

NOTES ON

Law of Contract Part 1

BY AJITABH MISHRA

ASSISTANT PROFESSOR OF LAW

S. No.	TOPIC	LINK
1.	Definition, Nature, kinds of Contract	VIEW
2.	Essentials of a Valid Contract	VIEW
3.	Void Agreements	VIEW
4.	Contingent Contract	VIEW
5.	Performance of Contract	VIEW
6.	Discharge of Contract	VIEW
7.	Quasi Contract	VIEW

DEFINITION, NATURE, KINDS OF CONTRACT

Meaning and Formation of Contracts:

A contract, essentially a cornerstone of legal interactions, embodies the essence of mutual agreements backed by legal enforceability. Its formation is not arbitrary; it follows specific criteria set forth by the Indian Contract Act. This includes the presence of free consent, lawful consideration, and a lawful object. The transformation from a mere agreement to a binding contract is a crucial delineation within this legal landscape.

SUMMARY:

Meaning of Contract:

Definition:

A contract is a legally binding agreement between parties.
It necessitates reciprocal promises and is enforceable by law.

Formation:

Contracts arise through various means: agreement, standard forms, or promissory estoppel.

Requirements for Validity:

Free consent, lawful consideration, lawful object, and absence of expressly declared void conditions are necessary for an agreement to transform into a contract.

What is an Agreement?

Definition:

An agreement signifies mutual obligations arising from promises.

Criteria:

It involves promises from both sides, forming the consideration for each other.

Definition of Contract:

Enforceability:

Contract involves a promise that can be enforced by law.

It must meet the essentials outlined in Section 10 of the Indian Contract Act.

Components:

Mutual assent, offer, acceptance, consideration, and enforceability are integral parts.

Formation of a Contract:

Steps:

Offer + acceptance = Promise;

Promise + consideration = Agreement;

Agreement + enforceable by law = Contract.

Components of a Contract:

The crux of a contract is the assurance of enforceability. For this, it must exhibit elements like mutual assent, expressed through offer and acceptance, consideration as a fundamental aspect of the bargain, and most importantly, it should meet the prerequisites outlined in Section 10 of the Indian Contract Act.

Nature and Scope:

The nature of contracts lies in its binding quality; it delineates the circumstances wherein promises become legal obligations. It doesn't dictate specific duties but rather provides a framework within which parties can create their rights and responsibilities. This expansive nature allows contracts to cover diverse aspects of commercial law, spanning from sale of goods to taxation, insurance, and more.

Diversity and Expertise:

Contracts, diverse in form and content, cater to varied purposes and durations. From membership agreements to intricate domestic contracts or fully executed ones, they encapsulate a wide spectrum of human interactions. Each type of contract carries its intricacies, demanding expertise and precision in its formation and execution.

Legal Precedents:

Landmark judgments such as **Mohori Bibee v. Dharmodas Ghose** or **Carlill v. Carbolic Smoke Ball Co.** have played pivotal roles in shaping and interpreting contract law in India. They've addressed critical aspects, from contracts involving minors to the enforceability of promises made through advertisements, establishing guidelines and principles that continue to influence legal proceedings.

In essence, contracts form the backbone of legal obligations and societal interactions, providing a structured framework for agreements while allowing flexibility within legal boundaries. Understanding their nuances is pivotal for both legal professionals and individuals engaging in contractual agreements, ensuring clarity, fairness, and enforceability in dealings.

SUMMARY:

Nature of Contract:

Legal Binding:

It determines the circumstances where promises become legally binding.

It offers a framework for establishing enforceable rights and duties.

Scope of Contract:

Diversity:

Contracts vary in form, duration, amount, and purpose.

Commercial law aspects encompass contracts, sale of goods, taxation, insurance, rental, etc.

Identification Phase:

Defines the basic scope of the contract, including obligations, services, and involved parties.

Expertise in Contracts:

Spans diverse agreements like membership contracts, domestic/marriage contracts, unformed or fully executed contracts.

Landmark Judgments:

1. Mohori Bibee v. Dharmodas Ghose:

Addressed contracts with minors, establishing the principle of minors' contracts being voidable at their discretion.

2. Carlill v. Carbolic Smoke Ball Co.:

Focused on the enforceability of unilateral contracts, specifically dealing with promises made in advertisements.

KINDS OF CONTRACT

There is following three types of Contract:

1. Government Contracts
2. Standard Form Contracts
3. Tenders.

Explanation;

(1) Government Contracts:

Definition: Contracts in which either the Central Government or a State Government is a party.

Position in Britain:

- **Pre-1947 Common Law:** Crown had immunity from lawsuits in contractual matters.
- Crown Proceedings Act, 1947: Abolished old procedure, allowing lawsuits against the Crown in regular courts.

Position in India:

- Governed by the Indian Contract Act, 1872, with specific formalities under Article 299 of the Constitution.
- **Article 299:**
- Defines the protocol for contracts made by or on behalf of the Government of India or any state government.
- Specifies that contracts must be in writing, signed by an authorized representative.
- Protects the President/Governor from personal liability but doesn't grant immunity to the government itself.

Legal Precedents:

State of Bihar v Majeed (1954): Government Contracts must adhere to Article 299 provisions.

Mrs. Aliakutty Paul vs The State of Kerala and Ors (1995): Tender acceptance must align with Article 299.

(2) Standard Form of Contracts:

Definition: Contracts where one party dictates all terms, and the other party typically can't negotiate.

Purpose:

- Simplify the contracting process by reducing complexity.

- Avoid the need to draft a unique agreement for every transaction.

Nature:

- Absence of negotiations, predetermined and non-negotiable terms.
- Often involves parties with significantly unequal bargaining power.

Legal Status:

- Governed by the Indian Contract Act of 1872, subject to the same legal framework as general contracts.
- Legal measures explored to protect rights in such contracts, especially with power imbalances.

Advantages:

- Cost savings, efficiency, consistency, established legal precedents.
- Disadvantages:
- Risk of overlooking terms, lack of negotiation, complex language, imbalanced favor.

(3) Tenders:

Definition: Invitations for acceptance or offers, typically for large projects involving multiple contractors.

Estimates:

- Valuation or statement of expected cost; may or may not be considered an offer.
- Legality depends on circumstances.

Nature of Offers:

- Proposal to meet a condition with immediate capacity for execution.
- Unfinished or impossible-to-perform offers are not valid.

Issuance of Bidding Forms:

- Invitation for contractors to make offers; forms must align with buyer's requirements.
- Should contain necessary information and incorporate contract conditions.

