

BUSINESS LAW

To create a understanding of basic laws affecting
the operations of the business enterprise

What is LAW?

LAW means

a ‘set of rules’ which governs our behaviours and relating in a civilized society.

So there is no need of Law in a uncivilized society.

It is **RULES AND PRINCIPLES** which **REGULATE** our relations with other individuals and with the state.

Acc to Salmond:

“law is the **Body Of Principles** recognised and applied by the state in the administration of justice.”

abstract body of rules and also a social machinery for **securing order in the community.**

LAW IS NOT STATIC.

OBJECT OF LAW:

- to **establish socio economic justice** and **remove the existing imbalance** in the socio economic structure.
- to bring **welfare and improvement** of the community

Need for Knowledge of Law:

‘Ignorance of law is no excuse’

THE INDIAN CONTRACT ACT, 1872

- The Indian Contract Act came into force on **1st September, 1872**.
- it contains the law relating to **contracts**
- the law of contract is that branch of law which determines the **circumstances** in which promises made by the parties to a contract shall be **legally binding** on them.
- its rules define the **remedies** that are available in a court of law against a person who fails to perform his contract and the conditions under which the remedies are available.

The law of contract
does not lay down a number of rights and duties which the law will enforce.

It consists of a number of **LIMITING PRINCIPLES**, subject to which the parties may create rights and duties for themselves which the law will uphold.

The parties to contract in a way make the law for themselves.

Law of contract creates

Jus in Personam & Jus in rem.

Jus in Rem means a right against or in **a respect of a thing**. **Eg:** right of possession & ownership

Jus in Personam means a right against or in **respect of a person**. **Eg:** right to receive compensation for a false charges from a particular person.

Jus in Rem is available against the **world at large**

Jus in personam is available against **particular person**.

AGREEMENT

Every promise and every set of promises forming consideration for each other. - Sec 2(e)

PROMISE:

when the person whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. – Sec 2(b)

Agreement = offer + acceptance

Definition of Contract:

A contract is an agreement made between two or more parties which the law will enforce.

Sec 2(h) defines a contract as

‘an agreement enforceable by law.’

- a legally binding agreement between **two or more persons**
- **rights** are acquired by one or more
- **to act / forbid** on the part of the others.

Consensus ad idem

The parties to the agreement must have agreed about the subject matter of the agreement in the **same sense and at the same time**.

Unless there is consensus ad idem, there can be no contract

OBLIGATION

A legal tie which imposes upon a definite person or persons the **necessity of doing or abstaining from doing a definite act or acts.**

It may relate to social or legal matters.

An agreement which gives rise to a **social obligation is not a contract.**

It must give rise to a **legal obligation** in order to become a contract.

EG.

A agrees to sell his car to B for Rs. 10,000/-.

Obligation of A : _____

Obligation of B : _____

Communication when complete

The communication of a proposal is complete when it comes to the **knowledge of the person to whom it is made.**

EG.

- A proposes, by letter, to sell a house to B at a certain price

The communication of the proposal is complete when B receives the letter

- B accepts A' s proposal by a letter sent by post

The communication of the acceptance is complete

- as against A, when the letter is posted
- as against B, when the letter is received by A

- A revokes (cancel) his proposal by telegram

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it

- B revokes his acceptance by telegram

B' s revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

Distinction between Contract & Agreement

Basis	Contract	Agreement
1. Section :	Sec. 2(h)	Sec. 2(e)
2. Definition :	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreements.
3. Enforceability :	Every contract is enforceable	Every promise is not enforceable.
4. Interrelationship	A contract includes an agreement.	An agreement does not include a contract.
5. Scope :	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.
6. Validity :	Only legal agreements are called contracts.	An agreement may be both legal and illegal.
7. Legal Obligation :	Every contract contains a legal obligation.	It is not necessary for every agreement to have legal obligation.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

- **Offer and acceptance** (two parties : one makes offer & other accepts it)
- intention to create a **legal relationship** (eg. **Husband promises wife**)
- **Lawful consideration** (benefit moving from one party to another)
- **Capacity of parties** – competency (minor / sound mind / not disqualified by law)
- **Free and genuine consent**
- **Lawful Object** (should not be illegal / immoral / opposed in public policy)
- **Agreement not declared void** (Void- not valid)
- Certainty and possibility of **performance**
- **Legal Formalities**

CLASSIFICATION OF CONTRACTS

- **According to Validity**

- Voidable contract⁺
- Void agreement & Void Contract
- Illegal agreement
- Unenforceable Contract

- **According to Formation**

- Express Contract
- Implied Contract
- Quasi Contract

- **E – commerce Contract**

- **According to Performance**

- Executed Contract
- Executory Contract
- Unilateral / One sided contract
- Bilateral Contract

• **According to Validity**

• **Voidable contract**

An agreement which is **enforceable by law at the opinion of one party but not at the opinion of others** is a voidable contract. Can happen because of misrepresentation or fraud or a mistake.

