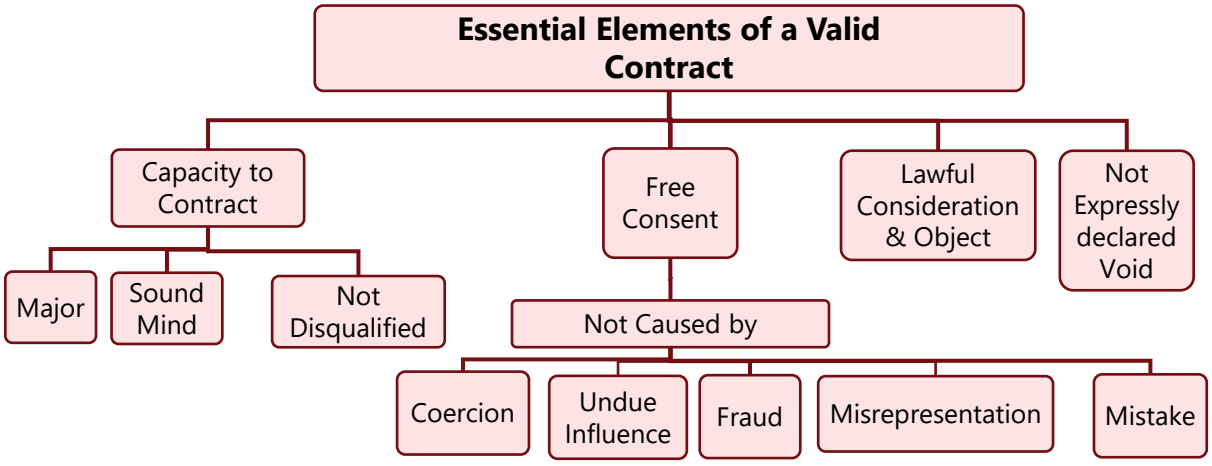
UNIT-3: OTHER ESSENTIAL ELEMENTS OF A CONTRACT

LEARNING OUTCOMES

After studying this Chapter, you will be able to understand:

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

UNIT OVERVIEW



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 elements to form a valid contract.

Who is competent to contract (Section 11)

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),*** ""Mr. D a minor, mortgaged his house for Rs. 20,000 to money lender, but the mortgagee i.e. money lender has paid him Rs. 8,000. Subsequently the minor

had filed a suit for cancellation of contract. Held the contract is void as Mr. D is minor and therefore he is not liable to pay anything to lender."

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 1: X, a minor makes a promissory note in favour 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 the minor from making the other party bound to him. 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 2: 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.

Example 3: A, a minor has falsely induced himself as major and contracted with Mr. X for loan of ₹ 20,000. When Mr. X asked for the repayment A denied to pay. He pleaded that he was a minor so cannot enter into any contract. Held, A cannot be held liable for repayment of amount. However, if he has not spent the same, he may be asked to repay it but the minor shall not be liable for any amount which he has already spent even though he received the same by fraud. Thus, a minor can always plead minority and is not estopped from doing so even where he had produced a loan or entered into some other contract by falsely representing that he was of full age, when in reality he was a minor.

5. **Liability for necessaries:** The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by

section 68 of the Indian Contract Act. A claim for necessaries supplied to a minor is enforceable by law. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.

To render minor's estate liable for necessaries 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 necessaries.

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.

Example 4: Shruti being a minor purchased a laptop for her online classes of ₹ 70,000 on credit from a shop. But her assets could pay only ₹ 20,000. The shop keeper could not hold Shruti personally liable and could recover only amount recoverable through her assets i.e. upto ₹ 20,000.

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 contact 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 shall never be held 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.

Example 5: A minor can have an account in the bank. He can draw a cheque for his purchases. But he shall not be liable for cheque bounces nor can he be sued under court of law for any fraud done from his account.

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 necessaries. The parents will be held liable only when the child is acting as an agent for parents.