Examination of Offers:

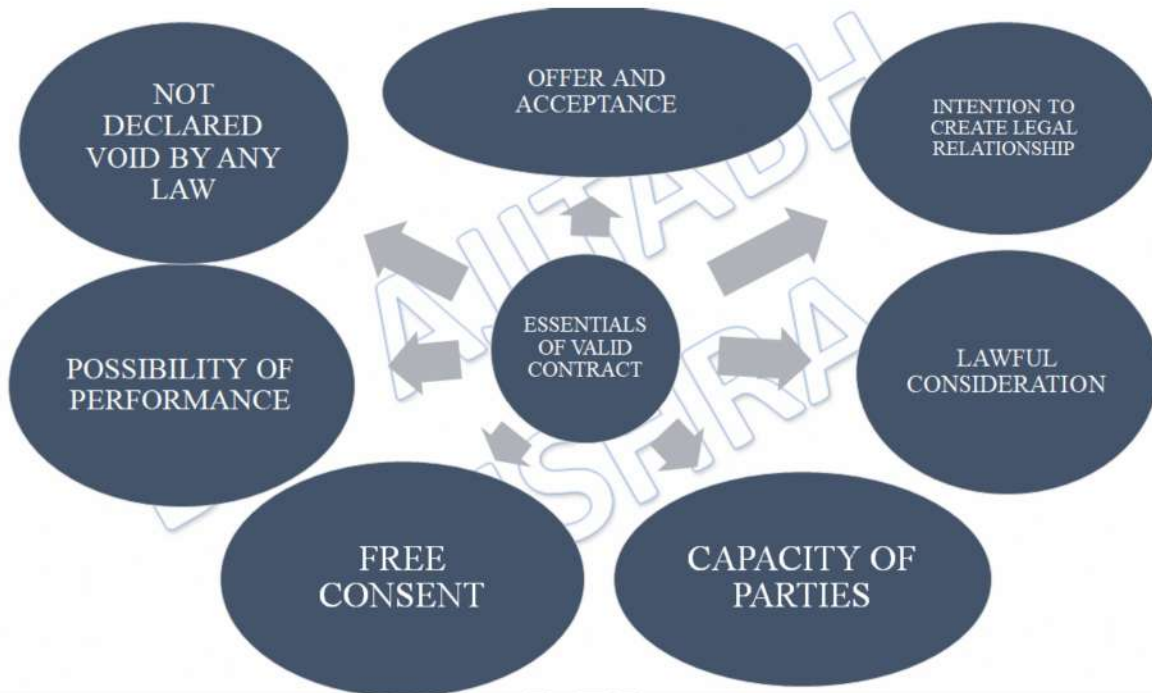
- Offers must comply with bidding terms; well-written forms and conditions aid compliance.
- Alterations to terms by bidders assessed for acceptability and legal implications.

Requisites of a Valid Tender:

- Unconditional, right place, conform to terms, right time, proper way, ability and willingness, reasonable inspection, right person, total amount.

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ESSENTIALS OF A VALID CONTRACT



1. OFFER AND ACCEPTANCE:

The First essential of the Valid Contract is the offer And Acceptance in which one party offers and other party accepts the contract. The Law related to this essential is provided under section 3 to 9 of the Indian Contract Act, below is the explanation:

1. Communication of Proposals, Acceptances, and Revocations:

- Parties communicate their proposals, acceptances, or revocations through acts or omissions intending to convey or effectively conveying such intentions.

2. Completion of Communication:

- Proposal communication completes upon the knowledge of the recipient.

3. Acceptance communication:

- As against the proposer, when in transmission beyond the acceptor's control.
- As against the acceptor, when known by the proposer.

4. Revocation communication:

- As against the sender, upon transmission beyond their control.

- As against the recipient, upon their knowledge.

5. Illustrative Examples:

Proposal made by A to sell a house to B via a letter completes upon B receiving the letter.

B's acceptance via post:

Complete against A upon posting.

Complete against B upon A's receipt.

6. Revocation by telegram:

Complete against sender upon dispatch.

Complete against recipient upon receipt.

7. Revocation Timelines:

Proposal revocable before complete acceptance communication.

Acceptance revocable before its complete communication.

8. Revocation Methods:

Proposal revocation by notice, lapse of specified time, failure to fulfill conditions, or the proposer's death or insanity known before acceptance.

Acceptance must be absolute and expressed in a usual manner, unless prescribed otherwise.

9. Acceptance by Performance or Consideration:

Fulfilling proposal conditions or accepting consideration constitutes acceptance.

10. Express and Implied Promises:

Express promises are made explicitly through words.

Implied promises are made implicitly, without verbal expression.

Conclusion:

These sections intricately outlines the communication, acceptance, and revocation protocols, emphasizing the completion of communication, revocation timelines, methods, and the distinction between express and implied promises within the framework of the Indian Contract Act, 1872.

2. FORMATION OF E-CONTRACT

Introduction

Communication of offers and acceptances isn't confined to physical means but also extends to electronic methods. While the provisions regarding electronic communication were absent during the enactment of the ICA (Indian Contract Act) in 1882, they were incorporated post the introduction of the Information Technology Act in 2000. Sections 10-13 of this Act outline rules governing electronic forms for offers, acceptances, and revocations.

Section 10: Authority for Electronic Signature Rules

Under this Act, the Central Government holds the power to establish regulations concerning electronic signatures. These regulations encompass:

- (a) Defining acceptable types of electronic signatures.
- (b) Specifying how electronic signatures should be affixed.
- (c) Outlining procedures for identifying individuals responsible for electronic signatures.
- (d) Establishing controls to maintain the integrity, security, and confidentiality of electronic records or payments.
- (e) Addressing other necessary matters to confer legal validity to electronic signatures.

Section 10A: Validity of Contracts via Electronic Means

Contracts formed electronically, involving proposals, acceptances, and revocations communicated via electronic means, are deemed valid and enforceable. The mere use of electronic records for these purposes doesn't invalidate the contract.

Section 11: Attribution of Electronic Records

An electronic record is considered sent by the originator under these conditions:

- (a) If the originator personally sent it.
- (b) If someone authorized by the originator sent it on their behalf.
- (c) If an information system programmed by or for the originator sent it automatically.

Section 12: Acknowledgment of Receipt

In the absence of specific instructions for acknowledgment:

- (a) Acknowledgment can be provided by the addressee through various means, including automated communication or conduct indicating receipt.
- (b) If the originator specifies the record to be binding only upon acknowledgment and none is received, the record is deemed unsent.
- (c) If no acknowledgment requirement is specified and none is received within a reasonable time, the originator can notify the addressee, setting a reasonable acknowledgment deadline. If no acknowledgment is received within that time, the record is treated as unsent.

Section 13: Time and Place of Dispatch and Receipt of Electronic Records

Dispatch of an electronic record happens when it enters a computer resource beyond the originator's control, unless otherwise agreed. The time of receipt depends on:

- (a) Specific designation by the addressee for receiving electronic records.
- (b) In the absence of specific designations, receipt occurs upon entry into the addressee's computer resource.

3. LAWFUL CONSIDERATION

Definition and Significance of Consideration

Consideration serves as the fundamental pillar of any contract. An agreement lacking consideration doesn't hold the essential elements of a contract. Scholars such as Anson, Blackstone, and Pollock define consideration as a reciprocal exchange, where the Promisee receives something of value as an incentive for the promise.

Essentials of Consideration

- The act or refraining from an act forming consideration must occur at the promisor's behest.
 - It can be executed by the Promisee or any other individual.
 - The act or refraining is either completed, in progress, or promised.
 - At the Desire of the Promisor (Promissory Estoppel)
 - For an act or refraining from an act to qualify as valid consideration, it must be carried out at the request of the promisor. Legal cases like Durga Prasad vs.

Baldeo, Kedar Nath vs. Gorie Mohd., and Doraswamy Iyer vs. A. Ayyar exemplify instances where this principle determines the validity of consideration.

Consideration from Promisee or Others

A promise becomes enforceable if supported by consideration, irrespective of whether it originates from the Promisee or any other party. The Doctrine of Constructive Consideration supports this, while English Law's privity of consideration restricts third parties from providing consideration. Notable cases like Tweedle vs. Atkinson and Chinnaya vs. Ramaya illustrate this concept.