Element of free consent is missing:

- **One party prevents other party** from performing his obligation
- One party **fails to perform** his obligation within a specified time

• **Void agreement & Void Contract**

Agreement not enforceable by law is said to be void.

Eg. An agreement with a minor. / an agreement without consideration

Contract ceases to be enforceable by law becomes void when it ceases to be enforceable

Eg. A contract to Import from country X ceases in case of a war breakout

• **Illegal agreement**

• **Unenforceable Contract** (technical defect like absence of writing, etc..)

- **According to Formation**

- **Express Contract**

- When the terms of contract are expressly agreed upon (**written / by words spoken**)

- **Implied Contract**

- Inferred (conclude)** from the acts or conduct of the parties or course of dealing between them

- Eg. getting into a public bus
 taking a cup of coffee in a restaurant

- **Quasi Contract**

- It is created by law

- It rests on the principle of

- ‘a person shall not be allowed to enrich himself unjustly at the expenses of another’**

- Eg. A (trader) leaves goods at B’s house by mistake. B treats the goods as his own.
= B is bound to pay for the goods.

- **According to Performance**

- **Executed Contract**

- Where both the parties have fulfilled their respective obligations

- **Executory Contract**

- Where both the parties are yet to perform their obligations

- It may be sometimes partly executed & partly executory

- **Unilateral / One sided contract**

- One party has to fulfill his obligations at the time of the formation of contract, the other party having fulfilled his obligations at the time of the contract or before the contract comes into existence. (executed consideration)

- Eg coolie and luggage

- **Bilateral Contract**

- Both parties are outstanding at the time of the formation of contract. (executory considerations)

OFFER AND ACCEPTANCE

An offer is a **proposal by one party to another** to enter into a legally binding agreement with him.

A person is said to have made an offer when he

“signifies to another his **willingness to do or to abstain from doing anything**, with a view to obtaining the assent of that other to such act or abstinence”

the person making the offer is known as :

Offeror / proposer / promiser

Person to whom offer is made is known as:

Offeree / Proposee

When the offeree accepts the offer he is called:

Acceptor / promisee

How an offer is made:

- Express offer - in words, spoken or written
 - eg. An ad in newspaper for offering Rs. 500 to anyone who finds their dog.
- Implied offer - implied from the conduct of parties or circumstances
 - eg. When you arrive at a hair salon for your usual cut, it is expected that you will pay for the services rendered.
- Specific offer - to a definite person
- General offer - to a world at large

LEGAL RULES AS TO OFFER

- Offer **must show an obvious intension** of the part of the offerer to be bounding by it
- Offer must be **capable of being accepted by law** and give rise to legal relationship
- Terms of offer **must be definite, unambiguous and certain** (not loose or vague)
- Offer may be distinguished from
 - declaration of intention and announcement. The terms of an offer should be clear so that there is no confusion whether; it is a valid offer or a mere statement. Sometimes, a person declares that he has an intention to do something this does not amount to an offer.
(eg. An auctioneer's ad in newspaper
 - invitation to make an offer or do business. Sometimes, a party does not make an offer but simply proposes certain terms and invites other party to make an offer on proposed terms. (eg. Display of goods by shopkeeper, with price) (newspaper advertisements are not offer.)
- Offer must be **communicated**
- Offer must be made with a view of obtaining the consent.
- **Statement of price is not an offer**

ACCEPTANCE

Acceptance is an act by the offerree to an offer.

A contract emerges from the acceptance of an offer

It may be express or implied

(implied : auction – striking of an hammer by auctioneer for highest bidder)

Who can accept:

- acceptance of a **particular offer**
by the offerree alone, no other
- acceptance of a **general offer**
any person..

LEGAL RULES AS TO ACCEPTANCE

- It must be **absolute**
- it must be **communicated** to the offerer
- given within a **reasonable time**
- **cannot precede an offer**
- must show an intention on the part of the acceptor to fulfill terms of the promise
- must be given by the party to whom the offer is made
- must be given before the offer lapses or before the offer is withdrawn
- it cannot be implied from silence

WHEN DOES AN OFFER COME TO AN END?

