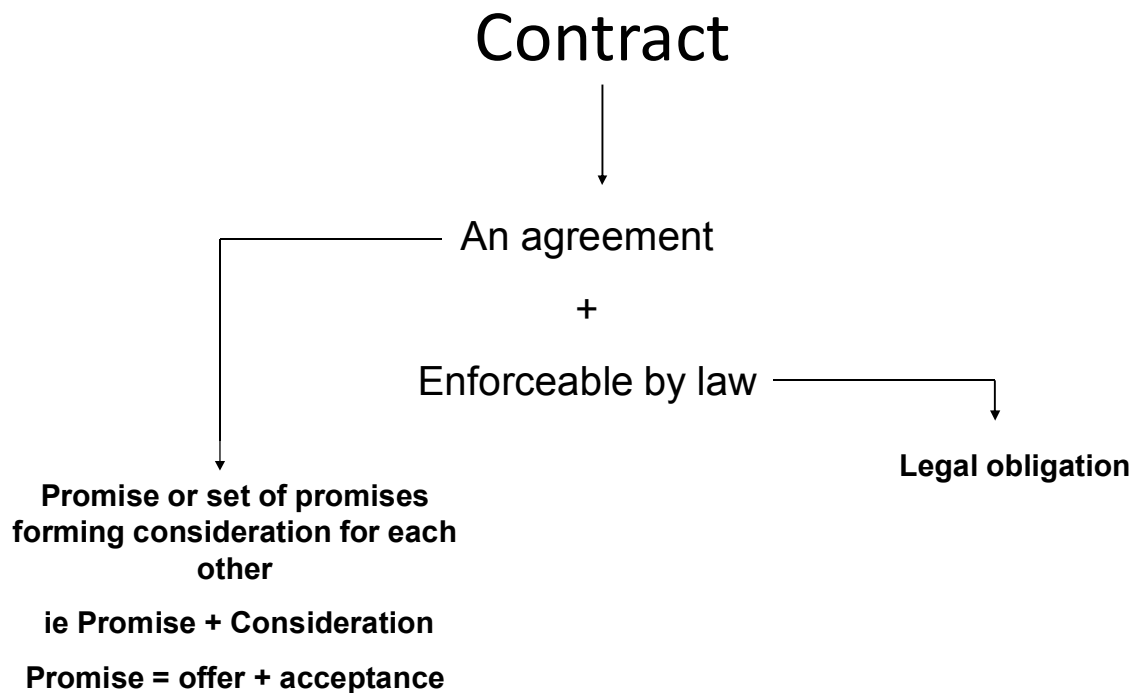
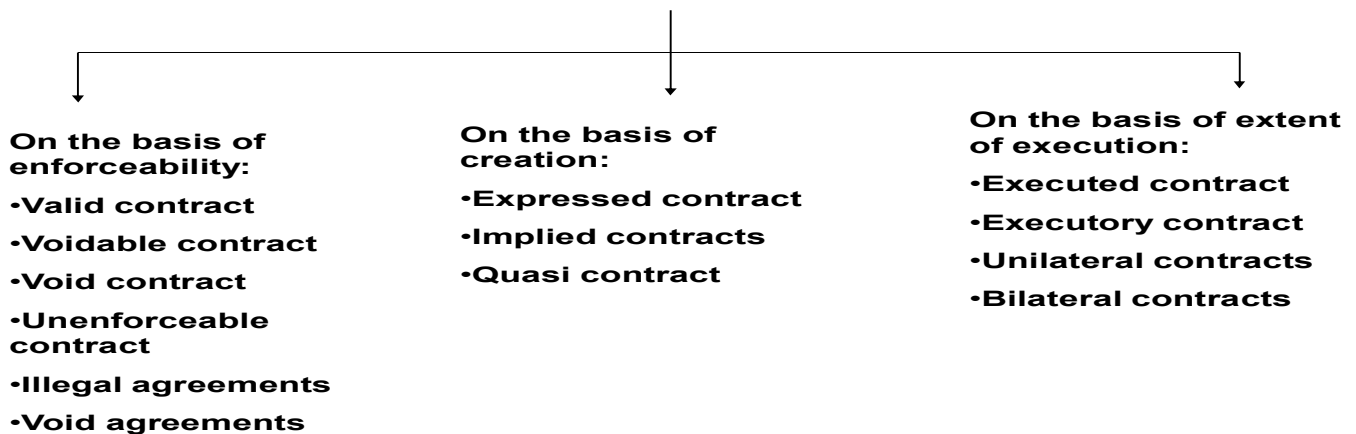


# THE INDIAN CONTRACT ACT, 1872

## CHAPTER - 1 NATURE OF CONTRACT



## Kinds of Contracts



**1. DEFINITIONS**

<b>DEFINITIONS</b>	
<b>A. CONTRACT Sec. 2(h)</b>	An agreement enforceable by law.
<b>B. AGREEMENT Sec. 2(e)</b>	Every promise and every set of promises forming consideration for each other.
<b>C. ENFORCEABILITY BY LAW</b>	An agreement which creates legal obligation on the part of parties.
<b>D. PROMISE Sec. 2 (b)</b>	A proposal when accepted becomes a promise.
<b>E. CONSIDERATION</b>	Price paid by the one party for the promise of the other. Technical word meaning 'QUID PRO QUO' i.e. something in return.

**2. ESSENTIAL ELEMENTS OF A VALID CONTRACT (SECTION 10)**

- All Agreements are contracts
- if they are made by the consent
- of the parties competent to contract
- for a lawful consideration and with a lawful object and
- are not hereby expressly declared to be void.

<b>ESSENTIAL ELEMENTS OF A VALID CONTRACT</b>	
<b>1. AGREEMENT</b>	In order to constitute a void contract, there must be an agreement between the parties. To form an agreement, there should be proper offer by one and its proper acceptance by the other.
<b>2. FREE CONSENT</b>	Consent means agreed upon same thing in the same sense i.e. there should be consensus – ad- idem. A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Example :- 'A' threatened to shoot 'B' if he (B) does not sell his house to him Rs. 20000 and 'B' agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of 'B'.
<b>3. COMPETENCY OF THE PARTIES</b>	Parties must have the capacity to enter into a contract otherwise the contract is not valid.
<b>Who is competent to contract</b>	Who is incompetent to contract
<b>Major</b>	Minor
<b>Person of Sound mind</b>	Person of Unsound Mind
<b>Person not disqualified by law from contracting</b>	Person disqualified by law from contracting
<b>4. LAWFUL CONSIDERATION</b>	Consideration must not be unlawful, immoral or opposed to the public policy. <b>Examples :</b> Unlawful :- A agrees to sell narcotics to B for a sum of Rs. 100000. This agreement is not valid because the consideration is unlawful. Immoral :- An agreement for letting a house to a prostitute for carrying on her vocation there. Opposed to the public policy :- Trading with enemy, Agreement in restraint of marriage, trade, legal proceedings etc.
<b>5. LAWFUL OBJECT</b>	Object means the purpose or design. The object of the agreement must be lawful. Example :- 'A' and 'B' make an agreement for smuggling out some goods from India to another country. This agreement cannot be enforced in the court because the object is

	unlawful.
<b>6. NOT EXPRESSLY DECLARED VOID</b>	An agreement should not be one which is expressly declared void by the law. Example :- Agreement in restraint of trade, marriage or legal proceedings are expressly declared void by the law and hence not enforceable.
<b>7. INTENTION TO CREATE LEGAL RELATIONSHIP</b>	Parties must have an intention of creating the legal relationship. An agreement of a purely domestic or social nature is not a contract. Example 1 :- 'A' invites his friend 'B' to his birthday party. 'B' accepts the offer. But he fails to turn up for the party. This agreement creates social and personal relationship between 'A' and 'B'. It cannot be enforced in the court. Thus A has no legal remedy against B. Example 2 :- 'A' borrows sum of Rs. 500 from his friend 'B' for three months. 'B' gets legal right to sue upon 'A' if he fails to return money. It is because this agreement creates legal relationship, which can be enforced in the court.

