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UNIT – 1
Fundamentals of Contract Law

Law of Contract is the most important and basic part of Mercantile law. It is the foundation for many other laws falling in the category of mercantile laws. It is not only the mercantile or trader but every person who lives in the organised society, consciously or unconsciously enters into contract from sunrise to sunset. When a person hires a taxi, or orders something in a hotel or buys something form a shop, purchases a newspaper, ride a bus etc. he actually enters into and performs contract though he may be unaware of this fact. Such contracts at times create legal relations giving rise to certain rights and obligations.

The law relating to contracts in India is contained in **Indian Contract Act, 1872**. The Act came into force with effect from ***September 1, 1872***. It is applicable to the whole of India except the State of Jammu & Kashmir (***As per Section 1***).

SCHEME OF THE ACT: The Act as enacted originally had 266 Sections divided into following Chapters:

Chapters	Provisions	Sections
	Preliminary	S. 1 - 2
Ch. I	Communication, Acceptance and Revocation of Proposals	S. 3 - 9
Ch. II	Contracts, Voidable Contracts, and Void Agreements	S. 10 - 30
	Void Agreements	
Ch. III	Contingent Contracts	S. 31 - 36
Ch. IV	Performance of Contracts	S. 37 - 67
	Contracts which must be Performed	
	By whom contracts must be performed	
	Time and place for performance	
	Performance of Reciprocal Promises	
	Appropriation of payments	
	Contract which need not to be performed	
Ch. V	Certain Relations Resembling those created by Contract	S. 68 - 72
Ch. VI	The Consequences of Breach of Contract	S. 73 - 75
Ch. VII	Sale of Goods **[Repealed by SALE OF GOOD ACT, 1930]**	S.76-123
Ch. VIII	Indemnity and Guarantee	S. 124 - 147
Ch. IX	Bailment	S. 148 - 181
	Bailments of pledges	

	Suit by bailor or bailee against wrong-doer	
Ch. X	Agency Appointment and Authority of agents	S. 182 - 238
	Appointment and Authority of agents	
	Sub-agents	
	Ratification	
	Revocation of authority	
	Agent`s duty to principal	
	Principal`s duty to agent	
	Effect of agency on contracts with third persons	
Ch. XI	Of Partnership **[Repealed by Indian Partnership Act, 1932]**	S. 239 - 266 [Repealed]
Sch.	[Repealed]	[Repealed]

These sections were repealed from the Contract Act, 1872 and two new Acts were enacted for the same:
*** SALE OF GOOD ACT, 1930**
**** PARTNERSHIP ACT, 1932**

PRESENT FORM OF INDIAN CONTRACT ACT

Law of Contract basically 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 cases of the breach of the contract.

The Indian Contract Act, in its present form may be divided into two parts-

- The First part of the enactment i.e. Section 1 to 75 deals with the ***general principles of the law of contract*** which apply to all types of contracts irrespective of their nature.
- The second part (i.e. Section 124 to 238) deals with special types of contracts namely indemnity and guarantee, bailment and pledge, agency etc.

Enforcement of Act: The Indian Contract Act was passed in 1872 and came into force from 1st September, 1872. Prior to this English law of contract was followed in India. Law of contract creates jus in personam and not jus in rem. It extends to whole of India except state of Jammu and Kashmir.

OBJECTIVE OF THE ACT: The objective of the Contract Act, 1872 is to ensure that the rights and obligations arising out of a contract are honoured and that legal remedies are made available to an aggrieved party against the party failing to honour his part of agreement. Act lays down the basic principles of the formation, performance and enforceability of contracts. Although, law of contract is not the whole law of agreements or that of obligations.

DEFINITIONS OF CONTRACT

POLLOCK
"Every agreement and promise enforceable at law is a contract."

HALSBURY
"A contract is an agreement between two or more persons which is intended to be enforceable at law and is contracted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act."

SALMOND
"A contract is an agreement creating and defining obligation between the parties"

SIR WILLIAM ANSON
"A legally binding agreement made between two or more persons by which rights are acquired by one or more to acts or forbearances on the other or others."

In essence, an agreement may be or may not be enforceable by law, and so all agreements are not contracts. Only those agreements are contracts, which are enforceable by law.

AGREEMENT + ENFORCEABILITY BY LAW = CONTRACT

Hence, it can be concluded that "All contracts are agreements, but all agreements are not contracts."

DISTINCTION BETWEEN CONTRACT & AGREEMENT

BASIS OF DISTINCTION	CONTRACT	AGREEMENT
Section	**Sec. 2(h)**	**Sec. 2(e)**
Definition	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreement.
Enforceability	Every contract is enforceable	Every promise is not enforceable.
Inter-relationship	All contracts are necessarily agreements.	Every agreement need not necessarily be a contract.
Scope	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.

Validity and legal obligation	Only legal agreements are called contracts. Every contract contains a legal obligation.	An agreement may be both legal and illegal. It is not necessary for every agreement to have legal obligation.

VARIOUS DEFINITIONS UNDER INDIAN CONTRACT ACT, 1872

- ***Proposal (i.e. offer) [Section 2(a)]:*** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person to such act or abstinence, he is said to make a proposal.

- ***Acceptance [Section 2(b)]:*** When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

- ***Promise [Section 2(b)]:*** A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.

- ***Promisor and promise [Section 2(c)]:*** When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.

- ***Consideration [Section 2(d)]:*** When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise. Consideration is actually the price paid by the one party for the promise of the other. Technically it is termed as **"QUID PRO QUO"** i.e. something in return.

- ***Agreement [Section 2(e)]:*** Every promise and set of promises forming the consideration for each other.

- ***Contract [Section 2(h)]:*** An agreement enforceable by law is a contract.

- ***Void agreement [Section 2(g)]:*** An agreement not enforceable by law is void.

- ***Voidable contract [Section 2(i)]:*** An agreement is a voidable contract if it is enforceable by law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by law at the option of the other or others.

- ***Void contract [Section 2(j)]:*** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

There are two basic essential elements of a contract-

- **An agreement**
- **Its enforceability by law**

These two components together constitute the basis for a contract and are explained as follows:

AGREEMENT Agreement has been defined in ***Section 2(e)*** as "***every promise or every set of promises forming the consideration for each other***" Further, promise is defined in ***Section 2 (b)*** as, "***a proposal when accepted become a promise.***"

In other words, an agreement consists of a proposal or an offer by one party and its acceptance by the other party. It also implies that the parties have a common intention about the subject-matter of their agreement. Two parties must be thinking of the same thing in the same sense. Thus agreement is the outcome of two consenting minds i.e. '***consensus ad idem***'.

WHAT IS ENFORCEABILITY OF CONTRACT??

Agreements are two types-

- Unenforceable agreement
- Enforceable agreement

All agreements to become a contract must give rise to legal obligations. 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 and be sued. On the other hand, all those agreements are said to be unenforceable in which an aggrieved party cannot go to a law court and that is left at the mercy of the parties only. It is a gentleman's promise which may or may not be fulfilled by the promisor.

All these agreement remain only an agreement between the parties and they never become a contract in the eyes of law, because they are merely social, domestic or moral arrangements, which lack a basic intention to create legal relations. All those agreements are said to be enforceable in which the aggrieved party has a right to approach a law court to get the agreement enforced and the other party is held liable either to perform the agreement or to face the consequence for breach of that agreement. Usually it is a legal presumption that all commercial agreements do have a basic intention to create a legal relationship and therefore they are enforceable at law. All these agreement which are enforceable at law are contracts.

This also implies that unenforceable agreements remain agreements only and cannot be converted into a valid contract and only enforceable agreements are converted into a valid contract. Therefore, we can conclude that: "***All contracts are agreements but all agreements are not contracts***."

An agreement, to be enforceable by law, must possess the essential elements of a valid contract as contained in ***Section 10 of the Indian Contract Act***.

According to Section 10, "***All agreements are contract 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 expressly declared to be void.***"

Simplifying the same, all agreements are contracts, if they are made–
- by free consent of the parties,
- competent to contract,
- for a lawful consideration
- with a lawful object, and
- not hereby expressly declared to be void

Along with the elements mentioned under Section 10 there are certain other basic elements of a valid contract which may be mentioned as follows -

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 fulfill 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 fulfill certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner and it must be communicated by an authorized person before the offer lapses.

2. ***Intention to Create Legal Relationship:*** The requirement of intention to create legal relations in contract law is aimed at sifting out cases which are not really appropriate for court action. Not every agreement leads to a binding contract which can be enforced through the courts. For example you may have an agreed to take a friend for a movie or for dinner. You may have a moral duty to honour that agreement but not a legal duty to do so. This is because in general the parties to such agreements do not intend to be legally bound and the law seeks to mirror the party's wishes. In order to determine which agreements are legally binding and have an intention to create legal relations, the law draws a distinction between social, moral, domestic and religious agreements and agreements made in a commercial context. 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.

   RELEVANT CASES ON THIS POINT:
   - ***Rose & Frank Co. v. Crompton Bros. (1925)***
   - ***Balfour v. Balfour (1919)***

3. ***Capacity of Parties:*** As per the requirement of Sec. 10, the parties to an agreement must be competent to contract. In other words, they must be capable or competent to enter into a contract. If either of the parties does not have the capacity to contract, the contract is not valid. 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." Therefore, other way round, following persons are incompetent to contract-

(a) Minors,
(b) Persons of unsound mind, and
(c) Persons disqualified by law to which they are subject.

So, the person to be competent to contract 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.

RELEVANT CASE: ***Mohiri Bibi v. Dharmodas Ghosh*** **(***Landmark case on minor's contract. Minor's contract has been held as void ab initio.***)**

4. ***Lawful Consideration:*** An agreement must be supported by lawful consideration. Consideration means something in return. In the words of Pollock, "Consideration is the price for which the promise of another is bought." Consideration is known as quid pro-quo i.e. ***something in return***. Contract Act not only requires a consideration rather it prescribes for a lawful consideration. Now, what constitutes a lawful consideration has been explained under ***Section 23*** of the Indian Contract Act, 1872, according to which, "***The consideration is considered lawful unless it is forbidden by law or is of such a nature that if permitted would defeat the provisions of any 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: A agrees to sell his car to B for Rs.1,00,000. Here B's promise to pay Rs.1,00,000 is the consideration for A's promise to sell the car and A's promise to sell the car is the consideration for B's promise to pay Rs.1,00,000.

5. ***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;***
   - ***it is of such nature that if permitted it would defeat the provision of any law;***
   - ***it is fraudulent;***
   - ***it involves an injury to the person or property of any other;***
   - ***the court regards it as immoral or opposed to public policy."***

Example: 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.

6. ***Free Consent:*** There must be free consent of the parties to the contact. Free consent of all the parties to a contract is one of the essential elements of a valid contract as per requirement of Section 10. The parties to a contract should have identity of minds. This is called ***consensus ad idem*** in English Law. Consent has been defined under ***Sec. 13*** of the Contract Act as follows-
"***Two or more person are said to consent when they agree upon the same thing in the same sense***" **(*consensus ad idem*).** It means that there is no contract if the parties have not agreed upon the same thing in the same sense.

Further, Contract Act requires not only consent but a free consent. According to ***Section 14***, consent is said to be free when it is not caused by-
   - ***Coercion, or***

- ***Undue influence, or***
- ***Fraud, or***
- ***Misrepresentation, or***
- ***Mistake.***

A contract which is valid in all other respects may still fail because there is no real consent to it by one or both of the parties.

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. (For example- Agreements in restraint of trade, marriage, legal proceedings and agreement by way of wager have been expressly declared as void under the Act itself.

   Example: X promised to marry none else except Y and in default pay her Rs.1,00,000. X married 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.

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.***"

9. ***Possibility of Performance:*** The terms of the agreement must be such as are capable of performance. If the act is impossible in itself, physically or legally, it cannot be enforced at law. According to ***Section 56***, "***An agreement to do an impossible act is void.***"
   Example: X agrees with Y to discover treasure by magic and Y agrees to pay Rs 1,000 to X. This agreement is void because it is an agreement to do an impossible act. Example II: X agrees with Y to enclose 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 must be complete:*** 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. An oral contract is a perfectly valid contract, expect in those cases where writing, registration etc. is required by some statute. In India, writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instruments, memorandum and articles of association of a company, etc. Registration is required in cases of documents falling within the scope of ***Section 17 of the Registration Act***.
    Example: An oral agreement for arbitration is unenforceable because the law requires that arbitration agreement must be in writing.

CLASSIFICATION OF CONTRACTS

- **ON THE BASIS OF CREATION OR FORMATION**
- **ON THE BASIS OF VALIDITY OR ENFORCEABILITY**
- **ON THE BASIS OF EXECUTION OR PERFORMANCE**
- **ON THE BASIS OF LIABILITY**

A. *On the basis of creation or formation*-

1. ***Express Contracts:*** An express contract is one entered into by words which may be either spoken or written. Where the proposal and acceptance is made in words, it is an express contract.
   Example 1: A says to B, "Will you buy my furniture for Rs. 50,000?" B says to A, "I am ready to buy your car for Rs. 50,000." It is an express contract made orally.
   Example 2: A writes a letter to B, I offer to sell my furniture to you for Rs. 50,000." B send a letter to A, "I am ready to buy your furniture for Rs. 50,000." It is an express contract made in writing.

2. ***Implied Contracts:*** Where the proposal or acceptance is made otherwise than in words, it is an implied contract. Implied contract can be inferred from the surrounding circumstances and the conduct of the parties who made them.
   Example: A, a coolie in uniform picks up the baggage of B to carry it from railway platform to the taxi without being asked by B to do so and B 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.

3. ***Quasi Contracts or constructive contracts:*** It is contract in which there is no intention on either side to make a contract, but the law imposes a contract. In such a contract, rights and obligations arise not by any agreement between the parties but by operation of law. Thus, a finder of lost goods is under an obligation to find out the true owner and return the goods. Similarly, where certain goods are delivered to a wrong addressee, the addressee is under an obligation either to pay for them or return them.

4. ***E. Com. Contracts/Contracts over Internet:*** These contracts are entered into between the parties using internet. In electronic commerce, different parties/persons create network which are linked to other network through EDI (Electronic Data Inter-change). This helps in doing business transactions using electronic mode.

B. *On the basis of validity or enforceability*-

1. ***Valid Contract:*** An agreement enforceable at law is a valid contract as per Sec. 2(h). An agreement becomes a contract when all the essentials of a valid contract as laid down in Section 10 are fulfilled.

2. ***Void Contract [Sec. 2(j)]:*** The term 'Void contract' is a contradiction in terms. But according to ***Section 2(j)***, ***"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 and legally enforceable when entered into but which subsequently became void due to supervening or subsequent impossibility of performance, change of law or some other reason.

3. ***Void Agreements:*** According to ***Section 2(g)***, "***An agreement which is not enforceable by law by either of the parties is void.***" Such agreements are ***void ab initio*** i.e. they are unenforceable from the very inception. No legal rights or obligations can arise out of a void agreement. For example an agreement without consideration or with a minor is a void agreement. A void agreement never matures into a contract.

4. ***Voidable Contract:*** According to ***Section 2(i)***, *"**An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others is a voidable contract.**"* Note that the word used here is 'contract' and not just 'agreement'. This is the result of absence of free consent in the contract. The consent is said to be not free when it was obtained by coercion, undue influence, fraud, misrepresentation or mistake. The other party who although took a consent cannot be allowed to take advantage of his own fraud because this is a judicial principle that "***He who comes into equity (i.e. before law) must come with clean hands.***" Thus, a voidable contract is one which can be set aside or repudiated or avoided at the option of that aggrieved party whose consent was not free. Also, a voidable contract is valid and enforceable until it is repudiated (i.e. avoided) by the party entitled to avoid it.

[NOTE: As per ***Section 64*** of the Contract Act, in case of a 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 oligation to perform the contract. This is called **"RESTITUTION"]**

5. ***Unenforceable Contract:*** It is contract which is otherwise valid, but cannot be enforced because of some technical defects like absence of a written form or absence of a proper stamp. Such contracts cannot be proved in court. But, 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.

6. ***Illegal Agreements:*** An illegal agreement is one the object of which is unlawful, or is prohibited by law or otherwise against the policy of law. Such agreements cannot be enforced by law. Illegal agreements are always void ab initio. Thus, a contract to commit dacoity is an illegal agreement and cannot be enforced at law.

- **EFFECT ON COLLATERAL AGREEMENT:** In case of illegal agreements, even the collateral agreements become void. Although an illegal agreement should be distinguished from a void contract. ***All illegal agreements are void but all void agreements or contracts are not necessarily illegal***. Every void agreement is not illegal unless its object or consideration is immoral, or opposed to public policy etc. A void contract does not affect collateral or a parallel contract.

C. On the basis of execution or performance-

1. ***Executed contracts:*** An executed contract is one where both the parties have performed their respective obligations under the contract and nothing remains to be done by either party.
   Example: A offers to sell his bike to B for Rs. 15,000. B accepts A's offer. A delivers his bike to B and B pays Rs. 15,000 to A. It is an executed contract.

2. ***Executory Contract:*** Where the contract is yet to be performed either wholly or partially or one or both parties have yet to perform their obligation, the contract is executory contract.
   Example: A offers to sell his bike to B for Rs. 15,000. B accepts A's offer. If the bike has not yet been delivered by A and the price has not yet been paid by B, it is an executory contract.

3. ***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: A offers to sell his bike to B for Rs. 15,000 on a credit of one month. B accepts A's offer. A delivers his bike to B. Here,the contract is executed as to A and executory as to B.

D. On the basis of liability-

1. ***Unilateral Contracts:*** A unilateral contract is one in which a promise on one side is exchanged for an act on the other side. A contract is said to be unilateral where one party has discharged his obligation either before or at time of entering into contract.

2. ***Bilateral Contracts:*** These are the contract where a promise on one side is exchanged for a promise on the part of the other party.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

BASIS OF DISTINCTION	VOID AGREEMENT	VOID CONTRACT
1. DEFINITION	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which cases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
2. TIME WHEN BECOMES VOID	It is void from the very beginning. (void ab initio)	It becomes void subsequently due to change in law or change in circumstances.
3. RESTITUTION	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. DESCRIPTION IN THE ACT	Such agreements have been mentioned as void in the Act. Agreements without consideration, agreements with unlawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

BASIS OF DISTINCTION	VOID AGREEMENT	VOIDABLE CONTRACT
1. DEFINITION & ENFORCEA-BILITY	An agreement not enforceable by law is said to be void. It cannot be enforced by any party. It is a nullity and hence does not exist in the eye of law.	A contract enforceable by law at the option of the aggrieved party is a voidable contract. It continues to be enforceable if the aggrieved party does not repudiate the contract.
2. PERIOD OF VALIDITY	It is void from the beginning i.e. void ab initio	It is valid till it is avoided (or rescinded) by the aggrieved party to the contract.

3. CHANGE IN STATUS	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid or rescind it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
4. CAUSES	An agreement is void because an essential element of a valid contract (other than free consent) is missing. Reasons may be that it was made with incompetent parties or for unlawful objects and consideration, or without consideration, or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
5. TRANSFER OF TITLE	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
6. RESTITUTION	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right for restitution is available if the party elects to avoid the contract.
7. DAMAGES	No party has a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfillment of the promise.

DISTINCTION BETWEEN VOID CONTRACT & VOIDABLE CONTRACT

BASIS OF DISTINCTION	VOID CONTRACT	VOIDABLE CONTRACT
1. DEFINITION	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.[Sec.2(j)]	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. PERIOD OF VALIDITY	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. WILL OF THE PARTY	Its validity is not affected by the will of any party. It is decided by the law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
4. CAUSES	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Sections 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

BASIS OF DISTINCTION	VOID AGREEMENT	ILLEGAL AGREEMENT
1. DEFINITION	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law is illegal.
2. EFFECT ON COLLATERAL AGREEMENT	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. SCOPE	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All illegal agreements are void.
4. RESTITUTION	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

PROPOSAL/OFFER

To form an agreement, there must be at least two elements– one offer and the other acceptance. Offer or proposal is the starting point in the formation of an agreement. The word proposal is synonymous with the English word 'offer'. Thus offer is the foundation of any agreement.

As per ***Sec 2(a) of Indian Contract Act***-
"***When one person signifies to another his willingness***–
- ***to do or to abstain from doing anything,***
- ***with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."***

Observing the above definition, a proposal involves the following essential elements-
- It must be made by one person to another person. In other words, there cannot be a proposal by a person to himself.
- 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***)
- It must be made with a view to obtain the consent of that other person to proposed act or abstinence.

The person who makes an offer is called "***Offeror***" or "***Promisor***" and the person to whom the offer is made is called the "***Offeree***" or "***Promisee***"

HOW AN OFFER IS MADE: An offer may be either ***express*** or ***implied***. An express offer is one which is made by words either spoken or written such as letter, telegram, telex, fax messages, e-mail or through internet. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case.

LEGAL RULES AS TO VALID OFFER

1. ***Offer must be communicated to the offeree***: The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor. Offer must be made with a view to obtaining the assent of the other party. An offer must be distinguished from mere expression of intention. [***Harris v. Nickerson*** (1873)]

   In ***Lalman Shukla v. Gauri Dutt*** **(1913)**, A's nephew has absconded from his home. He sent his servants to trace his missing nephew. When the servant had left, A afterwards announced that anybody who discovered the missing boy would be given the reward of Rs.500. The servant discovered the missing boy without knowing about the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when the discovered the missing boy.

2. ***Special terms of the offer must also be communicated:*** If the special terms of the offer are not communicated, the offeree will not be bound by those terms. This question of special terms generally arises in case of standard form of contracts.

3. ***The offer must be certain, definite and unambiguous:*** No contract can come into existence if the terms of the offer are vague or loose and indefinite. Both the parties should be clear about the contract, its terms and the legal consequences that may follow in a particular contract. ***Sec.29*** of Contract Act provides "***a contract the terms of which is not certain and is not capable of being made certain is void for uncertainty***"
Example: A offered to sell to B. 'a hundred tons of oil'. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

4. ***The offer must be capable of creating legal relation:*** The offeror must intend the creation of legal relations. He must intend that if his offer is accepted a legally binding agreement shall result. A social, moral or domestic agreement without any intention to create legal relation is not a contract because the presumption is that parties do not intend legal consequences to follow from breach of contract. For example, A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

5. ***Offer may be express and implied:*** The offer may be express or implied. An offer which is expressed by words, written or spoken/oral, is called an express offer. The offer which is expressed otherwise than in words i.e. by conduct, is called an implied offer [***Section 9***].

6. ***An offer may be conditional:*** An offer can be made subject to a condition. In that case, the offer can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted.