- **REVOCAION OR LAPSE OF OFFER (Cancellation or failure)**

- by **communication of notice** of revocation by the offeror at any time before its acceptance is complete as against him (eg.withdrawal of bid in auction before hammer)
- by lapse of **time**.
- by **non – fulfillment** by the offeree of a condition precedent to acceptance
- by **death or insanity** of the offeror
- if a **counter offer is** made to it
- if the **law is changed**

REJECTION OF OFFER

- express rejection
- implied rejection
 - Counter offer
 - conditional acceptance

CONSIDERATION

When a party to an agreement promises to do something, he must get ‘**something in return**’

Sec 2(d) defines consideration as

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

- An act of doing something

Eg. A promises to B to guarantee payment of price of goods which B sells on credit to C. Here selling of goods by B to C is consideration to A’s promise

- an abstinence

A promises B not to file a suit against him if he pays him Rs. 500/-
The abstinence of A is the consideration for B’s Payment

- A return promise

A agrees to sell his horse to B for Rs. 10,000/-

LEGAL RULES AS TO CONSIDERATION

- it must move at the **desire of the promisor** (If an act is done without the request or at the request of the third party, it will not be a valid consideration.)

(A saves B's goods from fire without being asked to do so. A cannot demand payment for his services)

- it may move **from the promisee or any other person**

Eg: A father gifted the whole of his property to his daughter on the condition that she should pay an annuity to her uncle. On the same day, the daughter entered into an agreement with her uncle and agreed to pay the annuity. Later on, the daughter refused to pay on the ground that the uncle did not give any consideration to her. The court held that the consideration was paid by the father on the behalf of the uncle.

- It may be **past, present or future**

(Past consideration: Act was done in the past and consideration was received before the date of the promise. Eg: A found B's purse. After a month B promised to pay Rs 50 to A as reward for the service rendered. B is paying for past consideration.)

(Present consideration: Act is done in the present and consideration is received at the same time. Eg: A purchase goods by paying money in cash.)

(Future consideration: Act is to be done in future and consideration receive is after the date of promise. Eg: A agrees to sell his watch for Rs 200 to B the next week. For one party consideration may be past and for other party it may be future)

- it need **not be adequate** (Eg: A agrees to sell his watch worth Rs 100 only for Rs 10)
- it must be **real and not illusory:** physical impossibility, legal impossibility, uncertain consideration, illusory consideration

Eg: A promised to pay Rs 100 extra to a doctor for performing a successful operation. The promise of paying extra rupees is illusory as the doctor is bound to do best for his patient.

- it must be **something which the promisor is not already bound to do** (Eg: A promised to pay Rs 100 extra to lawyer for winning the case. A is not bound to pay Rs 100 even if he wins the case as the lawyer was on duty and he is bound to do his best to win the case.)
- it must not be **illegal, immoral or opposed to public policy**
- it may be an **act, abstinence** or forbearance or a **return promise**

STRANGER TO CONTRACT

It is general rule of contract that

ONLY PARTIES TO CONTRACT CAN SUE & BE SUED ON THAT CONTRACT .

This rule is known as **‘Doctrine of privity’** i.e relationship between the parties to contract .

- A person who is not a party to a contract cannot sue upon it even though the contract is for his benefit and he provided consideration
- A contract cannot confer rights or impose obligations on any other persons other than the parties to contract.

Exceptions

- A trust or a charge .
- Marriage settlement , partition or other family arrangements .
- Estoppel
- Assignment of contract . (eg. Holder of a bearer cheque can encash it)
- Contract with agent .

CONTRACT WITHOUT CONSIDERATION IS VOID – EXCEPTIONS

- Love & affection .
- Compensation for voluntary service. (eg. A finds B's Purse. B promises to give A Rs. 100/-.)
- Promise to pay a time – barred debt.
- Completed gift .
- Charity .

CAPACITY TO CONTRACT

Capacity here means **competence of the parties** to enter into a valid contract.

Acc, to **sec. 10**,

An agreement becomes a contract if it is entered into between the parties who are competent to contract.

Following are the condition for a person to enter into contract

- He must be **major**
- He must be **sound mind**
- He must **not be disqualified by any other law.**

Disqualified persons to enter into a contract

- Minor
- A person of unsound mind
- Persons disqualified by any law to which they are subject

Minor:

According to Indian majority act sec(3) minor is defined as any person under the **age of 18 years** . In the following cases a person is said to be minor if he does not complete the age of 21 years

- a) any person under the guardian & wards act ,1890
- b)any person which comes under superintendence of law/legal representative