#### BALFOUR Vs. BALFOUR (1919)

In this case a husband just makes a promise to pay his wife monthly allowance of £30 for her maintenance. Later on they separated and husband failed to pay stipulated amount to his wife. She filed suit for that allowance. But it was held by the court that such arrangements are not contracts or do not result in a contract because parties did not intend to create legal relationship and finally the suit was dismissed.

CERTAINTY OF MEANING	Agreement made by the parties must be certain or capable of being made certain. Example: 'A' is a dealer of kerosene oil and coconut oil. 'B' makes an agreement with him for buying 10 lts of oil. Meaning of this agreement is uncertain and therefore it cannot be enforced.
POSSIBILITY OF PERFORMANCE	An agreement to do an act impossible in itself is void. Example: An agreement to discover treasure by magic is void.
LEGAL FORMALITIES	Such as in writing, registration etc must be completed otherwise the contract is not enforceable at law.

### Classification of contract

#### A. ON THE BASIS OF ENFORCEABILITY

<b>1.VALID CONTRACT</b>	A contract which contains all the essential elements.
<b>2. VOID CONTRACT [SEC. 2(j)]</b>	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
<b>3.VOID AGREEMENT [SEC. 2(g)]</b>	An agreement which is not enforceable by law is said to be void. It is an agreement which cannot be enforced from the date when they were made. It is void ab initio.
<b>4. VOIDABLE CONTRACT [SEC. 2(i)]</b>	An agreement, which is enforceable by law at the option of one more of the parties, but not at the option of the other (s) is a voidable contract. For example :- Mr. A, at knife – point, asks B to sell his scooter for Rs.50 Mr. B gives consent. The agreement is voidable at the option of B, whose consent is not free.
<b>5. UNENFORCEABLE CONTRACT</b>	An unenforceable contract is one which is good in substance but cannot be enforced by law due to some technical defects, such as under stamping, absence of writing, barred by limitation.
<b>6. ILLEGAL CONTRACT</b>	A contract which is forbidden by law. For example :- Agreement to commit crime.

#### B. CLASSIFICATION ON THE BASIS OF CREATION

<b>1. EXPRESS</b>	A contract which is created either by word spoken or written.
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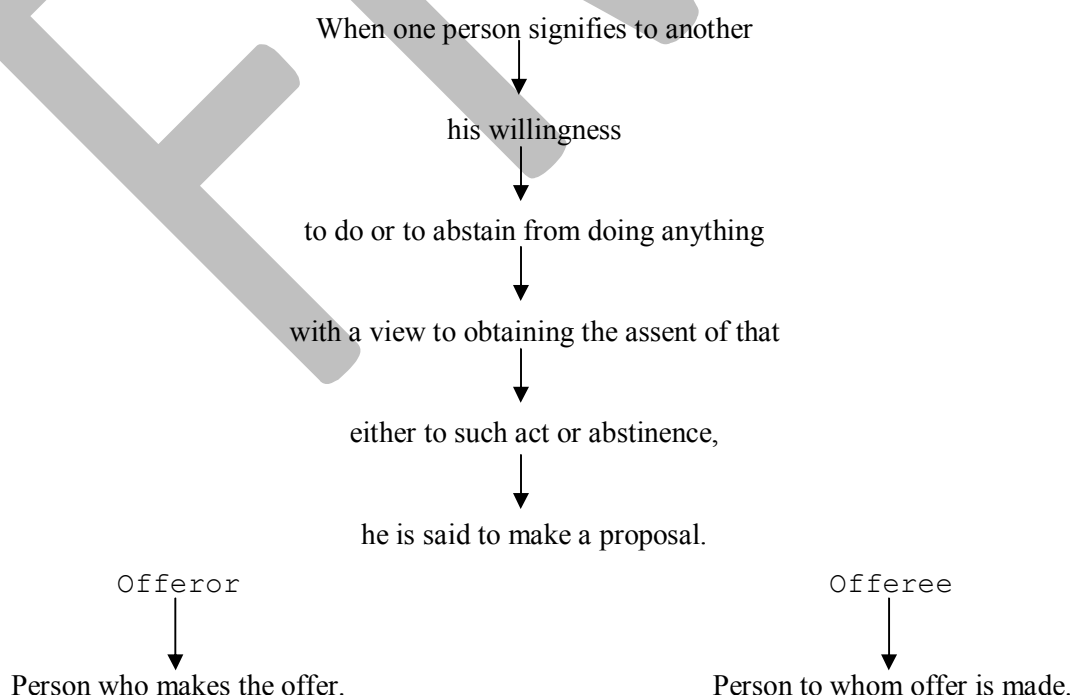
<b>CONTRACT</b>	For example :- If 'A' of Agra offers to sell his car for Rs. 150000 to 'B' of Delhi by a letter and 'B' accepts the offer by writing a letter. Thus the contract between 'A' and 'B' is said to be an express contract.
<b>2. IMPLIED CONTRACT</b>	The contract which is created otherwise than by words spoken or written. i.e. these contracts are
<b>A. Tacit Contract</b>	A contract which is inferred from the conduct of the parties is said to be tacit contract. For example :- (i) When we enter into a bus without asking any question from bus conductor, we enter into implied contract. (ii) Obtaining cash form ATM
<b>B. Quasi Contracts</b>	These are the contracts, which are created neither by word spoken, nor written, nor by the conducts of the parties, but these are created by the law. For example :- If 'A' leaves his goods at 'B' a shop by mistake, then it is 'B's duty to return the goods or to compensate the price. In fact, these contracts depends upon the principle that nobody will be allowed to become rich at the expense of the others. This principle is known a doctrine of unjust enrichment.
<b>3. E-CONTRACT</b>	An e-contract is one, which is entered into between two parties via internet.

### C. CLASSIFICATION ON THE BASIS OF BASIS OF EXECUTION

<b>1. Executed Contract</b>	An executed contract is a contract in which both the parties have performed their obligation. This is a contract which has been completed. For <b>example</b> :- If 'A' agrees to sell his car to 'B' for Rs. 100000. The contract is said to be executed if 'A' delivers car to 'B' and B pays the price to 'A'.
<b>2. Executory Contract</b>	An Executory contract is the contract which is to be performed in future.
<b>A.Unilateral Contract</b>	Where obligation is pending on the part of one of the parties.
<b>B.Bilateral Contract</b>	A Bilateral Contract in which obligation is pending on the part of both of the parties.