7. ***Communication of offer must be complete and acceptance of such original offer only can make a contract i.e. a counter offer if made in place of acceptance will result in the lapse of the original offer:***

Example: A offered to sell his pen to B for Rs.100. B replied, "I am ready to pay Rs.90. On A's refusal to sell at this price, B agreed to pay Rs.100. Held, there was not contract as the acceptance to buy it for Rs.90 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.100 is a fresh offer from B to which A was not bound go give his acceptance. This is called a counter offer and a counter offer amounts to rejection or lapse of the original offer after which original offer cannot be accepted.

8. ***Cross offer do not conclude a contract:*** Where two parties make identical offers to each other, in ignorance of each others offer, the offers are known as cross-offers and neither of the two can be called an acceptance of the other and, therefore, there is no contract.

9. ***An offer must not thrust or put the burden of acceptance on the offeree:*** Offer should not contain a term the non-compliance of which would amount to acceptance. One cannot say while making the offer that if the offer is not accepted before a certain date, it will be presumed to have been accepted. Moreover, acceptance cannot be presumed from silence. Acceptance is valid only if it is communicated to the offeror.
Example: A writes to B, "I offer to sell my house for Rs. 40000. If I do not receive a reply by next Monday, I shall assume that you have accepted the offer." There will be no contract if B does not reply.

10. ***An invitation to offer is not an offer:*** An offer must be distinguished from an invitation to offer. In the case of an "invitation to offer" the aim is merely to circulate information of readiness to

negotiate business with anybody who on such information comes to the person sending it. Such invitations are not offer in the eyes of law and do not become promises on acceptance.

Example: Menu card of restaurants, price-tags attached with the goods displayed in any showroom or supermarket is an invitation to proposal/offer and not an offer in itself. If the salesman or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal. Similarly, job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer. An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

KINDS OF OFFER/PROPOSAL

1. ***Express offer***- When the offeror is expressly communicated by the offeror by words, spoken or written, the offer is said to be an express offer.

2. ***Implied offer***– When the offer is not communicated expressly rather an offer may be implied from the conduct of the parties or the circumstances of the case, it is said to be an implied offer.

3. ***Specific offer***- It means an offer made to a particular person or to a group of persons. A specific offer can be accepted only by that person to whom it is made and communication of acceptance is necessary in case of specific offer.

4. ***General offer***- It means on offer which is made to the public in general. General offer can be accepted by anyone. If offeree fulfills the term and condition which is given in offer then offer is said to be accepted. Communication of acceptance is not necessary is case of general offer. Mere compliance with the terms of the offer gives rise to a contract. In ***Carlill v Carbolic Smoke Ball Company Limited (1893)***, the Company advertised that a reward of $100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions. One lady, Mrs. Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza. She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such she is entitled to recover the reward from the company.

5. ***Cross offer***- When two parties exchange identical offers in ignorance at the time of each other's offer, the offer's are called cross offer. A contract comes into existence when any of the parties, accept the cross offer made by the other party.

6. ***Counter offer***- When the offeree gives a qualified or conditional acceptance of the offer i.e. an acceptance subject to modifications and variations in the terms of original offer, he is said to make a counter offer. In other words, an offer made by the offeree in return of the original offer is called as a counter offer. A counter offer amounts to rejection of the original offer.

7. ***Standing, open and continuous offer***- An offer which is allowed to remain open for acceptance over a period of time is known as standing, open or continuous offer. Tender for supply of goods is a kind of standing offer. For example, when we ask the newspaper vendor to supply the newspaper daily,

in such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called standing offers.

8. ***Standard form of contract***- In commercial transactions, usually parties do not intent to negotiate the terms of contract at every occasion. And therefore, the institutions such as banks, insurance policy departments etc. design a standard document to be signed with every person who intends to avail services from such institutions. Such documents are called Standard form of contracts.

LAPSE OF OFFER/MODES OF REVOCATION OF OFFER (SECTION 6)

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in ***Section 6*** of the Indian Contract Act:

1. ***By communication of notice of revocation:*** An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes before bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.

2. ***By lapse of time:*** An offer lapse-
   a) If either offeror or offeree dies before acceptance.
   b) If it is not accepted within-
      - The specific time, or
      - A reasonable time, if not time is specified

   Where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

3. ***By failure to accept condition precedent:*** Where, the offer requires that some condition must be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. ***By the death or insanity of the offeror:*** Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.

5. ***By counter offer by the offeree:*** Where a counter offer is made by the offeree, the original offer automatically comes to an end, as the counter offer amounts to rejection of the original offer.

6. ***By not accepting the offer, according to the prescribed or usual mode:*** Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.

7. ***By rejection of offer by the offeree:*** Where the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.

8. ***By change in law:*** Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

ACCEPTANCE

Acceptance is defined under ***Sec. 2(b)*** of Indian Contract act:

"***When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.***"

Alike a proposal, an acceptance may also be ***express*** or ***implied***. When acceptance is made by words, spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance. Thus where a person boards a train or bus, he impliedly accepts to pay the usual fare.

Who may accept?

An offer can be accepted only by the person to whom the offer is made. It cannot be accepted by another person without the consent of the person making it. Specific answer to this question may be given with reference to type of offer-

(a) In case of specific offer- Can be accepted only by the person to whom that offer was made.

(b) In case of General offer- An offer made to the world at large or public in general (called general offer) can be accepted by any person having knowledge of the offer by fulfilling the terms of the offer.

How to make acceptance?

Like an offer, an acceptance may also be either '***express acceptance***' i.e. by words, oral or written or '***implied acceptance***' i.e. otherwise than by words which means by conduct.

LEGAL REQUIREMENTS OF A VALID ACCEPTANCE

1. ***Acceptance must be absolute and unconditional:*** As per ***Sec. 7(1)***, an acceptance must be unconditional and unqualified. Accepting an offer with conditions, variations and reservations amounts to a counter offer and rejection of the original offer. The acceptor must comply with the terms of the offer. A variations or alteration, however, small of the offer, will make the acceptance invalid.

2. ***Acceptance must be communicated to the offeror:*** If the offeror remains silent and does nothing to show that he has accepted the offer, no contract is formed. The acceptor should do something to ***signify*** his intention to accept. Thus, where a person accepts an offer but fails to post the letter of acceptance, it is no acceptance.

3. ***Acceptance must be within a reasonable time:*** Acceptance to be valid must be made within the time allowed by the offeror and if no time is specified, it must be made within a reasonable time.

4. ***It must be according to the mode prescribed or usual or reasonable mode:*** As per ***Sec. 7(2)***, if the proposal does not prescribe the manner in which it is to be accepted, then the offer must be accepted in some usual and reasonable manner. And if the proposal prescribes the manner in which it is to be accepted then the offer must be accepted in the prescribed manner only, within a reasonable time. Acceptance should be exactly made as is demanded by the offeror. This is also called "***mirror image rule***."

Consequence of not accepting the offer in the prescribed manner- If the offer is not accepted in the prescribed manner then the offerer may approve or reject such acceptance. Ones such a deviated acceptance is communicated to offerer, he may insist that the acceptance must be made in the manner prescribed. If the offere wants to reject such acceptance, he must inform the acceptor within a reasonable time that he is not bound by the acceptance because it is not in the prescribed manner. Failure on the part of the offeror to do so will imply that he has accepted the acceptance although it is not in the desired manner.

5. ***The acceptor must be aware of the proposal at the time of the offer:*** Acceptance follows offer. If the acceptor is not aware of the existence of the offer and conveys his acceptance, no contract comes into being.

6. ***Acceptance must be given before the offer lapses or before the offer is revoked:*** It means that acceptance must be made within the offer is in force i.e. before the offer has been revoked or offer has lapsed.

7. ***Acceptance cannot be implied from silence:*** Offer should not contain a term the non-compliance of which would amount to acceptance. One cannot say while making the offer if offeree remains silent then acceptance shall be presumed from such silence. Silence is not permitted as a mode of acceptance in law. Acceptance is valid only if it is communicated to the offeror.

GENERAL RULES AS TO COMMUNICATION OF OFFER, ACCEPTANCE AND REVOCATION

When parties are at a distance and the offer and acceptance are exchanged through post, rules are contained in ***Sections 3 and 4***.

1. ***Communication of proposal is complete***- When it comes to the knowledge of the person to whom it is made i.e. the offeree. In case an offer is made by post, its communication will be complete when the letter containing the offer reaches the offeree.

2. ***Communication of acceptance is complete***-The communication of acceptance is complete at different times for the proposer and acceptor. The rules regarding the communication of acceptance are as follows-

   a) ***As against the proposer:*** As soon as a duly addressed letter of acceptance is put into the course of transmission i.e. when the letter of acceptance is posted so as to be out of reach of the acceptor, whether the same reaches the proposer or not. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped. Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.

   b) ***As against the acceptor:*** As soon as the proposer receives the letter of acceptance.

[**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 may be utilized by the acceptor to withdraw or revoke his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.]

- **ACCEPTANCE BY TELEPHONES TELEX OR FAX*:*** Such contracts are 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 communication of acceptance is complete when the acceptance is received or is heard by the offeror and not when it is transmitted by the offeree. The contract is concluded as soon as the offeror receives or hears the acceptance. Therefore, the acceptor must ensure that his acceptance is properly received by the proposer.

- **THE PLACE OF CONTRACT*:*** In case of acceptance by the post, the place where the letter of acceptance is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, telex etc.), the contract is made at the place where the acceptance is received or is heard.

COMMUNICATION OF REVOCATION OF OFFER OR ACCEPTANCE

The term ***'revocation'*** means 'taking back' or 'withdrawal'. Rules regarding revocation have been incorporated under Sec. 5 of the Contract Act. The communication of a revocation is complete as against the person who makes it when it is put into the course of transmission. As against the person to whom it is made, when it comes to his knowledge.

Time limit for revocation of offer: 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 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.

RULES REGARDING REVOCATION:

- Revocation must always be express.
- Revocation must move from the offerer/proposer himself or through a duly authorised agent
- Notice of revocation of a general offer must be given through the same channel by which the original offer was made.
- Offer can be revoked even if the letter of acceptance is lost or delayed in transit.

Time limit for revocation of acceptance: According to Sec. 5, "***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, the acceptor may revoke his acceptance by a speedier mode of communication which will reach before the letter of acceptance is received by the proposer.

The proposition relating to the 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 cannot be recalled or altered."***

Here, gunpowder is offer and lighted match is the acceptance. When a lighted match is shown to a train of gunpowder, it explodes and something happens which cannot be undone. Similarly, an offer once accepted cannot be revoked. However, acceptance can be revoked by resorting to some quicker means of communication so that the offeror learns about such revocation before acceptance.

SIMULTANEOUS DELIVERY OF LETTER OF ACCEPTANCE AND THE TELEGRAM CONTAINING REVOCATION OF ACCEPTANCE

In such cases, the formation of contract will depend upon the fact which one is read first by the offeror. Generally, it is presumed that a man of ordinary prudence will first read the telegram and therefore the revocation will be quite effective.

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.)

RELEVANT CASES ON ACCEPTANCE

- ***Lalman v. Gauridatta (1913)***
- ***Adams v. Lindsell (1818)***
- ***Bhagvandas Goverdhandas Kedia v. Girdharilal Pursottamdas (1966)***
- ***Powell v. Lee (1908)***
- ***Felthouse v. Bindley 1863***
- ***Harvey v. Facey (1893)***
- ***Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd. (1952)***
- ***MC Pherson v. Appanna (1951)***

CONSIDERATION

Consideration is the foundation of every contract and also one of the essential elements thereof. The law insists on the existence of consideration if a promise is to be enforced as creating legal obligations. In the absence of consideration a promise or undertaking is purely gratuitous and therefore creates no legal binding effect. Consideration must be of two directional nature. That means both parties should get benefitted mutually. The term "consideration" means ***something in return*** i.e. ***quid pro quo***. What is 'something' has been explained by Justice Lush in a leading English case ***Currie v. Misa*** as follows-

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

Pollock has suggested that "***consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.***"

Consideration may be in the form of cash, goods, act or abstinence. A promise without consideration is null and void. It is called a naked promise or "***Nudum Pactum***." ***Nudo pacto non oritur actio***, i.e. ***an agreement without consideration is void***. ***Section 25*** of the Indian Contract Act supports this contention and provides that agreement without consideration is void.

Sec. 2(d) of the Indian Contract act, 1872 defines consideration as-
"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

1. ***Consideration must move at desire of the promisor:*** An act or abstinence constitutiong consideration must have been done at the desire of the promisor only. Any act performed at the desire of the third party or without the desire of the promisor cannot be a valid consideration.

2. ***It may move from the promisee or any other person:*** An act constituting consideration may be done by the promisee himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that even a stranger to the consideration can sue on a contract, provided he is a party to the contract (***Chinayya v. Ramayya***)

3. ***Consideration may be of past, present or future:***

    a) ***Past Consideration:*** A consideration for the act done in past or which has already moved before the formation of the agreement is a past consideration. Past consideration is valid in Indian Contract Act, but past consideration is no consideration in English Law.
    b) ***Present Consideration:*** When both the parties are ready to give consideration at the same time or the consideration which moves simultaneously with the promise is a present consideration.

c) ***Future Consideration:*** When a party promises to do or to abstain from doing something in future, it is a future consideration. The consideration which is to be moved after the formation of agreement is called future consideration.

4. ***Consideration need not to be adequate:*** As per the definition of consideration it simply indicates that "***something in return***" is consideration which must actually be of some value in the eyes of law, that '***something***' can be adequate or grossly inadequate. Law only requires the presence of some consideration in a valid contract; its adequacy is not required in law.
According to ***Explanation 2 of Sec. 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.

5. ***Consideration must be real:*** It should not be uncertain, illusory or impossible.

6. ***Consideration must be lawful:*** For a valid contract it is necessary that the consideration should be lawful as according to Sec.23 of the Indian Contract Act, otherwise it will become void and unenforceable i.e. it must not be illegal, immoral or opposed to public policy.

7. ***Must be something other than the promisor's existing obligation:*** 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.

RELEVANT CASELAWS ON CONSIDERATION-
- ***Durga Prasad v. Baldeo (1880)***
- ***Kedar Nath v. Gouri Mohammed (1886)***
- ***Abdul Aziz v. Masum Ali (1914)***
- ***Chinnaya v. Ramayya (1882)***
- ***Tweddle v. Atkinson (1861)***

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule as laid down under ***Section 25*** is "***An agreement made without consideration is void***". Every agreement to be enforceable at law must be supported by valid consideration. An agreement made without consideration is void and is unenforceable except in certain cases. ***Sec. 25 & Sec. 185 specifies exceptional cases where an agreement though made without consideration will be valid***. These are as follow:

1. ***Agreement made on account of natural love and affection [Sec. 25(1)]:*** An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. An agreement without consideration will be valid provided-
(a) It is expressed in writing;
(b) It is registered under the law for the time being in force;
(c) It is made on account of natural love and affection;
(d) It is between parties standing in a near relation to each other.
All these essentials must be present to enforce an agreement made without consideration.

2. ***Agreement made to compensate past services voluntarily rendered [Sec. 25(2)]:*** An agreement made without consideration will be valid if it is a promise to compensate wholly or in a part a

person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. To apply this rule, the following essentials must exist:

(a) The act must have been done voluntarily;
(b) For the promisor or it must be something which was the legal obligation of the promisor;
(c) The promisor must be in existence at the time when the act was done;
(d) The promisor must agree now to compensate the promisee.

3. ***Promise to pay a time-barred debt [Sec. 25(3)]:*** A promise to pay a time-barred debt is also enforceable. But the promise must be in writing and be signed by the promisor or his agent authorized in that behalf. The promise may be to pay the whole or part of the debt. An oral promise to pay a time-barred debt is unenforceable.

4. ***Completed gifts [Exp. 1 to Sec. 25]:*** Explanation 1 to Section 25 provides that the rule '***No consideration, No contract***' shall not affect validity of any gifts actually made between the donor and the donee. Thus if a person gives certain properties to another according to the provision of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.

5. ***Agency (Sec. 185, Indian Contract Act):*** There is one more exception to the rule. It is given in section 185 which says that no consideration is needed to create an agency.

6. ***Guarantee (Sec 127, Indian Contract Act):*** A contract of guarantee is made without consideration.

7. ***Remission (Sec 63):*** No consideration is required for an agreement to receive less then what is due. This is called remission in the law.

DOCTRINE OF PRIVITY OF CONSIDERATION AND PRIVITY OF CONTRACT

The Indian law is different from the English law and the definition of consideration under the Indian Contract Act clearly provides that consideration may move from the promisee or any other person. So consideration may flow from a stranger to the contract as well. ***Under the English law the consideration must move from the promisee only and not from a stranger, and a stranger to a consideration cannot enforce it. This is known as "the principle of privity of contract".***

It means that as per privity of contract, a stranger to a contract cannot enforce that contract or cannot sue on such contract. Only parties to a contract can sue each other or be sued upon. A stranger to a contract can't sue in England as well as in India though it may be for his benefit. Privity of contract means the relationship subsisting between the parties to a contract.

Exception to this principle-

1. ***Trust:*** In case of trust a beneficiary can sue upon the contract. This exception to the rule of Privity of contract has been recognised in a well known case of ***Khwaja Mohd. Khan v. Hussaini Begum (1910)***

2. ***Family settlement/Marriage contract:*** In case of family settlement members who were not originally party to the contract can also sue upon it. A female member can enforce a provision for marriage expenses made on partition of HUF.

In a case, two brothers, on partition of family joint properties, agreed to invest in equal shares for their mother's maintenance. It was held that the mother was entitled to require her sons to make the investment.

3. ***Acknowledgement of liability:*** Where a person admits his liability thereafter if he refused, he will be stopped from denying his liability.

4. ***Assignment of contract:*** Assignee (the person to whom benefits of contract are assigned) can enforce upon the contract.

5. ***Contract entered into through an agent:*** A principal may sue under the contract entered into by his agent on his behalf.

E-Contract

Introduction to E-Contracts in India

An e-contract, or electronic contract, is a legally binding agreement that is created, negotiated, and executed through digital means such as the internet, email, mobile applications, or other digital platforms. Unlike traditional paper-based contracts, e-contracts rely on electronic communication and authentication mechanisms, such as digital signatures or Aadhaar-based e-signatures, to establish contractual obligations. These contracts are pivotal in India's rapidly growing digital economy, driven by the rise of e-commerce, fintech, and remote business operations. They offer unparalleled ease, speed, and efficiency in facilitating commercial and legal transactions, reducing the need for physical presence or paperwork. E-contracts are widely used in sectors like online retail, software licensing, freelancing, and blockchain-based transactions, making them a cornerstone of modern commerce.

The legal foundation for e-contracts in India is provided by the **Indian Contract Act, 1872**, which governs the general principles of contract formation, and the **Information Technology Act, 2000 (IT Act)**, which specifically addresses the validity and enforceability of digital agreements. Together, these laws ensure that e-contracts are as legally robust as traditional contracts, fostering trust in digital transactions.

Legal Framework Governing E-Contracts in India

Essentials of Valid E-Contract

Indian Contract Act, 1872

The Indian Contract Act, 1872, provides the foundational principles for all contracts in India, including e-contracts. For an e-contract to be valid, it must satisfy the following essential elements of all traditional contract outlined in the Act like:

- **Offer and Acceptance**: A clear offer by one party and its unequivocal acceptance by another, communicated electronically (e.g., via email, website interfaces, or app-based confirmations). For example, a customer clicking "Place Order" on Flipkart constitutes acceptance of the seller's offer.
- **Lawful Consideration**: Something of value exchanged between parties, which can be monetary (e.g., payment for goods) or non-monetary (e.g., data sharing in exchange for free services). The consideration must be lawful and not against public policy.
- **Intention to Create Legal Relations**: Both parties must intend for the agreement to be legally binding. For instance, clicking "I Agree" on a website's terms of service demonstrates this intent.
- **Lawful Object**: The purpose of the contract must not be illegal, immoral, or opposed to public policy (e.g., contracts for prohibited goods are void).
- **Contractual Capacity**: Parties must be competent—adults (above 18), of sound mind, and not disqualified by law (e.g., not bankrupt). Minors or those under duress cannot form valid contracts.

The format of the contract—whether oral, written, or electronic—does not impact its validity as long as these elements are met. The Act's flexibility allows e-contracts to adapt traditional principles to digital platforms, ensuring seamless integration into India's legal system.

Information Technology Act, 2000

The IT Act, 2000, provides specific provisions to legitimize and regulate e-contracts, addressing the unique challenges of digital transactions. Key provisions include:

- **Section 10A**: Explicitly states that contracts formed through electronic means (e.g., offers, acceptances, or revocations communicated via email, apps, or websites) are valid and enforceable. This provision eliminates any doubt about the legal status of e-contracts, ensuring they are not deemed unenforceable merely because they are electronic.
- **Sections 2(1)(t) and 2(1)(r)**: Define "electronic record" (any data generated, sent, or stored in electronic form) and "electronic/digital signature" (authentication methods like PKI-based signatures or Aadhaar e-signatures). These definitions establish the building blocks for e-contract validation.
- **Section 5**: Grants legal recognition to electronic signatures, equating them to handwritten signatures. This includes digital signatures issued by Certifying Authorities (e.g., eMudhra) and Aadhaar-based e-signatures with OTP verification, ensuring secure authentication.

- **Section 65B (Indian Evidence Act, 1872)**: Provides for the admissibility of electronic records as evidence in courts, provided they are accompanied by a certificate verifying their authenticity (e.g., server logs, email trails, or blockchain records). This ensures e-contracts can be relied upon in disputes.

Together, these provisions align e-contracts with traditional contracts, enabling their use in India's digital economy. The IT Act also facilitates compliance with global standards, supporting cross-border e-commerce and digital trade.

Limitations

Certain documents listed in the First Schedule of the IT Act, such as negotiable instruments (e.g., promissory notes, cheques), powers of attorney, wills, trusts, and real estate transactions (sale deeds or leases exceeding one year), are excluded from electronic execution to prevent fraud and ensure compliance with stamping and registration laws.