MINORS AGREEMENT

- An agreement with or by a minor is **void**
- He can be a promisee or a beneficiary
- His agreement **cannot be ratified by him on attaining the age of majority**
- If he has received any **benefit** under a void agreement he cannot be asked to compensate or pay for it
- He **can always plead minority**
- There can be **no specific performance** of the agreements entered into by him as they are void
- He **cannot enter into a contract of partnership**
- He **cannot be adjusted insolvent**
- He is **liable for necessaries** supplied to him or anyone whom he is legally bound to support
- His **parents / guardian are not liable for the contract entered into by him**
- A minor is liable in tort (a civil wrong)

Persons of Unsound Mind:

Acc sec. 12

A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it and of forming a rational judgment 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

Persons of unsound mind

- Lunatic
 - Idiots
 - Drunken or intoxicated persons.
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- Lunatic: a person who is **mentally deranged** due to some mental strain or other personal experience. He suffers from interval of sanity and insanity. He can enter a contract when he is of sound mind
 - Idiots: a person who has **completely lost his mental powers**. He does not exhibit understanding of even ordinary matters. Idiocy is permanent and lunacy denotes periodical insanity. An agreement with idiot is void
 - Drunken / intoxicated persons: suffers from **temporary incapacity to contract**. The position is similar to that of a lunatic.

Other person

- Alien enemies (contract with persons of a country which is in war with India) Eg: Contract between India and Pakistan. Are void subject to following rules:
 - a. Contracts made during war period.
 - b. Contracts made before war.
- Foreign sovereigns (representatives of foreign states. These person can enter into a valid contract and also enforce them in Indian courts. However no suit can be filed against them without prior permission of the central court)
- Insolvents
- Convicts

FREE CONSENT

According to Sec 10 of the Indian Contract Act one of the essentials of a valid contract is “Free Consent”

Sec 13 defines “consent” as “Two or more persons are said to consent when they agree upon **the same thing in the same sense**”.

According to Sec 14, consent is said to be free when it is not caused by:

- 1.Coercion
- 2.Undue influence
- 3.Fraud
- 4.Misrepresentation
- 5.Mistake

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

COERCION

When a person is compelled to enter into a contract **by the use of force** by the other party or under a threat, coercion is said to be employed.

According to Sec 15 coercion means “**Committing or threaten to commit** any act forbidden by Indian Penal Code 1860 or **unlawful detaining or threatening** to detaining any other persons property with a view to enter into an agreement. It is immaterial whether the IPC is or is not in force where the coercion is employed”

The threat amounting to coercion need not necessarily be from a party to contract , it may also proceed from a stranger to the contract.

Eg. A threatens to shoot B if B does not release him from a debt, B releases A from debt.

Consent is said to be caused by coercion when obtained by:

- the **committing or threatening to commit any act forbidden by the Indian Penal Code**
- the **unlawful detaining or threatening to detain any property**

It is not important whether the IPC is or not in force where the coercion is taking place.

UNDUE INFLUENCE

Sometimes a party is **compelled to enter into a contract against his will** as a result of unfair persuasion by the other party.

Section 16(1) defines undue influence as follows:

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 uses that position to obtain an unfair advantage over the other

Eg.

- parent and child
- trustee & beneficiary
- religious adviser and discipline
- doctor and patient.....

Essentials of undue influence

- There are **two** persons
- The relations are satisfying between them
- One must **dominate** the other
- There must be **unfair advantage**
- It involves the **moral pressure**

MISREPRESENTATION AND FRAUD

Misrepresentation is a **false statement** which the person making it honestly believes to be true or which he does not know to be false.

According to Sec 18 there is misrepresentation:

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

Eg. A sells his horse to B saying that he is in good health, believing that the horse was in good health.

Later B finds out that horse is not in good health.

Statement made by A is misrepresentation

Requirements of misrepresentation

- it must be a **representation of a material fact**
- it must be made **before the conclusion** of the contract with a view to induce other party into the contract
- it must be made with the **intention that it should be acted upon** by the person to whom it is addressed
- it must **actually have been acted upon** and must have induced the contract
- it must be **wrong but the person who made it honestly believed it to be true**
- it must be **made without any intention to deceive the** other party
- it need not be made directly to the plaintiff.

Consequences of Misrepresentation

The aggrieved party in case of misrepresentation by the other party can:

- **avoid the contract**
- accept the contract but insist that he shall be **placed in the position** in which he would have been if the representation made had been true.

