

## UNIT 3 : OTHER ESSENTIAL ELEMENTS OF A CONTRACT

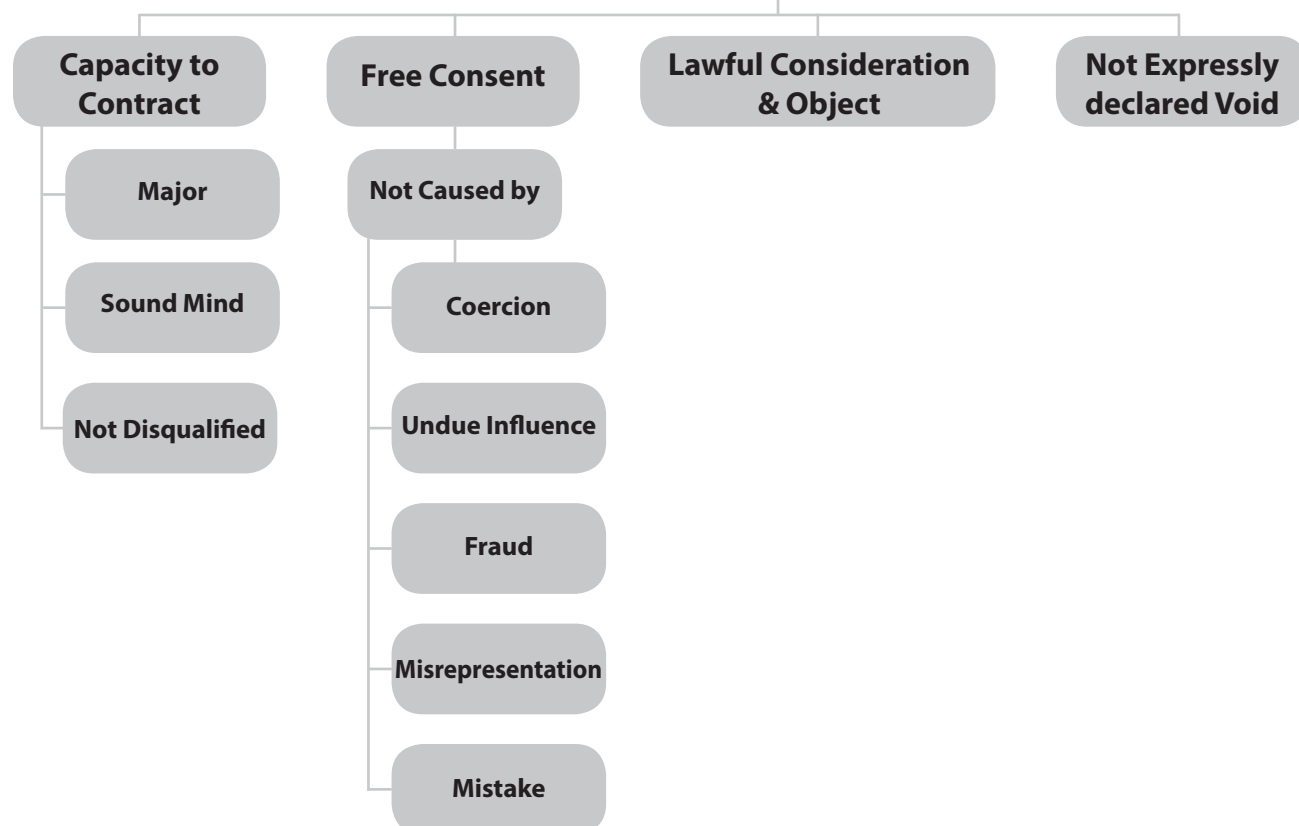
### LEARNING OUTCOMES

After studying this unit, you would be able to:

- ◆ Note the various ingredients of incapacity to contract.
- ◆ Be clear about the legal consequence of contracting with a minor.
- ◆ Be familiar with the concept of 'consensus ad idem' i.e. parties agreeing upon the same thing in the same sense.
- ◆ Try to grasp the characteristics of different elements vitiating free consent and particularly to distinguish amongst fraud, misrepresentation and mistake.
- ◆ Understand the circumstances when object and consideration become unlawful.
- ◆ Be aware of the agreements opposed to public policy.

### UNIT OVERVIEW

### Essential Elements of a Valid Contract



It has already been discussed that an agreement results from a proposal by one party and its acceptance by the other party. We have already discussed offer, acceptance and consideration in detail. We shall now discuss in detail the elements which constitute a valid contract enforceable in law.

Section 10 of the Indian Contract Act, 1872 provides that an agreement in order to be a contract, must satisfy the following conditions:

- (1) the parties must be competent to contract;
- (2) it must be made by the free consent of the parties;
- (3) it must be made for a lawful consideration and with a lawful object;
- (4) it should not have been expressly declared as void by law.

### 3.1 CAPACITY TO CONTRACT

**Meaning:** Capacity refers to the competence of the parties to make a contract. It is one of the essential element to form a valid contract.

#### **Who is competent to contract (Section 11)**

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

#### **Analysis of Section 11**

This section deals with personal capacity of three types of individuals only.

Every person is competent to contract who-

- (A) has attained the age of majority,
- (B) is of sound mind and
- (C) is not disqualified from contracting by any law to which he is subject.

**(A) Age of Majority:** In India, the age of majority is regulated by the Indian Majority Act, 1875.

Every person domiciled in India shall attain the age of majority on the completion of 18 years of age and not before. The age of majority being 18 years, a person less than that age even by a day would be minor for the purpose of contracting.