Example 6: Richa a minor entered into contract of buying a scooty from the dealer and mentioned that her parents will be liable for the payment of scooty. The dealer sent a letter to her parents for money. The parents will not be liable for such payment as the contract was entered by a minor in their absence and out of their knowledge.

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 (Guarantor) 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.

Example 7: Mr. X guaranteed for the purchase of a mobile phone by Krish, a minor. In case of failure for payment by Krish, Mr. X will be liable to make the payment.

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 though 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.

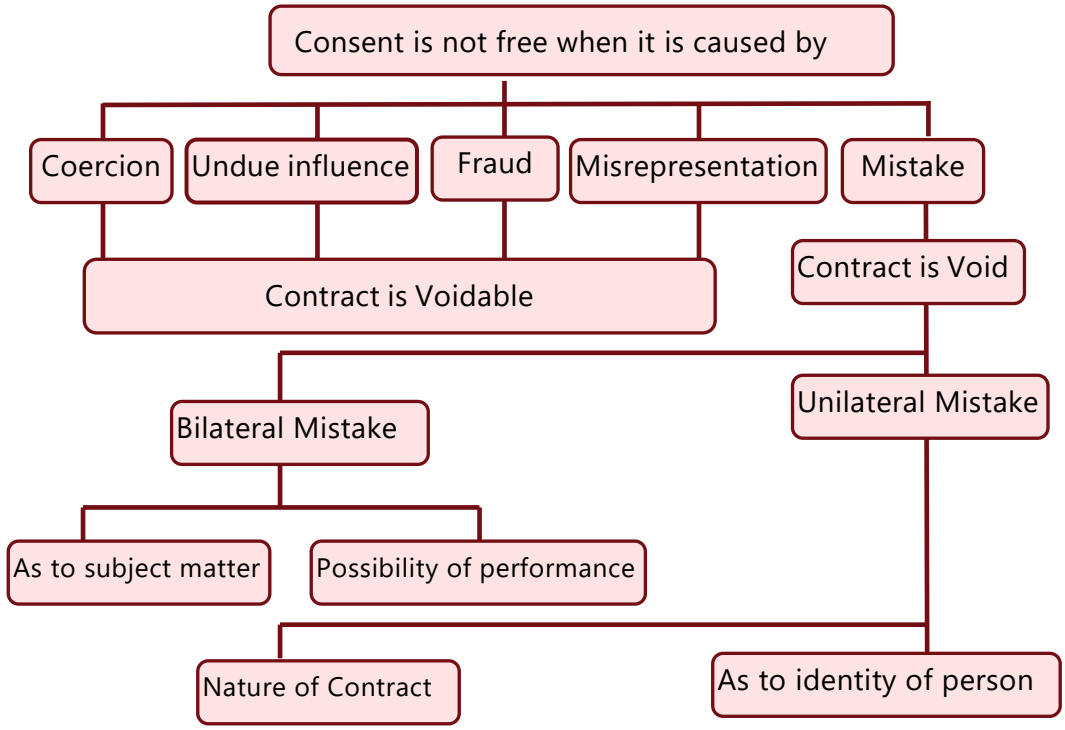
Example 8: A patient in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.

Example 9: 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."

It is to be noted that 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.

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) A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 72)

Threat to commit suicide – Whether is it coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 declares that committing or threatening to commit any act

forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

Example 10: 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.

Example 11: An agent refused to give books of accounts to the principal unless he frees him from all his liabilities. The principal had to give the release deed. Held, the contract was under coercion by unlawful detaining of the principal's property.

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".

Example 12: 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.

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 13: 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 14: By reason of fiduciary relationship, a solicitor can dominate the will of his client and a trustee can dominate the will of the beneficiary.

Example 15: A spiritual guru induced his devotee to gift to him the whole of his property in return of a promise of salvation of the devotee. Held, the consent of the devotee was given under undue influence. Here, the

relationship was fiduciary relationship between Guru and devotee and Guru was in a position to dominate the will of devotee.

(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 16: 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 17: 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 18: 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.

