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UNIT: I

Contract – Formation and essential elements of contract – Types of contract and agreements - Rules as to offer, Acceptance and Consideration – Capacity of contract – Lawful Object and Free Consent – Quasi Contract.

Meaning of Contract:

The word “**Contract**” is derived from the Latin word “**Contractum**” which means “**drawn together**”. It denotes a drawing together the minds of two or more persons to form a common intention giving rise to an agreement. To the layman, the word “**Contract**” probably means “**an agreement**” which can be enforced in the court of law.

Definition of Contract:

According to Section 2 (h) “ a contract is an agreement enforceable by Law”. It is clear from this definition that a contract must fulfil two conditions.

- i) There must be an agreement and
- ii) Such an agreement must be enforceable in a Court of law.

Sir William Anson defines a contract as “legally binding agreement made between two or more persons by which rights are acquired by one or more or forbearances on the part of the other or others”.

Sir John Salmond defines a contract as “An agreement creating and defining obligation between parties”.

Sir Fredrick Pollock , defines a contract as “every agreement and promise enforceable at law”.

Definition of agreement:

According to section 2(e) defines an agreement as “every promise and every set of promises forming the consideration for each other”

Example:

X offers to sell his bicycle to Y for Rs.700. This offer has been accepted by Y. Y’s promise to pay Rs.700 forms the consideration for X’s promise to sell the bicycle and vice versa. Consideration is the return benefit of the parties to the contract get.

Definition of Promise:

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According to Section 2(b), “a proposal when accepted becomes a promise”

Example:

A offers to sell his motorcycle to B for Rs.25,000. If A’s proposal is accepted by B, it becomes a promise.

An agreement, thus consists of a proposal or an offer by one person and its acceptance by another.

Agreement = Offer + Acceptance

Distinction between an Agreement and a Contract

Agreement	Contract
1. Agreement= Offer+ Acceptance	1. Contract = Agreement +Its Legal Enforceability
2. An agreement may create social or legal obligations.	2. A contract creates only legal obligations between the parties.
3. All agreements do not become contracts.	3. All contracts are based on agreements.

Social and Legal Obligation:

An agreement may give rise to a social obligation or a legal obligation. Those agreements that give rise to legal obligations alone are enforceable in a Court of law. All contracts, therefore, are based on agreements but all agreements do not become contracts.

In the case of a social or domestic agreement, the intention of the parties is not to make it legally binding on them and such an agreement, therefore is not enforceable in a Court of law.

Example:

i) A father promises to give Rs.20 daily as pocket money to his son. Later, he refuses to give. The son cannot take legal action against his father, as the agreement is essentially a domestic agreement and therefore, has no legal significance.

ii) A agrees to join B for lunch at a restaurant on a particular day. Due to certain reasons, A is unable to fulfill his obligation. B cannot sue A as the obligation is purely of a personal nature.

FORMATION OF CONTRACT

A Contract is an agreement which is enforceable at law. Therefore,

Contract = Agreement + Enforceability at Law

So, it is clear that ‘agreement’ is a wider term than ‘contract’ in other words all contracts are agreements; but all agreements are not contracts.

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Sections 10 of Contract Act says as follows:-

All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared to be “void”.

Section 10 of the contract act ,We can find that the following ingredients are necessary for the formation of a valid contract.They are as follows:

- 1.Agreement i.e.,offer and acceptance.
- 2.Consensus-ad-idem(identity of minds)
- 3.Lawful consideration.
- 4.Capacity of parties
- 5Free consent
- 6.Lawful object
- 7.Agreement not declared
- 8.Certainty and possibility of performance and
9. Necessary legal formalities

1. Agreement i.e., offer and acceptance

There must be a lawful proposal by one party and a lawful acceptance by the other party which results in an agreement. In other words offer and acceptance create a agreement. A proposal from one party to do a particular act and its acceptance by the other party are two essential elements of an agreement.

For example, A sends a proposal to B to purchase a scooter from B. B also accepts it. Now, it results in an agreements.

The terms of the offer and acceptance must be definite. Thus, it involves two parties, one party making the offer and the other party accepting it.

2. Consensus-ad-idem (identity of minds)

The parties to the contract must agree upon the subject matter of the contract in the same manner and in the same sense. In other words, there must be identity of minds among the parties regarding the subject matter of the contract.

For example, X, who is an owner of two cars, one is Maruthi and another is Ambassador. X expresses his willingness to sell one of his cars to Y. In the course of transaction, at the time when X makes the offer he is thinking, that he is going to sell Maruthi. On the other hand Y is thinking that he going to purchase the Ambassador.

In this example, there is no consensus-ad-idem i.e. identity of minds about the subject matter of the contract namely the cars between the parties. Hence, the contract is void. The existence of this consensus may be ascertained by the text of an offer and acceptance.

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3.Lawful Consideration

Consideration is the most important element in a contract. In every contract, the agreement must be supported by consideration. Otherwise, they are gratuitous and void. The term consideration means “**something in return**”. If one of the parties agrees to give something, he must also get something in return from the other party. Similarly, if one of the parties agrees to give up something he should get some benefit from the other party. This concept of benefit or detriment is called ‘Consideration’.

For example, Mani agrees to sell his house to Raghu for Rs.5 Lakhs and Raghu also promises to pay Rs.5 Lakhs for the house. In this example, for Mani’s promise the consideration is Rs.5 lakhs and for Raghu’s promise the consideration is the house.

Consideration need not be in cash or kind. Even it may be the form of an act or refraining from doing something. The intention of the parties, whether they create legal relationship or not can be ascertained by the presence of consideration. Without consideration there is no contract.

4.Capacity of Parties (Competency)

There must be atleast two parties for every contract. These parties must have legal capacity to enter into a contract. In another words, the parties should not suffer from any incapacities known to law. Every person who is major in age and possess sound mind is competent to enter into contracts.

A minor by virtue of his minority is incapable of entering into a contract, A person who has not completed 18 years is called as ‘**minor**’. This incapacity is due to his mental deficiency.

The position of lunatic, idiot and drunken persons etc., is also the same.

5.Free Consent

To form a contract one person must give a consent to another person. The consent obtained by one party from another must be a free consent. It should not be obtained either by force or fraudulent representation. In other words, there should not be any flaw in the consent of parties.

A is compelled to sign a promissory note in favour of B. In this case, B shows his knife and threatens, A saying that if he is not signing the pronote, he is not signing the pronote, he will be shot dead, Immediately A signs the pronote.

In this example not doubt, there is consent: but the consent is not free consent. It is obtained by some unfair meant like coercion ie., by showing the knife.

6.Lawful object

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Both consideration and object of contract must be lawful, it must not be illegal, immoral or opposed to public policy.

Example:

1. A enters into an agreement with B to supply certain prohibited goods. Such an agreement is void, as its object is illegal.
2. M lets out his house knowingly to a prostitute who has promised a big amount as monthly rent. Such an agreement is illegal as its object is against the morals of the society.

7. Agreement not declared void

The agreement between the parties must not have been declared void expressly by any law in force in the country. For example, under the Indian Contract Act, an agreement in restraint of marriage or an agreement in restraint of trade is void.

8. Terms of the Agreement must be certain:

The terms of the agreement must be clear, precise and certain. If the terms are vague or ambiguous, the agreement cannot be enforced.

Example:

There is an agreement between R, a supplier of milk products, and S, a trader, by which the former would supply to the latter milk products worth Rs.200 daily. What is not clear in this agreement is the type of milk products to be supplied by R, i.e., milk, buttermilk, curd, butter etc., and the quantity in respect of each. The agreement, therefore, is not enforceable.

9. Possibility of performance:

What is undertaken by the parties to an agreement must be such that it can be performed. An agreement to do an impossible act cannot be enforced.

Examples:

- i) A agrees to prove that two parallel lines can meet if B pays him Rs.10,000. Such an agreement is incapable of being carried out and is, therefore, void.
- ii) G agrees to turn iron into gold if H pays him Rs.1 lakh. An agreement such as this cannot be enforced in a Court of law.

10. Legal Formalities:

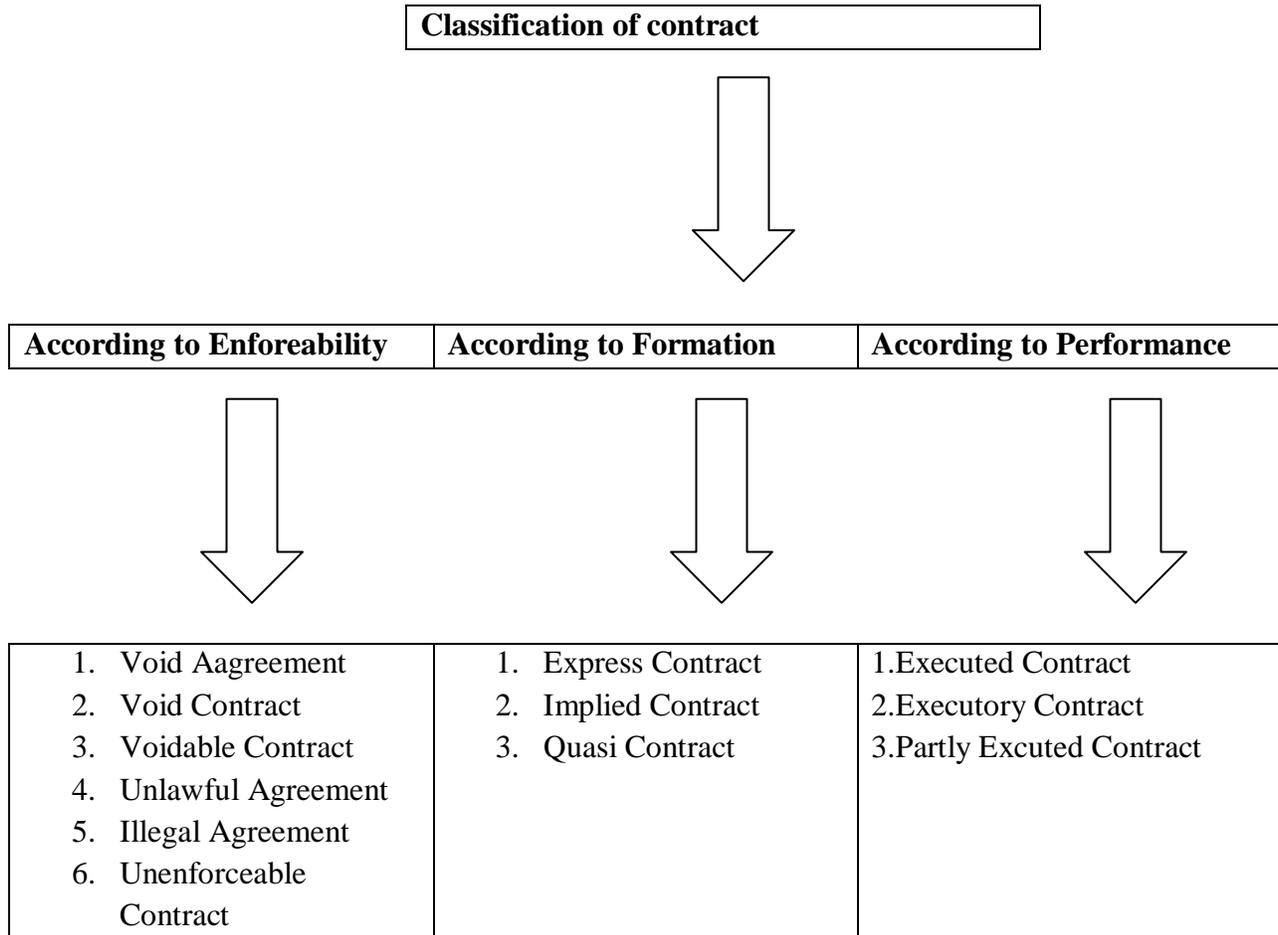
For a contract to be enforceable in a Court of law, it must comply with the necessary legal formalities as to writing, stamp duty, registration, certification, witness etc.,

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A contract will be a valid contract only when all the essential elements mentioned above are present in it.

CLASSIFICATION OF CONTRACT

Contracts may be classified as shown in the following chart



CLASSIFICATION ACCORDING TO ENFOREABILITY

Based on enforceability, contracts are classified as follows:

1.Void Agreement:

According to Section2(g) , “ An agreement not enforceable by law is said to be void”. A void agreement is void “ab initio” (A Latin phrase the meaning of which is “From the Beginning”). At no stage can such an agreement be enforced.

Examples:

- i) An agreement with a minor (aperson whose age is below 18 years)

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- ii) An agreement with a person of unsound mind
- iii) An agreement without consideration (return benefit) – subject to certain exceptions.

2. Void Contract:

“ A contract which ceases to be enforceable by law become void when it ceases to be enforceable “. Section 2(i), A contract may be valid at the time when it is entered into. But due to certain subsequent happenings it may become void.

Examples:

- i) P agrees to marry Q’s daughter. But before marriage P dies. A valid contract , thus, has become void.
- ii) M enters into a contract with N, who is in a foreign country, to import certain goods. This is a valid contract. Such a contract becomes void when a war breaks out between the country of import and the country of exports.

When a contract becomes void, the party who has received any benefit under it must restore it to the party from whom he has got the benefit. The restoration of benefit is called “Restitution”.

Example:

P agrees to sell his cycle to Q and receives from him Rs.100 as advance. Before the sale is effected, the cycle is lost. The contract becomes void and P shall return the advance money.

3. Voidable Contract:

Section 2(i) defines a voidable contract as “an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others”. A contract is a voidable contract when the consent or willingness of one party has been obtained by the other by such unfair means as coercion (act of threatening), undue influence, fraud etc.,

The affected party (the aggrieved or the plaintiff) may avoid such a contract within a reasonable time. He, however, has the burden of proof (onus of proof) to establish that his consent has been obtained forcibly. Until, avoided (rescinded or repudiated) by the affected party, a voidable contract remains valid.

Example:

(i).X at knife-point obtains Y’s consent(by coercion) for the sale of the latter’s house worth Rs.15lakhs. Y can avoid the contract by applying to the Court for relief but should be able to prove that his consent has been obtained by using force.

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The affected party in a voidable contract has to exercise his 'right to avoid' within a reasonable time failing which he will lose such a right.

Example:

X at knife-point obtains Y's consent for the sale of the latter's motorcycle for a low price. Y does not exercise his right to avoid within a reasonable time and X manages to sell the motorcycle to Z who buys it in good faith. Y loses his right to avoid.

Distinction between a Void Contract and a Voidable Contract

Void Contract	Void Contract
1.A void contract was valid when it was made. Due to subsequent happenings, it has become void, i.e., unenforceable.	1.A voidable contract is valid until it is avoided or rescinded by the affected party. Such a party, however, has to avoid it within a reasonable time.
2.Something beyond the control of the party makes a valid contract void, e.g., change of law, destruction of the subject matter etc.,	2.A contract is a voidable contract when the element of free consent is missing.
3.A void contract cannot be enforced by either party.	3.A voidable contract is valid until it is avoided by the affected party.
4.The question of a third party acquiring rights does not arise.	4.There is scope for a third party to acquire rights over what has been obtained under a voidable contract.
5.There is no question of payment of damages (Compensation) to anyone under a void contract.	5.The affected party can claim damages.

5. Unlawful Agreement:

An unlawful agreement is one that is not approved by law on some ground of public policy. Such an agreement is void from the very beginning (void ab initio) and, therefore, is not enforceable in a Court of law.

Examples:

- i) An agreement in restraint of marriage, i.e., an agreement that restricts a person's right to choose his/her life partner. There is an agreement between X and Y by which X's daughter will marry Y's son. Such an agreement is unlawful and, therefore, not enforceable.
- ii) An agreement in restraint of trade, i.e., an agreement that restricts a person's right to choose his/her profession or occupation. An agreement between P and Q that P's son will work in Q's concern is a void agreement.

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5. Illegal Agreement:

An agreement is illegal if the activities of the parties to it:

- a) Involve the commission of a crime: or
- b) Violate basic public policy ; or
- c) Are immoral in nature.

Such an agreement is void, ie., cannot be enforced in a Court of law.

Example:

- i) A employs B to kill C and promises B a sum of Rs. 10,000 for doing the job. If B kills C, he cannot claim payment from A and if A has already paid the amount and B does not kill C, A cannot recover the amount.

Other Examples:

- ii) Giving bribe to an official for a favour
- iii) Letting out one's house knowingly to a prostitute.

The collateral (secondary or contributory) transactions to an illegal agreement also become illegal and, therefore, void.

Example:

A employs B to kill C and agrees to pay B Rs. 10,000 for doing the job. A borrows the amount from D who is aware of the purpose for which it is going to be used. The agreement between A and D is collateral to the main agreement between A and B. As the main agreement is illegal the collateral agreement also becomes illegal.

Distinction between an Unlawful Agreement and an Illegal Agreement

Unlawful Agreement	Illegal Agreement
1. Unlawful acts (e.g., restricting a person's right to choose his job or life partner) are simply not approved by law. They do not result in the commission of a crime.	1. Illegal acts (e.g., bribing) result in the commission of a crime.
2. What is unlawful need not be illegal	2. What is illegal is always unlawful.
	3.
3. As no crime is committed, the party to the agreement is not awarded punishment.	4. As an illegal act results in the commission of a crime, punishment is awarded.

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6.Unenforceable Contract:

Sometimes a contract may become unenforceable owing to certain technical defects in it.

Examples:

- i) Where a party to a written contract has not given his/her signature.
- ii) Absence of certification by a Notary public or some other authority where such certification is necessary.
- iii) Deficit in stamp duty etc.,

CLASSIFICATION ACCORDING TO FORMATION

Based on the mode of formation, contracts may be classified as follows:

1. **Express Contract:** An express contract is one that is entered into by the parties by words – spoken or written. Usually it will be in a written form.

Example:

X offers to sell his house to Y for Rs.15 lakhs. Y accepts X's offer and they both sign the sale agreement prepared on a stamp paper of the appropriate value and is duly signed by the witnesses. This result in a contract between X and Y.

2.Implied Contract:

An implied contract does not arise out of express promise by the parties but is inferred from their acts or from the circumstances of a particular case.

Examples:

- i) The offer by a cinema theatre (to screen a film) and its acceptance by a movie-goer (by buying the ticket) is always the result of an implied contract.
- ii) There is always an implied offer by a bus transport company to carry a passenger to a particular place and an implied acceptance by the passenger by buying the ticket.

3.Quasi-Contract:

A quasi- contract is not actually entered into by the parties but is something imposed on a party by law. It is based on the principle that a person shall not be allowed to enjoy certain benefits unreasonably at the cost of another.

Examples: A pays B's electricity bill when the latter is not in station to avoid disconnection. B is under a quasi-contractual obligation to return the money to A.

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- i) Certain goods meant for A have been delivered by mistake by a trader to B. B consumes the goods. He is under a quasi-contractual obligation to pay the price to the trader.

CLASSIFICATION ACCORDING TO PERFORMANCE

Based on the extent of performance, contracts may be classified as:

1. **Executed Contract:** A contract is said to be executed when both the parties to it fulfil their respective obligations.

Example:

X, a carpenter, agrees to make a table for Y a sum of Rs.2,000. The contract becomes executed the moment X makes the table and Y pays the agreed sum.

2. **Executory Contract:** An executory contract is one in which both the parties are yet to fulfil their respective obligations.

Example:

L agrees to sell his wristwatch to M for Rs.500. The contract is an executory contract until L handsover the watch to M and M pays the agreed amount.

- 3.**Partly Executed Contract:** It is a contract in which one party has already fulfilled his obligation and the other is yet to fulfil his obligation.

Example:

A departmental store supplies goods to a customer who pays by credit card. Thus, although the departmental store has fulfilled its obligation, the customer's obligation is fulfilled only upon the realisation of his payment.

OFFER AND ACCEPTANCE

<p style="text-align: center;">Contract = Agreement+ its enforceability</p> <p style="text-align: center;">Agreement= Offer+Acceptance</p>
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This chapter focuses attention on Offer and Acceptance.

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OFFER

An 'offer' is also known as a 'proposal'. According to Section 2(a), "when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

The following points emerge out of the above definition of offer:

1. There is an offer only when a person conveys his willingness to another and not to himself.
2. The willingness may be to do or not to do (abstain from doing) a thing.

Example:

- i) E wants to sell his scooter to F for Rs. 20,000. The willingness of E to sell becomes an offer.
3. The person conveying his willingness must aim at getting the consent (assent) of the other to the proposal.

Example:

A, who is frustrated about the performance of his car, tells B, "I am even prepared to sell it for Re.1". The statement of A does not constitute an offer as it is not made with a view to getting the consent of B.

The person making the offer or proposal is called the 'Offeror', 'Promisor' or 'Proposer'. The person to whom the offer is made is called the 'Offeree' or 'Proposee'.

When the offer is accepted, the offeree will be called the 'Promisee' or the 'Acceptor'.

TYPES OF OFFER

Offer may be of the following types:

1. Express Offer
2. Implied Offer
3. Specific Offer
4. General Offer
5. Cross Offer
6. Counter – Offer
7. Standing Offer

Express Offer

An offer made by express words- spoken or written is known as express offer.

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Examples:

- i) P tells Q “Will you buy my cycle for Rs. 700?”
- ii) R writes to S “ I want to sell my car for Rs.lakhs”,

Implied Offer

An offer that is to be inferred or understood from the conduct of the parties or the circumstances of each particular case is known as implied offer.

Examples:

- i) The offer by a cinema theatre to screen films is always an implied offer.
- ii) The offer by a bus transport company to carry passengers is also an implied offer.

Specific Offer

An offer made to a specific person or group is known as a specific offer.

Examples:

- i) An offer by X, a very close friend of Y, to sell his bike to the latter for Rs.10,000 is a specific offer.Y and nobody else can accept the offer.

General offer

When an offer is made to the world at large ,it is known as a general offer.Any member of the public who is aware of such an offer may accept it.

Example

X offers a reward of Rs.50,000 to anyone who traces out his missing son.Y ,who is aware of the offer,finds the boy.He can claim the reward.

Cross offer

Cross offer take place when two persons make identical offers to each other with respect to the same subject matter and without knowing the intension of the offer.

Example

A, by a letter,offers to sell his car to B. Without knowing A’s intention to sell and before receiving his letter,B too writes to A expressing his willingness to buy A’s car.tThus both A and B have only made an identical offer and neither of them has given acceptance.It is ,therefore ,clear that there is no binding contract between them.

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Counter offer

It takes place when the person to whom the offer is made, instead of accepting the terms of the offeror, desires modification of the same.

Example

X offers his motorcycle to Y for Rs.30,000 and wants Y to pay the full amount within two days. Y wants the motorcycle for Rs.20,000 and also two weeks time to pay. There is no acceptance of the offer by Y and it only amounts to a counter offer.

Standing offer

A standing offer is of a continuous nature. It is not restricted to a single transaction. It applies to a series of future transactions.

Example

X, an edible oil merchant, offers to supply edible oils to a hotel as and when required for the next two years. The offer by X is a standing offer.

Important rules relating to an offer, as provided in the Indian contract act, 1872 are listed below:

LEGAL RULES RELATING TO OFFER:

(1) An offer must be capable of creating legal relations:

An offer must be such that when accepted it will result in a **valid contract**. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

Example:

An offer by a father to give pocket money to his son or an offer to join a friend for dinner at a hotel on a particular day, even when accepted, cannot be legally binding. Such offers have no legal significance.

(2) The offer must be distinguished from mere statement of intention:

The terms of an offer should be clear so that there is no confusion whether; it is a valid offer or a mere statement of intention. Sometimes, a person declares that he has the intention to do something; this does not amount to an offer.

Such statements merely indicate the intentions that an offer will be made in future or an offer will be invited in future.

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(3) The offer must be distinguished from an invitation to receive offer:

The terms of an offer should be clear so that there is no confusion whether it is a valid offer or an invitation to receive offer. Sometimes, a party does not make an offer but simply proposes certain terms and invites the other party to make an offer on proposed terms.

(4) An offer may be express or implied:

An express offer is made by words of mouth or it is written, while an implied offer means an offer made by conduct.

(5) An offer may be general or specific:

A specific offer is one which is made to an ascertained person. And a general offer is one which is not made to a specific person, but to the public at large. It may be noted that in case of a general offer, the contract is not made with the entire world.

But it is made only with the person, who having the knowledge of the offer, comes forward and acts according to the conditions of the offer.

(6) An offer may be conditional:

An offer to be valid may contain a condition and in that case it has to be accepted along with the condition stated therein. However, no offer can contain a term or condition the non compliance of which would amount to acceptance.

(7) The terms of an offer must be certain, definite and not vague:

The terms of an offer must be definite, clear and certain. If the terms of the offer are vague and uncertain, no contract will come into existence.

The reason for the same is that when the offer is vague or uncertain, it cannot be said what exactly the parties intended to do.

(8) An offer must be communicated to the other party:

It is an important and essential element of a valid offer. The first part of the definition of the offer emphasises this requirement. According to this, the willingness to make offer should be 'signified' (i.e. indicated or declared).

In other words, the offer is completed only when it has been communicated to the offeree. It may be noted that until the offer is communicated, it cannot be accepted.

Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

(9) The offer must be made with a view to obtain the consent of the offeree:

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The second part of the definition of offer emphasises the requirement that an offer must be made with a view to obtain the consent of the offeree to the proposed act or abstinence.

Thus, when a person is making an offer it means that he is making it with a view to obtain the consent of the offeree. As soon as the offeree accepts it, the offeror is bound by it.

ACCEPTANCE.

The Indian Contract Act 1872 **defines acceptance** in Section 2 (b) as “When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be **accepted**. ... An offer does not create any **legal** obligations, but after the offer is **accepted** it becomes a promise.

Acceptance can be ‘express’ or ‘implied’. It is express when it is made by words spoken or written. It is implied when it is to be understood from the circumstances or the conduct of the parties.

Example:

Purchase of ticket by a passenger boarding a bus indicates his implied acceptance of the offer (also an implied one) of the bus transport company to take him to his place of destination.

Seven important legal rules regarding to a valid acceptance

1. Acceptance must be given only by the person to whom the offer is made:

An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract; it cannot be accepted by another person without the consent of the offeror.

The rule of law is clear that “if you propose to make a contract with/1, then B can’t substitute himself for A without your consent.” An offer made to a particular person can be validly accepted by him alone.

Similarly an offer made to a class of persons (i.e., teachers) can be accepted by any member of that class. An offer made to the world at large can be accepted by any person who has knowledge of the existence of the offer.

Illustration:

A sold his business to his manager B without disclosing the fact to his customers. C, a customer, who had a running account with A, sent an order for the supply of goods to A by name. B received the order and executed the same. C refused to pay the price.

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It was held that there was no contract between B and C because C never made any offer to B and as such C was not liable to pay the price to B (Boulton vs Jones).

2. Acceptance must be absolute and unqualified [Sec. 7(1)]:

In order to be legally effective it must be an absolute and unqualified acceptance of all the terms of the offer. Even the slightest deviation from the terms of the offer makes the acceptance invalid. In effect a deviated acceptance is regarded as a counter offer in law.

Illustration:

L offered to M his scooter for Rs 4,000. M accepted the offer and tendered Rs 3,900 cash down, promising to pay the balance of Rs 100 by the evening. There is no contract, as the acceptance was not absolute and unqualified.

3. Acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted:

If the offeror prescribes no mode of acceptance, the acceptance must be communicated according to some usual and reasonable mode. The usual modes of communication are by word of mouth, by post and by conduct.

When acceptance is given by words spoken or written or by post or telegram, it is called an express acceptance. When acceptance is given by conduct, it is called an implied or tacit acceptance.

Implied acceptance may be given either by doing some required act, for example, tracing the lost goods for the announced reward, or by accepting some benefit or service, for example, stepping in a public bus by a passenger.

If the offeror prescribes a mode of acceptance, the acceptance given accordingly will no doubt be a valid acceptance, even if the prescribed mode is funny. Thus, if an offeror prescribes lighting a match as a mode of acceptance and the offeree accordingly lights the match, the acceptance is effective and complete.

But what happens if the offeree deviates from the prescribed mode? The answer to this query is given in Section 7(2) itself which states that in cases of deviated acceptances “the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the (deviated) acceptance.”

Illustration:

If the offeror prescribes ‘acceptance by telegram’ and the offeree sends acceptance through a messenger, there is no acceptance of the offer, if the offeror informs the offeree that the

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acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

It should be noted that law does not allow an offeror to prescribe 'silence' as the mode of acceptance. Thus, a person cannot say that if within a certain time acceptance is not communicated the offer would be considered as accepted.

Similarly, a trader who, of his own without receiving any order, sends goods to some person with a letter saying "If I do not hear from you by the next Monday, I shall presume that you have bought the goods," cannot impose a contract on the unwilling recipient.

It is so because in the absence of such a rule the offerees will be at the mercy of offerors, unless they reply all such offers in negative which will certainly be causing a lot of inconvenience and financial burden to them.

Mental acceptance ineffectual:

Mental acceptance or quiet assent not evidenced by words or conduct does not amount to a valid acceptance; and this is so even where the offeror has said that such a mode of acceptance will suffice. Acceptance must be communicated to the offeror, otherwise it has no effect.

Illustration:

A person received an offer by letter. In reply he wrote a letter of acceptance, put the letter in his drawer and forgot all about it. Held, this uncommunicated acceptance did not amount to acceptance and so did not complete the contract (Brogden vs Metropolitan Rly. Co).

4. Acceptance must be communicated by the acceptor:

For an acceptance to be valid, it must not only be made by the offeree but must also be communicated by, or with the authority of, the offeree (or acceptor) to the offeror.

Illustration:

In Powell vs Lee, P was a candidate for the post of headmaster in a school. The managing committee of the school passed a resolution selecting him for the post. A member of the managing committee, acting in his individual capacity, informed P that he had been selected, but P received no other intimation.

Subsequently, the resolution was cancelled, and P was not appointed to the post. P filed a suit against the Committee for breach of contract. The Court held that in the absence of an authorised communication from the Committee there was no binding contract.

5. Acceptance must be given within a reasonable time and before the offer lapses and or is revoked:

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To be legally effective acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within a reasonable time because an offer cannot be kept open indefinitely (Shree Jay a Mahal Cooperative Housing Society vs Zenith Chemical Works Pvt. Ltd.).

Again, the acceptance must be given before the offer is revoked or lapses by reason of offeree's knowledge of the death or insanity of the offeror.

6. Acceptance must succeed the offer:

Acceptance must be given after receiving the offer. It should not precede the offer. In a company shares were allotted to a person who had not applied for them. Subsequently he applied for shares being unaware of the previous allotment. It was held that the allotment of shares previous to the application was invalid.

7. Rejected offers can be accepted only, if renewed:

Offer once rejected cannot be accepted again unless a fresh offer is made (Hyde vs Wrench).

REVOCAION OF OFFER AND ACCEPTANCE

Revocation of an **offer** means its withdrawal by the offeror. An **offer** may be **revoked** at any time before the offeree accepts it. **Revocation** of an **offer** after **acceptance** will be ineffective. If it is to be effective, it must be communicated before the dispatch of the letter of **acceptance**.

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Example:

M, by a letter posted on 1st June, offers to sell his car to N for Rs.2 Lakhs. The letter reaches N on 3rd. N accepts the offers by a letter posted on 5th. The letter reaches M on 7th.

M may withdraw his offer at any time before 5th but not afterwards. Similarly, N may withdraw his acceptance at any time before 7th but not afterwards.

Methods of an offer will lapse or come to an end under the following circumstances:

1. By a Notice of revocation:

The proposer may, by sending a notice of revocation to the offeree, withdraw the proposal. But the notice of revocation must reach the offeree before he conveys his acceptance.

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2.By the lapse of time:

The proposal stands revoked if it is not accepted within the time specified. If no time is specified, the offer shall lapse on the expiry of a reasonable time.

3.By the failure of the acceptor to fulfil a condition precedent to acceptance:

Example:

S agrees to sell his bicycle to B for Rs.400 upon the condition that B makes full payment within a day. B fails to pay the amount. The offer stands revoked.

4.By the death or insanity of the proposer:

The offer stands revoked if the fact of death or insanity of the proposer comes to the knowledge of the acceptor before acceptance.

5.By a Counter – Offer:

If the acceptor, instead of accepting the terms of the offeror in full, seeks certain modifications and amendments in the terms, it amounts to a counter- offer. The original offer, in such a case, will lapse.

6.By the offeree not giving his acceptance as per the prescribed mode:

When the offeree fails to accept the proposal as per the prescribed mode , the offeror can revoke the offer not by keeping quiet but by informing the offeree about the same.

7. Change of Law or Destruction of the Subject-matter:

Example:

i) .An offer to make a bulk purchase of lottery tickets comes to an end the moment the Government imposes a ban on lotteries.

ii).P offers to sell his scooter to Q for Rs.10,000. The offer will come to an end if the scooter is completely damaged in an accident.

8.By the rejection of the offer by the offeree:

An offer comes to an end once it is rejected by the offeree. Rejection of offer may be ‘express’ or ‘ implied’

CONSIDERATION

‘**Quid Pro Quo**’ is a Latin phrase the meaning of which is ‘**something in return**’. A party to an agreement who promises to do something must gain something in return.

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According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as follows:

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee.”

According to Section 2(d) of the Indian Contract Act, 1872, the following features are essential for a valid consideration:

(i) Consideration must move at the desire of the promisor

Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration.

Peter is going back home from work. On his way, he sees that his neighbor John's house is on fire. He immediately arranges for a water hose and manages to douse the fire. Peter cannot claim any reward for his effort because it was a voluntary act and was not done at the desire of John (promisor).

(ii) Consideration may move from the promisee to any other person

If you look at the definition of consideration according to section 2 (d) of the Indian Contract Act, 1872, it explicitly states the phrase ‘promisee or any other person...’ This essentially means that in India, consideration may move from the promisee to any other person. However, it is important to note that there can be a stranger to consideration but not a stranger to the contract.

Peter gifted his son, Oliver an apartment in the city with a condition that he pays a fixed amount of money to his uncle, John, every year. On the same day, Oliver executed a deed to pay a fixed amount of money to John every year. However, Oliver failed to pay and John filed a suit for recovery. Oliver pleaded that he was not liable since no consideration had moved from John. However, the court held the words ‘promisee or any other person...’ and allowed John to maintain his suit for recovery.

(iii) It can be in the past, present or future

a. Past

Since consideration is the price of a promise, it is normally given to induce the promise. However, it can be given before the promise is made by the promisor. This is past consideration. It is important

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to note that past consideration is not considered for a new promise since it is not been given in lieu of the promise. According to Indian law, 'past considerations' is 'good consideration' if it was given at the desire of the promisor.

Peter employs John to work on his field during the months of agricultural harvesting. He promises to pay John an amount of Rs 5,000 for his services when he sows the new crop in the fields. The services of John in the past constitute a valid consideration.

a.1. Past Voluntary services

At times, a person might render voluntary services without any request or promise from another. If the person receiving the services makes a subsequent promise to pay for the services, then such a promise is enforceable in India under Section 25(2) of the Indian Contract Act, 1872 which states:

‘An agreement made without consideration is void, unless it’s a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.’

Peter finds John’s wallet on the road. He returns it to him and John promises to pay Peter Rs 500 for his services. This is a valid contract.

b. Present

If the promise and consideration take place simultaneously then it is present or executed consideration. An example is Peter goes to a shop, buys a bag of chips and pays for the same on-spot.

c. Future

When the consideration for a promise moves after the contract is formed, it is a future or executor. It is also valid if it depends on the condition.

Peter promises to create architectural plans for John’s new house. John promises to pay Peter an amount of Rs 50,000 provided the plans are approved by his wife.

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(iv) It must have value in the eyes of the law

While the law allows the parties to decide an 'adequate' consideration for them, it must be real and have value in the eyes of law. While the Court will not consider inadequacy, it will look at it to determine if the consent was given by the party with free-will or not.

Peter's wife agrees to withdraw the suit she has filed against him in return for his promise to pay her a monthly maintenance amount. This is a good consideration and holds value in the eyes of law.

(v) It should be over and above the Promisors' existing obligations

If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.

Peter receives a summons from the Court to appear before it as a witness for John. John promises to pay him Rs 10,000 to appear in the Court. This contract is not valid because Peter is obligated by law to appear in the Court on receiving a summons.

(vi) It cannot be Unlawful

A consideration that is against the law or public policies is not valid.

Peter offers Rs 10,000 to John to beat up his business rival. John beats him up but Peter refuses to pay him. John cannot file a suit for recovery since the consideration is against the law.

A Contract Without Consideration is Void- Exceptions

Consideration is one of the most essential element to constitute a contract. Consideration means "something in return". It is the price paid for the Contract. Section 2(d) of the Indian Contract Act, 1872 defines Consideration as "when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

The General rule is that an Agreement without Consideration is Void. Section 25 of the Indian Contract Act, 1872 deal with the exception to this rule. In such cases, the agreements are enforceable even though they are made without considerations. These cases are as follows:

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1) Love and Affection

According to Section 25(1) of the said Act, where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, it is enforceable even if there is no consideration,

Example :

A, for natural love and affection, promises to give his son, B, \$ 1,000. A puts his promise to B into writing and registers it. This is a contract.

2) Compensation for Voluntary services

According to Section 25(2), A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration.

Example :

(i) A finds B's purse and gives it to him. B promises to give A \$ 50. This is a contract.

(ii) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

3) Promises to pay a time barred debt

A promise made by a debtor to pay a time barred debt is enforceable provided it is made it is made in writing and signed by the debtor or by his agent generally or specially authorized in that behalf. The promise may be to pay the whole or any part of the debt. The debt must be such "of which the creditor might have enforced payment but for the law for the limitation of suits," such an agreement is a contract.

Example :

A owes B \$ 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B \$ 500 on account of the debt. This is a contract.

4) Completed Gift

According to Section 25 Exception 1 "No Consideration, no Contract does not apply to Completed Gifts.

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5) Agency - According to Section 185 of the Indian Contract Act 1872, No consideration is necessary to create an agency.

STRANGER TO A CONTRACT

The expression “Privity of **Contract**” is a doctrine, which means **stranger** to a **contract**. It means that a person, who is not a party to the **contract**, cannot sue for carrying out the promise made by the parties to the **contract**. That is, a person who is not a party to the **contract** cannot enforce a **contract**.

Example:

If X makes a promise to deliver goods to Y. Then in this case, if X breaches the contract then only Y has a right to prosecute him and no other person can prosecute him. But this general rule has certain exceptions.

EXCEPTIONS TO THE RULE-“CONTRACT WITHOUT CONSIDERATION IS VOID

There are, certain exceptions to the rule of privity of contract recognized both by the English Law and the Indian Law, under which a person, who is not a party to a contract can sue on it. The exceptions to the rule are:

1.Trust or charge. 2.Family Settlement. 3.Assignment of a Contract. 4.Acknowledgement of payment or Estoppel. 5.Aggrement affecting the Land. 6.Contract through an agent or agency. 7.Holder in due course.

1.Trust or charge

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract. This concept of a beneficiary under a contract has been highlighted in the case of Muhammad Khan v. Husaini Begum.

Example: Ivan's father had an illegitimate son, Nadan. Before he died, he put Ivan in possession of his estate with a condition that Ivan would pay Nadan an amount of Rs 10,00,000 and transfer half of the estate in Nadan's name, once he becomes 18 years old.

After attaining that age when Nadan didn't receive the money and asked Ivan about it, he denied giving him his share. Nadan filed a suit for recovery. The Court held that a trust was formed with Nadan as the beneficiary for a certain amount and share of the estate. Hence, Nadan had the right to sue upon the contract between Ivan and his father, even though he was not a party to it.

2.Family settlement

There can be agreement made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of some person. In such cases, a person, for whose benefit the provision is made, can enforce the agreement though he is not a party to it.

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Example:

Ravi promised Indira's father that he would marry Indira else would pay Rs 80,000 as damages. Eventually, he married someone else, thereby breaching the contract. Indira filed a case against Ravi which was held by the Court since the contract was a family arrangement with Indira as the beneficiary.

Radhika was living in a Hindu Undivided Family (HUF). The family had made a provision for her marriage. Eventually, the family went through a partition and Radhika filed a suit to claim her marriage expenses. The Court held the case because Radhika was the beneficiary of the provision despite being a stranger to the contract .

3. Assignment of a contract

The assignee of a debt or an actionable claim may sue the original debtor if the assignment is a legal one. If the benefits under the contract are assigned to the third party, the assignee can sue.

Example : Krishnan Lal Sahu Vs. Promila Bala, A.I.R (1928) 518 cal. In this case, Court held that "the assignee of rights and benefits under a contract not involving personal skill can enforce the contract subject to the equities between the original parties.

4. Acknowledgement of payment or Estoppel

Sometimes, one of the parties to a contract acknowledges the payment to a third party or otherwise constitutes himself as an agent of the third party. In such cases, the party incurs a binding obligation towards the third party who can enforce it. And if that party acknowledges the payment to the third person or constitutes himself as an agent of that third person, then the third person can recover the amount from such a party.

Example: Aby gives Rs 1,000 to Jose to pay Anu. Jose acknowledges the receipt of funds to be paid to Anu. However, he fails to pay him. Anu can sue Jose for recovery of the amount.

5 Agreement affecting the Land

If a certain land is purchased by somebody with the notice of rights and obligations of the owner towards that property, then those rights and obligations shall bind the purchaser although he was not a party to the agreement. This exception was created in the case of Tulk vs. Moxhay, 1919.

6. Contract through an agent or Agency

This exception is more like that of acknowledgement of payment. In a contract of Agency, a person appoints another person to act on his behalf with a third party. The person who appoints another person is called 'Principal' and the person, who is appointed is called 'Agent'. When an agent enters into a contract on behalf of the principal, the principal can enforce the contract.(here Principal is a stranger to the Contract; the agent and other parties are parties to the Contract.

7. Holder in due course

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A holder in due course of a negotiable instrument is one who has obtained the negotiable instrument in good faith and for valuable consideration. He can sue prior parties to the negotiable instrument.

Conclusion

The general rule states that only parties to contract can sue each other and no stranger is allowed to enter between the parties to sue. But with the development of time, the law has also developed and now even a stranger is permitted to sue to safeguard his interest under exceptional circumstances.

PERSONS INCOMPETENT TO CONTRACT

An agreement becomes a contract only when the parties to it are competent to contract.i.e., capable of entering into a contract.

Capacity to Contract

According to Section 11, *“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”*

So, we have three main aspects:

1. Attaining the age of majority
2. Being of sound mind
3. Not disqualified from entering into a contract by any law that he is subject

MINOR

A minor is a person who has not completed his eighteen years of age(section 3 of the Indian Majority Act,1875). He is under the care of his parents who are called “natural guardians”.

If the parents of the minor are not alive ,the court will appoint a guardian for him. In such a case ,the minor will majority only at the age of 21.

RULES REGARDING MINOR’S AGREEMENTS

A minor’s agreement being void is wholly devoid of all effects. When there is no contract there should be no contractual obligation on either side.

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1. An agreement with or by minor is void

Section 10 of the Indian Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not a competent. BUt either section makes it clear whether the contract entered into by a minor is void or voidable. Till 1903, court in india wee not unanimous on this point the privy council made it perfectly clear that a minor is not competent to a contract and that a contract by minor is void *ab initio*.

The leading case is:

MOHRI BIBI V. DHARMO DAS GHOSE (1903)

“A minor borrowed Rs. 20000 from B and as a security for the same executed a mortgage in his favor. *He became a major a few months later and filled a suit for the declaration that the mortgage executed by him during his majority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to replacement of money.*

2. No ratification

An agreement with the minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent authorize an act cannot give it validity by ratifying.

But If on becoming major, minor makes a new a new promise for fresh consideration, then this new promise will be binding.

3. Minor can be a promise or beneficiary

If a contract is beneficiary to a minor it can be enforced by him. Their is no restriction on a minor from bring a beneficiary, for example, being a payee or a promisee in a contract. Thus a minor is capable of purchasing immovable property and he may sue to recover the possession of the property upon tender of the purchase money. Similarly a minor in whose favor a promissory note has been executed can enforce it.

4. No estoppel against a minor

Where a minor by misrepresenting his age has induced the other party enter into a contract with him, he cannot be made liable on the contract. There can be no estoppel against a minor. It means he is not estoppel from pleading his infancy in order to avoid a contract.

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5. No Specific performance Except in certain cases

A minor's contract being absolutely void, there can be no question of the specific performance of such contract. A guardian of a minor cannot bind the minor by an agreement for the purchase of immovable property ; so the minor cannot ask for the specific performance of the contract which the guardian had no power to enter into.

But a contract entered into by guardian or manager on minor's behalf can be specifically enforced if

(a) The contract is within the authority of the guardian or manager.

(b) It is for the benefit of the minor.

6. Liability for torts

A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only he was held liable when he lent the horse to one of his friends who jumped and killed the horse.

But a minor cannot be made liable for a breach of contract by framing the action on tort. you cannot convert a contract into a tort to enable you to sue an infant.

7. No insolvency

A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.

8. Partnership

A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Contract Act , he can be admitted to the benefits of partnership.

9. Minor can be an agent

A minor can act as an agent. But he will not to be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

10. Minor cannot bind parent or guardian

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In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

11. Joint contract by minor and adult

In such a case, the adult will be liable on the contract and not the minor. In **Sain Das Vs Ram Chand**, where there was a joint purchase by two purchasers, one of them was a minor. It was held that the vendor could enforce the contract against the major purchaser and not the minor.

12. Surety for a minor

In a contract of guarantee when an adult stands for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party.

13. Minor as Shareholder

A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he become a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

14. Liability for necessities

The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act. A claim for necessities supplied to a minor is enforceable by law. But a minor not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

A PERSON OF UNSOUND MIND

According to Section 12: “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 judgment as to its effect upon his interests”

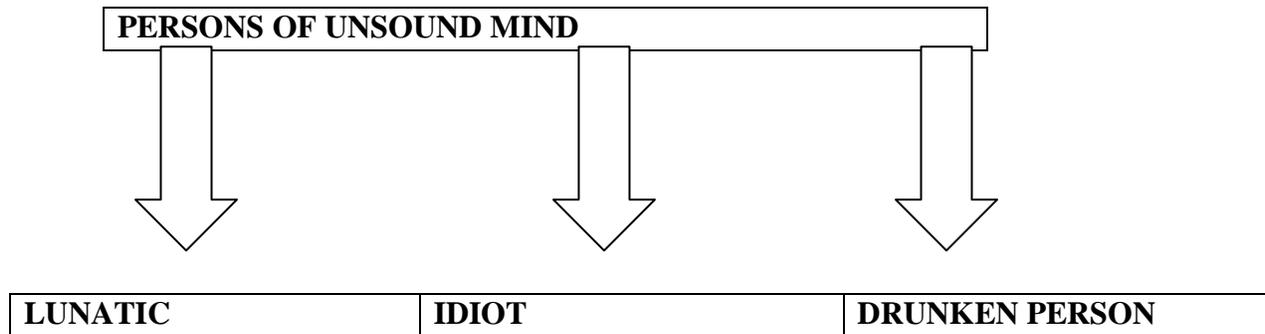
. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.”

Example:

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

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(b): A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.



Lunatic

A lunatic is a mentally affected person. He suffers from intermittent conditions of sanity and insanity. Such a person can enter into a contract when he is in a position to understand the implication of it.

Idiot

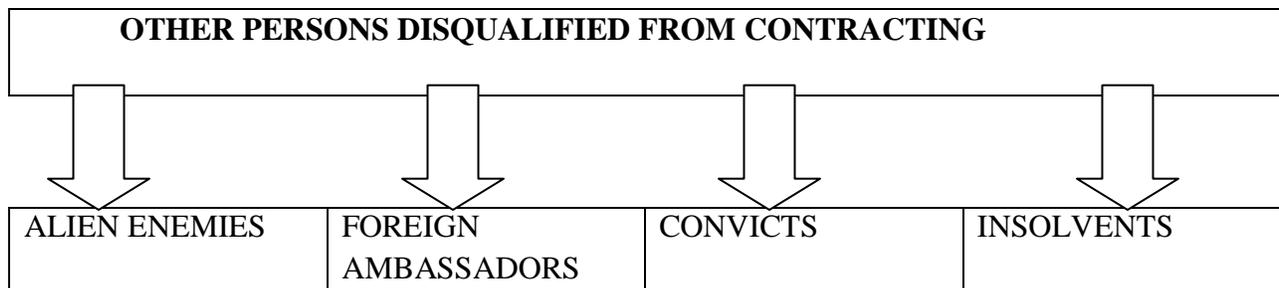
An idiot is a person who does not possess understanding power at all. Idiocy, unlike insanity, is a permanent condition. An agreement by or with an idiot, therefore, is void.

Drunken Person

A person who is drunk loses temporarily his capacity to form a rational judgement. Such a person, therefore, cannot enter into a valid contract at a time when he is so drunk.

OTHER PERSONS DISQUALIFIED FROM CONTRACTING

Apart from minors and persons of unsound mind, the following persons too are disqualified from contracting under law:



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Alien Enemies:

An alien is a person who is not a citizen of India. He may be an alien friend or an alien enemy. An alien friend is one whose country is at peace with India. An alien enemy, on the other hand, is one whose country is at war with India.

Contracts with an alien friend are valid. As far as an alien enemy is concerned, he cannot enter into a contract with an Indian during the period of war. He also cannot take legal action in an Indian Court without the permission of the Central Government. As far as the contracts made before the war are concerned, they are dissolved if found to be against the public policy.

Foreign ambassadors

They are representatives of foreign countries in India. They can enter into contracts and enforce these contracts in Indian courts. But legal action can be taken against them only with the permission of the Central Government.

Convicts

Convict is a person in jail. A person while undergoing imprisonment cannot enter into a valid contract. But if he is on "parole" (released from jail for a particular purpose) or if his period of imprisonment has ended, he can enter into a contract.

Insolvents

An insolvent is a person whose debts are more than his assets. The property of an insolvent will come into the possession of the Official Receiver or Official Assignee appointed by the Court. An insolvent cannot enter into contract relating to his property. He cannot sue and be sued.

The contractual capacity of a Company, registered under the Companies Act of 1956, is determined by its Memorandum of Association and the provisions of the Companies Act. An act done in excess of the power of the company "Ultra Vires" the company, i.e., beyond its power and therefore void.

Lawful Objective

The fourth element of a contract is that it must be made for a lawful objective. Courts will not enforce contracts that are illegal or violate public policy. Such contracts are considered void. For example, a gambling contract would be illegal in many states.

If the illegal agreement has not been performed, neither party has the right to sue the other for damages or to require performance of the agreement. If the agreement has been performed, neither party can sue the other for damages or to have the agreement set aside.

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For an agreement to become a valid contract, it is important that its object is lawful. According to Section 23,

“The consideration or object of an agreement is lawful, unless-

It is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implied injury to the person or property of another; or the person or property of another; or the court regards it as immoral, or opposed to public policy”.

Section 23 of Indian Contract Act 1872 deals with lawful objects and consideration and the said Section is reproduced below for ready reference. Statutory provision: Section 23 of ICA 1872: “23. What considerations and objects are lawful and what not.-

The consideration or object of an agreement is lawful, unless-

- it is forbidden by law; or
- is of such nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another or;
- the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10, 000 rupees. Here B' s promise to pay the sum of 10, 000 rupees is the consideration for A' s promise to sell the house, and A' s promise to sell the house is the consideration for B' s promise to pay the 10, 000 rupees. These are lawful considerations.

(b) A promises to pay B 1, 000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise- of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A' s promise is the consideration for B' s payment and B' s payment is the consideration for A' s promise and these are lawful considerations.

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(d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

Free Consent

According to Section 10, "All agreements are contracts if they are made by the free consent of parties".

'Consent' means 'willingness'. The willingness of the parties to a contract must come freely. According to Section 14, Consent is said to be free when it is not caused by

- 1) Coercion
- 2) Undue Influence
- 3) Fraud
- 4) Misrepresentation or
- 5) Mistake

Flaw (imperfection) in consent, thus, arises due to coercion, undue influence, fraud, misrepresentation or mistake.

COERCION

To 'coerce' someone means to 'force' or 'compel' him or her to act in a particular manner. In other words, a person uses 'Coercion' against another if he threatens that other person.

Example:

X, who owes Y Rs. 10,000, threatens to kill Y if the latter does not release him (X) from the debt. Here, X uses coercion.

Case: Ranganayakamma vs. Alwarchetty

In this case, the relatives of a young girl, whose husband had died just then, forced her to adopt a boy. They further threatened that her husband's body would not be removed for cremation unless she gave her consent. The Court held that the consent was secured by coercion. Consequently the adoption was set aside.

DEFINITION OF COERCION

According to Section 15,

"Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 1860 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".

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It is clear from the definition that-

- a) Committing or threatening to commit any act forbidden by the Indian Penal code amounts to coercion.

Examples:

- i) X beats Y and forces him to execute a deed of gift in his (X's) favour. Here, coercion is used.
- ii) P threatens to kill Q if the latter does not sell his land worth Rs. 5 Lakhs for Rs.50,000. Here, Q's consent is obtained using coercion
- iii) Unlawful detaining or threatening to detain any property belonging to another is coercion.

What is the effect of Coercion?

Exercising coercion against someone amounts to commission of a crime punishable under the Indian Penal Code. Where the consent of a party to a contract has been obtained using coercion, the contract becomes voidable at the option of that party – the affected party or the plaintiff. He can avoid it. Under Section 72, a person to whom money has been paid or anything delivered under coercion, must repay or return it.

Will threat to commit suicide amount to Coercion?

An attempt to commit suicide is punishable under the Indian Penal Code (IPC). A threat to commit suicide does amount to coercion as decided by the Court in the following Case:

Chikham Amiraju Vs. Seshamma

A husband threatened to commit suicide if his wife and son did not execute a release deed in favour of his brother in respect of certain properties belonging to the wife. In view of the threat, the wife and the son executed the release deed. The court held that the threat of suicide amounted to coercion within Section 15 and the release deed was, therefore, voidable at the option of the wife.

UNDUE INFLUENCE

Sometimes, a party to a contract may, by reason of his position, exercise undue (excessive or considerable) influence over the other.

Example:

Taking undue advantage of his position, a doctor may prescribe certain tests for a patient, with the intention of extracting exorbitant fees, even when such tests are not required. The patient, in such a case, gets victimised.

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In jurisprudence, **undue influence** is an equitable doctrine that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will.

Definition of Undue Influence

According to Section 16(1)

“ A contract is said to be induced by undue influence where 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 over the other”.

Examples:

a) A person holding real or apparent authority over the other:

- i) Master and Servant
- ii) Doctor and Patient
- iii) Lawyer and Client
- iv) Parent and Child
- v) Guardian and Ward
- vi) Religious Guru and Disciple

In the above relationships, undue influence is presumed.

In the following cases, however, there is no presumption of undue influence:

- i) Husband and Wife
- ii) Landlord and Tenant
- iii) Creditor and Debtor

b) A person standing in a fiduciary relation to the other (Fiduciary relationship is the one based on trust and confidence)

- i) Trustee and Beneficiary
- ii) Promoter and Company
- iii) Principal and Agent
- iv) Solicitor and Client
- v) Insurer and Insured

c) A person making contract with someone whose physical or mental capacity is affected by reason of age, illness or mental or bodily distress:

Medical Attendant or Care Giver and Patient

Important case on Undue Influence

Sher Singh Vs. Prithi Singh

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In this case, an old man aged about 90 years, physically and mentally weak, executed a gift Deed in favour of a close relative who looked after him. Held, the relative was in a position to dominate the will of the old man.

Distinction between Coercion and Undue Influence

The following are the points of differences between Coercion and Undue influence.

Coercion	Undue Influence
1. Law does not presume coercion under any circumstances.	1. Law presumes undue influence under certain circumstances.
2. It may be exercised by or against a stranger to the contract also.	2. It is exercised only by a party to the contract and not by a stranger.
3. It involves a threat to one's life or property	3. It involves the use of one's position to one's advantage.
4. It amounts to commission of a crime punishable under the Indian Penal code.	4. It does not amount to commission of a crime.

FRAUD

When a party to an agreement makes a false representation of fact deliberately (intentionally) with a view to deceive the other, it amounts to fraud.

Definition of Fraud

According to Section 17

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his convenience, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-

1. The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true:

(When a person makes representation about something as true when he knows it to be false)

Example:

A, while selling his car to B tells him that the car is in a perfect condition. A knows fully well that the car is not in a good condition. What A does amounts to fraud.

- (2) The active concealment of a fact by one having knowledge or belief of the fact;

Example:

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Certain second-hand items are serviced and sold by X to Y as brand new items. The act of X amounts to fraud.

(3) A promise made without any intention of performing it:

Example:

A private finance company promises 35% interest per annum on deposits received and succeeds in collecting a huge amount of deposits. After paying the first year interest out of the principal, it makes a default in the subsequent years. The act of the company amounts to fraud.

(4). Any other act fitted to deceive;

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

Essential Elements of Fraud

The essential elements of fraud may be stated as follows:

1. There must be a representation or assertion: In some cases, silence itself may amount of fraud.

Example:

A buys B's horse and tells B, "If you don't deny, I shall assume that the horse is sound". B, who knows that the horse is unsound, keeps quiet. Here, B's silence amounts to fraud.

2. It must relate to a fact: Expression of one's opinion about something cannot be regarded as representation of fact.

Example:

X, who wants to sell his farm-house, tells Y, a prospective buyer, "I acquired it at a cost of Rs.50,000 a decade ago". This is statement of fact. If X tells Y that the farm-house is now worth Rs.5 Lakhs, it is a statement of opinion.

3. It must be made with the knowledge of its falsity or without belief in its truth or without caring whether it is true or false.

Example:

P, whose bike does not give good mileage, tells Q, a prospective buyer that the bike gives good mileage.

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4. It must have induced the other party to act upon it.
5. The other party acting on the faith of the statement must have suffered some loss.

MISREPRESENTATION

‘Misrepresentation’ is a false representation of fact made by a party to an agreement without any intention to deceive the other party.

Example:

A, while selling his gold ring to B, tells him that it is made of pure gold. A firmly believes that it is made of pure gold and his intention is not to cheat B. Later, B finds that the gold is impure, A’s statement about the ring amounts to misrepresentation and not fraud.

Definition

Misrepresentation is defined under Section 18 of the Indian Contract Act, 1872 which says, a misrepresentation is a form of a statement made preceding to the contract being completed. There are two varieties of statement that can be performed before a contract is formed, these will either:

1. Form part of the contract.
2. Not form part of the contract, therefore it becomes a representation.

Concept of Misrepresentation

For understanding the concept of misrepresentation first, we need to know the meaning of representation in terms of the contract. A representation is said to be such statement which generates the entry into a contract but is not a part of a term of the contract.

Misrepresentation is about giving of inaccurate information by one party (or their agent) to the other before the contract is made which induces them to make the contract. If a person makes a contract in reliance on misrepresentation and has to face loss as a result, they can revoke the contract or claim damages.

Unwarranted Statements

A statement made without any reasonable basis is an unwarranted statement. When a person makes a positive statement of a fact without any trustworthy source of information and believes that statement to be true, the act amounts to misrepresentation. When something is unwarranted

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it is not called for under the provided circumstances. For instance, arguing the merits of someone's talent is one thing, but addressing them stupid is unwarranted.

Types of Misrepresentation

There are three types of misrepresentation present in the contract:

Fraudulent misrepresentation

Fraudulent misrepresentation will happen when a false representation is made and the party making the representation let say X knew it was false or was reckless as to whether it was correct or incorrect- the lack of an accurate belief in its truth will present it a fraudulent one. If A honestly believes the statement to be true it cannot be a fraudulent misrepresentation, negligence in creating a false statement will not result in fraud. However, if it can be shown that A suspected that the statement might be incorrect or wrong, but made no enquiries to check the position, that will be sufficient. It will not be mandatory to prove a dishonest motive.

Negligent misrepresentation

Negligent misrepresentation under the Misrepresentation Act 1967 (MA 1967) befalls where a declaration is made by one contracting party to another negligently or without reasonable grounds for believing its truth. The test is an impersonal one.

There is no obligation to establish fraud. If the innocent party can prove the statement was false, it will be for the maker of the statement to establish that it rationally believed in the truth of the statement (that is, the representation).

A solution for negligent misrepresentation remain at common law, however, its use in contractual situations has been considerably lessened as a result of Section 2(1) of the MA 1967.

Innocent misrepresentation

Misrepresentation made completely without fault can be described as an innocent misrepresentation.

If X is unable to show it had objective grounds to believe its declaration was true the misrepresentation will be fraudulent or negligent.

Remedies of Misrepresentation

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As we know the contract made in misrepresentation is voidable which is not done intentionally by the party. So by keeping this in mind, The remedies for misrepresentation are:

Rescind: Rescind means to cancel. When the aggrieved party wants he can claim for cancellation of the contract and/or damages. Under contract law, rescission is defined as the unmaking of a contract between the parties. Rescission is the unwinding of a transaction. This is made to bring the parties, as far as possible, back to the position in which they were before they entered into a contract (the status quo ante).

Insist upon the performance: The aggrieved party can claim to the first party who have committed misrepresentation to get the object in the manner which was prior to the contract that they directly.

Distinction between Misrepresentation and Fraud

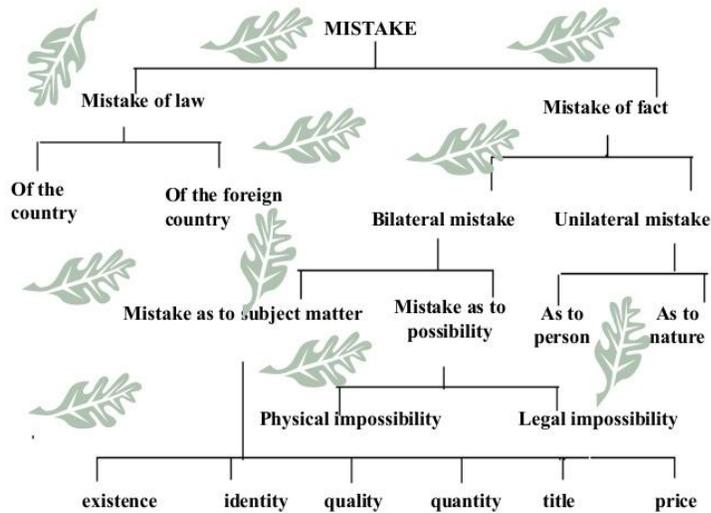
S.N.	Basis	Fraud	Misrepresentation
1.	Meaning	A fraud is an intentional misrepresentation or concealment of fact with an aim to deceive the other party.	Misrepresentation is an innocent misstatement made without any intention to deceive the other party.
2.	Section	Fraud is defined under section 17 of Indian Contract Act, 1872.	Misrepresentation is defined under section 18 of Indian Contract Act, 1872.
3.	Intention to deceive	There is intention to deceive the other party.	There is no intention to deceive the other party.
4.	Belief of the fact	The party making fraudulent statement believes that the fact is not true.	The party making the misrepresentation believes that the fact is true.
4.	Suit for damages	The aggrieved party has the right to sue the party for damages.	The aggrieved party cannot sue the party for damages.
5.	Defense in the court	The party who made fraudulent statement cannot set up a defense that the aggrieved party had sufficient mean to discover the truth.	In case of misrepresentation the party who made representation can set up a defense that the aggrieved party had sufficient mean to discover the truth.

MISTAKE

A mistake is an erroneous belief that is innocent in nature. It leads to a misunderstanding between the two parties. Now when talking about a mistake, the law identifies two types of mistakes, namely

- i. A Mistake of Law
- ii. A Mistake of Fact

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Mistake of Law

This mistake may relate to the mistake of the Indian laws, or it can be a mistake of foreign laws. If the mistake is regarding Indian laws, the rule is that the ignorance of the law is not a good enough excuse. This means either party cannot simply claim it was unaware of the law.

The Contract Act says that no party shall be allowed to claim any relief on the grounds of ignorance of Indian law. This will also include a wrong interpretation of any legal provisions.

However, ignorance of a foreign law is not given a similar treatment. Ignorance of the foreign law is given some leeway, the parties are not expected to know foreign legal provisions and their meaning. So a mistake of foreign law is in fact treated as a mistake of fact under the Indian Contract Act.

Mistake of Fact

Then there is the other type of mistake, a mistake of fact. This is when both the parties misunderstand each other leaving them at a crossroads. Such a mistake can be because of an error in understanding, or ignorance or omission etc. But a mistake is never intentional, it is an innocent overlooking. These mistakes can either be unilateral or bilateral.

Bilateral Mistake

When both parties of a contract are under a mistake of fact essential to the agreement, such a mistake is what we call a bilateral mistake. Here both the parties have not consented to the same

thing in the same sense, which is the definition of consent. Since there is an absence of consent altogether the agreement is void.

However, to render an agreement void the mistake of fact should be about some essential fact that is of importance in a contract. So if the mistake is about the existence of the subject matter or its title, quality, quantity price etc then it would be a void contract. But if the mistake is of something inconsequential, then the agreement is not void and the contract will remain in place.

For example, A agrees to sell to B his buffalo. But at the time of the agreement, the buffalo had already died. Neither A nor B was aware of this. And so there is no contract at all, i.e. the contract is void due to a mistake of fact.

Unilateral Mistake

A unilateral mistake is when only one party to the contract is under a mistake. In such a case the contract will not be void. So the Section 22 of the Act states that just because one party was under a mistake of fact the contract will not be void or voidable. So if only one party has made a mistake of fact the contract remains a valid contract.

However, there are some exceptions to this. In certain conditions, even a unilateral mistake of fact can lead to a void or voidable agreement. Let's see a few of these exceptions via some examples and case studies.

1. ***When Unilateral Mistake is as to the Nature of the Contract:*** In such a case the contract can be held as void. Let us see the example of Dularia Devi v. Janardan Singh. Here an illiterate woman put her thumb impression on two documents thinking they were the same. She thought the document was to gift some property to her daughters. But the other document was a Sale deed to defraud the women out of more of her property. This contract was held void by the courts
2. ***When the Mistake is regarding the Quality of the Promise:*** There was an auction being held by A to sell hemp and tow. B thinking the auction was only for hemp, mistakenly bid for a tow. The amount bid was on par for hemp but very high for a tow. Hence the contract was held as voidable.
3. ***Mistake of the Identity of the Person contracted with:*** For example, when A wants to enter into a contract with B but mistakenly enters into a contract with C believing him to be B.

.Quasi Contract

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A quasi contract is a retroactive arrangement between two parties who have no previous obligations to one another. It is created by a judge to correct a circumstance in which one party acquires something at the expense of the other.

The contract aims to prevent one party from unfairly benefiting from the situation at the other party's expense. These arrangements may be imposed when goods or services are accepted, though not requested, by a party. The acceptance then creates an expectation of payment.

The word 'Quasi' means pseudo. Hence, a Quasi contract is a pseudo-contract. When we talk about a valid contract we expect it to have certain elements like offer and acceptance, consideration, the capacity to contract, and free will. But there are other types of contracts as well.

There are cases where the law implies a promise and imposes obligations on one party while conferring rights to the other even when the basic elements of a contract are not present. These promises are not legal contracts, but the Court recognizes them as relations resembling a contract and enforces them like a contract.

These promises/ relations are Quasi contracts. These obligations can also arise due to different social relationships which we will look at in this article.

The core principles behind a Quasi Contract are justice, equity and good conscience. It is based on the maxim: "No man must grow rich out of another persons' loss."

Let's look at an example of a Quasi contract: Peter and Oliver enter a contract under which Peter agrees to deliver a basket of fruits at Oliver's residence and Oliver promises to pay Rs 1,500 after consuming all the fruits. However, Peter erroneously delivers a basket of fruits at John's residence instead of Oliver's. When John gets home he assumes that the fruit basket is a birthday gift and consumes them.

Although there is no contract between Peter and John, the Court treats this as a Quasi-contract and orders John to either return the basket of fruits or pay Peter.

Features of a Quasi Contract

1. It is usually a right to money and is generally (not always) to a liquated sum of money
2. The right is not an outcome of an agreement but is imposed by law.

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3. The right is not available against everyone in the world but only against a specific person(s). Hence it resembles a contractual right.

Sections 68 – 72 of the Indian Contract Act, 1872 detail five circumstances under which a Quasi contract comes to exist. Remember, there is no real contract between the parties and the law imposes the contractual liability due to the peculiar circumstances.

Section 68 – Necessaries Supplied to Persons Incapable of Contracting

Imagine a person incapable of entering into a contract like a lunatic or a minor. If a person supplies necessaries suited to the condition in life of such a person, then he can get reimbursement from the property of the incapable person.

John is a lunatic. Peter supplies John with certain necessaries suited to his condition in life. However, John does not have the money or sanity and fails to pay Peter. This is termed as a Quasi contract and Peter is entitled to reimbursement from John's property.

However, to establish his claim, Peter needs to prove two things:

1. John is a lunatic
2. The goods supplied were necessary for John at the time they were sold/ delivered.

Section 69 – Payment by an Interested Person

If a person pays the money on someone else's behalf which the other person is bound by law to pay, then he is entitled to reimbursement by the other person.

Peter is a zamindar. He has leased his land to John, a farmer. However, Peter fails to pay the revenue due to the government. After sending notices and not receiving the payment, the government releases an advertisement for sale of the land (which is leased to John). According to the Revenue law, once the land is sold, John's lease agreement is annulled.

John does not want to let go of the land since he has worked hard on the land and it has started yielding good produce. In order to prevent the sale, John pays the government the amount due from Peter. In this scenario, Peter is obligated to repay the said amount to John.

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Section 70 – Obligation of Person enjoying the benefits of a Non-Gratuitous Act

Imagine a person lawfully doing something or delivering something to someone without the intention of doing so gratuitously and the other person enjoying the benefits of the act done or goods delivered. In such a case, the other person is liable to pay compensation to the former for the act, or goods received. This compensation can be in money or the other person can, if possible, restore the thing done or delivered.

However, the plaintiff must prove that:

- The act that is done or thing delivered was lawful
- He did not do so gratuitously
- The other person enjoyed the benefits

Section 71 – Responsibility of Finder of Goods

If a person finds goods that belong to someone else and takes them into his custody, then he has to adhere to the following responsibilities:

- Take care of the goods as a person of regular prudence
- No right to appropriate the goods
- Restore the goods to the owner (if found)

Peter owns a flower shop. Olivia visits him to buy a bouquet but forgets her purse in the shop. Unfortunately, there are no documents in the purse to help ascertain her identity. Peter leaves the purse on the checkout counter assuming that she would return to take it.

John, an assistant at Peter's shop finds the purse lying on the counter and puts it in a drawer without informing Peter. He finished his shift and goes home. When Olivia returns looking for her purse, Peter can't find it. He is liable for compensation since he did not take care of the purse which any prudent man would have done.

Section 72 – Money paid by Mistake or Under Coercion

If a person receives money or goods by mistake or under coercion, then he is liable to repay or return it.

Example.

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Peter misunderstands the terms of the lease and pays municipal tax erroneously. After he realizes his mistake, he approached the municipal authorities for reimbursement. He is entitled to be reimbursed since he had paid the money by mistake.

Similarly, money paid by coercion which includes oppression, extortion or any such means, is recoverable.

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