FRAUD

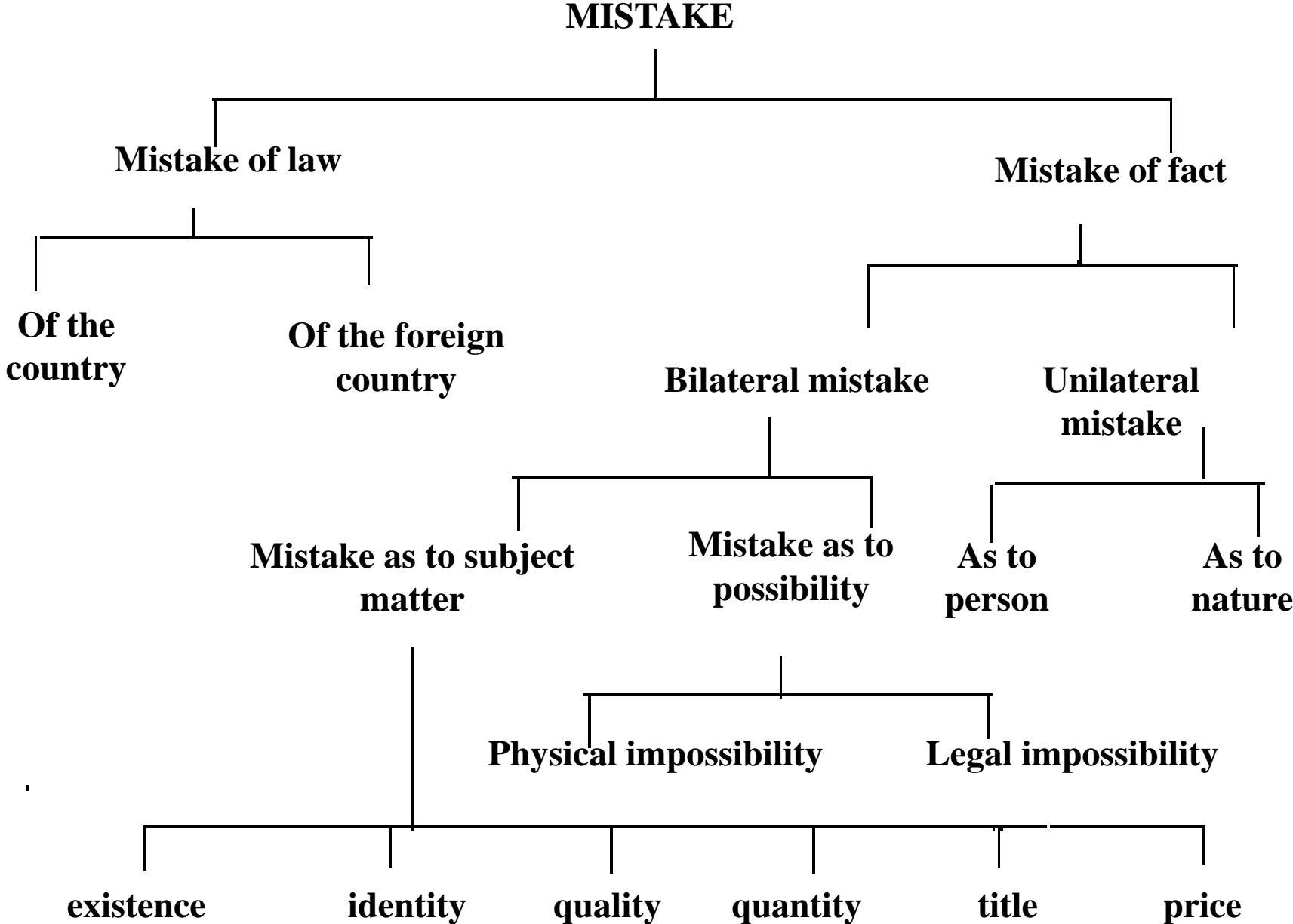
According to Sec 17 fraud means and includes any of those acts committed by a party to contract or with his connivance or by his agent with **an intent to deceive** or induce a person to enter a contract:

- The suggestion that a fact is true when it is not true and the **person making it does not believe in it to be true**
- The **active concealment** of a fact by a person having knowledge or belief of the fact
- A **promise made without any intention of performing it**
- Any other act fitted to deceive
- Any such act or omission as the law specially declares to be fraudulent

Essential elements of fraud

- there must be a representative or assertion and **it must be false**
- the representation must relate to a **material fact** which exists now or existed in the past.
- the representation must have been made **before the conclusion** of the contract with the intention of including the other party to act upon it
- the representation must have been **made with a knowledge of its falsity** of without belief in its truth not caring whether it is true or false.
- the other party must have been **induced to act upon** the representation
- the other party must have **relied upon** the representation and must have been deceived
- the other party acting on the representation **must have subsequently suffered some loss`**

MISTAKE : Mistake is defined as erroneous belief about something.