Advantages of E-Contracts

E-contracts have transformed the way agreements are formed and executed in India, offering significant benefits:

1. **Speed and Efficiency**: E-contracts enable instantaneous formation, acceptance, and execution. For example, a consumer on Myntra can complete a purchase contract in seconds by clicking "Buy Now," compared to days for paper-based agreements.
2. **Cost Effectiveness**: Eliminates expenses related to paper, printing, notarization, postage, and physical storage. A company using platforms like DocuSign saves thousands on courier and archiving costs annually.
3. **Global Reach**: Facilitates cross-border transactions without physical or logistical barriers. For instance, an Indian freelancer on Fiverr can contract with a U.S. client seamlessly, with terms agreed via the platform.
4. **Enhanced Security**: Digital signatures (e.g., Aadhaar e-sign or PKI-based) use encryption to ensure authenticity and prevent forgery. Blockchain-based smart contracts add immutability, reducing tampering risks.
5. **Convenience and Accessibility**: Parties can execute contracts anytime, anywhere, with internet access. For example, a tenant in Bengaluru can sign a lease with an NRI landlord via an app like NoBroker at midnight.
6. **Environmental Benefits**: Reduces paper consumption, aligning with sustainability goals. E-commerce platforms like Amazon provide digital invoices, cutting down on paper waste.

7. **Organized Record Keeping**: Digital contracts are easily stored, retrieved, and audited using cloud-based systems (e.g., Google Drive, contract management software like Zoho Contracts), simplifying compliance and tracking.

8. **Automation Opportunities**: Smart contracts and automated systems (e.g., auto-renewal subscriptions on Netflix) integrate with software for seamless lifecycle management, reducing manual intervention.

9. **Transparency and Auditability**: Blockchain-based e-contracts, like those on Ethereum, provide transparent, verifiable records, enhancing trust in high-value transactions like supply chain agreements.

10. **Scalability**: E-contracts support high-volume transactions, such as millions of daily purchases on Flipkart, without the logistical constraints of physical contracts.

Disadvantages of E-Contracts

Despite their benefits, e-contracts face challenges that can impact their adoption and enforcement:

1. **Authentication and Security Risks**: Verifying the authenticity of digital signatures or preventing cyber fraud (e.g., phishing, hacking) remains complex. For instance, a forged digital signature could invalidate a contract if not detected.

2. **Jurisdictional Issues**: Cross-border e-contracts raise questions about applicable law and enforcement. For example, a dispute between an Indian buyer and a U.S. seller on eBay may face conflicting legal jurisdictions.

3. **Proving Consent**: In browsewrap agreements, proving informed consent is difficult, as users may claim ignorance of hyperlinked terms. Courts often scrutinize whether notice was adequate, as seen in global cases like *Rudder v. Microsoft Corporation*.

4. **Technical Failures**: Internet outages, server crashes, or software glitches can disrupt contract formation or execution, leading to disputes. For example, a failed payment confirmation on an e-commerce site may nullify a sale.

5. **Stamp Duty and Compliance**: Digital stamping for contracts requiring stamp duty (e.g., property leases) lacks uniform norms across states, complicating compliance. The proposed Indian Stamp Bill, 2023, aims to address this.

6. **Proof of Execution**: Proving the exact date, terms, or acceptance can be challenging without robust electronic records. For instance, missing Section 65B certificates may render email evidence inadmissible.

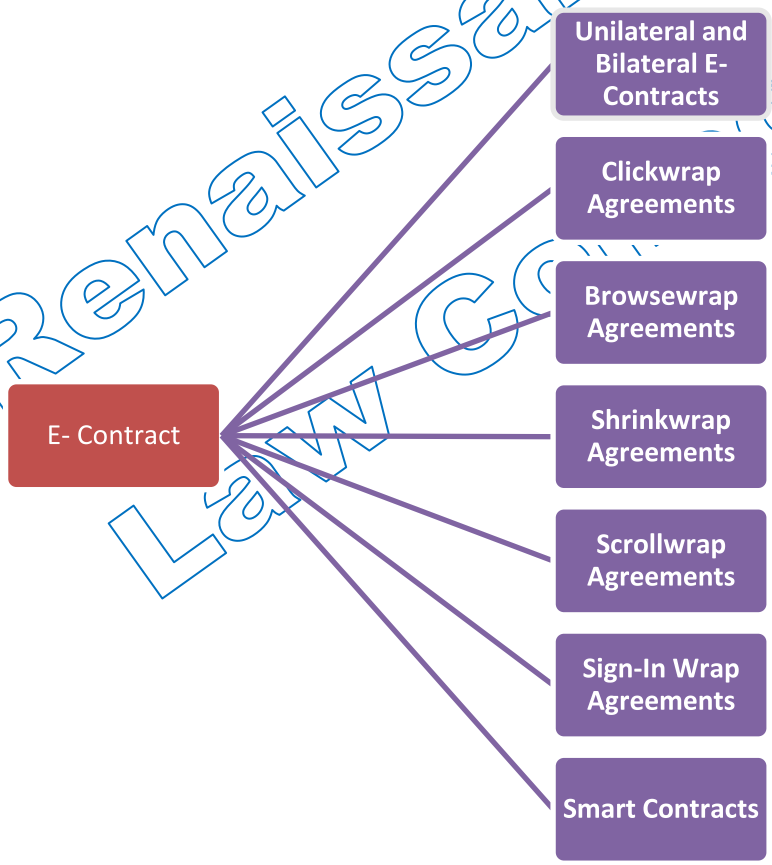
7. **Data Privacy Concerns**: E-contracts often involve personal data (e.g., Aadhaar details for e-signatures), requiring compliance with the Digital Personal Data Protection Act, 2023. Breaches can lead to legal and financial liabilities.

8. **Digital Divide**: Limited internet access or digital literacy in rural India restricts e-contract adoption. For example, farmers may struggle to use digital platforms for agricultural contracts.

9. **Legal Evolution Lag**: Rapid technological advancements (e.g., blockchain, AI-driven contracts) outpace legal frameworks, creating grey areas. Courts may need to interpret laws creatively, as seen in cases like *Mphasis Ltd. v. CBI* (2022) for WhatsApp-based contracts.

10. **Risk of Misrepresentation**: In automated contracts (e.g., trading bots), errors in programming or misaligned instructions can lead to unintended obligations, raising disputes over intent

Type of E- Contract



1. Unilateral and Bilateral E-Contracts

Unilateral Contracts

- **Definition**: A unilateral contract involves a promise by one party (the offeror) that becomes binding only when the other party (the offeree) performs a specific act. No prior acceptance is required; performance itself constitutes acceptance.

- **Characteristics**: These contracts are typically open offers to a broad audience, often used for rewards or incentives. They are binding only on the offeror until the act is completed, and the offeree is not obligated to act.
- **Legal Validity**: Recognized under Section 2(a) (offer) and Section 8 (acceptance by performance) of the Indian Contract Act. The IT Act's Section 10A ensures electronic unilateral contracts are enforceable if properly documented.
- **Example**:

  Bug Bounty Programs: Companies like Google or Zomato run bug bounty programs where they publicly announce rewards (e.g., $1,000–$50,000) for ethical hackers who identify vulnerabilities in their systems. For instance, a hacker submitting a verified bug report via Google's vulnerability reward portal accepts the offer by performance, forming a unilateral e-contract.

  Referral Programs: Paytm offers incentives for referring new users to its app. When a user shares a referral link and a friend signs up, the referrer's action completes the contract, entitling them to a digital wallet credit.

Bilateral Contracts

- **Definition**: Bilateral contracts involve mutual promises where both parties agree to reciprocal obligations, creating a binding agreement upon acceptance.
- **Characteristics**: These contracts require explicit agreement (offer and acceptance) and are common in digital marketplaces, service agreements, and e-commerce. They often involve detailed terms negotiated or accepted electronically.
- **Legal Validity**: Governed by Sections 2(a), 2(b) (offer and acceptance), and Section 10 (essential elements) of the Indian Contract Act, with Section 10A of the IT Act ensuring electronic formation is valid.
- **Example**:

  Freelancer Platforms: On platforms like Upwork or Freelancer.com, a client posts a project (e.g., website development) and a freelancer submits a proposal. Once the client accepts via the platform's interface, a bilateral e-contract is formed, outlining deliverables, payment, and timelines.

2. Clickwrap Agreements

- **Definition**: Clickwrap agreements require users to explicitly agree to terms by clicking a button like "I Accept" or "I Agree" before accessing a service or completing a transaction.
- **Characteristics**: These are highly enforceable due to the clear, affirmative action of clicking, which demonstrates informed consent. Terms are typically presented prominently during checkout or registration processes.

- **Legal Validity**: Upheld under the Indian Contract Act for clear offer and acceptance, with IT Act's Section 5 recognizing electronic assent (e.g., clicks) as valid. Courts, as seen in *Rudder v. Microsoft Corporation*,1999(influential in India), emphasize that clicking "I Agree" binds users even if they don't read the terms.

- **Example**:

  E-Commerce Checkout: On Amazon.in or Flipkart, users must click "I Agree" to terms of service during checkout, covering payment, delivery, and returns. For instance, purchasing a smartphone on Amazon involves agreeing to terms via a clickwrap interface, ensuring enforceability for disputes like non-delivery.

  Railway Booking: Booking a train ticket on the IRCTC website requires users to accept terms (e.g., cancellation policies) by clicking a checkbox, forming a binding contract for the journey.

3. Browsewrap Agreements

- **Definition**: Browsewrap agreements imply user consent through continued use or browsing of a website, with terms accessible via hyperlinks, often in the footer or a separate page.

- **Characteristics**: These agreements rely on implied consent, making enforceability weaker than clickwrap, as courts scrutinize whether users had reasonable notice of the terms. Clear visibility and accessibility of the hyperlink are critical.

- **Legal Validity**: Enforceable under the Indian Contract Act if notice and intent are proven, supported by IT Act's Section 65B for electronic evidence. Courts may reject enforceability if terms are buried or not prominently displayed.

- **Example**:

  Video Streaming Platforms: YouTube's terms of service, linked in the website footer, are deemed accepted by users who continue watching videos. A user uploading content implicitly agrees to YouTube's copyright and usage policies.

  News Websites: Websites like The Hindu or Times of India include browsewrap terms in their footer, covering user conduct and data privacy, binding visitors who browse articles or comment.

4. Shrinkwrap Agreements

- **Definition**: Shrinkwrap agreements are included within product packaging (physical or digital), with acceptance implied by opening, installing, or using the product.

- **Characteristics**: Common in software purchases, these agreements are binding once the user breaks the "shrinkwrap" (literal or metaphorical). They are less common today due to digital distribution but remain relevant for physical software or bundled licenses.

- **Legal Validity**: Valid under the Indian Contract Act as acceptance by conduct (Section 8), with IT Act's Section 10A recognizing electronic licenses. Courts uphold these if terms are accessible before use.
- **Example**:

  Software Licenses: Purchasing a Microsoft Office DVD includes a license agreement inside the package. Installing the software implies acceptance of terms like usage restrictions or updates, enforceable in disputes over unauthorized use.

  Gaming Consoles: Buying a PlayStation game disc includes a shrinkwrap agreement in the packaging, binding users to terms like non-resale or online play conditions upon opening.

5. Scrollwrap Agreements

- **Definition**: Scrollwrap agreements require users to scroll through the entire terms and conditions before the "Accept" button becomes active, ensuring users cannot claim ignorance.
- **Characteristics**: These are a variation of clickwrap agreements, designed to increase enforceability by proving the user had access to the full text. They are common in apps or services requiring detailed compliance (e.g., banking, legal).
- **Legal Validity**: Strongly enforceable under the Indian Contract Act due to explicit consent, with IT Act's Section 5 validating the electronic acceptance. Courts favor these for their transparency.
- **Example**:

  Mobile Banking Apps: Apps like HDFC Bank's mobile app require users to scroll through terms of service (e.g., liability for unauthorized transactions) before enabling the "Accept" button during onboarding.

  Legal Platforms: Platforms like IndiaFilings require users to scroll through service agreements for company registration or tax filing before proceeding, ensuring informed consent.

6. Sign-In Wrap Agreements

- **Definition**: Sign-in wrap agreements imply consent to terms by signing into or registering for a platform or app, often during account creation or login.
- **Characteristics**: Consent is inferred from the act of signing in, with terms linked or displayed during the process. Enforceability depends on whether users were adequately notified of the terms.
- **Legal Validity**: Valid under the Indian Contract Act if notice is clear, supported by IT Act's Section 10A. Courts may question enforceability if terms are not easily accessible.
- **Example**:

Social Media Platforms: Signing into Instagram or LinkedIn implies agreement to their terms of service and privacy policies, often linked during the login or registration screen.

E-Learning Platforms: Platforms like Byju's require users to accept terms during account creation, binding them to usage and subscription rules upon login.

7. Smart Contracts

- **Definition**: Smart contracts are self-executing agreements coded on blockchain platforms, automatically enforcing terms when predefined conditions are met, eliminating intermediaries.
- **Characteristics**: Built on platforms like Ethereum or Polygon, they ensure transparency, immutability, and automation. They are ideal for trustless transactions but require technical expertise for creation and execution.
- **Legal Validity**: Recognized under the IT Act's Section 10A as valid e-contracts, provided they meet Indian Contract Act requirements. Courts are increasingly accepting blockchain-based evidence under Section 65B of the Indian Evidence Act.
- **Example**:
    - **Travel Insurance**: A blockchain-based insurance platform like Etherisc offers smart contracts that automatically pay out compensation for flight delays, verified by airline data on the blockchain, without manual claims processing.
    - **Cryptocurrency Trades**: On Indian exchanges like WazirX, smart contracts automate crypto trades (e.g., swapping

Challenges in E-Contract Enforcement in India

E-contracts, while transformative for India's digital economy, face several enforcement challenges due to their reliance on technology, cross-border applicability, and evolving legal frameworks. These hurdles can complicate their validity, execution, and dispute resolution, requiring careful consideration by parties and regulators. Below is a detailed exploration of the challenges in enforcing e-contracts in India, with expanded insights and real-world context to illustrate their implications.

- **Authentication and Security Risks**
  Description: Ensuring the authenticity of digital signatures and preventing cyber fraud is a critical challenge. Digital signatures, such as those issued by Certifying Authorities under the IT Act, 2000 (e.g., eMudhra) or Aadhaar-based e-signatures, rely on cryptographic technology. However, vulnerabilities like phishing, malware, or hacking can compromise their integrity, leading to disputes over whether a contract was genuinely executed.

- **Jurisdictional Issues**
  Cross-border e-contracts raise complex questions about which country's laws apply and which courts have jurisdiction, especially in disputes involving international parties.

- **Proving Consent**
  Demonstrating that parties genuinely consented to e-contract terms, especially in browsewrap agreements, is challenging. Courts scrutinize whether users had reasonable notice and opportunity to review terms before agreeing.

- **Technical Failures**
  Internet outages, server crashes, or software glitches can disrupt e-contract formation or execution, leading to disputes over whether a contract was validly formed.

- **Stamp Duty and Compliance**
  Certain e-contracts, such as property leases or commercial agreements, require stamp duty under the Indian Stamp Act, 1899. The lack of uniform norms for digital stamping creates compliance challenges.
  Proposed Reforms: The Indian Stamp Bill, 2023, aims to standardize e-stamping, but until enacted, parties face uncertainty. A 2023 case saw a digitally signed lease challenged for lacking proper e-stamp certification.

- **Proof of Execution**
  Proving the date, terms, and acceptance of an e-contract can be difficult without robust electronic evidence, especially in disputes where one party denies agreement.

- **Data Privacy**
  E-contracts often involve personal data (e.g., Aadhaar details for e-signatures), requiring strict compliance with India's Digital Personal Data Protection Act, 2023 (DPDP Act), and cybersecurity laws.

- **Rapid Legal Evolution**
  The fast pace of technological advancements (e.g., blockchain, AI-driven contracts) often outstrips India's legal framework, creating grey areas that require judicial interpretation.

Conclusion

E-contracts in India, empowered by the Indian Contract Act and IT Act, represent a legally valid and enforceable mode of contracting aligned with the digital age. With multiple types suited to diverse commercial needs—from clickwrap to blockchain smart contracts—they facilitate faster, cheaper, and more flexible business transactions globally. Despite challenges in security, consent, jurisdiction, and evolving legal frameworks, e-contracts stand as a cornerstone of modern commerce and digital trust in India's legal landscape.

Landmark Case Laws on E-Contracts

Trimex International FZE Ltd., Dubai v. Vedanta Aluminium Ltd. (2010, Supreme Court)

- **Parties**: Trimex International FZE Ltd. (Petitioner/Supplier) vs. Vedanta Aluminium Ltd. (Respondent/Buyer)
- **Facts**

  Trimex offered VAL bauxite supply via email, which VAL accepted after several email exchanges, confirming 5 shipments from Australia to India. A draft contract was prepared but not formalised. After the first consignment, VAL requested that Trimex hold the next shipment, but the shipowners had already nominated a vessel. Trimex sought damages when VAL refused to award the contract.

  On Oct 16, 2007, VAL accepted Trimex's offer for 5 shipments, including material terms. A formal contract with an arbitration clause was sent by VAL on November 8, 2007, and accepted with minor changes. Despite this, VAL later asked to hold the shipment, but Trimex refused and terminated the contract on November 16, reserving the right to claim damages. Trimex had to pay shipowners $0.6M after cancellation and served a claim-cum-arbitration notice on Sept 1, 2008. VAL denied the existence of a contract, leading Trimex to request the appointment of an arbitrator.
- **Issue**

  Whether a valid contract existed despite the absence of a signed formal agreement.
- **Petitioner's Arguments**

  A binding contract existed once VAL accepted the offer for 5 shipments via email.

  The offer contained all material terms (price, quantity, delivery, payment, arbitration). VAL never objected to the arbitration clause.

  Trimex acted on the agreement by contracting with suppliers and shipowners.
- **Respondent's Arguments**

  No concluded contract existed as key terms (specifications, price inclusions, delivery, title transfer, quality check, demurrage) remained undecided.

An unsigned draft cannot bind parties.

Mere agreement on parameters is not a contract (citing *Dresser-Rand S.A. v. Bindal Agro*).

- **Judgement**

  The Supreme Court held that the absence of a formally signed contract does not affect its validity if essential terms are agreed upon. Here, price, quantity, delivery, payment, demurrage, quality benchmarks, and arbitration were all settled. Acceptance was complete (S.4), unqualified and unconditional (S.7).

  The Court emphasized reducing judicial intervention in arbitration (UNCITRAL Model Law) and ruled in favour of Trimex, appointing a retired judge as arbitrator.

Rudder v. Microsoft Corporation (1999, Ontario Superior Court of Justice, Canada)

- **Parties**

  Plaintiffs: Rudder and another, Canadian subscribers to Microsoft Network (MSN).

  Defendant: Microsoft Corporation, a U.S.-based technology company.

- **Facts of the Case**

  The plaintiffs, Canadian subscribers to MSN, initiated a lawsuit against Microsoft Corporation, alleging improper billing practices related to their credit cards for premium MSN services. The dispute centred on Microsoft's billing system, which the plaintiffs claimed resulted in unauthorised or incorrect charges. Microsoft responded by seeking a stay of the Canadian proceedings, citing a forum selection clause embedded in its clickwrap agreement. This agreement, presented during the MSN software installation process, required users to click "I Agree" twice to accept the terms of service, which included a clause designating King County, Washington, as the exclusive jurisdiction for any disputes arising from the agreement. Microsoft argued that this clause obligated the plaintiffs to resolve the dispute in Washington, not Canada.

- **Argument**

  Plaintiffs' Argument

  The plaintiffs contended that the forum selection clause in the clickwrap agreement should not be enforced. They argued that the agreement was not sufficiently brought to their attention, and many users, including themselves, were unlikely to have read or fully understood the terms due to their length and complexity.

They further claimed that enforcing the clause would be unfair, as it forced Canadian consumers to litigate in a foreign jurisdiction (Washington), potentially increasing costs and limiting access to justice. The plaintiffs asserted that the clause was unconscionable, given the imbalance of power between individual consumers and a multinational corporation like Microsoft.

- **Defendant's Argument (Microsoft)**

Microsoft maintained that the clickwrap agreement was legally binding and enforceable. They argued that the plaintiffs had explicitly consented to the terms, including the forum selection clause, by clicking "I Agree" twice during the MSN setup process. Microsoft emphasised that the terms were clearly presented, and users had the opportunity to review them before proceeding.

They further argued that forum selection clauses are standard in online service agreements and that King County, Washington, was a reasonable jurisdiction, as it was Microsoft's principal place of business. Microsoft asserted that there was no evidence of unconscionability or bad faith in the agreement's formation, and enforcing the clause would uphold the principle of freedom of contract.

- **Judgement**

The Ontario Superior Court of Justice ruled in favour of Microsoft, granting a stay of proceedings in Canada. The court held that the clickwrap agreement was enforceable, as the plaintiffs had actively consented to its terms by clicking "I Agree" twice. The court found that the forum selection clause was clear, unambiguous, and prominently displayed during the installation process, making it binding even if the plaintiffs had not read the terms.

The judge rejected the plaintiffs' claim of unconscionability, noting that there was no evidence of coercion, fraud, or an unreasonable imbalance in the agreement. The court emphasised that clickwrap agreements are a common and valid method of forming contracts in the digital age, and users are responsible for reviewing the terms they agree to. Consequently, the case was stayed, requiring the plaintiffs to pursue their claims in King County, Washington, as stipulated in the agreement.

Tamil Nadu Organic Private Ltd. v. State Bank of India (2014, Madras High Court; often cited in 2019 contexts)

- **Parties**

  Petitioner: Tamil Nadu Organic Private Ltd., a borrowing company.

  Respondent: State Bank of India, a nationalized bank.

- **Facts**

  The petitioner had availed a loan facility from the respondent bank. Disputes arose under the SARFAESI Act, particularly concerning the bank's act of debiting legal expenses amounting to Rs. 5.5 lakhs from the borrower's account. The enforcement of the loan terms and related transactions relied significantly on electronic communications, emails, and digital records. The borrower challenged the actions of the bank by filing a writ petition before the Madras High Court. However, the dispute was eventually settled between the parties.

- **Arguments**

  Petitioner's

  The borrower contended that the bank's unilateral debiting of legal expenses was improper and questioned the enforceability of electronically executed terms and procedures under the SARFAESI Act. They argued that reliance on electronic communications could not substitute the traditional contractual and procedural requirements, and the debits were arbitrary.

- **Respondent's Argument (State Bank of India)**

  The bank argued that the loan agreements and subsequent enforcement actions, including e-auction and digital communications, were valid under the Information Technology Act, 2000. It maintained that electronic contracts carry the same legal validity as traditional paper-based agreements, provided essential elements of contract formation are satisfied. The bank further contended that debiting expenses was part of the borrower's liability under the loan terms.

- **Judgement**

  The Madras High Court recognised that contracts formed electronically, through emails and digital records, are legally valid and enforceable, equivalent to traditional written contracts. The Court clarified that the use of electronic means in banking practices, including loan agreements and e-auctions, does not diminish the binding nature of obligations under the SARFAESI Act. It upheld the validity of such practices, emphasising transparency and efficiency. The case, however, was ultimately settled, with the Court observing that settlements provide a practical resolution to banking disputes without requiring full adjudication.

