



DELHI

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Delhi

Civil Law - 1

Volume 1



DELHI JUDICIAL SERVICES

CIVIL LAW – 1 VOLUME - 1

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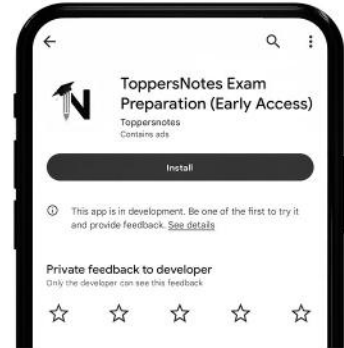
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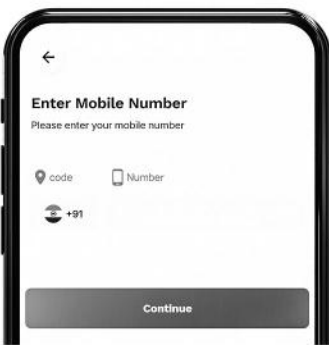
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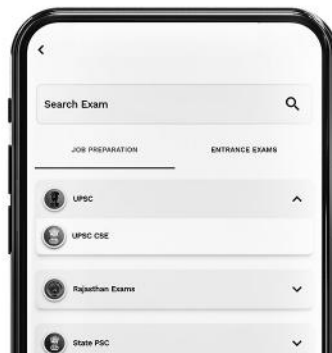
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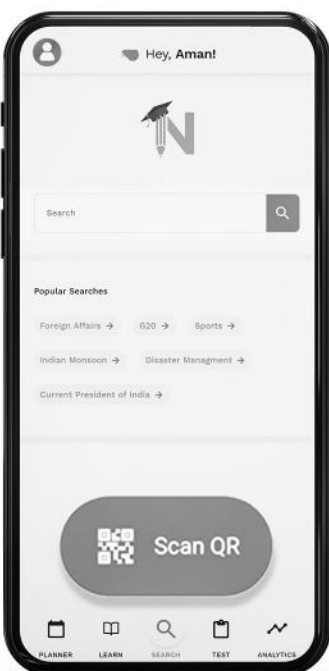
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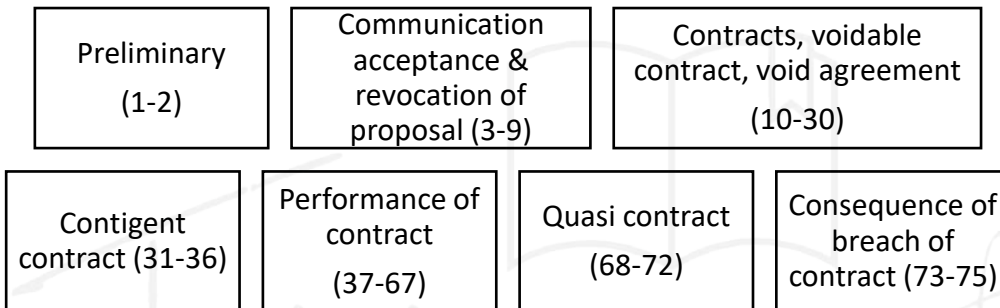
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The Indian Contract Act.1872

- Act no 9,1872
- Governor general assent 25 April, 1872
- Came in force 1 September, 1872
- 3rd law commission
- Primarily it was in 4 parts

General Principles (1-75)	Sales of Goods (76-123) Now different act (REPEALED BY 1930) Sales of Goods act. 1938	Specific contract (124-238)	Partnership (239-266) (REPEALED BY 1932) now different act Partnership act 1932
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General Principles (1-75)



- According to Salmond, contract is such agreement which create right & duties between the parties.
- According to arson (father of contract) contract is actionable promise or promise.

Preliminary (1-2)

Section 1 : apply on whole of India, except J&k

- Now in J&K also refer J&K reorganization act, 2019 schedule 5 entry 42.
- This act has superseding effect but not apply on following:
 - (a) Any statute, act not expressedly repeated. (TPA, NI)
 - (b) Any usage or custom of trade or incident which is not inconsistent with the act.
 - (c) Omeda Khatun Vs Bogendra
 - (d) Contract act, doesn't have retrospective application.