#### **Law relating to Minor's agreement/Position of Minor**

1. **A contract made with or by a minor is void ab-initio:** A minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

In the leading case of *Mohori Bibi vs. Dharmo Das Ghose (1903)*, “A, a minor borrowed ₹ 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to repayment of money.

It is especially provided in Section 10 that a person who is incompetent to contract cannot make a contract within the meaning of the Act.

- 2. No ratification after attaining majority:** A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

**Example:** X, a minor makes a promissory note in the name of Y. On attaining majority, he cannot ratify it and if he makes a new promissory note in place of old one, here the new promissory note which he executed after attaining majority is also void being without consideration.

- 3. Minor can be a beneficiary or can take benefit out of a contract:** Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

**Example:** A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

- 4. A minor can always plead minority:** A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defence.
- 5. Liability for necessities:** The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act. A claim for necessities supplied to a minor is enforceable by law. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

To render minor's estate liable for necessities two conditions must be satisfied.

- (i) The contract must be for the goods reasonably necessary for his support in the station in life.
- (ii) The minor must not have already a sufficient supply of these necessities.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles. Necessaries extend to all such things as reasonable persons would supply to an infant in that class of society to which the infant belongs. Expenses on minor's education, on funeral ceremonies come within the scope of the word 'necessaries'.

The whole question turns upon the minor's status in life. Utility rather than ornament is the criterion.

- 6. Contract by guardian - how far enforceable:** Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.

But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable Property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

- 7. No specific performance:** A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.

8. **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.
  9. **Partnership:** A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.
  10. **Minor can be an agent:** A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.
  11. **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 necessities. The parents will be held liable only when the child is acting as an agent for parents.
  12. **Joint contract by minor and adult:** In such a case, the adult will be liable on the contract and not the minor. *In Sain Das vs. Ram Chand*, where there was a joint purchase by two purchasers, one of them was a minor, it was held that the vendor could enforce the contract against the major purchaser and not the minor.
  13. **Surety for a minor:** In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party.
  14. **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.
  15. **Liability for torts:** A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only he was held liable when he lent the horse to one of his friends who jumped and killed the horse. Similarly, a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.
- (B) **Person of sound mind:** According to section 12 of Indian Contract Act, "a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests."

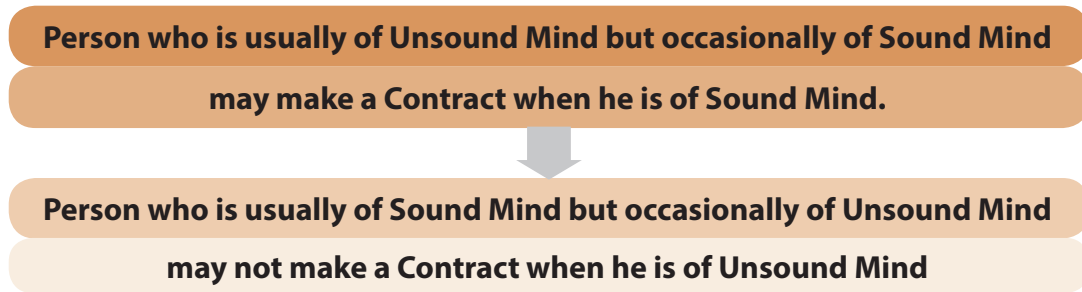
A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

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

**Example 1:** A patient in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.

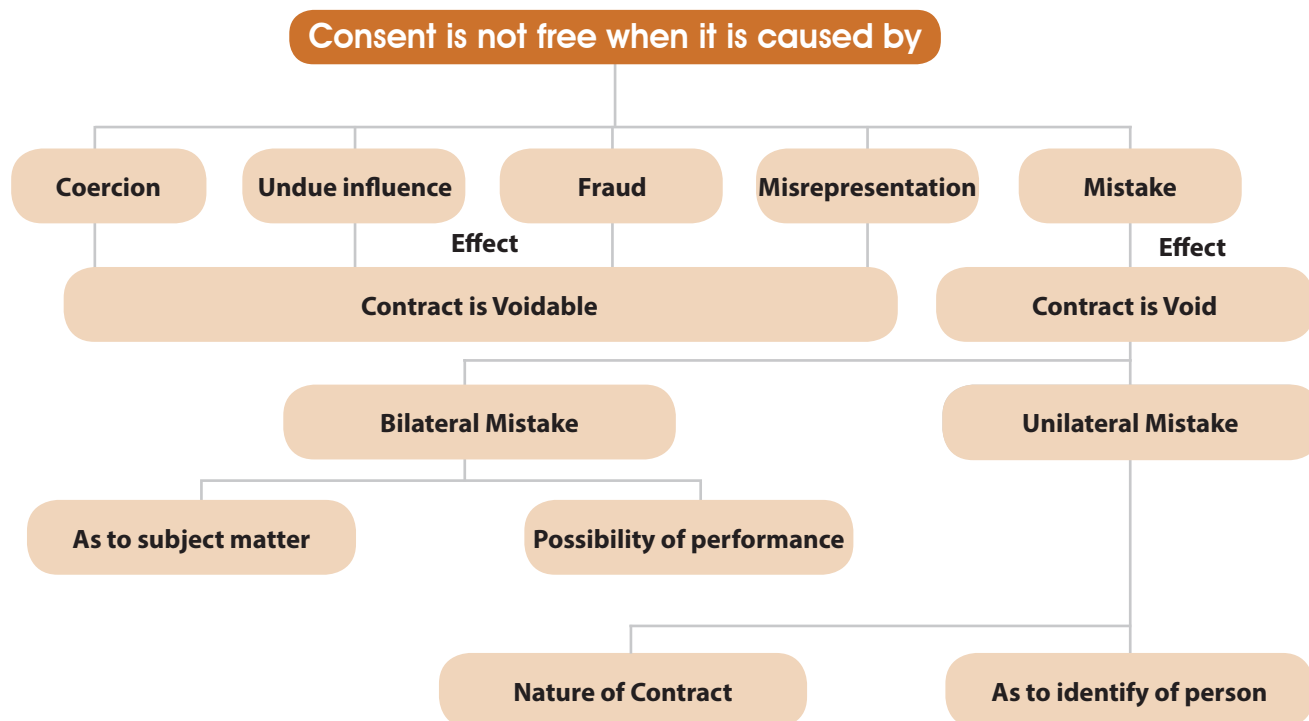
**Example 2:** A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