- **Significance**

  The judgment reinforced the integration of the Information Technology Act with banking practices, boosting confidence in digital lending and enforcement mechanisms. It highlighted that electronic contracts and procedures, when fulfilling essential contractual requirements, are fully enforceable. This case is often cited for validating the use of technology in banking and for promoting transparent and efficient dispute resolution.

P.R. Transport Agency v. Union of India (2006, Allahabad High Court)

- **Parties**

  Petitioner: P.R. Transport Agency.

  Respondents: Union of India and Others.

- **Facts of the Case**

  The petitioner was awarded a transportation tender by Bharat Coking Coal Limited (BCCL) in Jharkhand. The acceptance of the tender was communicated via email, which was received by the petitioner in Chandauli, Uttar Pradesh. The respondents contended that no part of the cause of action arose in Uttar Pradesh since the tender process and execution were linked to Jharkhand. The petitioner, however, argued that the receipt of the acceptance email in Chandauli gave the Allahabad High Court jurisdiction.

- **Arguments**

  Petitioner's Argument

  The petitioner argued that under Section 13(3) of the Information Technology Act, 2000, the place where an electronic communication (such as an email) is received constitutes the place of contract formation. Since the acceptance email was received in Chandauli, Uttar Pradesh, part of the cause of action arose within the jurisdiction of the Allahabad High Court.

  Respondents' Argument (Union of India and Others)

  The respondents contended that the tender process and its acceptance were rooted in Jharkhand, where BCCL is located. They asserted that no material facts or cause of action arose in Uttar Pradesh, and therefore, the Allahabad High Court lacked jurisdiction to entertain the matter.

- **Judgement**

  The Allahabad High Court ruled in favour of the petitioner, holding that under Section 13(3) of the IT Act, 2000, the contract was completed at the place where the acceptance email was received. Applying the principle of instantaneous communication, the court determined that the email acceptance was deemed to be dispatched and received at the petitioner's place of business in Chandauli, Uttar Pradesh. Consequently, the Allahabad High Court had jurisdiction to hear the case.

- **Significance**

  This case is significant for establishing jurisdictional principles in e-contracts, particularly in relation to emails. It clarified that the place of receipt of an acceptance email constitutes a valid part of the cause of action under Section 20 of the Civil Procedure Code. The judgment also acknowledged the complexities of electronic communication, including server locations, but prioritized the place of business as the determining factor for jurisdiction.

Sudarshan Cargo Pvt. Ltd. v. M/s. Techvac Engineering Pvt. Ltd. (2013, Karnataka High Court)

- **Parties**

  Appellant: Sudarshan Cargo Pvt. Ltd.

  Respondent: M/s. Techvac Engineering Pvt. Ltd.

- **Facts of the Case**

  The case revolved around the evidentiary value of email correspondence exchanged between the parties. The appellant relied on certain emails containing admissions and acknowledgements by the respondent in connection with contractual obligations. The dispute raised the question of whether such email communications could be recognised as valid electronic records under Indian law.

- **Arguments**

  Appellant's Argument

The appellant argued that the emails were admissible as electronic records under Section 2(b) of the Information Technology Act, 2000. They maintained that email correspondence was a reliable form of communication and, when containing admissions or confessions, carried evidentiary weight comparable to traditional written documents.

Respondent's Argument

The respondent disputed the reliability of email evidence, asserting that electronic records are prone to tampering and lack the authenticity of physical documents. They urged the court not to treat the emails as binding or admissible evidence in the dispute.

- **Judgement**

  The Karnataka High Court upheld the validity of emails as legitimate electronic records under Section 2(b) of the IT Act, 2000. The Court held that email correspondence is admissible in evidence and can be relied upon to establish contractual obligations or confessions, provided authenticity is not disputed.

- **Significance**

  This judgment clarified the evidentiary role of emails in contractual disputes, strengthening the recognition of electronic records in Indian law. It established that emails, when genuine, are enforceable and admissible, thereby promoting trust in digital communication as part of e-contracting and dispute resolution.

UNIT - 2
Validity of Contractual Elements

CAPACITY OF PARTIES TO CONTRACT

Meaning of Capacity to Contract: Capacity or competence to contract means ***legal capacity of parties to enter into a contract***. In other words, it is the ***capacity of parties to enter into a legally binding contract***.

WHO ARE COMPETENT TO CONTRACT

Every person is legally competent to contract if he fulfills the following three conditions-

1. *He has attained the age of majority, according to the law to which he is subject;*
2. *He is of sound mind; and.*
3. *He is not disqualified from contracting by any other law to which he is subject.*

1) **MINORS:** Any person, who has not attained the age of majority prescribed by law, is known as minor. ***Section 3 of the Indian Majority Act, 1875*** prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years-
   i. ***Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or***
   ii. ***Where the minor's property has been placed under the superintendence of a Court of Wards.***

2) **PERSONS OF UNSOUND MIND:** According to ***Sec. 12*** of Contract Act, 1872, person is said to be of sound mind for the purpose of making a contract-
   ⇨ ***if he is capable of understanding the terms of contract at the time of making it, and***
   ⇨ ***if he is capable of making a rational judgment as to the effect upon his interests.***

- ***Types of Persons of Unsound Mind:***
  ✓ Idiot
  ✓ Lunatic
  ✓ Delirious persons
  ✓ Drunken or intoxicated persons
  ✓ Hypnotized persons
  ✓ Mental decay

According to ***Sec. 12***, ***"A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind. And a person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind."***

3) **PERSONS DISQUALIFIED BY OTHER LAWS:** There are certain persons who are disqualified from contracting by the other laws of our country. It refers to statutory disqualification imposed on certain person in respect of their capacity to contract. They are as under:

- ✓ ***Alien enemy:*** An alien is a person who is a citizen of a foreign country. An alien may either be an alien friend or an alien enemy. Aliens are generally competent to contract with citizens of the India. He can maintain as action on a contract enter into by him during peace time. But if a war is declared, an alien enemy cannot enter into a contract with the Indian citizen. Contract entered into before the declaration of war are either stayed or terminated but contract made during the wartime are absolutely unenforceable.

- ✓ ***Foreign sovereigns, diplomatic staff etc.:*** These persons are immune from the jurisdiction of local courts, unless they voluntarily submit to its jurisdiction. These persons have a right to enter into contract 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 jurisdiction of our Courts. Rules regarding suits by or against foreign sovereigns are laid down in Section 84 to 87 of Civil Procedure Code.

- ✓ ***Corporations and companies:*** A corporation is an artificial person as recognised by law. It exists only in the eyes of law. It is competent to enter into a contract only through its agent. The contractual capacity of a company is determined by the 'object clause' of its memorandum of Association. The contractual capacity of statutory corporations is determined by the statute creating it.

- ✓ ***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. An insolvent cannot enter into a contract as his property is vested in the official receiver or official assignee. This disqualification of an insolvent is removed after he is discharged.

- ✓ ***Convicts:*** A convict while undergoing imprisonment in incapable of entering into a contract. But this disability comes to an end on the expiry of the sentence.

- ✓ ***Married women:*** A woman is competent to enter into a contract. Marriage does not affect the contractual capacity of a woman. She can even bind her husband in cases of pressing necessity. A married woman may sue or be sued in her own name in respect of her separate property.

- ✓ ***Professional persons:*** Doctors and advocates are included in the class. In England barristers are prohibited by the etiquettes of their profession from suing for their fees.

STATUS OR NATURE OF MINOR'S AGREEMENTS

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

1) ***An agreement with or by minor is void:*** Section 10 of the Indian Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not a competent. But neither section makes it clear whether the contract entered into by a minor is void or voidable. Till 1903, court in India were not unanimous on this point the privy council made it perfectly clear that a minor is not competent to a contract and that ***a contract by minor is void ab initio***. Minor's agreement is absolutely void from very beginning, i.e. void ab initio. ***It is nullity in the eye of law***.

An agreement with minor, therefore, can never be enforced by law. The leading case on minor's contract is ***Mohri Bibi V. Dharmo Das Ghosh (1903)***

2) ***No ratification:*** An agreement with the minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent to authorize an act cannot give it validity by ratifying.

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

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

5) ***No specific performance except in certain cases:*** A minor's contract being absolutely void, there cannot be a question of specific performance of such contract. A guardian of a minor cannot bind the minor by an agreement for the purchase of immovable property; so the minor cannot ask for the specific performance of the contract which the guardian had no power to enter into. But a contract entered into by guardian or manager on minor's behalf can be specifically enforced if-
   a. ***The contract is within the authority of the guardian or manager.***
   b. ***It is for the benefit of the minor.***

6) ***Liability for torts:*** A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. But a minor cannot be made liable for a breach of contract by framing the action on tort.

7) ***No insolvency:*** A minor cannot be declared insolvent as he is incapable of contracting; debts and dues are payable from the personal properties of minor and he is not personally liable.

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

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

10) ***Minor cannot bind parent or guardian:*** In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.

11) ***Joint contract by minor and adult:*** In such a case, the adult will be liable on the contract and not the minor.

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

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

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

FREE CONSENT

MEANING OF CONSENT: Consent simply means an act of assenting to an offer. ***According to Sec. 13***, "***Two or more persons are said to consent when they agree upon the same thing in the same sense***" In English law, this is called '***consensus ad idem.***' Consent involves identity of minds in respect of the subject-matter of the contract. 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.

MEANING OF FREE CONSENT: Free consent is one of the essential elements of a valid contract. ***Sec. 14*** describes the cases when the consent is not free. This is a negative definition of free consent in the sense that it mentions some negative elements, the presence of which in a contract would vitiate a contract.
Consent is said to be free when it is not caused by-

- ***Coercion [Section 15]***
- ***Undue influence [Section 16]***
- ***Fraud [Section 17]***
- ***Misrepresentation [Section 18]***
- ***Mistake [Section 20, 21,22]***

If consent was caused by coercion, undue influence, fraud, misrepresentation the contract is voidable at the option of party whose consent was so taken [***Sec. 19, 19A***]

1) **COERCION:** Coercion simply means compelling or forcing a person to enter in to a contract under a pressure or a threat. Sec. 15 defines coercion as, "***Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement***".

   The essential elements of coercion are-

   (a) Committing or threatening to commit any act forbidden by Indian Penal Code.
   (b) Unlawful detaining or threatening to detain any property.
   (c) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
   (d) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

- ***Effect of threat to commit suicide***- As such, a suicide and a threat to commit suicide are not punishable under Indian Penal Code but an attempt to commit suicide is punishable under the IPC. This does not mean that suicide and threat to commit suicide are permitted by IPC. The question whether a threat to commit suicide amounts to coercion or not was considered by Madras High Court in the case of ***Chikham Ammiraju v. Seshamma.*** Threat to commit suicide was held to be amounting to coercion in this case.

- ***Effect or co-ercion [Sec. 19, 64, 72]*** - When coercion is employed to obtain the consent of a party the contract is voidable at the option of the party whose consent was obtained by coercion [***Sec. 19***]. When such aggrieved party exercises his option to treat the voidable contract as void, it is called "***rescinding a contract***". Further, as per Sec. 64, the party rescinding the contract shall restore the benefit received by him under the contract, to the person from whom the benefit was received. Also, the party to whom money has been paid or anything delivered under co-ercion, must repay or return it [***Sec. 72***]

BURDEN/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.

2) **UNDUE INFLUENCE**: It is kind of moral or mental coercion. The term "undue influence" means dominating the will of the other person to obtain an unfair advantage over the other.

Sec. 16(1) defines undue influence as, "A contract is said to be induced by undue influence-

- ✓ Where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other and
- ✓ The dominant party uses that position to obtain an unfair advantage over the other."

According to Sec. 16 (2), a person is deemed to be in a position to dominate the will of another in the following circumstances-

(a) Where he holds a ***real or apparent authority*** over the other e.g., in the relationship between master and servant, parent and child, Tax officer and assessee etc.

(b) Where he stands in ***fiduciary relation*** to the other. ***It implies a relationship of mutual trust and confidence. Examples:*** A trustee and beneficiary, spiritual or religious adviser (guru) and his disciple, solicitors and clients, guardian and ward etc.

(c) Where a contract is made with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. ***Example:*** Medical attendant and patient.

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

CONTRACTS WITH PARDANASHIN WOMAN: A woman who onserves complete seclusion (i.e. who does not come in contact with people other than her family members) is called pardanashin woman. There is a legal presumption that a contract with a pardanashin woman is induced by undue influence. In such cases, the burden of proof completely lies on the person who enters into a contract with a pardanashin woman and he will have to prove-

- ➯ That he made full disclosure of all the facts to her
- ➯ That she understood the contract and the implication of the contract on her interests.
- ➯ That she was in receipt of competent independent advice before entertaining into the contract.

- ***Effect of undue Influence:*** [***Section 19A***] When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party whose consent was so caused. 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.

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

The weaker party ahs 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.]

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

BASIS OF DISTINCTION	COERCION	UNDUE INFLUENCE
1. DEFINITION	Coercion is the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. RELATIONS	In case of coercion, relation between the parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.
3. INTENTION	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. NATURE OF FORCE	It involves physical force.	It involves moral force.
5. KIND OF ACT	It involves criminal act.	It does not involve criminal act.
6. DIRECTION	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. WHO CAN EXERCISE?	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8. REMEDIES	A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoided the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A]

The presumption of undue influence can be rebutted by showing-

- ✓ That the dominant party has made full disclosure of all the facts to the weaker party before making the contract;
- ✓ That the price was adequate; and
- ✓ That the weaker party was in receipt of competent independent advice before entering into the contract.

3) **FRAUD**: The term 'fraud' means a fake or false representation of facts made willfully with a view to deceive the other party. ***Sec. 17*** defines fraud as, 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 that a fact is true when it is not true by a person who does not believe it be true. ***Example:*** A sells to B locally manufactured goods as imported goods charging a higher price, it amounts to fraud.

   b) The active concealment of the fact by a person having knowledge or belief of the fact. Mere concealment does not amount to 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.
   Example: A, 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 tentamount to fraud through active concealment.

   c) A promise made without any intention to perform it.
   d) Any such act or omission as the law specifically declares to be fraudulent. Example: Under Companies Act and Insolvency Acts, certain kinds of transfers have been declared any other clause.
   e) Any other act fitted to deceive. It covers those acts which deceive but are not covered under any other clause.

ESSENTIAL ELEMENTS OF FRAUD

1. 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 a contract does not affect the validity of the contract.
2. 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 fraud.
3. The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to fraud.
4. 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.
5. The party acting on the representation must have suffered some loss.

When the silence amount to fraud??

GENERAL RULE: Mere (only) silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

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

   a) Duty to speak exists where the parties stand in a fiduciary relationship, e.g. father and son, guardian and ward, trustee and beneficiary etc. or where contract is a contract of ubberima fidei (i.e. requiring utmost good faith), e.g. contracts of insurance.
   b) When silence itself is equivalent to speech.

4) MISREPRESENTATION: The term 'misrepresentation' means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party.

As per ***Sec. 18***, misrepresentation means and includes a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused-

- ***a)*** By positive assertion or a statement, 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)*** By breach of duty, which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another 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 regarding the subject matter of the agreement.

Essential of misrepresentation-

- ***a)*** There must be a representation or omission of a material fact and such false representation must be made without the knowledge of its falsehood i.e. the person making it must honestly believe it to be true.
- ***b)*** The representation or omission of duty must be made with a view to inducing the other party to enter into contract but without the intention of deceiving the other party.
- ***c)*** The representation or omission of duty must have actually induced the party to enter into contract.

EFFECTS OF MISREPRESENTATION:

1. ***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-
   - a) Where the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence.
   - b) Where the party gave the consent in ignorance of the misrepresentation.
   - c) Where the party after becoming aware of the misrepresentation, takes a benefit under the contract.
   - d) Where an innocent third party, before the contract can be rescinded, acquires for consideration some interest in the property passing under the contract.
   - e) Where the parties cannot be restored to their original position.

2. ***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.

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

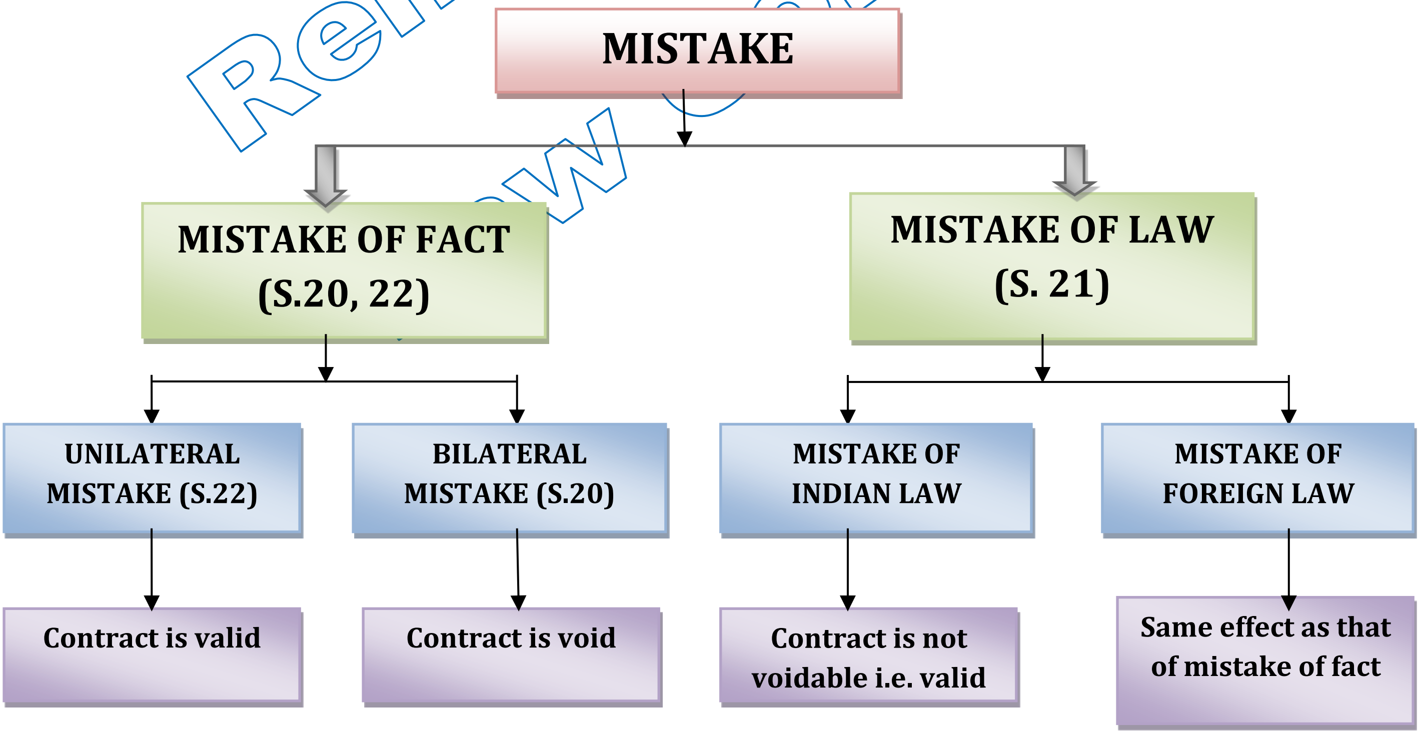
BASIS OF DISTINCTION	FRAUD	MISREPRESENTATION
1. MEANING	A fraud is an intentional misrepresentation or concealment of material fact to induce the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party fact to induce another to enter into a contract, without an intention to deceive.

2. INTENTION	Fraud is committed with an intention to deceive	There is no such intention to deceive.
3. BELIEF IN THE FACTS	The person committing fraudulent act does not believe it to be true.	The person making misrepresentation believes in the facts to be true and existing.
4. SUIT FOR DAMAGE	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. DEFENSE	A party cannot set up a defense that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defense that the aggrieved party that the aggrieved party had means of discovering the truth.

5) **MISTAKE** (***Sec. 20, 21, 22***): A mistake is said to have occurred where the parties intending to do one thing by error do something else.

According to ***Sec. 20*** mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the same thing in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.



(a) MISTAKE OF LAW: As regarding mistake of law, there is a judicial principle based on a maxim i.e. '***ignorantia juris non excusat***' which means that ignorance of law is not excusable. Every person is bound to know the laws prevailing in the nation and therefore one cannot take a defense that he was not aware of the law and cannot evade from the performance of the contract provided it is a contract to perform some lawful act only and not something that is per se (i.e. in itself) unlawful. Although, mistake of foreign law has the same effect as that of a mistake of fact as foreign law is a matter of fact.

(b) MISTAKE OF FACT (*Sec. 20 & 22*)*:* There is again a judicial principle regarding mistake of fact which is based on a maxim i.e. '***ignorantia facti excusat***' which means that ignorance of fact is excusable.

BILATERAL MISTAKE *(Sec.20):* An agreement is void where there is a bilateral mistake as to the subject matter. According to Section 20, "***Where both the parties 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-

- Both the parties must be under a mistake
- Mistake must be of fact but not of law.
- Mistake must relate to an essential fact.

According to the explanation of Sec.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."

1) ***Bilateral mistake as to subject matter includes-***
    a) Mistake as to existence of subject matter
    b) Mistake as to identity of subject matter
    c) Mistake as to title of subject matter
    d) Mistake as to price of subject matter
    e) Mistake as to quality of subject matter
    f) Mistake as to quantity of subject matter

2) ***Mistake as to the possibility of performance***- The agreement is void where there is 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.

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

EXCEPTIONS: The agreement is ***void*** where a unilateral mistake relates to the identity of the person contracted with or the nature of the contract.

1) ***Mistake as to identity of the person contracted with***- The agreement is void.
2) ***Mistake as to the nature of contract***- The agreement is void
3) ***Mistake as to other matter***- Agreement is not void.

UNIT - 3
Legality and Enforceability

EVERY AGREEMENT OF WHICH THE OBJECT OR CONSIDERATION IS UNLAWFUL IS VOID [SEC 23]

As per Sec. 10, consideration and object of an agreement must be a lawful one in order to constitute a valid contract; otherwise the agreement is void. Certain considerations and objects have been expressly declared as unlawful under ***Sec. 23*** of the Indian Contract Act and therefore the contracts having such unlawful objects and considerations are void.

Following are the instances of unlawful objects and considerations-

a) ***If it is forbidden by law:*** If the object or the consideration of an agreement 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.

b) If it defeats the provisions of any law

c) ***If it is fraudulent:*** If the object of an agreement is to defraud others, the agreement is void.

d) If it involves or implies injury to a person or property of another

e) If the court regards it as immoral or 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 changing with the passage of time. In this regard, an agreement whoch 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 the 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-

- ✓ ***Agreements of trading with enemy***.
- ✓ ***Agreement for stifling prosecution.***
- ✓ ***Agreement is 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. 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.

  Both these agreements are declared illegal and void in English Law whereas all these agreements are not illegal in India. 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.
- ✓ ***Agreement for the sale/Transfer of public offices and titles.***
- ✓ ***Agreement in restraint of parental rights which prevents a parent from exercising his right to guardianship.***
- ✓ ***Agreements in restraint of personal liberty.***
- ✓ ***Agreement tending to create monopoly.***
- ✓ ***Agreements interfering with course of justice.***
- ✓ ***Agreement in restraint of marriage (Sec. 26)***
- ✓ ***Agreement in restraint of trade (Sec. 27)***
- ✓ ***Agreement in restraint of legal proceedings (Sec. 28)***

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 collateral transactions to an illegal agreement also become illegal and hence cannot be enforced.
- 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.
- ***In case of an agreement containing the promise, some part of which is legal and other part is illegal, the legal position is as under-***
  - ➪ If the illegal part cannot be separated from the legal part: The whole agreement is altogether illegal.
  - ➪ If the illegal part can be separated from the legal part: The Court will enforce the legal part and reject the illegal part.

AGREEMENTS EXPRESSLY DECLARED AS VOID UNDER CONTRACT ACT

As per ***Sec. 2 (g)***, void agreement is an agreement which is not enforceable by law i.e. it is void ab initio. Indian Contract Act enlists the following circumstances where agreements have been declared as void-

- ➪ Agreement by or with persons incompetent to contract [***Sec.11***]
- ➪ Agreement entered into through a mutual mistake i.e. bilateral mistake [***Sec.20***]
- ➪ Where object or consideration is unlawful [***Sec.23***]
- ➪ Where consideration or object is partially unlawful [***Sec.24***]
- ➪ Agreement without consideration [***Sec.25***]
- ➪ Agreement in restraint of marriage [***Sec.26***
- ➪ Agreement in restraint of trade [***Sec.27***]
- ➪ Agreement in restraint of legal proceeding [***Sec.28***]
- ➪ Where terms of contract is uncertain [***Sec.29***]
- ➪ Agreement is a wagering agreement [***Sec.30***]
- ➪ Agreement is an agreement to do an impossible thing [***Sec.56]***
- ➪ An agreement to enter into an agreement in the future.

AGREEMENT IN RESTRAINT OF MARRIAGE (*Sec. 26*)

According to ***Sec. 26*** of the Indian Contract Act, every agreement in restraint of the marriage of any person ***other than minor*** is void. Any restraint of marriage whether total or partial, is opposed to public policy.

AGREEMENT IN RESTRAINT OF TRADE (*Sec. 27*)

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 (1) (g)*** 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.

Interpretation of the words "*...__that extent__...*"

These words 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.

EXCEPTIONS TO SEC. 27

__The exceptions here mean the cases where agreements in restraint of trade are not considered void. Such exceptions are__-

A. __Exceptions under Statutory Provisions__-

1) ***__Sale of goodwill__*- Seller of goodwill of a business may agree with the buyer to restrain from carrying on business. There are certain conditions of such restrictions to be valid-
   a) Must relate to same business
   b) Restriction shall apply within specified local limits.
   c) Restriction shall apply within a reasonable time period
   d) The specified local limits must be reasonable having regard to the nature of business.
   Therefore, the buyer of goodwill may restrain the seller for carryin on any business similar to the one sold by him within certain vicinity and for a certain period of time provided the restrictions in regard to time and vicinity are found reasonable.

2) ***__Restriction on existing partner [Sec. 11(2) of Indian Partnership Act]__***- Not to carry on business other than business of the firm till he is partner.

3) ***__Restriction on outgoing partner [Sec. 36 (2), Indian Partnership Act]__***- An outgoin 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 agreements shall be valid only if the restrictions are reasonable. This restriction also implies not to carry on a similar business after retirement

4) ***__Restriction on partners upon or in anticipation of dissolution of a partnership firm__*** [***__Sec. 54, Indian Partnership Act__***]: Partners may, upon or in anticipation of dissolution of a partnership firm, agree that some or all of them will not carry on business similar to that of the firm within specified periods or local limits. Such agreement shall be valid only if the restrictions are reasonable.

5) ***__Sec. 55(2), Indian Partnership Act__***: Partner may agree with due buyers of goodwill, not to use the firm name or carry on firm's business or solicit clients of the firm.

6) ***__Restriction in case of sale of goodwill [Sec. 55(3), Indian Partnership Act]__***: Upon sale of firm's goodwill, a partner may agree that he will not carry on any business similar to the firm within specified periods or local limits.

B. __Exceptions under Judicial Interpretations__-

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

2) ***Sole dealing agreement:*** An agreement to deal in the products of a single manufacturer or to sell the whole produce to a single dealer is valid if their terms are reasonable.

3) ***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:
   a) ***An agreement to serve the employer for a stipulated period:*** Such agreements, if reasonable, do not amount to restraint of trade and hence are enforceable.
   b) ***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.
   c) ***A clause to prevent the employee from accepting a similar engagement after the termination of his employment:***

      - ***If the restraint is intended only to protect an employer against an employee making use of trade secrets learned y him in the course of employment:*** Such agreemens do not amount to restraint of trade and hence are enforceable by law.

      - ***If a restraint is intended to serve any other purpose (say, to avoid competition):*** Such agreements amounts to restraint of trade and hence, are not enforceable by law.

AGREEMENT IN RESTRAINT OF LEGAL PROCEEDINGS [SEC. 28]

An agreement by which any party is restricted absolutely from enforcing his legal rights under any contract is void. According to Sec. 28, the following two agreements amount to restraint of legal proceedings and are thus, void to that extent-

a) ***Agreement restraining enforcement of rights:*** An agreement by which a party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent. There are two exceptions to this rule-
   - ✓ ***An agreement between two or more persons to referto arbitration any dispute which may arise between them, is not illegal.***
   - ✓ ***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 a suit should be filed in one of those courts alone and not in the other is not invalid. ***[C. Milton & Co. v. Ojha Automobile Co.]***

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

b) ***Agreements limiting 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. A partial restrain is not void.

AN AGREEMENT THE MEANING OF WHICH IS NOT CERTAIN, VOID [SEC 29]

An agreement is called an uncertain agreement when the meaning of that agreement is not certain or capable of being made certain. Such agreements are declared void under Section 29. Uncertainty may relate to –
- ➢ Subject matter of contract; or
- ➢ Terms of contract.

Example: A agrees to sell to B "a hundred ton of oil." There is whatever to show what kind of oil was intended. The agreement is void for uncertainty.

WAGERING AGREEMENT [Sec. 30]

An agreement between two persons under which money or money's worth is payable by one person to another on the happen or non happening of a future uncertain event is called a wagering agreement.

Essential elements of wagering agreements-

a) ***The must be a promise to pay money or money's worth***

b) ***Performance of a promise must depend upon determination of an uncertain event.*** An event 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 gains 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 loose, or may lose but cannot win, it is not a wagering agreement.

d) ***Neither party to have control over the events***
e) ***Neither party should have any other interest in the happening or non-happening of the event other than the sum or stake he will win or lose.***
f) ***One party is to win and one party is to lose***

EXAMPLES OF WAGERING AGREEMENTS:

- Agreement to settle the difference between the contract price and market price of certain goods or shares on a particular day.
- A lottery is wagering agreement. Therefore, an agreement to buy and sell lottery tickets is a wagering agreement. (***Section 294A of the Indian Penal Code declares that drawing of lottery is an offence***. However, the government may authorize lotteries. The persons authorized to conduct lotteries are exempted from the punishment. But, the lotteries still remain a wagering transaction.
- An agreement to buy a lottery ticket.
- A crossword puzzle in which prizes depend upon correcpondence 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. Chamaurbaugwala***]. ***But, a crossword puzzle is generally a game of skill and intelligence and hence not a wager.***

EXAMPLES OF TRANSACTIONS NOT HELD AS WAGERING AGREEMENTS:

- A commercial transaction should always be distinguished from a pure speculative transaction. A commercial transaction is done with an intention of delivery of goods (commodity or security) and payment of price. Therefore, it is not wagering agreement.
- Contract of insurance are contracts of utmost good faith and it is just a contingent contract and not a wagering agreement.
- Prize competitions which are games of skill, e.g., picture puzzles.
- According to the Prize Competition Act, 1955, prize competitions in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.

- 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. (Sec.30)

Effects of wagering agreements-

- Agreements by way of wager are void in India.
- No suit can be filed to recovery the amount won on any wager.
- Agreements by way of wager have been declared illegal in the states of Maharashtra and Gujarat.
- Any transaction or agreement collateral to wagering agreement are not void in India except in the States of Maharashtra and Gujarat because such transactions and agreements as collateral to wagering agreements are illegal in the states of Maharashtra and Gujarat.

CONTINGENT CONTRACTS (Sec. 31 to 36)

*As per **Sec. 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.**"*

Essential features of a contingent contract-

a) It is a contract to do or not to do something
b) Dependent on happening or non happening of an uncertain future event
c) Such an event is a collateral event (i.e. it is collateral to the contract) i.e. the event must not depend upon the mere will of party.
d) The event is uncertain

Sec. 32: Contracts contingent upon the happening of an event
Such contracts cannot be enforced by law unless and until that event has happened.
Becomes enforceable: only if such event has happened
Becomes void: if such event because impossible i.e. happening becomes impossible.
Sec. 33: Contracts contingent upon non-happening of a future event
Becomes enforceable: When the happening of such event becomes impossible.
Becomes void: If such event happens.
Sec. 34: Contract contingent upon the future conduct of a living person
Becomes enforceable: When such person acts in the manner as desired in the contract.
Becomes void: When such person does anything which makes the desired future conduct of such person impossible.

Sec. 35-
Contracts contingent upon happening of an uncertain specified event within a specified/fixed time
Becomes enforceable: When such event has happened within the specific time.
Becomes void: When the happening of such event because impossible before the expiry of specified time or when such event has not happened within specified time.

Contracts contingent upon non-happening of an uncertain specified event within a fixed time
Becomes enforceable: When the happening of such event because impossible before the expiry of specified time or when such event has not happened within the specified time.
Becomes void: When such event has happened within the specified period.

DISTINCTION BETWEEN CONTINGENT CONTRACT AND WAGERING AGREEMENT

BASIS OF DISTINCTION	CONTINGENT CONTRACT	WAGERING AGREEMENT
1) MEANING	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
2) NATURE OF EVENT	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Even is the sole determining factor.
3) RECIPROCAL PROMISE	There is no reciprocal promise is a contingent contract.	The wagering agreement consists of reciprocal promise.
4) INTEREST IN THE SUBJECT MATTER	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
5) VALIDITY	A contingent contract is valid contract.	A wagering agreement is void agreement. In the State of Maharastra and Gujarat it is illegal.
6) NATURE OF CONTRACT	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.

UNIT IV
Remedies and Special Contractual Concepts

PERFORMANCE OF CONTRACT

Performance of the contract is one of the various modes of discharge of the contract. A contract is said to have been performed when the parties to a contract either perform or offer to perform their respective promises. Sec.37 of the Indian Contract Act lays down the obligation of the parties regarding performance.

Sec 37*: *The parties to a contract must either perform or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of Contract Act, or of any other law.

TYPES OF PERFORMANCE

- ***Actual performance***: When a promisor has made an offer of performance to the promisee and the offer has been accepted by the promisee, it is called an actual promisee. The contractual obligations are actually performed whereby the liability of a party under the contract comes to an end.

- ***Attempted performance or tender of performance:*** Where the promisor has made an offer of performance to the promisee, and the offer has not been accepted by the promisee, it is called an attempted performance [Sec.38]. Such refusal to accept offer of performance by promisee discharges the party from its liability and from its performance.

Tender or offer of performance to be valid must satisfy the following conditions-

- It must be unconditional
- It must be made at a proper time and place i.e. must be made in stipulated time that too during the business hours and also at the stipulated place i.e. promisee's business place or at promisee's residence if there is no business place.
- Reasonable opportunity to the promisee to examine and ascertain that the goods offered are the same as the promisor is bound to deliver.
- It must be for the whole obligation and not for a part of it.
- It must be made to the promisee or his duly authorized agent.
- In case of payment of money, tender must be of the exact amount due and it must be a legal tender.

EFFECT OF REFUSAL OF PARTY TP PERFORM PROMISE WHOLLY: When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

WHO CAN DEMAND PERFORMANCE?

a) ***Promisee***– Stranger can't demand performance of the contract.

b) ***Legal Representative***– In case of death of the promisee, the legal representative can demand performance unless a contrary intention appears from the contract or the contract is of personal nature.

c) ***Third party***– A third party can also demand performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefir the provision is made in a family arrangement. This is an exception to the doctrine that a stranger to a contract cannot enforce a contract.

d) ***Joint Promisees***- In case of several promisees, unless a contrary intention appears from the contract, the following persons must perform the promise-
   - ✓ ***In case all the promisees are alive***- All the promisees jointly can demand performance.
   - ✓ ***In case of death of any of the joint promisees***- Representatives of deceased promisee jointly with the surviving promisee(s) can demand performance of promise.
   - ✓ ***In case of death of all joint promisees***- Representatives of all of them jointly can demand performance of the promise.

BY WHOM PROMISE IS TO BE PERFORMED / WHO WILL PERFORM THE CONTRACT (SEC 40)

a) ***Promisor himself***- If it appears from nature of the case that it was the intention of the parties to a contract that any promise contained in it should be performed by the promisor himself, such as the ones which includes personal skill, volition or art, such promise must be performed by the promisor himself.
Example- A promises to paint a picture for B as this promise involves personal skill of A. It must be performed by A.

b) ***Promisor or agent***– If it was not the intention of the parties to a contract that the promise should be performed by the promisor himself, as does not involves personal skill of the promisor, such contracts can be performed by the promisor himself or any competent person employed by him.

c) ***Legal Representative***– In case of death of the promisor, his legal representatives can perform the contract unless a contrary intention appears or the contract does not involve personal skill.

d) ***Third person [Sec.41]***- A contract can be performed by a third party if the promisee accepts arrangement i.e. performance by a third party. According to Sec.41, when a promisee accepts the performance by a third party, he cannott afterwards enforce the performance against the promisor although the promisor might not have authorized or ratified the act of the third party. In other meaning once the promisee accepts the performance from a third person, he cannot compel the promisor to perform the contract again.

e) ***Joint Promisors***- In case of several promisors, unless a contrary intention appears from the contract, the following persons must perform the promise-
   - ✓ ***In case all the promisors are alive***- All the promisors jointly must perform.

- ✓ ***In case of death of any of the joint promisors***- Representatives of deceased promisor jointly with the surviving promisor(s) must perform the promises.
- ✓ ***In case of death of all joint promisors***- Representatives of all of them jointly must perform the promises.

DEVOLUTION OF JOINT LIABILITIES AND JOINT RIGHTS

*"**Devolution**"* means passing over from one person to another.

Sec.42 provides for the devolution of joint liabilities: The liabilities of joint promisors pass to their legal representatives (in case of death).

RULES REGARDING THE PERFORMANCE OF JOINT PROMISE [SEC. 43 & 44]:

a) ***Joint and several liability of joint promisors:*** When two or more persons make a joint promise, the promisee may, in the express contract to the contrary, compel anyone or more of such joint promisors to perform the whole of the promise.

b) ***Right to claim contribution:*** Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

c) ***Sharing of loss by default in contribution:*** If anyone of two or more joint promisors makes a default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

d) ***Effect of release of one joint promisor:*** Where two or more persons made a joint promise, a release of one of such joint promisors by the promisee, does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors. ***(Sec 44)***
NOTE: In English law if one joint promisor is discharge then all the joint promisors gets discharged.

MEANING OF DEVOLUTION OF JOINT RIGHTS [SECTION 45]

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly, with the survivor or survivors and after the death of the last survivor, with the representative of all jointly.

RULES REGARDING THE TIME AND PLACE OF PERFORMANCE [SECTIONS 46 TO 50]

- ✓ ***Where no time is specified for performance [Sec. 46]***
  - ➪ Time of performance is not specified **+** promisor agreed to perform without a demand by the promisee, the contract must be performed within a reasonable time.
  - ➪ What is reasonable time is a question of fact and will depend on facts of the case.

- ✓ ***Where time is specified but hour not mentioned [Sec.47]***.

- ➩ Time of performance specified **+** promisor agreed to perform without application by the promisee then contract must be performed on the day fixed in the contract during the usual business hours and at the place at which the promise ought to be performed.

✓ ***Where time is fixed and promisor has not undertaken to perform without an application by the promisee [Sec. 48]***

- ➩ The promisee must apply for performance at a proper place and within the usual hour of business.

✓ ***Where no place for performance is specified and no application is to be made by the promisee [Sec. 49]***

- ➩ It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance and perform it at such appointed place.

✓ ***Where the promisee prescribes the manner or time for performance [Sec. 50]***

- ➩ The promise must be performed in the manner and at the time prescribed by the promisee.

TIME AS THE ESSENCE OF THE CONTRACT (SEC. 55)

"Time is essence of a contract" means that it is essential for the parties to a contract to perform their respective promises within the specified time. Where time is essence, the concerned parties must perform and are under actual obligation to fulfil their respective promises within the specified time.

Time is pleaded as a fact that is to say that if time is specified for the performance of the contract, this is not by itself sufficient to prove that time is essence of the contract. Intention of the parties has to be observed in order to ascertain whether the parties had the intention to treat time as an essential fact in that particular contract.

Cases where time is considered to be essence of contract:

- Where the parties have expressly agreed to treat as the essence of the contract.
- Where the non-performance at the specified time or delay operates as an injury to the party.
- Where the nature and necessity of the contract requires it to be performed within the specified time.

In commercial or mercantile contracts, the time fixed for the delivery of goods is considered to be the essence of a contract but the time fixed for the payment of the price is not considered to be the essence of a contract.

In non-commercial and non-mercantile contracts, usually the presumption is that time is not the essence of such contracts.

CONSEQUENCES OF NON-PERFORMANCE OF CONTRACT WITHIN SPECIFIED TIME [SEC. 55]

The consequence of non-performance of a contract within the specified time depends upon whether the time is essence of the contract or not:

- ***When time is essence of a contract-***
  - ***a)*** The contract becomes voidable at the option of the promisee.
  - ***b)*** If performance beyond the specific time is accepted, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the agreed time unless at the time of such acceptance, he gives notice to the promisor of his intention to do so.

- ***When time is not the essence of the contract-***
  - ***a)*** The contract does not become voidable at the option of the promisee.
  - ***b)*** The promisee is entitled to claim compensation for any loss occasioned by the non-performance of the promise at the agreed time.

PERFORMANCE OF RECIPROCAL PROMISES

Meaning of Reciprocal Promise: As per ***Sec. 2 (f)***, "***Promises which form the consideration or part of consideration for each other as called reciprocal promises***."

TYPES OF RECIPROCAL PROMISES:

a) ***Mutual and Independent***- Such promises all to be performed by each party independently without waiting for the other party to perform his promise and therefore he can't excuse himself on the ground of non-performance by the default party.

b) ***Mutual and Dependent***- Where the performance of promise by one party depend on the prior performance of the promise by other party. The party at fault becomes liable to pay compensation to the other party may sustain by the non performance of the contract [***Sec. 54***]

c) ***Mutual and concurrent***- When the promises are to be performed simultaneously a promisor need not perform his part unless the promisee is ready and willing to perform his reciprocal promise. [***Sec. 51***]

Order of performance of reciprocal promises [Sec. 52]: Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they must be performed in that order. And if the order is not expressly fixed by the contract, then it must be performed in the order in which the nature of the transaction requires.

Effects of preventing the performance [Sec. 53]: When the contracts contain reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is not entitles to sompensation from the other party for any loss which ma sustain in consequence of the non-performance of the contract.

APPROPRIATION OF PAYMENTS [SEC. 59–61]
{ALSO KNOWN AS **RULE IN CLAYTON'S CASE**}

"***Appropriation***" means application of payments or adjustment of payment towards the debts. The question of appropriation of payments arises when a debtor owes several debts to the same creditor and makes a payment that is not sufficient to discharge the whole indebtness.

Appropriation of Payments- Sometimes, a debtor owes several distinct debts to the same creditor and he makes a payment which is insufficient to satisfy all the debts. In such a case, a question arises as to which particular debt the payment is to be appropriated. ***Section 59 to 61*** of the Act which actually incorporates the four rules laid down in Clayton's case provides for the following rules as to appropriation of payments which provide an answer to this question.

1) ***Appropriation as per express instructions by the debtor to the creditor [Sec. 59]:*** Every debtor who owes several debts to a creditor has a right to instruct his creditor to which particular debt, the payment is to be appropriated or adjusted. Therefore, where the debtor expressly states that the payment is to be applied to the discharge of a particular debt, the payment must be applied accordingly.
Example: A owes B three distinct debts of Rs. 2,000, 3,000 and 5,000. A sends Rs. 5,000 and instructs B that the payment should be appropriated against the third debt. He is bound to appropriate the payment against the third debt only.

2) ***Application of payment where debt to be discharge is not indicated [Sec. 60]:*** Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor shall have the discretion to apply such payment for any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
Example: A owes to B, among other debts, the sum of Rs. 5,000. B writes to A and demands payment of this sum. A sends to B Rs. 5,000 accordingly. This payment is to be applied to the discharge of the debt of which B had demanded payment.

3) ***Application of payment where neither party appropriates [Sec. 61]:*** Where neither party appropriates, the payment shall be applied to discharge the debts including time barred ones in a

cronoloical order i.e. in order of time. If the debts are of equal standing, the payment shall be appropriated/applied in discharge of each of these debts proportionately. [First interest then principle]

QUASI CONTRACT [Sec. 68 to 72]

A Quasi-contract is not a contract at all because one or the other essentials for the formation of a contract are absent. The term "Quasi" is a Latin word, which means *"as if"* or *"Similarly"*. It means ***seemingly, apparently, but not really***.

Chapter V containing ***Sections 68 to 72*** of the Indian Contract Act lays down provisions relating to Quasi Contracts although this term has not been used as such rather these transactions have been recognised as ***"Certain relations resembling those created by contracts"***. These are contracts implied in law as implied contracts. It means a contract which lacks one or more of the essentials of a contract. Quasi contract are declared by law as valid contracts on the basis of principles of equity and ***the doctrine of unjust enrichment*** i.e. ***no person shall be allowed to enrich himself unjustly at the expense/cost of another & the legal obligations of parties remains the same as that in a contract***. This concept was propounded in the case of ***Moses v. Mc Furlong*** *by* ***Lord Mansfield.***

Nature of Quasi contracts-
- A quasi contract does not arise from any formal agreement but is imposed by law.
- Every quasi contract is based upon the principle of equity and good conscience.
- A quasi contract is always a right to money and generally though not always to a liquidated sum of money.
- A suit for its breach may be filed in the same way as in case of a complete contract.
- The right granted to a party under a quasi contract is not available to him against the whole world but against particular person(s) only.
- A suit for breach of a quasi contract may be filed in the same way as in case of an ordinary contract
- Although there is no express or implied contract between the parties under a quasi contracts yet they are put in the same position as if there is a contract between them.

PROVISIONS RELATING TO VARIOUS QUASI CONTRACTS ARE CONTAINED UNDER SECTIONS 68 TO SEC 72 OF CONTRACT ACT, 1872

1. ***Sec. 68: Supply of necessaries to a person not competent to contract***

   If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

   Only the property of the incapable person is liable for reimbursement, not the person himself for the obvious reason that he is incompetent to contract. Where he doesn't own any property, nothing shall be payable. There is no definition of the term 'necessaries'. What constitutes necessaries is a question of fact and depends upon the facts and circumstances of the case. Moreover, what is luxury to one person may be a necessity to another.

   Example: A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

***Landmark case*: Nash v. Inmann** (1908)
Khangul v. Lakhha

2. ***Sec. 69*: *Reimbursement i.e. right to recover money paid for another person.***
Payment by a person who is interested in such payment is recoverable as an equitable right. A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other.
3. ***Sec. 70*: *Obligation of person enjoying benefit of non-gratuitous act.***
Where a person, lawfully does anything for another person, or delivers anything to him; not intending to do so gratuitously, and such other person enjoys the benefits thereof then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.
***Example 1*:** A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

***Example 2*:** A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Section 70 corresponds to what in England is called "***Actions for Quantum Meruit***" which means ***'as much as is deserved'*.**

4. ***Sec. 71*: *Responsibility of finder of goods.***
A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as that of a bailee i.e. duty to take reasonable care of the goods, duty not to use the goods for his own purpose, duty not to mix the goods with own goods, right to recover reasonable expenses, reward, or even to sell the goods lawfully.

Finder's right to sell: Under Sec. 169, the finder of goods has the power to sell them when-
   a) The owner of the goods cannot with reasonable diligence be found, or he refuses, upon demand, to pay the lawful charges of the finder, and
   b) Either the thing found is in danger of perishing or of losing the greater part of its value, or, in case the goods are not of perishable nature, but the lawful charges of the finder, in respectof the thing found, amount to two-thirds of its value.

5. ***Sec.72*: *Money paid under a mistake or coercion.***
A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

***Compensation for failure to discharge obligation created by quasi contract* [Section 73]**
When an obligation created by quasi contract is not discharged the injured party is entitled to reline the same compensation from the party in default as if such person had, contracted to discharge is and broken his contract.

GOVERNMENT CONTRACTS

Introduction to Government Contracts in India

Government contracts in India are legally binding agreements between public sector entities—such as the Central Government, State Governments, or their instrumentalities (e.g., public sector undertakings like ONGC or SAIL)—and private parties, including individuals, firms, or companies, for the procurement of goods, services, infrastructure, or other public requirements. These contracts are critical for delivering essential public projects and services, such as building highways, supplying medical equipment, or providing IT solutions for government initiatives like Digital India. They ensure efficient and fair utilization of public resources, aligning with the principles of public interest, transparency, and accountability.

Defined as agreements where the Union or State Government is a party, government contracts are primarily governed by the Indian Contract Act, 1872, which provides the foundational legal framework for all contracts in India. This is supplemented by specific constitutional provisions (Articles 298 and 299) and public procurement regulations, such as the General Financial Rules (GFR), 2017, and state-specific laws. These frameworks ensure that government contracts adhere to strict procedural and legal standards, balancing public welfare with commercial efficiency. The adoption of digital platforms like the Government e-Marketplace (GeM) has further modernized procurement, enhancing transparency and reducing corruption.

Legal and Constitutional Framework

Indian Contract Act, 1872

The Indian Contract Act, 1872, governs all contracts in India, including those involving the government, ensuring uniformity in legal principles. Key provisions include:

- Section 2(h): Defines a contract as "an agreement enforceable by law," requiring mutual consent, lawful object, and consideration.

Essential Principles

a) Offer and Acceptance: A clear offer by one party (e.g., a government tender for road construction) and acceptance by another (e.g., a contractor's bid), which can be electronic via platforms like GeM.

b) Lawful Consideration: Value exchanged, such as payment for goods or services, which must be lawful and not against public policy.

c) Capacity to Contract (Sections 10, 11): Parties must be competent—adults, of sound mind, and not disqualified (e.g., not bankrupt). Government entities are deemed competent under constitutional authority.

d) Lawful Object (Section 23): The contract's purpose must not be illegal, immoral, or against public policy (e.g., contracts for prohibited goods are void).

- Application to Government Contracts: These principles ensure government contracts are valid only if they meet the same standards as private contracts. For instance, a contract for supplying laptops to government schools must include clear offer, acceptance, and lawful consideration.

Constitutional Provisions

The Constitution of India provides specific provisions to regulate government contracts, ensuring legal validity and public accountability:

- Article 298:

a) Empowers the Union and State Governments to engage in trade, business, acquire or dispose of property, and enter contracts for any purpose.

b) Extends to government instrumentalities, such as public sector enterprises (e.g., Bharat Heavy Electricals Limited).

c) Enables flexibility in commercial activities, from infrastructure projects to service contracts.

- Article 299:

a. Lays down procedural safeguards to protect public funds:

   i. Contracts must be executed in the name of the President (for Union) or Governor (for State).

   ii. Must be made by authorized persons (e.g., designated officers in ministries or departments).

   iii. Must be in writing, clearly expressing such authority, to avoid unauthorized commitments.

b. Ensures transparency and accountability, preventing misuse of public resources.

c. Non-compliance renders contracts void, as seen in *K.P. Chowdhary v. State of Madhya Pradesh* (1966).

- Significance: These articles balance governmental authority with legal rigor, ensuring contracts are enforceable while safeguarding public interest.

Supplementary Regulations

a) Additional regulations complement the constitutional and statutory framework, standardizing procurement processes:

b) General Financial Rules (GFR), 2017:

   a. Comprehensive guidelines for financial management in government procurement.

   b. Cover tendering processes, contract management, payment schedules, and audit requirements.

   c. Mandate competitive bidding, cost-effectiveness, and adherence to timelines to optimize public fund usage.

   d. Example: GFR Rule 149 promotes use of the Government e-Marketplace (GeM) for transparent procurement of goods like office supplies or services like IT consultancy.

Public Procurement Policy

a) Ensures fairness, competition, and anti-corruption measures.

b) Mandates open tendering, non-discrimination among bidders, and compliance with socio-economic policies (e.g., preference for MSMEs or Made in India products under Rule 153 of GFR).

c) Example: The Make in India initiative influences procurement by prioritizing domestic suppliers for government contracts.

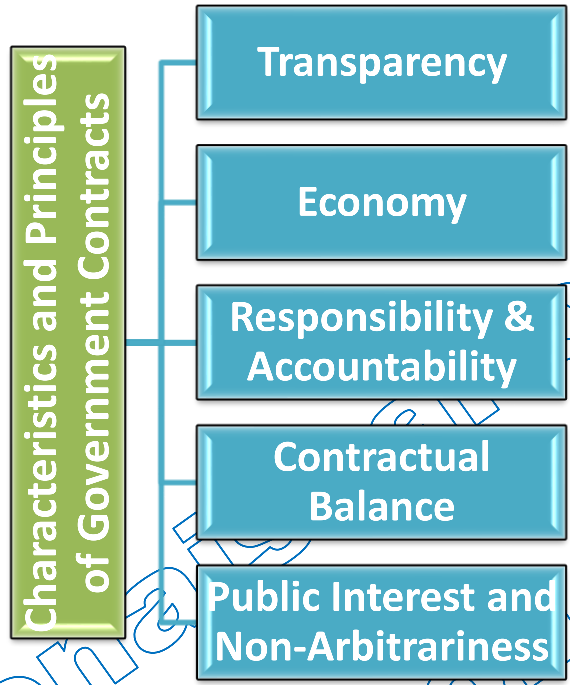
Government e-Marketplace (GeM)

a) A digital platform launched in 2016 to facilitate online procurement by government entities.

b) Enhances transparency, reduces corruption, and streamlines processes like bidding and contract execution.

c) Example: A state government purchasing medical equipment for hospitals via GeM ensures competitive pricing and audit trails.

Characteristics and Principles of Government Contracts



Government contracts are distinguished by their alignment with public interest, requiring adherence to strict principles to ensure fairness, efficiency, and accountability. These characteristics differentiate them from private contracts:

a) **Transparency:**
Government contracts are awarded through open and competitive tender processes with publicly disclosed criteria, ensuring equal opportunity for all bidders and preventing favoritism or corruption. For example, Smart City project tenders are published on GeM or government portals with detailed eligibility and evaluation criteria. Judicial precedents such as *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) uphold non-arbitrary tendering under Article 14, reinforcing transparency.

b) **Economy:**
Government contracts require strict adherence to budgetary provisions and financial timelines to prevent wastage of public funds. This ensures maximum efficiency and value for money, such as in railway electrification projects that must align with sanctioned budgets and completion schedules. The GFR 2017 highlights cost-effectiveness and allows price negotiation only in exceptional cases to maintain fiscal discipline.

c) **Responsibility & Accountability:**
Both the government and contractors are accountable for fulfilling contractual obligations and maintaining compliance with legal and procedural norms. Breaches can result in civil remedies like damages, criminal proceedings for fraud, or disciplinary actions like blacklisting. For instance, contractors supplying substandard materials for public hospital projects can face penalties or debarment, with judicial oversight

(e.g., *Delhi Transport Corporation v. DTC Mazdoor Congress*, 1991) ensuring actions remain non-arbitrary.

d) **Contractual Balance:**
Government contracts must strike a fair balance between the rights and obligations of the parties involved. One-sided clauses disproportionately favoring the government are open to judicial review and may be corrected to prevent exploitation. For example, in road construction projects, risk allocation for delays like land acquisition must be fair, with courts allowing remedies such as quantum meruit (*Bhikraj Jaipuria v. Union of India*, 1962) to uphold equity.

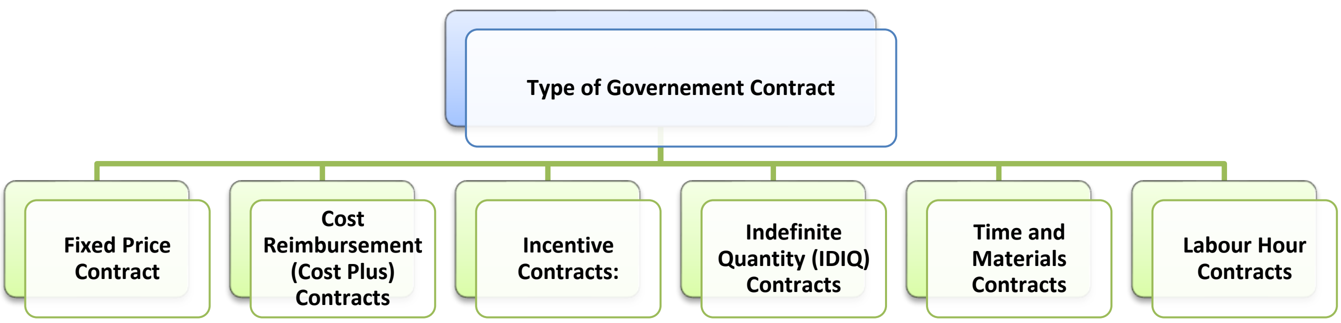
e) **Public Interest and Non-Arbitrariness:**
Government contracts must always serve public welfare and avoid arbitrary decision-making, as required by Article 14 of the Constitution. Awarding contracts, such as in defense procurement, to unqualified bidders would violate fairness and invite judicial scrutiny. The Supreme Court in *Ramana Dayaram Shetty* (1979) reinforced the principle of non-discrimination in public procurement processes.

Conclusion

Government contracts in India are governed by a robust legal framework comprising the Indian Contract Act, 1872, constitutional provisions (Articles 298 and 299), and supplementary regulations like the GFR 2017 and Public Procurement Policy. These ensure that contracts for goods, services, or infrastructure projects are executed transparently, economically, and accountably. The emphasis on procedural safeguards, competitive bidding, and fairness, coupled with modern platforms like GeM, aligns government contracts with public interest while fostering efficiency. Judicial precedents reinforce these principles, ensuring that government contracts balance legal rigor with practical utility, safeguarding public resources while enabling effective partnerships with private entities.

Types of Government Contracts in India

Government contracts in India, governed by the Indian Contract Act, 1872, constitutional provisions (Articles 298 and 299), and regulations like the General Financial Rules (GFR), 2017, are structured to meet diverse public procurement needs, such as infrastructure development, service delivery, or goods supply. These contracts vary based on project complexity, cost predictability, and flexibility requirements. Below is a detailed exploration of the types of government contracts, with expanded explanations, practical applications, and examples to illustrate their use in the Indian context.



1. **Fixed Price Contracts:**
   Fixed price contracts establish a predetermined price for goods or services that remains constant regardless of the contractor's actual costs or time spent. They offer high predictability for budgeting and planning, with limited clauses for adjustments such as inflation or force majeure events. These contracts work best for projects with clearly defined scopes, like highway construction or bulk supply, where costs can be accurately estimated and risk lies primarily with the contractor, encouraging efficiency. Governed by the Indian Contract Act, 1872 and GFR 2017 (Rule 204), they promote transparency through competitive bidding.
2. **Cost Reimbursement (Cost Plus) Contracts:**
   Cost reimbursement contracts involve the government reimbursing contractors for actual, allowable costs incurred, plus a fixed fee or percentage profit. They shift the risk of cost overruns to the government and are used for projects where costs are hard to estimate in advance, such as research, development, or disaster recovery. These contracts require strict monitoring and audits to ensure costs are justified, with caps set to control expenditure. Governed by the Indian Contract Act and GFR 2017 (Rule 205), they are common in defense R&D projects and large-scale reconstruction efforts.
3. **Incentive Contracts:**
   Incentive contracts motivate contractors to meet performance targets such as cost savings, early completion, or high quality by linking payments to measurable outcomes. They align contractor performance with public interest, combining base payments with bonuses or penalties tied to results. While they encourage efficiency and innovation, they require clear performance metrics and careful monitoring to avoid disputes. Governed by the Indian Contract Act and GFR 2017 (Rule 206), these contracts are widely used in infrastructure and renewable energy projects where timely and quality outcomes are crucial.
4. **Indefinite Delivery / Indefinite Quantity (IDIQ) Contracts:**
   IDIQ contracts allow the government to procure goods or services over a fixed period without specifying exact quantities upfront, placing orders as needed. They provide flexibility for fluctuating requirements, include minimum and maximum order limits, and reduce repeated tendering, saving time and resources. Regulated by the Indian Contract Act and GFR 2017 (Rule 207), they are often used for recurring needs like medical supplies, IT services, or emergency materials, where demand cannot be predicted precisely.
5. **Time and Materials Contracts:**
   Time and materials contracts pay contractors based on actual labor hours worked at negotiated rates and verified material costs. They are ideal for projects with uncertain scopes, such as consultancy, repair work, or emergency response, and often include cost caps to prevent budget overruns. These contracts share risk

between the government and the contractor but require close oversight and detailed record-keeping as mandated under GFR 2017 (Rule 208) to avoid overbilling and cost escalation.

6. **Labour Hour Contracts:**

   Labour hour contracts are a simpler variation of time and materials contracts, focusing solely on payment for labor hours at agreed rates, excluding material costs. They are used for short-term, labor-intensive tasks like data entry, event staffing, or administrative support where materials are negligible. Governed by the Indian Contract Act and subject to audit requirements under GFR 2017, these contracts simplify cost tracking but require strict monitoring to prevent inflated claims.

Conclusion

Government contracts in India are tailored to meet diverse procurement needs, from fixed price contracts offering cost certainty to flexible IDIQ contracts for uncertain demands. Governed by the Indian Contract Act, constitutional provisions, and GFR 2017, these contracts balance efficiency, transparency, and public interest. Fixed price and incentive contracts suit well-defined projects, while cost reimbursement, time and materials, and labor hour contracts address complex or uncertain scopes. IDIQ contracts provide flexibility for ongoing needs. Each type requires careful design, oversight, and compliance to ensure fairness, cost-effectiveness, and accountability, supporting India's public sector objectives in infrastructure, services, and innovation.

Case Law

K.P. Chowdhary v. State of Madhya Pradesh (1966 AIR 203)

- **Facts**
  K.P. Chowdhary entered into a contract with the State of Madhya Pradesh for liquor vending. Later, when disputes arose over payments and the enforcement of the contract, the State sought to recover dues as arrears of land revenue. Chowdhary challenged the proceedings, raising the issue that the contract was not executed per the procedure laid out in Article 299(1) of the Constitution.
- **Issues**

  Whether a contract with the Government must strictly comply with Article 299(1)?

  Can there be an "implied" or informal contract with the Government?

- **Judgment**
  The Supreme Court held that Article 299(1) prescribes mandatory requirements for government contracts: the contract must be expressed to be made by the President (or Governor), executed in writing, and by authorized persons. These conditions are not directory but mandatory. There cannot be an implied contract with the government; all contracts must explicitly comply with Article 299(1) for validity. Any contract lacking these formalities is unenforceable by either party and is considered void. This strict rule is to protect public funds against unauthorized or irregular executive actions.

Bhikraj Jaipuria v. Union of India (AIR 1962 SC 113)

- **Facts**
  Bhikraj Jaipuria supplied food grains to the East Indian Railway based on purchase orders that were not executed according to Article 299 requirements. When disputes over payment arose, the government raised the defence that the agreement was not valid as it was not formally executed.
- **Issues**

  Are contracts not executed per Article 299 invalid?

  If the government has benefited (received goods/services), can the contractor recover compensation?

- **Judgment**
  The Supreme Court confirmed that Failure to comply with Article 299 renders the contract void. However, if the government has enjoyed the benefit of goods/services, Section 70 of the Indian Contract Act applies, and the contractor may claim compensation on a "quantum meruit" (as much as earned) basis. This prevents unjust enrichment by the State, balancing the rigidity of Article 299 with equity.

State of Bihar v. Majeed (AIR 1954 SC 786)

- **Facts**
  A government servant, Abdul Majeed, was wrongfully terminated by an officer not competent to do so under service rules. He claimed salary arrears, and the State argued there was no enforceable contract, invoking the doctrine of pleasure and non-compliance with required formalities.
- **Issues**

  Can wrongfully dismissed government servants claim arrears through the courts?

  Are Article 299 requirements for formal contracts mandatory?

- **Judgment**
  The Supreme Court held The English "pleasure doctrine" does not apply in the same restrictive manner in India. Government contracts are enforceable in court if they comply with Article 299. Actions outside the statute and procedural defects can affect enforceability. Article 299's mandates safeguard public interest and are mandatory for enforceable contracts.

Ramana Dayaram Shetty v. International Airport Authority of India (1979 AIR 1628)

- **Facts**
  A tender for an airport restaurant was awarded to a bidder who did not satisfy eligibility criteria. Ramana Dayaram Shetty, a qualified bidder, challenged the decision as arbitrary and discriminatory.
- **Issues**
  Do Article 14 rules of equality and non-arbitrariness apply to government contract tenders?

Can the State or statutory corporation award contracts arbitrarily?

- **Judgment**
  The Supreme Court held that The State and its instrumentalities are bound by Article 14 in granting government contracts; they cannot act arbitrarily. Tendering must be fair, transparent, and non-discriminatory. Contractual discretion must be exercised reasonably, and departures from norms must be justified or the contract award can be nullified.

Mulamchand v. State of Madhya Pradesh (AIR 1968 SC 1218)

- **Facts**
  A suit was filed for price recovery based on a contract with a local government authority. The contract was not in the President's or Governor's name and not properly executed as per Article 299(1).
- **Issues**

  Can a contract with the government be ratified if not executed as per Article 299?

  Do doctrines like estoppel or ratification rescue such contracts?
- **Judgment**
  The Supreme Court categorically held Contracts not conforming to Article 299(1) are void ab initio (from the beginning). Such contracts cannot be ratified subsequently or enforced against the government or its officials, even personally. The requirement is absolute; non-compliance leaves no room for exceptions through estoppel or ratification.

Conclusion

Government contracts in India are governed by a complex but robust legal framework comprising the Indian Contract Act, constitutional provisions (Articles 298 & 299), financial rules, and judicially enforced principles of fairness and transparency. Contractors gain security but must navigate the procedural rigour and accountability mechanisms built to protect public interest.

DISCHARGE OF CONTRACT

Discharge of a contract means termination of the contractual relations between the parties to a contract. When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. Simply put, when both the parties are legally discharged or relaxed from performing their part of the promises in a particular contract, the contract is said to have been discharged.

A contract may be discharged by any of the following ways:

- By performance– Actual or Attempted.
- By mutual consent or agreement.
- By subsequent or supervening impossibility or illegality.

- By lapse of time.
- By operation of law.
- By breach of contract.

I. DISCHARGE BY PERFORMANCE- Performance of a contract is the most popular manner of discharge of a contract. The performance may be either actual performance or attempted performance.

i. ***Actual performance:*** When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed, it is called the actual performance and the contract comes to an end.

ii. ***Attempted performance or Tender:*** When the promisor offers to perform his obligation, but is unable to do so because the promise does not accept the performance, it is called "Attempted Performance" or "tender". Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

II. DISCHARGE BY MUTUAL CONSENT OR AGREEMENT (SEC. 62)- A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.

i. ***Novation:*** "Novation" occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the terms of contract is called "alteration" and not "novation". For being "Novation", the changes must be of significant nature.

ii. ***Alteration:*** It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc. Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

iii. ***Rescission:*** A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "**Rescission**" or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. If there is non-performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission (Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.)

iv. ***Remission:*** It is defined as "Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made."

v. ***Waiver:*** It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation.

III. DISCHARGE BY SUBSEQUENT OR SUPERVENING IMPOSSIBILITY OR ILLEGALITY

i. ***Impossibility at the time of contract (Initial impossibility)*** **-** If you contract for something impossible, the agreement is void ab initio.

ii. ***Subsequent impossibility [Sec. 56, Para 2]*** **–** If impossibility is found out after the contract is made, then the contract becomes void from such date. Sec. 2(j) defines a void contract as "A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Sec. 56 is what actually incorporates ***"Doctrine of frustration."*** In England, before 1863, subsequent impossibility of performance was not a defence. The doctrine evolved in the case of ***Taylor v. Caldwell (1863).*** In this case, subject matter of the case was a music hall. The defendant agreed to let out the music hall to the plaintiff on specified dates for the purpose of entertainment. The hall was destroyed by fire prior to those dates. The plaintiff, however, sued for damages for breach of the contract. The defendant pleaded that the supervening impossibility discharged him from the contract. This defence was successful and the suit was dismissed. This doctrine was embodied in Para 2 of Sec. 56. In certain circumstances the parties to a contract are discharged from performance of the obligations when there is a supervening impossibility. The contract is then said to be frustrated.

Landmark cases: ***1. Krell v. Henry {Coronation Procession Case}***
2. Satyabrat Ghosh v. Mungneeram Bangur & Co. (1954)

A contract is discharged by supervening impossibility in the following cases:
- ✓ Destruction of the subject-matter
- ✓ Death or personal incapacity
- ✓ Declaration of war
- ✓ Change of law
- ✓ Non-existence or non-occurrence of a particular state of things necessary for the performance.

Cases when the contract is not discharged on the ground of supervening impossibility:
- ✓ Difficulty of performance
- ✓ Commercial impossibility
- ✓ Default of a third party
- ✓ Strikes, lockouts and civil disturbances
- ✓ Partial impossibility.

IV. DISCHARGE BY LAPSE OF TIME: In some circumstances, the lapse of time may also discharge the contacts, e.g. the period of limitation for simple contracts is three years the under Limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. Also where times is of essence, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

V. DISCHARGE BY OPERATION OF LAW: A contract is discharged by operation of law in the following cases-

i. ***Death***: Sometimes, a contract is of a personal nature and involves personal skills etc. of promisor. In such cases, the contract is discharged on the death of the promisor.

ii. ***Insolvency:*** When a person is adjudged as insolvent then he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, as the case may be.

iii. ***Merger of rights:*** When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, then the contract conferring inferior right is discharged. For example, A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

iv. ***Loss of evidence of contract:*** Where the evidence of the existence of the contract is lost or vanished, the contract is discharged. For example, document of contract is lost or destroyed and no other evidence is available, the contract is discharged.

VI. **DISCHARGE BY BREACH OF CONTRACT:** A contract is sometimes discharged, by its breach generally 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 obligations under the contract. A breach of contract may occur in the following two ways-

a) ***Anticipatory breach of contract (Sec. 39):*** Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due.

b) ***Actual breach:*** Actual breach occurs in the following two ways-
   i. On due date of performance
   ii. During the course of performance

Consequence 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 as fault.

REMEDIES FOR BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract. *Chapter VI* of Contract Act with *Sec. 73 to 75* deals with the consequences of breach of a contract. When a contract is breached, the injured party is entitled to one or more of the following remedies-

- Suit for specific performance of the contract
- Rescission of the contract
- Suit for damages
- Suit upon quantum merit
- Suit for injunction

1. **SUIT FOR SPECIFIC PERFORMANCE:** The suit for specific performance is regulated by the Specific Relief Act, 1963. Specific performance means the actual carrying out of the contract as agreed. The

Court may grant specific performance where it is just and equitable to do. Specific Performance may be granted under the following grounds-

i. Where actual damages arising from breach is not measurable.
ii. Where monetary compensation is not adequate remedy.

The Court cannot grant the remedy of specific performance in the following situations-

i. Where monetary compensation is an adequate relief
ii. Where the Court cannot supervise the actual execution of the work
iii. Where the Contract is for personal services
iv. Where the Contract is not enforceable by either party against the other.
v. Where contract is inequitable to either party.
vi. Where contract made by company beyond its power. (ultravires)

2. **RESCISSION OF CONTRACT [Sec. 39]**: Rescission means a right not to perform an obligation. In such cases, the injured/aggrieved party is discharged from all the obligations under the contract and can either rescind the contract and file a suit claiming compensation for the damage which he has sustained because of the non-performance of the contract.

3. **SUIT FOR DAMAGES**: Damages are a monetary compensation allowed to the injured party for the loss suffered by him in a breach of contract. There are four kinds of damages under the Indian Contract Act of 1872. The aggrieved party of the contract is entitled for monetary compensation when the contract is breached.

The objective 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 as also to put the aggrieved/injured party in a position in which he would have been had there been performance and not breach. The aggrieved/injured party must be able to prove the actual loss or no damages will be awarded.

In India, the rules relating to damages are based on the judgment in English case of ***Hadley v. Buxendale (1854)***. ***Section 73*** of the Indian Contract Act which deals with compensation for loss or damage caused by breach of contract is based on the judgment of this case. It states that the aggrieved party may claim the damages as follows-

- ⇨ 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.
- ⇨ Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to special damages.
- ⇨ The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach.

Damages can be of four kinds-

- ***Ordinary or General Damages***
- ***Special Damages***
- ***Exemplary, Punitive or Vindicative Damages***
- ***Nominal Damages***
- ***Liquidated damages and penalty***

(a) Ordinary damages are restrained to the "***direct or proximate consequences***" of the breach of a contract. The remote and indirect losses, which are not natural and possible consequence of the breach of contract, cannot be taken into account.

(b) ***Special Damages*** can be claimed only if special circumstances which would result in a special loss in case of breach of contract are brought to the notice of the party. These damages arise on account of the special or unnatural circumstances affecting the plaintiff. The special circumstances which are mentioned above are the circumstances at the time when the contract is entered into. Subsequent knowledge of special circumstances will not create any special liability.

(c) ***Exemplary or punitive damages*** are awarded with a view to punish the guilty party for the breach. The exemplary damages have no place in the law of contract since the object of the damages is to compensate the loss suffered by the injured party in case of a breach. However, Exemplary or Punitive damages are awarded to the following exemptions.

- Breach of a contract to marry
- Dishonour of a cheque by a banker when there are sufficient funds to the credit of the customer.

(d) ***Nominal damages*** are awarded when there is no significant loss suffered by the plaintiff. It is awarded for namesake to establish the right of the injured party.

(e) ***Suit for Quantum Meruit*****:** The term "Quantum Meruit" is derived from a Latin phrase which means "what one has earned". The injured party can file a suit upon quantum merit and may claim payment in proportion to work done or goods supplied. ***Sections 65 to 70*** deal with the provisions relating to suit for Quantum Merit.

(f) ***Suit for injunction*****:** Injunction is an order of the Court restraining a person from doing a particular act. Where the defendant is doing something which he is promised not to do, then the injured party will get a right to file a suit for injunction. Injunction basically means stay order granted by court. This order prohibits a person to do particular act. Where there is breach of contract by one party and order of specific performance is not granted by court, injunction may be granted.

UNIT V
SPECIFIC RELIEF ACT

- **Specific performance of contract**
- **Contracts that can be specifically enforced and that can't be specifically enforced**
- **Persons against whom specific enforcement can be ordered**
- **Rescission and cancellation**
- **Injunctions– temporary, perpetual, mandatory, obligatory**
- **Declaratory decree**
- **Discretion and powers of court**

"The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objection to them." -
-- ***Bentham***

I. Introduction to Specific Relief

Specific relief refers to a legal remedy provided by courts to enforce a specific obligation or obtain a specific performance from a party in a civil dispute. It is a remedy granted by the court and is aimed at ensuring justice in cases where monetary compensation is not an adequate solution. And The Specific Relief Act, 1963 is an Indian legislation that governs the principles and procedures for granting specific relief. It defines the various forms of specific relief and lays down the conditions under which such relief can be granted.

II. Meaning and Nature of Specific Relief

- **Meaning of Specific Relief:** Specific relief is a remedy that is specific to the subject matter of the dispute. It aims to restore the party to the position he or she would have been in if the contract or agreement had been performed as agreed. It may involve compelling a party to carry out their contractual obligations or restraining them from committing a wrongful act.
- **Nature of Specific Relief:** Specific relief is an equitable remedy, which means it is based on principles of fairness and justice rather than strict legal rules. It is discretionary in nature, and the court considers various factors, such as the nature of the contract, the conduct of the parties, and the practicality of enforcing the relief, before granting specific relief.

III. The Meaning and nature of Specific relief also covers the following points:

A. **Specific Performance:** Specific relief may involve the court ordering the performance of a specific act as required by a contract or legal obligation.
B. **Injunctions:** Specific relief can also include the issuance of injunctions, which are court orders that prohibit a person from doing a particular act.
C. **Discretionary Remedy:** Specific relief is a discretionary remedy, meaning that the court has the discretion to grant or deny it based on the circumstances of each case.

D. **Alternative to Damages:** Specific relief is an alternative to monetary damages and aims to restore the parties to their original positions.

IV. SCOPE OF SPECIFIC RELEIF

The scope of specific relief is broad and covers a wide range of contractual and civil disputes. It applies to cases involving contracts for the sale or lease of property, partnerships, intellectual property rights, specific performance of trusts, and breach of contract, among others.

a. **Contracts:** Specific relief can be sought in cases involving breach of contract, where the court may order the defaulting party to perform their contractual obligations.
b. Property Disputes: Specific relief can be granted in cases concerning the ownership or possession of property, where the court may order the restoration of possession or specific acts related to the property.
c. **Trusts and Trustees:** Specific relief is available in cases involving trusts and trustees, allowing the court to enforce the duties and obligations of trustees.
d. **Tortious Acts:** Specific relief can be sought in cases involving tortious acts, where the court may grant injunctions to prevent or restrain the wrongful actions of individuals.
e. **Intellectual Property:** Specific relief is available in cases of infringement of intellectual property rights, where the court may order the cessation of the infringing activity.
f. **Other Circumstances:** The court has the power to grant specific relief in other cases as well, depending on the circumstances and the relief sought.

The Specific Relief Act provides for specific reliefs. The expression 'Specific Relief' means ***a relief in specie***. ***Specific relief means relief of certain species, i.e. an exact or particular, a named, fixed or determined relief***. The term is generally understood and providing relief of a specific kind rather than a general relief or damages or compensation. ***It is a remedy which aims at the exact fulfilment of an obligation or specific performance of the contract***. Specific Relief Act explains and enunciates the various reliefs which can be granted under this provisions, provides the law with respect to them. Specific Relief Act, 1963 extends to the whole of India, except the State of Jammu and Kashmir. The Specific Relief Act deals only with certain kinds of equitable reliefs and these are-

- ***Recovery of possession of property***
- ***Specific performance of contracts***
- ***Rectification of instruments***
- ***Rescission of contracts***
- ***Cancellation of instruments***
- ***Declaratory decrees***
- ***Injunctions***

RECOVERY OF POSSESSION OF PROPERTY

Recovery of possession is dealt with in ***Sections 5 to 8 of the Specific Relief Act***. ***Section 5 and 6 deals with the immovable property and Section 7 and 8 deals with the movable property***.
Section 5 - ***Recovery of specific immovable property***

Section 5 of the Specific Relief Act deals with the recovery of specific immovable property- "***A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.***"

The section in simple words provides that any person who is a lawful owner of an immovable property, can get the possession of such property by due course of law. It means that when a person is entitled to the possession of specific immovable property he can recover the same by filing the suit as per provisions of Civil Procedure Code, 1908. He may file a suit for ejectment on the strength of his title and can get a decree for ejectment on the basis of title ***within 12 years of the date of dispossession*****.** There are three types of actions which can be brought in law for the recovery of specific immovable property:

- ***a suit based on title by ownership;***
- ***a suit based on possessory title; and***
- ***a suit based merely on the previous possession of the plaintiff, where he has been dispossessed without his consent, otherwise than in due course of law.***

The last remedy is provided in ***Section 6*** of the Specific Relief Act. The suits of the first two types can be filed under the provisions of the Civil Procedure Code. The word '***entitled to possession***' means having a legal right to title to possession on the basis of ownership of which the claimant has been dispossessed. Plaintiff must show that he had possession before the alleged trespasser got possession.

Section 6– Suit by person dispossessed of immovable property

1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him [through whom he has been in possession or any person] may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
2) No suit under this section shall be brought-
   a. After the expiry of six months from the date of dispossession; or
   b. Against the Government.
3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

The main object of Section 6 is to discourage forcible dispossession on the principle that disputed rights are to be decided by due process of law and no one should be allowed to take law into his own hands, however good his title may be.
Section 6 provide summary and speedy remedy through the medium of Civil Court for the restoration of possession to a party dispossessed by another, within 6 months of its dispossession, leaving them to fight out the question of their respective titles in a competent Court.

Requisites of Section 6-

1. ***Judicial possession of the plaintiff at the time of dispossession:*** The plaintiff must establish his judicial possession at the time of dispossession. Judicial possession is not equivalent to lawful possession. If a person has the possession of property as a fact and once he becomes settled as such, it is enough for the purpose of relief under Section 6, irrespective of his being without any right to the same or mere trespasser.

2. ***Dispossession of the plaintiff without his consent otherwise than in due course of law:*** For the application of this section the dispossession must be without the consent of plaintiff or against the process of and operation of law invoked by the ordinary method of Civil Court.

3. ***The suit must be instituted within 6 months from the date of dispossession:*** Section 6 prescribes its own period of limitation as 6 months for suits to be filed there under.

4. ***Dispossession must be of 'immovable property':*** The expression 'immovable property' means only such properties of which physical possession can be given under the Act and it does not cover incorporeal rights, since the incorporeal rights are not rights of which possession can be taken and delivered to the claimant.

5. ***Dispossession has not been made by the Government, but by any other person.***

6. ***Under this Section, an order or decree is final in the sense that it is not open to review or appeal, although it is subject to revision by High Court.***

SECTION 5	SECTION 6
The plaintiff has to file a long-drawn regular suit for ejectment.	It gives a summary remedy.
The claim is based on title.	The claim is based on possession and no proof of title is required and even rightful owner may be precluded from showing his title to the land.
The period of limitation is 12 years.	The period of limitation is of only 6 months from the date of dispossession.

RECOVERY OF SPECIFIC MOVABLE PROPERTY

Section 7 - ***Recovery of specific movable property***

A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Explanation 1- A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2- A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Section 7 provides for the recovery of movable property in specie i.e. the things itself. The things to be recovered must be specific in the sense they are ascertained and capable of identification. The nature of things must continue without alteration. Where the Court decrees delivery of such property, the decree shall also state the amount of money to be paid in alternative, if delivery cannot be had.

Section 8 - ***Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession***

Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:-

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation- Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume-

i. that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;
ii. that it would be extremely difficult to ascertain the actual damage caused by its loss.

The relief under Section 8 can only be granted against a person having the possession and control of the particular article claimed by the plaintiff. The object of this section is to provide special remedy so that persons having the possession or control of particular articles of movable property, although not as their owners, may be compelled specifically to deliver them to the persons entitled to their immediate possession.

So, section 8 provides for specific restitution of immovable property. It empowers the court to order the return of the property to the rightful owner if it determines that the person in possession of the property is not entitled to it.

***Requisites of Section 8*:**

1. The defendant has possession or control of the particular article claimed;
2. Such article is movable property;
3. The defendant is not the owner of the article;
4. The plaintiff is entitled to immediate possession; and
5. Anyone of the condition laid down under clauses (a) to (d) of Section 8 must exist.

Provisions of Section 8 are applicable in the following situations only:

(a) *When such property is held by the defendant as agent or trustee of the property.*
(b) *When compensation is not an adequate relief for the loss to the plaintiff.*
(c) *When ascertainment of actual damage is not possible.*
(d) *When possession of the property is wrongfully transferred from the plaintiff.*

In case of situations under (a) and (b), burden of proof is on the plaintiff and under (c) and (d) burden is on the defendant.

Difference between Section 7 and section 8:

Section 7 and Section 8 both speak of the recovery of movable property. However the point of difference between two are:

- Relief under Section 7 is of general nature, independent of nature of property, independent of relationship between the parties. Whereas, relief under Section 8 is of specific character, depends upon the nature of property, depends upon the relationship existing between the parties.
- Relief claimed under Section 7 is for the possession of movable property and in alternate for compensation equal to the value of property whereas relief under Section 8 is for delivery of property (specific movable property).
- Under Section7, a suit to recover possession can be maintained against the owner of property. Section 8 does not contemplate a suit against the owner.
- **Importance of Section 5-8:** Sections 5-8 of the Specific Relief Act, 1963 provide a legal framework for individuals to seek the recovery of possession of immovable property. These provisions serve as

an essential safeguard for protecting property rights and ensuring justice in cases of dispossession or unlawful occupation.

- Overall, Sections 5-8 of the Specific Relief Act, 1963 play a significant role in protecting property rights and ensuring justice in cases of dispossession or unlawful occupation. They provide individuals with a legal framework to assert their rights and recover possession of their immovable property.

CHAPTER II: SPECIFIC PERFORMANCE OF CONTRACTS

SPECIFIC PERFORMANCE OF CONTRACTS

The contract is an agreement upon consideration to do or not to do particular thing. If the person on whom this contractual obligation rests, fails to discharge it, other party has right either to insist on the literal and actual performance of the contract or to obtain compensation for the non-performance of it. The former is called the ***'Specific Performance.'***

The subject- matter of Specific performance of contracts is dealt in Part II, Chapter II of the Specific Relief Act, 1963 which may be classified under the following heads-

(a) Contracts which may be specifically enforced.
(b) Contracts which cannot be specifically enforced.
(c) Parties to an action for specific performance.
(d) Specific performance with a variation.
(e) Discretion of the Court in ordering specific performance.

Section 9 - Defences respecting suits for relief based on contract.

Section 9 simply declares that defendant may raise any ground available in law to him while resisting suit for specific performance. In other words all those pleas as recognized under law of contract like incapacity of parties, the absence of concluded contract, the uncertainty of the contract, coercion, fraud, misrepresentation, mistake, illegality etc. are available to defendant in a suit for specific performance.

CONTRACTS WHICH MAY BE SPECIFICALLY PERFORMED

The remedy of specific performance being an equitable remedy is at the discretion of the Court. But in the exercise of this discretion, the Court is governed by certain principles. ***The circumstances in which specific performance may be granted are enumerated in Section 10 of the Specific Relief Act.***

***Section 10* - Specific Performance in Respect of Contracts: The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.]**

a) This section states that the specific performance of a contract can be enforced by the court, subject to the provisions contained in sub-section (2) of section 11, section 14, and section 16.
b) It means that if someone breaches a contract, the other party can seek specific performance, which is a court order that requires the breaching party to fulfill their contractual obligations.
c) However, the specific performance of a contract is subject to certain provisions in the law, as mentioned in the section.

Section 11: Cases in Which Specific Performance of Contracts Connected with Trusts Enforceable Except as otherwise provided in this Act, specific performance of a 1 [contract shall], be enforced when the act agreed to be done is in the performance wholly or partly of a trust. (2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

- This section explains that specific performance of a contract shall be enforced when the act agreed to be done is in the performance wholly or partly of a trust, except as otherwise provided in this act.
- It means that if a contract is connected to a trust, the court can enforce specific performance of the contract, subject to the provisions of this act.
- However, if a trustee makes a contract in excess of their powers or in breach of trust, that contract cannot be specifically enforced.

Section 12: Specific performance of part of contract

a) This section explains that the court will not direct the specific performance of a part of a contract, except as otherwise provided in this section.
b) If a party to a contract is unable to perform the whole of their part of it, but the part that must be left unperformed is only a small proportion of the whole in value and admits of compensation in money, the court may direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.
c) If a party to a contract is unable to perform the whole of their part of it, and the part that must be left unperformed forms a considerable part of the whole, though admitting of compensation in money, or does not admit of compensation in money, they are not entitled to obtain a decree for specific performance.
d) However, the court may direct the party in default to perform specifically so much of their part of the contract as they can perform, if the other party pays the agreed consideration for the whole of the contract reduced by the consideration for the part that must be left unperformed and relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by them through the default of the defendant.
e) If a part of a contract can be specifically performed and stands on a separate and independent footing from another part of the same contract that cannot or should not be specifically performed, the court may direct specific performance of the former part.

Section 13: Rights of purchaser or lessee against person with no title or imperfect title.

This section is based on the extended principle what is known in English Law as '***Doctrine of feeding the grant by estoppel***'. ***This doctrine found acceptance in India, in the form of Section 43 of Transfer of property Act.*** The right of the purchaser or lessee against the person with no title or imperfect title has been enumerated in Section 13 of the Specific Relief Act. A contract may be specifically enforced even though the promisor had no title or imperfect title at the time of the contract. The promisor is bound to comply with the terms of the contract if he subsequently acquires the power of performing the contract.

Section 14: Contracts not specifically enforceable: Section 14 of the Indian Specific Relief Act, 1963 lists the types of contracts that cannot be specifically enforced,

a) which means that a court cannot force the parties to carry out the specific terms of the contract. Here are the explanations of each point:

b) If one party has obtained substituted performance of the contract in accordance with section 20 of the Act, the contract cannot be specifically enforced. Section 20 allows a party to obtain performance of the contract by someone other than the other party, and the cost of such performance is then recovered from the other party. For example, if A has agreed to sell his car to B, but later refuses to do so, B can obtain substituted performance of the contract by buying a similar car and recovering the cost from A. Once substituted performance has been obtained, the contract cannot be specifically enforced.

c) If the performance of the contract involves a continuous duty that the court cannot supervise, then the contract cannot be specifically enforced. This means that if the court cannot monitor or oversee the performance of the contract on an ongoing basis, then it cannot force the parties to perform it. For example, if A agrees to teach B a particular skill over a period of time, but there is no way for the court to monitor whether A is actually teaching B, then the contract cannot be specifically enforced.

d) If the contract is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms, then the contract cannot be specifically enforced. This means that if the contract is so specific to the abilities, expertise or qualifications of the parties that the court cannot force them to perform it. For example, if A agrees to paint a portrait of B, but A is the only artist with the skill to paint that particular style of portrait, the court cannot force A to perform the contract, as it is too specific to A's personal abilities.

e) If the contract is in its nature determinable, then it cannot be specifically enforced. A determinable contract is one where the parties have agreed to a certain course of action but have also included provisions for its termination. For example, if A agrees to lease a property to B for a period of one year, but includes a clause that the lease will be terminated if A decides to sell the property, then the contract is determinable and cannot be specifically enforced.

Section 14A: this section deals with the power of the court to engage experts in a specific relief suit. Here's what it means:

a) If the court feels that it requires an expert opinion to assist in a specific relief suit, it may engage one or more experts and direct them to report on the specific issue in question. The expert may be required to attend court and provide evidence, including producing relevant documents.

b) The court may also require any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods, or other property for their inspection.

c) The opinion or report given by the expert becomes part of the record of the suit. The court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to them or mentioned in their opinion or report, or as to their opinion or report, or as to the manner in which they have made the inspection.

d) The expert is entitled to a fee, cost or expense as fixed by the court. This is payable by the parties in such proportion, and at such time, as directed by the court.

e) In summary, section 14 lists the types of contracts that cannot be specifically enforced, while section 14

In summary, the provisions in Sections 9-14 of the Indian Specific Relief Act, 1963, provide a framework for the enforcement and limitations of specific performance as a remedy for contractual disputes. These provisions ensure that parties have the opportunity to defend themselves, while also providing guidance on when specific performance can be granted and the circumstances under which it may not be enforced.

PARTIES TO AN ACTION FOR SPECIFIC PERFORMANCE

Section 15: Who may obtain specific performance

Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest of his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled there under;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

It is a general rule that a contract cannot be got enforced except by a party to the contract. This general rule is embodied in clause (a) of Section 15. But there are certain exceptions to this general rule. These exceptions are contained in clause (b) to (h) of the section and contain list of persons who although not a party to the contract, are entitled to obtain specific performance of contract.

Section 16: Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person-

(a) who has obtained substituted performance of contract under section 20; or]

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation- For the purposes of clause (c)-

i. where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

ii. the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

- In **clause (a)**, Court of equity would refuse the specific performance not only for fraud but also for trickiness for 'he who comes for equity must come with clean hands.'
- In **clause (b)**, the incapacity may be physical or mental or even legal.
- In **clause (c)**, when a plaintiff in his suit for specific performance of the contract insists upon the implementation of the terms of the contract but on his own does not disclose his readiness and willingness to perform his own part of term, such contract cannot be enforced. It is necessary for the party claiming specific performance to aver and prove that he has been all the time ready and willing to perform his part of contract.

Section 17: Contract to sell or let property by one who has no title, not specifically enforceable

This section states that a contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor who does not have a title to the property, or who, at the time fixed for the completion of the sale or letting, cannot provide a title free from reasonable doubt.The same provisions apply to contracts for the sale or hire of movable property as well.

Section 18: Non-enforcement except with variation

Section 18 deals with cases in which the contract entered into is valid contract. In other words, it is one in respect of which the remedy of damages is available. Section 18 does not apply unless there is complete contract. It sets out the cases in which contracts cannot be enforced except with a variation and there are three particular cases set out in which a contract may be enforced subject to variation, such a variation being in favour of the defendant. But the remedy of specific performance is available when the plaintiff is prepared to accept the variation pleaded by the defendant.
So, this section explains that if a plaintiff seeks specific performance of a written contract, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation set up.
This applies in cases where the written contract is different from what the parties agreed to, or does not contain all the terms agreed to, or where the parties have varied the terms subsequently.

Ingredient summarized:

- ⇨ Contract in writing. The section does not apply unless there is a complete contract.
- ⇨ Defendant sets up a variation.
- ⇨ The plaintiff is put to an election either to have his action for specific performance dismissed or have it subject to such variation.
- ⇨ But if plaintiff does not accept variation, he does not loose ordinary common law remedy of damages.

Section 19: Relief against parties and persons claiming under them by subsequent title

a) This section states that specific performance of a contract can be enforced against either party to the contract, as well as any other person claiming under them by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.

b) It also applies to any person claiming under a title that, although prior to the contract and known to the plaintiff, could have been displaced by the defendant.

c) In conclusion, the provisions regarding "Persons for or Against Whom Contracts May Be Specifically Enforced" within the Indian Specific Relief Act, 1963, establish the parameters for determining the parties who can seek specific performance and those against whom it can be enforced. These provisions ensure that the court has the authority to compel the party in breach of the contract to fulfil their obligations as agreed upon. Specific performance can be sought by individuals or entities who are party to the contract and have a legitimate interest in its performance. Conversely, the court may refuse to grant specific performance if it determines that the enforcement would be inequitable or impracticable. Overall, these provisions provide clarity and guidance on the scope and limitations of specific performance in contract disputes.

Section 20: Substituted Performance of Contract

a) Party suffering from breach can opt for substituted performance through a third party or by their own agency.
b) They can recover the expenses and costs incurred from the party committing the breach.
c) Notice of at least thirty days must be given to the party in breach before opting for substituted performance.
d) If the contract is performed through a third party or by the suffering party's own agency, they cannot claim specific performance against the party in breach.
e) The party suffering from breach can still claim compensation from the defaulting party.

Section 20 A: Special Provisions Relating to Infrastructure Project

a) No injunction can be granted in suits involving infrastructure projects specified in the Schedule.
b) Granting injunction would hinder or delay the progress or completion of the infrastructure project.
c) The term "infrastructure project" refers to projects and infrastructure sub-sectors mentioned in the Schedule.
d) The Central Government can amend the Schedule based on the requirements for infrastructure project development.

Section 20 B: Special Courts

a) The State Government, in consultation with the Chief Justice of the High Court, can designate one or more civil courts as special courts.
b) Special courts have jurisdiction to try suits under the Act related to contracts concerning infrastructure projects.
c) The purpose is to ensure specialized jurisdiction and effective resolution of disputes related to infrastructure projects.

Section 20 C: Expeditious Disposal of Suits:

a) Suits filed under the Act must be disposed of by the court within twelve months from the date of service of summons to the defendant.

b) The court can extend the period for a maximum of six months, provided it records the reasons for the extension in writing.

Section 21: Power to award compensation in certain cases

1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

3) If, in any such suit, the court decides that specific performance ought to be granted, but that is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation-The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

The plaintiff in a suit for specific performance of contract, under Section 21 may also ask for compensation in case of the breach of the contract, either in addition to or in substitution for such performance but if the plaintiff in a suit for specific performance omits to ask for compensatory relief and his suit for specific performance is dismissed them his subsequent suit for compensation will be barred by the provisions of Section 24.

Section 22: Power to grant relief for possession, partition, refund of earnest money, etc

a) A person suing for specific performance of a contract for the transfer of immovable property can also seek possession, partition, or other relief.

b) The relief must be specifically claimed in the plaint, or the court may allow the plaintiff to amend the plaint to include the claim.

c) The power of the court to grant relief is without prejudice to its power to award compensation under Section 21.

Section 23: Liquidation of damages not a bar to specific performance

1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

Section 24: Bar of suit for compensation for breach after dismissal of suit for specific performance

The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

Section 25: Application of preceding sections to certain awards and testamentary directions to execute settlements—The provisions of this Chapter as to contracts shall apply to awards to which 2 [the Arbitration and Conciliation Act, 1996 (26 of 1996)], does not apply and to directions in a will or codicil to execute a particular settlement.

CHAPTER III: RECTIFICATION OF INSTRUMENTS

Section 26: When instrument may be rectified

1. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then-
   - ***(a)*** either party or his representative in interest may institute a suit to have the instrument rectified; or
   - ***(b)*** the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
   - ***(c)*** a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.
2. If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.
3. A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.
4. No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

Doctrine of Rectification: Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties. Where a contract has been reduced into writing, in pursuance of a previous engagement and the writing, owing to fraud or mutual mistake, fails to express the real intention of the parties, the court will rectify the writing instrument in accordance with their true intent. Here the fundamental assumption is that there exists in between the parties a complete and perfectly acceptable contract but the writing designed to embody it, either from fraud or mutual mistake is incorrect or imperfect and the relief sought is to rectify the writing so as to bring it into conformity with true intent.

Who can apply for rectification: The following persons may apply-

(a) Either party or his representative in interest:

(b) The plaintiff in any suit
(c) A defendant in such suit

So, in short Section 26 of the Specific Relief Act, 1963 addresses the rectification of contracts or other written instruments in cases where the expressed terms do not reflect the real intention of the parties due to fraud or mutual mistake. The section outlines the following provisions:

- **Parties' Remedies**: Either party or their representative can initiate a lawsuit to rectify the instrument, or the plaintiff can include a claim for rectification in a suit where the rights arising from the instrument are in question. Additionally, a defendant in such a suit can request rectification as a defense.
- **Court's Discretion**: If the court finds, in a suit seeking rectification, that the instrument fails to express the true intention of the parties due to fraud or mistake, it can exercise its discretion to direct the rectification of the instrument to align with their actual intention. However, this rectification should not prejudice the rights of third parties who have acquired rights in good faith and for value.
- **Rectification and Specific Performance**: A written contract that has been rectified, upon the prayer of the party seeking rectification in their pleading and at the discretion of the court, may subsequently be specifically enforced.
- **Claim Requirement**: No relief for rectification can be granted unless it has been specifically claimed by the party. However, the court has the authority to allow the amendment of the pleading to include such a claim at any stage of the proceeding if it deems it just to do so.

Section 26 provides a legal recourse for parties to rectify written instruments when their true intentions have been misrepresented due to fraud or mutual mistake. By allowing for rectification and subsequent enforcement, the section aims to uphold the integrity and fairness of contractual agreements.

Conditions necessary for obtaining rectification are:-

⇨ There must have been a complete agreement reached prior to the written instrument which is sought to be rectified. There must be two distinct stages: a) an agreement, verbal or written, which clearly expresses the final intention of the parties, and b) instrument which purports to embody that intention.

⇨ Both the parties must have intended, and still intending, that the exact terms of the prior contract should be reduced to writing.

⇨ Clear evidence of mistake common to both parties or of fraud must be there.

The principle on which the court acts in correcting instruments is that the parties are to be placed in the position as that in which they would have stood if no error had been committed.

CHAPTER IV: RECESSION OF CONTRACTS

Section 27: Section 27 of the Specific Relief Act, 1963 deals with the circumstances in which a contract may be rescinded or refused to be rescinded. The section provides the following provisions:

- ***Grounds for Rescission: Any person with a vested interest in a contract can sue for its rescission. The court may adjudicate the rescission of the contract in the following cases:***
    - ***The contract is voidable or terminable by the plaintiff.***
    - ***The contract is unlawful for reasons not apparent on its face, and the defendant is more responsible for the unlawfulness than the plaintiff.***

- ***Grounds for Refusal of Rescission: Notwithstanding the provisions in sub-section (1), the court may refuse to rescind the contract in the following situations:***
    - ***The plaintiff has expressly or implicitly ratified the contract.***
    - ***Due to circumstances that have occurred since the contract was made (not due to any act of the defendant), the parties cannot be substantially restored to their original positions.***
    - ***Third parties have acquired rights in good faith and for value during the existence of the contract.***
    - ***Only a part of the contract is sought to be rescinded, and such part is inseparable from the rest of the contract.***

Section 28: addresses the rescission of contracts for the sale or lease of immovable property when a decree for specific performance has been granted but the purchaser or lessee fails to pay the required amount within the specified time. The provisions state that the vendor or lessor may apply for rescission of the contract, either partially or entirely, and the court may order such rescission as it

deems just. The court may also direct the restoration of possession to the vendor or lessor and the payment of accrued rents and profits. If the purchaser or lessee pays the required amount within the given period, the court may award further relief, including the execution of a conveyance or lease and delivery of possession.

Section 29: allows a plaintiff in a suit for specific performance to pray alternatively for recession and cancellation for contract if specific enforcement is not possible. If the court refuses to enforce the contract specifically, it may order the contract to be rescinded and delivered up for the cancellation.

Section 30: *empowers the court, upon granting recession of a contract, to require the party receiving such relief to restore any benefit received from the other party and make any compensation deemed just by the court.*
These sections provide a legal framework for the rescission of contracts and outline the circumstances under which rescission may be granted or refused. The court's discretion plays a significant role in determining whether rescission is appropriate and the subsequent equitable actions to be taken.

CHAPTER V: CANCELLATION OF INSTRUMENTS

Section 31: of the Specific Relief Act, 1963 deals with the circumstances in which cancellation of a written instrument may be ordered. The section provides the following provisions:

- **Grounds for Cancellation**: Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that the instrument, if left outstanding, may cause serious injury, may file a lawsuit seeking to have the instrument declared void or voidable. The court has the discretion to adjudicate the instrument as void or voidable and order its delivery and cancellation.
- **Effect on Registered Instruments**: If the instrument has been registered under the Indian Registration Act, 1908, the court must send a copy of its decree to the officer in whose office the instrument has been registered. The officer will then note the cancellation of the instrument in their records.

Section 32 states that in cases where an instrument is evidence of different rights or obligations, the court may, in an appropriate situation, partially cancel the instrument and allow it to remain valid for the remaining parts.

Section 33 *deals with the power of the court to require the restoration of benefits or compensation when an instrument is cancelled or successfully resisted as void or voidable.*

- **Cancellation of Instrument:** When an instrument is cancelled by the court, the court may require the party receiving relief to restore any benefit received from the other party and make any compensation as deemed just by the court.
- **Successful Resistance:** If a defendant successfully resists a suit on the ground that the instrument sought to be enforced against them is voidable or that the agreement sought to be enforced is void due to their incapacity to contract, the court may require the defendant to restore any benefit received under the instrument or agreement to the other party, to the extent that they have benefited from it.

These sections provide the legal framework for the cancellation of written instruments. They allow individuals to seek the cancellation of void or voidable instruments that may cause them harm, and provide the court with the power to order the delivery, cancellation, and restoration of benefits or compensation.

CHAPTER VI: DECLARATORY DECREES

Section 34**: **Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

Explanation-A trustee of property is a "***person interested to deny***" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

A declaratory decree is a mode of relief where there is no specific performance and no award of compensation. There is only a declaration of rights of the parties without any consequential relief which can be enforced by the execution of the decree. In other words, declaratory decrees are those where some right is declared in favour of the plaintiff but nothing is sought to be paid or performed by the defendant. Further, the declaration does not confer any new rights upon the plaintiff; it merely declares what he had before.

OBJECT: The object of such decrees is that where a person's status or legal character has been denied or where a doubt has been created upon his titles to rights and interests in some property, he may have the doubt removed by having his legal status or rights declared by the court. But it is not a matter of absolute right to obtain a declaratory decree. It is purely the discretion of the Court. The object of Section 34 is to perpetuate and strengthen testimony regarding title and protect it from adverse attacks.

Essential requisites for a declaratory action

1. The plaintiff must be entitled to any legal character or to any right as to any property.
2. The defendant should have denied or be interested in denying the character or title of the plaintiff. It is this denial which gives a cause of action for declaratory relief.

3. The plaintiff is not in a position to claim further relief than mere declaration of his title, or where he is so able to seek further relief, he seeking such relief also.

***Section 35**: Effect of declaration*

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

According to this section, the declaratory decree is not binding on everybody in the world. It cannot bind strangers and ***as such a declaration will not operate as a judgement in rem*** and will be binding only between parties to the suit and their representatives. Hence, a declaratory decree is binding between the parties inter se and its effect does not bind persons who are not connected with the suit in question.

CHAPTER VII: INJUNCTIONS GENERALLY

An injunction is a specific order of the court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases, when it is called mandatory injunction requiring active restitution of the former state of things. An injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing. In former case it is called ***restrictive injunction*** and in the latter case it is called ***mandatory injunction***.

***Section 36**: Preventive relief how granted*

Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

***Section 37**: Temporary and perpetual injunctions*

1. Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.

2. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER VIII: PERPETUAL INJUNCTIONS

***Section 38**: Perpetual injunction when granted*

1. Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
2. When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
3. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-
   - ***(a)*** where the defendant is trustee of the property for the plaintiff;
   - ***(b)*** where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
   - ***(c)*** where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

<u>Section 39</u>: <u>Mandatory injunctions</u>
When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

<u>Section 40</u>: <u>Damages in lieu of, or in addition to, injunction</u>

1. The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

2. No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

<u>Provided that</u> where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

3. The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

<u>Section 41</u>: <u>Injunction when refused</u>-
An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
(c) to restrain any person from applying to any legislative body;
(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
(e) to prevent the breach of a contract the performance of which would not be specifically enforced;
(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
(g) to prevent a continuing breach in which the plaintiff has acquiesced;
(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
(ha) *if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.*
(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
(j) when the plaintiff has no personal interest in the matter.

<u>Section 42</u>: <u>Injunction to perform negative agreement</u>
Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that, the plaintiff has not failed to perform the contract so far as it is binding on him.

Even if specific performance of an affirmative agreement in a contract is not possible, the court can grant an injunction to enforce a negative agreement associated with the contract, provided that the plaintiff has not failed to perform their obligations.
These provisions outline the framework for granting injunctions, both temporary and perpetual, as preventive relief in civil suits. The court has discretionary powers to determine whether to grant an injunction based on the circumstances of each case.

IMPORTANT CASE LAWS ON SPECIFIC RELIEF ACT

East India Hotels Ltd. v. Syndicate Bank 12 September, 1991

Introduction
The landmark judgment in East India Hotels Ltd. v. Syndicate Bank addresses the intricate legal dynamics surrounding the rights of licensees post the expiration of their licenses. Decided by the Supreme Court of India on September 12, 1991, this case delves into the applicability and limitations of Section 6 of the Specific Relief Act, 1963. The dispute centers on whether a licensee, who remains in possession of property after the termination of the license, qualifies for relief under this section, especially when such possession transitions into that of a trespasser.

Summary of the Judgment
In this case, East India Hotels Ltd. (the Company) had entered into a leave and license agreement with Syndicate Bank for the use of 15,000 sq. ft. in the Oberoi Towers, Bombay, for a period of twelve years, commencing on December 27, 1974. Upon the expiration of the license on December 31, 1986, the Company requested the Bank to vacate the premises, an assertion the Bank did not comply with. Despite repaying the loan and interest as per the agreement, the Bank remained in possession post the license period. A subsequent fire on April 12, 1990, compelled the Bank to vacate the premises temporarily. The legal contention arose when the Bank filed a suit under Section 6 of the Specific Relief Act seeking possession. The Bombay High Court initially decreed in favor of the Bank but stayed the decree for ten weeks. Upon appeal, the Supreme Court overturned the High Court's decision, holding that the Bank, as a licensee who became a trespasser post license expiry, was not entitled to relief under Section 6.
Analysis

Legal Reasoning
The Supreme Court meticulously dissected the nature of the relationship between the parties:
- License vs. Lease: The Court underscored that a license does not confer any estate or interest in the property, differentiating it from a lease.
- Posession Post-License: Post-termination, any continued occupation by the licensee is deemed trespass unless formal legal processes are adhered to for dispossession.
- Section 6 Applicability: The section is intended to prevent unauthorized dispossession. In this case, since the Bank was a licensee who did not have a renewed agreement and had not been dispossessed through due legal proceedings, Section 6 relief was deemed inapplicable.
- Corporate Conduct: The judgment criticized the Bank's continued occupation, highlighting misuse of legal delays by large corporations to maintain possession unjustly.

By establishing that post-license possession without legal dispossession equates to trespass, the Court narrowed the scope of Section 6 to prevent abuse by corporate entities.
Impact

This judgment significantly impacts the interpretation and application of Section 6 of the Specific Relief Act. It reinforces the legal principle that:

- Licensees do not acquire possessory rights beyond the agreed term unless legally renewed.
- Section 6 remedies are not available to those who continue to occupy property unlawfully post-license termination.
- Courts will scrutinize the nature of possession and the manner of dispossession to prevent misuse of legal provisions by entities with substantial resources.

Future litigations involving licensees will require a clear demonstration of dispossession sans legal endorsement to qualify for Section 6 relief, thereby shaping landlord-licensee relationships and property possession disputes.

1. **Gaddipati Divija & Anr. v. Pathuri Samrajyam & Ors [2023] 3 S.C.R. 802:** When specific performance of the terms of the contract has not been done, the question of time being the essence does not arise -time would not be of essence in a contract wherein the obligations of one party are dependent on the fulfilment of the obligations of another party. In this case, the Supreme Court addressed issues related to the Specific Relief Act, 1963, particularly concerning the readiness and willingness of parties in contracts for specific performance. The Court emphasized the necessity for plaintiffs to demonstrate their readiness and willingness to perform their contractual obligations to obtain specific performance relief.

2. **Major Gen. Darshan Singh (D) By Lrs. & Anr. v. Brij Bhushan Chaudhary (D) By Lrs. 2024 INSC 157:** In this judgment, the Supreme Court emphasized that the grant of a decree for specific performance under Section 20 of the Specific Relief Act, 1963, is discretionary and equitable. The Court highlighted that the exercise of such discretion depends on several factors, including the conduct of the plaintiff. In this particular case, the plaintiffs were found to have made false and incorrect statements in the plaint, which were material to the case. Consequently, the Court held that the plaintiffs were disentitled to the relief of specific performance due to their conduct. This decision underscores the principle that specific performance is an equitable remedy, and parties seeking such relief must approach the court with clean hands.
3. **Poona Ram v. Moti Ram, (2019) 11 SCC 309:** The Supreme Court of India dealt with the doctrine of adverse possession and its implications on ownership rights. The Court emphasized that a person claiming title by adverse possession must establish continuous, open, and hostile possession of the property for a statutory period of 12 years. The burden of proof lies on the claimant to demonstrate possession with the intention of ownership, rather than mere occupation. The judgment reaffirmed the principle that mere possession does not confer ownership unless adverse possession is legally established. This ruling has significant implications for suits under the **Specific Relief Act, 1963,** particularly those involving recovery of possession, declaratory relief, and specific performance.
4. **Hammad Ahmed v. Abdul Majeed, (2019) 14 SCC 1:** The Supreme Court clarified that an interim mandatory injunction can be granted in appropriate cases to protect the rights of the parties. The case revolved around a contractual dispute where the plaintiff sought the enforcement of an agreement for sale. The Court reiterated that specific performance is a **discretionary and equitable remedy** and that the plaintiff must establish **readiness and willingness** to perform their contractual obligations. The judgment emphasized that the **onus is on the plaintiff** to prove that they were always willing and financially capable of completing the transaction. Additionally, the Court clarified that a party cannot seek specific performance if they have failed to fulfill their part of the contract within the stipulated time. This case serves as an important precedent in property and contract law, reinforcing the principle that courts will not enforce agreements unless the claimant meets all statutory requirements and acts in good faith.

5. **Thulasithara v. Narayanappa, (2019) 6 SCC 409:** The Supreme Court of India addressed key aspects of **specific performance of contracts** and **readiness and willingness** under the **Specific Relief Act, 1963**. The dispute arose from a sale agreement where the plaintiff sought specific performance, claiming that the defendant had failed to execute the sale deed despite receiving part of the consideration. The Court reiterated that for a decree of specific performance to be granted, the **plaintiff must prove continuous readiness and willingness** to fulfill their contractual obligations