- **Bilateral mistake:**

A agreed to purchase B's car which was lying in B's garage. Unknown to either party that the car and garage were completely destroyed by fire a day earlier. The agreement is void

A agreed to buy the cargo from B which was to arrive from Mumbai via a ship named XYZ. There were two ships of same name sailing from Mumbai, one in October and other in December. A meant the former, but R meant the latter. Held there was a mutual / bilateral mistake so there was no contract

A person took a lease of a land, which unknown to both the parties already belonged to him. Held the lease was void

- **Unilateral Mistake:**

A offers to sell his house to B for an intended sum of Rs. 54,000. by mistake he makes an offer in writing of Rs. 45,000. he cannot pleade mistake as a defense.

LEGALITY OF OBJECT

When consideration or object is unlawful

- if it is **forbidden by law**

(A promises to obtain employment for B and B promises to pay A Rs. 10,000/-. The agreement is void)

- if it is of such a nature that if permitted it would **defeat the provision of any law**

(A held a license to run a liquor shop. However the act forbade him to sell / transfer / sublease the license to any other. A & B enters into a partnership. The agreement was void)

- if it is **fraudulent**

- if it involves or implies **injury to the person or property of another**

- If the **court regards it as immoral**

(A married woman was given money to enable her to obtain divorce from her husband and then marry the lender. Held the agreement was immoral and the lender cannot recover his money)

- where the court regards it as **opposed to public policy**

VOID AGREEMENTS

- Agreement by **incompetent parties**
- agreements made under a **mutual mistake** of fact
- agreements the consideration or object of which is **unlawful** in full or part
- agreements made **without consideration**
- agreements in **restraint of marriage**
- agreements in **restraint of trade**
- Agreements the **meaning of which is uncertain**

Eg. A agrees to pay B Rs. 100/- when he was able to pay

- agreements by way of **wager(bet)**
- agreements contingent on **impossible events**
- in case of reciprocal promises to do thing legal and also other things illegal the second set of reciprocal promises is a void agreement.

PERFORMANCE OF CONTRACT

Performance of contract takes place when the parties to the contract **fulfill their obligation** arising under the contract **within the time and in the manner prescribed**

Actual performance:

where a party to a contract has **done what he had undertaken to do** or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed

Eg. A borrows Rs. 500 from B with a promise to pay after 1 month.
 A pays the amount on due date.

Offer to perform. / tender.

Sometimes it so happens that the **promisor offers to perform** his obligations under the contract at the proper time and place **but the promisee does not accept** the performance.

This is known as attempted **performance or tender.**

Eg. A promises to deliver certain goods to B, A takes the goods to the appointed place during business hours but B refuses to take the delivery of goods.

REQUISTE OF A VALID TENDER

- it must be **unconditional**

Eg. A debtor offers to pay B his creditor the amount due to him if B sells him certain shares at cost price.

- it must be of the **whole quantity** contracted for or of the **whole obligation**
- it must be by a person who is in a **position and is willing to perform** the promise
- It must be made **at proper time and place** (mention of place and time)
- it must be made **to a proper person**
- it may be made **to one of the several joint promises**
- in case of tender of goods, it must give a reasonable opportunity to the promisee for **inspection of the goods.**
- in case of tender of money, the debtor must make a valid tender in the **legal tender money.**

CONTRACTS WHICH NEEDS NOT BE PERFORMED

- when its performance becomes **impossible**
- when the parties to it agree to **substitute** a new contract for it or to rescind or alter it
- when the promisee dispenses with or remits wholly or in part the performance of the promise made to him or **extends the time** for such performance
- when the **person at whose option it is voidable, rescinds it**
- when the promisee neglects or **refuses to afford the promisor reasonable facilities** for the performance of his promise.

Eg. A contracts with B to repair B's house. B neglects or refuses to show A where repairs are to be done.

Here a is excused for non performance

- when it is **illegal**

BY WHOM MUST CONTRACTS BE PERFORMED

- promisor himself

eg. A promises to paint a picture of B. here painting must be made by A himself.

- agent

- legal representatives

eg. A promises to deliver goods to B on a certain day on a payment of 1000 rs. A dies before the delivery date. A's representative are bound to deliver the goods to B and B is bound to pay 1000 to A's representative

eg. A promises to paint a picture of B by a certain day at a certain price, A dies before that day. The contract cannot be enforced either by A's representative or by B

- third person

- joint promisors

RECIPROCAL PROMISES

Promises **which form the consideration or part of the consideration for each other** are called reciprocal promises

A promises to do or not to do something in consideration of B's promise to do or not to do something, the promises are reciprocal

Eg. A promises to remove certain debris lying in front of B's house provided B supplies him with the cart.