**Position of unsound mind person making a contract:** A contract by a person who is not of sound mind is void.



(C) **Contract by disqualified persons:** Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc. The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc.

### 3.2 FREE CONSENT



#### Definition of Consent according to Section 13:

**“two or more persons are said to consent when they agree upon the same thing in the same sense.”**

Parties are said to have consented when they not only agreed upon the same thing but also agreed upon that thing in the same sense. ‘Same thing’ must be understood as the whole content of the agreement. Consequently, when parties to a contract make some fundamental error as to the nature of the transaction, or as to the person dealt with or as to the subject-matter of the agreement, it cannot be said that they have agreed upon the same thing in the same sense. And if they do not agree in the same sense, there cannot be consent. A contract cannot arise in the absence of consent.

If two persons enter into an apparent contract concerning a particular person or ship, and it turns out that each of them, misled by similarity of name, had a different person or ship in his mind, no contract would exist between them as they were not ad idem, i.e., of the same mind. Again, ambiguity in the terms of an agreement, or an error as to the nature of any transaction or as to the subject-matter of any agreement may prevent the formation of any contract on the ground of absence of consent. In the case of fundamental error, there is really no consent whereas, in the case of mistake, there is no real consent.

As has been said already, one of the essential elements of a contract is consent and there cannot be a contract without consent. Consent may be free or not free. Only free consent is necessary for the validity of a contract.

#### **Definition of 'Free Consent' (Section 14)**

Consent is said to be free when it is not caused by:

1. Coercion, as defined in Section 15; or
2. Undue Influence, as defined in Section 16; or
3. Fraud, as defined in Section 17; or
4. Misrepresentation, as defined in Section 18 or
5. Mistake, subject to the provisions of Sections 20, 21, and 22.

When consent to an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. When the consent is vitiated by mistake, the contract becomes void.



### **3.3 ELEMENTS VITIATING FREE CONSENT**

We shall now explain these elements one by one.

#### **(I) Coercion (Section 15)**

“Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

#### **Analysis of Section 15**

The section does not require that coercion must proceed from a party to the contract; nor is it necessary that subject of the coercion must be the other contracting party, it may be directed against any third person whatever. Following are the essential ingredients of coercion:

- (i) Committing or threatening to commit any act forbidden by the India Penal Code; or
- (ii) the unlawful detaining or threatening to detain any property to the prejudice of any person whatever,
- (iii) With the intention of causing any person to enter into an agreement.
- (iv) It is to be noted that is immaterial whether the India Penal Code is or is not in force at the place where the coercion is employed.

### Effects of coercion under section 19 of Indian Contract Act, 1872

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 71)

**Example:** Where husband obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code. The threat of suicide amounts to coercion within Section 15.

### II Undue influence (Section 16)

According to section 16 of the Indian Contract Act, 1872, "A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other".

A person is deemed to be in position to dominate the will of another:

- (a) Where he holds a real or apparent authority over the other; or
- (b) Where he stands in a fiduciary relationship to the other; or
- (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 for example, an old illiterate person.

#### Example 1:

A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

#### Example 2:

A, a man enfeebled by disease or age, is induced by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

#### Example 3:

A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

#### Example 4:

A applies to a banker for a loan at a time when there is a stringency in money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

### Analysis of Section 16

**The essential ingredients under this provision are:**

- (1) **Relation between the parties:** A person can be influenced by the other when a near relation between

the two exists.

(2) **Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

(a) **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

**Example:** A father, by reason of his authority over the son can dominate the will of the son.

(b) **Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.

**Example:** By reason of fiduciary relationship, a solicitor can dominate the will of his client and a trustee can dominate the will of the beneficiary.

(c) **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

**Example:** A doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.

(d) **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

**Example:** A youth of 18 years of age, spend thrift and a drunkard, borrowed ₹ 90,000 on a bond bearing compound interest at 2% per mensem (p.m.). It was held by the court that the transaction is unconscionable, the rate of interest charged being so exorbitant [*Kirpa Ram vs. Sami-Ud-din Ad. Khan (1903)*]

(3) **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

(4) **Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

#### **Power to set aside contract induced by undue influence- (Section 19A)**

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

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 to the Court may seem just.

#### **Example 1:**

A, a money lender advances ₹ 1,00,000 to B, an agriculturist, and by undue influence induces B to execute a bond for ₹ 2,00,000 with interest at 6 percent per month. The court may set aside the bond, ordering B to repay ₹ 1,00,000 with such interest as may seem just.



