UNIT - I CONTRACT

CHAPTER – 1 Meaning and Essentials of Contract

INTRODUCTION

What is Law

Law means a 'set of rules'. Broadly speaking, it may be defined as the rules of conduct recognized and enforced by the state to. Control and regulate the conduct of people, to. Protect their property and contractual rights with a view to. Securing justice, peaceful living and social security.

Since the value system of society keeps on changing, the law also. Keeps changing according to. the changing requirements of the society.

There are several branches of law such as International law, Constitutional law, Criminal law, Civil law etc. Every branch of law regulates and controls a particular field of activity.

Why Should One Know Law

One should know the law to which he is subject because ignorance of law is no. excuse. For example, if X is caught traveling in a train without ticket, he cannot plead that he was not aware of the rule regarding the purchase of ticket and therefore, he may be excused. In another example, if Y is caught driving scooter without driving license, he cannot plead that he was not aware of the traffic rule regarding the obtaining of a driving license and therefore, he may be excused.

What is Mercantile Law (or Commercial Law)

Mercantile law is not a separate branch of law. Basically, it is a part of civil law which deals with the rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property. It includes laws relating to. Various contracts, partnership, companies, negotiable instruments, insurance, carriage of goods, arbitration etc.

What are the Sources of Mercantile Law?

In India, mercantile law is basically an adaptation of the English Law with some modifications and reservations, which are necessitated by the peculiar conditions prevailing in India. The main sources of the Indian mercantile law are shown below in Fig. 1.1.

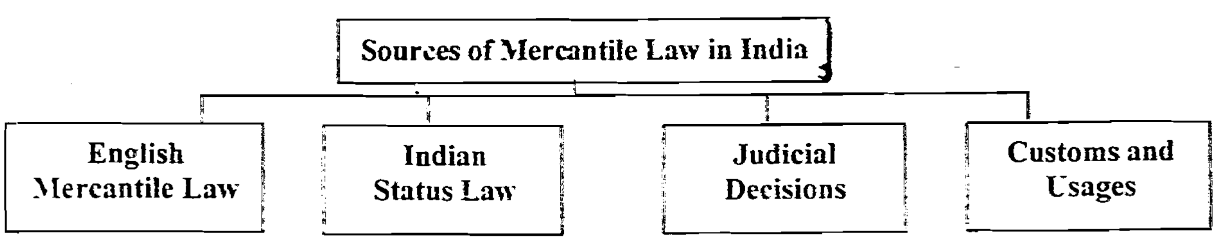


Fig. 1.1 Sources of Mercantile Law in India

Let us discuss them one by one.

(a) **English Mercantile Law** English laws are the primary sources of Indian Mercantile Law. English laws are based on customs and usages of merchants in England.

(b) **Indian Statute Law** The various Acts passed by the Indian Legislature are the main sources of mercantile law in India, e.g. Indian Contract Act, 1872, The Sale of Goods Acts, 1930, The Indian Partnership Act, 1932, The Negotiable Instruments Act 1881, The Companies Act, 1956.

(c) Judicial Decisions The past judicial decisions of English courts and Indian courts are also one of the sources of law. Wherever the law is silent on a point, the judge has to decide the case according to the principle of equity, justice and good conscience. The past judicial decisions are followed by the courts while deciding similar cases before them.

(d) Customs and Usages The customs and usages of a trade are also one of the sources of mercantile law in India. These customs and usages govern the merchants of a trade in their dealings with each other. Some Acts passed by the Indian Legislature recognizes the importance of such customs and usages. For example, Section 1 of the Indian Contract Act, 1872 provides "nothing contained therein shall affect any usage of custom of trade . . ." Similarly, Section 1 of The Negotiable Instruments Act, 1881 provides "nothing contained therein shall affect any local usage relating to instrument in an oriental language."

The Law of Contract

The law of contract is contained in the Indian Contract Act, 1872 which

(a) deals with the general principles of law governing all contracts, and *Meaning and Essentials of Contract* 1.3

(b) covers the special provisions relating to special contracts like Bailment, Pledge, Indemnity, Guarantee and Agency.

The law of Contract is applicable not only to business but also to all day-to-day personal dealings. In fact, each one of us enter into a number of contracts from sunrise to sunset.

For example,

1. when you purchase a newspaper, you enter into a contract with the vendor of newspaper.
2. when you purchase milk, you enter into a contract with the milkman.
3. when you purchase bread and butter, you enter into a contract with the vendor of bread and butter.
4. when you ride a bus, you enter into a contract with the transport company. The general law of contract relates to the essentials of a valid contract, the rules for performance and discharge of a contract and the remedies available to the aggrieved party in case of breach of contract.

MEANING OF CONTRACT

According to Section 2(h) of the Indian Contract Act, 1872, "An agreement enforceable by law is a contract." In other words, an agreement which can be enforced in a court of law is known as a contract. On analyzing this definition of contract, it appears that a contract must have the following two elements.

(a) An agreement, and

(b) Enforceability of an agreement.

In the form of an equation, it can be shown as under:

Contract = An Agreement + Enforceability of an agreement

Now the question arises, 'What is an Agreement?' and What is Enforceability of an agreement?

What is an Agreement

According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises forming the consideration for each other is an agreement." Now the question arises, 'what is promise?' According to Section 2(b) of the Indian Contract Act, 1872, "A proposal when accepted, becomes a promise."

***Example** X offers to sell his car for Rs 1,00,000 to Y. Y accepts this offer. This offer after acceptance becomes promise and this promise is treated as an agreement between X and Y.*

In other words, an agreement consists of an offer by one party and its acceptance by the other. In the form of an equation, it can be shown as under:

Agreement = Offer (or Proposal) + Acceptance of Offer (or Proposal)

What is Enforceability of Agreement

An agreement is said to be enforceable by law if it creates some legal obligation. In other words, the parties to an agreement must be bound to perform their promises and in case of default by either of them, must intend to sue e.g. in case of social or domestic agreements, the usual presumption it that the parties do not intend to create legal relations.

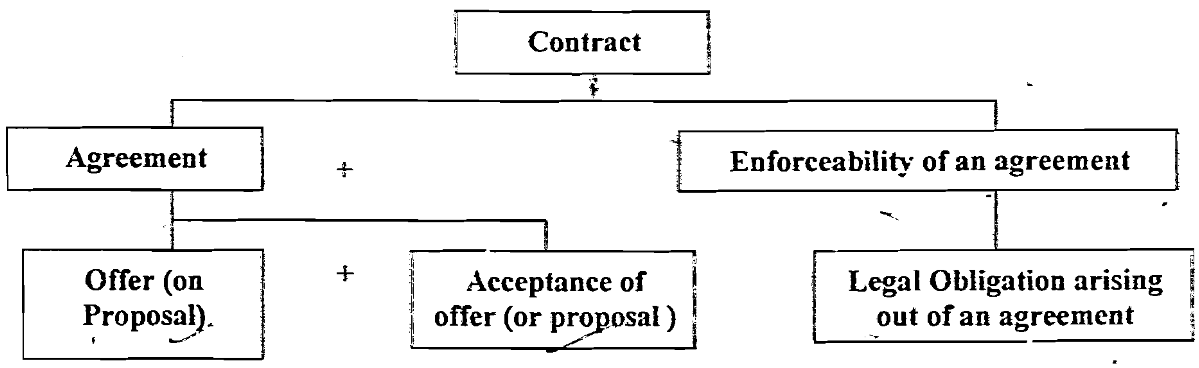
Example X invites his friend Y to a dinner and Y accepts the invitation. If Y fails to turn up for dinner, X cannot go to the court to claim his loss.

Similarly, in case of domestic arrangements, parties to agreement do not intend to sue each other so as to make such agreements unenforceable by law, e.g. in *Balfour. Balfour* (1919) 2 K.B. 571, a promise by the husband to pay his wife £ 30 every month was held unenforceable as the parties never intended it to be attended by legal obligations.

In commercial or business agreements the usual presumption is that the parties intend to create legal relations.

Example X offers to sell his car to Y for Rs 1,00,000. Y accepts this offer. Such an agreement between X and Y is a contract because it creates legal obligation. In this agreement, ff X refuses to sell or Y refuses to buy, the other party can file a suit in the court of law for the breach of the contract.

Thus, in the form of a graphic representation, the contract can be expressed as under:



"The .aw of contracts is not the whole law of agreements." The law of contracts is the law of only those agreements which create legal obligations (i.e. an obligation which is enforceable by law). An obligation is the duty to do or not to do certain act. In other words, the law of contract is concerned with only those agreements where the parties have the intention to create legal obligations (i.e. the parties are bound to do or not to do certain act). In business or commercial agreements, the usual presumption is that the parties intend to create legal obligations.

Example X offers to sell his car to Y for Rs 1,00,000. Y accepts this offer. In this agreement if there is default by either party, an action for breach of contract can be enforced through a court of law provided all the essential elements of a valid contract are present in this agreement.

The law of contract is not the law of those agreements which do not create legal obligations. In other words, the law of contract is not concerned with those agreements where the parties do not have the intention to create legal obligations. In social, domestic, moral or religious agreements, the usual presumption is that the parties do not intend to create legal obligations.

Example X invites Y to dinner. Y accepts the invitation but fails to turn up. Here, X cannot sue Y for damages because the parties to this agreement do not intend to create legal obligations.

Thus, the whole position may be summarized as under:

Type of agreement	*Whether the law of contract covers such agreements*
I. Agreements where the parties intend to create legal obligations, e.g. business agreements.	Yes
II. Agreements where the parties do not intend to create any legal obligation, e.g. social agreements	No

Thus, the law of contracts is not the whole law of agreements.

"The law of contracts is not whole law of obligations." The law of contracts is the law of only those obligations which arise out of agreements. The law of contracts is not concerned with those obligations which do not arise out of agreements. For example, obligation to maintain wife and children, obligation arising from judgment of courts, obligations arising from torts or civil wrong.
Thus, the whole position may be summarized as under:

Type of obligation	*Whether the law of contract covers such obligation*
I. Obligations which arise out of agreements	Yes
II. Obligations which do not arise out of contract	No

Thus, the law of contracts is not the whole law of obligations.

Distinction between an Agreement and a Contract
An agreement differs from a contract in the following respects:

Basis of distinction	*An agreement*	*A contract*
1. What constitute?	Offer and its acceptance constitute an agreement.	Agreement and its enforceability constitute a contract
2. Creation of legal obligation	An agreement may or may not create a legal obligation	A contract necessarily create a legal obligation
3. One in other	Every agreement need not necessarily be a contract	All contracts are necessarily agreements
4. Binding	Agreement is not concluded or a binding contract	Contract is concluded and binding on the concerned parties

CLASSIFICATION OF CONTRACTS
The various bases on which the contracts can be classified are shown below in Fig. 1.2.

Basis of Classification of Contracts

- **Creation** (1)
- (2) **Execution**
- (3) **Enforceability**

Fig. 1.2 Basis of Classification of Contracts

(1) **Contracts on the Basis of Creation**
On the basis of creation, the contracts may be classified as under:

(a) Express Contract Express contract is one which is made by words spoken or written.
Example I *X says to Y" Will you buy my car for Rs 1,00,000?" Y says to X"I am ready to buy your car for Rs 1,00,000." It is an express contract made orally.*
Example II *X writes a letter to Y. "I offer to sell my car for Rs 1,00,000 to you." Y send a letter to X. "I am ready to buy your car for Rs 1,00,000." It is an express contract made in writing.*

(b) Implied Contract An implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstances of the particular case.

Example I A transport company runs buses on different routes to carry passengers. This is an implied offer by transport company. X boards a bus. This is an implied acceptance by X. Now, there is an implied contract and X is bound to pay the prescribed fare.
Example II X, a coolie in uniform picks up the baggage of Y to carry it from railway platform to the taxi without being asked by Y to do so and Y allows it. In this case there is an implied offer by the coolie and an implied acceptance by the passenger. Now, there is an implied contract between the coolie and the passenger and the passenger is bound to pay for the services of the coolie.

(2) **Contracts on the Basis of Execution**
On the basis of execution, the contracts may be classified as under:
(a) **Executed Contract** It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract.
Example X offers to sell his car to Y for Rs 1,00,000. Y accepts X's offer. X delivers the car to Y and Y pays Rs 1,00,000 to X. It is an executed contract.

(b) **Executory Contract** It is a contract where both the parties to the contract have still to perform their respective obligations.
Example X offers to sell his car to Y for Rs 1,00,000. Y accepts X's offer. If the car has not yet been delivered by X and the price has not yet been paid by Y, it is an executory contract.

(c) **Partly executed and Partly Executory Contract** It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.
Example X offers to sell his car to Y for Rs 1,00,000 on a credit of one month. Y accepts X's offer. X delivers the car to Y. Here, the contract is executed as to X and executory as to Y.

Contracts on the Basis on Enforceability
On the basis of enforceability, the contracts may be classified as under:
(a) **Valid Contract** A contract which satisfies all the conditions prescribed by law is a valid contract.
Example X offers to marry Y. Y accepts X's offer. This is a valid contract.

(b) **Void Contract** The term 'Void Contract' is a contradiction in terms. But according to Section 2(j) of the Indian Contract Act, 1872, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable." In other words, a void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of him or some other reason.
Example X offers to marry Y. Y accepts X's offer. Later on Y dies. This contract was valid at the time of its formation but became void on the death of Y.

(c) **Void Agreement** According to Section 2(g), "An agreement not enforceable by law is said to be void." Such agreements are *void-a -initio* which means that they are unenforceable right from the time they are made.
Example An agreement with a minor or a person of unsound mind is void-ab-initio because a minor or a person of unsound mind is incompetent to contract.
Thus, a void agreement never matures into a contract.

(d) **Voidable Contract** According to Section 2(i) of the Indian Contract Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others, is a voidable contract. In other words, "A voidable contract is one which can be set aside or repudiated or avoided at the option of the aggrieved party." Until the contract is set aside or repudiated by the aggrieved party, it remains a valid contract. For example, a contract is treated as voidable at the option of the party whose consent has been obtained by coercion or undue influence or fraud or misrepresentation.

Example X threatens to kill Y if he does not sell his house for Rs 1,00,000 to X. Y sells his house to X and receives payment. Here, Y's consent has been obtained by coercion and hence this contract is voidable at the option of Y, the aggrieved party. If Y decides to avoid the contract, he will have to return Rs 1,00,000 which he had received from X. If Y does not exercise his option to repudiate the contract within a reasonable time and in the meantime, Z purchases that house from X for Rs 1,00,000 in good faith, Y cannot repudiate the contract.

In case of voidable contract, if the aggrieved party decides to repudiate the contract, the party rescinding the contract must restore the benefit received by him under the contract to the person from whom the benefit was received and the other party is freed from his obligation to perform the contract. [Section 64]

Distinction between Void Agreement and Voidable Contract Void agreement differs from voidable contract in the following respects:

Basis of distinction	*Voidable contract*	*Void agreement*
1. Void *ab-initio*	It is void from the very beginning.	It is valid when made and continues to remain validtill it is repudiated by the aggrieved party.
2. Which essential element of contract is missing	It is void because an essential element of a valid contract (other than free consent) is missing.	It is voidable because the consent of a party is not free.
3. Enforceability	It cannot be enforced by any party.	It continues to be enforceable if the aggrieved party does not repudiate the contract.
4. Right of third party	Third party does not acquire any rights.	A third party who purchases goods in good faith and for consideration before the contract is repudiated, acquires good title to those goods.
5. Effect of lapse of reasonable time	Even on the expiry of a reasonable time, it can never become a valid contract.	On the expiry of a reasonable time, it may become a valid contract if the aggrieved party does not repudiate the contract within reasonable time.
6. Damages	The question of damages does not arise.	The ~~aggrieved~~ party ~~can claim~~ damages.

(e) Illegal Agreement An illegal agreement is one the object of which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void *ab-initio* (i.e. void from the very beginning).

***Example** X agrees to pay Y Rs 1,00,000 if Y kills Z Y kills Z and claims Rs 1,00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful.*

Effect on collateral agreements agreements become void. In case of illegal agreements, even the collateral

***Example** If in the above example, X borrows Rs 1,00,000 from W who is aware of the purpose of the loan, the main agreement between X and Y is illegal and the agreement between X and W which is collateral to the main agreement is also void. Hence, W cannot recover the money from X.*

Distinction between Void Agreement and Illegal **Agreement** ***Void agreements differ from the Illegal Agreements in the following respects:***

Basis of distinction	Void agreement	Illegal agreement
1. *Void/illegal*	All illegal agreements are always void.	All void agreements need not necessarily be illegal.
2. *Effect on collateral agreements*	The collateral agreements do not become void.	The collateral agreements also become void.
3. *Restoration of benefit received*	If a contract becomes void subsequently, the benefit received must be restored to the other party.	The money advanced or thing given can not be claimed back.

(f) Unenforceable Contract It is a contract which is actually valid but cannot be enforced because of some technical defect (such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed..

Example An oral agreement for arbitration is unenforceable because the law requires that an arbitration agreement must be in writing. If the oral agreement for arbitration is reduced to writing, it will become enforceable.

ESSENTIALS OF A VALID CONTRACT

According to Section 10, "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

The analysis of the provisions of Section 10 shows that a valid contract must have certain essential elements. These essential elements have been shown below in Fig. 1.3.

Essential Elements of a Valid Contract

1. Proper offer and its Proper Acceptance
2. Intention to create legal relationship
3. Free consent
4. Capacity to contract
5. Lawful consideration
6. Lawful object
7. Agreement not expressly declared void
8. Certainty of meaning
9. Possibility of performance
10. Legal formalities

Fig. 1.3 Essential Elements of a Valid Contract

Let us discuss these essential elements one by one:

1. Proper Offer and Acceptance There must be at least two parties one making the offer and the other accepting it. Such offer and acceptance must be valid. An offer to be valid must fulfil certain conditions, such as it must intend to create legal relations, its terms must be certain and unambiguous, it must be communicated to the person to whom it is made, etc. An acceptance to be valid must fulfil certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner, it must be communicated by an authorised person before the offer lapses.

2. Intention to Create Legal Relationship There must be an intention among the parties to create a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

***Example** X invited Y to a dinner. Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement. Similarly, if Y fails to attend the dinner, X cannot go to the courts of law for enforcing the agreement.*

But even a business agreement may not be enforceable by law where the agreement so provides e.g. in *Rose & Frank Co. v. Crompton Bros.* (1925) A.C. 445, the agreement entered into stated that it will not be subject to legal jurisdiction in the law courts, the agreement was not enforceable by law as the parties never agreed to create legal obligations despite being a business agreement.

3. Free Consent There must be free consent of the parties to the contract. According to Section 14, consent is said to be free when it is not caused by (i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) mistake. If the consent of the parties is not free, then no valid contract comes into existence.

***Example** X threatens to kill Y if he does not sell his house to X. Y agrees to sell his house to X. In this case, Y's consent has been obtained by coercion and therefore, it can not be regarded as free.*

4. Capacity of Parties The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract. According to Section 11 of Indian Contract Act, 1872, "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." In other words, the person must be major, must be of sound mind and must not be declared disqualified from contracting by any law to which he is subject. If the parties to agreement are not competent to contract, then no valid contract comes into existence.

***Example** X, a minor borrowed Rs 8,000 from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract. Therefore, the mortgage was not valid and the money advanced to minor could not be recovered.*

5. Lawful Consideration An agreement must be supported by lawful consideration. Consideration means something in return. According to Section 23 of the Indian Contract Act, 1872, "the consideration is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy."

***Example I** X agrees to sell his car to Y for Rs 1,00,000. Here, Y's promise to pay Rs 1,00,000 is the consideration for X's promise to sell the car and X's promise to sell the car is the consideration for Y's promise to pay Rs 1,00,000.*

***Example II** X promises to drop prosecution which he has initiated against Y for robbery and Y promises to restore the value of things taken. The agreement is void because the consideration is unlawful.*

6. Lawful Object The object of an agreement must be lawful. According to Section 23 of the Indian Contract Act, 1872, "the object is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy."

***Example I** X, Y and Z enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void because its object is unlawful.*

***Example II** X lets a flat on hire to Y, a prostitute, knowing that it would be used for immoral purposes. The agreement is void because its object is for immoral purposes.*

7. Agreement not Expressly Declared Void The agreement must not have been expressly declared void under the provisions of Sections 24 to 30 of the Indian Contract Act, 1872. Under these provisions, agreement in restraint of marriage, agreement in restraint of legal proceedings, agreement in restraint of trade and agreement by way of wager have been expressly declared void.

Example I X promised to marry none else except Y and in default pay her Rs 1,00,000. X married to Z and Y sued X for the recovery of Rs 1,00,000. It was held that Y was not entitled' to recover anything because this agreement was in restraint of marriage and as such void.
Example II X and Y carried on business in Chandni Chowk area of Delhi. X promised to stop business in that locality if Y paid Rs 1,00,000. X stopped his business but Y did not pay him the promised money. It was held that X was not entitled to recover anything because the agreement was in restraint of trade and as such void.

8. **Certainty of Meaning** The terms of the agreement must be certain and unambiguous. According to Section 29 of the Indian Contract Act, 1872, agreements the meaning of which is not certain or capable of being made certain are void.
Example X a dealer in different types of oils agreed to sell 100 tonnes of oil to Y. This agreement is void on the ground of uncertainty because it is not clear what kind of oil is intended to be sold.

If, however, the meaning of the agreement could be made certain from the circumstances of the case, it will be treated as a valid contract.
Example X who is a dealer in mustard oil, agreed to sell 100 tonnes of oil to Y. This agreement is valid because the meaning of the agreement could be easily ascertained from the circumstances of the case.