Here a need not to perform if B fails to deliver a cart

- simultaneous performance of reciprocal promises
- Order of performance of reciprocal promises
- effect of one party preventing another from performance of promise
- effect of default as to promise to be performed first.

DISCHARGE OF CONTRACT

Discharge of contract means

termination of the contractual relationship between the parties.

A contract is said to be discharged when it ceases to operate.

A contract may be discharged :

- by performance
- by agreement or consent
- by impossibility
- by lapse of time
- by operation of law
- by breach of contract

Mode of discharge of contract

1. By performance
- Actual
 - Attempted

6. By impossibility of performance

4. By lapse of Time

5. By breach of contract
- Actual
 - Anticipatory

- 2. By mutual agreement**
(By implied consent)
1. Novation – Sec 62
 2. Rescission – Sec 62
 3. Alteration – Sec 62
 4. Remission – Sec 63
 5. Waiver
 6. Merger

- 3. By Operation of law**
1. Death
 2. Merger
 3. Insolvency
 4. Unauthorized alteration

DISCHARGE BY PERFORMANCE

Actual performance

When **both parties perform their promises** & there is **nothing remaining to perform**

Most of the contracts are discharged by performance

Attempted Performance

When the **promisor offers to perform** his obligation ,but **promisee refuses to accept the performance.**

It is also known as tender

DISCHARGE BY AGREEMENT OR CONSENT

NOVATION (Sec 62):

New contract substituted for old contract with the same or different parties

Eg. A owes B Rs. 100/-. A, B, & C agree that C will pay B and he will accept 100/- from C in lieu of the sum due from A.

A liability will come to an end and old contract between A & B will be substituted by new contract between B & C

RESCISSION (Sec 62) :

When some or all terms of a contract are cancelled

eg. A promises to supply B a certain quality of clothes in 6 mth. By that time that clothes go out of fashion. A & B may rescind the contract

ALTERATION (Sec 62):

When one or more terms of a contract is/are altered by the mutual consent of the parties to the contract

REMISSION (Sec 63):

Acceptance of a lesser fulfillment of the promise made.

eg. A owes B Rs. 5,000. A pays to B and B accepts in satisfaction of whole debt Rs. 2,000 paid at the time and place where Rs. 5,000 were payable. The whole debt is discharged.

WAIVER:

Mutual abandonment of the right by the parties to contract

MERGER:

When an inferior right accruing to a party to contract merges into a superior right accruing to the same party

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

Impossibility existing at the time of agreement:

- KNOWN TO PARTIES (absolute impossibility) (A & B agrees to discover treasure by magic)
- UNKNOWN TO PARTIES
- SUBSEQUENT IMPOSSIBILITY
- SUPERVENNING IMPOSSIBILITY (Sec 56) :

Destruction of subject matter (contract destroyed without the fault of the promisor or promisee)

Non-existence of state of things

Eg. A & B contract to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void

Death or incapacity of personal services

Change of law

Outbreak of war

DISCHARGE BY LAPSE OF TIME

- the limitation act 1963, clearly states that a **contract should be performed within a specified time called period of limitation**
- **if it is not performed and if the promisee takes no action within the limitation time, then he is deprived of his remedy at law**

Eg. If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.

DISCHARGE BY OPERATION OF LAW

- death
- merger
- insolvency
- unauthorized alteration of the terms of a written agreement
- rights & liabilities vesting in the same person

Eg. A took a land on lease from B. Subsequently A purchases that very land. Now a becomes the owner of the land and the ownership rights being superior to the rights of a lessee, the earlier contract of lease stands terminated

DISCHARGE BY BREACH OF CONTRACT

Actual breach :

- At the time of performance
- During the performance

Anticipatory breach

- By the act of promisor (implied repudiation)
- By renunciation of obligation (express repudiation)

Eg.

A undertakes to supply certain goods to B on a certain date. Before that date he informs B that he is not going to supply the goods. This is anticipatory breach of contract by express repudiation

A contracts to sell his bike to B. Before the agreed date he sells his same bike to C. B is entitled to sue A for breach of promise

REMEDIES FOR BREACH OF CONTRACT

A remedy is the means given by law for the enforcement of right

When a contract is broken the injured party has one or more of the following remedies:

- rescission of the contract
- suit for damages
- suit upon quantum meruit
- suit for specific performance of the contract
- suit for injunction

RESCISSION

When a contract is broken by one party, the other party **may sue to treat the contract as rescinded and refuse further performance.**

In such a case, he is absolved of all his obligations under the contract.

The court may give rescission due to

- 1) contract is voidable.
- 2) contract is unlawful

Eg. A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver cement on that day.

B is discharged from his liability to pay the price.

DAMAGES

Damages are a **monetary compensation** allowed to the injured party by the court for the loss or injury suffered by him by the breach of the contract.

The objective of awarding damages for the breach of contract is to put the injured party in the same position as if he had not been injured.

This is called the doctrine of restitution.

Eg. A contracts to deliver 50 quintals of farm wheat to B at Rs. 475/ quintal at time of delivery. The price of wheat rises to Rs 500 and A refuses to sell the wheat.

B can claim damages at the rate of Rs. 25 / quintal

QUANTUM MERUIT

The phrase quantum meruit literally means **‘as much as earned’**.

A right to sue on a quantum meruit arises **when a contract, partly performed by one party, has been discharged by breach of contract by the other party.**

This right is performed not on original contract but on implied promise by other party for what has been done.

eg. A agrees to deliver 100 kg of rice at a price of 100/- per bag. The rice was to be delivered in two installments of 50 kg each. A delivered the first installment, but failed to supply the second.

B must pay for 50 Kg.

SPECIFIC PERFORMANCE

- In certain cases of breach of contract **damages are not an adequate remedy.**
- The court may, in such cases, direct the party in breach **to carry out his promise according to terms of the contract.**
- This is a direction by the court for specific performance of the contract at the suit of the party not in breach
- Cases for specific performance to be enforced
 - 1) when the act agreed to be done is such that **compensation is not adequate relief.**
 - 2) when there is **no standard for ascertaining the actual damage**
 - 3) when it is probable that **compensation cannot be agreed to be done.**

INJUNCTION

When a party is in breach of a negative term of contract the court may, by issuing an order, restrain him by doing what he promised him not to do.

Such an order of the court is called injunction

Court refuses grant of injunction

- whereby a promisor undertakes not to do something
- which is negative in substance though not in form

Eg. A an actor agreed to act exclusively for a particular producer for one year. During the year he contracted to act for some other producer.

A could be restrained by an injunction

QUASI CONTRACTS

A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Types of Quasi contracts:

- Supply of necessaries (Sec 68)
- Payment by a interested person (Sec 69)
- Obligation to pay for non gratuitous acts (Sec 70)
- Responsibility of finder of goods (Sec 71)
- Mistake or Coercion (Sec 72)

SUPPLY OF NECESSARIES

According to sec 68 a minor is liable to pay out of his property for 'necessaries' supplied to him or to anyone whom he is legally bound to support.

The significance of this is that it does not arise out of a contract as much so as it arises out of a contract.

the minor is not personally liable and 'necessaries' include food, clothing as well as education, They also include watch bicycle etc.

Eg. A supplies B a lunatic with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's Property

PAYMENT BY A INTERESTED PERSON

According to Sec 69 a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Eg. B holds land in Bengal, on lease granted by A, the zamindar. The revenue payable by A to the government being in arrear, his land is advertised for sale by the government. Under the revenue law the consequences of such sale will be on B's lease.

to prevent the sale B pays to government the sum due from A

A is bound to make good to B the amount so paid.

The essential elements center around

- The payment made should be bona fide of ones interest
- The payment should not be a voluntary one
- The payment must be such that the other is bound by law to pay

OBLIGATION TO PAY FOR NON GRATUITOUS ACTS

According to Sec 70 when a person lawfully does or delivers anything for the other ,not intending to do so gratuitously ,and the person derives any benefit from it, he is liable to compensate, or restore the thing so done or delivered.

Eg. A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. B is bound to pay for them

Here three conditions must satisfy

- The thing must have been done lawfully
- The person intending to do it must not have done it gratuitously
- The person must have derived benefit from the act

RESPONSIBILITY OF THE FINDER OF GOODS

According to Sec 71 a person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as the bailee is bound to take as much care of the goods as a man of ordinary prudence would,

In addition to that he must make efforts to trace the owner.

If he does not, he will be guilty of wrong conversation, and till the owner is found out the property will vest with the finder, **he can sell in case of**

- goods are of perishable nature
- owner cannot be found out
- when owner refuses to pay for the lawful charges
- when the lawful charges amount to two thirds of thing

eg. A customer in B's Shop puts down a brooch with her coat and forgets to pick it up. One of B's assistant found it and placed it in a drawer over the weekend. On Monday it was discovered as missing.

B was liable to A in view of the absence of that ordinary care which in the circumstances, a prudent man would have taken.

MISTAKE OR COERCION

A person to whom money has been paid, or anything delivered by mistake or under coercion must repay or return it to the person who paid it by mistake or under coercion

Eg. A and B jointly owe Rs. 100 to C. A alone pays the amount to C and B not knowing this fact also pays 100 Rs. To C. C is bound to repay the extra amount.