**Case study:** A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher?

**Yes,** the student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

### (III) Fraud (Section 17)

**Definition of Fraud under Section 17:** '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 an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

### Explanation to Section 17

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

#### Example 1:

A sells, by auction, to B, a horse which A knows to be unsound, A says nothing to B about the unsoundness of the horse. This is not fraud by A.

#### Example 2:

B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

#### Example 3:

B says to A – "If you do not deny it, I shall assume that the horse is sound". A says nothing. Here A's silence is equivalent to speech.

#### Example 4:

A and B being traders, enter into a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

### Analysis of Section 17

The following are the essential elements of the fraud:

- (1) There must be a representation or assertion and it must be false. However, silence may amount to fraud or an active concealment may amount to fraud.
- (2) The representation must be related to a fact.

- (3) The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
- (4) The representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
- (5) The other party must have been induced to act upon the representation or assertion.
- (6) The other party must have relied upon the representation and must have been deceived.
- (7) The other party acting on the representation must have consequently suffered a loss.

**Effect of Fraud upon validity of a contract:** When the consent to an agreement is caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

- (1) He can rescind the contract within a reasonable time.
- (2) He can sue for damages.
- (3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

#### **Mere silence is not fraud**

A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly there is no duty to disclose facts which are within the knowledge of both the parties.

**Example:** H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W. Held there was no fraud. [*Word vs. Hobbs. (1878)*].

#### **Silence is fraud:**

1. **Duty of person to speak:** Where the circumstances of the case are such that it is the duty of the person observing silence to speak. For example, in contracts of *uberrimae fidei* (contracts of utmost good faith).

##### **Following contracts come within this category:**

- (a) **Fiduciary Relationship:** Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

**Example:** A broker was asked to buy shares for client. He sold his own shares without disclosing this fact. The client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith. (*Regier V. Campbell Staurt*)

- (b) **Contracts of Insurance:** In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.
- (c) **Contracts of marriage:** Every material fact must be disclosed by the parties to a contract of marriage (*Hazi Ahmed v. Abdul Gassi*).
- (d) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.

(e) **Share Allotment contracts:** Persons issuing 'Prospectus' at the time of public issue of shares/ debentures by a joint stock company have to disclose all material facts within their knowledge.

2. **Where the silence itself is equivalent to speech:** For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

In case of fraudulent silence, contracts is not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence (Exception to section 19)

#### (IV) Misrepresentation (Section 18)

##### Misrepresentation means and includes -

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any 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 any one claiming under him;
- (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

##### Analysis of Section 18

According to Section 18, there is misrepresentation:

- (1) statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- (2) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;
- (3) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

##### Example 1:

A makes a positive statement to B that C will be made the director of a company. A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The statement amounts to misrepresentation, because the information received second-hand did not warrant A to make the positive statement to B.

##### Example 2:

'A' believed the engine of his motor cycle to be in an excellent condition. 'A' without getting it checked in a workshop, told to 'B' that the motor cycle was in excellent condition. On this statement, 'B' bought the motor cycle, whose engine proved to be defective. Here, 'A's statement is misrepresentation as the statement turns out to be false.

**Difference between Coercion and Undue influence:**

Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure.
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party.	The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.

**Distinction between fraud and misrepresentation:**

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

**Legal effects of agreements without free consent - (Section 19)**

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was so caused by fraud or 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.

**Exception** - If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

**Explanation to Section 19** - A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practiced, or to whom such misrepresentation was made, does not render a contract voidable.

**Example:** A, intending to deceive B, falsely represents that 500 maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B. This is because when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