(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.

Example 19: A teacher asks her daughter to get marry to one of his brilliant students. Both the girl and boy were smart, settled and intelligent. Here the teacher had a relation which can have influence on both of them. But as no undue advantage of such influence was taken such contract of marriage is said to be made by free consent.

(4) ***Burden of proof:*** When a party to contract decides to avoid the contract on the ground of undue influence, he has to prove that-

(a) The other party is in position to dominate his will,

(b) the other party actually used his position to obtain his consent,

(c) transaction is unfair or unconscionable.

Effect of undue influence- (Section 19A)

(i) 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.

(ii) 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 20: 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.

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.

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.

Whether Silence is fraud or not?

As per explanation of section 17, silence is fraud in following situations:

(a) There is duty to speak.

Example 21: A sell, 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 22: In the above example, B is A's daughter. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(b) When silence is equal to speech.

Example 23: 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.

(2) The representation must be related to a fact.

Example 24: 'A' who is about to sell goods says that goods cost him Rs. 50,000. This is statement of fact. But if he says the goods are worth Rs. 50,000, it is a statement of opinion.

(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.

Example 25: 'A' bought shares in a company on the faith of a prospectus which contained an untrue statement that 'B' was a director of the company. 'A' had never heard of 'B' and, therefore, the statement was immaterial from his point of view. A's claim for damages in this case was dismissed because the untrue statement had not induced 'A' to buy the shares.

(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 in 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.

Exception: In the following cases, contract is not voidable:

(i) If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.

(ii) A fraud which did not cause the consent of the party to agreement.

IV Misrepresentation (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 26: 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 27: '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.

Example 28: A while selling his mare to B, tells him that the mare is thoroughly sound. A genuinely believes the mare to be sound although he has no sufficient ground for the belief. Later on, B finds the mare to be unsound. The representation made by A is a misrepresentation.

Example 29: A buy an article thinking that it is worth ₹ 1000 when in fact it is worth only ₹ 500. There has been no misrepresentation on the part of the seller. The contract is valid.