Section 2:

- (a) P- Proposal
- (b) P- promise
- (c) P- promiser & promisee
- (d) C- consideration
- (e) A- agreement
- (f) R- reciprocal promises
- (g) V- void agreement
- (h) C- contract
- (i) V- voidable contract
- (j) V- void contract

2(a) : Proposal : wherever any person signifies to another his willingness to do or abstain from doing anything with the view to obtain the assent of other person is called proposal.

2(b): Promise : The person to whom proposal is made when he signifies his assent then that proposal is considered as accepted when the proposal is accepted it become promise.

2 (c): Promisor : Person who gives proposal.

Promisee : Person who accepts proposal.

2 (d): Consideration : At the desire of promisor. Promisee or other person.

- **Past** : has done or abstain from doing.
- **Present** : does or abstains
- **Future** : promises to do or abstain from doing.

This is called consideration.

2(e): Agreement : every promise or set of promises forming consideration to each other is called agreement.

2(f): Reciprocal Promise : Promises which form the consideration or part of consideration for each other, is called reciprocal promises.

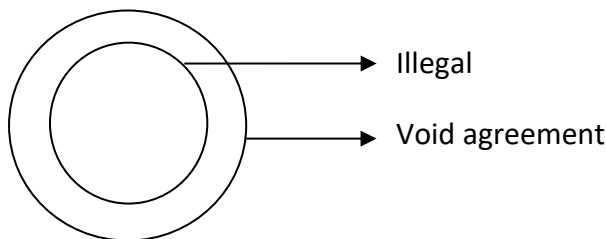
Agreement

Void agreement 2(g)	Contract 2(h)
Such agreement which are not enforceable by law	Such agreement which are enforceable by law.

Contract 2(h)	Voidable 2(i)	Void 2(j)
	Wherever agreement is enforceable At the option of only one party (Fraud)	when contract be enforceable (Both can't enforce)

Void contract	Voidable contract
Sec 2 (j)	Sec 2 (i)
It becomes void & nobody can enforce	It is valid till it is cancelled
Both party	One party
No legal remedy	One party has legal remedy
It can't be made valid contract	It can be made valid contract
If any person reviews goods then also no title.	If goods reviewed before becoming void then title also.

- Void agreements are of several types and which against law, is called illegal agreement.



CHAPTER - 1

Communication, Acceptance & Revocation of Proposal: (3-9)

Q. Is intention necessary for contract ?

Ans.

- In sec 2(a) the word willingness is used instead of the word intention. So we have to use English law.
- Contract is of two types:
 - a. Family, social & moral contracts
 - b. Commercial contracts

Family, social & moral contracts	Commercial contracts
The general rule is that there is a presumption that parties didn't intend to do contract.	The general rule is that there shall be presumption wherever commercial matter then parties intention to do contract.
Balfour Vs Balfour (judge Lord Atkin) Matter pertain to maintenance of wife & husband it was considered social contract.	Rose & Frank comp. Vs IR Crompton (Judge Lord Atkin) Commercial matter are of serious nature so there must be intention.
John Vs Padvatton Matter pertains to maintenance of mother and daughter consider family contract.	

Indians law

- Benvarai lal Vs Sukh Darshan Daya
The above English law is now recognized in India.
- Wherever intention of party is to be recognized then it shall be objectively taken; i.e. depend on facts & circumstances.

Q. What do you understand by standard form of contract ?

Ans. The general rule is that contract generally is customaries; i.e. parties can make contracts according to their needs.

- But nowadays where institutions have grown big then they publish rules and publication on back side of form and customer has to sign.
- Either has to take the whole contract or refuse it there is no effect of accepting few conditions.
- **There** is no effect of striking of few terms.
- This is called standard form of contract.
Eg. Air ticket, Parking ticket.
- There are few exceptions where this rule does not apply:
 - a. Condition must be reasonable
 - b. It must be along the contract form.
 - c. Rule of fundamental breach shall apply (i.e. there must be no condition which end the main purpose.)
 - d. Rule of strict interpretation shall apply.
 - e. Person shall be liable under law of torts.
 - f. Not apply on 3rd position.