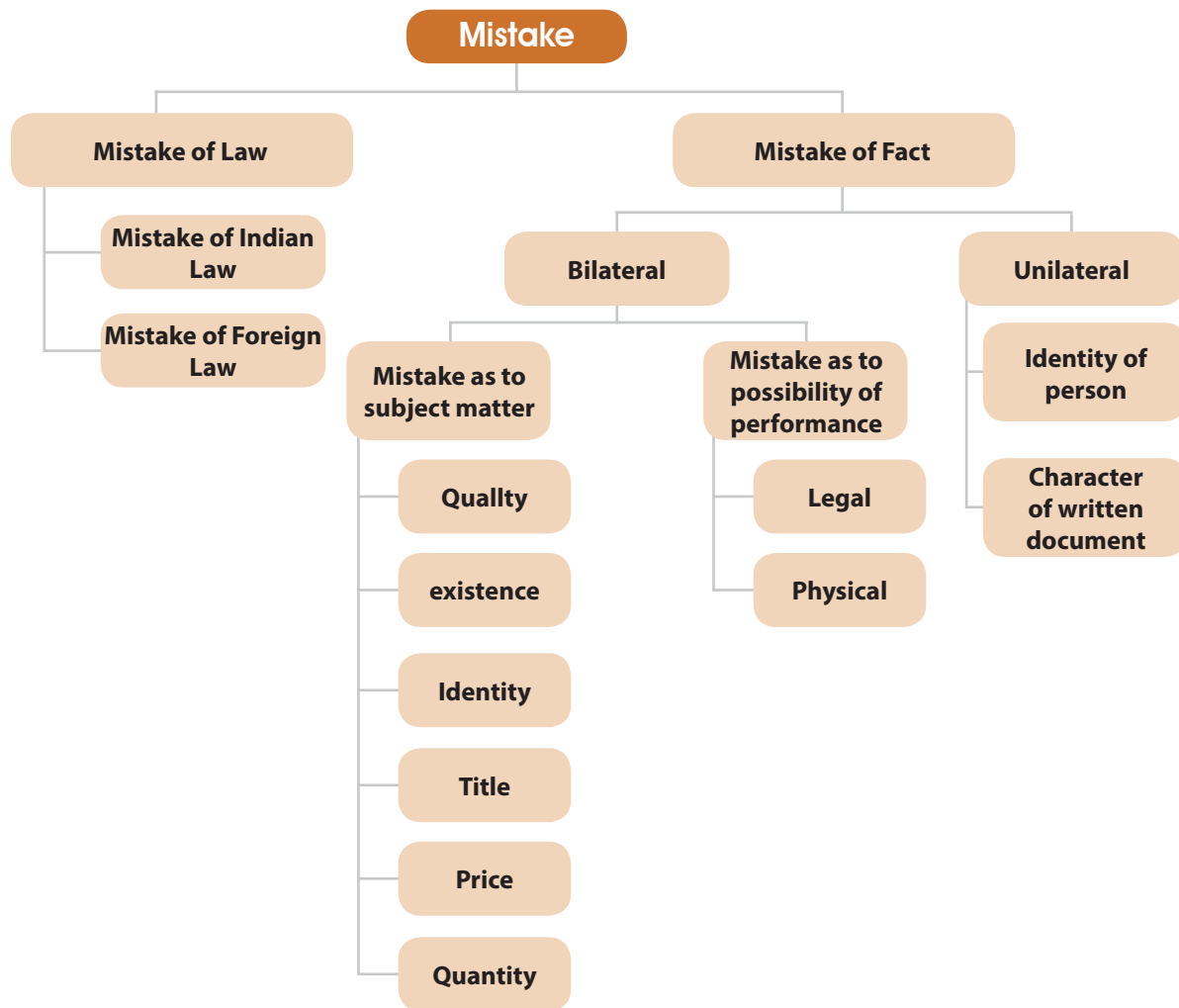
**Analysis of Section 19**

It has already been considered that when consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, though the agreement amounts to a contract, such a contract is voidable at the option of the party whose consent was so obtained. The party, however, may insist that the contract should be performed and that he should be put in the same position in which he would have been, if the representation made had been true.

But a person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation or silence amounting to fraud.

**Example:** A by a misrepresentation leads B to believe erroneously that 750 tons of sugar is produced per annum at the factory of A. B examines the accounts of the factory, which should have disclosed, if ordinary diligence had been exercised by B, that only 500 tons had been produced. Thereafter B purchases the factory. In the circumstance, B cannot repudiate the contract on the ground of A's misrepresentation.

Where a party to a contract commits fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the later. **(Explanation to Section 19).** Thus, when a seller of specific goods deliberately conceals a fault in order that the buyer may not discover it even if he inspects the goods but the buyer does not in fact, make any inspection, the buyer cannot avoid the contract, as he is not in fact deceived by the conduct of the seller.



**Mistake:** Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral.

Bilateral mistake is when both the parties to a contract are under a mistake.

Unilateral mistake is when only one party to the contract is under a mistake.

**Effect of mistake on validity of a contract:**

Mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence. It may be of two kinds-



It is essential for the creation of a contract that both the parties should agree to the same thing in the same sense. Thus, if two persons enter into a contract, each of them thinking about a different subject matter,

no contract will arise. As a result, a mistake may lead a contract towards voidness. Its effect can be broadly studied as under:

- (i) **Mistake of Law:** A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake.
- (ii) **Mistake of fact:** Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

**Example:** A offers to sell his Ambassador Car to B, who believes that A has only Fiat Car, agrees to buy the car. Here, the two parties are thinking about different subject matter so that there is no real consent and the agreement is void.



### 3.4 LEGALITY OF OBJECT AND CONSIDERATION

**Which considerations and objects are lawful, and those which are not (Section 23):**

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

1. It is forbidden by law; or
2. Is of such a nature that, if permitted, it would defeat the provisions of any law; or
3. Is fraudulent; or
4. Involves injury to the person or property of another; or
5. The court regards it as immoral; or
6. 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.

**In the following examples, the agreement is void because the object is unlawful:**

- (1) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud is unlawful.
- (2) A promises to B to abandon a prosecution which he had instituted against B for robbery and B promises in lieu thereof to restore the value of the property robbed. The agreement is void as its object, namely, the stifling of prosecution, is unlawful.

Section 10 of the Indian Contract Act provides for the legality of consideration and objects thereto. Section 23 of the Act also states that every agreement of which the object or consideration is unlawful is void.

The following is an **example** of the agreement which is void because of unlawful consideration.

A promises to obtain for B an employment in the public service and B promises, in return, to pay ₹1,00,000

to A. The agreement is void, as the consideration thereof is unlawful. Here A's promise to procure for B an employment in the public services is the consideration for B's promise to pay ₹1,00,000. The consideration, being opposed to public policy, is unlawful.

Under Section 23 of the Indian Contract Act, in each of the following cases the consideration or object of an agreement is said to be unlawful:

- (i) **When consideration or object is forbidden by law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.

**Example:** A licence to cut grass is given to X by the Forest Department under the Forest Act. One of the terms of licence is that the licensee should not assign his interest under the licence without the permission of the Forest Officer, and a fine is prescribed for a breach of this condition. But the observance of the conditions of the licence is not obligatory under the Forest Act. If A in breach of the condition, agrees to assign his interest under the licence to B, that agreement will be valid. Here, the assignment is not prohibited by law, the condition against assignment has been imposed only for administrative purpose or solely for the protection of revenue.