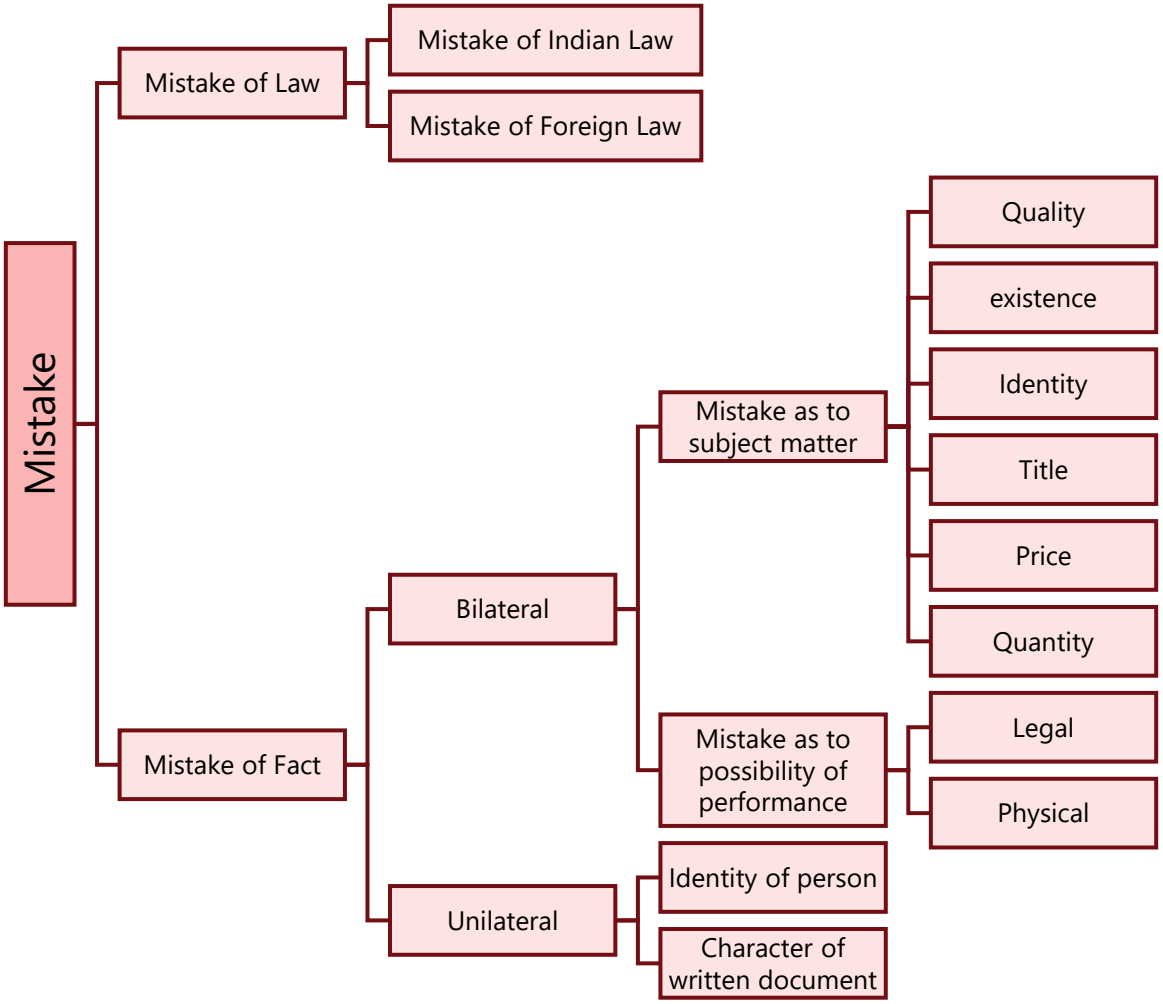
Difference between Coercion and Undue influence:

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	No such illegal act is committed or a threat is given.

	threatening to detain property unlawfully.	
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.



Mistake: Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either mistake of law or mistake of fact.

Mistake of Law: Mistake of law is further classified as mistake of Indian law or mistake of foreign law.

(i) Mistake of Indian Law: A person cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.

Example 30: A and B enter into a contract on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. This contract is not voidable.

(ii) Mistake of foreign law: Such a mistake is treated as mistake of fact and the agreement in such a case is void.

Mistake of fact: Mistake of fact are of two types – (i) Bilateral Mistake, (ii) Unilateral Mistake

(i) Bilateral mistake: Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void (Section 20).

Cases of Bilateral Mistakes

(i) Mistake as to the quality of the subject-matter.

(ii) Mistake as to the existence of the subject-matter.

(iii) Mistake as to the identity of the subject-matter.

(iv) Mistake as to the title of the subject-matter.

(v) Mistake as to the price of the subject-matter.

(vi) Mistake as to the quantity of the subject-matter.

(ii) Unilateral Mistake: According to Section 22, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

3.4 LEGALITY OF OBJECT AND CONSIDERATION

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

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 31: A father had arranged for marriage of his 17 years boy and took dowry from the girl's parents. Such marriage contract cannot take place as in India the minimum age for boy marriage is 21 years and dowry is not permissible in Indian law. Such is not a valid contract as the consideration and object both are forbidden by law.

(ii) When consideration or object are of such a nature that if permitted it would defeats the provisions of law:

If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law, the agreement is void.

Example 32: A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(iii) **When it is fraudulent:** Agreements which are entered into to promote fraud are void.

Example 33: 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.

(iv) 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.

Example 34: 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.

Example 35: 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 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.

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

Example 36: 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.

Example 37: A asks B, "If you arrange a girl for marriage with me, I will give ₹ 50,000." Here contract is void as it is immoral.

(vi) **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.

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.