9. **Possibility of Performance** The terms of the agreement must be such as are capable of performance. According to Section 56, "an agreement to do an impossible act is void."
Example I X agrees with Y to discover treasure by magic and Y agrees to pay Rs 1,000 D X. This agreement is void because it is an agreement to do an impossible act.
Example II X agrees with Y to enctose some area between two parallel lines and Y agrees to pay Rs 1 ,000 to X. This agreement is void because it is an agreement to do an impossible act.

10. **Legal Formalities** The agreement must comply with the necessary formalities as to writing, registration, stamping etc. if any required in order to make it enforceable by law.
Example I An oral agreement for arbitration is unenforceable because the law requires that arbitration agreement must be in writing.
Example" An oral agreement for sale of immovable property is unenforceable because the law requires that such agreement must be in writing and registered.
Conclusion All the aforesaid elements must be present in an agreement in order to create a valid contract. If anyone of them is missing or absent, the agreement will not be enforceable by law.

CHAPTER – 2 Offer and Acceptance

VALID OFFER

Meaning of Offer [Section 2(a)]

An offer is the starting point in the making of an agreement. An offer is also called 'proposal'. According to Section 2(a) of The Indian Contract Act, 1872, "A person is said to have made the proposal when he signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that offer to such act or abstinence."

Thus. an offer involves the following essential elements:

(a) It must be made by one person to another person. In other words, there can be no proposal by a person to himself.

Example X says to Y that he wants to sell his car to himself for Rs 1 lakh. There is no proposal because there can be no proposal by a person to himself.

(b) It must be an expression of readiness or willingness to do (i.e. a positive act) or to abstain from doing something (i.e. a negative act).

Example I X offers to sell his car to Y for Rs 1 lakh. It is a positive act on the part of X. Example II X offers not to file a suit against Y if Y pays X the outstanding amount of Rs 1,00,000. It is a negative act on the part of X.

(c) It must be made with a view to obtain the consent of that other person to proposed act or abstinence.

Example X jokingly says to" Y"I am ready to sell my car for Rs 1,000." *Y*, knowingly that X is not serious in making the offer, says "I accept your offer." In this case, X's offer was not the real offer as he did not make it with a view to obtain the consent of *Y*.

Meaning of "Offerer" (or 'Promisor'), Offeree (or Promisee)

The person making the proposal is called the offerer or proposer. The person to whom the proposal is made is called the 'offeree' or 'proposee'.

Example X says to y, "I want to sell my car to you for Rs 1 lakh." Here, 'to sell car' is an offer or proposal. X who has made the offer is called offer or or promisor. Y to whom the offer has been made is called the offeree or proposee.

How to Make an Otter

An offer can be made by any act which has the effect of communicating it to another person. An offer may, either be an 'express offer' or 'implied offer'.

(a) Express Offer An express offer is one which is made by words spoken or written.

Example I X says to Y,"Wili you purchase my car for As 1,00,000?" Example II X writes to Y in a letter, "' want to sell my house for As 2,00,000."

Example III X advertises in a newspaper that I will pay As 1 ,000 to anyone who traces my missing nephew.

(b) Implied Otter An implied offer is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstances of the particular case.

Example I A transport company runs buses on different routes to carry passengers. This is an implied offer by the transport company to carry passengers for a certain fare.

Example II A bid at an auction is an implied offer to buy.

To Whom an Otter is Made

An offer may be 'specific' or 'general'.

(a) **Specific Otter** A specific offer is one which is made to a definite person or particular group of persons. A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made.

Example X offers to buy car from Y for As 1.0 lakh. This offer is a specific offer which has been made to a definite person Y. No person other than Y can accept this offer. [Boulton v. Jones] Similarly an offer made to a company is an offer to a group of persons and hence a specific offer.

(b) **General Offer** A general offer is one which is not made to a definite person, but to the world at large or public in general. A general offer can be accepted by any person by fulfilling the terms of the offer. In case of general offer, the contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

Example I X advertised in the newspaper that he would pay As 5,000 to anyone who traces his missing boy. Y, who knew about the reward traced that boy and sent a telegram to X that he had found his son. It was held that X was entitled to receive the amount of reward. [Harbhajan Lal v. Harcharan Lal (AIR All 539)].

Example II Carbolic Smoke Ball Co. advertised in the newspaper that it would pay As 1,000 to anyone who contracts influenza after using the smoke ball of the company according to the printed instructions. Mrs Carlil uses the smoke ball according to the printed directions but subsequently contracted influenza. On a suit for the reward she was held entitled to recover the same because she had accepted the offer by fulfilling the terms of the offer. [Carlil v. Carbolic Smoke Ball Co.]

~~Legal~~ Rules for a Valid Offer

An offer to be valid must fulfil the conditions shown below in Fig. 2.1.

Legal Rules for a Valid Offer

1	2	3	4	5
Intention To create Legal Relation-Ship	Certain and Unambiguous Terms	Different from a mere Declaration Of intention	Different From an Invitation To offer	Proper Communication
	6	7		
	No term The non-Compliance Of which Amount to Acceptance	Communication Of special terms		

Fig. 2.1 Legal Rules for a Valid Offer

Let us discuss the rules one by one.

(a) **Intention to Create Legal Relationship** An offer must intend to create legal relations. An offer must be such that when accepted, it will create legal relationship among the parties.

The question whether or not the parties have intention to create legal relationship can be answered with reference to type and terms of agreement and the circumstances under which the agreement is made. (As discussed in the last chapter.)

(b) Certain and Unambiguous Terms The terms of the offer must be certain and unambiguous and not vague, If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.
Example I *X offers to sell to Y" a 100 tons of oil" If X is a dealer in coconut oil and mustard oil, his offer is not certain because it is not clear that he wants to sell coconut oil or mustard oil. But if X is a dealer in coconut oil only, it is clear that he wants to sell coconut oil. Hence, the offer is certain.*
Example II *X otters to sell to Y his car for Rs 1,00,000 or Rs 1 ,50,000. Here X's offer is not certain because it is not clear which of the two prices was to be given by Y.*
Note: If the terms of the offer are capable of being made certain, the offer is not regarded as vague. For example, X offers to sell to Y" a 100 tons of coconut oil" Here, the offer cannot be said to be uncertain on the ground that it is not clear what price is to be given for oil because in such a case if such an offer is accepted by *Y. Y has* to give only a reasonable price.

(c) Different from a Mere Declaration of Intention, The offer must be distinguished from a mere declaration of intention. Such statement or declaration merely indicates that an offer will be made or invited in future.
Example I *A father wrote to his would be son-in-law that his daughter would have a share of what he left after the death of his wife. It was held that the letter was a mere statement of intention and not an ofter. [Farine v. Fickar]*
Example II *X, a broker of Mumbai wrote to Y a merchant of Ghaziabad stating the terms on which he is willing to do business. It was held that the letter was a mere statement of intention and not an offer. [Devidatt v. Shriram]*
Example III *A notice that the goods stated in the notice will be sold by tender does not amount to an offer to sell. [Spencer v. Harding]*
Example IV *An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day. Mr. X with the intention to buy furniture came from a distant place for the auction but the auction was cancelled. It was held that Mr. X cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. [Harris v. N. Nickerson]*

(d) Different from an Invitation to Offer An offer must be distinguished from an invitation to offer. In case of an invitation to offer, the person making an invitation invites others to make an offer to him. It is prelude to an offer inviting negotiations or preliminary discussions.
Example I *Goods were displayed in the shop for sale with price tags attached on each article and self service system was there. One customer selected the goods. It was held that the display of goods was only an intention to offer and the selection of the goods was an offer by the customer to buy and the contract was made when the cashier accepted the offer to buy and received the price. [Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.]*
Example II *A prospectus issued by a company for subscription of its shares and debentures is only an invitation to general public to make an offer to buy the shares debentures which mayor may not be accepted by the company.*
Similarly, an advertisement inviting quotations of lowest price in response to an enquiry amounts to invitation to offer but not an offer capable of acceptance, e.g. in *Harvey* v. *Facie* (1893), *X* sent a telegram to Y asking "Will you sell us Bumper Hall Penn? Telegraph Lowest Cash Price." *Y* replied through a telegram "Lowest Price for Bumper Hall Penn £900." *X* replied telegraphically stating "We agree to buy Bumper Hall Penn for £900 asked by you." Held, the quotation of price by *Y* was a mere invitation to offer. Consent of *X* to purchase the estate for £900 was an offer.

(e) Communication An offer must be communicated to the person to whom it is made. An offer is complete only when it is cOIIJP1unicated to the offeree. One can accept the offer only when he knows about it. Thus, an offer accepted without its knowledge does not confer any legal rights on the acceptor.

Example I G sent 'is servant L to trace his lost nephew. When the servant had left, G announced a reward of Rs 500 to anyone who traces the missing boy. L found the boy and brought him home. When L came to know about reward, he filed a suit against G to recover the reward. It was held that L was not entitled the reward because he did not know about the reward when he found the missing boy. [Lalman Shukla v. Gauri Dutt]
Example II S offered a reward to anyone who traces his lost dog. F brought the dog without any knowledge of the offer of reward. It was held that F was not entitled to the reward because F cannot be said to have accepted the offer which he did not know. [Fitch v. Snedakar]

(f) No Term the Non-compliance of which Amounts to Acceptance The offer must not contain a term the non-compliance of which would amount to acceptance. It means that while making the offer, the offerer can not say that if offer is not accepted before a certain date, it will be presumed to have been accepted.
Example X writes a letter to *Y*. I offer to sell my car for Rs 1,00,000. If I do not receive your reply by Friday next, I shall assume that you have accepted the offer. Here if *Y* does not reply, it does not mean that he has accepted the offer.

(g) Communication of Special Terms or Standard Form Contracts The special terms of the offer must also be communicated along with the offer. If the special terms of the offer are not communicated, the offeree will not be bound by those terms. The question of special terms arises generally in case of standard form of contracts. Standard contracts are made with big companies such as insurance companies, railways, shipping companies, banking companies, hotel companies, dry cleaning companies. Since such companies are in position to exploit the weakness of general public by including certain terms in the contract which may limit their liabilities, it is provided that the special terms of the offer must be brought to the notice of general public.
Example I X purchased a steamer ticket for travelling from Dablin to White Haven and on the back of the ticket, certain conditions were printed one of which excluded the liability of the company for loss, injury or delay to the passengers or his luggage. X never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. His luggage was lost due to the negligence of the servants of the shipping company. It was held that X was entitled to claim compensation for the loss of his luggage in spite of the exemption clause because there was no indication on the face of the ticket to draw his attention to the special terms printed on the back of the ticket. [Handerson v. Stevenson]
Example II P deposited his bags in the cloakroom at a railway station. On the face of the receipt the words 'see back' were printed. One of the conditions printed on the back was 'the liability of the railway company shall be limited for any package to $10'. p's bag was lost and P claimed the actual value of bag amounting to $24. P admitted knowledge of the condition printed on the back but denied having read it. It was held that P could recover only $10 because the railways had given reasonable sufficient notice on the face of the ticket as to the existence of conditions. [Parker v. SE Rail Co.]
Notes:

(i) In case the special conditions are printed in a language which the offeree does not understand, it is the offeree's duty to ask for the translation of the condition before accepting the offer and if he does not ask, it shall be presumed that he knows them and he will be bound by them.

(ii) The special terms and conditions must be brought to the knowledge of the offeree before the contract is concluded and not afterwards.' A subsequent communication will not bind the acceptor unless he himself agrees thereto. For example, Mr. *X* and Mrs. *X* hired a room in hotel for a week. When they entered the room, they found a notice on the wall disclaiming the owner's liability for damages, loss or theft of articles. Some of their items were stolen. It was held that owner was liable because the notice was not a part of the contract as it came to the knowledge of the customer after the contract was entered into. *[Olley v. Marlborough Court Ltd.]*

(iii) The special terms and conditions must be reasonable. What is reasonable is a question of facts. If terms and conditions are unreasonable, the other party will not be bound by them. For example, if a dry cleaner limits his liability to 25% of the market price of the article in case of loss, the customer will not be bound by this condition because it means that the dry cleaner can purchase garments at 25% of the market price. In *Lily White Drycleaners* v. *Munnuswamy* AIR 1966 (Mad.), the receipt issued by the drycleaner stated that the drycleaner would be liable only to the extent of 10 times the dry cleaning charges in the event of any damage to the clothes. Held, such a clause was unreasonable and opposed to public policy, and therefore. couldn't bind the parties.

Meaning of Cross Offers

Two offers which are similar in all respects made by two parties to each other. in ignorance of each other's offer are known as 'cross offers'. Cross offers do not amount to acceptance of one's offer by the other. Hence, no contract is entered into on cross offers.

Example *X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs 1 lakh. The letter is posted on 1st January and the same day, Y of Delhi sends a letter by post to X of Agra offering to buy X's car for Rs 1 lakh. These two letters cross each other. Y's letter is merely an offer and not the acceptance of X's letter. Here, both the parties are making offer and no party has accepted the offer. Therefore, no contract has been entered into. If they want to enter into a contract, at least one of them must send his acceptance to the offer made by the other.*

Meaning of Standing Offer

An offer of a continuous nature is known as 'standing offer' . A standing offer is in the nature of a tender. It is the same thing as an invitation to an offer. A contract is said to have been entered into only when an order is placed on the basis of the tender.

Example *X Ltd. requires a large quantity of certain goods during the 12 months period and gives an advertisement inviting tender in the leading newspaper. Z submitted the tender to supply those goods at a specific rate. Z's tender is accepted or approved. Now, Z's tender becomes a standing offer. Each order given by X Ltd. will be an acceptance of the offer.*

ACCEPTANCE

Meaning of Acceptance

Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer. According to Section 2(b) of the Indian Contract Act, 1872, "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise."

In other words, an acceptance is the consent given to offer.

Example *X offers to sell his car to Y for Rs 1,00,000. Y agrees to buy the car for Rs 1,00,000. Y's act is an acceptance of X's offer.*

Who Can Accept

In general, an offer can be accepted only by the person or persons to whom it is made. The specific answer to this question can be given with reference to type of offer as under:

(a) In Case of Specific Offer An offer made to a definite person or particular group of persons (called specific offer) can be accepted only by that definite person or that particular group of persons to whom it has been made and none else.

Example *X sold his business to Y but this fact was not known to an old customer Z. Z placed an order for certain goods to X by name. Y supplied those goods to Z. It was held that there was no contract between Y and Z because Z never made any offer to Y. [Boulton v. Jones]*

(b) **In Case of General Offer** An offer made to the world at large or public in general (called gener offer) can be accepted by any person having knowledge of the offer by fulfilling the terms of the offe
Example A Company advertised that it would pay $100 to anyone who contracts influenza after usir the smoke balls of the company according to the printed directions. Mrs Carli I used the smoke bal according to the printed directions but subsequently she contracted influenza. She filed a suit for tl reward. It was held that she was entitled to recover the reward because she had accepted the offer l complying with the terms of the uffer. [Carlil v. Carbolic Smoke Ball Company)

How to Make Acceptance

Like an offer, an acceptance may also be *either* an 'implied acceptance' *or* 'express acceptanc
(a) **Express Acceptance** An express acceptance is one which is made by words spoken or written.
Example *X* says to *y*, "Will you purchase my car for Rs 1,00,000?" Then *Y* says, "I am ready : purchase your car for Rs 1,00,000."

(b) **Implied Acceptance** An implied acceptance is one which is made otherwise than in words. I other words, it is inferred from the conduct of the person or the circumstances of the particular case.
Example A transport company runs buses on different routes to carry passengers. *X*, a passenge boards the bus. *X's* act is an implied acceptance by *X* and he is bound to pay the fare

Legal Rules for a Valid Acceptance

An acceptance to be valid *must'* fulfil certain conditions which are shown below in Fig. 2.2.

Conditions for a Valid Acceptance

- Absolute & unquali-fied
- Manner in which acceptance is to be given
- Communication
- By whom
- To whom
- Time limit
- Before lapse of offer

Fig. 2.2 Conditions for a Valid Acceptance

(a) **Absolute and Unqualified** According to Section 7(1) of the Indian Contract Act, 1872, "In orde to convert a proposal into a promise, the acceptance must be absolute and unqualified." It means, tha an offer must be accepted as it is without any reservation, variation or condition. A qualified an conditional acceptance amounts to marking of a counter offer which puts an end to the original offe and it cannot be revived by subsequent acceptance.
Example I X offered to sell his car for Rs 1,00,000 to Y. B agreed to buy it for Rs 90,000. Y's act is a counter offer and not an acceptance of X's offer. Now, if Y accepts the original offer to buy the car fo Rs 1,00,000, X will not be bound to sell the house because Y's counter offer has put an end to th original offer. [Nihal Chand v. Amar Nath]
Example II X offered to sell two plots of land to Y at a certain price. Y accepted the offer for one plo It was held that the acceptance was not valid because it was not for the whole of the offer. [Bhawan v Sadula]
Example III At an auction sale, X's bid was provisionally accepted at an auction sale. The acceptanc was subject to confirm8.tion. X withdrew his bid before confirmation. It was held that X cou withdraw his bid before confirmation because the acceptance was not absolute but subject t confirmation.

(b) Manner According to Section 7(2) of the Indian Contract Act, 1872, the acceptance of an offer must be given in the following manner.

(a)	If the proposal does not prescribe the manner in which it is to be accepted.	The offer must be accepted in some usual and reasonable manner.
(b)	If the proposal prescribes the manner in which it is to be accepted.	The offer must be accepted in the Prescribed manner.

The consequences of not accepting the offer in the prescribed manner: If the offer is not accepted in the prescribed manner, the offerer may approve or reject such acceptance. If the offerer wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance because it is not in the prescribed manner. If he does not do so within a reasonable time the presumption will be that he doesn't mind the offer being accepted in a different mode and will be bound by such acceptance.

Example X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs 1.00.000 and also writes "send your acceptance by telegram." Y sends his acceptance by an ordinary letter. X can reject such acceptance on the ground that it was not accepted in the prescribed manner. But if he does not inform Y within the reasonable time, he shall be deemed to have accepted such acceptance and a valid contract will be formed between X and Y.

(c) Communication The acceptance must be signified (i.e. indicated or declared). In other words, the acceptance is complete only when it has been communicated to the offerer. A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct.

***Example** X offered to supply coal to a Railway Company. The manager of the company accepted the offer and put it in the drawer of his table and forgot all about it. It was held that no contract was made because acceptance was not communicated. (Brogden v. Metropolitan Railway Co.]*

Note: In case of acceptance made by post, the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.

(d) By Whom Acceptance must be communicated by the offeree himself or by a person who has the authority to accept. In other words, if acceptance is communicated by an unauthorised person, it will not give rise to legal relations.

Example *P* applied for the post of a headmaster in a school. The managing committee passed a resolution approving *P* to the post but this decision was not communicated to *P*. But one member of the managing committee in his individual capacity and without any authority infonned *P* about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else. *P* filed a suit for breach of contract. It was held that Ps suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorised person. *[Powell* v. *Lee]*

Note:

The communication of acceptance is not necessary in case of unilateral contracts where the offerer prescribed a particular mode of acceptance. In such cases. it is sufficient if that prescribed mode is followed as in case of *Carlit* v. *Smoke Ball Co.* and *Har Bhajan Lal* v. *Harcham Lal.*

(e) To Whom Acceptance must be communicated to the offerer himself. In other words, if acceptance is communicated to an unauthorised person, it will not give rise to legal relations.

Example** F offered by a letter to buy his nephew's horse for $39 saying "If I hear no more about him, I shall consider the horse mine." The nephew sent no reply at all but told B his auctioneer, not to sell that particular horse as he intended to sell that horse to F. B sold the horse by mistake. It was held that F will not succeed because his nephew had not communicated acceptance to him. [Felthouse v.* ***Bindley]

(f) Time Limit The acceptance must be given within the time prescribed (if any) or within a reasonable time (if no time is prescribed). What is reasonable time depends upon the facts and circumstances of the case.

Example An offer to buy shares of a company was made in June but the acceptance was communicated in November, it was held that the offerer was not bound by the acceptance because the acceptance was not given within a reasonable time. [Ramsgate Victoria Hotel Co. v. Montefiore]

(g) Before Lapse of Offer The acceptance must be given before the offer lapses or is withdrawn. In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relations.

Example *X* offered by a letter to sell his car for Rs 1,00,000. Subsequently, *X* withdrew his offer by a telegram which was duly received by *Y*. After the receipt of telegram, *Y* sent his acceptance to X. In this case, the acceptance is invalid because it was made after the effective withdrawal of the offer.

COMMUNICATION OF OFFER AND ACCEPTANCE

The communication of offer and acceptance must complete so as to bind the concerned parties because as soon as the communication is complete the parties loose the right of withdrawal or revocation. The legal provisions relating to the communication of offer and acceptance are as under:

(a) Communication of Offer The communication of offer is complete when it comes to the knowledge of the person to whom it is made. In case an offer is made by post, its communication will complete when the letter containing the offer reaches the offeree.

Example X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs 1,00,000. The letter is posted on 1st January and this letter reaches on 7th January. The communication of the offer is complete on 7th January.

Note: An offer accepted without its complete communication does not bind the offerer.

Example In case of Lalman v. Gauri Duff, G sent his servant L to trace his lost nephew. When the servant had left, G announced a reward to anyone who traces the boy. L found the boy and brought him home. When L came to know of the reward, he claimed the reward. It was held that L was not entitled to the reward because he did not know about the offer when he found the missing boy.