- (ii) **When consideration or object defeats the provision of law:** The words '**defeat the provisions of any law**' must be taken as limited to defeating the intention which the law has expressed. The court looks at the real intention of the parties to an agreement. If the intention of the parties is to defeat the provisions of law, the court will not enforce it.

Legislative enactment would be defeated by an agreement by a debtor not to plead limitation, as the object is to defeat the provisions of the Limitation Act. The Hindu Law is defeated by an agreement to give son in adoption in consideration of annual allowance to the natural parents.

- (iii) **When it is fraudulent:** Agreements which are entered into to promote fraud are void. For example, an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the price of the goods so sold, cannot be recovered.

- (iv) **When consideration defeats any rule for the time being in force in India.**

- (v) **When consideration involves injury to the person or property of another:** The general term "injury" means criminal or wrongful harm. In the following examples, the object or consideration is unlawful as it involves injury to the person or property of another.

- (1) An agreement to print a book in violation of another's copyright is void, as the object is to cause injury to the property of another. It is also void as the object of the agreement is forbidden by the law relating to copyright.
- (2) A promises to repay his debt by doing manual labour daily for a special period and agrees to pay interest at an exorbitant rate in case of default. Here A's promise to repay by manual labour is the consideration for the loan, and this consideration is illegal as it imposes what, in substance, amounts to slavery on the part of A. In other words, as the consideration involves injury to the person of A, the consideration is illegal. Here, the object too is illegal, as it seeks to impose slavery which is opposed to public policy. Hence, the agreement is void.

- (vi) **When consideration is immoral:** The following are the examples of agreements where the object or consideration is unlawful, being immoral.

- (1) A landlord cannot recover the rent of a house knowingly let to prostitute who carries on her vocation there. Here, the object being immoral, the agreement to pay rent is void.



- (2) Where P had advanced money to D, a married woman to enable her to obtain a divorce from her husband and D had agreed to marry him as soon as she could obtain the divorce, it was held that P was not entitled to recover the amount, since the agreement had for its object the divorce of D from her husband and the promise of marriage given under these circumstances was against good morals.

**(vii) When consideration is opposed to public policy:** The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community. In law, public policy covers certain specified topics, e.g., trading with an enemy, stifling of prosecutions, champerty, maintenance, interference with the course of justice, marriage brokerage, sales of public offices, etc. Agreements tending to create interest against duty, agreements tending to create monopolies and agreements not to bid at an auction are also opposed to public policy. An attempt to enlarge the scope of the doctrine is bound to result in the curtailment of individual freedom of contract.

### **Agreements opposed to public policy**

Some of the agreements which are held to be opposed to public policy are-

- (1) **Trading with enemy:** Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.
- (2) **Stifling Prosecution:** An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal. Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy. Thus, where A agrees to sell certain land to B in consideration of B abstaining from taking criminal proceeding against A with respect to an offence which is compoundable, the agreement is not opposed to public policy. But, it is otherwise, if the offence is uncompoundable.
- (3) **Maintenance and Champerty:** Maintenance is an agreement in which a person promises to maintain suit in which he has no interest.

*Champerty* is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.

The agreement for supplying funds by way of Maintenance or Champerty is valid unless

- (a) It is unreasonable so as to be unjust to other party or
- (b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

**(4) Traffic relating to Public Offices:** An agreement to traffic in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

- (1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

**(5) Agreements tending to create monopolies:** Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

**(6) Marriage brokerage agreements:** An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. For instance, an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.

Note: Marriage bureau only provides information and doesn't negotiate marriage for reward, therefore, it is not covered under this point.

**(7) Interference with the course of justice:** An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy; so also is an agreement by A to reward B, who is an intended witness in a suit against A in consideration of B's absencing himself from the trial. For the same reasons, an agreement which contemplates the use of under-hand means to influence legislation is void. Similarly, an agreement to induce any executive officer of the State to act partially or corruptly is void.

**(8) Interest against obligation:** The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

- (1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.
- (2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ₹200,000 privately; the agreement is void.

**(9) Consideration Unlawful in Part:** By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

**Example:** A promises to superintend, on behalf of B, a legal manufacturer of indigo and an illegal traffic in other articles. B promises to pay A salary of ₹ 20,000 per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

## 3.5 VOID AGREEMENTS

### Expressly declared Void Agreements

1. Made by incompetent parties (Section 11)	6. Agreement in restraint of marriage (Section 26)
2. Agreements made under Bilateral mistake of fact (Section 20)	7. Agreements in restraint of trade (Section 27)
3. Agreements the consideration or object of which is unlawful (Section 23)	8. Agreement in restraint of legal proceedings (Section 28)
4. Agreement the consideration or object of which is unlawful in parts (Section 24)	9. Agreement the meaning of which is uncertain (Section 29)
5. Agreements made without consideration (Section 25)	10. Wagering Agreement (Section 30)
[Refer Unit 2]	11. Agreements to do impossible Acts (Section 56)