Doctrine of Privity of Contract

This doctrine establishes that a contract exists solely between the involved parties, disallowing third parties (strangers to the contract) from making claims, even if the contract is for their benefit. Cases like Dunlop Pneumatic Tyre Co. Ltd. vs. Selfridge & Co. illustrate this principle.

Nature of Consideration: Past, Present, or Future

Consideration can be past, present, or future. Under English law, past consideration typically lacks consideration, but past acts done at the request can be considered valid for subsequent promises.

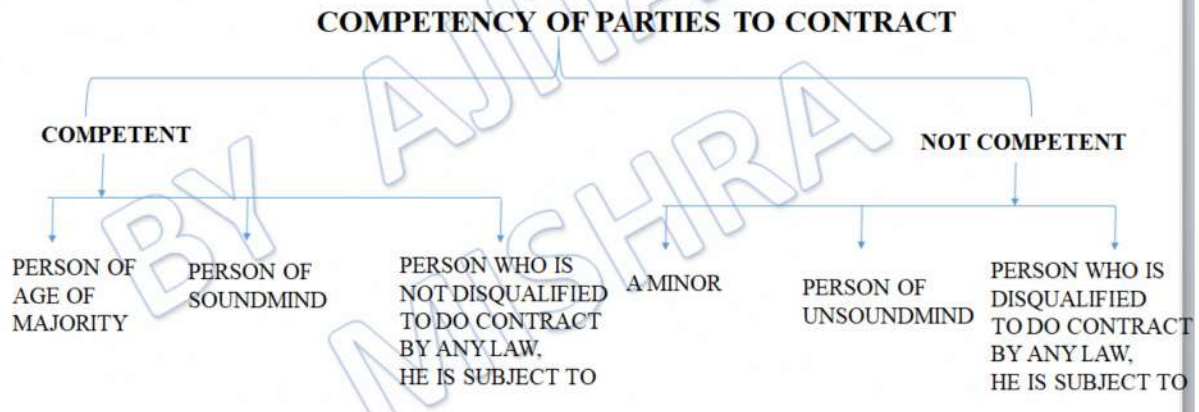
Adequacy of Consideration

Section 25, Explanation 2, states that agreements where the promisor's consent is freely given aren't void merely due to inadequacy.

Exceptions to Consideration

Exceptions include agreements based on natural love and affection between close relatives, compensation for past voluntary services, and promises to pay time-barred debts under specific conditions (Section 25(3)). Other exceptions encompass contracts of agency, remission of promise performance by the Promisee, and agreements to extend the time for contract performance.

4. CAPACITY OF PARTIES



Nature of Minor’s Agreement:

The Indian Contract Act (Sections 10, 11, or 12) doesn’t explicitly clarify the stance on agreements made by minors. Instead, this is determined by case laws and amendments. The Mohoribibi Case, Raj Rani Case, and the Specific Relief Act of 1963 have collectively established that a minor’s agreement is absolutely void. However, parents or guardians, if competent, can contract on behalf of the minor provided it is for the minor’s benefit.

Effects of Minor’s Agreement:

No Estoppel Against Minor:

Estoppel, a rule of evidence, doesn’t apply to a minor’s agreement. Even if the minor misrepresents their age as being an adult during a contract, estoppel doesn’t hold against them (e.g., Khan Gul vs. Lakha Singh).

No Liability in Contract or Tort:

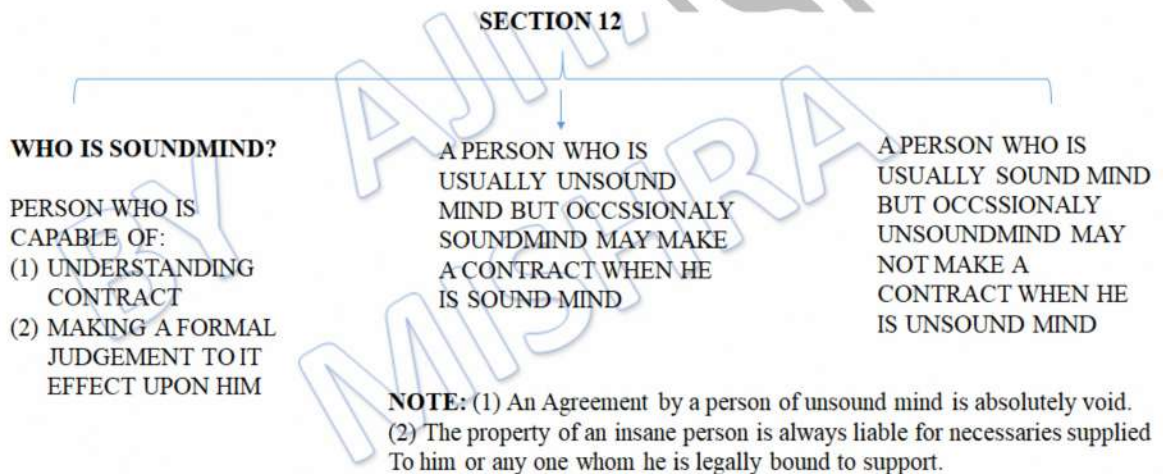
A minor isn't liable in contract or tort arising from a contract. This means they can't be held responsible for indirect enforcement of their agreement. Cases like Harimohan vs. Dulu Miyan and Wali Singh vs. Sohan Singh illustrate this.

Doctrine of Restitution:

Restitution, rooted in equity, aims to restore unjust enrichment. Under English law, if a minor unjustly enriches themselves, they're compelled to restore goods obtained by misrepresentation. In India (Mohoribibi vs. Dharmodas Ghose), a minor executing a mortgage isn't liable to restore money.

Ratification of Minor's Agreement:

When a minor reaches majority, ratifying their contract makes it valid. However, consideration received during minority doesn't validate ratification (Suraj Narain vs. Sukhu Aheer). A fresh promise after attaining majority with new consideration can validate an agreement made during minority.

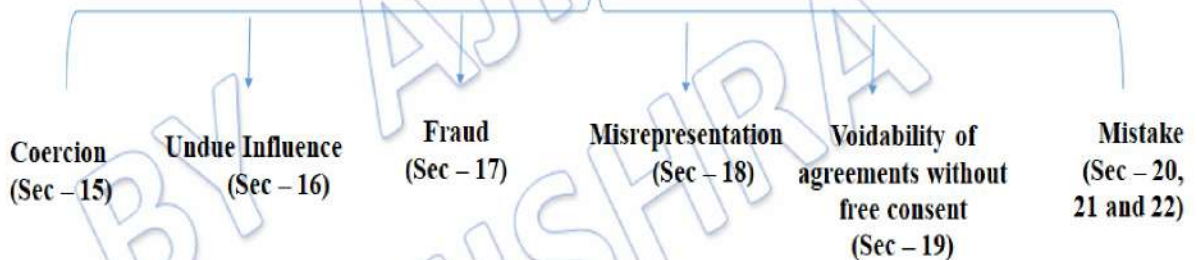


Disqualified Persons from Contracting:

- Several individuals are disqualified from entering contracts according to the law:
- Alien enemies
- Foreign sovereigns and ambassadors
- Convicts
- Married women concerning their husband's property
- Insolvents in certain cases
- Joint stock companies and corporations incorporated under special Acts (e.g., LIC, UTI, etc.)