## CHAPTER - 2 OFFER & ACCEPTANCE

### 1. PROPOSAL [Sec. 2(a)] :



LEGAL RULES REGARDING OFFER	
<b>1. Offer must be capable of creating the legal relation</b>	A social invitation, even if it is accepted, does not create legal relations because it is not so intended. (Balfour Vs. Balfour Vs. Balfour)
<b>2. Offer must be certain, definite and not vague</b>	The terms of the offer must be certain or capable of being made certain.
<b>Example 1</b>	'A' has two Maruti cars, one is red and other blue. He offers to sell his car to 'B'. In this case, which car he is offering to sell is not clear. Therefore the offer is not valid one.
<b>Example 2</b>	'A', a dealer of coconut oil, offers to sell 10 lts of oil to 'B' for a certain price. This offer is valid one because it is capable of being made certain.
<b>Example 3</b>	'A' offered to take a house on lease provided the house should be put into thorough repairs and should be sufficiently decorated. This offer is too vague and hence not valid.
<b>3. Offer may be express or implied</b>	
<b>a. Express Offer</b>	An offer which is made by words spoken or written. <b>Example :-</b> 'X' says to 'Y', "Will you purchase my white horse for Rs. 20000. <b>Example :-</b> 'X' writes to 'Y' a letter, "I want to sell my car for Rs. 40000 to you."
<b>b. Implied Offer</b>	An offer which is made otherwise than by words spoken or written. <b>Example :-</b> A transport company runs buses on a particular route. This is an implied offer from the transport company to carry passengers on the route who are prepared to pay the specified fare. The acceptance of the offer is complete as soon as the passengers board the bus. A passenger who enters the bus also impliedly promises to pay the prescribed fare.
<b>4. Offer must be distinguished from an invitation to offer</b>	An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer.
<b>Examples of Invitation to Offer</b>	1. Window display of goods by a shopkeeper. 2. Quotations, Catalogue, Price list. 3. Advertisement in a newspaper for sale of an article.
	<b>Example :-</b> Goods are sold in a shop under 'self service' system. Customer select the goods in the shop and take them to the cashier for payment of price. Cashier refuses to accept the payment. Held that customer cannot bound the shopkeeper for delivery of goods. (Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.)
<b>5. Offer may be Specific Offer specific general</b>	
<b>Specific Offer</b>	An offer made to definite person is called Specific offer. A specific offer can be accepted only by the person to whom it is made.
<b>General Offer</b>	An offer which is made to the public at large. Anyone having knowledge of the offer can accept this offer by complying with the terms of the offer. <b>Example :-</b> A company advertised in several newspapers that a reward of € 100 would be given to any person who contracted influenza after using the smoke balls of the company according to its printed directions. Carlill used the smoke balls according to the directions of the company but contracted influenza. Held that she could recover the amount as by using the smoke balls she had accepted the offer. (Carlill V. Carbolic Smoke Ball Co. 1893)

<b>6. Offer must be communicated to the person to whom it is made</b>	<p>An offer, to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated to the offeree by the offeror or by his duly authorized agent, there can be no acceptance of it.</p> <p>An acceptance of an offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.</p> <p><b>Example :-</b> S offered a reward to anyone who returned his lost dog. F bought the dog to S without having heard of the offer. Held, F was not entitled to the reward (Fitch v. Snedaker).</p> <p><b>Example :-</b> S sent his servant L to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward (Lalman Shukla v. Gauri Dutt)</p>
<b>7. Offer must be made with a view to obtaining consent of the offeree</b>	<p>A mere declaration of intention does not amount to offer.</p> <p><b>Example :-</b> An auctioneer advertised in a newspaper that a sale of office furniture would be held. A broker came from a distant place to attend that auction, but all the furniture was withdrawn. The broker thereupon sued the auctioneer for his loss of time and expenses. Held, a declaration of intention to do a thing did not create a binding contract with those who acted upon it, so that the broker could not recover (Harris v. Nickerson)</p>
<b>8. An offer may be conditional</b>	<p>While making an offer the offeror may impose conditions for the acceptance of the offer. A conditional offer is a valid offer.</p>
<b>9. An offer should not contain a term the non-compliance of which amounts to acceptance</b>	<p>Offeror cannot impose any such condition the non-fulfillment of which would lead to acceptance of that offer.</p> <p><b>Example :-</b> A offers to sell out his bike to B stating that if B does not reply within a week, he will assume that he has accepted the offer. This is not a valid offer, because failure on the part of B to reply would result in an acceptance.</p>
<b>10. Communication of Special terms</b>	<p><b>Example :-</b></p> <p>P deposited his bags in the cloakroom at the railway station. On the face of receipt, the words "See back" were printed. One of the conditions printed on the back was "the liability of the railway company shall be limited to € 10 for any package."</p> <p>P's bag was lost. He claimed the actual value of bag amounting to € 24.</p> <p>Held that P cannot recover the amount more than € 10 since the railway company had taken all the reasonable steps to ensure that conditions printed on back printed were brought to the knowledge of P. (Parker v. S.E. Rail Co.)</p>

## 2. TYPES OF OFFER

<b>A. General offer</b>	An offer made to the public at large. Anyone can accept this offer by doing the desired act.
<b>B. Specific offer</b>	An offer made to a definite person or group of persons. Such offer can be accepted only by the specified person to whom it is made.
<b>C. Cross offers</b>	<p>When two parties exchange identical offer in ignorance at the time of each other's offer, the offers are called cross offers. Two cross offers cannot become a binding contract in the absence of acceptance.</p> <p><b>Example :-</b> A makes an offer for selling out his bike to B for 20000. B, in ignorance of this offer makes a similar offer for buying A's bike for Rs. 20000. These two offers are called cross offers and none of these would constitute an acceptance.</p>
<b>D. Counter offer</b>	<p>A qualified acceptance to the offer subject to modification and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.</p> <p><b>Example :-</b> A offers B, "Will you purchase my car for Rs. 100000. B replies, "I will purchase but I can pay only Rs. 75000 for your car." This acceptance given by B is a counter offer.</p>
<b>E. Standing, open or continuing offer</b>	An offer is allowed to remain open for acceptance over a period of time. Example Tender for supply of goods.

**3. LAPSE (Revocation) of an OFFER**

- On expiry of stipulated or reasonable time.
- By not accepting in mode prescribed.
- By rejection by the offeree.
- By death or insanity of the offeror or offeree before acceptance.
- By revocation by the offeror at any time before acceptance.
- Revocation of standing offer at any time by giving notice to the offeree.
- Revocation by non fulfillment of condition precedent to acceptance.
- By subsequent illegality or destruction of subject matter.

**4. ACCEPTANCE : Sec. 2(b)**

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

LEGAL RULES AS TO VALID ACCEPTANCE	
<b>Acceptance must be absolute and unqualified</b>	Offeree should be assented to all terms & conditions of the offer. A qualified acceptance amounts to counter offer.
<b>Acceptance must be communicated</b>	Mere mental acceptance is not acceptance. Acceptance cannot be made in ignorance of the offer. Mere silence is not acceptance.
<b>Acceptance to Whom</b>	Acceptance must be communicated to the offeror i.e. the person who made the offer.
<b>Mode of Acceptance</b>	Acceptance must be in the mode prescribed in the proposal. If no mode prescribed in the proposal, the acceptance must be according to some usual and reasonable mode.
<b>Time for Acceptance</b>	Acceptance must be given within specified time limits given in the offer. In case no time is specified in the offer, offer must be accepted within reasonable time and before the offer lapses.
	Example :- A person applied for shares in a company in June. He cannot be bound by the allotment made late in November since delay of 6 months in acceptance of application for shares was unreasonable. (Ramsgate Victoria Hotels v. Montefiore)
<b>Acceptance by conduct</b>	By performance of an act intended by the proposer.
<b>Who can accept</b>	
<b>Specific offer</b>	A specific offer can be accepted only by the person to whom it is made.
<b>General offer</b>	A general offer can be accepted by anyone having knowledge of the offer by complying with the terms of the offer.

**6. COMMUNICATION OF OFFER & ACCEPTANCE (Section 4)**

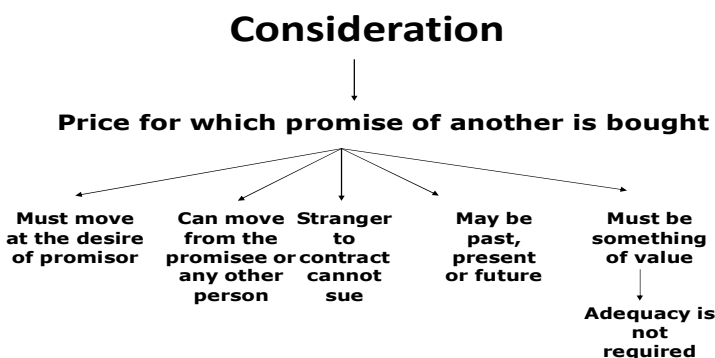
<b>(A) Communication of Offer</b>	The communication of offer is complete when it comes to the knowledge of the person to whom it is made.
<b>(B) Communication of Acceptance</b>	The communication of acceptance is complete.
<b>(a) As against the Proposer</b>	When it is put into the course of transmission to him so as to be out of power of the acceptor to withdraw the same.
<b>(b) As against the Acceptor</b>	When it comes to the knowledge of the proposer.

**7. REVOCATION OF OFFER & ACCEPTANCE (Section 4)**

The communication of revocation is complete -	
<b>(a) As against the person who makes it</b>	When it is put into the course of transmission to the person to whom it is made so as to be out of power of the person who makes it.
<b>(b) As against the person to whom it is made</b>	When it comes to his knowledge.

TIME FOR REVOCATION (Section 5)	
<b>Revocation of Offer</b>	An offer can be revoked at any time before the communication of acceptance is complete as against the proposer.
<b>Revocation of Acceptance</b>	An acceptance can be revoked at any time before the communication of acceptance is complete as against the offeree.

## CHAPTER -3 CONSIDERATION



1. **CONSIDERATION** :- **"QUID PRO QUO"** – i.e. something in return. Consideration is the price agreed to be paid by the promisee for the obligation of the promisor.

- When, at the desire of the promisor,
- the promise or any other person
- has done or abstained from doing or
- does or abstains from doing or
- promise to do or to abstain from doing
- something
- such act or abstinence or promise is called consideration for the promise. [Section 2(d)]

### 2. LEGAL REQUIREMENTS REGARDING CONSIDERATION

<b>A. Consideration must move at the desire of the promisor</b>	Consideration must move at the desire or request of the promisor. Any act done at the desire of a third party is not consideration.
<b>B. Consideration may move from the promisee or any other person</b>	Consideration may move from the promisee or any other person who is not a party to the contract. Thus, there can be a stranger to a consideration.
<b>C. Executed and Executory consideration</b>	If consideration under the contract has been given, it is said to be executed. If consideration under the contract is to be moved in future, it is called executory consideration.
<b>D. Consideration may be past, present or future</b>	
<b>Past consideration</b>	The words "has done or abstained from doing" indicates past consideration. Past consideration is no consideration in England.
<b>Present Consideration</b>	The words "does or abstains from doing" indicates present consideration. Consideration which moves simultaneously with the promise. <b>Example :-</b> Cash Sales.
<b>Future Consideration :</b>	The words "promise to do or to abstain from doing" indicate future consideration. Consideration which is to be performed in future.

	<b>Example :-</b> A get booked an air ticket from Delhi to Mumbai. The flight is to be take off on the next day. In this case the consideration from A is a Past consideration and consideration is pending on the part of Airlines which is to be performed in future.
<b>E. Consideration should be real, not illusory</b>	If consideration is an illusory one, then it is not valid.
<b>F. Consideration need not be adequate</b>	Though consideration is an essence of contract, adequacy of consideration is not regarded as an essence of contract. Courts do not regard the adequacy of consideration, it is at the part of promisor to consider that whether he is receiving adequate consideration or not.
<b>G. The performance of an act what one is legally bound to perform is not consideration for the contract.</b>	<b>Example :-</b> Promise to pay money to a witness.
<b>H. Consideration must not be unlawful, immoral or opposed to the public policy.</b>	

3. NO CONSIDERATION, NO CONTRACT	
The general rule of law is that an agreement without consideration is void.	
EXCEPTIONS	
<b>(i) Agreement on account of Natural love and Affection</b>	WRITTEN AND REGISTERED AGREEMENT BASED ON NATURAL LOVE AND AFFECTION PARTIES STANDING IN NEAR RELATION Example :- A husband by a registered document after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable. (Rajlukhy Devi V. Bhootnath)
<b>(ii) Compensation for past voluntary services (Section 25 (2))</b>	<ul style="list-style-type: none"> <li>➤ Services rendered voluntarily</li> <li>➤ Services rendered for the promisor.</li> <li>➤ Promisor must be in existence at the time of rendering services.</li> <li>➤ Promisor must have intended to compensate the promisee.</li> </ul> <b>Example :-</b> X finds Y's purse and gives it to him. Y promises to give X Rs 1000. This is a valid contract.
<b>(iii) Promise to pay time barred debt (Section 25 (3))</b>	A promise to pay, wholly or in part a debt which is barred by law of limitation can be enforced if it is :- <ul style="list-style-type: none"> <li>➤ In writing and</li> <li>➤ Signed by the person making it or his authorized agent.</li> </ul>
<b>(iv) Agency</b>	➤ According to Section 185 of the Indian Contract At, no consideration is necessary to create an agency.
<b>(v) Completed Gifts</b>	Gifts do not require any consideration. (Explanation 1 to Section 25)
<b>(vi) Charity</b>	A Promise to contribute to charity, though gratuitous, would be enforceable, if on the faith of the promised subscription, the promise takes definite steps in furtherance of the object and undertakes a liability, to the extent of liability incurred, not exceeding the promised amount of subscription. (Kedarnath V. Gorie Mohammad)
<b>(i) Bailment</b>	Consideration is not necessary to effect bailment. (Section 148)

## CHAPTER - 4 CAPACITY TO CONTRACT

### 1. WHO IS COMPETENT TO MAKE A CONTRACT

**SECTION 11:** Every person is competent to contract who is of 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.

<b>A. AGE OF MAJORITY</b>	<p>According to Section 3 of Indian Majority Act, 1875 A minor is a person who has not completed 18 years of age. Every person domiciled in India attains majority on the completion of 18 years of age.</p> <p>Exceptions : In the following cases, a person attains majority on completion of 21 years of age :-</p> <table border="1" data-bbox="435 528 1497 645"> <tr> <td data-bbox="435 528 959 645">1. Where the guardian of a minor is being appointed under Guardians and Wards Act, 1890.</td><td data-bbox="959 528 1497 645">2. Where the superintendence of minor's property is assumed by Court of Wards.</td></tr> </table>	1. Where the guardian of a minor is being appointed under Guardians and Wards Act, 1890.	2. Where the superintendence of minor's property is assumed by Court of Wards.
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<b>B. SOUND MIND PERSON (Section 12)</b>	<p>A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it and of forming a rational judgement so as to its effect upon his interests.</p> <table border="1" data-bbox="435 763 1497 916"> <tr> <td data-bbox="435 763 959 916">A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.</td><td data-bbox="959 763 1497 916">A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.</td></tr> </table>	A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.	A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.
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#### UN SOUND MIND PERSONS

Drunken person	Idiot	Lunatic
<p>A contract by drunken person is altogether void.</p> <p>Partial or ordinary drunkenness is not sufficient to avoid the contract.</p>	<p>An idiot is a person who is permanently of unsound mind.</p> <p>Such a person has no lucid intervals.</p>	<p>A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. However, he has some intervals of sound mind.</p> <p>A patient in lunatic asylum, who is at intervals of sound mind, may contract during those intervals.</p>

C. Persons Disqualified by Law	
<b>Alien enemy</b>	An Alien enemy is a person who is a citizen of a foreign country which is at war with India.
<b>Contracts during the war</b>	An alien enemy cannot enter into contract during the period of war except a license from the central government.
<b>Contracts entered before war</b>	Contracts entered before war are either dissolved or merely suspended for the period of war and revived after the war is over.
<b>Statutory Corporation</b>	A statutory corporation cannot enter into contracts which are ultra virus its memorandum.
<b>Municipal Bodies</b>	Municipal bodies cannot enter into acts which are beyond their statutory powers.
<b>Sovereign States, Ambassadors &amp; Diplomatic Couriers</b>	These persons enjoy certain special privileges. They cannot be sued in the Indian courts. However, they can enter into contracts and enforce those contracts in Indian Courts.
<b>Convict</b>	A convict cannot enter into contract during the period of imprisonment.
<b>Insolvent</b>	When the person is adjudged insolvent, his property stands vested in the official receiver or official assignee appointed by the court. He cannot enter into contracts in relation to property which is vested to the official assignee or receiver.

**A contract with a party incompetent to contract is void ab initio.**

2. POSITION OF MINORS AGREEMENT	
<b>i. An agreement entered into by or with a minor is void ab initio</b>	A minor is not competent to contract. A minor's contract being void, any money advanced to a minor cannot be recovered. {Mohiri Bibi V.Dharmodas Ghose (1903)}
<b>ii. Minor can be beneficiary</b>	Even if a minor is incapable of contracting, still no law prevents him from taking the benefit under a contract. A promissory note executed in favour of a minor is valid and can be enforced by the minor. A minor can be payee of a cheque or other negotiable instrument.
<b>Minor as a partner</b>	A Minor cannot become a partner in a firm but he can be admitted to the benefits of the partnership with the consent of all partners. (Section 30 of Indian Partnership Act, 1932)
<b>Minor can always pleads minority</b>	If a minor by fraudulently representing his age enters into contract, still minor can take the shelter of minority. Example :- A, a minor by fraudulently representing himself to be a major, induce B to lend him Rs. 2000. He refused to repay it and B sued him for the money. Held that the contract was void and A was not liable to repay the amount due.
<b>Ratification attaining majority is not allowed</b>	A minor cannot ratify the agreement on attaining the age of majority as the original agreement is void – ab – initio and therefore, validity cannot be given to it later on. Example : 'A', a minor makes a promissory note in favour of 'B'. On attaining majority, he makes out a fresh promissory note in lieu of old one. Neither the original, nor the fresh promissory note is valid.
<b>Contract by minor's guardian</b>	A contract may be entered into on behalf of a minor by his guardian or manager of his estate. In such a case the contract can be enforced by or against the minor provided that the contract. (a) is within the scope of the authority of the guardian or manager, and (b) is for the benefit of the minor.
<b>Liability for necessities</b>	No personal liability of minor but minor's property is liable. In order to entitled a supplier to be reimbursed from the minor's estate, following conditions must be satisfied :- A. Goods must be necessities for that particular minor having regard to his condition of life. B. The minor must be in need of those goods both at the time of sale and delivery. {Nash v. Inman (1908)} C. The minor's estate is not liable only for necessary goods but also for necessary services rendered to him.
<b>Minor as an Agent</b>	Minor can be an agent but cannot be held personally liable for negligence or breach of duty.
<b>Minor as an Insolvent</b>	A minor cannot be adjudicated as insolvent because he is incapable of contracting.

## CHAPTER - 5 FREE CONSENT

### 1. CONSENT (Section 13)

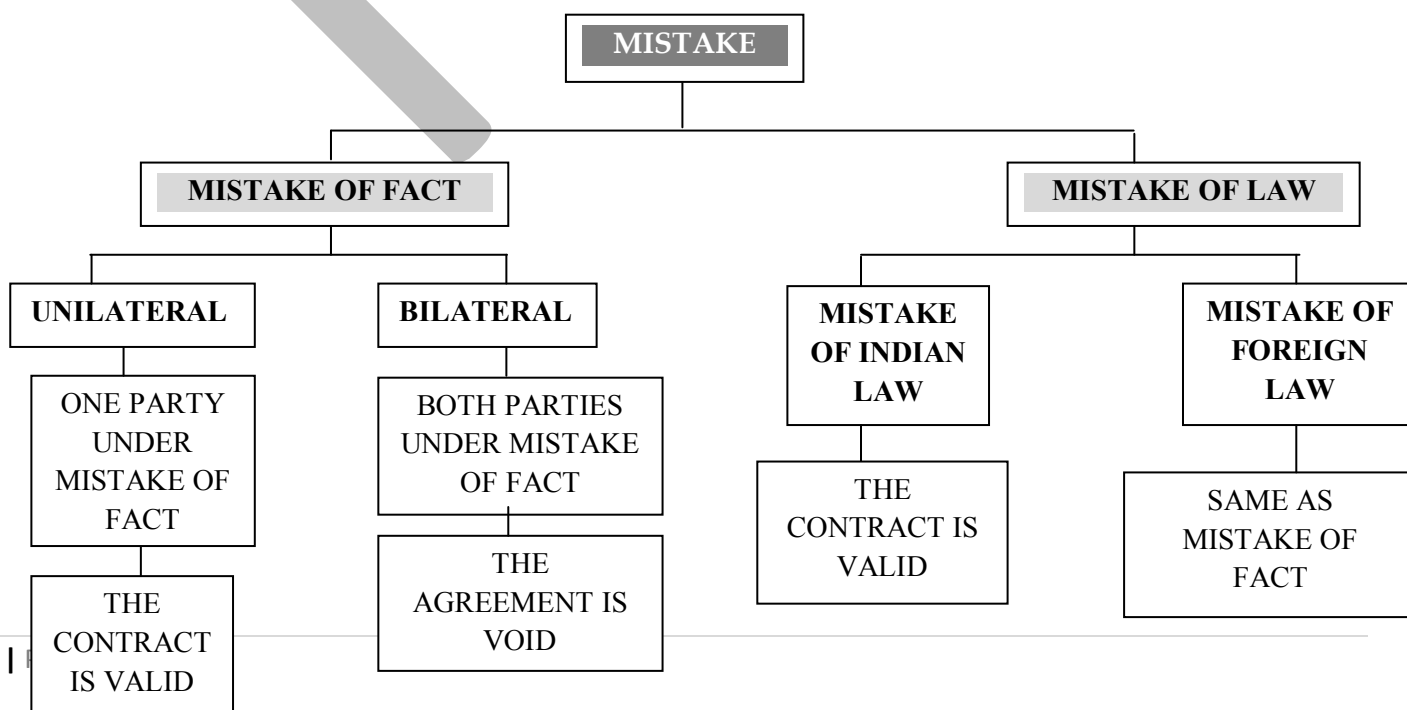
Two or more persons are said to have consented when they agree upon something in the same sense (consensus – ad – idem).