Section 3 : Communication, acceptance & revocation of proposal shall be done by act or omission which intent to communicate.

Q. When proposal communication is complete ?

Ans. Section 4, Para 1: when it is in the knowledge of the person to whom it is given.

- Lalman Shukla Vs Gauri Dutt:
 - If person doesn't have knowledge then no acceptance shall be considered.
 - Knowledge of proposal is condition pre-requisite.
 - Eg. Child missing->servant->reward
- **R Vs Clark:**
 - If person had forgotten regarding proposal while doing work then it shall be considered that he doesn't have knowledge.

Offer/ Proposal: it is of two types:

General offer	Specific offer
It is given to the whole world, any person can accept it	It is given to a specified person with whom.
It is of continuing nature.	Intention to do a contract.

Section 8 : Wherever general offer is to be accepted then by following manner:

- a. By performing conditions.
 - b. By accepting consideration for reciprocal promise.
- **Carlill Vs Carbolic smoke Ball comp:** (1893 QB 256 (A) Judge Bowden)
- In this person accepted general offer, by fulfilling conditions (influenza – regular use of inhaler reward 100 pounds)

Section 9 : promises are of 2 types:

- a. Express = Words written or oral.
- b. Implied = according to circumstances.

Q. What is the difference between offer and invitation to offer ?

Ans.

Offer	Invitation to offer
Definition of 2(a)	It is only invitation by which perso has knowledge.
It is a legal right	Not a legal right
When proposal is accepted it becomes promise.	When invitation is accepted it becomes offer.
If breached then compensation	No compensation action.
Eg. A \longrightarrow B (offer) (Acceptance)	Eg. A \longrightarrow B (Invitation to (Offer) Offer acceptance)

Q. How acceptance is done?

Ans.

Section 7 : Acceptance must be absolute (100%) & unqualified (No if no but).

- If no specific manner is stated then by usual & reasonable manner.
- Wherever specific manner then in that manner only.
- If not done then promisor can insist and return or; if doesn't fo then it shall be considered that he has accepted in that manner only.

- Cross offer = offer in exchange of offer. (both parties don't know)
- Counter offer = in this person knew about the offer but instead of accepting he gave another offer (if & but)
- Harvey Vs Facie Bumper Ball pen

The question was minimum price is 900 pound.

It is not acceptance because here only information was given.

- Mc Pherson Vs Appanna

Wherever there is acceptance it must be unqualified & absolute.

Q. What do you understand by 'Gun powder & match stick' theory of Arson?

Ans.

- If applies on English law that if proposal is accepted once then it becomes promise and if consideration is given then agreements & if agreement is enforce by law then it shall become contract.
- It is similar to if match stick is placed near gun powder then explosion is invertible hence nobody can stop it. Similarly in English law if acceptance is given, it shall become promise and gentleman has to keep his promise.
- In English law, there is no revocation i.e. once acceptance is given it becomes promise. It can't be reverted back.
- In addition law, there is revocation.

Q. How revocation is done ?

Ans. Section 6: by following manner:

New LCD in India

N = Notice

L = Lapse of time (if no time then after reasonable time)

C = Condition Precedent

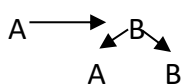
D = Death of proposer before accepting

I = Insanity

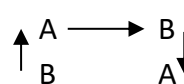
Acceptance

Because in Indian law there is revocation so there is difference in English & Indian law.

English law



Indian law



English law	Indian law
In English law as soon as acceptance is given it becomes contract because there is no revocation.	Since in Indian law there is revocation so there is a difference in the rule of acceptance.
In English law as soon as 'B' post the letter and it is out of his control (letter in post box)	In Indian law, as soon as letter is posted communication is completed against proposer (completed against 'A')
Then it shall be considered that acceptance is completed with regard to both promisor & acceptor : a. Complete against 'A' b. Complete against 'B'	English law & Indian law is same with regard to the proposal.

Even if letter is not received then also on the date of posting the letter contract is completed.

In Indian law the difference is regarding 'B' (acceptor) for him communication shall be completed when it comes to the knowledge of proposer (In the knowledge of 'A')

• **Adams Vs Lindsay:**

Even if letter is not receive or delayed then also no effect on the contract because contract was completed as soon as the letter of acceptance was posted.