Example 38: India entered in war like situation with China. Mr. A from India entered into contract with China for import of toys. Such contract is void as China is alien enemy of India. The contract if made before such war like situation may be suspended or dissolved. Like India felt apps like tik tok and PUBG will provide some internal information of the country, hence such apps were banned and any contract with them were dissolved.

(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.

Example 39: A offer B ₹ 2000, if he sues C for a case which they could have settled mutually under provisions of law, just to annoy C. Such agreement is maintenance agreement.

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.

Example 40: A agrees to pay expenses to B if he sues C and B agrees to pay half of the amount received from result of such suit. This is an agreement of champerty. 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) Trafficking relating to Public Offices and titles: An agreement to trafficking 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.

Example 41: Harish paid ₹ 15000 to the officer to give his son the job in the Forest department of India. On failure by officer he couldn't recover the amount as such contract amounts to trafficking in public office which is opposed to public policy.

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

Example 42: XYZ and ABC were only the manufactures of oxygen cylinders in West Bengal. They both entered into contract of supplying the same at very high rates and enjoy the monopoly rates during the covid period in the country. Such contract is opposed to public policy as they intended to create monopolies.

(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 absenting himself from the trial. For the same reasons, an agreement which contemplates the use of under-hand means to influence legislation 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.

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 43: 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 44: 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 45: Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price to maintain the quality of the product, 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 46: 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 47: 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 48: 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 not 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 ₹ 500 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 necessaries 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 drunker 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.

Minor: Sec.3 Indian Majority Act, 1875: Minor who is under 18 years.

Position of a contract with Minor

1.Agreement with or by minor is void-ab-initio agreement 2. Cannot be ratified on attaining majority. 3.Minor can be a beneficiary or can take benefit out of a contract. 4.Minor can always plead minority. 5.Minor's estate is liable for necessaries. 6.Minor is personally liable for contracts for his benefit or supply of necessaries entered by guardian within scope of authority. 7. No specific performance can be claimed. 8. Minor cannot be adjusted insolvent. 9.Minor cannot enter into partnership.	10. Minor can be an agent without incurring any personal liability. 11. Parents/guardians are not liable for the contract entered into by him. 12. In case of joint contract by adult and minor, only adult is liable. 13. If adult is surety for minor, adult is liable as direct contract between adult and third party. 14. Shares cannot be allotted to minor but minor can become a shareholder by transfer or transmission of fully paid shares to him. 15. Minor is Liable for torts.

1. Contract with person of unsound mind is void.
2. Person usually Unsound. sometimes sound - can contract when sound.
3. Person usually sound. sometimes unsound - cannot contract when unsound.

Disqualified by Law

1. Foreign sovereigns (Rulers)
2. Alien Enemy
3. Corporations
4. Convicts.

CONSENT & FREE CONSENT

Consent: "Two or more persons are said to consent when they agree upon the same thing in the same sense." (Consensus-ad-idem). When there is no consent, there is no contract.

Free Consent (Sec.14): Consent is said to be free when it is not caused by

Coercion (Sec. 15)

(i) Committing or threatening to commit any act forbidden by IPC

(ii) Unlawful detaining or threatening to detain any property.

Consequences

(i) Voidable at the option of party whose consent was so caused.

(ii) Person to whom money is paid or thing delivered under coercion must repay or return it.

Burden of Proof

Lies on the aggrieved party

Note: Threat to commit suicide is coercion

Undue Influence (Sec. 16)

One party is in the position to dominate the will of other and it takes unfair advantages of relation.

Consequences

(i) Voidable at the option of party whose consent was so caused.

(ii) Such contract may be set aside either absolutely or if the party who is entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just and equitable.

Burden of Proof

Firstly, Lies on the aggrieved party after that other party has to prove that no undue influence.

Fraud (Sec. 17)

(i) Knowingly make a false suggestion.

(ii) Active concealment of a fact

(iii) Promise without any intention of performance.

(iv) Any other act fitted to deceive.

(v) Act or omission declared by law as fraud.

Essentials

(i) The representation must be false.

(ii) Misrepresentation must be made willfully.

(iii) Misrepresentation must be made with intention to deceive the other party.

(iv) The other party is actually deceived.

(v) The other party has suffered a loss.

Note. Silence amounts to fraud where:

(i)There is a duty to speak.

(ii) His silence is speech.

Consequences

Party can

• rescind the contract.

• insist for genuine performance.

• sue for damages.

Note: ·If party takes any benefit, contract is not voidable.

Mis-representation (Sec. 18)

(i) False statement but maker believes it to be true.

(ii) Breach of duty without any intention to deceive.

(iii) Mis-representation even made innocently, the other party has actually acted.

Consequences

Party can

• rescind the contract.

• insist for genuine performance.

Mistake (Sec. 20 to Sec.22)

Mistake of Law

(i) Mistake of law of the country-

Contract is not voidable.

(ii) Mistake of law of a foreign country-

Contract is void.

Mistake of Fact

(i) Bilateral Mistake-

Contract is void if-

mistakes relates to material fact;

both parties are under mistake.

(ii) Unilateral Mistake-

Contract is neither void nor voidable

UNLAWFUL OBJECT AND CONSIDERATION (Sec.23)

If consideration or object forbidden by law	When consideration or object is of such a nature that if permitted it would defeats provisions of law	When it is fraudulent	When consideration involves injury to person or property of another	When consideration is immoral	When consideration is opposed to public policy

Agreements of trading with enemy	Trafficking relating to Public Offices & titles.	Interference with the course of justice
Agreement of stifling prosecution	Agreements tending to create monopolies	Interest against obligation
Maintenance & champerty	Marriage brokerage agreements	Consideration unlawful in part

VOID AGREEMENTS

Made by Incompetent Parties(S.11)	Without consideration (S.25)	With uncertain meaning (S.29)
Under a mutual mistake of fact (S.20)	In restraint of marriage (S.26)	Wagering Agreements (S.30)
Unlawful consideration or object (S.23)	In restraint of trade (S.27)	To do impossible act (S.56)
Unlawful consideration or object in part(S.24)	In restraint of legal proceedings (S.28)	

WAGERING AGREEMENT (SEC. 30)

Meaning: Agreement between two parties by which one promises to pay money or money's worth on the happening of same uncertain event in consideration of the other party's promises to pay if the event does not happen.	**Essentials** (i) Promises to pay money (ii) Uncertain event (iii)Mutual Chances of win or lose. (iv)No control over the event (v) No other interest in the event. **Effects** (i) Agreement is void (ii) No suit to recover amount won.	**Transactions are not Wager** (i) Chit Fund (ii) Share market transactions in which delivery of stocks and shares in intended to be given & taken. (iii)Game of skill, crossword, etc. (iv)a contribution toward any prize value of Rs. 500 or above to the awarded to the winner or winners of a horse race. (v) A contract of insurance.

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.*

11. *A paid ₹ 5000 to a Government servant to get him a contract for the canteen. The Government servant could not get the contract. Can A recover ₹ 5000 paid by him to the Government servant?*

(a) *Yes, the agreement is opposed to public policy*

(b) *No, the agreement is opposed to public policy*

(c) *No, the agreements are a voidable agreement and can be avoided by A*

(d) *No, the agreement falls under section 23 and hence illegal*

12. *With regard to the contractual capacity of a person of unsound mind, which one of the following statements is most appropriate?*

(a) *A person of unsound mind can never enter into a contract*

(b) *A person of unsound mind can enter into a contract*

(c) *A person who is usually of unsound mind can contract when he is, at the time of entering into a contract, of sound mind*

(d) *A person who is occasionally of unsound mind can contract although at the time of making the contract, he is of unsound mind*

13. *An agreement made under mistake of fact, by both the parties, forming the essential subject matter of the agreement is:*

    (a) Void

    (b) Voidable

    (c) Valid

    (d) Unenforceable

14. *A is in dire need of ₹ 1,00,000 but was unable to get any loan from banks as he had no security to offer. A approached his friend B who knowing the helpless position of A lent money at a very high rate of interest, saying that he had himself borrowed money from C. The contract is:*

    (a) Vitiated by undue influence that B had exercised over A due to his close friendship.