5. FREE CONSENT

A CONSENT IS SAID TO BE FREE WHEN it is not caused by



Coercion:

- Any agreement formed under coercion allows the affected party the option to void the contract. Coercion can manifest in various ways, such as threats to commit forbidden acts as per the Indian Penal Code or unlawfully detaining property.
- Acts amounting to coercion aren't deemed as such if they do not constitute a threat of filing a false charge (**Askari Mirza vs. Bibi Jai Kishori**).
- Statutory compulsion, threats to strike, and threats of suicide also fall under coercion.

Duress:

- Duress, an English law concept, involves actual violence or threats of violence specifically to a person's life or bodily harm. It doesn't extend to threats against property.
- In India, coercion may arise from a person not party to the contract and affect a stranger to the contract.

UNDUE INFLUENCE

Where the relation between the parties are such that one of the parties is in a position:

1. to dominate the will of the other; and
2. Uses such position to obtain an unfair advantage over the other.

Section 16 (1)

A person is said to dominate the will of other when:

1. He holds a real or apparent authority over the other.
2. He stands in a fiduciary relation to the other.
3. He makes a contract with a person whose mental capacity is affected due to

1. Unsoundness of mind
2. Old age
3. Illness
4. Mental or bodily distress

Section 16 (2)

If a person who is in a position to dominate the will of other makes a contract with such person then the burden of proving of element of undue influence in such contract is on the person who is in a dominating position.

Section 16 (3)

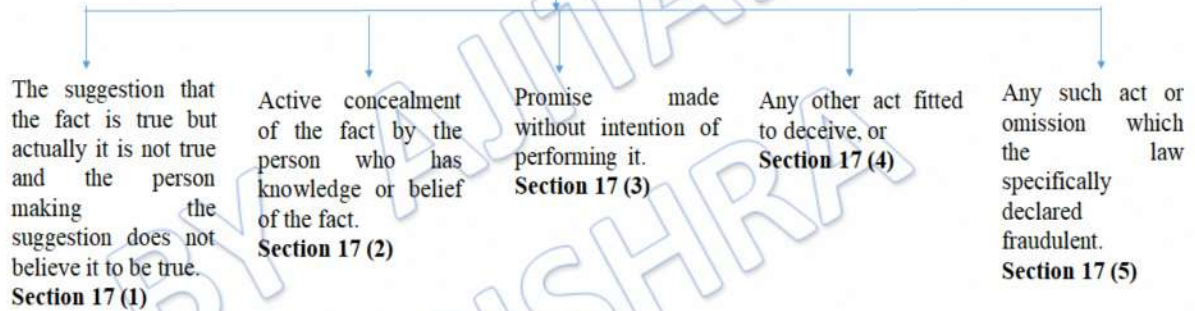
Relations Involving Domination:

One party dominates another when there's a significant trust imbalance, and the parties aren't on equal footing. Relations involving domination include authority figures, employer-employee, police or judge over an accused, fiduciary relationships, and family relations. Contracts made under undue influence are void, and if the undue influence is from a non-contracting party, the contract may be voidable. The case **Chinnamma vs. Devenga Sangha** emphasized that the person dominating need not directly benefit; it's sufficient if any third person in whom they are interested benefits.

Presumption of Undue Influence:

Unconscionable bargains or contracts made under conditions where no sane person would engage in such agreements and no honest person would take advantage are deemed as undue influence. For instance, transactions with a distressed person fall under this category.

FRAUD



Fraud:

An agreement caused by fraud is voidable. Fraud essentials include a false statement of fact and wrongful intention. Unlike coercion and undue influence, fraud by a stranger to the contract does not affect the contract. Fraud is a civil wrong, unlike coercion, which is both a civil and criminal wrong

Unlike coercion and undue influence, fraud by a stranger to the contract doesn't directly affect the contract's validity (**Derry vs. Peek**).

Mere Silence is Fraud?

Passive concealment, or mere silence, is not considered fraud, as parties are not obligated to disclose everything. However, if there is a duty to speak, and the party fails to disclose the truth, it constitutes fraud. Fraud also arises in relationships of trust and confidence, and when a fact initially true becomes false, disclosure becomes necessary to avoid fraud.

EXAMPLES

	A Sell a horse which is unsound and does not speak anything	→	B	→	NO FRAUD
Father	Sell a horse which is unsound and does not disclose the fact to	→	Son	→	FRAUD (Relation of Trust and confidence)
	A Sell a insurance policy and does not disclose about the terms which may adversely affect B	→	B	→	FRAUD (Duty to speak)
	A Wants to sell his business states his average Sale is 10000/day but afterwards due to his illness the sale reduce to 6,000/day	→	B	→	FRAUD (earlier true Afterwards false Duty to speak)
	With <u>Vs</u> <u>O'Flangan</u>				[1936] Ch. 575]

VOID AGREEMENTS

VOID AGREEMENT

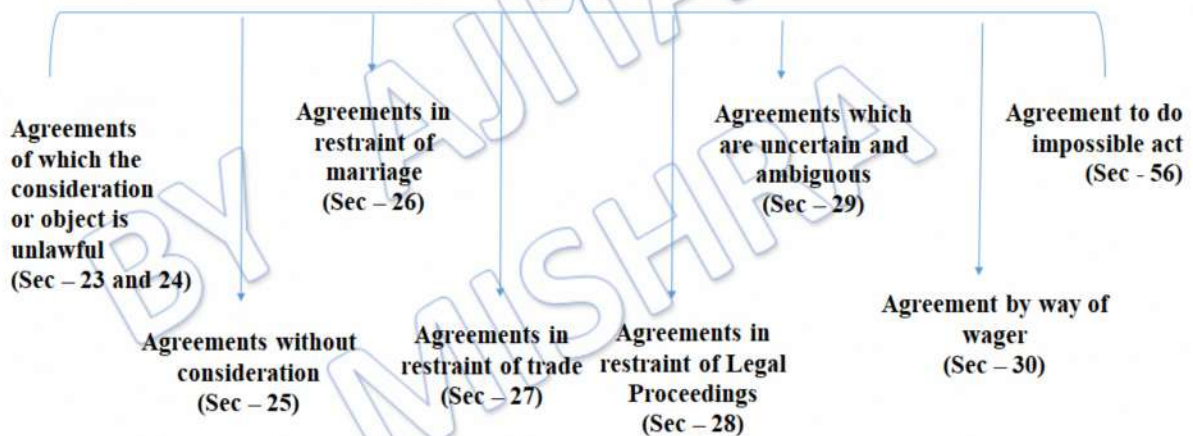
- The Agreement which is **Void – ab – initio** (Void from the beginning) is Void agreement.
- It has no value in the eyes of law.
- It is not enforceable by law.

VOID CONTRACT

- The Contract which is on the face of it is Valid but before completion becomes void.
- It has value in the eyes of law until it is valid.



VOID AGREEMENT



Section 25 of the Indian Contract Act, 1872

Void Agreements without Consideration:

- An agreement made without any consideration is considered void unless it falls under specific exceptions outlined in the section.

Exceptions for Validity:

(1) Expressed in Writing and Registered:

If an agreement lacking consideration is:

- Expressed in writing,
- Registered as per the prevailing registration laws,
- Made on account of natural love and affection between parties closely related,

Such an agreement becomes valid.