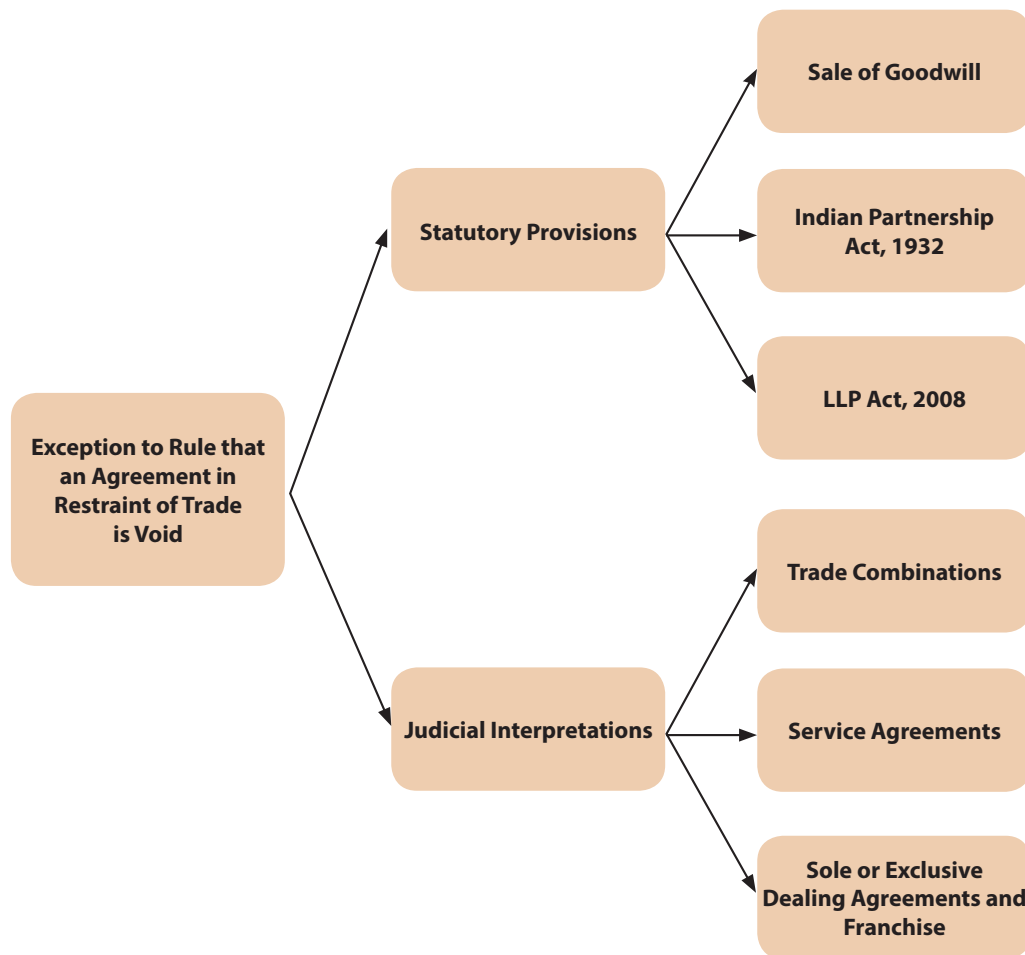
- (1) **Agreement in restraint of marriage (Section 26):** Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding and considered as void agreement.
- (2) **Agreement in restraint of trade (Section 27):** An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable. Under Section 36 of the Indian Partnership Act, 1932 if an outgoing partner makes an agreement with the continuing 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 an agreement, thought in restraint of trade, will be valid, if the restrictions imposed are reasonable. Similarly, under Section 11 of that Act an agreement between partners not to carry on competing business during the continuance of partnership is valid.

But an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

**Example 1:** B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.

**Example 2:** An agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade.

**Example 3:** Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price is not an agreement in restraint of trade.



**(3) Agreement in restraint of legal proceedings (Section 28):** An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

However, there are certain exceptions to the above rule:

- (i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract.
- (ii) Similarly, a contract by which the parties agree to refer to arbitration any question between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing.

**4. Agreement - the meaning of which is uncertain (Section 29):** An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.

**Example:** A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

- 5. Wagering agreement (Section 30):** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

**Example:** A agrees to pay ₹ 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

#### Essentials of a Wager

1. There must be a promise to pay money or money's worth.
2. Promise must be conditional on an event happening or not happening.
3. There must be uncertainty of event.
4. There must be two parties, each party must stand to win or lose.
5. There must be common intention to bet at the timing of making such agreement.
6. Parties should have no interest in the event except for stake.

#### Transactions similar to Wager (Gambling)

- (i) **Lottery transactions:** A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager. Even if the lottery is sanctioned by the Government of India it is a wagering transaction. The only effect of such sanction is that the person responsible for running the lottery will not be punished under the Indian Penal Code. Lotteries are illegal and even collateral transactions to it are tainted with illegality (Section 294A of Indian Penal Code).
- (ii) **Crossword Puzzles and Competitions:** Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.

#### Case Law: *State of Bombay vs. R.M.D. Chamarbangwala AIR (1957)*

**Facts:** A crossword puzzle was given in magazine. Abovementioned clause was stated in the magazine. A solved his crossword puzzle and his solution corresponded with previously prepared solution kept with the editor. Held, this was a game of chance and therefore a lottery (wagering transaction).

Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid. According to the Prize Competition Act, 1955 prize competitions in games of skill are not wagers provided the prize money does not exceed ₹ 1,000.

- (iii) **Speculative transactions:** an agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day, is a gambling and hence void.
- (iv) **Horse Race Transactions:** A horse race competition where prize payable to the bet winner is less than ₹ 500, is a wager.

**Example:** A and B enter into an agreement in which A promises to pay ₹ 2,00,000 provided 'Chetak' wins the horse race competition. This is a wagering transaction.

However, Section 30 is not applicable in an agreement to contribute toward plate, prize or sum of money of the value of ₹5,00,000 or above to be awarded to the winner of a horse race.