    (b) Void as the rate of interest being very high was unconscionable.

    (c) Not valid as B had wrongly misled A that he had borrowed money from C.

    (d) Valid as a friend could not be supposed to have wielded undue influence only because the money lent carried higher rate of interest.

15. *Which of the following is not an exception to the rule that the agreement in restraint of trade is void:*

    (a) A partner can be prevented for carrying on similar business

    (b) An outgoing partner can be restrained on carrying similar business

    (c) On dissolution of firm, partners may agree not to carry on similar business

    (d) The seller of goodwill of business can be prevented for carrying any kind of business at any place.

16. *An agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event, is a*

    (a) Wagering agreement

    (b) Contingent contract

    (c) Quasi contract

    (d) Uncertain agreement

17. *A wagering agreement in India is declared by the Contract Act as*

(a) *Illegal and void*

(b) *Void but not illegal*

(c) *Voidable at the option of the aggrieved party*

(d) *Immoral*

18. *An agreement, the object of which is to procure a public post, is*

(a) *Void*

(b) *Voidable*

(c) *Valid*

(d) *Defective*

19. *While obtaining the consent of the promise, keeping silence by the promisor when he has a duty to speak about the material facts, amounts to consent obtained by:*

(a) *Coercion*

(b) *Misrepresentation*

(c) *Mistake*

(d) *Fraud*

20. *A enters into an agreement with B who has robbed A of ₹ 10,000 to drop prosecution against him in consideration of B's returning ₹ 8,000. Afterwards B refused to pay. A can get from B*

(a) *₹ 8,000*

(b) *₹ 100*

(c) *Nothing*

(d) *₹ 10,000 plus damages*

21. *On attaining the age of majority, a minor's agreement:*

(a) *cannot be ratified by him*

(b) *becomes valid*

(c) *can be ratified by him*

(d) *becomes void*

22. *A threat to kidnap one's son in consideration of ₹5,00,000 is void because of:*

(a) *inadequacy of consideration*

(b) *incompetence of parties*

(c) *absence of free consent*

(d) *all of the above*

23. *In which of the following case, aggrieved part can sue for damages:*

(a) *Fraud*

(b) *mistake*

(c) *undue influence*

(d) *misrepresentation*

24. *A mere attempt to deceive a party to a contract:*

(a) *is fraud even though the party is not deceived*

(b) *is not fraud unless the party is actually deceived*

(c) *amounts to coercion*

(d) *amounts to misrepresentation*

Descriptive Questions

1. *"An agreement, the meaning of which is not certain, is void". Discuss.*

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.*

3. *A student was induced by his teacher to sell his brand new car to the later 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 whether the student can sue the teacher?*

4. *Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract?*

5. *Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ₹3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running*

at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying ₹ 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.

6. *Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ₹ 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ₹ 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872.*

ANSWER/HINTS

Answers to MCQs

1.	**(a)**	2.	**(d)**	3.	**(b)**	4.	**(a)**	5.	**(b)**	6.	**(c)**
7.	**(c)**	8.	**(b)**	9.	**(a)**	10.	**(d)**	11.	**(d)**	12.	**(c)**
13.	**(a)**	14.	**(d)**	15.	**(d)**	16.	**(a)**	17.	**(b)**	18.	**(a)**
19.	**(d)**	20.	**(c)**	21.	**(a)**	22.	**(c)**	23.	**(a)**	24.	**(b)**

Answers to the Descriptive Questions

1. **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.

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. Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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.

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.

4. **Misrepresentation:** According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.

2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.

3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party

loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

5. As per the provisions of Section 19 of the Indian Contract Act, 1872, 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 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 representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 18, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract in the above ground.

6. According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [*Mohori Bibi Vs Dharmo Das Ghose 1903*].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.