(2) Promise to Compensate:

If a promise is made:

- To compensate, wholly or partly, for something already voluntarily done for the promisor,
- For something the promisor was legally obligated to do,

This promise becomes a valid contract.

(3) Promise to Pay a Time-Barred Debt:

If a promise is made:

- In writing and signed by the person to be charged or their authorized agent,
- To pay wholly or partially a debt for which the statute of limitations to file a lawsuit has expired,

This promise becomes a valid contract.

Explanations:

Explanation 1:

- The section doesn't affect the validity of a gift actually made between the donor and the donee.

Explanation 2:

- Inadequacy of consideration doesn't render an agreement void if the promisor's consent was freely given. However, the court may consider the inadequacy of consideration while determining the freedom of the promisor's consent.

Illustrations:

Scenario (a): A promises to give B Rs. 1,000 without any consideration.

Implication: This agreement is void as it lacks consideration.

Scenario (b): A, out of natural love and affection, promises his son B Rs. 1,000. A puts this promise in writing and registers it.

Implication: This agreement becomes a valid contract due to the exception concerning natural love and affection when documented and registered.

Agreement in Restraint of Marriage (Section 26):

- Any agreement restraining marriage is void except for agreements regarding a minor's marriage.
- Void agreements include restraints:
 - Prohibiting marriage entirely.
 - Restricting marriage for a specific duration.
 - Preventing marriage to a specific person or group.
 - Restricting marriage outside a particular family or group.
- **Lowe v. Peers (1768)** case clarifies that agreements to marry a particular person are valid, but agreements not to marry anyone else except the promisee are void restraints of marriage.

Agreement in Restraint of Trade (Section 27):

- Any agreement restraining someone from exercising a lawful profession, trade, or business is void.
- This includes restraints that are general, partial, qualified, or non-qualified.
- **Gujarat Bottling Co. Ltd. v. Coca Cola (1995)** case determined the validity of an agreement restraining a licensee from dealing with competing goods. It was held valid due to specific circumstances.

Exceptions to Restraint of Trade:

- **Sale of Goodwill:** An agreement from a seller not to carry on a similar business within specific local limits after selling the goodwill is valid.
- **Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co. Ltd. (1894)** case validated the reasonable part of an agreement but deemed the unreasonable portion void.

Agreement in Restraint of Legal Proceedings (Section 28):

- An agreement entirely restraining a party from enforcing their rights in a court of law is void.
- Limiting the time within which a right can be enforced is also void, except when it pertains to the right to appeal.
- Partial restraints are permissible; for instance, selecting one court out of multiple jurisdictions.
- If parties restrict the time limit provided by law for legal action, the agreement is void. For instance, reducing the limitation period for filing a case.

Exceptions to Restraint of Legal Proceedings:

- **Arbitration Clause Validity:** An agreement to refer disputes to arbitration and bind with the arbitration award is valid.
- **Contracts to Refer to Arbitration:** Valid if the questions have already arisen or affect any law in force in India.

- Bank or Financial Institution Agreements: Contracts by banks or financial institutions stipulating terms in guarantees, discharging liability, or providing for extinguishment of rights after a specified period (not less than 1 year) are not void.

Agreements Uncertain or Ambiguous (Section 29):

- Agreements whose meaning is not certain or capable of being certain are void.

• e.g:

A	→	B	Uncertain And void
Bought a horse with the extra condition that if the horse will be proven lucky for him he will pay £5 more			
<u>Guthing Vs. Lynn</u> [1831 (2 B Ad 232)]			
A	→	B	Uncertain and Void
Agreed to sell 100 tons of oil			
A	→	B	Not Uncertain, valid
Had a company of coconut oil and he agreed to sell 100 tons of oil			
A	→	B	Uncertain, VOID
Agree to do a particular contract in the future			
There cannot be a contract to make a contract in future. [UOI Vs. Philips Construction (1980)]			

IMPORTANT CONCEPT TO REMEMBER UNDER SECTION 29

1. Undefined Property:

A — Agree to sale a property which is not known and the seller cannot define the prop. — B

Uncertain, VOID

Surendra Kumar Gupta Vs. Narayan ram [AIR 2011 Chh 138]

2. Partial Uncertainty:

A — Agree to 1 ton wheat from his godown with some terms and conditions and there were no evidence found for any terms and conditions — B

Partial Uncertainty, VALID

3. Agreement to increase wages:

Company — Agrees to increase the wages of employees with retrospective effect — employee

UnCertain and welfare measure, VALID

Govt. of Maharashtra Vs. Deokar Distillery [AIR 2003 SC 1216]

4. Lock out agreement:

A — Agree to not to negotiate with anyone else for 3 months regarding selling of his business — B

Certainty, VALID

Wagering Agreement (Section 30):

- Any agreement by way of wager is void.
- A wager involves parties having opposing views on an uncertain future event, and the outcome decides the transfer of property or amount from one party to another based on the event's result.

ESSENTIAL CHARACTERISTICS OF WAGERING AGREEMENTS



CONTINGENT CONTRACTS

Contingent Contract (Section 31):

- Dependent on the happening or non-happening of a future event or contingency.
- Contracts of insurance and guarantee fall under the category of contingent contracts.
- Differentiates between two types of contracts:
 - One where there's an existing obligation, and performance is delayed until a future date.
 - Another where there's no present obligation; the obligation arises based on a future event.
- Requires an event collateral or incidental to the contract, meaning an event not directly promised or part of the contract's consideration.
- Eg:

A → I will pay you 10L rupees if your house got burnt → B

A → Agreement to buy wheat and condition is put that when the wheat is received then the payment will be made → B → NOT CONTINGENT CONTRACT

A → Contracts that I will pay 30,000 for white-washing of house and the payment will be made after white washing completes → B → NOT CONTINGENT CONTRACT

Legal Cases Illustrating Contingent Contracts:

- **Bashir Ahmed vs. Govt. of A.P.:** The government's promise to buy books on Unani Medicine was not collateral to the establishment of a company. The government was liable to pay despite the failure of the company establishment scheme.
- **Rojasara Ramjibhai Dahyabhai vs. Jani Narottamdas:** The contract's specific performance could be demanded upon the occurrence of the requisite contingency.

- **Gian Chand vs. Gopala:** An agreement to sell land was contingent on the return of earnest money if the land was notified for acquisition. As the land was already under notification, making the contract impossible to perform.

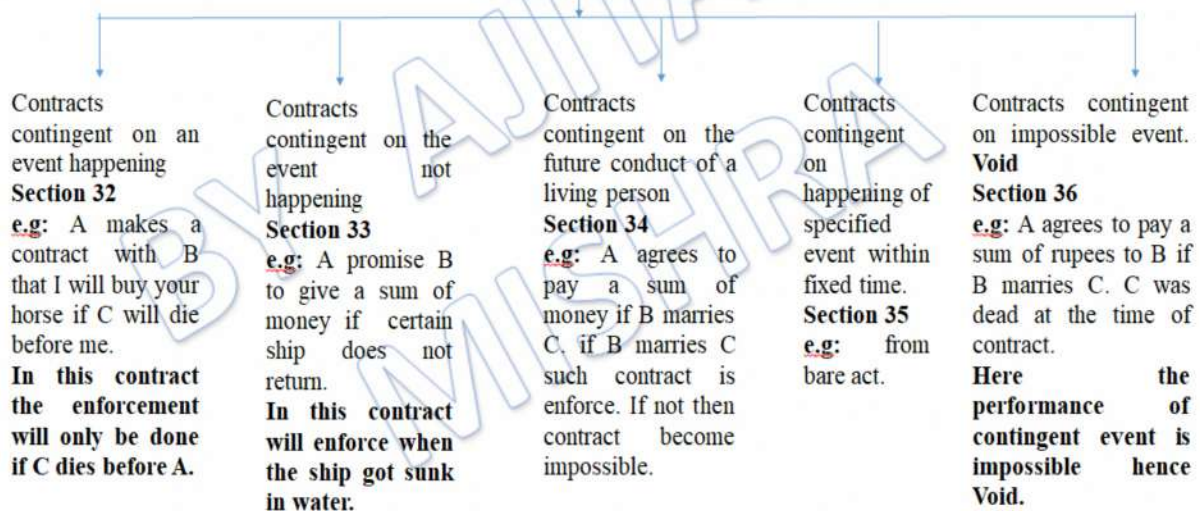
WAGERING AGREEMENT AND CONTINGENT CONTRACT

WAGERING AGREEMENT	CONTINGENT CONTRACT
1. A wagering agreement is also a contingent contract, but it has been declared void by Sec 30.	1. It is not Void but valid agreement.
2. Performance is linked with the happening of a uncertain future event.	2. In this also the performance is linked with the uncertain happening of a future event.
3. The purpose of this contract is to gain the benefit out of pure chance only and the parties have no other relation with the event.	3. The contingent contract serves some business and social purpose.
4. There is no business or consideration in this type of contract	4. In this contract there is business and consideration.
5. In this agreement there is a mutual chance of gain or lose between the party.	5. Here the parties may win but cannot lose.

A I will pay 50,000 if India wins in this match B

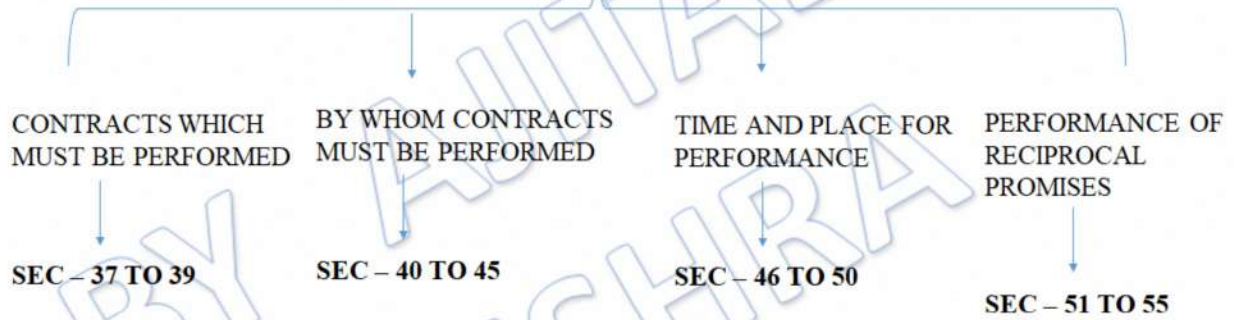
A I will return back the full cost of mobile if it hang in 6 months B

ENFORCEMENT OF THE CONTINGENT CONTRACT



PERFORMANCE OF CONTRACT

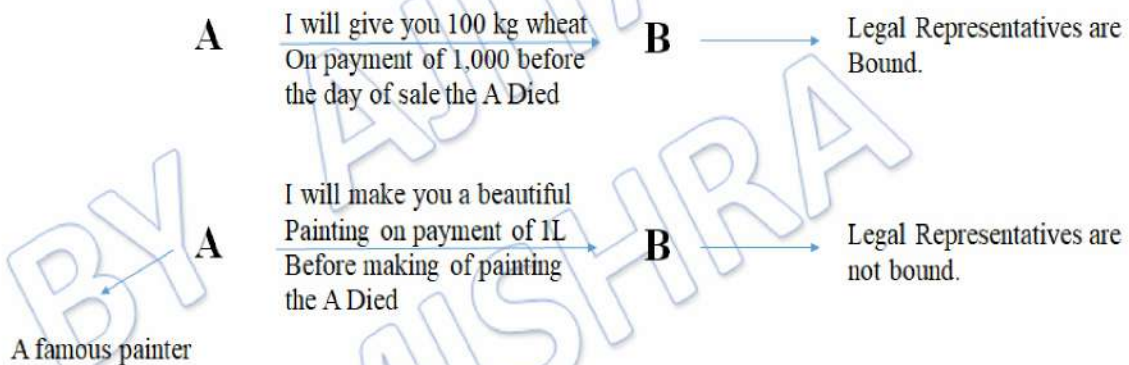
PERFORMANCE OF CONTRACT



Obligations of Parties to a Contract (Section 37):

- Parties to a contract are obligated to perform their promises unless barred by Contract Act provisions or other laws.
- The legal representative of a deceased promisor is bound to perform the contract unless the contract is based on special skills or there's a contrary condition.

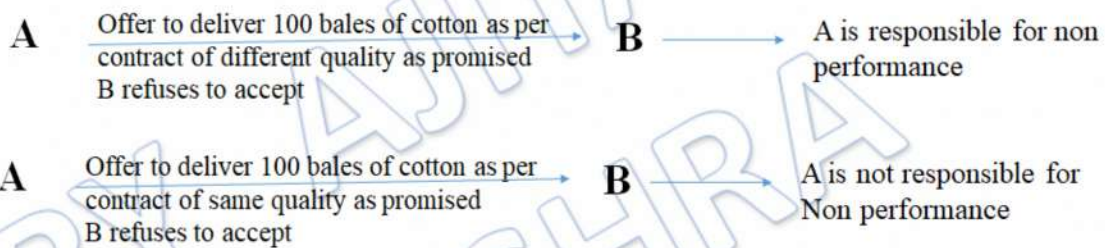
EXAMPLES



Effect of Refusal to Accept Offer of Performance (Section 38):

- If a promisor offers to perform the contract unconditionally, at the right time and place, and as agreed upon, the Promisee must accept.
- If the Promisee refuses without reasonable cause, the promisor isn't responsible for non-performance and doesn't lose rights in the contract.

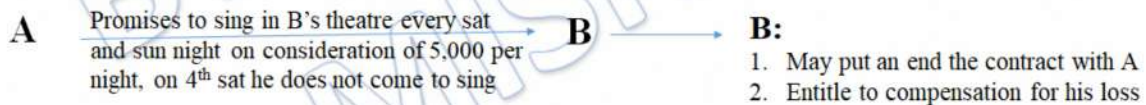
EXAMPLE



Refusal to Perform Promise Wholly (Section 39):

- If the promisor refuses or is unable to perform the promise entirely, the Promisee can terminate the contract and claim compensation for any losses incurred unless the Promisee consented to or permitted the non-performance.

• e.g:



Person by Whom Contracts Must Be Performed (Sections 40 and 41):

- The promisor has to perform the contract personally if it requires personal performance. Otherwise, it can be performed by someone appointed by the promisor or their legal representatives.

- If the Promisee accepts performance from a third person without the promisor's consent, they can't enforce it against the promisor. However, with the promisor's consent, the Promisee can do so.

- **Eg:**

A Promises to pay a sum of money to B on a specified day → B → A:

1. May pay by himself
2. May appoint any other person to pay
3. If A dies then his legal representative may pay or appoint anyone to pay the same

A Promises to paint a painting for B on a specified day → B → A:

1. Shall paint by himself

Joint Liability (Sections 42 to 45):

- **Devolution of Joint Liabilities (Section 42):** Joint promisors are liable to perform jointly during their lives. If one dies, their legal representatives and surviving promisors are responsible. The representatives of all promisors must fulfill the promise if all promisors die.
- **Compulsion to Perform in Joint Promises (Section 43):** The Promisee can compel any joint promisor to perform. Each promisor can compel other promisors to contribute equally. If one doesn't contribute, the others must bear the loss equally.

EXAMPLES

A, B, C Promises to pay 3,000 rupees → D

1. D may compel A or B or C to pay the amount.
2. If C is compelled to pay whole amount then he is entitle to receive 1000 rupees from A and B each.
3. If C is compelled to pay whole amount and A is declared **insolvent** then he is entitle to receive 1000 from B and 1000 by selling A's estate. If in case A's estate can only pay 500 rupees then C is entitle to receive 500 rupees by selling A's estate and the loss of another 500 rupees is to be divided in to C and B and hence in such case C will be entitle to recover 1250 rupees from B.
4. If A is unable to pay anything then whole of the amount is to be divided into C and B i.e 1500 each

- **Release of One Joint Promisor (Section 44):** Releasing one joint promisor doesn't discharge their liability to other promisors.

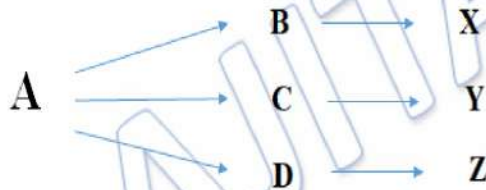
Eg:

A, B, C Promises to pay 3,000 rupees → D

Here, If D the promisee releases A from his liability then also B and C were liable to pay their share of 1000 each.

- **Devolution of Joint Rights (Section 45):** If multiple promisees have joint rights against one promisor, any of them or their representatives can compel the promisor to perform, as long as no contract states otherwise.

EXAMPLE



A is a promisor and B, C, D are the promisee, here if B dies then X the legal representative of B along with C and D compel A to perform or if all B, C, D dies then their legal representative X, Y, Z respectively, jointly compel the promisor A to perform his promise.

Time for Performance when not Specified (Section 46):

- When no time for performance is specified, the promisor must perform within a reasonable time without the promisee's request.

Specified Time for Performance (Section 47):

- When the time for performance is specified without the promisee's request, the promisor should perform during usual business hours on that day and at the specified place.

A Promises to deliver certain goods on 1st Jan on the warehouse of D. on 1st Jan A reaches with goods late night when the warehouse of D was closed **D** → A has not performed his promise

Application for Performance on a Certain Day (Section 48):

- When the time is specified and the promisee applies for performance, it's the promisee's duty to specify the time, place, and usual business hours for performance.

Place for Performance when not Specified (Section 49):

- If the time is specified without the promisee's application, the promisor must ask the promisee to specify the place for performance.

A Promises to give 100 kg of wheat on 1st Jan, 2021 **B** → A must apply to B to appoint him a reasonable place to deliver the same and he must deliver the same

Performance as Directed by Promisee (Section 50):

- The promisee may direct the manner or time of performance.

Reciprocal Promises (Sections 51 to 55):

- Promisor's Obligation (Section 51): In reciprocal promises, no promisor is bound to perform unless the other promisor is ready and willing to perform. **Example:**



- Order of Performance (Section 52): This specifies that follow the order specified in the contract; if not provided, consider the nature of the transaction.

• **e.g:**



- Liability for Preventing Performance (Section 53): If one party prevents the other from performing, the contract might be voidable at the option of the prevented party, who is entitled to compensation.
- Default in Performance (Section 54): If one party's performance is contingent on the other's and the latter defaults, they are liable for damages.

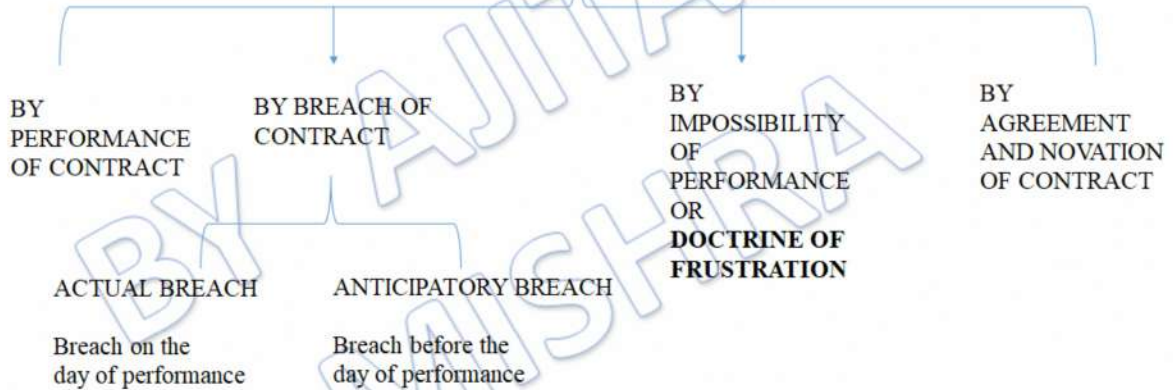
e.g:



- Failure to Perform at Fixed Time (Section 55): If a party fails to perform at the specified time and time is essential, the contract becomes voidable at the other party's option. Compensation for losses can be claimed by the other party. If time isn't essential, the contract doesn't become voidable, but compensation for losses is still possible. If the promisee accepts performance at another time, they can't claim compensation for non-performance.

DISCHARGE OF CONTRACT

DISCHARGE OF CONTRACT



SECTION 56

AGREEMENT TO DO IMPOSSIBLE ACT

IN GENERAL SUCH AGREEMENT IS VOID

IF CONTRACT AFTERWARD BECOMES IMPOSSIBLE BY REASON WHICH PROMISOR COULD NOT PREVENT THEN IT BECOMES IS VOID

IF PROMISOR KNOWS AND PROMISEE NOT KNOW THAT THE AGREEMENT BECOMES IMPOSSIBLE AFTERWARDS THEN SUCH PROMISOR MUST COMPENSATE PROMISEE FOR ANY LOSS SUSTAIN.

Section 56: Doctrine of Frustration

Contracts become void if performance is impossible or unlawful.

Cases like **Punj Sons Pvt. Ltd. v. UOI** and **Krell v. Henry** illustrate the concept of frustration leading to the discharge of a contract.

- This section is based on the maxim:

“lex non cogit ad impossibilia”

Means: The law cannot compel a person to do an impossible act.

Doctrine of frustration - Contract afterwards become impossible
Or unlawful becomes void

Doctrine of Frustration under the Indian Contract Act:

- **Definition:** The Doctrine of Frustration applies when unforeseen events occur after the formation of a contract, making its performance impossible, illegal, or fundamentally different from what was initially agreed upon.
- **Impossibility of Performance:** It applies when an unforeseen event, beyond the control of both parties, makes it objectively impossible to fulfill the contract. This could include events like war, natural disasters, government regulations, etc.
- **Unforeseeable Events:** The event leading to frustration must be unforeseeable and not the fault of either party at the time of contract formation. If the risk was anticipated or could have been mitigated, the doctrine might not apply.
- **Effect on Contract:** Once frustration occurs, the contract becomes void. Both parties are released from their obligations under the contract, and neither party can be held liable for non-performance due to the unforeseen event.
- **Fairness and Justice:** The doctrine aims to prevent injustice by acknowledging that certain events are beyond the control of the parties involved. It ensures fairness by not holding them accountable for circumstances they couldn't have foreseen or managed.
- **Legal Recognition:** The Indian Contract Act recognizes this doctrine to prevent parties from being unfairly bound by contracts that have become impossible to perform due to unforeseen and uncontrollable events.
- **Judicial Interpretation:** Courts may examine each case individually to determine if frustration truly applies. They assess the nature of the event, its impact on the contract, and whether the situation falls within the principles of frustration as defined under the law.

- **Relief from Obligations:** Upon frustration, parties are relieved from their contractual obligations, and any advance payments or obligations already fulfilled might be subject to restitution, aiming to restore the parties to their pre-contractual position.

Types of Impossibility

- Legal impossibility due to government laws.
- Physical impossibility like illness.
- Commercial impossibility as seen in **Satyabrata Ghosh v. Mungneeram** where war temporarily disrupted a contract.

Reciprocal Promises (Section 57)

Legal and Illegal Promises:

- If parties mutually agree to:
 - Perform certain legal actions as part of their contract, and
 - Also, under specific circumstances, agree to undertake certain illegal actions,
- The legal promises constitute a contract, while the illegal promises are void.

Illustration:

Scenario: A and B agree that A will sell a house to B for 10,000 rupees. However, if B uses it as a gambling house, B shall pay A 50,000 rupees for it.

Implication: The promises to sell the house and pay 10,000 rupees constitute a valid contract. However, the second part, involving the use of the house as a gambling den, is void due to its illegal nature.

Alternative Promises (Section 58)

Legal and Illegal Alternatives:

- In an alternative promise where one option is legal and the other illegal, only the legal option can be enforced.

Illustration:

Scenario: A and B agree that A will pay B 1,000 rupees. Subsequently, B will deliver to A either rice or smuggled opium.

Implication: This agreement is valid concerning the delivery of rice but void concerning the delivery of opium due to its illegal nature.

By Agreement and Novation of Contract (Sections 62 and 63)

Novation, rescission, and alteration in contracts create new terms or end the old contract.

1. **Novation:** New contract from old contract.
2. **Rescission:** to end the old contract.
3. **Alteration:** To change the old contract.

Case law like **Evans v. Drummond** demonstrates novation through a fresh promissory note.

Section 64: Consequences of Rescission of Voidable Contract

- Rescission of a voidable contract allows the innocent party to discontinue performing the contract and requires the return of benefits received.

Obligation of Receiving Advantage from Void Agreement (Section 65)

Void Agreement or Contract:

- When an agreement or contract is found to be void, any person who has received an advantage under that void agreement must compensate the person from whom they received the benefit.

Illustrations:

Scenario (a): A pays B 1,000 rupees in exchange for B's promise to marry C, A's deceased daughter.

Implication: The agreement is void, but B is obligated to repay A the 1,000 rupees.

Scenario (b): A contracts with B to deliver 250 maunds of rice before the first of May. A delivers only 130 maunds before that day, and none after. B retains the 130 maunds after the first of May.

Implication: B must pay A for the 130 maunds retained after the specified date.

Rescission of Voidable Contract (Section 66)

Communication of Rescission:

- The rescission (cancellation) of a voidable contract can be communicated or revoked using the same methods and subject to the same rules as those for communication or revocation of a proposal.

Effect of Neglect of Promisee to Facilitate Performance (Section 67)

Promisee's Neglect and Promisor's Performance:

- If a promisee neglects or refuses to provide reasonable facilities for the promisor to perform their promise, the promisor is excused for any non-performance caused by such neglect or refusal.

Illustration:

Scenario: A contracts with B to repair B's house. However, B neglects or refuses to indicate the areas in need of repair.

Implication: A is excused from non-performance of the contract caused by B's neglect or refusal to point out the repair areas.

By Breach of Contract (Section 73)

- The breaching party is liable to compensate for natural loss and foreseeable losses known at the time of contract-making.
- Compensation is not granted for remote or indirect losses.

Cases like **Handley v. Baxendale** and **Victoria Laundry v. Newman Industries** depict scenarios where compensation depends on foreseeability and knowledge of circumstances.

Important Cases on Breach and Damages

- **Simpson v. London & Northwest Railway Co.** emphasizes liability if a party has knowledge of special conditions causing harm due to breach.
- **Victoria Laundry v. Newman Industries** demonstrates compensation for delays in delivery but not for losses not specifically communicated.

Damages

- Liquidated damages are predetermined in contracts for breach scenarios.
- Unliquidated damages are decided by the court based on the inconvenience and losses incurred.

Party Rightfully Rescinding a Contract (Section 75)

Entitlement to Compensation:

- A person who rightfully rescinds (cancels) a contract is entitled to compensation for any damages suffered due to the non-fulfillment of the contract.

Illustration:

Scenario: A, a singer, contracts with B, the theatre manager, to perform at the theatre for two nights weekly for the next two months, with B agreeing to pay 100 rupees for each night's performance. On the sixth night, A willfully fails to appear at the theatre, leading B to rescind the contract.

Implication: B, who rightfully rescinded the contract due to A's non-performance, is entitled to claim compensation for the damages incurred as a result of the contract not being fulfilled.

QUASI CONTRACTS

Section 68: Supply of Necessaries to Incapable Person

- If a person incapable of entering into a contract receives necessary goods or services, the provider can seek reimbursement from the incapable person's property.
- For instance, supplying necessaries to a lunatic entitles the supplier to reimbursement from the lunatic's property.

Section 69: Payment of Money by Interested Person

- When an interested party pays a bill on someone else's behalf, that person can claim reimbursement from the concerned individual.
- Example: If a tenant pays the overdue rent to the landlord, the tenant can recover this amount from the original debtor.

**REIMBURSEMENT OF MONEY
(SECTION 69)**

LEGALLY DUE
FROM ANOTHER

IN WHICH ONE
PERSON IS
INTERESTED

Section 70: Obligation to Repay

- A person who enjoys a benefit due to the actions of another is obliged to reimburse the latter.
- In the case of **Indu Mehta**, where she served the State and claimed reimbursement for her services, the State was obligated to reimburse her.

ENJOY BENEFIT OF NON-GRATUITOUS ACT (SEC – 70)

A person must do Lawfully something for another or deliver something to another

Such act or delivery must be done **NON-GRATUITOUSLY**

Other person must enjoy some benefit

Non Gratuitous Act – Not free of cost

Sec 70 cannot be invoked against Minor.

Section 71: Responsibility of Finder of Goods

- When someone finds another person's goods and intends to return them to the rightful owner, they undertake a responsibility similar to that of a bailee in a bailment contract.
- **For instance**, if A finds B's lost phone, A is expected to take reasonable steps to return it to B, behaving akin to a bailee, even without a formal bailment contract.

Section 72: Return of Goods Delivered by Mistake or Under Coercion

- If goods are delivered to someone by mistake or coercion, that person is obligated to return or repay them.
- **For example**, if money is mistakenly transferred to someone's account, upon proof of the mistake, the recipient must return the amount.