### Transactions resembling with wagering transaction but are not void

- (i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- (ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹ 1,000.
- (iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

### Distinction between Contract of Insurance and Wagering Agreement

	Basis	Contracts of Insurance	Wagering Agreement
1.	Meaning	It is a contract to indemnify the loss.	It is a promise to pay money or money's worth on the happening or non happening of an uncertain event.
2.	Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
3.	Insurable Interest	Insured party has insurable interest in the life or property sought to be insured.	There is no property in case of wagering agreement. There is betting on other's life and properties.
4.	Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5.	Enforceability	It is valid and enforceable	It is void and unenforceable agreement.
6.	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in case of wagering agreement.
7.	Public Welfare	They are beneficial to the society.	They have been regarded as against the public welfare.



## SUMMARY

The following persons are incompetent to contract: (a) minor, (b) persons of unsound mind, (c) other disqualified persons.

- (a) **Minor:** Agreement with a minor is altogether void but his property is liable for necessities supplied to him. He cannot be a partner but can be admitted to benefits of partnership with the consent of all partners. He can always plead minority and cannot be asked to compensate for any benefit received under a void agreement. Under certain circumstances, a guardian can enter into valid contract on behalf of minor. Minor cannot ratify a contract on attaining majority.
- (b) **Persons of unsound mind:** Persons of unsound mind such as idiots, lunatics and drunkers cannot enter into a contract, but a lunatic can enter into a valid contract when he is in a sound state of mind. The liability for necessities of life supplied to persons of unsound mind is the same as in case of minors. (Section 68).
- (c) Certain other persons are disqualified due to their status.

### Free Consent

Two or more persons are said to consent when they agree upon the same thing in the same sense (Section 13). Consent is free when it is not caused by mistake, misrepresentation, undue influence, fraud or coercion. When consent is caused by any of above said elements, the contract is voidable at the option of the party whose consent was so caused (Sections 19 and 19A)

- (a) **Coercion:** Coercion is the committing or threatening to commit any act, forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person with the intention of causing any person to enter into an agreement (Section 15). A contract induced by coercion is voidable at the option of the aggrieved party.
- (b) **Undue influence:** When one party to a contract is able to dominate the will of the other and uses the position to obtain an unfair advantage, the contract is said to be induced by undue influence. (Section 16). Such contract is voidable, not void.
- (c) **Fraud:** Fraud exists when a false representation has been made knowingly with an intention to deceive the other party, or to induce him to enter a contract (Section 17). Contract in the case is voidable.
- (d) **Misrepresentation:** Means a misstatement of a material fact made believing it to be true, without an intent to deceive the other party (Section 18). Contract will be voidable in this case.
- (e) **Mistake:** When both the parties are at a mistake to a matter of fact to the agreement, the agreement is altogether void.

### Lawful Object and Consideration

An agreement where the object or the consideration is unlawful, is void. Object or consideration is unlawful if it is forbidden by law, it defeats the provisions of law; or is fraudulent, or involves injury to the person or property of another; or is immoral; or is opposed to public policy.

Besides the above said agreements, certain agreements have been expressly declared to be void by the Contract Act such as - wagering agreements, agreement with uncertain meaning, agreements where consideration is unlawful in part etc.

 ... **TEST YOUR KNOWLEDGE****Multiple Choice Questions**

1. Ordinarily, a minor's agreement is
  - (a) Void ab initio
  - (b) Voidable
  - (c) Valid
  - (d) Unlawful
2. Consent is not said to be free when it is caused by
  - (a) Coercion
  - (b) Undue influence
  - (c) Fraud
  - (d) All of these
3. When the consent of a party is obtained by fraud, the contract is;
  - (a) Void
  - (b) Voidable
  - (c) Valid
  - (d) Illegal
4. The threat to commit suicide amounts to
  - (a) Coercion
  - (b) Undue influence
  - (c) Misrepresentation
  - (d) Fraud
5. Moral pressure is involved in the case of
  - (a) Coercion
  - (b) Undue Influence
  - (c) Misrepresentation
  - (d) Fraud
6. A wrong representation when made without any intention to deceive the other party amounts to
  - (a) Coercion
  - (b) Undue influence
  - (c) Misrepresentation
  - (d) Fraud
7. Which of the following statement is true?
  - (a) A threat to commit suicide does not amount to coercion
  - (b) Undue influence involves use of physical pressure
  - (c) Ignorance of law is no excuse
  - (d) Silence always amounts to fraud
8. In case of illegal agreement the collateral agreements are:
  - (a) Valid
  - (b) Void
  - (c) Voidable
  - (d) Any of these
9. An agreement the object or consideration of which is unlawful, is
  - (a) Void
  - (b) Valid
  - (c) Voidable
  - (d) Contingent



10. An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy.

- (a) Trading with an enemy                      (b) Trafficking in public offices  
(c) Marriage brokerage contracts      (d) Contracts to do impossible acts.

**Answers: to MCQs**

1	(a)	2	(d)	3	(b)	4	(a)	5	(b)	6	(c)	7	(c)	8	(b)	9	(a)	10	(d)
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**Theoretical Questions**

**Question 1:** "Mere silence does not amount to fraud". Discuss.

**Question 2:** "Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.

**Question 3:** "An agreement, the meaning of which is not certain, is void". Discuss.

**Question 4:** Who are disqualified persons to do the contract?

**Answer to the Theoretical Questions**

1. **Mere silence not amounting to fraud:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

**Exceptions to this rule:**

- (i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

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

2. **Minor can be a beneficiary or can take benefit out of a contract:** Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

**Example:** A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

- 3. Agreement - the meaning of which is uncertain (Section 29):** An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.
- 4. Contract by disqualified persons:** Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc. The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc.