INDIAN CONTRACT ACT, 1872

1. Indian Contract Act, 1872 came into force on 1st September, 1872.
2. It applies to whole of India except the state of J & K.
3. The provisions related to contract are contained in Indian Contract Act, 1972.
4. The provisions related to sale of goods were originally contained in Indian Contract Act, 1872.
5. The provisions related to sale of goods are contained in the Sale of Goods Act, 1930.
6. The Sale of Goods Act came into force on 1st July, 1930.
7. Indian Partnership Act came into force on 1st oct, 1932.
8. The provisions related to partnership are contained in Indian partnership Act, 1932.
9. Contract [Sec. 2(h)] An agreement enforceable by law.
10. Agreement [sec 2(e)] Every promise & e very set of promises forming consideration for each other.
11. Promise [sec 2 (b)] A proposal when accepted becomes a promise.
12. An agreement is an accepted proposal.
13. Consideration Quid pro quo i.e., something in return.
14. Enforceability by law Agreement which creates legal obligation on the part of parties. (Balfour Vs. Balfour)

ESSENTIAL ELEMENTS OF A VALID CONTRACT [SECTION 10]

All agreements are contracts if they are made by the:-

(i) Free consent of the parties
(ii) Competent to the contract.
(iii) For a lawful consideration &
(iv) With a lawful object &
(v) Are not hereby expressly declared to be void.
(vi) Intention to create legal relationship
(vii) Certainty of meaning
(viii) Possibility of performance
(ix) Legal formalities.

TYPES OF CONTRACTS

(i) **Valid Contract** – A contract which contains all essential elements.
(ii) **Void Contract [sec 2 (j)]** – A contract which creases to be enforceable by law becomes void when it ceases to be so enforceable. It is a contact which is valid in the beginning but later on due to some reasons it becomes void.
(iii) **Void Agreement [Sec 2(g**)]- An agreement not enforceable by law. It is void from the very beginning when it is made. It is void ab initio.
(iv) **Voidable Contract [Sec 2 (i)]** – A contract which is enforceable by law at the option of one party but not at the option of other(s). Here, only one party can go to the court of law, other party cannot go to the court of law.

(v) **Illegal Agreement** – An agreement the consideration of object of which is unlawful [sec. 23].

(vi) **Unenforceable contract** – It is one which is good in substance but due to some technical defect such as absence in writing, signing one or more parties cannot sue upon it.

(vii) **Unilateral Contract** – Obligation is pending on the part of one of the parties to the contract.

(viii) **Bilateral Contact** – Obligation is pending on the part of both of the parties to the contract.

(ix) **Executed Contract** – A contract which is completed. Where parties to the contract have performed their respective obligations.

(x) **Executory contract** – A contract which is to be performed in future.

<u>TIME BARRED DEBT</u>

1. Indian limitation Act, 1923 – A debt is said to be time barred on expiry of 3 years from the due date, if the amount has not been recovered and also no action has been taken for recovery of the amount.
2. A time barred debt is not recoverable.
3. A written promise to pay time barred debt & signed by the promisor or his duly authorized agent is valid.
4. A person who pay time barred debt, in ignorance of Indian Limitation Act, 1963 (Indian Law), cannot recover it back.
5. In case of appropriation of payment, here there is an appropriation by time, payment may appropriated to the debt first in time, whether time barred or not.
6. An agreement which is not legally enforceable but binding in honour only is invalid.
7. In commercial & Business Agreements, the intention of parties to create legal relationship is presumed to exist.

<u>Proposal [sec 2(a)]/Offer</u> – Where one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the consent of that either to such act or abstinence, he is said to make a proposal.

<u>Acceptance [sec 2 (b)] –</u> Where the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted.

Legal rules regarding offer

(i) Offer must be capable of creating the legal relationship. (ii) Offer must be certain, definite and not vague.

(ii) Offer may be express or implied. (iv) Offer must be distinguish from an invitation to offer.

(iii) Offer may be conditional.

(iv) Offer may be specific or general.

(v) Offer must be made with a view to obtaining the assent of the offeree.

(vi) An offer should not contain a term of non compliance which may amount to acceptance.

(vii) Offer must be communicated to the person to whom it is made.

(viii) Special terms to an offer must be communicated.

TYPES OF OFFER

(i) General Offer – An offer made to the public at large. Anyone having knowledge of the offer can accept this offer by complying with the terms of offer.

(ii) Specific Offer – An offer made to a specified person. This offer can be accepted only by the person to whom it is made

(iii) Cross Offers – When two persons exchange identical offer in ignorance of each other's offer. Two cross offers cannot made a contact.

(iv) Counter Offer – Qualified acceptance to the offer & counter offer amounts to rejection of the original offer.

(v) Standing /open/continuing offer – An offer which is allowed to remain open over a period of time.

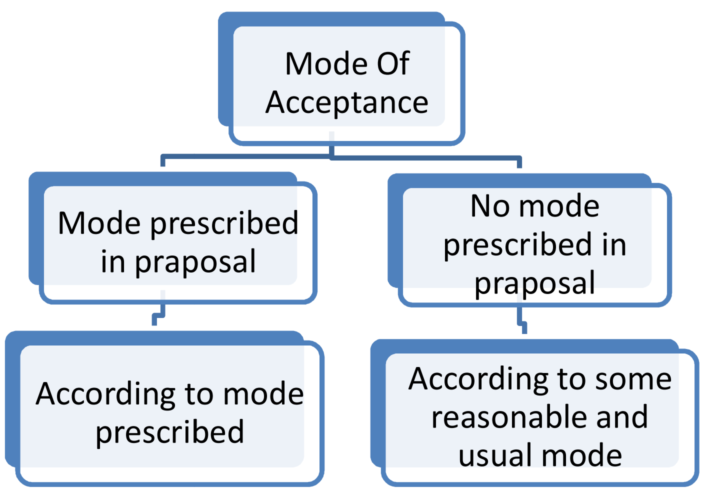
Tender for supply of goods is an example of General offer & standing offer.

RULES REGARDING VALID ACCEPTANCE

(i) Acceptance must be absolute and unqualified.

(ii) Mere silence is not an acceptance.

(iii) Acceptance must be communicated.



Consideration [Sec 2(d)] – When at the desire of the promisor, the promisee or any other person has been done or abstained from doing or, does or abstains from doing or promise to do or to abstain from doing something. Such an act or abstinence or promise is called consideration for the promise. Technical word "Quid pro Quo" i.e., something in return.

Legal rules regarding consideration

1. Consideration must move at the desire of the promisor.

2. Consideration may move from the promisee or any other person.
3. Executed Consideration – Consideration which has been given.
4. Executory Consideration – Consideration which is to be moved in future.
5. Consideration may be past, present or future.
6. Consideration should be real & not illusory.
7. Consideration need not be adequate.
8. The performance of an act what one is legally bound to perform is not consideration for the contact.
9. Consideration must not be unlawful, immoral or opposed to the public policy. There can be a stranger to a consideration but there cannot be a stranger to a contract.

A third party or stranger to a contract cannot sue.

Exceptions:

1. Trust – Beneficiary can sue upon the contract.
2. Family Settlement – Other family members can sue.
3. Marriage contract – Female member for her marriage expenses on partition of HUF.
4. Acknowledgement of liability – when one admits his liability.
5. Assignment – Assignee can enforce upon the contract.
6. Covenant running with land.

No Consideration, no contract (An agreement without consideration is void). [section 25].

Exceptions:

1. Agreement on account of natural love and affection is valid if is-
   (a) Written and registered agreement
   (b) On account of natural love & affection.
   (c) Between parties standing in near relation.
2. Compensation for past voluntary services
3. Promise to pay time barred debt:- 1. In writing 2. Signed
4. Agency
5. Completed gift
6. Charity
7. Bailment.

An acceptance is to offer what is a lighted match is to a train of gunpowder. [Sir William Anson]

COMMUNICATION OF OFFER AND ACCEPTANCE

Communication of offer is complete when

1. it comes to the knowledge of the person to whom it is made (i.e., when the letter of offer reaches to offeree).
2. Communication of Acceptance is complete.

(A) As against the proposer – when it is put into the course of transmission to him so as to be out of power of the acceptor to withdraw the same (when letter of Acceptance posted).

(B) As against the acceptor – When it comes to the knowledge of the proposer. (i.e., when letter of Acceptance reaches to the proposer).

Communication of Revocation is complete

(A) AS against the person who made it, when it is put into the course of transmission to the another person so as to be out of power of the person making it.

(B) As against the person to whom it is made, when it reaches to him.

<u>OTHER IMPORTANT POINTS</u>

1. A bid at an auction sale is an implied offer to buy.
2. A proposal is revoked by death or insanity of the proposer, if the fact of insanity or death comes to the knowledge of the acceptor before acceptance.
3. An agreement to agree in future is invalid.

<u>MEANING OF TERMS</u>

1. **Offeror** – The person who made the offer.
2. **Offeree** – The person to whom offer is made.
3. **Promisor –** The person who makes the promise.
4. **Promisee –** The person to whom promise is made

<u>PARTIES COMPETENT TO CONTRACT</u>

1. Major

2. Sound mind

3. Person not disqualified by law from contracting

<u>PARTIES INCOMPETENT TO CONTACT</u>

1. Major

2. Unsound mind person

3. Person disqualified by law from contracting

<u>NOTE</u> - Age of majority is defined u/s 3 of Indian Majority Act, 1875

Major – A person who has completed 18 years of age.

Exceptions

1. Guardian appointed by court

2. Superintendent appointed – 21 years.

<u>NOTES</u>

1. A person who is usually of sound mind but occasionally of unsound mind cannot made contract when he is of unsound mind.

2. A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind.

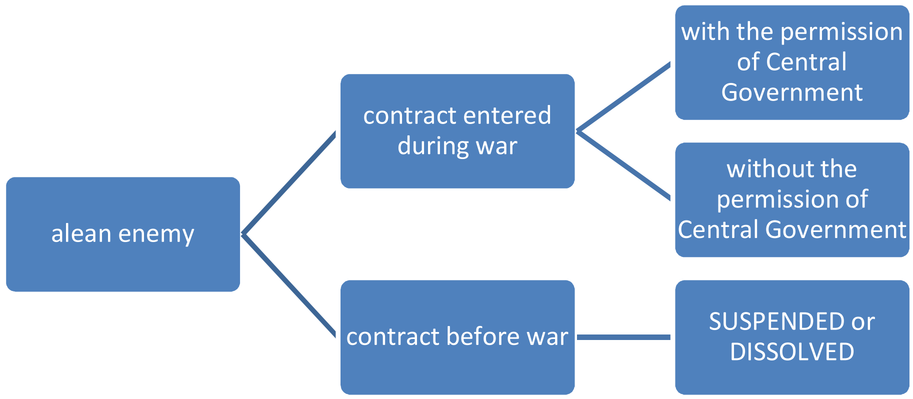
3. Unsound Mind Persons – Drunkard, Idiot, Lunatic.

<u>4. Persons disqualified by Law</u>

1. Alien enemy

2. Statutory corporation

3. Municipal bodies
4. Sovereign states Ambassadors & Diplomatic couriers
5. Convict
6. Insolvent



5 A contract with incompetent person is void-ab-initio.

<u>POSITION OF MINOR'S AGREEMENT</u>

1. An agreement entered into by or with a minor is void-ab-initio [**Mohiri Bibi Vs. Dharmodas Ghose]**

2. Minor can be beneficiary.

3. Minor cannot become a partner but he can be admitted to the benefits of partnership with the consent of all partners.

4. Minor can always plead minority.

5. Ratification on attaining majority is not allowed.

6. Contract by minor's guardian is valid if it is within the scope of guardian's authority and it is for the benefit of minor.

7. Minor is not personally liable for necessaries supply to him but minor's property is liable, not only for necessary goods, but also for necessary services. [Nash Vs. Inman]

8. Minor can be an agent but cannot be held personally liable for breach of duty or negligence.

9. A minor cannot be declared insolvent because he is incapable of contracting.

<u>CONSENT [SECTION 13]</u> – Agreed upon same thing in the same sense – consensus ad-idem – meeting/Identity of mind.

<u>FREE CONSENT [SECTION 14]</u> – A consent is said to be free if it is not caused by

(**a**) Coercion or
(**b**) Undue influence or
(**c**) Fraud or
(**d**) Misrepresentation or
(**e**) Mistake.

<u>COERCION [SEC 15] –</u> Coercion is committing or threatening to commit an act forbidden by IPC or the unlawful detaining or threatening to detain any property to the prejudice of any person, whatever with intention of causing him to enter into an agreement.

1. A threat to commit suicide amounts to coercion.

2. A person to whom money has been paid or anything delivered must repay or return it.

UNDUE INFLUENCE [SEC 16] – A contact is said to be induced by undue influence where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of another and uses that position of obtain an unfair advantage over the other.

- A person is in a position to dominate the will of another where he holds real or apparent authority over the other or stands in fiduciary relation to the other.

FRAUD [SEC 17] (Intention to Deceive)

(a) The suggestion as a fact which is not true by one who does not believes it to be true.
(b) Active concealment of fact by one having knowledge or belief of the fact.
(c) A promise mode without any intention of performing it.
(d) Any other act fitted to deceive.
(e) Any such act or omission as to law specially declared to be fraudulent.

MERE SILENCE IS NOT A FRAUD. **Exception:**

- ❖ Where is the duty of person to speak.
- ❖ Where silence is equivalent to speech.

MISREPRESENTATION – Where a person asserts something which is not true though he believe it to be true.

* A contact induced by Coercion, undue influence, fraud or misrepresentation is voidable.

MISTAKE

MISTAKE			
MISTAKE OF FACT		MISTAKE OF LAW	
UNILATERAL	BILATERAL	INDIAN LAW	FORIEGN LAW
One party under mistake - valid	Both parties under mistake - void	VALID	VOID

SOME OTHER IMPORTANT POINTS:-

1. Moral pressure is involved in case of undue influence.
2. Ignorance of law is of no excuse.
3. A contract is not voidable if fraud or misrepresentation does not induce the other party to enter into contract.
4. A party cannot complain of fraudulent silence if he has the means of discovering the truth with ordinary means.
5. Coercion must be exercised against promisor or any other person.

6. An attempt to deceive is not fraud unless the other party is actually deceived.

Section 23 – Consideration or object is unlawful if it is:-

(a) Forbidden by law or

(b) Of such nature that if permitted, defeat the provisions so any law or

(c) Fraudulent

(d) Involves injury to a person or property of another

(e) Immoral or opposed to the public policy.

VOID AGREEMENTS

- Agreement without consideration
- Agreement with incompetent parties
- Uncertain agreement
- Agreement made under mutual mistake of fact.
- Agreement with unlawful consideration or object.
- Illegal agreements
- Agreement to do an impossible act
- Wagering agreements
  A. Collateral transactions to a wagering agreement are valid.
  B. Speculative transactions are generally valid.

AGREEMENTS OPPOSED TO THE PUBLIC POLICY

- Trading with Alien enemy
- Champerty & maintence
- Stifling prosecution
- Interference with the course of justice
- Marriage brokerage contracts
- Interest against obligation
- Sale of public office
- Agreement for creation of monopolies
- Agreement in restraint of trade
- Agreement in restraint of marriage
- Agreement in restraint of legal proceeding

CONSIDRETION UNLAWFUL IN PART		
CONTRACT IS INSEPARABLE	CONTRACT IS SEPARABLE	
CONTRACT IS ALTOGETHER VOID	LEGAL PART VALID	ILLEGAL PART VOID

WAGERING AGREEMENT – It is an agreement involving payment of a s sum of money upon the determination of uncertain event.

OTHER IMPORTANCE POINTS

- Compromise of public offence is illegal.
- Maintence – Promotion of litigation in which one has no interest.
- Champerity – It is a bargain whereby one party agrees to assist another in recovering property, with a view to sharing the profits of litigation.
- All agreements on account of champerity and maintence are neither void nor valid. Some of them may be void, some of them are valid.
- An agreement which provides for a reference to arbitration instead of court of law is valid even if it is in restraint of legal proceeding.

1. Where a contract involves the exercise of personal skill and diligence, it must be performed by the promisor himself.

2. In case of death of promisor, the liability of legal representative is limited to the value of the property they inherited from the deceased.

3. If all of the joint promisers dies, their legal representatives are bound to perform the promise jointly.

4. Succession – Both burden & benefits are transferred.

5. Assignment – Only benefits are transferred, not the liability there upon.

6. Reciprocal Promises [Sec 2(f)] – When a contract consists a two promises, one being consideration for the other such promises are called reciprocal promises.

TIME ESSENTIAL → LATE PERFORMANCE → CONTRACT BECOME VOIDABLE AT THE OPTION OF PROMISEE

7.

TIME IS NOT ISSENTIAL → LATE PERFORMANCE BUT WITHIN RESONABLE → CONTRACT CAN NOT AVOIDED PROMISEE IS INTITLED TO COMPENTATION

8. If debt to be discharged is not indicated by the Debtor, then creditor may apply it, if creditor does not appropriate it, it will be applied in discharge of debt in order of time, whether time barred or not.

9. Novation – Old contract is cancelled & new contract is formed. Parties may or may not change.

10. Recession – Old contract is cancelled, no new contract is formed.

11. Alternation – Changing in the terms of original contract, parties must remain same

12. Remission – To remit or waive off the performance by promise.

13. In case of voidable contract, if aggrieved party rescinds the contact, it must return the benefit received there under.

14. Void Contract/Agreement – Either restore back the advantage received or pay compensation for it.

15. Discharge of contract by

- Actual or attempted performance.
- Mutual agreement – Novation, Alternation, Remission, Recession.
- Impossibility of performance.
- Lapse of time e.g. Time barred debt.
- Operation of law such as death or insolvency.
- Actual or anticipatory Breach**.**

16. Where the performance of promise by one party depends upon the prior performance of promise by the other party, such promises are mutual & dependent.

BREACH OF CONTRACT

Actual Breach – Breach of contract on the due date of performance or during the performance.

Anticipatory Breach – Breach of contract before time of performance has arrived i.e., before due date of performance.

DAMAGES IN CASE OF BREACH

1. **Ordinary damages** – Compensation for any loss or damage which arise naturally in the normal course of event of Breach.
2. **Special Damages –** It cannot be recovered as a matter of right. These can be recovered only if the notice of special circumstances is given**.**
3. **Vindictive damages/Exemplary Damages** – For Breach of promise to marry or for wrongful dishonor by banker of his customer cheque**.**
4. **Nominal Damages –** Where plaintiff proved that there is breach of contract but he has not suffered any real damage. These may be a single rupee or even 10 paisa. These are awarded to maintain the right to decree in the court**.**
5. **Remote Damage –** Indirect loss from breach of contract. Remote Damages are not recoverable.
6. **Damages for deterioration coursed due to delay Deterioration**
   Not only implies physical damages to goods but also loss of special opportunity for sale damages can be recovered from carrier even without notice.
7. **Calculation of Damage**
   Breach by buyer Damage = Contact Price – Market price on date of Breach.
   Breach by seller Damage = Market price on date of Breach – Contract price.
8. **Remedies for Breach of Contact**
   - Right to rescind the contract
   - Right to claim damages
   - Right to continue the contract
   - Suit upon Quantum Meruit (as much as is earned or according to the quality of work done)
   - Suit for specific performance
   - Suit for injunction

- Injunction order is issued by the court when a party do what he promised not to do.

Other points:-

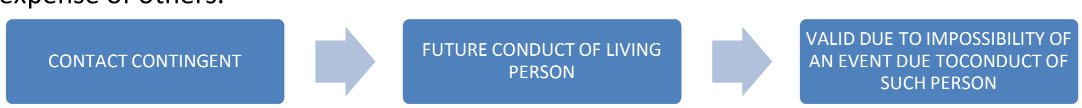
- A contract is not frustrated by commercial impossibility
- In case of anticipatory breach, the aggrieved party may treat the contract
  (a) As discharged and bring an immediate action for damages
  (b) As operative and wait till the time of performance arrives.
- A party entitled to rescind the contract, loses the remedy where
  (a) He has ratified the contract
  (b) The third party acquired the right in good faith
  (c) Contract is not separable and recession is sought of one part only.