(b) Communication of Acceptance The communication of acceptance is complete at different times for the proposer and acceptor. The rules regarding the communication of acceptance are as under:

The communication of acceptance is complete.	*When does the communication of acceptance complete*
(i) As against the proposer	When it is put in a course of transmission to him, so as to be out of the power of the acceptor. In case of acceptance made by post, the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
(ii) As against the acceptor	When it comes to the knowledge of the proposer. In case of acceptance made by post, the acceptor becomes bound by the acceptance only when the letter of acceptance is actually received by proposer.

Note: The time gap between the date on which the letter of acceptance is posted and the date on which the letter of acceptance is received by the proposer can be utilized by the acceptor to withdraw his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.

***Example** X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs 1,00,000. The letter is posted on 1st January and this letter reaches Y on 7th January. Y sends his acceptance by post on 10th January but X receives this letter of acceptance on 15th January. In this case the legal position relating to the communication of offer and acceptance is as under:*

Communication	*When does the communication complete*	*Reason*
(a) Communication of offer	7th Jan.	The letter containing the offer reaches the offeree on 7th Jan.
(b) Communication of acceptance as against the proposer	10th Jan.	The letter of acceptance is posted on 10th Jan.
(c) Communication of acceptance as against the acceptor	15th Jan.	The letter of acceptance is received by the proposer on 15th Jan.

After posting the letter of acceptance on 10th January, *Y* can withdraw his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.

Contracts over telephone/telex/fax A contract by telephone/telex/fax is treated on the same principle as an oral agreement made between two parties when they are face to face with each other. In such cases, the contract will complete only when the proposer receives the acceptance and not when the acceptor does transmit it. Therefore, the acceptor must ensure that the proposer properly receives his acceptance.

***Example** X made an offer to Y over telephone. While Y was conveying his acceptance, the line went dead and X could not hear anything. In this case, there was no contract at that moment.*

Note: In case of contracts over telephone, telex or fax, the question of revocation (i.e. withdrawal of acceptance) does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time).

REVOCATION OF OFFER AND ACCEPTANCE

Meaning of Revocation The term 'revocation' means 'taking back' or 'withdrawal'.

Time Limit within which Offer can be Revoked [Section 5] According to Section 5 of the Indian Contract Act, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. We know that communication of acceptance is complete as against the proposer when a properly addressed and stamped letter of acceptance is duly posted by the acceptor. Hence, an offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor. Thus, the proposer may revoke his offer by a speedier mode of communication which will reach before the letter of acceptance is posted by the acceptor.

Example *X* of Agra offers by a letter dated 1st January sent by post to sell his car to *Y* of Delhi for Rs. 1,00,000. *Y* accepts the offer on 7th January at 1 p.m. by letter sent by post. Here, *X* may revoke his offer at any time before 1 p.m. on 7th Jan. but not afterwards.

Notes:

(i) Revocation must always be expressed.

(ii) Revocation must move from the offerer himself or a duly authorized agent.

(iii) Notice of revocation of a general offer must be given through the same channel by which the original offer was made.

(iv) Offer can not be revoked even if the letter of acceptance is lost or delayed in transit.

Time Limit within which Acceptance can be Revoked [Section 5] According to Section 5 of the Indian Contract Act, "An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards." We know that communication of acceptance is complete as against the acceptor when the letter of acceptance is actually received by the proposer. Hence, an acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer. Thus an acceptor may revoke his acceptance by a speedier mode of communication, which will reach before the letter of acceptance is received by the proposer.
Example X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs 1,00,000. Y accepts the offer on 7th Jan. at 1 p.m. by a letter sent by post. X receives the letter of acceptance on 15th Jan. at 3 p.m. Here, Y may revoke his acceptance at any time before 3 p.m. on 15th Jan. but not afterwards.

Acceptance is to Offer what a Lighted Match is to a Train of Gunpowder The position relating to revocation of proposal and acceptance has been described by Anson in the following words,

"Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which can not be recalled or undone."
This statement primarily holds good under English law.
Here. gunpowder = offer and lighted match = acceptance

When a lighted match is shown to a train of gunpowder, it explodes and some thing happens which cannot be undone. Similarly, an offer once accepted cannot be revoked. But so long a lighted match is not shown, the gunpowder remains inert and can be removed, similarly an offer can be revoked before it is accepted.

Similarly, once acceptance is given it cannot be revoked. But under Indian Contract Act. acceptance can be revoked by resorting to quicker means of communication so that the offerer learns about it before acceptance. Thus, the above statement doesn't hold in relation to revocation of acceptance under Indian law.

Simultaneous Delivery of Letter of Acceptance and the Telegram containing Revocation of Acceptance In case the letter of acceptance and the telegram containing revocation of acceptance are delivered to the proposer at the same time, the formation of contract depends upon the fact which one is read first by the offerer. The contract shall be said to have been formed if the letter of acceptance is read first but shall not be said to have been formed if the telegram containing revocation of acceptance is read first. Generally, it is presumed that a man of ordinary prudence will first read the telegram. Hence the revocation will be quite effective.

No Revocation in case of Contract over Telephone or Telex of Fax In case of contracts over telephone or telex or fax, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time).

Communication of Revocation [Section 4] The communication of revocation is complete at different times for person who makes it and the person to whom it is made. The rules regarding the communication of revocation are as under:

The communication of revocation is *complete.*	*When does the communication of revocation complete.*
(i) As against the person who makes it *(ii)* As against the person to whom it is made	When it is put in a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it. When it comes to his knowledge.

Example X proposes by letter to sell his car to Y for Rs 1,00,000. Y accepts X's proposal by a letter sent by post. If X revokes his proposal by telegram, the revocation of offer is complete as against X *when the telegram is dispatched and it is complete as against Y when Y receives the telegram. If Y revokes his acceptance by telegram, the revocation of acceptance is complete against Y when the telegram is dispatched and as against X when it reaches him.*

LAPSE OF AN OFFER

An offer must be accepted before it lapses (i.e. comes to an end). An offer may come to end in any of the ways shown in Fig. 2.3.

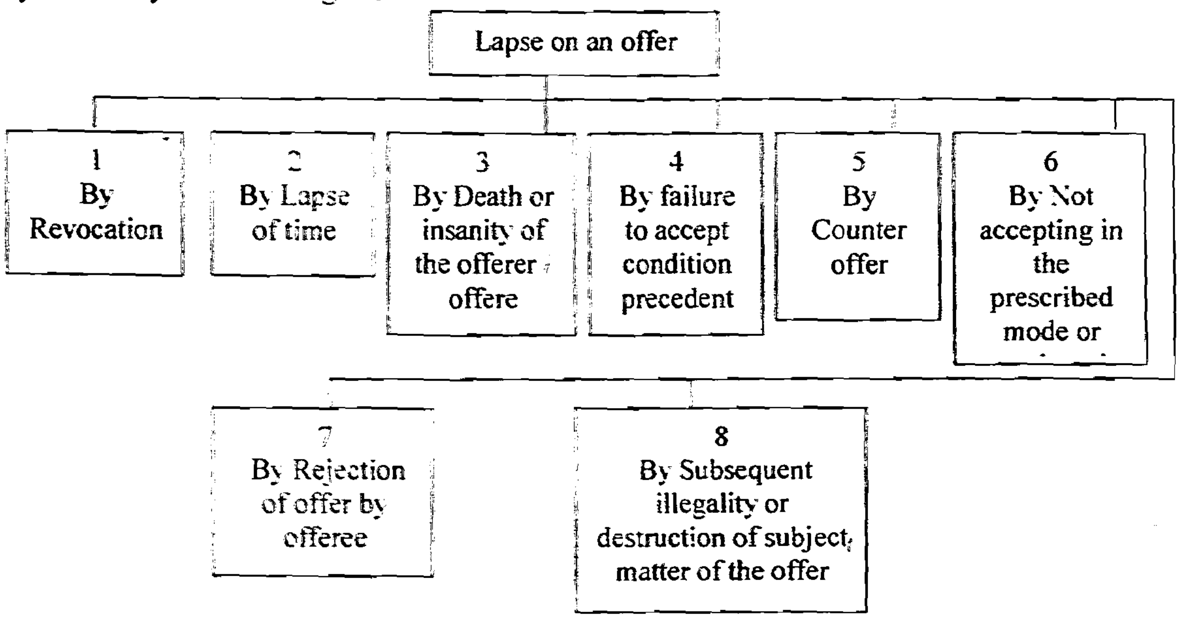


Fig. 2.3 Lapse of an Offer

(a) By Revocation An offer lapses if the offerer revokes the offer before its acceptance by the offeree. According to Section 5 of the Indian Contract Act, a proposal. may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards.

Example I *X* of Agra offers by a letter dated 1st January sent by post to sell his car to *Y* of Delhi for Rs 1,00,000. Y accepts the offer on 7th January at 1 p.m. by a letter sent by post. Here, *X* may revoke his offer at any time before 1 p.m. on 7th Jan. but not afterwards.

***Example II** At an auction sale, the highest bidder can revoke his offer to buy before the fall of the hammer.*

(b) By Lapse of Time An offer lapses if it is not accepted within the fixed time (if any prescribed in the offer) *or* within reasonable time (if no time is prescribed in the offer).

***Example** An offer to buy shares of a Company was made in June but the acceptance was communicated in November. It was held that offer to buy shares had lapsed because it was not accepted within a reasonable time. [Ramsgate Victoria Hotel Co. v. Montefiore)*

(c) By Death or Insanity of the Offeror or Offeree An offer lapses by the death or insanity of the offerer if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. In other words, if the offer is accepted in ignorance of the death or insanity of the offerer. there will be a valid contract. It may be noted that in English law the death of the offerer terminates the offer even if acceptance is made in ignorance of the death.

An offer also comes to an end by the death or insanity of the offeree if the offeree dies or becomes insane before accepting the offer because an offer cán be accepted only by the offeree and not by any other person.

(d) By Failure to Accept Condition Precedent An offer lapses if it is accepted without fulfilling the conditions of the offer.
Example X offered to sell his car to Y for Rs 1,00,000 subject to the condition that Y should pay an advance of Rs 20,000 before a certain date. Y accepted the offer but did not send an advance of Rs 20,000. In this case, the offer has lapsed because the advance was not paid.

(e) By Counter Offer An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer. Counter means making a fresh offer instead of accepting the original offer.
Example X offered to sell his car to Y for Rs 1,00,000. Y said that he would buy it for Rs 90,000. X refused to sell for Rs 90,000. Subsequently, Y offered to buy the car for Rs 1,00,000. Here, Y's offer to buy for Rs 90,000 is a counter offer which terminates the original offer. Y's second offer to buy for Rs 1,00,000 is a fresh offer and not an acceptance of the original offer. [Hyde v. Wrench]

(f) By not Accepting in the Prescribed Mode or Usual Mode An offer if it is not accepted in the specific manner (if any, prescribed in the offer) or in some usual and reasonable manner (if no manner has been prescribed in the offer).
Example X offered to sell his car to Y for Rs 1,00,000 and wrote to Y "Send your acceptance by telegram." Y sent acceptance by an ordinary letter. X can reject such acceptance.

(g) By Rejection of Offer by Offeree An offer lapses if it is rejected by the offeree. An offer is said to be rejected if the offeree expressly rejects it or accepts it subject to certain conditions. It may be noted that once an offer is rejected, it can not be revived subsequently.

(h) By Subsequent illegality or Destruction of Subject Matter of the Offer An offer lapses if it becomes illegal or the subject matter is destroyed before its acceptance by offeree.
Example I X of Delhi offered supply of 100 tons of sugar to Y at Mumbai on a certain date. Before this offer is accepted by Y, the Central Government issued an order prohibiting the inter-state movement of sugar. Here, X's offer has come to an end.
Example II X of Delhi offered to sell his car to Y of Agra for Rs 1,00,000. Before the offer is accepted by Y, the car is destroyed by fire. Here X's offer has come to an end.

CHAPTER – 3 Capacities of Parities

WHO IS COMPETENT TO CONTRACT

According to Section 11 of the Indian Contract Act, 1872, "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." Thus, all the three tests (viz. age, soundness, disqualification) must be applied to determine whether a person is competent to contract or not. The following table summarises the result of these tests.

Test to check competency	*The person is competent to contract*	*The person is not competent to contract in the following cases*						
I. Whether he is of the age *of* majority	Yes	Yes	Yes	No	No	No	Yes	No
II. Whether he is *of* sound mind	Yes	Yes	No	Yes	No	Yes	No	No
IIII. Whether he is not is qualified from contracting	Yes	No	Yes	Yes	Yes	No	No	No

POSITION OF AGREEMENTS WITH A MINOR

Who is Minor

A minor is a person who has not attained majority. According to Section 3 of the Indian Majority Act, 1875, a person is deemed to have attained majority as under:

(a) Where a guardian *of* a minor's person or property is appointed under the Guardian and Wards Act, 1890	On completion *of* 21 years
(b) Where minor's property has passed under the superintendence *of* the court *of* wards	On completion *of* 21 years
(c) In other cases	On completion *of* 18 years

Position of Agreements by a Minor

The law protects minor's rights because they are not mature and may not possess the capacity to judge what is good and what is bad for them. The position of agreements with or by a minor may be summarised as under:

1. **Validity** An agreement with a minor is void *ab-initio* [Leading case Law *Mohiri Bibee* v. *Dharmodas Ghosh*]
   Facts D, a minor borrowed a sum from M by executing a mortgage of his property in favour of M. Subsequently, D sued for setting aside the mortgage. The privy council held that Sections 10 and 11 of the Indian Contract Act make the minor's agreement void and therefore the mortgage was not valid. M prayed for refund of the amount by the minor. It was held that the money advanced to minor cannot be recovered because minor's agreement was void.
2. **No Estoppel** A minor is not estopped from setting up the plea of minority. He may plead infancy to escape from being liable. In G. *Bhimappa Meti* v. *Balangowda Bhimangowda;* the Bombay High Court held that "Where an infant represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him, he in an action founded on the contract, is not estopped from setting up infancy."
3. **In case of fraudulent representation of age by minor** According to Sections 30 and 33 of the Specific Relief Act, 1963, in case of a fraudulent misrepresentation of his age by the minor inducing the other party to enter into a contract, the court may award compensation to the other party. The Lahore High Court in *Khan Gul* v. *Lakha Singh* held that where the contract is set aside, the *status quo ante* should be restored and the court may direct the minor on equitable

grounds to restore the money or property to the other party if the money or property could be traced.

4. **Ratification on attaining the age of majority** An agreement with a minor cannot be ratified even after he attains majority. Ratification relates back to the date of the making of the agreement and therefore an agreement which was then void cannot be made valid by subsequent ratification. In *Indran Ramaswamy* v. *Anthaoppa*, a person on attaining majority, gave a promissory note in satisfaction of one executed by him for money borrowed when he was a minor. It was held that the claim under the promissory note could not be enforced because there was no consideration.
5. **Validity of minor's agreement jointly with a major person** The agreements made by a minor jointly with a major person are void vis-a-vis the minor but can be enforced against the major person who has jointly promised to perform.
6. **Minor as a partner** A minor cannot become a partner in a partnership firm. However. according to Section 30 of Indian Partnership Act 1932. with the consent of all the partners for the time being be admitted to the benefits of partnership. In other words, he can share the profits without incurring any personal liability.
7. **Minor as an agent** A minor can act as an agent and bind his principal by his acts without incurring any personal liability.
8. **Minor as a shareholder or member of a company** A minor can become a shareholder or member of a Company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
9. **Minor as an insolvent** A minor cannot be declared insolvent because he is not competent to contract.
10. **Contract for the benefit of a minor** A minor can be a promisee. In *Raghva Chariar* v. *Srinivasa*, the Madras High Court held that a mortgage executed in favour of a minor who has advanced the mortgage money is enforceable by him or by any other person on his behalf. Similarly, in case of sale of goods by a minor, he is entitled to recover the price from the buyer. Thus, he may be a promisee but not promisor on a promissory note or a drawer but not drawee on a bill of exchange.
11. **Contract by minor's guardian** The contracts entered into on behalf of a minor by his guardian or manager of his estate can be enforced by or against the minor if the contract (a) is within the scope of the authority of guardian or manager, and (b) is for the benefit of the minor. *[Subramanyam* v. *Subba Rao]*. It may also be noted that his guardian cannot enter into a valid contract for purchase of the immovable property for his/her service.
12. **Contract for supply of necessaries** A person who has supplied the necessaries to a minor or to those who are dependent on him is entitled to be reimbursed from the property of such minor. [Section 68] *Meaning of necessaries:* The term necessaries includes articles required to maintain a particular person in the state, degree and station in life in which he is. According to Section 2 of English Sale of Goods Act, the necessaries mean the goods which are suitable to the condition in life of a minor and to his actual requirement at the time of sale and delivery. In India, food, clothing, shelter, education and marriage of a female have been held to be necessaries. Section 68 covers the reimbursement for the supply of such items or loans for the same. *Example:* In case of *Nash* v. *Inman*, a minor bought eleven fancy coats from *N* for his own use. It was held that eleven coats at a time cannot be a necessity.

    Section 68 also covers the rendering of necessary services to a minor. For example, the lending of a money to a minor for the purpose of defending him in prosecution is deemed to be a service rendered to the minor.

    'Claim against property and not against person' A claim for the payment of necessaries supplied can be made against the minor's property and not against the minor personally. In other words, a minor cannot be asked to expend labour in exchange.

    Liability of minor s guardian The parent or guardian of a minor cannot be held liable unless those goods/services are supplied/rendered to a minor as the agent of the parent or guardian.

13. **Minor's liability in Tort** A minor may be held liable in Tort (civil wrong). But if in the course of doing what he is entitled to do under the contract, he is found guilty of negligence, he cannot be made liable on tort if he is not liable on the contract, e.g. in *Burnard* v. *Huggis,* a minor hired a horse promising not to jump it. He lent the horse to his friend who used the horse against the instructions and this led to the death of the horse. The minor was held liable on Tort. But in another case a horse was hired for riding. The horse was injured due to over-riding. The minor could not be held liable since the injury resulted from negligence in the course of what he was entitled to do under the contract. Since he was not liable on the contract himself, he could not be held liable in tort too. *(Jennings* v. *Randall).*

POSITION OF PERSONS OF UNSOUND MIND

Who is a Person of Unsound Mind

According to Section 12 of the Indian Contract Act, "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, is capable

(a) to understand the terms of the contract,

(b) to form a rational judgment as to its effect upon his interests."

Thus, if a person is not capable of both, he is said to have suffered from unsound ness of mind. The examples of persons having an unsound mind include idiots, lunatics and drunken persons. A person who is so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct is said to be an 'idiot'. A person affected by lunacy is said to be 'lunatic'. A person can become lunatic at any stage of his life.

Position of a Person who is Usually of Unsound Mind but Occasionally of Sound Mind

According to Section 12, "A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind."

Example A patient in a lunatic asylum who is at intervals of sound mind may contract during those lucid intervals.

Position of a Person who is Usually of Sound Mind but Occasionally of Unsound Mind

According to Section 12, "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 sane man who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest, cannot enter into contract whilst such drunkenness lasts.

Burden of Proof

The rules regarding the burden of proof are summarised as under:

Case	*The burden of proof lies on*
I. Where a person is usually of sound mind	The burden of proving that he was of unsound mind at the time of contract lies on the person who challenges the validity of contract.
II. Where a person is usually of unsound mind	The burden of proving that he was of sound mind at the time of contract, lies on the person who affirms it.
III. In case of drunkenness or delirium from fever or other causes	The burden of proving that he was delirious from fever or was so drunk at the time of contract, lies on the person who challenges the validity of the contract.

Position of Agreements with Persons of Unsound Mind

The position of agreements of persons of unsound mind is summarised as under:

Persons of unsound mind	*Capacity to enter into contract*
I. Lunatic (i.e. a person who is mentally deranged due to some mental strain or other personal experience but who has some lucid intervals of sound mind)	
(a) While he is of unsound mind	He cannot enter into any contract. Any agreement entered into by him during this period is altogether void and he cannot be held liable thereon.
(b) While he is of sound mind	He can enter into a valid contract and he is liable for such contracts.
II. Idiots (i.e. a person who is permanently of unsound mind)	He cannot enter into any contract. Any agreement entered into by him is altogether void and he is not liable thereon.
III. Drunken person (i.e. a sane person 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 interest)	He cannot contract while such delirium or drunkenness lasts.

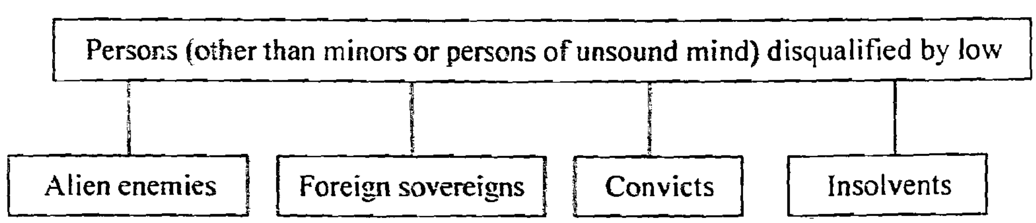
Exceptions The position of contracts with persons of unsound mind is identical with that of contracts with a minor. Thus, the position of contracts with persons of unsound mind is as under:

(a) He may enforce a contract for his benefit;

(b) His properties shall be attachable for realisation of money due against him for the supply of necessaries to him or to any of his dependents.

PERSONS DISQUALIFIED BY LAW

Besides minors and persons of unsound mind, there are others who are disqualified from contracting under the provision of some other laws. Such persons have been shown below in Fig. 3.1.



Persons Disqualified by Law

Let us discuss about them one by one.

(a) **Alien Enemy** An alien is a person who is the citizen of a foreign country. An alien may either an alien friend or an alien enemy.

An alien whose country is at peace with the Republic of India is called as alien friend. He has usually the full contractual capacity.

An alien whose country is at war with the Republic of India is called an alien enemy. His contractual capacity can be summarized as under:

I. Position of contracts during the war	An alien enemy can *neither enter* into any contract *nor* can be sued in an Indian Court except by license from the Central Government.
II. Position of contracts entered into before the war	
(a) If such contracts are against the public policy or are such that may benefit the enemy	(a) Such contracts stand dissolved.
(b) If such contracts are not against public policy	(b) Such contracts are merely suspended for the duration of the war and revived after the war is over unless they have already become time barred under the Law of Limitation Act.

Example *X, an Indian, carries on a business in Pakistan. He enters into a contract with Y who carries on business in India. Immediately after the formation of the contract, a war broke out between India and Pakistan. In this case, X becomes an alien enemy though he is Indian and the contract between X and Y (if not against the public policy) will be suspended for the duration of the war and revived after the war is over.*

(b) Foreign Sovereigns and Ambassadors They can enter into contracts and enforce those contracts in our courts but they cannot be sued in our courts without the sanction of the Central Government unless they choose to submit themselves to the jurisdictions of our Courts.

Notes:

(i) An ex-king can be sued in our Courts.

(ii) Where a foreign sovereign etc. enter into a contract through an agent residing in India, the agent shall be held liable on the contract.

(c) Convicts A person is called a convict during his period of sentence. His contractual capacity is summarized as under:

I. During the period of sentence	He cannot enter into any contract.
II. After the expiration of the period of sentence or when he is on parole.	He can enter into a contract. He can sue on a contract.

(d) Company under the Companies Act or Statutory Corporation under the Special Act of Parliament The contractual capacity of the company and the statutory corporation is summarized as under:

I. In case of a Company	Its contractual capacity is determined by the 'object clause' of its Memorandum of Association.
II. In case of Statutory Corporation	Its contractual capacity is determined by the statute creating it.

Any act done in excess of the power given is *ultra vires* (i.e. beyond power) and hence void.

(e) Insolvents When a person's debts exceed his assets, he is adjudged insolvent and his property stands vested in the Official Receiver or Official Assignee appointed by the Court. Such person

(i) cannot enter into contracts relating to his property,

(ii) cannot sue,

(iii) cannot be sued.

Note: When the insolvent is discharged, the aforesaid disqualification is removed.

CHAPTER – 4 Consideration

MEANING OF CONSIDERATION

Consideration is one of the essential elements of a valid contract.

The term 'consideration' means something in return, i.e. *quid-pro-quo*. What is 'something' has been explained by Justice Lush J. in a leading English case *Currie* v. *Misa* as under:

"A valuable consideration in the sense of the law, may consist *either* in some right, interest, profit or benefit accruing to the one party *or* some forbearance. detriment, loss or responsibility given. suffered or undertaken by the other."

Thus, consideration must result in a benefit to the promisor, and a detriment or loss to the promisee or a detriment to both. Section 2(d) of the Indian Contract Act, 1872 defines consideration as under:

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

Example I X promises to deliver his good to *Y* and *Y* promises to pay Rs 1,000 on delivery. In this case, the consideration for each of these promises is as under:

Promise	*Consideration*
For X's promise	*Y's* promise to pay Rs 1,000 on delivery
For *Y's* promise	X's promise to deliver his goods.

Example II X owes Y Rs 10,000. Y promises X not to file a suit against him for one year on X's agreeing to pay him Rs 500 more. In this case, the consideration for each of the promise is as under:

Promise	*Consideration*
For X's promise	Forbearance on the part of *Y* to file a suit
For *Y's* promise	X's promise to pay Rs 500 more

ESSENTIAL ELEMENTS OF VALID CONSIDERATION

On the basis of definition of consideration as per Section 2(d), the essential elements of valid consideration are shown below in Fig. 4.1.

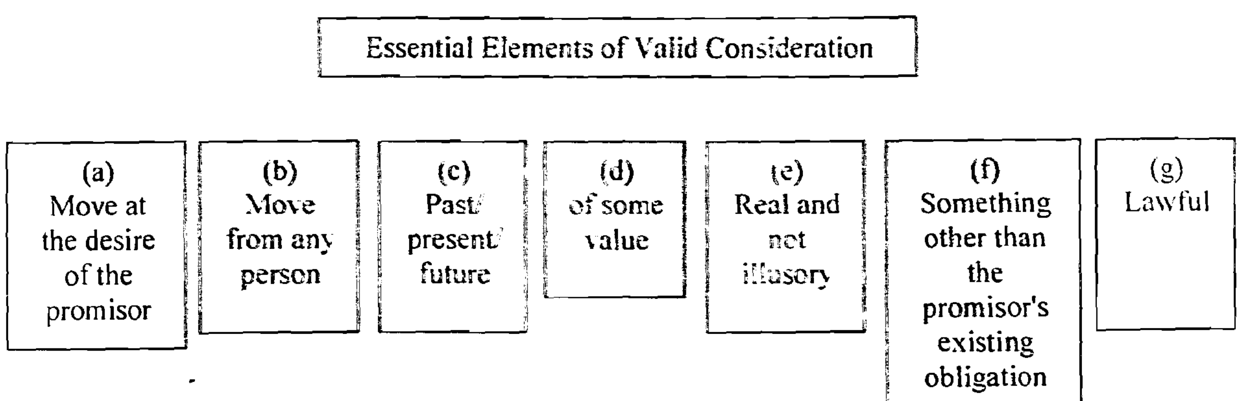


Fig. 4.1

Let us discuss them one by one.

(a) **It must be Given only at the Desire of the Promisor** An act constituting consideration must have been done at the desire or request of the promisor. Thus, an act done at the desire of a third party or without the desire of the promisor cannot constitute a valid consideration.

***Example I** A's son is lost and B goes in search for him. Can B claim remuneration from A, (a) if B does this act voluntarily, (b) if B does this act at the request of A. (c) if B does this a~ at the request of C?*

Case	*Decision and reason*
(a) If *B* does this act voluntarily	*B* cannot claim remuneration from *A* because he has not done at *A's* request.
(b) If *B* does this act at the request of *A*	*B* can claim remuneration from *A* because he has done at *A's* request.
(c) If *B* does this act at the request of C	*B* cannot claim remuneration from *A* because he has not done at *A's* request.

***Example II** X spent As 1,00,000 on the construction of shops at the request of the collector of the District. In consideration of this Y a shopkeeper promised to pay some money to X. It was held that this agreement was void being without consideration because X had constructed the shops at the request of collector and not at the desire of Y. [Durga Prasad v. Baldeo]*

(b) It may Move from any Person An act constituting consideration may be done by the promisee himself or any other person (i.e. stranger to consideration). Thus, it is immaterial who furnishes the consideration and therefore, may move from the promisee or any other person.
***Example** X, by a deed of gift transferred certain property to her daughter Y with a direction that Y should pay Z an annuity. On the same day, Y executed a deed in writing in favour of Z and agreed thereby to pay the annuity. Later, Y refused to pay the annuity on the plea that no consideration had moved from Z It was held that Z was entitled to maintain suit because a consideration need not necessarily move from the promisee, it may move from any other person (i.e. X in the present case). [Chinnawa v. Ramawa]*

(c) It may be Past or Present or Future The consideration may be past, present or future.

Past Consideration	The consideration which has already moved before the formation of agreement. ***Example** X renders some service to Y at Y's request in the month of May. In June, Y promises to pay X Rs 1 ,000 for his past services. Past services amount to past consideration. X can recover As 1,000 from Y.*
Present Consideration	The consideration which moves simultaneously with the promise, is called present consideration. ***Example** In case of cash sale, promise to pay the price and promise to deliver the goods are performed simultaneously.*
Future Consideration	The consideration which is to be moved after the formation of agreement is called future consideration. **Example** *X* promises to deliver certain goods to *Y* after 10 days and *Y* promises to pay after 10 days from the date of delivery.

Tutorial Note: The English Law does not recognise the past consideration.

(d) It must be of Some Value The consideration need not be adequate to the promise but it must be of some value in the eye of the law. It is understood in the sense of something in return and that something can be anything, adequate or grossly inadequate. According to Explanation 2 of Section 25, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Example A agrees to sell a horse worth As 1,000 for Rs 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should taken into account in considering whether or not A's consent was freely given.

(e) It must be Real and not Illusory - The consideration must be real and not illusory.
Example I X engages Y for doing a certain work and promises to pay reasonable remuneration. This promise is not enforceable because the consideration is uncertain.
Example II X promises to put life into Y's dead wife and Y promises to pay Rs 1,00,000. This agreement is void because consideration is physically impossible to perform.

(f) Something other than the Promisor's Existing Obligation The act constituting consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
Example I X promises Y, his advocate, to pay an additional sum if the suit was successful. The suit was declared in favour of X but X refused to pay additional sum. II was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement. [Ramchandra Chintamana v. Kalu Raju]
Example II X had received summons to appear before a court of law as witness on behalf of Y who promised to pay some money for his trouble. It was held that the promises to pay money was void for want of consideration because X was under a legal duly to appear as witness before court of law. [Collins v. Godefroa]

(g) Lawful The consideration must *neither* be unlawful *nor* opposed to public policy.
Example I X promises Y to pay Rs 1,000 to beat Z, Y beats Z and claims Rs 1,000 from X, X refuses to pay. Y cannot recover because the agreement is void on the ground of unlawful consideration.
Example II X promises Y to obtain an employment in the public service and Y promises to pay Rs 1,000 to X. The agreement is void on the ground of unlawful consideration.

STRANGER TO A CONTRACT Privity to contract

Though a stranger to consideration ~~can sue because the consideration can be~~ furnished or supplied by any person whether he is the promisee or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship' subsisting between the parties to a contract).
Example I X owes Y Rs 1,00,000 and sells his property to Z. Z promises to payoff Xs debt 10 y. Z fails to pay. Y cannot sue Z because he is a stranger to a contract.
Example II X bought lyres from Dunlop Rubber Co. and sold them to Y, a sub-dealer who agreed with X not to sell below Dunlop's list price and to pay to Dunlop Co. Rs 150 as damages on every tyre he undersold. Y sold two lyres at less than the list price and thereupon, Dunlop Co. sued him for the breach. II was held that the Dunlop Co. could not maintain the suit because it was a stranger to the contract. [Dunlop P. Tyre Co. Ltd. v. Selfridge & Co. Ltd.]

Exceptions
The rule that a stranger to a contract cannot sue, is subject to the following exceptions:
(a) In case of Trusts The beneficiary (i.e. the person for whose benefit the trust has been created) may enforce the contract.
Example I X transferred certain properties to be held by Y for the benefit of Z. Z can enforce the agreement even though he is not a party to the agreement. [M.K. Rapsi v. John]
Example II X sent an insured parcel to Y. On loss of such parcel, Y sued the post office. It was held that Y was entitled to sue though he was stranger to the contract because on receipt of such article, the post office becomes a trustee for the addresee. [Amir Ullah v. Central Govt.]

Example III X, the father of a minor daughter D, and Y, the father of a minor son S, entered into an agreement of marriage for D and S on the condition that after the marriage, Y would pay his daughter-in-law D, Rs 500 as kharch-e-paan daan (betel box money). After the marriage took place, X died. On Y's refusal to pay the agreed amount to D, the Court held that 0 was entitled to recover the amount as a beneficiary of trust even if she was a stranger to the contract between Xand Y. [Khwaja Mohd. v. Hussaini Begum (1910) 37.IA 152]

(b) In Case of Family Settlement The person for whose benefit the provision is made under family arrangements may enforce the contract.
Example A provision of marriage expenses of a female member was made in a Joint Hindu Family. On partition, the female member sued for such expenses. It was held that she was entitled to sue. [Rakhmanbai v. Govind]

(c) Acknowledgement The person who becomes an agent of third party by acknowledgement or otherwise, can be sued by such third party.
Example X receives Rs 1 ,000 from Y for paying the same to Z. X acknowledges this receipt to z. Z can recover the amount from X because X will be regarded as Zs agent. [Surjan v. Nana]

(d) Assignment of a Contract Where a benefit under a contract has been assigned, the assignee can enforce the contract subject to all equities between the original parties to the contract e.g. the assignee of an insurance policy.

CONTRACTS WITHOUT CONSIDERATION

General Rule According to Section 10, consideration is one of the essential elements of a contract. According to Section 25, an agreement made without consideration is void. For example, X promises to pay Rs 5,000 to his girlfriend *Y*. This promise cannot be enforced by *Y* because she is not giving anything to X for this promise.

In *Abdul Aziz* v. *Mazum Ali*, a promise to donate Rs 500 towards construction of a mosque was held unenforceable as it was a gratuitous promise lacking consideration. But gratuitous promise shall be enforceable by law if the promisee on the faith of such promise suffered a liability as suffering of detriment forms a valid consideration *[Kedamath* v. *Gorie Mohd.]*

Exceptions to the General Rule No Consideration, No Contract

The following are the exceptions to the general rule No Consideration, No Contract:

(a) Agreements Made on Account of Natural Love and Affection [Section 25(1)] Such agreement made without consideration is valid if:

(i) it is expressed in writing,
(ii) it is registered under the law,
(iii) it is made on account of love and affection, and
(iv) it is between parties standing in a near relation to each other.

Note: Nearness of relation by itself does not necessarily import love and affection.
Example I A Hindu husband by a registered document promised to pay his wife Rs 1,000 per month as her pin-pocket money. This agreement is valid.
Example II A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife Rs 1,000 p.m. for her maintenance. It was held that this agreement was void because there was no natural love and affection. [Rajlakhi Devi v. Shoot Nath Mookherjee]

(b) Promise to Compensate [Section 25(2)] Such promise made without consideration is valid if:

(i) it is a promise to compensate (wholly or in part); and
(ii) the person who is to be compensated has already done something voluntarily or has done something which the promisor was legally bound to do.

Example I X finds Ys purse and gives it to him. Y promises to give Rs 500 to X. This is a valid contract even though the consideration did not move at the desire of Y, the promisor.
Example II X, a neighbour helped putting down the fire in Y's house. Afterwards, Y promised X to give Rs 1,000. This is a valid contract even though the consideration did not move at the desire of the promisor.
Example III X, supported Y's infant son. Y promised to pay Xs expenses in so doing. This is a valid contract. Here, X has done that act which Y was legally bound to do.

(c) **Promise to Pay Time Barred Debt [Section 25(3)]** Such promise without consideration is valid if:

- (i) it is made in writing.
- (ii) it is signed by the debtor or his agent, and
- (iii) it relates to a debt which could not be enforced by a creditor because of limitation.

Note:
According to the law of limitation, a debt which remains unpaid or unclaimed for a period of 3 years becomes a time barred debt which is legally not recoverable. But a promissory note issued in personal capacity by the wife of a debtor to pay his time barred debt of her husband is not enforceable *[Pestonjee v. Bai Meharbai]*

(d) **Completed Gifts [Explanation to Section 25]** The gifts actually made by a donor and accepted by the donor are valid even without consideration. Thus, a completed gift needs no consideration.
Example X transferred some property to Y by a duly written and registered deed as a gift. This is a valid contract even though no consideration moved.

(e) **Agency [Section 185]** No consideration is necessary to create an agency.

CHAPTER 5 Free Consent

CONSENT

Meaning of Consent

The consent means an act of assenting to an offer. According to Section 13, "Two or more persons are said to consent when they agree upon the same thing in the same sense." Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called 'consensus-ad-idem'.

Effect of Absence of Consent

When there is no consent at all, the agreement is void *ab-initio*, i.e. it is not enforceable at the option of either party. Example I X has one Maruti car and one Fiat car. He wants to sell Fiat car. Y does not know that X has two cars. Y offers to buy X's Maruti car for Rs 50,000. X accepts the offer thinking it to be an offer for his Fiat car. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is void *ab-initio*.

Example II X, an illiterate woman, signed a gift deed thinking that it was a power of attorney. This gift deed was not explained to her. It was held that her mind did not go with that writing and she never intended to sign a gift deed. Hence, there was no consent at all and the agreement was void ab-initio. [Bala Devi v. S. Majumdatj

FREE CONSENT

Meaning of Free Consent [Section 14]

Free consent is one of the essential elements of a valid contract as it is evidenced by Section 10 which provides that all agreements are contracts if they are made by the free consent of the parties. . . According to Section 14, Consent is said to be free when it is not caused by (a) coercion, or (b) undue influence, or (c) fraud, or (d) misrepresentation, or (e) mistake.

Effect of Absence of Free Consent [Section 19]

When there is consent but it is not free (i.e. when it is caused by coercion or undue influence or fraud or misrepresentation), the contract is usually voidable at the option of the party whose consent was so caused.

Example X threatens to kill Y if he does not sell his house to X. Y agreed to sell his house to X. In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

COERCION

Meaning of Coercion [Section 15]

Coercion means compelling a person to enter into a contract under a pressure or a threat. According to Section 15, a contract is said to be caused by coercion when it is obtained by

(a) committing any act which is forbidden by the Indian Penal Code; or

(b) threatening to commit any act which is forbidden by the Indian Penal Code; or

(c) unlawful detaining of any property; or (d) threatening to detain any property.

Example I X beats Y and compels him to sell his car for Rs 50,000. Here, Y's consent has been obtained by coercion because beating someone is an offence under the Indian Penal Code.

Example II A Hindu-widow of 13 years was forced to adopt a boy under threat that her husband's dead body would not be allowed to be removed if she does not adopt the boy. She adopted the boy. Here, widow's consent has been obtained by coercion because preventing the dead body from being removed for cremation is an offence under Section 297 of the Indian Penal Code. [Ranganayakamma v. Alwar Seltl]

Note: The Indian Penal Code need not be in force in place where the coercion is employed.

Against Whom/by Whom Coercion may be Exercised

Coercion may proceed from any person, and may be directed against any person, even a stranger.

Example I X threatens to kill Z, Y's son, if Y refuses to sell his house to him. Yagrees to sell his ho Here, Y's consent has been obtained by coercion though Z is a stranger to the contract.

Example II X threatens to kill Y if Y refuses to sell his house to Z. Y agrees to sell his house. Here consent has been obtained by coercion though X is a stranger to the contract.

Effect of Threat to File a Suit

A threat to file a suit (whether civil or criminal) does not amount to coercion unless the su on false charge. Threat to file a suit on false charge is an act forbidden by the Indian Penal Code thus will amount to an act of coercion.

Effect of Threat to Commit Suicide

A 'suicide' and a 'threat to commit suicide' are not punishable but an attempt to commit sui is punishable under the Indian Penal Code. It does not mean that 'suicide' and threat to commit sui are permitted by Indian Penal Code. The question whether a 'threat to commit suicide' amount coercion or not was considered by Madras High Court in the case of *Chikham Ammiraju* v. *Sesham* In this case, a person threatened to commit suicide if his wife and son did not execute a release dee favour of his brother in respect of certain property. It was held that though a threat to commit sui is not punishable under the Indian Penal Code, it is deemed to be forbidden by that code. Hence. threat to commit suicide amounted to coercion and the release deed was therefore, voidable.

Duress V. Coercion: The English law uses the term' duress' for coercion. However, the two different in the following way:

(a) Duress does not include detaining of property or threat to detain property.

(b) Duress can be employed only by a party to the contract or his agent.

Effects of Coercion [Sections 19, 64, 72]

The effects of coercion are as follows:

Effects	*Provision*
(a) Option of aggrieved party to avoid the contract	When consent to an agreement is obtained by coercion, th agreement is a contract voidable at the option of the par whose consent was obtained by coercion (also called aggrieve party). [Section 19]
(b) Obligation of aggrieved party to restore benefit	The party rescinding a voidable contract shall restore th benefit received by him under the contract, to the person fro whom the benefit was received. [Section 64]
(c) Obligation of other party to repay or return	A person to whom money has been paid or anything delivere under coercion, must repay or return it. [Section 72]

Example I X threatens to kill Y if he does not sell his house for Rs 1,00,000 to X. Y sells his hou X and receives the payments. Here, Y's consent has been obtained by coercion. Hence, this contra voidable at the option of Y. If Y decides to avoid the contract, he will have to return Rs 1,00,000 w he had received from X.

Example II A railway company refused to deliver certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

Burden or Onus of Proof

The burden of proving that consent was obtained by coercion, and the aggrieved party would not have entered into contract had coercion been employed, lies on the party intending to avoid the contract.

UNDUE INFLUENCE

Meaning of Undue Influence [Section 16(1)]

The term 'undue influence' means dominating the will of the other person to obtain an unfair advantage over the other. According to Section 16(1), a contract is said to be induced by undue influence

(a) where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other, and

(b) the dominant party uses that position to obtain an unfair advantage over the other.

Presumption of Domination of Will [Section 16(2)]

According to Section 16(2), a person is deemed to be in a position to dominate the will of another in the following three circumstances:

Circumstances	*Examples*
(a) Where he holds a real or apparent authority over the other	Master and servant, parent and child, Income Tax Officer and assessee, Principal and a temporary teacher
(b) Where he stands in a fiduciary relation to the other	Trustee and beneficiary, spiritual adviser (Guru) and his disciples, solicitors and client, guardian and ward
(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress	Medical attendant and patient

No Presumption of Domination of Will

According to judicial decisions held in various cases, there is no presumption of undue influence in the following relationships:

(a) Husband and wife (other than pardanashin)
(b) Landlord and tenant
(c) Creditor and debtor

Example I X advanced Rs 10,000 to his son Y during his minority and obtained upon Ys coming of age, a bond from Y for Rs 1,00,000. Here, there is misuse of parental influence.

Example II A poor Hindu widow agreed to pay interest at 100% p.a. because she needed the money to establish her right of maintenance. It was held that the lender was in position to dominate the will of widow. [Ranee Annpurni v. Swaminath]

Example III A devotee gifted her property to her spiritual guru to secure benefits to her soul in next world. It was held that spiritual guru was in position to dominate the will of devotee. [Mannu Singh v. Umadat Pandey]

Example IV X, an illiterate old man of about 90 years, physically infirm and mentally in distress, executed a gift deed of his properties in favour of Y his nearest relative who was looking after his daily needs and managing his cultivation. It was held that Y was in a position to dominate the will of X. *[Sher Singh* v. *Prithi Singh]*

Effect of Undue Influence [Section 19A]

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Discretion of Court Any such contract may be set aside *either* absolutely *or*, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as the court may seem just.

Example I A's son forged Bs name to a promissory note. B, under threat of prosecuting A's son obtains a bond from A, for the amount of the forged note. If B sues on this bond, the court may set the bond aside.

Example II A, a money-lender, advances Rs 10,000 to B, an agriculturist, and by undue influence induces B to execute a bond for Rs 20,000 with interest at 6 per cent per month. The court may set the bond aside, ordering B to repay Rs 10,000 with such interest as may seem just.

Burden of Proof

When a contract is avoided on the ground of undue influence, the liabilities of dominant party and weaker party to prove are as under:

The weaker party has to prove (a) that the other party was in a position to dominate the will (b) that the other party actually used his influence to obtain an unfair advantage (c) that the transaction is unconscionable (unreasonable)	In case of unconscionable transaction, the dominant party has to prove that such contract was not induced by undue influence. **Note:** A transaction is said to be unconscionable if the dominant party makes an exorbitant profit of the other's distress

Example X was in great need of money. The market rate of interest prevailing at that time was 15% to 24%. A lender agreed to grant the loan at 30% because of stringency in the money market. This cannot be called as unconscionable transaction merely because of an unusual high rate of interest. However, if the lender agreed to grant the loan at a rate which is so high (say 75% or 100%) then the Court considers it unconscionable, and the transaction will be called unconscionable.

Contracts with Pardanashin Woman

Meaning of Pardanashin Woman: A woman who observes complete seclusion (i.e. who does not come in contact with people other than her family members) is called pardanashin woman.

Legal Presumption: A contract with a pardanashin woman is presumed to have been induced by undue influence.

Burden of Proof" The other party who enters into a contract with a pardanashin woman must prove(a) that he made full disclosure of all the facts to her;
(b) that she understood the contracts and the implications of the contract;
(c) that she was in receipt of competent independent advice before entering into the contract.

Comparison between Coercion and Undue Influence

Similarities: In case of both coercion and undue influence, the consent is not free and the contract is voidable at the option of the aggrieved party.

Distinction: Coercion differs from the undue influence in the following respects:

Basis of distinction	*Coercion*	*Undue influence*
1. Relationship	Parties to a contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.

2. Consent	Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
3. Nature of pressure	It involves physical pressure.	It involves moral pressure.
4. Who can exercise	It can be exercised even by a stranger to the contract.	It can be exercised only by a party to a contract and not by a stranger.
5. Restoration of benefit	The aggrieved party has to restore the benefit received under Sec. 64.	The party avoiding the contract mayor may not return the benefit under Sec. 19A.
6. Presumption	Coercion has to be proved by the party alleging it, in no case it is presumed by the law.	It may be presumed by the law under certain circumstances. The party against whom such presumption lies must disprove it.
7. Nature of liability	The party committing the crime may be punishable under I.P.C.	It doesn't involve any criminal liability.

Rebutting Presumption

The presumption of undue influence can be rebutted by showing

(a) that the dominant party has made a full disclosure of all the facts to the weaker party before making the contract;

(b) that the price was adequate; and

(c) that the weaker party was in receipt of competent independent advice before entering into the contract.

FRAUD

Meaning and Essential Elements of Fraud [Section 17]

(a) Meaning The term 'fraud' means a false representation of fact made willfully with a view to deceive the other party. Section 17 defines the fraud as follows:

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

(a) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true; e.g. X sells to *Y* locally manufactured goods as imported goods charging a higher price, it amounts to fraud.

(b) the active concealment of a fact by one having knowledge or belief of the fact. Mere concealment is no fraud. But where steps are taken by a seller concealing some material facts so that the buyer even after a reasonable examination cannot trace the defects, it will amount to fraud, e.g. X a furniture dealer, conceals the cracks in furniture sold by him by using some packing material and polishing it in such a way that the buyer even after reasonable examination cannot trace the defect, it would tent amount to fraud through active concealment.

(c) a promise made without any intention of performing it; e.g. in *Shireen* v. *John*, AIR (1952) Punj 227, a man and a woman underwent a ceremony of marriage with the husband not regarding it as a real marriage. Held, the husband had no intention to perform the promise from the time he made it and hence the consent of the wife was obtained under fraud.

(d) any such act or omission as the law specially declares to be fraudulent, e.g. under Companies Act and Insolvency Acts, certain kinds of transfers have been declared to be fraudulent.

(e) any other act fitted to deceive. It covers those acts which deceive but are not covered under any other clause.

(b) Essential Elements On the basis of aforesaid definition of fraud, the essential elements of fraud are shown below in Fig. 5.1.

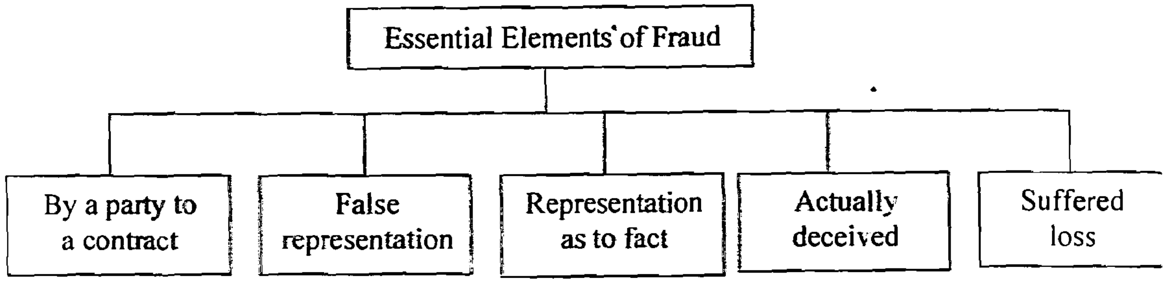


Fig. 5.1 Essential Elements of Fraud

Let us discuss them one by one:

(i) *By a party to a contract:* The fraud must be committed by a party to a contract or by anyone with his connivance or by his agent. Thus, the fraud by a stranger to the contract does not affect the validity of the contract.

Example *The directors of a company issued a prospectus containing false statements. A shareholder who ... subscribed for the shares on the faith of the prospectus wanted to avoid the contract. It was held that he ... do so because the false statement made by directors amounted to fraud. [Reese River Silver Mining Co ... Smith]*

(ii) *False representation:* There must be a false representation and it must be made with the knowledge of its falsehood. Where the representation was true at the time when it was made but becomes untrue before the contract is entered into and this fact is known to the party who made the representation, it must be corrected. If it is not so corrected, it will amount to a fraud.

Example I X fraudulently informs Y that X's estate is free from encumbrance. On the faith of X's statement, Y buys the estate. Actually the estate is subject to mortgage. Here, Y may avoid the contract because X with the intention to deceive Y induced Y to enter into a contract.

Example II On 1st Jan. X correctly informs Y that the monthly sales of his business are Rs 1,00,... In May the contract of sale of business was signed. During this period the monthly sales decreased ... Rs 50,000. It was held that Y was entitled to avoid the contract because X's failure to disclose the ... in monthly sales amounted to fraud. [With V O' Flanagan].

(iii) *Representation as to fact:* The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to fraud.

(iv) *Actually deceived:* The fraud must have actually deceived the other party who has acted on the basis of such representation. In other words, an attempt to deceive the other party by which the other party is not actually deceived, is not a fraud.

Example X had a defective cannon. In order to conceal the defect, he put a metal plug on it. Y bought the cannon without examining. When Y used it, it brust. Y refused to pay the balance. It was held that Y was liable to pay as he was not actually deceived by fraud because he would have bought it even if no deceptive plug was inserted. [Horsefull v. Thomas].

(v) *Suffered loss:* The party acting on the representation must have suffered some loss.

Effects of Fraud [Section 19]

The effects of fraud are as follows:

(a) The party whose consent was caused by fraud can rescind (cancel) the contract but he cannot do so in the following cases:
   (i) where silence amounts to fraud, the aggrieved party cannot rescind the con tract if he had the means of discovering the truth with ordinary diligence;
   (ii) where the party gave the consent in ignorance of fraud;
   (iii) where the party after becoming aware of the fraud takes a benefit under the contract;

(iv) where an innocent third party before the contract is rescinded acquires for consideration some interest in the property passing under the contract,

(v) where the parties cannot be restored to their original position.

(b) The party whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

Example A fraudulently informs B that A's estate is free from encumbrance. 8 thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(c) The party whose consent was caused by fraud. can claim damages if he suffers some loss.

Silence as to Fraud

General Rule According to explanation to Section 17. "Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud."

Example I *A sells, by auction to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.*

Example II *A and B. being traders, enter upon a contract. A has private information of a change in prices which would affect Bs willingness to proceed with the contract. A is not bound to inform 8.*

Example III *In Shri Krishna v. Kurukshetra University (AIR 1976 SC 376) a candidate failed to mention the fact of shortage of attendance in the examination form. Held, no fraud.*

Exceptions to the General Rule The general rule that silence does't amount to fraud has the following exceptions.

Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Such duty arises in the following two cases:

(i) Where parties stand in fiduciary relationship like parent-child, trustee-beneficiary.

Example *A sells by auction to B. a horse which A knows to be unsound. 8 is A's daughter and has just come of age. Here. the relation between the parties would make it A's duty to tell B if the horse is unsound.*

(ii) Where the silence itself is equivalent to speech.

Example *B says to A. "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech. If the horse turns out to be vicious A can be held liable for fraud.*

(iii) Half Truth: Half truth is worse than a blatant lie. Partial truthful diclosures may easily deceive the other party. e.g. prospectus of a company disclosing only average dividend declared by the company in the last 5 years instead of the actually declining dividends over that period is a glaring example of half truth amounting to fraud.

MISREPRESENTATION

Meaning and Essential Elements of Misrepresentation [Section 18]

(a) Meaning The tenn 'Misrepresentation' means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party. Section 18 defines the tenn 'misrepresentation' as follows:

"Misrepresentation" means and includes-

(a) the positive assertion. in a manner not warranted by the information of the person making it, of that which is not true. though he believes it to be true;

(b) any breach of duty which. without an intent to deceive, gains an advantage to the person committing it. or anyone claiming under him, by misleading an other to his prejudice or to the prejudice of anyone claiming under him;

(c) causing, however innocently. a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

(b) Essential Elements On the basis of the aforesaid definition of misrepresentation, the essential elements of misrepresentation are shown below in Fig. 5.2.

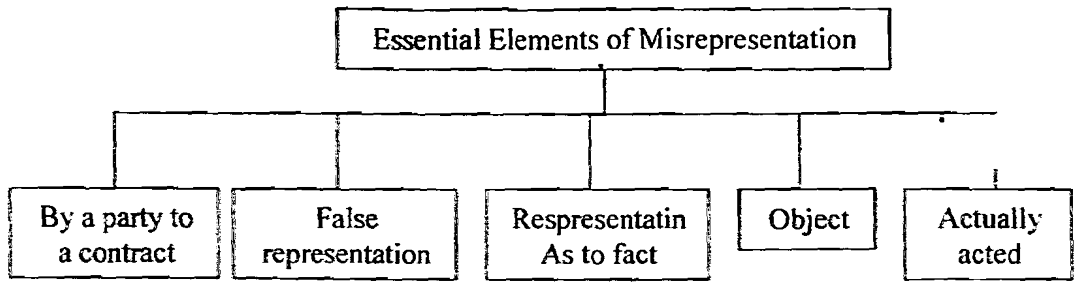


Fig :- Essential Elements of Misrepresentation

(i) *By a party to a Contract :* The representation must be made by a party to a contract or by anyone with his connivance or by his agent. Thus, the representation by a stranger to the contract does not affect the validity of the contract.

(ii) *False representation:* There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly believe it to be true.

(iii) *Representation as to fact:* The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to misrepresentation.

Example X sold his Hotel to Y and stated that a part of the hotel is occupied by a tenant who is most desirable. In fact the rent from the tenant could only be recovered under pressure and was currently much in arrear. It was held that Y was entitled to avoid the contract because X's statement amounted to misrepresentation. [Smith's case]

(iv) *Object:* The representation must be made with a view to inducing the other party to enter into contract but without the intention of deceiving the other party.

(v) *Actually acted:* The other party must have acted on the faith of the repre sentation.

Example I X says to Y who intends to purchase his land, "My land produces 2 tons of rice per acre." X believes the statement to be true although he has no sufficient ground for the belief. Y purchases X's land believing X's statement. Later on, Y finds that the land produces only 1.5 tons of rice per acre Here X's representation is misrepresentation.

Example II The prospectus of a company contained a statement that the company had been authorised by Special Act of the Parliament to use steam or mechanical power for running the trains. In fact, the authority to use the steam was subject to the approval of the 'Soard of Trade'. But this fact was not mentioned in the prospectus. The Board of Trade did not approve the use of steam, and consequently the company wound up. The shareholders of the company filed a suit against the directors for fraud. But the court held that they were not liable for fraud. The directors were not guilty of fraud, as they honestly believed that once the Parliament had authorised the use of steam, the consent of the Board of Trade practically concluded. [Deny v. Peek]

Effects of Misrepresentation [Section 19]

The effects of misrepresentation are as follows:

(a) **Right to Rescind the Contract** The party whose consent was caused by misrepresentation can rescind (cancel) the contract but he cannot do so in the following cases:

(i) where the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence:

(ii) where the party gave the consent in ignorance of misrepresentation;

(iii) where the party after becoming aware of the misrepresentation, takes a benefit under the contract;

(iv) where an innocent third party, before the contract is rescinded, acquires for consideration some interest in the property passing under the contract;

(v) where the parties cannot be restored to their original position.

***Example** X, leads Y erroneously to believe that 1000 mounds of indigo are made annually at X's factory. Y examines the accounts of X's factory which show that only 800 mounds of indigo have been made. After this Y buys the factory. Here, the contract is not voidable on account of X's misrepresentation because Y after becoming aware of misrepresentation takes the benefit under the contract.*

(b) Right to Insist upon Performance The party whose consent was caused by misrepresentation may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.

Comparison between Fraud and Misrepresentation

Similarities There are basically two similarities in case of fraud and misrepresentation as follows:

(a) In both the cases, a false representation is made by a party;

(b) In both the cases, the contract is voidable at the option of the party whose consent is obtained by fraud or misrepresentation.

Distinction Fraud differs from misrepresentation in the following respects:

Basis of distinction	*Fraud*	*Misrepresentation*
1. Intention	A wrong representation is made wilfully with the intention to deceive the other party.	A wrong representation is made innocently, i.e. without any intention to deceive the other party.
2. Knowledge of falsehood	The person making the wrong statement does not believe it to be true.	The person making the wrong statement believes it to be true.
3. Right to claim damages	The aggrieved party can claim damages.	The aggrieved party cannot claim damages.
4. Availability of means to discover the truth	Except where silence amounts to fraud, the contract is voidable even if the aggrieved party had the means of discovering thetruth with ordinary diligence.	The aggrieved party cannot avoid the contract if he had the means of discovering the truth with ordinary diligence.

MISTAKE

Meaning of Mistake [Section 20]

A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is an erroneous belief concerning something. The mistake can be of two types shown in Fig. 5.3.

Let us discuss them one by one:

I. Mistake of Law [Section 21]

Type of mistake of law	*Effect*
(a) Mistake of Indian Law	The contract is not voidable because everyone is supposed to know the law of his country.
(b) Mistake of Foreign Law	*A mistake of foreign law is treated as mistake of fact, i.e. the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.*

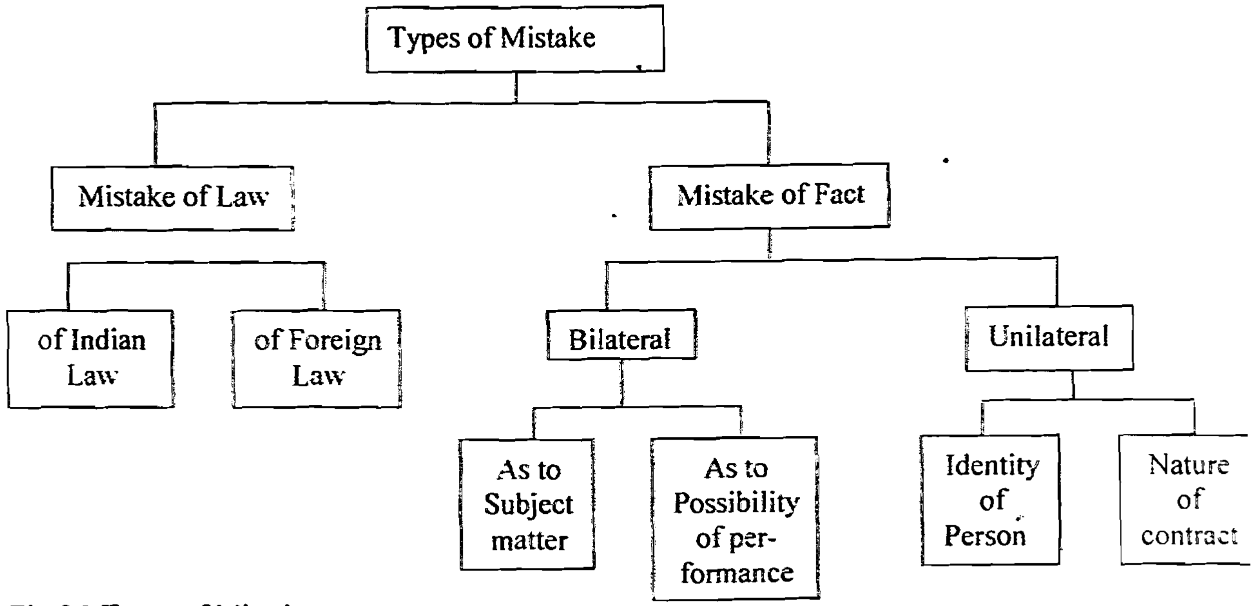


Fig.5.3 Types of Mistake

II. Mistake of Fact Mistake of fact can be *either* bilateral mistake *or* unilateral mistake.

(a) *Bilateral Mistake [Section 20]:* The term 'bilateral mistake' means where both the parties to the agreement are under a mistake. According to Section 20, "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void." Thus, the following three conditions must be satisfied before declaring a contract void under this section:

(i) Both the parties must be under a mistake

(ii) Mistake must be of fact but not of law.

According to explanation to Section 20, "An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact."

Example X buys a painting believing it to be worth Rs 50,000 whitelrl fact it is worth only As 5,000 The contract is not void.

(iii) Mistake must relate to an essential fact.

(iv)

Example I A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Mumbai. It turns out that. before the date of the bargain, the shop conveying the cargo had been cast away and the goods lost. Neither party was aware of facts. The agreement is void.

Example II A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

Example III A, being entitiea to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Bilateral Mistake as to the Subject Matter: An agreement is void where there is a bilateral mistake as to the subject matter. A bilateral mistake as to the subject matter includes the following:

(i) Mistake as to the existence of subject matter

(ii) Mistake as to the quantity of subject matter

(iii) Mistake as to the quality of subject matter

(iv) Mistake as to the price of subject matter

(v) Mistake as to the identity of subject matter

(vi) Mistake as to the title of subject matter

***Example I** A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain though nefther party was aware of the fact. The agreement is void because there is bilateral mistake as to the existence of subject matter.*
***Example II** matter. A agrees to buy from B all his horses believing that B has two horses but B actually has three horses. The agreement is void because there is bilateral mistake as to the quantity of subject*
***Example III** A agrees to buy a particular horse from B. Both believe it to be a race horse but it turns to be a cart horse. The agreement is void because there is bilateral mistake as to the quality of the subject matter.*
***Example IV** A agrees to buy a particular horse from B who mentioned in his letter the price as Rs 1,150 instead of 5,150. The agreement is void because there is bilateral mistake as to the price of the subject matter.*
***Example V** A agrees to buy from B a certain horse. B has one race horse and one cart horse. A thinks that he is buying race horse but B thinks that he is selling cart horse. The agreement is void because there is bilateral mistake as to the identity of subject matter.*
***Example VI** A agrees to buy a particular horse from B. That horse is already owned by A. The agreement is void because there is bilateral mistake as to the title of the subject matter.*

Bilateral Mistake as to the Possibility of Perfonnance: The agreement is void where there is a bilateral mistake as to the possibility of performance. In other words, where the parties to an agreement believe that the agreement is capable of performance, while in fact it is not so, the agreement is treated as void. The impossibility may *either* be physical *or* legal.

(b) *Unilateral Mistake [Section* 22]: The term 'unilateral mistake' means where only one party to the agreement is under a mistake. According to Section 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact."

***Example** X sold Oats to Y by sample and Y, thinking that they were old Oats, purchased them. In fact, the Oats were new. It was held that Y was bound by the contract. [Smith v. Hughes]*

Exceptions: The agreement is void where a unilateral mistake relates to the identity of the person contracted with or as to the nature of the contract.
***Example I** One Blenkarn, knowing that Blenkarn & Co. was a reputed customer of Lindsay & Co., placed an order with Lindsay & Co. by imitating the signatures of Blenkarn. The goods were then sold to Cundy, an innocent buyer. A suit was filed by Lindsay & Co. against Cundy for recovery of goods. It was held that there was no contract between Lindsay & Co. and Blenkarn as Lindsay & Co. never intended to contract with Blenkarn and as such, Cundy did not get a good title and hence he must return the goods or make payment of goods. [Cundy v. Lindsay & Co.]*
***Example II** A woman by falsely misrepresenting her to be wife of a well known Baron (a millionaire) obtained two pearl necklaces from a firm of jewellers on the pretext of showing them to her husband before buying. She pledged them with a broker, who in good faith paid her Rs 1,00,000. A suit was filed by the jeweller against the broker. It was held that there was no contract between the jeweller and the broker as the jeweller never intended to contract with her and as such, the broker did not get a good title and hence he must retum the goods. [Lake v. Simmons]*
***Example III** S knew that on account of his criticism of the plays in the past, he would not be allowed entry to the performance of a play at the theatre. The managing director ,of the theatre gave instructions that ticket should not be sold to S. S, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of contract. It was held that there was no contract between the theatre company and S as the theatre company never intended to contract with S. [Said v. Butt]*

Example IV An old illiterate man was induced to sign a Bill of Exchange by means of a false representation that it was a mere guarantee. It was held that he was not liable for the Bill of Exchange because he never intended to sign a Bill of Exchange. [Foster v. Mackinnon]

But the contract shall be valid and binding in spite of the mistake as to the identity of the parties in all those cases where the parties were willing to enter into contract with any person. Thus, if the mistake only relates to the attributes or motives of the person such as creditworthiness, it will not make the contract void. It may at the most make it voidable for fraud, e.g. in *Phillips* v. *Brooks*. One Mr. North entered a Jeweler's shop, selected a ring which the jeweler agreed to sell against payment by Cheque which North signed in the name of Sir G B, a man of credit and standing. North pledged the ring with Brooks. In the meanwhile the Cheque got dishonored. It was held that the contract between North and the Jeweler was valid as the jeweler agreed to sell goods to the very person who entered the shop. Thus, the contract had -been made before the goods were delivered to North. As the contract was induced by fraud, the jeweler could rescind the contract. However, the pledge made by North was valid. The jeweler's right was only confined to filing a suit against North to recover damages.

Effects of Mistake

The effects of mistake are as follows:

(a) In case of Bilateral Mistake as to essential fact	The agreement is void.
(b) In case of Unilateral Mistake	
(i) as to the identity of the person contracted with	The agreement is void.
(ii) as to the nature of contract	The agreement is void.
(iii) as to other matter	The agreement is not void
(c) Obligation of aggrieved party	He must restore any benefit received by him under the contract to the other party from whom the benefit had been received [Section 64]
(d) Obligation of other party	The person to whom money has been paid or anything delivered by mistake must repay or return it. [Section 72]

CHAPTER 6 Legality of Object and Consideration & Agreements Opposed to Public Policy

CIRCUMSTANCES UNDER WHICH THE OBJECT OR

CONSIDERATION IS DEEMED TO BE UNLAWFUL

The object and the consideration of an agreement must be lawful, otherwise, the agreement is void. According to Section 23 of The Indian Contract Act. 1872, the consideration or the object of an agreement is unlawful in the following cases:

(a) If it is Forbidden by Law If the object or the consideration of an agreement is the doing of an act which is forbidden (i.e. prohibited) by law, the agreement is void. An act is said to be forbidden by law when it is punishable *either* by the criminal law of the country *or* by special legislation.
Example I A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful. [William v. Bayley]
Example II X granted a loan to the guardian of a minor to enable him to celebrate the minor's marriage. It was held that X could not recover back because agreement is void as rts object (Le. minor's marriage) is illegal. [C. Srinivas v. K. Raja Rama Mohana Rao]
Example III A promises to obtain for B an employment in the public service, and B promises to pay Rs 1,000 to A. The agreement is void as the consideration for it is unlawful.
Example IV X, a Hindu already married and his wife alive, entered into a marriage agreement wrth Y an unmarried girl. This agreement is void because the second marriage is forbidden by Hindu Law.

(b) If it Defeats the Provisions of any Law If the object or the consideration of an agreement is of such nature that, if permitted, it would defeat the provisions of any law, the agreement is void.
Example I A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which a defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A, upon receiving from him the price which B has paid. The agreement is void as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.
Example II X borrowed Rs 1,00,000 from Y and agreed not to raise any objection as to the limitation and that Y may recover the amount even after the expiry of limitation period. This agreement is void as it defeats the provisions of the Law of Limitation Act. [Rama Murthi v. Goppawa]

(c) If it is Fraudulent If the object of an agreement is to defraud others, the agreement is void.
Example I A, B and C enter into an agreement of the division among them of gains acquired, or be acquired, by them by fraud. The agreement is void, as its object is unlawful.
If the object of an agreement is to defraud others, the
Example II A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(d) If it Involves or Implies Injury to a Person or Property of Another If the object of an agreement is to injure a person or the property of another, the agreement is void.
Example I X borrowed Rs 100 from Y and executed a bond under which he promised to work for Y without pay for 2 years and agreed to pay interest at 10% per month and the principal amount at once. It was held that the agreement was void because it involved injury to X. [Ramsaroop v. Bansi Mandat]

Example II X promised to pay Rs 10,000 to Y when he agreed to publish a libel (i.e. defamatory article against someone). It was held that Y could not recover the amount because the agreement. was void as it involved injury to someone. [Clay v. Yates]

(e) If the Court Regards it as Immoral or Opposed to Public Policy If the object or consideration is immoral or is opposed to the public policy, the agreement is void.
Example I A, who is Bs mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay Rs 1,000 to A. The agreement is void, because it is immotal.
Example II A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860).
Example III X let a flat to Y on a monthly rent of Rs 10,000. Y was a prostitute and used the flat for prostitution and did not pay the rent. X cannot recover the rent if he knew the purpose otherwise he can. [Pearce v. Brooks]
Example IV X gave Rs 1,00,000 to Y a married woman to obtain a divorce from her husband. X agreed to marry her as soon as she obtained a divorce. It was held that X could not recover back the amount because the agreement was void as its object was immoral. [Baivijli v. Hamda Nagatj
Example V Agreements for past or future cohabitation are void because the consideration I which is immoral at the time when it passes cannot become legal by passage of time [S. Yellappa v. Y. Sabu (Bombay High Coult)]

ILLEGAL AGREEMENTS

Meaning of Illegal Agreements

Illegal agreements are those agreements which are

(a) void *ab-initio*, i.e. void from the very beginning, and
(b) punishable by the criminal law of the country or by any special legislation regulation.

Effects of Illegal Agreements

The effects of illegal agreements are as under:

(a) The collateral transactions to an illegal agreement also become illegal and hence cannot be enforced.
(b) No action can be taken for the recovery of money paid or property transferred under an illegal agreement and for the breach of an illegal agreement.
(c) In case of an agreement containing the promise, some part of which is legal and other part illegal, the legal position is as under:

Case	*Provision*
1. If the illegal part cannot be separated from the legal part	The whole agreement is altogether illegal.
2. If the illegal part can be separated from the legal part	The Court will enforce the legal part and reject the illegal part.

Example I X promises to pay Y Rs 1 ,000 if Y beats Z. Y beats Z and claims Rs 1 ,000 but X refuses to pay. Y cannot recover from X because the agreement between X and Y is illegal.
Example II X pays Y Rs 1,000 to beat Z. Y does not beat. X cannot recover from Y because the agreement between X and Y is illegal.
Example III X lent Rs 1,00,000 to Y to enable him to purchase certain smuggled goods from Z X cannot recover the amount from Y if he knows the Y's purpose of borrowing.

VOID AGREEMENTS IF CONSIDERATION OR OBJECTS UNLAWFUL IN PART

According to Section 24, if one of the several considerations or objects of an agreement is unlawful, the agreement is void.

Example A promises to superintend, on behalf of 8, a legal manufacturer of indigo and illegal traffic of other articles. 8 promises to pay to A, a salary of Rs 10,000 a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

AGREEMENTS OPPOSED TO PUBLIC POLICY

It is not easy to define the term 'Public policy' with any degree of precision because 'public policy' by its very nature, is highly uncertain and keeps on fluctuating with the passage of time. An agreement which conflicts with morals of the time and contravenes any established interest of society may be said to be opposed to public policy. In India, it has been left to Court to hold any contract as unlawful on the ground of being opposed to public policy.

The following agreements have been held to be opposed to public policy:

(a) Agreements of Trading with Enemy All agreements made with an alien enemy are illegal on the ground of public policy.

(b) Agreement for Stifling Prosecution An agreement for stifling prosecution is illegal on the ground of public policy.

Example X, who knows that Y has committed a murder, receives Rs 7,00,000 from Y in consideration of not exposing Y. This agreement is illegal.

(c) Agreements in the Nature of Maintenance and Champerty Maintenance is an agreement whereby one party having no interest in suit, agrees to assist another to maintain suit. For example, X promises to pay *Y* Rs 5,000 if *Y* files a suit against Z. This is a maintenance agreement.

Champerty is an agreement whereby one party agrees to assist another in recovering property and in turn is to share in the proceeds of the action

Example X, agreed to pay Rs 10,000 to Y to enable him to file a suit for the recovery of his property and Y promised to give him 3/4th share in the property, if recovered. The agreement was held to be champertous and void. [Nuthani Venkataswami v. Katta Nagl]

Position in England: Both of these agreements are declared illegal and void.

Position in India: All of these agreements are not illegal. The Court will refuse to enforce such agreements if its object is not bonafide or the terms of reward are unreasonable in the opinion of court.

(d) Agreement for the Sale/Transfer of Public Offices and Titles The agreements for the sale or transfer of public offices or to obtain public titles like Padma Shree, are illegal on the ground of public policy.

Example X promises to pay Y Rs 50,000 if Y secures him an employment in Govt. service. This agreement is opposed to public policy.

(e) Agreements in Restraint of Parental Rights An agreement which prevents a parent to exercise his right of guardianship, is void on the ground of public policy.

Example G, a father having two sons, agreed to transfer guardianship in favour of A and also agreed not to revoke the transfer during his life. Subsequently, j,e filed a suit for the recovery of boys. It was held that he had a right to revoke his authority and get back his children. [Giddu Narayanish v. Mrs Annie Besan]

(f) Agreements in Restraint of Personal Liberty An agreement which unduly estricts the personal liberty of any person is void on the ground of public policy.

Example X borrowed Rs 1,00,000 from Yon the promise that he would not, without the Ys written permission leave his job, borrow money, dispose of his property or change his residence. It was held that the agreement was illegal on the ground of public policy. [Harwood v. Miller's Timber and Trading Co.]

(g) **Agreement Tending to Create Monopoly** An agreement which tends to create monopoly is void on the ground of public policy.
Example A local body granted a monopoly to X to sell vegetables in a particular locality. This agreement is void on the ground of being opposed to public policy.

(h) **Agreements Interfering with Course of Justice** An agreement which interferes with course of justice is void on the ground of being opposed to public policy.

(i) **Marriage Brokerage Contracts** A marriage contract is one whereby one or more persons receives money or money's worth in consideration of marriage.

(j) **Agreement in Restraint of Marriage [Section 26]** Every agreement in restraint of marriage of any person other than a minor is void.

(k) **Agreement in Restraint of Trade [Section 27]** Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

(l) **Agreement in Restraint of Legal Proceeding [Section 28]** An agreement which restricts a party absolutely from enforcing his legal rights arising under a contract or an agreement which curtails the period of limitation within which the legal rights may be enforced is void.

Note: The agreements referred to in (j), (k) and (l) have been discussed in detail in Chapter 7.

CHAPTER 7. Void Agreements and Contingent Contracts

MEANING OF VOID AGREEMENTS

According to Section 2(g) of the Indian Contract Act, 1872, a void agreement is an agreement which is not enforceable by law. The agreements which are not enforceable by law right from the time when they are made, are *void-ab-initio.*

The following types of agreements have expressly been declared void under various sections of the Indian Contract Act.

1. Agreements by or with persons incompetent to contract (Sections 10 & 11).
2. Agreements entered into through a mutual mistake of fact between the parties (Section 20).
3. Agreement, the object or consideration of which is unlawful (Section 23).
4. Agreement, the consideration or object of which is partly unlawful (Section 24).
5. Agreement made without consideration (Section 25).
6. Agreements in restraint of marriage (Section 26).
7. Agreements in restraint of trade (Section 27).
8. Agreements in restraint of legal proceedings (Section 29).
9. Wagering agreement (Section 30).
10. Impossible agreement (Section 56).
11. An agreement to enter into an agreement in the future.

Agreements from Nos 1 to 5 have already been discussed in earlier chapters. The other agreements are discussed in this chapter.

AGREEMENTS IN RESTRAINT OF MARRIAGE

According to Section 26 of the Indian Contract Act, every agreement in restraint of the marriage of any person other than a minor is void.

Example I X promised to marry Y only and none else, and to pay Rs 2000 in default. X married Z and Y sued X for recovery of Rs 2000. It was held that Y could not recover anything because the agreement was in restraint of marriage. [Lowe v. Peers]

It may be noted that an agreement which provides for a penalty upon remarriage may not be considered as a restraint of marriage.

Example II An agreement between two co-widows that if one of them remarried, she should forfeit her right to her share in the deceased husband's property, was not void because no restraint was imposed upon either of the two widows from remarrying. [Roa Rani v. Gulab Rani]

Example III Nikah Nama (i.e. a marriage agreement in Muslims) which authorizes wife to divorce herself and to claim maintenance from the husband on his marrying a second wife, was not void because no restraint was imposed upon husband from marrying a second wife. [Badu v. Badarannessa]

AGREEMENTS IN RESTRAINT OF TRADE

According to Section 27 of Indian Contract Act. 1872, "every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void." This is because Article 19(9) of the Constitution of India regards the freedom of trade and commerce as a right of every individual. Therefore, no agreement can deprive or restrain a person from exercising such a right.

Onus of Proof Where an agreement is challenged on the ground of its being in restraint of trade, the party supporting the contract must show that the restraint is reasonably necessary to protect his interests, and the party challenging the contract must show that the restraint is injurious to the public.

Meaning of Expression 'that Extent' The expression 'that extent' may be interpreted in the sense that only that portion of such agreement is void which is considered *either* as unreasonable *or* as opposed to public policy being in restraint of trade. The rest of the agreement would continue to be valid.

Example I In Patna city, 29 out of 30 manufacturers of combs agreed with R to supply him combs and not to anyone else. R was free to reject goods if he found that there was no market for them. It was held that the agreement was in restraint of trade and was thus void. [Shaikh Kalu v. Ram Saran Bhagat]

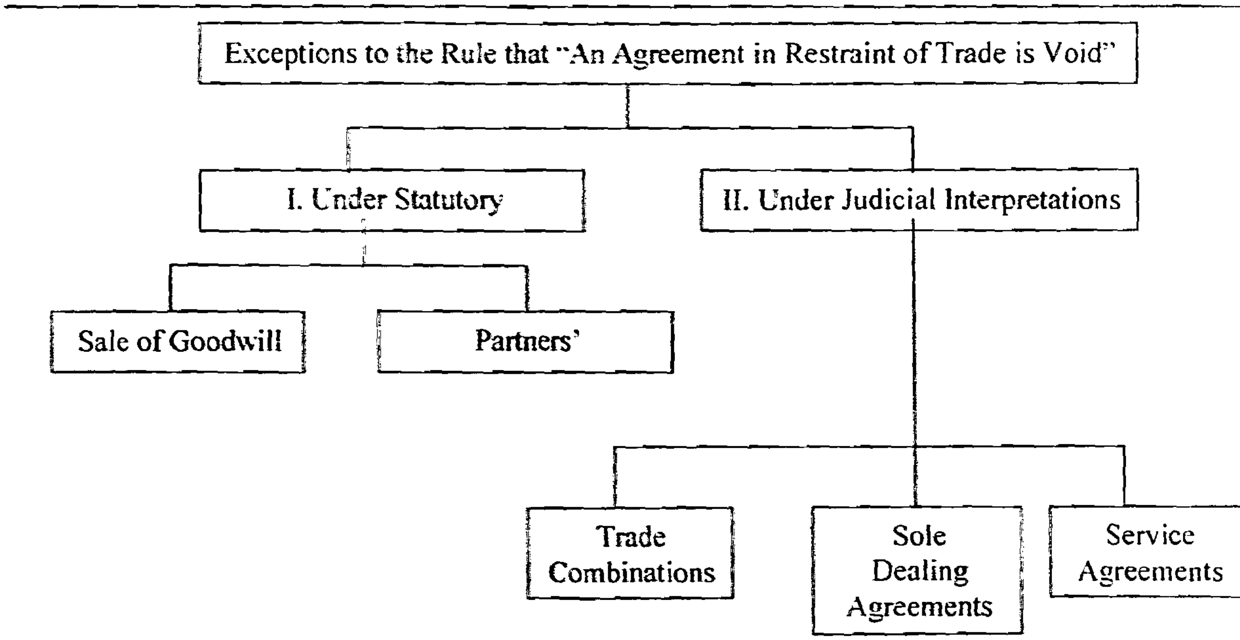
Example II X and Y carried on business in a certain locality in Calcutta. X promised to stop business in that locality if Y paid him Rs 1,000. X stopped his business but Y did not pay him the promised money. It was held that X could not recover anything from Y because the agreement was in restraint of trade and was thus void. [Madhub Chander v. Raj Coomer]

Example III An agreement restraining a servant from competing for 5 years after the period of service, was held as void. [Brahamputra Tea Co. v. E. Scarth]

Exceptions to the Rule that "An Agreement in Restraint of Trade is Void"

The exceptions here mean the cases where agreements in restraint of trade are not considered as void. Such exceptions are shown in Fig. 7.1.

Let us discuss them one by one.



Exceptions to the Rule that "An Agreement in Restraint of Trade is Void"

I. Exceptions Under Statutory Provisions

(a) ***Sale of Goodwill [Exception 1 to Section* 27]**: An agreement which restrains the seller of a goodwill from carrying on a business is valid if all the following conditions are fulfilled:

(i) Such restriction must relate to a similar business.

(ii) Such restriction must be within specified local limits.

(iii) Such restriction must be for the time so long as the buyer or any person deriving title to the goodwill from him, carries on a like business in the specified local limits.

(iv) Such specified local limits must be reasonable having regard to the nature of the business.

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Thus, the buyer of goodwill may restrain the seller for carrying on any business similar to the one sold by him within a certain vicinity and for a certain period of time provided the restrictions in regard to time and vicinity are found reasonable.

(b) ***Partners Agreements:*** The Indian Partnership Act, 1932, recognises the following agreements in restraint of trade as valid:

(i) *Restriction on existing partner [Section 11(2)]-A* partner shall not carry on any business other than that of the firm while he is a partner.

(ii) *Restriction on outgoing partner [Section* 36(2)]-An outgoing partner may agree with his partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid only if the restrictions are reasonable.

(iii) *Restriction on partners upon or in anticipation of the dissolution of the firm [Section* 54]-Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid only if the restrictions are reasonable.

(iv) *Restriction in case of sale of goodwill [Section* 55(3)]-A partner may upon the sale of the goodwill of a firm, make an agreement that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid if the restrictions are reasonable.

II. Exceptions Under Judicial Interpretations

(a) ***Trade Combinations:*** Trade combinations which have been formed to regulate the business or to fix prices are not void, but the trade combinations which tend to create monopoly and which are against the public interest are void.

Example I *An agreement among four ginning factories to fix uniform rate for ginning cotton and to divide the profits in a certain proportion is not void because such agreements are neither in restraint of trade nor opposed to public policy. [Haribhai v. Sharafall]*

Example II *An agreement by two finms to avoid competition is void because it tends to create monopoly and is against the public interest. [Jai Ram v. Kahna Ram]*

Example III *An agreement between certain persons to carry on business with the members of their caste only is void. [Vaithelinga v. Saminada]*

Example IV *An agreement among some ice manufacturing companies not to sell ice below a minimum price and to divide the profits in a certain proportion is not void because such agreement was made to regulate the business and not to restrain it. [S.S. Fraser & Co. v. Bombay Ice Mfg. Co.]*

(b) ***Sole Dealing Agreements:*** An agreement to deal in the products of a single manufacturer or to sell the whole produce to a single dealer are valid if their terms are reasonable.

Example I *An agreement by a person to sell all the mica produced by him to the plaintiffs and not to any other firm, and not to keep any in stock, is valid. [Subha Naidu v. Haj Badsha Sahib]*

Example II *An agreement by a buyer of goods for Delhi market, not to sell them in Calcutta, is valid.*

Example III *X, a seller of immitation jewellery in England sold his business to Yand agreed not to deal for two years (a) in immitation jewellery in England, (b) in real jewellery in certain foreign countries. The first promise was held lawful, the second promise was held as void because the restraint was unreasonable having regard to the nature of business.*

(c) ***Service Agreements:*** A clause in service agreement may or may not be in restraint of trade. An analysis of some of the clauses of service agreement is as under:

Clause	*Whether held as restraint of trade*
(i) A clause to serve the employer for a stipulated period.	Such agreements if reasonable, do not amount to restraint of trade and hence, are enforceable.
(ii) A clause to prevent the employee from accepting any other engagement during his employment.	Such agreements do not amount to restraint of trade and hence, are enforceable. *Example Doctors employed in Govt. service are usually not allowed to carry on private practice.*
(iii) A clause to prevent the employee from accepting a similar engagement after the termination of his services.	
(a) If a restraint is intended only to protect an employer against an employee making use of trade secrets learned by him in the course of his employment.	(a) Such agreements do not amount to restraint of trade and hence, are enforce able by law. *Example An employee who possesses certain trade secrets, agreed not to carry on the similar business during 5 years after the termination of service [Forster & Sons Ltd. v. Sugget]*
(b) If a restraint is intended to serve any other purpose (say, to avoid competition)	*(b) Such agreements amount to restrain of trade and hence, are not enforceable by law.* *Example An agreement to restraint a servant from competing for 5 years after the period of service, is void [Brahamputra Tea Co. v. E. Scarth]*

AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS

According to Section 28, the following two agreements amount to restraint of legal proceedings and are thus, void to that extent.

(a) **Agreements Restricting Enforcement of Rights** An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent.

Example A clause in a contract provided that no action should be brought upon it in case of breach. Such a clause is void because it restricts both the parties from enforcing their legal rights.

There are two Exceptions to the above rule:

***Exception I** An agreement between two or more persons to refer to arbitration any dispute which may arise between them, is not illegal.*

***Exception II** An agreement in writing between two or more persons to refer to arbitration any dispute which has already arisen, is not illegal.*

Note: Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other is not invalid. [CO *Milton & Co.* v. *Ojha Automobile Co.]*

However, an agreement not to go in appeal to a higher court against the judgement of a lower court, does not amount to restraint of legal proceedings.

(b) **Agreements Limiting the Period of Limitation** An agreement which limits the time within which an action may be brought so as to make it shorter than that prescribed by the Law of Limitation, is void because its object is to defeat the provisions of law.

Example A clause in a contract provides that no action should be brought after two years. Such a clause is void because it limits the period of limitation to two years which is less than the period of limitation (Le. three years) prescribed by the law of limitation.

UNCERTAIN AGREEMENTS

An uncertain agreement means an agreement the meaning of which is not certain or capable of being made certain. Such agreements are void.

***Example I** A agrees to sell to B"a hundred ton of oil" There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.*

***Example II** A agrees to sell to B a hundred ton of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.*

***Example III** A, who is a dealer in coconut oil, agrees to sell to B "one hundred ton of oil.' The nature of A's trade affords an indication of the meaning of the words, and has entered into a contract for the sale of one hundred tons of coconut oil.*

***Example IV** A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.*

***Example V** A agrees to sell to B "one thousand mounds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.*

***Example VI** A agrees to sell to B "my white horse for Rs five hundred or one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.*

***Example VII** An agreement to grant a lease when no date of commencement is expressly or impliedly fixed is void because it is not certain when the period of lease shall commence.*

***Example VIII** A agrees to sell to B 10 tons of Punjab wheat. But the price is not indicated. Such agreement is not void because in such a case, a reasonable price shall be payable according to Section 2 of the Sale of Goods Act, 1930.*

***Example IX** X agreed to buy a horse from Y for Rs 5,000 and to pay Rs 100 more if the horse proved lucky. It was held that the agreement was void because there was no mechanism to determine what luck bad or good the horse had brought to the buyer. [Guthing v. Lynn]*

***Example X** X agreed to pay Rs 10,000 when he was able to pay. It was held that the agreement was void for uncertainty. [Pushpabala v. LIC of India]*

***Example XI** X agrees to agree in future. Such agreement is void because there is no certainty whether the parties will agree under the future circumstances.*

WAGERING AGREEMENTS (SEC. 30)

Meaning of Wagering Agreements

An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering event. Such agreements are chance oriented and therefore, completely uncertain.

***Example** X promises to pay Rs 1,000 to Y if it rained on a particular day, and Y promises to pay Rs 1,000 to X if it did not. Such agreement is a wagering agreement.*

Essentials of a Wagering Agreement

The aforesaid definition highlights the following essentials of a wagering agreement:

(a) ***Promise to Pay Money or Money s Worth*** The wagering agreement must contain a promise to pay money or money's worth.

(b) ***Uncertain Event*** The performance of the promise must depend upon the determination of an uncertain event. An even is said to be uncertain when it is yet to take place or it might have already happened but the parties are not aware of its result.

(c) ***Mutual Chances of Gain or Loss*** Each party must stand to win or lose upon the determination of an uncertain event. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering agreement.

(d) ***Neither Party to have Control over the Event*** Neither party should have control over the happening of the event one way or the other.

(e) ***No other Interest in the Event*** Neither party should have interest in the happening or non-happening of the event other than the sum or stake he will win or lose.

Examples of Wagering Agreements

(a) An agreement to settle the difference between the contract price and market price of certain goods or shares on a particular day.

(b) A lottery (i.e. a game of chance). But parties running a Govt. approved lottery cannot be prosecuted.

(c) An agreement to buy a lottery ticket.

(d) A crossword puzzle in which prizes depend upon correspondence of the competitor's solution with a previously prepared solution kept with the Editor of newspapers is a lottery and hence a wagering transaction *[State of Bombay* v. *R.M.D. Chamarbaugwala]*. But a crossword puzzle is generally a game of skill and intelligence and hence nor a wager;

Examples of Transactions Held not Wagers

(a) Prize competitions which are games of skill, e.g. picture puzzles, athletic competitions. For example, an agreement to enter into a wrestling event in which winner was to be rewarded by the entire sale proceeds of tickets, was held not to be a wagering contract. *[Babasaheb* v. *Rajaram]*

(b) According to the Prize Competition Act, 1955, prize competition in games of skill are not wagers provided the prize money does not exceed Rs 1,000.

(c) An agreement to contribute to a plate or prize of the value of above Rs 500 to be awarded to the winner of a horse race. [Section 30]

(d) Contracts of insurance.

Effect of Wagering Agreemen [Seedoo 30] The effects pf wagering agreements are given as under:

(a) Agreements by way of wager are void in India.

(b) Agreements by way of wager have been declared illegal in the states of I Maharashtra and Gujarat.

(c) No suit can be filed to recover the amount won on any wager.

(d) Transaction which are collateral to wagering agreements are not void in India except in the states of Maharashtra and Gujarat.

(e) Transactions which are collateral to wagering agreements are illegal in the states of Maharashtra and Gujarat.

Example A Cricket match is to be held between India and Pakistan. X agrees to pay Rs 1,00,000 to Y if India wins the match and agrees to deposit the money with Z a third person of confidence for this purpose. X borrows Rs 1,00,000 from W. The implications of this case are summarised as under:

(a) The agreement between X and Y is a wagering agreement because the performance of an agreement depends upon the happening or non-happening of a future uncertain event and each party stands to win or loose.

(b) If India wins the match, Y (a winner) cannot recover the amount but X (a losser) can recover if the amount has not been paid to Y. Thus, a winner cannot recover the amount but a losser can if the amount has not been paid to the winner.

(c) If India wins the match and Z (a stakeholder) pays the money to Y (a winner), X (a losser) cannot recover it from Z. [Bridger v. Savage]

(d) The agreement between X and W which is a collateral to wagering agreement, is valid in India except in the States of Maharashtra and Gujarat. Thus, W can recover the money from X if the agreement between X and Y is entered into in India except in the States of Maharashtra and Gujarat but W cannot recover the money from X if the agreement between X and Y is entered into in the States of Maharashtra or Gujarat.

DISTINCTION BETWEEN CONTRACTS OF INSURANCE AND WAGERING AGREEMENT

The contracts of insurance differ from the wagering agreements in the following respects :

Basis of distinction	*Contracts of insurance*	*Wagering agreement*
1. Insurable interest	Person having an insurable interest can insure his life or property.	Parties to a wagering agreement need not have insurable interest.
2. Actual amount payable	In case of contracts of insurance except life insurance, the actual amount payable need not necessarily be the full amount for which the property is insured.	In case of wagering agreement, the actual amount payable is usually fixed.
3. Beneficial/against public policy	These are regarded as beneficial to the public policy.	These are considered to be against public policy.
4. Gamble	Such agreements do not tantamount to gambling as they involve the element of investment and protection.	Being chance oriented, these are closer to gambling.

AGREEMENTS CONTINGENT ON IMPOSSIBLE EVENTS [SEC. 36]

According to Section 36 of the Indian Contract Act, 1872 contingent agreements to do or not to do anything, if an impossible event happens are void whether the impossibility of the event is known or not to the parties to tne agreement at the time when it is made.

***Example** A agrees to pay Rs 1000 if B marries C (a Hindu) who is already married to D. This agreement is void.*

AGREEMENTS TO DO IMPOSSIBLE ACTS [SEC. 56]

According to Section 56 of the Indian Contract Act, 1872. "An agreement to do an impossible act is void."

***Example** A undertakes to put life into the dead wife of B. This agreement is void.*

RESTITUTION [SECS 64 & 65]

Restitution means "return or restoration of benefit." The provisions relating to 'restitution' are given below:

Case	Provision
(a) When a person at whose option a contract is voidable rescinds it [Section 64].	The party rescinding a voidable contract must restore the benefit to the person from whom he has received it.
(b) When an agreement is discovered to be void or the contract becomes void [Section 65].	The person who has received any benefit or advantage under such agreement or contract must restore it or compensate for i to the person from whom he has received it.

***Example I** A, a singer contracts with B the manager of a theatre to sing at his theatre for two nights every week during the next two months and B agrees to pay her Rs 100 for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B in consequence rescinds the contract, B must pay A for the five nights on which she had sung.*

***Example II** A contracts to sing for B on a specified day and receives an advance of Rs 1,000 but is unable to sing due to serious illness on that day. Since the contract has become void. A must retum Rs 1,000 to B.*

Non-applicability of the Principle of Restitution

The principle of restitution does not apply ,to contracts which are void *ab-initio* with the exception where the minor has entered into agreement by misrepresenting his age.

Example I X pays Rs 1,000 to Y to beat Z. Y does not beat Z. X claims Rs 1,000 from Y. X can not recover anything because this agreement is void ab-initio.

Example II X advances Rs 10,000 to Y a married woman to enable her to obtain a divorce from her husband. Y agrees to marry X as soon as she obtained a divorce. Y obtains the divorce but refuses to marry X. X can not recover anything from Y because this agreement is void ab-initio. [Baiviji v. Hamda Nagar]

Example III X advances Rs 10,000 to Ya married woman, if Y marries X in the event of death of Y's husband. Subsequently, Y's husband died but Y refused to marry X. X cannot recover anything from Y because this agreement is void ab-initio.

MEANING AND ESSENTIAL FEATURES OF A CONTINGENT CONTRACT

Meaning of a Contingent Contract [Section 31]

A 'contingent contract' is a contract to do or not to do something if some event, collateral to such contract, does or does not happen. Insurance contracts provide the best example of contingent contracts.

Example I A contracts to pay B Rs 10,000 if Bs house is burnt. This is a contingent contract.

Example II A promises to pay B Rs 1 crore if a certain ship does not return within a year.

Essential Features of a Contingent Contract

The essential features of a Contingent Contract are shown below in Fig. 7.2.

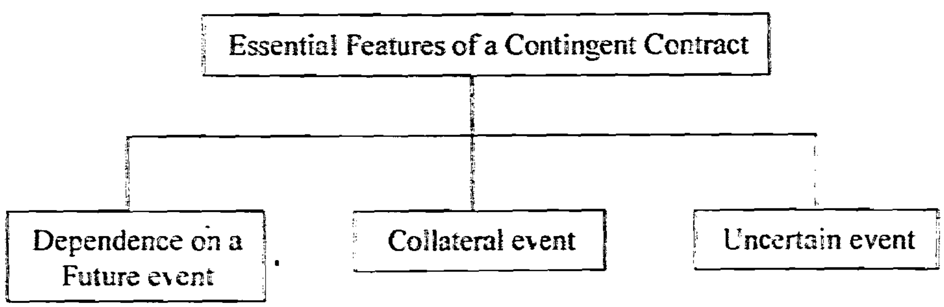


Fig. 7.2 Essential Features of a Contingent Contract

Let us discuss them one by one.

(a) *Dependence on a Future Event:* The performance of a contingent contract depends upon the happening or non-happening of some future eveqt.

(b) *Collateral Event:* The event must be collateral to the contract.

(c) *Uncertain Event:* The event must be uncertain.

Note: The performance of a contingent contract must depend upon the happening or non-happening of an event and not on the mere will of the promisor. For example, if *A* promises to pay *B* Rs 10,000 if he so chooses, it is not a contingent contract.

RULES REGARDING CONTINGENT CONTRACTS [SECS. 32 TO 36]

The various rules regarding the enforcement of contingent contract are given below:

Kind of contingent contract	*Rule regarding enforcement*
1. Contracts contingent upon the happening of an uncertain future event. [Section 32]	Such contracts cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

		Example I *A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.* ***Example II*** *A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.* ***Example III*** *A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.*
2.	Contracts contingent upon the non-happening of a certain future event. [Section 33]	Such contracts can be enforced when the happening of that event becomes impossible and not before. ***Example*** *A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.*
3.	Contracts contingent upon the future conduct of a living person. [Section 34]	If the uncertain event is the future conduct of a living person, such event shall be considered impossible if that such person does anything by which it becomes impossible to perform the contract within any definite time. ***Example*** *A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.*
4.	Contracts contingent upon the happening of an uncertain specified event within a fixed time. [Section 35]	Such contracts become void if before the expiry of fixed time (a) such event does not happen, or (b) such event becomes impossible. ***Example*** *A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship reo turns within the year, and become void if the ship is burnt within the year.*
5.	Contracts contingent upon the non-happening of an uncertain specified event within a fixed time. [Section 35]	Such contracts can be enforced by law if before the expiry of fixed time- (a) such event does not happen, or (b) it becomes certain that such event will not happen. ***Example*** *A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.*
6.	Agreements contingent up impossible events. [Section 36]	Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. ***Example I*** *A agrees to pay B Rs 1,000 if two straight lines should enclose a space. The agreement is void because two straight lines can never enclose a space* ***Example II*** *A agrees to pay B, Rs 1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void because B's marriage with C can never take place.*

DISTINCTION BETWEEN A WAGERING AGREEMENT AND A CONTINGENT CONTRACT

A wagering agreement differs upon a contingent contract in the following ways:

Basis of distinction	*Wagering agreement*	*Contingent contract*
1. Reciprocal promises	It consists of reciprocal promises.	It mayor may not consists of reciprocal promises.
2. Void/valid	It is void.	It is valid.
3. Main/Collateral Future Event	Future event is essential to the contract.	Future event is collateral to the contract
4. Nature	It is always of a contingent nature	It may not be of a wagering nature.
5. Interest of parties	Its parties have no other interest in the subject matter of the agreement except wining or losing of wagering amount.	Its parties may have other interest as well.

CHAPTER – 8 Discharge of a Contract

MEANING OF DISCHARGE OF A CONTRACT

Discharge of a contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the parties under the contract come to an end.

MODES OF DISCHARGE OF CONTRACT

A contract may be discharged in various modes shown in Fig. 8.1.

Discharge by Performance

A contract can be discharged by performance in any of the following ways:

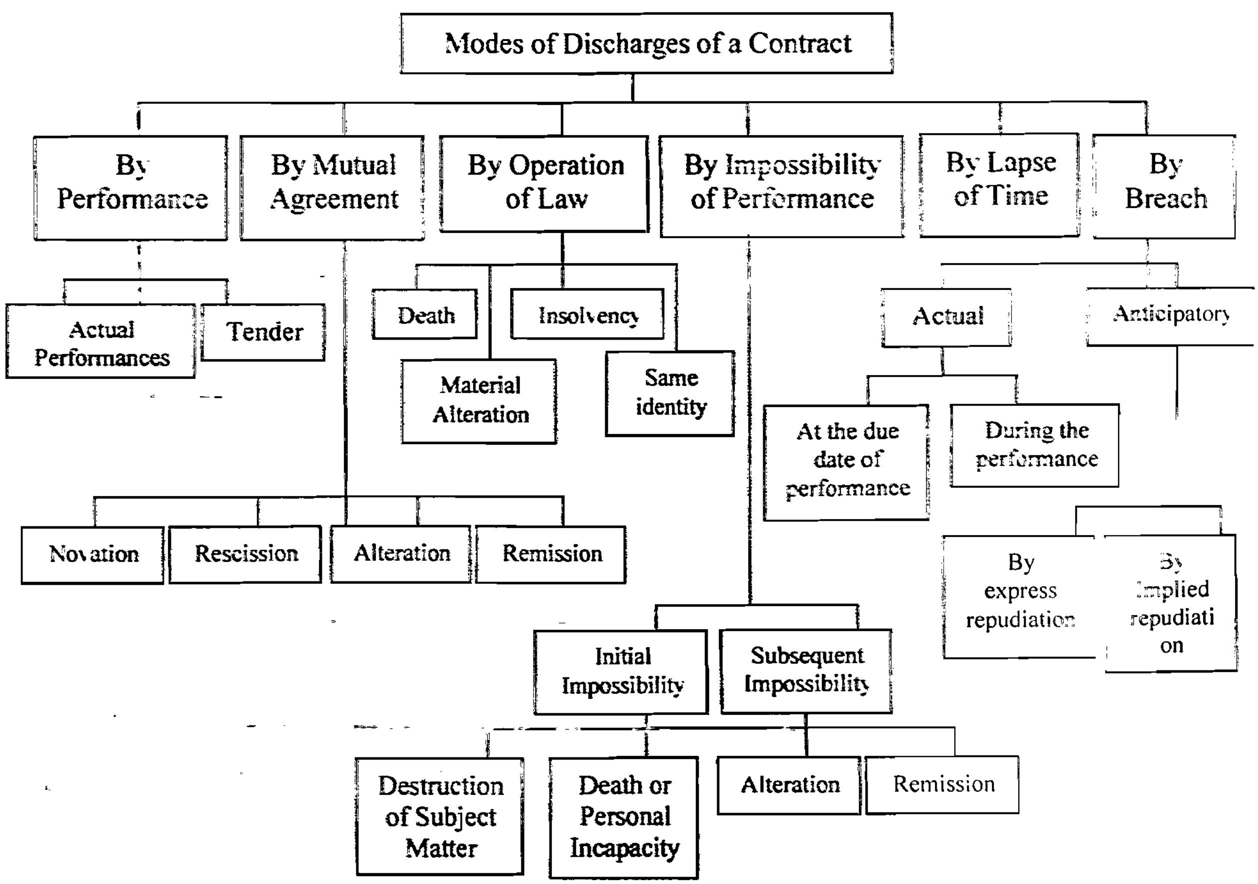
(a) **By Actual Performance** A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

(b) **By Attempted Performance or Tender** So far as the tenderer of performance is concerned, a contract is said to be discharged by attempted performance when the promisor has made an offer of performance to the promisee but it has not been accepted by the promisee.

Discharge by Mutual Agreement

Since a contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways:

(a) Novation [Section 62] Novation means the substitution of a new contract for the original contract. Such a new contract may be *either* between the same parties *or* between different parties. The consideration for the new contract is the discharge of the original contract.



Example I A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B no longer exists and a new debt from C to B has been contracted.
Example II A owes B Rs 10,000. A enters into an agreement with B, and gives B a mortgage of his (A's) estate for Rs 5,000 in place of the debt of Rs 10,000. This is a new contract and extinguishes the old.

(b) **Rescission [Section 62]** Rescission means cancellation of the contract by any party or all the parties to a contract.
Example X promises Y to sell and deliver 100 bales of cotton on 1st Oct. at his godown and Y promises to pay for goods on 1st Nov. X does not supply the goods. Y may rescind the contract.

(c) **Alteration [Section 62]** Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change.
Example X promises to sell and deliver 100 bales of cotton on 1st Oct. and Y promises to pay for goods on 1st Nov. Afterwards, X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

(d) **Remission [Section 63]** Remission means acceptance by the promisee of a lesser fulfillment of the promise made. According to Section 63, "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit."
Example I A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
Example II A owes B Rs 5,000. A pays to B, and B accepts, in satisfaction of the whole debt, Rs 2,000 paid at the time and place at which Rs 5,000 were payable. The whole debt is discharged.
Example III A owes B Rs 5,000. C pays to B Rs 1,000, and B accepts them in satisfaction of his claim on A. This payment is a discharge of the whole claim.
Example IV A owes B, under a contract a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of Rs 2,000. This is a discharge of the whole debt, whatever may be its amount.
Example V A owes B Rs 2,000, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of 50 paise in a rupee upon respective demands Payment to B of Rs 1,000 is a discharge of B's demand.

(e) **Waiver** Waiver means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract. e.g. *A* promises to supply goods to *Y*. Subsequently, Y exempts X from carrying out the promise. This amounts to waiving the right of performance on the part of *Y*.

Discharge by Operation of Law
A contract may be discharged by operation of law in the following cases:

(a) **By Death of the Promisor** A contract involving the personal skill or ability of the promisor is discharged on the death of the promisor.

(b) **By Insolvency** When a person is declared insolvent, he is discharged from his liability up to the date of his insolvency.

(c) **By Unauthorised Material Alteration** If any party makes any material alteration in the terms the contract without the approval of the other party, the contract comes to an end.

(d) By the Identity of Promisor and Promisee When the promisor becomes the promisee, the other parties are discharged.
Example *X draws a bill receivable on Y who accepts the same. X endorses the bill in favour of Z who in tum endorses in favour of Y. Here, Y is both promisor and promisee and hence the other parties are discharged.*

Discharge by Impossibility of Performance
The effects of impossibility of the performance of a contract may be discussed under the following two heads:

(a) Effects of Initial Impossibility
(b) Effects of Supervening Impossibility
(a) Effects of Initial Impossibility

(a) Effects of Initial Impossibility [Section 56 Paras 1 and 3] Initial impossibility means the impossibility existing at the time of making the contract. The effects of initial impossibility are as under:

Case	*Effect*
I. Where both the promisor and promisee know about the initial impossibility	Such agreement is void *ab initio.* **Example X** undertakes to put life into the dead wife of Y. This agreement is void.
II. Where both the promisor and promisee do not know about the initial impossibility	Such agreement is void on the ground of mutual mistake. **Example X** agrees to sell his horse to Y. Unknown to both the parties, the horse was dead at the time of making the agreement. This agreement is void.
III. Where the promisor alope knows about the initial impossibility	Such promisor must compensate for any loss which such promisee sustains through the non-performance of the promise. **Example** A contracts to marry *B*, being already married to C, and being forbidden. by the law to which he is subject to practise polygamy. A must make compensation to 8 for the loss caused to her by the non-perfcrmance of his promise.

(b) Effects of Supervening Impossibility [Section 56 Para 2] Supervening impossibility means impossibility which does not exist at the time of making the contract but which arises subsequently after the formation of the contract. The effects of supervening impossibility are as under:

Case	*Effect*
I. Where an act becomes impossible after the contract is made	The contrâct to do such an act becomes void when the act becomes impossible. [Section 56 Para 2]
II. Where an act becomes unlawful by reason of some event beyond the control of promisor	The contract to do such an act becomes void when the act becomes unlawful. [Section 56, Para 2]
III. Where the promisor alone knows about the impossibility	Such promisor must compensate the promisee for any loss which such promisee might have suffered on account of non-performance of the promise. [Section 56 Para 3]
IV. Where an agreement is discovered to be void or where a contract becomes void	Any person who has received any benefit under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it. [Section 65] *Example X contracts to sing for Y at a concert for Rs 1,000 which is paid in advance. X is too ill to sing. X must refund Rs 1,000 to Y.*

Cases when a Contract is Discharged on the Ground of Supervening Impossibility

A contract is discharged by supervening impossibility in the following cases:

(a) Destruction of Subject Matter: The contract is discharged if the subject matter of the contract is destroyed after the formation of the contract without any fault of either party.

Example I X agreed to sell his crop of wheat. The entire crop was destroyed by fire though no fault of the party. The contract was discharged.

Example II A music hall was rented out for a series of concerts on certain days. The hall caught fire before the date of first concert. It was held, the contract "has become void on ground of supervening impossibility's

(b) Death or Personal Incapacity: The contract is discharged on the death or incapacity or illness of a person if the performance of a contract depends on his personal skill or ability.

Example X agreed to sing on a specified day. X fell seriously ill and could not perform on that day. The contract was discharged.

(c) Declaration of War: The pending contracts at the time of declaration of war are *either* suspended *or* declared as void.

Example X contracts to take in cargo for Y at a foreign port. X's government afterwards declares war against the country in which the port is situated. The contract becomes void when the war is declared.

(d) Change of Law: The contract is discharged if the performance of the contract becomes impossible or unlawful due to change in law after the formation of the contract.

Example X agreed to sell his land to Y. After the formation of the contract, the Government issued a notification and acquired the land. The contract was discharged. [Shyam Sunder v, Durga]

(e) Non-existence or Non-occurrence of a Particular State of Things Necessary for Performance: The contract is discharged if that particular state of thing which forms the basis of a contract, ceases to exist or occur.

Example I X and Y contract to marry each other. Before the time fixed for the marriage, X goes mad. The contract becomes void.

Example II X hired a room from Y for viewing the coronation process of King Edward VII, The procession was cancelled because of King's illness. It was held that X was not liable to pay the room rent because the procession which formed the basis of the contract did not occur. (Krell v. Henry)

Cases when the Contract is not Discharged on the Ground of Supervening Impossibility

Impossibility of performance is, as a rule, not an excuse for non performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. A contract is not discharged by the supervening impossibility in the following cases:

(a) Difficulty of Performance: A contract is not discharged simply on the ground that its performance has become more difficult, more expensive or less profitable than that agreed at the time of its formation.

Example X agreed to supply coal within a specified time. He failed to supply in time because of government's restriction on the transport of coal from collieries. Here X will not be discharged because the coal was available in the open market from where X could have obtained it.

(b) Commercial Impossibility: A contract is not discharged simply on the ground of commercial impossibility, i.e. when the contract becomes commercially unviable or unprofitable.

Example X, a furniture manufacturer agreed to supply certain furniture to Y at an agreed rate. Afterwards, there was a sharp increase in the rates of the timber and rates of wages. Since, it was no longer profitable to supply at the agreed rate, X did not supply. X will not be discharged on the ground of commercial impossibility.

(c) Default of a Third Party: A contract is not discharged if it could not be performed because of the default of a third party on whose work the promisor relied.
Example *X entered into a contract with Y for the sale of goods to be manufactured by Z, a manufacturer of those goods. Z did not manufacture those goods. X will not be discharged and will be liable to Y for damages.*

(d) *Strikes, Lockouts and Civil Disturbances:* A contract is not discharged on the grounds of strikes, lockouts and civil disturbances unless otherwise agreed by the parties to the contract.
Example *X agreed to supply to Y certain goods to be imported from Algeria. The goods could not be imported due to riots in that country. It was held that this was no excuse for nonperformance of the contract. [Jacobs v. Credit Lyonnais]*
(e) Partial Impossibility: A contract is not discharged simply on the ground of impossibility of some of the objects of the contract.
Example *X agreed to let a boat to H (i) to view the naval review at the coronation of king and (ii) to cruise round the fleet. Due to the illness of the king, the naval review was cancelled but the fleet was assembled and the boat could have been used to cruise round the fleet. It was held that the contract was not discharged. [H.B. Steamboat Co. v. Hutton]*

Discharge by Lapse of Time

A contract is discharged if it is not performed or enforced within a specified period, called period of limitation. The Limitation Act, 1963 has prescribed the different periods for different contracts, e.g. period of limitation for exercising right to recover a debt is 3 years, and to recover an immovable property is 12 years. The contractual parties cannot exercise their rights after the expiry of period of limitation.
Example *On 1st July, 20X1 X sold goods to Y for Rs 1,00,000 and Y has made no payment till Aug. 20X4. State the legal position as on 1st Aug. 20X4 if no credit period was allowed (b) if 2 months credit period was allowed.*
Solution:
Case (a) The contract is discharged by lapse of time (i.e. 3 years) from 1st July 20X1 because the debt has become time barred and hence X cannot exercise his right to recover this debt.
Case (b) The contract is not discharged by lapse of time because the period of limitation is *yet* to expire on 31st Aug. 20X4 (i.e. 3 years from the expiry of the credit period).

Discharge by Breach of Contract

A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. A breach of contract may occur in the following two ways:
(a) Anticipatory Breach of Contract Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due.

(b) Actual Breach of Contract Actual breach of contract occurs in the following two ways:
- (i) *On Due Date of Performance:* If any party to a contract refuses or fails to perform his part of the contract at the time fixed for performance, it is called an actual breach of contract on due date of performance.
- (ii) *During the Course of Performance:* If any party has performed a part of the contract and then refuses or fails to perform the remaining part of the contract, it is called an actual breach of contract during the course of performance.

Consequences of Breach of Contract The aggrieved party (i.e. the party not at fault) is discharged from his obligation and gets rights to proceed against the party at fault. The various remedies available to an aggrieved party have been discussed in detail in the next chapter.

CHAPTER 9 Remedies for Breach of contract

MEANING OF BREACH OF CONTRACT

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e. the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contact may arise in two ways, (a) anticipatory breach and (b) actual breach.

ANTICIPATORY BREACH OF CONTRACT

Meaning of Anticipatory Breach of Contract [Section 39)

Anticipatory breach occurs when the party declares his intention of not performing the contract before the performance is due. Thus, when a party refuses to perform a contract even before it is due for performance. it is called anticipatory breach.

Modes of Declaring an Intention not Performing the Contract [Section 39]

A party may declare his intention of not performing the contract in the following two ways:

(a) When a party to a contract has refused to perform his promise.

Example X, a farmer agrees to sell to Y his entire crop of 10 tons of wheat @ Rs 8,000 per ton to be delivered on 20th October. On 1st October, X informs Y that he is not going to supply the goods. X has committed .anticipatory breach of contract by express repudiation.

(b) When a party to a contract has disabled himself from performing his promise in it, entirety.

Example X, a farmer agrees to sell to Y his entire crop of 10 tons of wheat @ Rs 8.000 per ton to be delivered on 20th October. On 1st October, X sold his entire crop to Z @ Rs 10.000 per ton. X has committed anticipatory breach of contract by implied repudiation.

Options Available to Aggrieved party [Section 39]

In case of anticipatory breach. the aggrieved party has the following two options:

(a) He can rescind the contract and claim damages for breach of contract with out waiting until the due date for performance, or

(b) He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.

Consequences of Treating Contract as Operative

In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:

(a) The promisor may perform his promise on or before the due date of performance and the promisee will be bound to accept the performance.

(b) The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case. the promisee shall lose his right to sue for damages.

Example X, a farmer agreed to sell to Y his entire crop of wheat @ Rs 8.000 per ton to be delivered on 20th October. On 1 st October, X informed Y that he was not going to supply the goods. Y decided not to rescind the contract. on 1st October and to wait till 20th October. On 19th October, the entire crop *was destroyed by fire without the fault of either party. Since the contract had become void on the ground of impossibility of performance, Y had lost his right to sue X for damages.*

Amount of Damages

The amount of damages in each of the options exercised by an aggrieved party will be calculated as under:

Option exercised	*Amount of damages*
I. When the aggrieved party rescinds the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the date of breach and the contract price.
II. When the aggrieved party does not rescind the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the due date of performance and the contract price.

Example *X, a farmer, agreed to sell to Y his entire crop of 10 tons of wheat @ Rs 8,000 per ton to be delivered on 20th October. On 1 st October, X informed Y that he was not going to supply the goods. Calculate the amount of damages which could be recovered by Y from X (a) if Y rescinded the contract on 1st October when the market price of wheat was Rs 10,000 per ton. (b) If Y did not rescind the contract on 1st October and waited till 20th October when the market price of wheat was Rs 12,000 per ton.*

Solution:

Case	A Market Price Per ton.	B Contaract Price Per ton	C = A-B Difference Per ton	D Qty.in tons	E = C * D Amount Of
(a)If Y rescinded the Contract	Rs. 10,000	Rs. 8,000	Rs. 2,000	10	Rs. 20,000
(b) If Y did not rescind the Contract	Rs. 12,000	Rs. 8,000	Rs. 4,000	10	Rs. 40,000

ACTUAL BREACH OF CONTRACT

Meaning of Actual Breach of Contract

Actual breach of contract may take place in any of the following two ways:

(a) On due Date of Performance If any party to contract refuses or fails to perform his part of the contract at the time fixed for performance, it is called an actual breach of contract on due date of performance.

Example *X agreed to sell to Y 10 tons of wheat @ Rs 8,000 per ton to be delivered in two equal instalments on 20th October and on 21 st October. On 20th October, X refused to deliver the goods. It is an actual breach of contract on due date of performance.*

(b) During the Course of Performance If any party has performed a part of the contract and then refuses or fails to perform the remaining part of the contract, it is caned an actual breach of contract during the course of performance.

Example *X agreed to sell to Y 10 tons of wheat @ Rs 8,000 per ton to be delivered in two equal instalments on 20th October and 21st October. On 20th October, X delivered 5 tons and refused to deliver remaining 5 tons. It is an actual breach of contract during the course of performance.*

Consequences of Actual Breach [Section 55]

The consequences of actual breach depends upon whether the time was the essence of the contract or not. The consequences in both the cases may be summarised as under:

	Where time is the essence of a contract	*Where time is not the essence of a contract*
I. Whether the contract becomes voidable at the option of the promisee	Yes	No
II. Whether the promisee is entitled to claim the compensation for any loss occasioned to him by the non-performance of the promise at the stipulated time		
(i) Where performance beyond the stipulated time is not accepted	Yes	Yes
(ii) Where performance beyond the stipulated time is accepted	No, unless the promisee gives notice to the promisor of his intention to do so.	No, unless the promisee gives notice to the promisor of his intention to do so.

***Example** X, a singer, enter into a contract with Y, the manager of a theatre, to sing at his theatre two nights in every week for the next two months. Y agrees to pay her Rs 100 for each performance. On the sixth night, X wilfully absents herself from the theatre. In this case, Y has the following two options:*

(a) *Y* may rescind the contract and claim compensation for the loss occasioned to him by *Xs* failure to sing on the sixth night.

(b) *Y* may permit X to sing on the seventh night and claim compensation for loss from X by giving a notice to X of his intention to do so.

REMEDIES FOR BREACH OF CONTRACT

Meaning of Remedy

A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract.

Remedies for Breach of Contract

The various remedies available to an aggrieved party are shown below in Fig. 9.1.

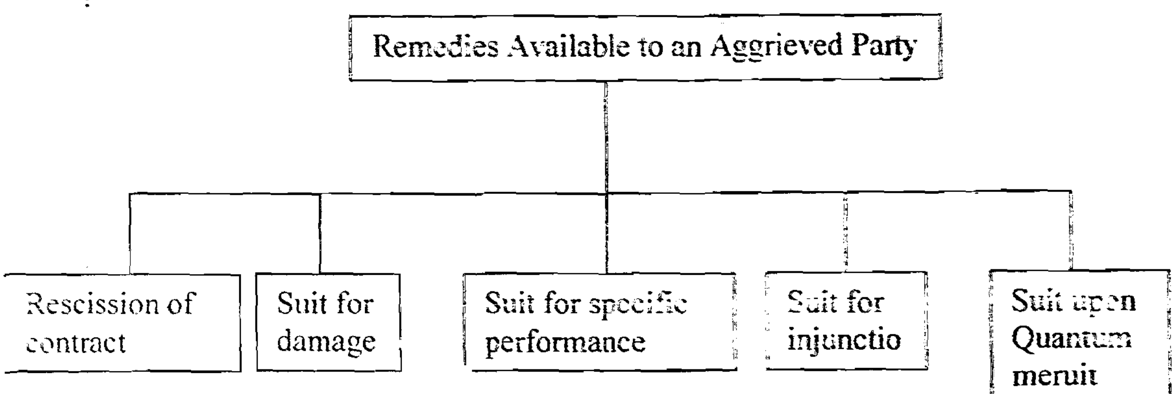


Fig. 9.1 Remedies Available to an Aggrieved Party

Let us discuss them one by one.

1. Rescission of Contract [Section 39] Rescission means a right not to perform obligation.

In case of breach of a contract, the promisee may put an end to the contract. In such a case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damage which he has sustained because of the non-performance of the contract.

***Example** X agrees to supply 10 tons of wheat to Y on 20th October. Y promises to pay for the goods on its receipt. X does not supply the goods on the due date. Here. Y is discharged from the liability of paying the price. Y is entitled to rescind the contract and to claim compensation for the damage which he has sustained because of non-supply of goods on the due date.*

2. Suit for Damages Damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The object of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract.

In India, the rules relating to damages are based on the judgement in English case of *Hadley* v. *Baxendale*. The facts of this case were: *H's* mill was stopped due to the breakdown of a shaft. He delivered the shaft to *B*, a common carrier, to be taken to a manufacturer to copy it and make a new one. *H* had not made it known to *B* that delay would result in a loss of profits. By some neglect on the part of *B*, the delivery of the shaft was delayed in transit beyond a reasonable time. Held, *B* was not liable for loss of profits during the period of delay as the circumstances communicated to *B* did not show that a delay in the delivery of shaft would entail loss of profits to the mill. The following rule of law was laid down in this case: 'Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered *either* arising naturally i.e., according to the usual course of things, from such breach of contract itself, *or* such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract. as the probable result of the breach of it.

Compensation for Loss or Damage Caused by Breach of Contract [Section 73]

Section 73, of the Indian Contract Act which deals with compensation for loss or damage caused by breach of contract is based on the judgement in the above case. It states that the aggrieved party may claim the damages as follows:

(a) Such damages which naturally arose in the usual course of things from such breach. This relates to ordinary damages arising in the usual course of things.

(b) Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to special damages.

(c) The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach. and

(d) Such compensation for damages arising from breach of quasi contract shall be same as in any other contract.

(a) Ordinary Damages Ordinary damages are those which naturally arise in the usual course of things from such breach. These damages can be recovered if the following two conditions are fulfilled:

(i) The aggrieved party must suffer by breach of contract, and

(ii) The damages must be proximate (i.e. direct) consequence of the breach of contract and not the indirect consequence.

Measure of Ordinary Damages: In a contract for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.

Example On 1st December, X contracted to sell and deliver 50 tons of wheat @ Rs.8,000 per ton to Y on 1st Jan. On 20th Dec. Y, afterwards, contracted to sell those goods to Z at Rs 10,000 per ton. X failed to deliver goods on 1st Jan. when the price of the wheat was Rs 9,500 per ton. Y is entitled to recover Rs 75,000 [i.e (Rs 9,500 - Rs 8,000) x 50]. Y is not entitled to recover Rs 1,00,000 as profit which would have arisen to Y from the sale to Z because the profit is the indirect consequence of the breach of contract.

(b) Special Damages Special damages are those which may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of a contract. These damages can be recovered if the special circumstances which would result in a special loss in case of breach of a contract are communicated to the promisor. e.g. loss of profits on account of default by the other party to the contract can be claimed only when an advance notice of such damages has been given before.

Example I A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

ExampleII A delivers to B, a common carrier, a machine to be delivered without delay, to A's mill informing that his mill has stopped for want of the machine. B unreasonably delays the delivery of machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit, which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(c) Exemplary or Punitive or Vindictive Damages Exemplary damages are those which are in the nature of punishment. The court may award these damages in case of (i) a breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party, (ii) Wrongful dishonour of a cheque by a banker. In case of wrongful dishonour of a cheque, the rule is smaller the amount of the cheque, larger will be the amount of damages awarded. A trader may recover such damages as wrongful dishonour of cheque shall adversely affect his goodwill but a non-trader whose cheque is wrongfully dishonoured will have to prove the loss of goodwill before claiming such damages.

(d) ***Nominal Damages*** Nominal damages are those which are awarded where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract. These damages are called nominal because they are very small, say, one rupee. The court mayor may not award these nominal damages.

(e) Damages for Inconvenience and Discomfort If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

Example H with his wife and children booked a ticket for a midnight train, to be transported to a particular place where he lived. They were, however, transported to a wrong place and they had to walk several miles on a drizzling night and as a result, his wife caught cold and he had to incur some medical expenses. It was held that he could recover compensation for inconvenience and not for medical expenses for the sickness of his wife because it was very remote consequence [Hobbs v. London & S. W Rail Co.1]

(f) Liquidated Damages and Penalty When the parties to a contract at the time of formation of contract, specify a sum which will become payable by the party responsible for breach, such specified sum is called:

(i) *Liquidated Damages* if the specified sum represents a fair and genuine pre estimate of the damages likely to result due to breach;

(ii) *Penalty* if the specified sum is disproportionate to the damages likely to result due to breach.

In India, there is no distinction between penalty and liquidated damages. The Courts in India allow only reasonable compensation not exceeding the specified sum [Section 74].

But under English law, liquidated damages are enforceable and not penalty.

(g) Stipulation for Interest The stipulations for interest mayor may not be in the nature of a penalty. If the stipulation for interest is in the nature of a penalty, the court may award reasonable compensation only. On the basis of various judicial pronouncements, the following guidelines may be adopted to decide whether a particular stipulation for interest is in the nature of a penalty or not:

Stipulation	*Whether the stipulation is in the nature of a penalty or not*
(i) For payment of interest in case of default	It is not in the nature of a penalty if the interest is reasonable
(ii) For payment of increased interest from the date of the Contract	It is always in the nature of a penalty.
(iii) For payment of increased interest from the date of default only	It mayor may not be in the nature of a penalty depending on the terms and circumstances of the case.
(iv) For payment of compound interest on default at the same rate as simple interest	It is not in the nature of a penalty.
(v) For payment of compound interest on default at the rate higher than that of simple interest	It is in the nature of a penalty
(vi) For payment of interest at a rate lower than that of original rate if interest is paid on due date	It is not in the nature of a penalty.

(h) Forfeiture of Security Deposit (or Earnest Money) A clause in a contract which provides for forfeiture of security deposit in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only.

3. Suit for Specific Performance Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

Example *X agreed to sell an old painting to Y for Rs 50,000. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of the contract.*

Cases where suit for specific performance is not maintainable.

(i) Where the damages are considered as an adequate remedy.

(ii) Where the contract is of personal nature, e.g. contract to marry.

(iii) Where the contract is made by a company beyond its powers as laid down in its Memorandum of Association.

(iv) Where the court cannot supervise the performance of the contract.

(v) Where one of the parties is a minor.

(vi) Where the contract is inequitable to either party.

4. **Suit for Injunction** Suit for injunction means demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act. Where a party to a contract does something which he promised not to do, the court may issue an order prohibiting him from doing so.
Example W agreed to sing at L's theatre only during the contract period. During the contract period, W made contract with Z to sing at another theatre and refused to perform the contract with L. It was held that W could be restrained by injunction from singing for Z [Lum ely v. Wagner]

5. **Suit for Quantum Meruit** Quantum Meruit means as much as is earned. Right to Quantum Meruit means a right to claim the compensation for the work already done. (For more details, see the next chapter.)
Example C an owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published [Planche v. Calburn]