction

An **anticipatory breach** occurs when a party repudiates the contract before the time of performance arrives. It is governed by **Section 39** of the Indian Contract Act, 1872**, allowing the aggrieved party to either rescind immediately or wait for performance.

Explanation

When one party refuses or disables himself from performing, the promisee can treat the contract as **discharged** and claim damages. Anticipatory breach can occur in two forms:

1. **Express Repudiation** – Clear communication of refusal before the due date.
2. **Implied Repudiation** – Acts that make performance impossible (e.g., selling the subject matter to another).

Legal Rights of Aggrieved Party

1. **Rescind the Contract** – Treat it as ended and sue immediately for damages.
2. **Keep it Alive** – Wait till due date; but if performance becomes impossible later, the right to claim is lost.

Case Law – *Hochster v. De La Tour* (1853) 2 E & B 678

The defendant engaged the plaintiff as a courier for a tour but cancelled before the start date. The court held that the plaintiff could sue immediately — he need not wait until the date of performance.

Principle: Refusal before due date gives the promisee an immediate right of action.

Conclusion

Anticipatory breach protects the innocent party by granting early legal remedy, preventing wasted effort. It upholds the sanctity of contracts and enforces good faith and certainty in business relations.

4. Liability to Pay for Non-Gratuitous Acts (Section 70)

Introduction

Section 70 of the Indian Contract Act, 1872, deals with **non-gratuitous acts**, forming one of the main quasi-contractual obligations. It prevents one person from unfairly benefiting at another's expense.

Explanation

If a person lawfully does something for another or delivers goods **without intending to act gratuitously**, and the other person **accepts and enjoys** the benefit, he must compensate the former.

Essentials:

1. Lawful act or delivery.
2. No intention to act gratuitously.

3. Benefit enjoyed by the other party.

This section creates an **implied legal obligation** to pay, even in the absence of a formal contract.

Case Law – *State of West Bengal v. B.K. Mondal & Sons*, AIR 1962 SC 779

Facts: A contractor built a warehouse for the government without formal contract approval. The government used it but refused payment.

Held: Since the government accepted the benefit, it was bound to pay reasonable compensation.

Principle: Acceptance of benefit without intention of gratuity imposes an obligation to compensate.

Conclusion

Section 70 ensures fairness by preventing unjust enrichment. It is a statutory extension of moral obligation — that those who knowingly accept benefits must compensate the provider.

5. State of West Bengal vs M/S. B.K. Mondal and Sons, AIR 1962 SC 779

Introduction

This landmark case illustrates the doctrine of **quasi-contractual liability** under **Section 70** of the Indian Contract Act, 1872**, establishing the principle of compensation for non-gratuitous acts.

Explanation

Facts:

B.K. Mondal & Sons constructed a warehouse for the Government of West Bengal without a formal contract. The government took possession and used the building but refused payment, contending absence of a valid contract.

Issue:

Whether the government was bound to compensate the contractor despite no formal contract?

Judgment:

The Supreme Court held that when a person lawfully does something for another, not intending to act gratuitously, and the other enjoys the benefit, he must compensate. Acceptance of benefit implies a legal obligation.

Principle:

Even without a valid contract, the law imposes a quasi-contractual obligation to prevent unjust enrichment.

Relevance:

This case remains a cornerstone of Indian contract law, emphasizing fairness and equity in state dealings.

Conclusion

The decision in *B.K. Mondal* reinforces that the Indian Contract Act recognizes implied promises. It ensures that benefits accepted are compensated, bridging the gap between moral duty and legal obligation.

6. Finder of Goods (Section 71)

Introduction

A **finder of goods** is a person who discovers lost property belonging to another and takes it into his custody. Section 71 of the Indian Contract Act, 1872, treats a finder as a **bailee**, imposing duties and conferring rights to ensure proper care of the goods.

Explanation

Duties of Finder:

1. Take reasonable care of the goods.
2. Make efforts to locate the true owner.
3. Return goods upon identification.
4. Not to appropriate goods for himself.

Rights of Finder:

1. Right to retain goods until expenses are reimbursed.
2. Right to claim reward, if announced.
3. Right to sell goods if owner not found or charges exceed two-thirds of value.

Case Law – *Kuppammal v. Muniandi*, AIR 1963 Mad 9

The Madras High Court held that a finder holds goods in trust and must take care as a prudent owner. He acquires rights similar to a bailee but cannot claim ownership.

Conclusion

Section 71 balances responsibility and fairness by protecting both the owner and finder. It imposes a moral and legal duty — transforming an accidental discovery into a **trust-like legal relationship** grounded in good faith and equity.