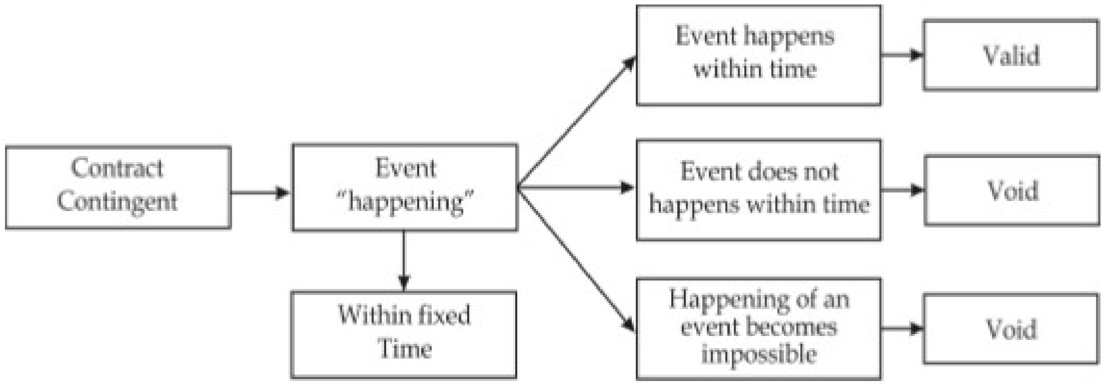
CONTINGENT CONTRACT

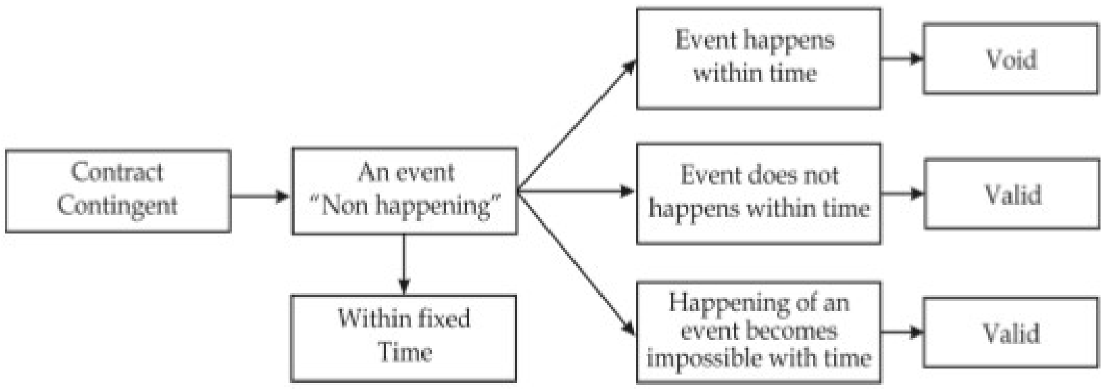
- **Contingent Contract [Sec 31]** – It is a contract to do or not to do something, if some event collateral to such contract, does or does not happens.
- Contract of Insurance is a contingent contract.
- When the contingent event is the part of contract, the contract is conditional one, & where it is collateral to the contract, it is a contingent contract.

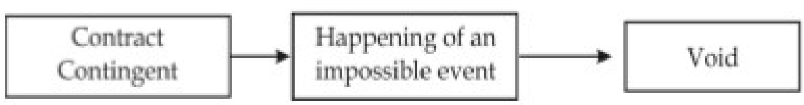
CONTINGENT CONTRACT			
EVENT HAPPENING		EVENT NOT HAPPENING	
EVENT HAPPENS	HAPPENING OF EVENT BECOMES INPOSSIBLE	AN EVENT HAPPENS	HAPPENING OF EVENT BECOMES INPOSSIBLE
VALID	**VOID**	**VOID**	**VALID**

The basis of "Quasi contractual relations" is the prevention of unjust enrichment at the expense of others.









QUASI CONTRACT

- Right in rem – Right against the entire world.
- Right in personam – Right against a particular person.
  1. Quasi contractual right is a right in personam.
  2. Quasi contracts are implied by law.

TYPES OF QUASI CONTRACTS

- Claim of necessaries supplied to an incompetent person, supplier can recover the price from the property of such person.
- Right to recover money paid for another.
- Obligation of a person enjoying the benefit of non gratuitous act.
- Responsibility of finder of goods = same as bailee.
- A person to whom money has been paid or anything delivered under coercion or by mistake must repay or return it.