

## INDIAN CONTRACT ACT, 1872

### INTRODUCTION -

- 1) **INDIAN CONTRACT ACT, 1872** governs law relating to contracts in India.
- 2) The Act was **passed by British India** and is based on the principles of English Common Law.
- 3) This Act is applicable to **whole of India including Jammu and Kashmir**.
- 4) The Act came into effect **from 1st September, 1872** and applies to all contracts in India.

### IMPORTANT DEFINITIONS UNDER THE ACT -

#### 1) **Proposal - Sec 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 to such act or abstinence, he is said to make a proposal.

#### 2) **Acceptance - Sec 2(b)**

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

Person making the proposal is called the "**promisor**", and the person accepting the proposal is called the "**promisee**".

#### 3) **Agreement - Sec 2(e)**

Every promise and every set of promises, forming the consideration for each other, is an agreement.

**In simple words, Agreement = Offer + Acceptance**

#### 4) **Void Agreement - Sec 2(g)**

An agreement not enforceable by law is said to be void.

#### 5) **Contract - Sec 2(h)**

An agreement enforceable by law is called as contract.

**In simple words, Contract = Agreement + Enforceability**

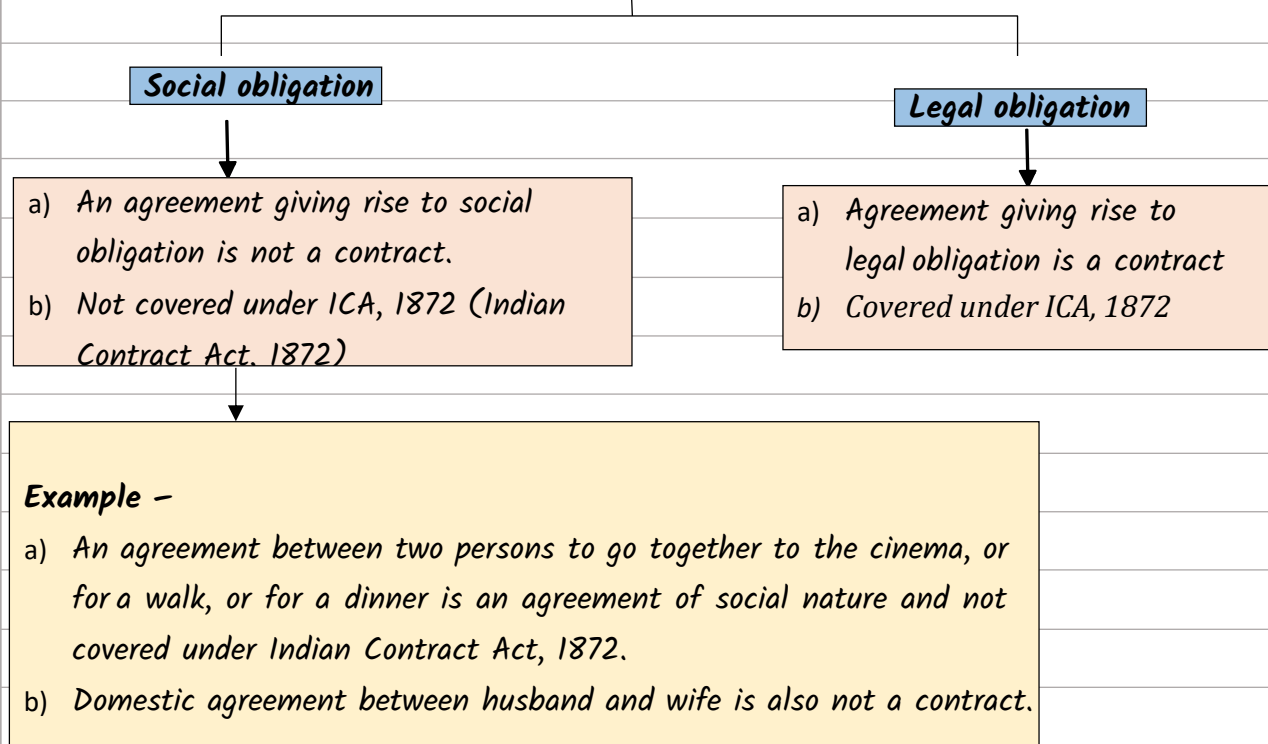
#### 6) **Voidable Contract -**

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 EVERY AGREEMENT CONTRACT?

- 1) **No**, every agreement is not a contract.
- 2) An agreement to become a contract must give rise to a **legal obligation (duty)**
- 3)

An agreement can be -



- 4) **Every contract is an agreement, but every agreement is not a contract**

## ESSENTIAL ELEMENTS OF A VALID CONTRACT -

### Essential elements of a valid contract -

#### Under Section 10 -

- a) Agreement
- b) Free Consent
- c) Competency of the parties
- d) Lawful Consideration
- e) Legal object
- f) Not expressly declared to be void

#### Not given under section 10 but still are essentials of valid contract -

- a) Two parties
- b) Intention to create legal relationship
- c) Legal formalities
- d) Certainty of meaning
- e) Possibility of performance

#### 1) Two parties -

There should be at least 2 parties for a contract.

#### 2) Offer -

There shall be an offer or proposal by one party

#### 3) Acceptance -

Offer made should be accepted by the other party

#### 4) Lawful consideration -

The agreement shall be supported by lawful consideration

#### 5) Lawful object -

The object and consideration of the contract shall be legal

#### 6) Competent (capacity) to contract - Section 11

- a) The parties to the contract shall be competent to contract
- b) For a person to become competent to contract -
  - Such person should be major (18+)
  - Such person should be of sound mind (Section 12)
  - Such person should not be disqualified by law

#### 7) Free consent -

- a) There shall be free consent between the parties to the contract
- b) Consent is said to be free when the following elements are absent (Section 14)
- Coercion (Section 15)
  - Undue influence (Section 16)
  - Fraud (Section 17)
  - Misrepresentation (Section 18)
  - Mistake (Section 20, 21, 22)

**8) Intention to create legal relationships -**

The intention of the parties to a contract must be to create a legal relationship between them.  
Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

**9) Possibility of performance -**

The agreement should be capable of being performed

Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced

**10) Legal formalities -**

Legal formalities if any required for particular agreement such as registration, writing, they must be followed

## OFFER

**A) Definition - 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 to such act or abstinence, he is said to make a proposal

**B) Types of offer -**

- 1) **General Offer** - It is an offer to the whole world.
- 2) **Specific offer** - It is an offer made to a particular person or group of persons.
- 3) **Express offer** - It is an offer which is made by words either oral or in writing.
- 4) **Implied offer** - It is an offer which is made by conduct or gesture of the parties.
- 5) **Counter offer** - When a person to whom the offer is made does not

accept the offer [as it is] he counters the condition. This is called counter offer.

6) **Cross offer** - When two offers of same terms and conditions cross each other at same time, it is called cross offer.

7) **Standing offer** - An offer is a standing offer if it is intended to remain open for a specified period

### C) Essentials of valid offer -

1) **Offer may be expressed or implied -**

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

2) **Offer may be specific or general -**

a) A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.

b) A general offer is an offer made to the public at large.

3) **Offer must create Legal Relations -**

An offer to be valid must create legal relationship between the parties. Say for example a dinner invitation extended by A to B is not a valid offer.

4) **Offer must be Clear, not Vague -**

The terms of an offer should not be vague (not clear / confusing)

For e.g. - A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

5) **Offer must be Communicated to the Offeree -**

No offeree can accept the proposal without knowledge of the offer (**Lalman Shukla v. Gauri Dutt.**)

6) **A statement of price is not an offer**

7) **Offer cannot contain a Negative Condition -**

The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer

Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.

- 8) A mere statement of intention is not an offer. Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled
- 9) Offer must be distinguished from an invitation to offer -

Basis For Comparison	Offer	Invitation To Offer
Meaning	When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Defined in	<b>Section 2(a)</b> of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Essential to make an agreement	Yes	No
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

## ACCEPTANCE

### A) Definition - Section 2(b)

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

### **B) Essentials of valid Acceptance -**

#### **1) Acceptance must be absolute and unqualified -**

- a) There must be an absolute and unqualified acceptance of all the terms of the offer.
- b) Qualified acceptance would amount to rejection of the offer

#### **2) Acceptance must be communicated -**

Acceptance must be communicated by the acceptor

#### **3) Acceptance must be in a prescribed or reasonable mode -**

- a) Offer should be accepted in a prescribed mode.
- b) If the offer or prescribes no mode of acceptance, the acceptances must be communicated according in any reasonable mode such as in writing or oral.

#### **4) Acceptance must be given within a reasonable time and before the offer lapses -**

- a) Acceptance must be given within specified time.
- b) If no time is specified, then acceptance may be made within reasonable time.
- c) Acceptance should be made before offer lapses (expires).

#### **5) Acceptance cannot precede an offer -**

- a) Acceptance must be given after receiving the offer.
- b) It should not precede the offer.

#### **6) Acceptance must be given only by the person to whom the offer is made -**

- a) An offer can be accepted only by the person or persons to whom it is made
- b) It cannot be accepted by another person without the consent of the offeror.

#### **7) Rejected offer can be accepted only on renewal -**

Rejected offer can be accepted only, on renewal; offer once rejected can't be accepted again unless a fresh offer is made.

### **COMMUNICATION OF OFFER & ACCEPTANCE AND REVOCATION - SECTION 4 & 5**

1. Communication of offer is complete when it comes to the knowledge of offeree.
2. Communication of acceptance is complete As against Offeror When offeree puts the acceptance in a course of transmission and it is beyond his reach to stop it and against offeree When the acceptance comes to the knowledge of offeror.
3. Revocation (withdrawal / cancellation) of offer –  
Revocation of offer is valid before offeree puts the acceptance in course of transmission and it is out of his reach to stop it.
4. Revocation of acceptance –  
Revocation of acceptance is valid before acceptance comes to the Knowledge of the offeror.

### HOW REVOCATION OF PROPOSAL IS MADE – SECTION 6

By the communication of **notice** of revocation by the proposer to the other party;

By the **lapse of the time** prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance

By the **failure of the acceptor to fulfil a condition precedent** to acceptance; or

By the **death or insanity of the proposer**, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

offer is **not accepted in the prescribed mode** and if no mode is prescribed, in some usual and reasonable manner or

The offeree makes a **counter-offer**

### CONSIDERATION (QUID PRO QUO)

#### A) Definition – 2(d)

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



### B) Meaning -

- a) Consideration means something in return
- b) It may be an act or abstinence or promise

### Note -

As per Section 25 of the Indian Contract Act, 1872 "An agreement made without consideration is void"

### C) Types of consideration -

#### Past Consideration -

In case of past consideration, the promisor had received the consideration before the date of promise

#### Present consideration

##### (Executed consideration) -

Present consideration is one in which one of the parties to the contract has performed his part of the promise, which constitutes the consideration for the promise by the other side it is known as present consideration.

#### Future Consideration

##### (Executory

##### consideration)-

when consideration is to move at a future date then it is called as future consideration

### D) Essentials of valid consideration -

#### 1) Consideration must move at the desire of the promisor -

- a) Consideration must move at the desire of the promisor.
- b) whatever is done must have been done at the desire of the promisor and not voluntarily or not at the desire of a third party

#### 2) Consideration may move from the promisee or any other person:

- a) Consideration may be furnished even by a stranger under Indian Law.
- b) Consideration can be from any direction, even a stranger to contract can offer consideration.

### 3) Consideration must be something of value -

Consideration must have some value in the eyes of law, and it should be real.

### 4) It may be an act, abstinence or a return promise -

- a) Promise to not to smoke is a negative act (abstinence),
- b) Promise to not to refer the matter to court (abstinence).
- c) Promise to perform at the wedding anniversary or birthday party (promise to do).

### 5) It may be past, present or future which the promisor is already not bound to do -

- a) According to Indian Law Consideration may be past, present or future.
- b) But under English Law Consideration may be present or future. Past consideration is no consideration according to English Law

### 6) It must not be unlawful -

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

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

## NO CONSIDERATION - NO CONTRACT- Section 25

### A) Meaning -

The general rule is *ex-nudopacto non oritur actio* i.e. an agreement made without consideration is void.

### Example -

If Salman promises to pay Aishwarya ` 1000 without any obligation from Aishwarya then it will be void contract as there is no consideration from Aishwarya towards Salman.

### B) Exceptions -

<b>Exceptions -</b>	<b>Under following cases, a contract will be valid even without consideration</b>
1.	Promise made on account of natural love and affection
2.	Promise to compensate for voluntary services
3.	Promise made to pay a time barred debt
4.	Completed Gifts
5.	Creation of agency
6.	Contract of Guarantee
7.	Remission

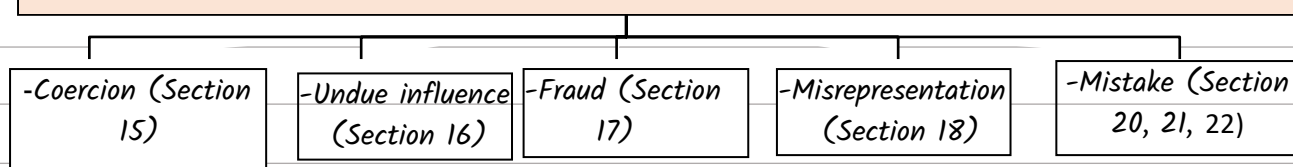
## FREE CONSENT

### A) Meaning - Section 13

'Two or more persons are said to consent when they agree upon the same thing in the same sense.'

### B) When consent is said to be free?

As per section 14 of the Contract act consent is said to be free when **following are absent** -



## COERCION - SECTION 15

### A) Meaning of coercion -

Coercion means -

- committing or threatening to commit any act forbidden (prohibited) by Indian Penal Code against another person; or
- unlawful detaining or threatening to detain the property of another person
- with a view to obtain consent of another person

**B) What will be the effect if the consent is caused by coercion – Section 19**

- a) Agreement is voidable at the **option of aggrieved party**.
- b) Aggrieved party has the option to cancel (rescind) the contract.
- c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

### UNDUE INFLUENCE – SECTION 16

**A) Meaning of undue influence –**

A contract is said to be induced (caused) by “undue influence” where the relations subsisting (existing) 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.

**B) When a person is deemed to be in a dominating position?**

- a. Where he holds a real or apparent authority over the other (e.g. master and servant)
- b. where he stands in a fiduciary (trust) relation to the other (e.g. Doctor and patient)
- c. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress (pain)

**Note –**

The burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other

**C) What will be the effect if the consent is caused by Undue influence – Section 19**

- a. Agreement is voidable at the option of aggrieved party.
- b. Aggrieved party has the option to cancel (rescind) the contract.
- c. If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

## FRAUD – SECTION 17

### A) Meaning of fraud –

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

- a) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- a) The active concealment (to hide) of a fact by one having knowledge or belief of the fact;
- b) A promise made without any intention of performing it;
- c) Any other act fitted to deceive;
- d) Any such act which the law specially declares to be fraudulent

#### Note –

**Deceive – intentionally cause (someone) to believe something that is not true**  
**Connivance – willingness for being secretly involved in an immoral or illegal act.**

### B) Is silence fraud?

- a) Whether silence is fraud or not depends upon various factors.
- b) Normally speaking, silence does not amount to fraud.
- c) However, silence will be considered as fraud in the following situations –
  - When there is a duty to speak
  - Where silence is equivalent to speech.
  - Where there is change in circumstances

### C) What will be the effect if the consent is caused by Fraud – Section 19

- a) Agreement is voidable at the option of aggrieved party.
- b) Aggrieved party has the option to cancel (rescind) the contract.
- c) If aggrieved party decides not to cancel the contract then he may continue the contract and claim damages from the other party.

If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

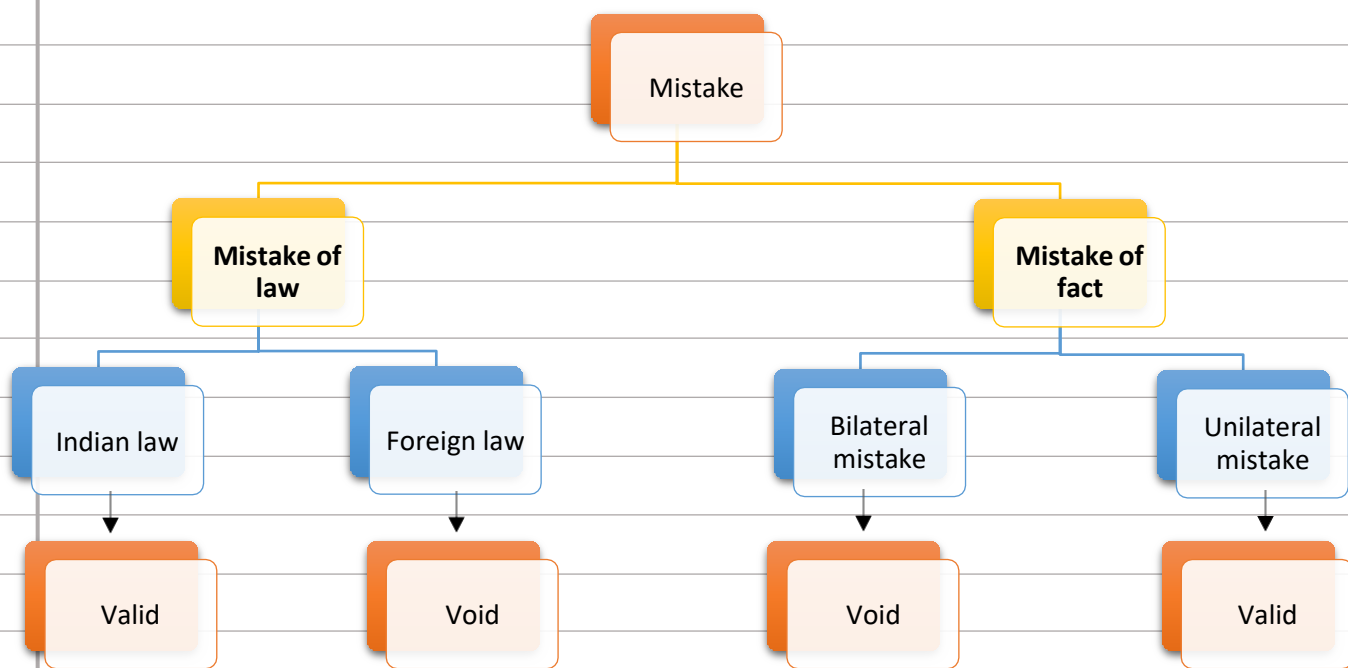
**MISREPRESENTATION – SECTION 18**

**A) Meaning –**

- a) A representation when wrongly made either innocently or intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.
- b) Misrepresentation means making any statement as true but actually that statement is false.

**B) What will be the effect if the consent is caused by Undue influence – Section 19**

- d) Agreement is voidable at the option of aggrieved party.
- e) Aggrieved party has the option to cancel (rescind) the contract.  
If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person



**MISTAKE OF LAW – SECTION 21**

<i>Mistake of law of the country –</i>	<i>Mistake of law of foreign country –</i>
<i>1) When a party enters into a contract, without the knowledge of law in the country, the</i>	<i>1) Such a mistake is treated as mistake of fact and agreement is such case is void.</i>

<p><i>contract is valid and not void.</i></p> <p>2) A contract is not voidable because it was caused by a mistake as to any law in force in India.</p> <p>3) The reason here is that <i>Ignorantia juris non excusat</i> (ignorance of law is not an excuse at all).</p> <p>4) However, if a party is induced (influenced) to enter into a contract by the mistake of law then such a contract may be avoided.</p> <p>5) The principle in this case is ignorance of law is not an excuse.</p>	<p>2) Ignorance of foreign law may be excused</p>
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### LEGALITY OF OBJECT – SECTION 23

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is –

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

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

### VOID AND ILLEGAL CONTRACTS –

#### Consequence of Illegal Agreements

- an illegal agreement **is entirely void**;
- **no action can be brought** by a party to the contract to an illegal agreement. The maxim is “**Ex turpi cause non-oritur action**” – **from an evil cause, no action arises**;
- money paid or property transferred under an illegal agreement cannot be recovered. The maxim is

***in parti delicto potierest condition defendeties- In cases of equal guilt, more powerful is the condition of the defendant;***

- where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and any agreement which is collateral (connected) to an illegal agreement is also tainted with illegality and is treated as being illegal, even though it would have been lawful by itself

### **AGREEMENTS VOID AS BEING OPPOSED TO PUBLIC POLICY -**

The following agreements are void as being against public policy but they are not illegal -

- Agreement in restrain (restrict) of parental rights** : An agreement by which a party deprives himself of the custody of his child is void.
- Agreement in restraint of marriage** : An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.
- Marriage brokerage or brokerage Agreements** : An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.
- Agreements in restraint of personal freedom are void** : Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.
- Agreement in restraint of trade** : An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.

### **VOID AGREEMENTS -**

Following agreements have been expressly declared to be void by the Indian Contract Act -

- Agreement made by incompetent person	- Agreement in restraint of marriage - Section 26
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- Agreement made under a bilateral mistake of fact - Section 20	- Agreement in restraint of trade - Section 27
- Agreement of which the consideration or object is unlawful - Section 23	- Agreement in restraint of legal proceedings - Section 28
- Agreement of which the consideration or object is unlawful in part - Section 24	- Agreements void for uncertainty - Section 29
- Agreement made without consideration - Section 25	- Wagering agreement
- Agreement to do impossible acts	

## PERFORMANCE OF CONTRACT

### Meaning -

- Every contract has certain obligations (duties) which are to be performed by the parties to the contract.
- When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed.
- When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance

### Who will perform the contract? - Section 40

Promisor himself

Legal Representative However, if the contract involves personal skills and if the promisor dies, the contract becomes void

Agent of promisor

Third persons, if promise permits

### Example -

Adi promises to pay Manav 5,000 rupees. Adi may perform the obligation of giving 5,000 rupees to Manav either by himself or he may appoint agent to perform the obligation.

If Adi dies before making the payment then legal representative of Adi must perform the promise.

## TIME AND PLACE FOR PERFORMANCE OF CONTRACT – SECTION 46-50

### 1) Time for Performance of Promise, where no application is to be made and no time is specified – Section 46

- Where the promise is to be performed without application by the promisee and no time for the performance is specified then the contract shall be performed within reasonable time.
- Reasonable time differs case to case and if there is any dispute then court will decide the reasonable time.

### 2) Time and Place for Performance of Promise, where time is specified and no application to be made – Section 47

Where the promise is to be performed on fixed day without application by the promisee then the promisor may perform the promise on that day during business hours and on such place as specified.

#### Example:

Mukesh promises to deliver goods at Rahul's warehouse on the 1st January. On that day Mukesh brings the goods to Rahul's warehouse, but after the usual hour for closing it, and they are not received. Mukesh has not performed his promise.

### 3) Application for Performance on certain day to be at proper time and place – Section 48

When a promise is to be performed on a certain day and for that promisee has to make application to promisor then it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

### 4) Place for Performance of Promise, where no application to be made and no place fixed for performance – Section 49

When a promise is to be performed without application by the promisee and place of performance is not fixed then it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise



**Example:**

John Cena promises to deliver a Car to Batista on a fixed day. John must apply to Batista to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

**5) Performance in Manner or at time prescribed or Sanctioned by Promisee – Section 50**

Where promisee specifies the manner or time of performance then promisor should perform promise in the manner or time specified by the promisee.

**AGREEMENT TO DO IMPOSSIBLE ACTS – SECTION 56**

1) An agreement to do an act impossible in itself is void.

2) Contract to do an act afterwards becoming impossible or unlawful –

A contract to do an act which, after the contract is made, becomes impossible or unlawful, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful.

3) In such cases, promisor should compensate promisee for any loss.

**Examples:**

a) A agrees with B to discover treasure by magic. The agreement is void

b) Hitesh and Makarand contract to marry each other. Before the time fixed for the marriage, Hitesh goes mad. The contract becomes void

c) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared

**CONTINGENT CONTRACT – SECTION 31-36**

A contract may be -

Absolute contract -	Contingent contract-
it is a type of contract where the promisor promises to the perform the contract without conditions. It is also known as unconditional contract	it is a type of contract where performace is dependant on some conditions which may happen or may not happen.

### A) Section 31 defines contingent contract as follows -

"a contract to do or not to do something if some event, collateral to such contract, does or does not happen"

#### Example -

Vasuli Bhai contracts to pay Bappi Bhai 5 lakh rupees if Bappi Bhai's house is burnt. This is a contingent contract.

Contracts of insurance, indemnity and guarantee are also example of contingent contracts.

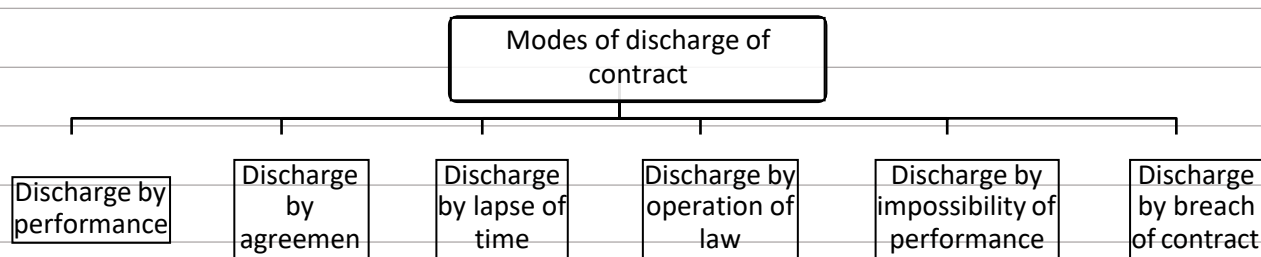
### B) Essentials of Contingent Contract -

- There must be a contract to do or not to do something
- The performance of the contract depends upon the happening or non-happening of some event in future
- The event must be uncertain (not fixed)
- The event must be collateral or incidental to the contract

## DISCHARGE OF CONTRACT -

### Meaning of Discharge of contract -

Discharge of contract means termination of contractual relationship between the parties. In simple words discharge of contract means that contract comes to an end.



### A) Discharge by performance -

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

## B) Discharge by agreement

The parties may agree to terminate the existence of the contract by any of the following ways:

### 1) Novation - Section 62

- a) Substitution of a new contract in place of the existing contract is known as "Novation of Contract".
- b) It discharges the original contract.
- c) The new contract may be between the same parties or between different parties.
- d) Novation can take place only with the consent of all the parties.

### 2) Alteration - Section 62

- a) Alteration means change in one or more of the terms of the contract.
- b) Alteration can take place only with the consent of all the parties

### 3) Rescission - Section 62

It means the cancellation of the contract.

### 4) Remission - Section 63

It means the acceptance of lesser fulfilment of the terms of the promise

**Example:** Salman has borrowed ` 500 from Aishwarya. Salman agrees to accept ` 250 from Aishwarya in satisfaction of the whole debt. The whole debt is discharged.

### 5) Waiver - Section 63

Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

**Example:** A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

### C) Discharge of a Contract by Lapse of Time -

If the promisor fails to perform and the promisee fails to take action within this specified period, then the promisee cannot seek remedy through law. It discharges the contract due to the lapse of time.

#### D) Discharge by operation of law -

A contract may be discharged by operation of law in the following cases -

##### 1) Death -

a) If contract involves personal skill then contract is discharged

b) If contract does not involve personal skill then the rights and liabilities of the deceased person will pass on to his legal representatives.

##### 2) Insolvency -

The insolvency of the promisor discharges the contract

##### 3) Unauthorized material alteration -

Material alteration in the terms of the contract without the consent of the other party discharges the contract.

##### 4) Merger -

When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end. Examples: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturer ship.

#### E) Discharge by breach of contract -

Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.

#### F) Discharge by impossibility of performance -

Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

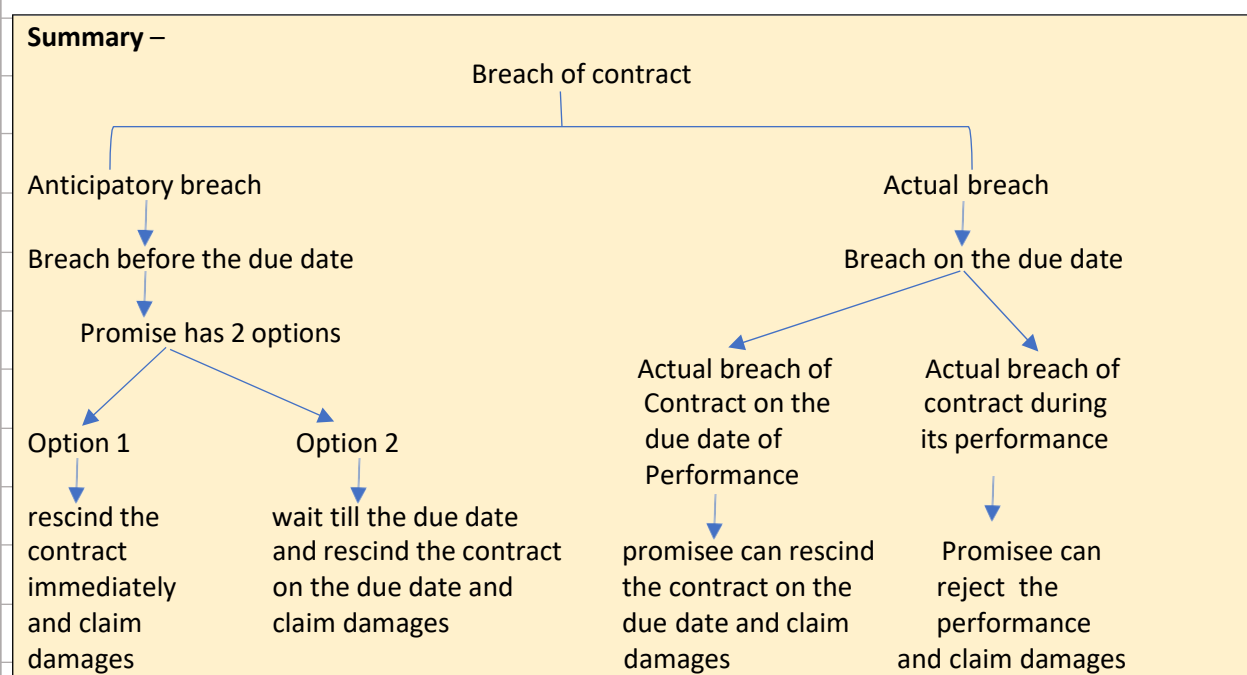
### BREACH OF CONTRACT AND REMEDIES FOR BREACH OF CONTRACT- SECTION 73-75

#### Meaning of breach of contract -

When a promise or agreement is broken by any of the parties, we call it a breach of contract. So

when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. **Breach of contract can be actual breach or anticipatory breach.**

### FOLLOWING ARE THE REMEDIES FOR THE BREACH OF CONTRACT –



#### A) **Rescession of Contract**

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

#### B) **Sue for Damages**

The party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business. There are two types of damages according to the Act,

- **Liquidated damages** - Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- **Unliquidated Damages** - Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

#### C) **Sue for Specific Performance**

*This means that the court may insist the person to perform the contract as per the agreement.*

**D) Injunction**

*An injunction is a court order restraining a person from doing a particular act.*

*So, a court may grant an injunction to stop a party of a contract from doing something he promised not to do.*

**E) Quantum Meruit**

*Quantum meruit literally translates to "as much is earned". At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit. So he must be paid a reasonable remuneration for the part of the contract he has already performed.*