**Example :** A offers B that he want sell his Maruti 800 to him for Rs. 50000. B replies that I can pay only Rs 40000 for your car. Since there is no consent between the parties, no contract will can be formed.

### 2. FREE CONSENT (Section 14)

A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

3. ELEMENTS VITIATING FREE CONSENT	
<b>(a) Coercion (Section 15)</b>	Coercion is committing or threatening to commit any act forbidden by Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
	Threat to commit suicide amounts to coercion. The agreement induced by coercion is voidable. A person to whom money has been paid or anything delivered under coercion, must repay or return it.
<b>(b) Undue Influence (Section 16)</b>	A contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.
	A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or when he stands in a fiduciary relation to the other. Example :- (a) Father and son (b) Solicitor and Client (c) Trustee and Beneficiary (d) Doctor and Patient, etc. A contract which is induced by undue influence is voidable.
<b>(c) Fraud (Section 17)</b>	Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: <ul style="list-style-type: none"> <li>➤ the suggestion as to fact of that which is not true by one who does not believe it to be true.</li> <li>➤ the active concealment of a fact by one having knowledge or belief of the fact.</li> <li>➤ a promise made without any intention of performing it.</li> <li>➤ any other act fitted to deceive.</li> <li>➤ any such act or omission as to law specially declared to be fraudulent.</li> <li>➤ A contract induced by fraud is voidable.</li> </ul>
<b>(d) Misrepresentation</b>	Where a person asserts something which is not true though he believes it to be true, is assertion amounts to misrepresentation.



## CHAPTER - 6 LAWFUL CONSIDERATION & OBJECT

### 1. LAWFUL CONSIDERATION OR OBJECT [Section 23]

Consideration or object is unlawful if it is :-

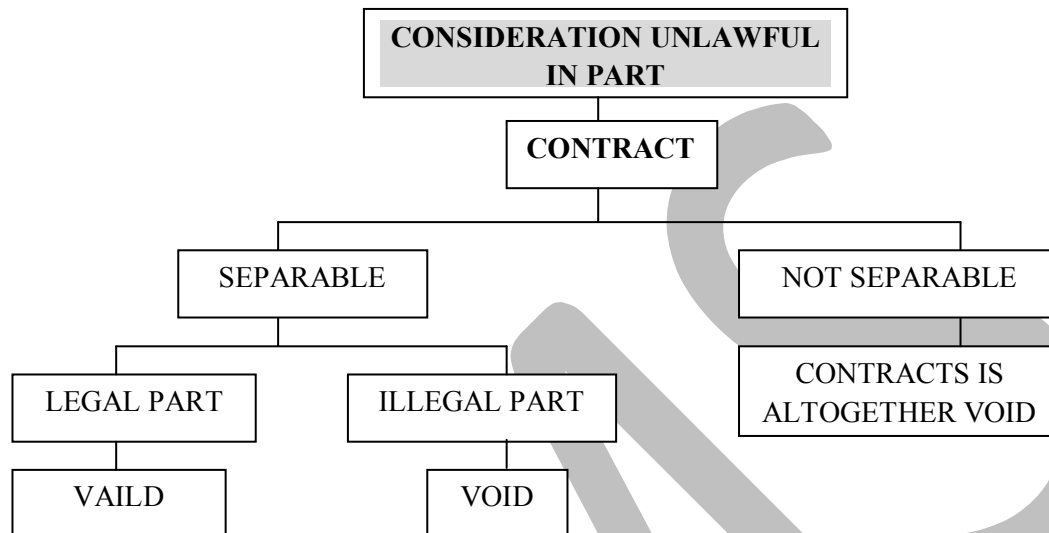
<b>A. Forbidden by law</b>	<p>Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulation or orders made in exercise of the authority conferred by the legislature.</p> <p><b>Example :-</b> A promises to drop prosecution which he has instituted against B for robbery and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.</p> <p><b>Example :-</b> A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back.</p> <p><b>Example :-</b> A license to cut the grass is given to X by forest department under Forest Act. The license provides for imposition of penalty in the event of X choosing to assign his right. However if X assigns his right, the agreement would still be valid since there is no prohibition for such assignment as the consideration stipulating penalty is only to regulate the matter of administrative measure.</p>
<b>B. Defeat the provisions of any law</b>	<p>The term 'Law' includes any legislative enactment or rule of the Hindu and Muslim Laws or any other rule for the time being in force in India.</p> <p><b>Example :-</b> Agreement in restraint of parental rights is in violation of Hindu Law.</p>
<b>C. Fraudulent</b>	<p>Where object or consideration is unlawful on ground of fraud.</p> <p><b>Example :-</b> A, B and C enter into agreement for the division among them of gains acquired or to be acquired by them for fraud. The agreement is void as its object is unlawful.</p>
<b>D. Injury to the person or property of another</b>	<p>The general term "injury" means criminal or wrongful harm. Where the object of an agreement is to cause injury to the person or property of another.</p> <p><b>Example :-</b> An agreement to print a book in violation of another's copyright is void.</p> <p><b>Example :-</b> A borrowed Rs. 1000 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once. Held, the contract was void (Ram Swaroop v. Bansi)</p>
<b>E. Immoral or opposed to the public policy</b>	<p><b>Example :-</b> Letting house to a prostitute knowingly.</p>
<p><b>Partial Illegality (Section 24) :-</b> If any part of a single consideration for one or more objects, or any one or any part of any one of several consideration for a single object, is unlawful, the agreement is void.</p> <p><b>Example :-</b> A promises to survive the business on behalf of B, a licensed manufacturer of some permissible chemicals and some contraband items. B promises to pay A a salary of Rs. 100000 per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.</p>	

## CHAPTER - 7 VOID AGREEMENTS

### 1. AGREEMENTS EXPRESSLY DECLARED VOID

Agreements by incompetent parties (Sec. 11)

Agreements with unlawful object or consideration (Sec. 23)
Agreement made under mutual mistake of fact (Sec. 20)
Agreements without consideration (Sec. 25)
Agreements in restraint of marriage, trade or legal proceedings etc.
Agreements to do impossible Acts (Sec. 56)
Example :- An agreement to discover treasure by magic is void.



### AGREEMENTS OPPOSED TO THE PUBLIC POLICY

These are the agreements which are against the moral laws of the society and contravenes any established interest of society. Following agreements are opposed to the public policy :-

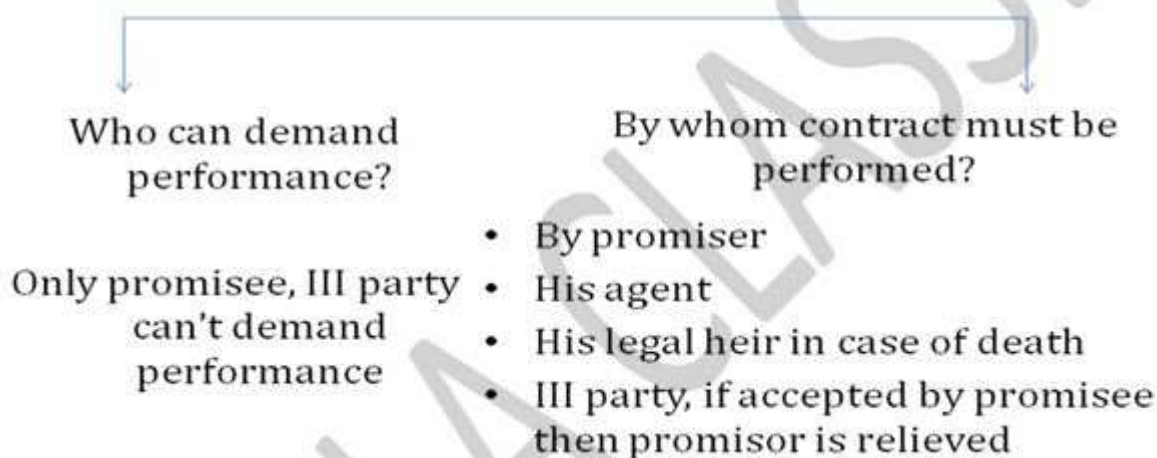
<b>(a) Trading with enemy</b>	Any trade with person owing allegiance to a Government at war with India without the license of the Government of India is void, as the object is opposed to public policy.	
<b>(b) Stifling prosecution</b>	An agreement to stifle prosecution tends to be a preservation or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony (crime). One should not convert a crime into a source of profit. Compromise of public offence is illegal . To drop uncompoundable offence without permission of court.	
	<b>Example :-</b> A knew that B has committed a crime. He obtains a promise from B to pay him Rs. 20000 in consideration of not exposing B. This is a case of stifling prosecution & therefore illegal & void.	
<b>(c) Champerty &amp; maintenance</b>	<b>Maintenance</b>	It is the promotion of litigation in which one had no interest.
	<b>Champerty</b>	It is bargain whereby one party agrees to assist the other in recovering property, with a view to sharing the profits of litigation. Example :- An agreement to give assistance (monetary or otherwise) to another person to recover the property by legal action and to share the proceeds of litigation is a champertous agreement.
<b>(c) Interference with the course of</b>	An agreement whose object is to induce any judicial officer of the state to act partially or corruptly is void.	

<b>justice</b>	
<b>(e) Marriage brokerage contracts</b>	An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. <b>Example :-</b> An agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.
<b>(f) Interest (benefit) against obligation</b>	Taking a benefit against the obligation. <b>Example :-</b> A, who is the manager of a firm, agrees to pass a contract to X if X pays to A Rs. 20000 privately; the agreement is void.
<b>(g) Sale of public office</b>	Bribe for appointment in a public office as it interfere with the appointment of a person best qualified for the service of public. An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void. An agreement to procure a public recognition like Padma Vibhushan for reward is void.
<b>(h) Agreements for creation of monopolies void</b>	Agreements having their object the establishment of monopolies are opposed to the public policy and hence void. It is also hit by MRTP Act. <b>Example :-</b> A local body granted a monopoly to A to sell vegetables in a particular locality. Held that the agreements was void.
<b>(i) Agreement in restraint of marriage</b>	Every agreement in restraint of marriage of any person, other than a minor, is void (Sec. 26) <b>Example :-</b> A promised to marry no one else except Miss B and in default pay her a sum of Rs. 100000. A married some one else and B sued A for recovery of the sum. Held, the contract was in restraint of marriage, and as such void.
<b>(j) Agreement in restraint of trade</b>	An agreement by which any person is restraint from exercising a lawful profession, trade or business of any kind, is to that extent void.
<b>Exception</b>	(i) Sale of goodwill (Within specified local limits) Reasonable (ii) An agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price is not an agreement in restraint of trade. (iii) An agreement between partners not to carry on competing business during the continuance of partnership is valid. (Section 11 of Indian Partnership Act, 1932) (iv) Agreement with outgoing partner not to carry on competing business for a reasonable time will be valid. (Section 36 of Indian Partnership Act, 1932) (vi) An agreement by a manufacturer to sell during a certain period his entire production to wholesale merchant is not in restraint of trade.
<b>(k) Agreement in restraint of legal proceedings</b>	It is one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period of starting legal proceedings. It is void.
<b>Exceptions :-</b>	Settlement of dispute through arbitration. Question already arisen or which may arise in future refer to arbitration → such a contract must be in writing.

## CHAPTER - 8 PERFORMANCE OF CONTRACT

### OVERVIEW

# Performance of Contract



### 1. PERFORMANCE OF CONTRACTS [Section 37]

The parties to a contract must either perform, or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the contract act or any other law.

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

### 2. BY WHOM CONTRACT MAY BE PERFORMED

<b>Promisor himself</b>	If there is something in the contract to show that it was intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involves the exercise of personal skill & diligence or which are founded on personal confidence between the parties must be performed by the promisor himself.
<b>Agent</b>	Where personal consideration is not the foundation of the contract, the promisor or his representative may employ a competent person to perform it.
<b>Representatives</b>	A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract, the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherited from the deceased.
<b>Third persons</b>	Where the promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
<b>Joint promisors</b>	When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them dies, the legal representatives of all of them must fulfill the promise jointly (Sec. 42).

### 4. EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE [Section 38]

When the promisor has made an offer of performance to the promisee, and the offer has not been accepted then the

promisor is not responsible for non – performance, nor does he thereby lose his rights under the contract.

**Conditions :-**

It must be unconditional

It must be made at proper time and place.

If the offer is to deliver anything to the promisee, promisee must have reasonable opportunity to check the goods.

An offer to one of the several promises will have same legal consequences as an offer to all of them.

**5. EFFECT OF REFUSAL OF PARTY TO PERFORM PROMISE [Section 39]**

When a party to a contract has refused to perform or has disabled himself from performing his promise in entirety, the promisor may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

**Rights to the aggrieved party**

- To terminate the contract.
- To indicate, by words or by conduct, that he is interested in his continuance.
- Right to claim damages.

**6. LIABILITY OF JOINT PROMISORS**

Promisee may compel any one or more of such joint promisors to perform the whole of the promise.

If one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.

If any of the joint promisors make a default in making his contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

**7. RIGHTS OF JOINT PROMISEES**

All of them jointly have right to claim performance.

If any one of joint promises dies, Survival promise + Representatives of deceased promisee.

If all of them dies. Representatives of deceased promises.

**8. TIME & PLACE FOR PERFORMANCE OF THE PROMISE**

No time specified for performance of promise, promise must be performed within reasonable time.

If promise is to be performed on a specified date but hour is not mentioned, the promisor may perform it any time during the usual hours of business, on such day.

Delivery must be made at the usual place of business.

When no place is fixed for performance of promise, it is the duty of the promisor to ask promisee to fix a reasonable place for the performance of promise.

When the promisor has not undertaken to perform the promise without an application by the promisee and the promise is to be performed on a certain day, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

**9. PERFORMANCE OF RECIPROCAL PROMISES**

<b>Reciprocal Promises</b>	When a contract consists of two promises, one being consideration for the other, such promises are called Reciprocal promises.
	<b>Example :-</b> A promises to deliver 500 quintals of rice and B promises to pay the price on delivery, the contract would consist of reciprocal promises.
<b>Simultaneous performance of Reciprocal promises</b>	Reciprocal promises may have to be performed simultaneously or one after another. <b>Example :-</b> Where A promises to deliver 500 quintals of rice and B promises to pay the price on delivery, both the promises are to be performed simultaneously.
<b>Performance of Reciprocal promises</b>	When the order of performance of the reciprocal promises is expressly fixed by the contract, they must be performed in that order.

<b>where order of performance is expressly fixed</b>	<b>Example</b> – A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B can be called upon to perform the promise to pay for it.
<b>Performance of Reciprocal promises when the order of performance is fixed by implication</b>	The order of performance may sometimes be indicated not expressly, but by the nature of the transaction. <b>Ex</b> – A promises to make over stock for B and B promises to give security for the payment of price. A's promise to make over stock need not to be performed until the security is given by B.
<b>Effect of one party preventing other from performing promise</b>	Contract become voidable Another party is entitled to claim compensation on A/c of by suffered due to non – performance.
Reciprocal promise to do certain things that are legal :- contract, and also some other things that are illegal – Void Agreement	

### 10. EFFECT OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL

Where time is essential and the party fails to perform promise at or before specified time, the contract becomes voidable at the option of the promisee.

Where time is not essential, the contract cannot be avoided on the ground that time for performance has expired. The promise is only entitled to compensation from the promisor for any loss caused by delay.

But it must be remembered that even where the time is not essential it must be performed within a reasonable time otherwise it becomes voidable at the option of the promisee.

Where time is essential, promisor fails to perform within time & promisee accept the performance, he cannot claim compensation for non –performance at time agreed unless notice of intention to claim compensation is given.

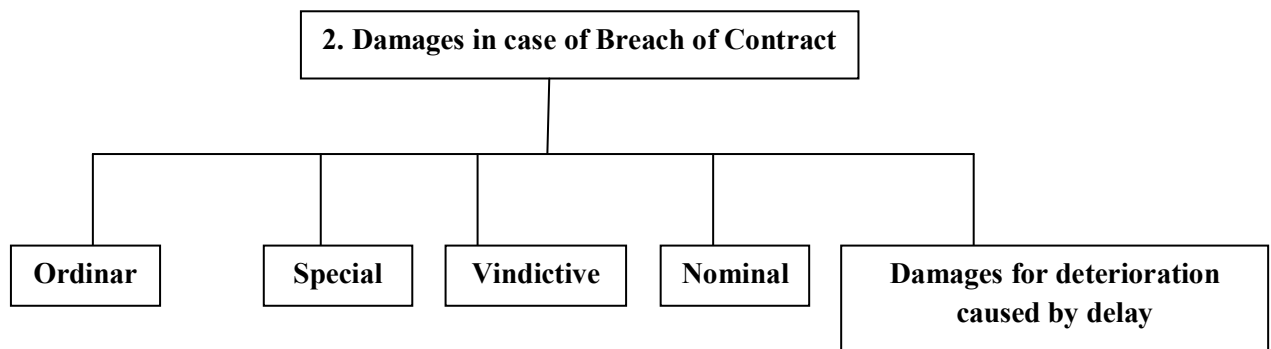
### 13. CONTRACTS WHICH NEED NOT BE PERFORMED

<b>1. Novation</b>	When parties to a contract substitute a new contract for old. On novation, old contract is discharged and consequently it need not to be performed. There may be change in parties.
<b>2. Rescission</b>	When parties to a contract agree to rescind it, the contract need not be performed. In this case, only old contract is cancelled no new contract is formed.
<b>3. Alteration</b>	Where parties to a contract agrees to alter it, the original contract is rescinded, with the remit that it need not be performed.
<b>Contract</b>	No change in parties to the Change in terms & conditions of original agreement.
<b>4. Waiver or Remit of performance by promise</b>	Promisee can dispense with performance without consideration and without a new contract or may extend the time of performance.

## CHAPTER - 9 BREACH OF CONTRACT

### 1. BREACH OF CONTRACT

ANTICIPATORY BREACH OF CONTRACT	ACTUAL BREACH OF CONTRACT
<ul style="list-style-type: none"> <li>When the promisor refuses altogether to perform his promise and signifies his unwillingness, even before the time of performance has arrived, it is called Anticipatory Breach.</li> </ul>	<ul style="list-style-type: none"> <li>Where the promisor refuses to perform promise on the scheduled date. When one of the parties breaks the contract by refusing to perform the promise when it falls due, it is Actual Breach.</li> </ul>



<b>i. Normal Damages</b>	Compensation for any loss or damage which arises naturally in the normal course of events. Ordinary damages are calculated by measuring the difference between the contract price and market price on the date of breach.
<b>ii. Special Damages</b>	Where party to a contract receives a notice of special circumstances affecting the contract, he will also liable for special damages.

**(iii) Vindictive or Exemplary Damages**



<b>(iv) Nominal Damages</b>	These damages are awarded where the plaintiff has proved that there has been breach of contract but he has not in fact suffered any real damage.
<b>(v) Damages for deterioration to goods caused by delay</b>	Damages can be recovered from the carrier even without notice. "Deterioration" not only implies physical damages but also loss of special opportunity for sale.

### 3. HOW TO CALCULATE THE DAMAGE

<b>Breach by buyer</b>	Damage = Contract price – Market price at the date of breach
<b>Breach by seller</b>	Damage = Market price at the date of Breach – Contract price

### 4. REMEDIES FOR BREACH OF CONTRACT

<b>(i) Rescission of Contract</b> Discharge from his own obligations Entitled to compensation for damages suffered
<b>(ii) Suit upon Quantum Meruit :-</b> "As much as is earned" Or "According to the quantity of work done" When the person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under contract. He may also recover the value of work done when further performance of contract become impossible. Suit for Quantum Meruit arise in three cases :- A. Work done and accepted under void contract. B. Act done or something delivered non – gratuitously, the person who enjoys the benefit must pay for it. C. Divisible Contract : One part performed & refuses to perform other part. Party in default may sue other party who has enjoyed the benefit of past performance.
<b>(iii) Suit for specific performance :-</b>

Where damages are not an adequate remedy in case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of contract.

(iv) **Suit for Injunction**

Where a party to a contract is negativating the terms of contract, the court may – be issuing an 'injunction order' restrain him from doing what he promised not to do.

## **CHAPTER - 10 QUASI CONTRACT**

### **4. QUASI CONTRACTS**

Quasi contracts are based on principle of equity, justice and good conscience.

In the case of Quasi contracts, the promisor voluntarily undertakes an obligation in favour of the promisee, or

Obligation may be imposed by law upon a person for the benefit of another even in the absence of contract.

### **5. SALIENT FEATURES OF QUASI CONTRACTS**

It does not arise from any agreement of the parties concerned, but it is imposed by law, and

It is a right which is available not against the entire world, but against a particular person/s only.

### **6. TYPES OF QUASI CONTRACTS**

<b>Claim for necessities</b>	supplied to a person incapable of contracting, the supplier is entitled to claim their price from the property of such a person. E.g. – Minor, Person of unsound mind.
<b>Right to recover money paid for another</b>	A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided that payment has been made by him to protect his own interest.
<b>Obligation of a person enjoying the benefit of non-gratuitous act</b>	<p>(a) Where a person lawfully does anything for another person or delivers anything to him.</p> <p>(b) Not intending to do so gratuitously and</p> <p>(c) Such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.</p>
<b>Responsibility of Finder of goods</b>	<p>A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as a bailee.</p> <p>To take proper care</p> <p>Not use it for personal purposes.</p> <p>Restore it to true owner, if owner is traced</p>
<b>Liability for money paid or thing delivered by mistake or under coercion</b>	A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.