Revocation

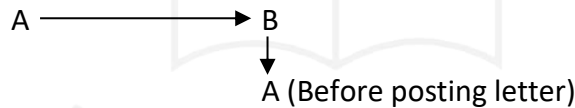
- Not is English law but it is in Indian law (sec 4 Para 3, sec 5, 6).

Section 4 Para 3 :

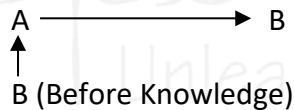
- Wherever any person is revoking as soon as he puts the thing in course of transmission and it is out of his reach (letter is posted), then against that person communication is completed.
- Wherever it comes to the knowledge of other person then communication is completed against that person.
- Proposal & acceptance both can be revoked.

Section 5 :

- Wherever proposal is to be revoked then it can be revoked at any time before acceptance is completed against the proposer.

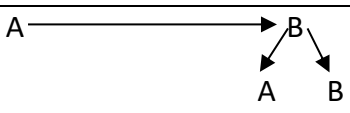
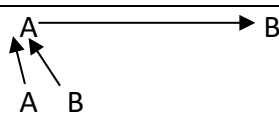


- Wherever acceptance is to be revoked then anytime when acceptance is not completed against the acceptor.



Q. What is the difference in law of post & Instantaneous medium ?

Ans.

Post	Instantaneous
	
If letter is lost, then also communication is completed & contract is formed.	'B' had replied but due to disturbance (noise of plane) could not hear the reply. So no contract takes place.
Edam Vs Lindsay	Wherever matter is of instantaneous medium then communication shall be completed only when it is in the knowledge of the proposer. Entrees Vs Mills Far East corp. There is difference in the law of letter and instantaneous medium.

Indian Law

- Bhagwan Das Govardhan Das Kedia Vs Girdhari Lal Purshottam lal & sons
In India also the above rule has been accepted.

Consideration : at the desire of promisor.

- Promise or other person.
- Past; has done or abstain from doing.
- Present; does or abstains.
- Future: promises to do or abstains from doing.
This is called consideration.

English law

- Dutton Vs Poole
- Twedle Vs Alkinson (Judge Witman)
By these matters two principles came into existence.

- a. Priority of consideration
- b. Priority of contract.

a. Priority of consideration:

In English law, it is clear that consideration must be given by only parties not other person.

Suit can only be by that person who has given consideration other person can't sue.

Indian law in the definition of consideration it is made clear that "promise or other persons" i.e. consideration shall be given by any other person also.

There is a difference between Indian & English law.

- **Chimayya Vs Ramaiyya:**

In Indian any one can give consideration, not need to be party.

b. Privity of contract:

- This rule pertains to enforcement of contract that who can enforce the contract.
- Indian & English law both are same i.e. only to parties to contract can enforce the contract. Not the stranger.
- But in India exception to this also prevails where strangers can also sue.
- M.C. Chacko Vs State Bank of Travancore

The general rule is that only parties to contract can sue not other person except of exceptional circumstances.

Exceptions are

- a. Where matter is of trust or charge or interested person, then any person can sue who has interest or get it enforced.

Khwaja Mohd. Khan Vs Husaini Begum - matter pertains to "Kharacha-e- paandaan" in Muslim law, the bride's father instituted the suit.

- b. Wherever matter is of family settlement partition, compromise there all the person can sue whose rights are affected.

Drapadi Vs Jaswanth Rai - wherever matter pertains to compromise in cruelty & maintenance then every person who is interested with the permission of court can sue.

c. **Acknowledgment** : wherever person has given acknowledgment in front of third person and on this ground entered into the contract then he can sue.

Eg: Estopped

d. Covenant running through land: wherever there is any land in which there is any charge or covenant then it can be enforced.

Tulk Vs Muxhey - If purchaser knows that there is any covenant on land then it can be enforced.

Q. Is consideration must in constant?

Ans. the general rule is that contract is not without consideration if it is done without consideration then such contract shall be void.

- There are exceptions to this rule:
 - a. Sec 25 of ICA
 - b. Gratuitous Bailment
 - c. Agency
 - d. Partnership

Section 25:

- Wherever any contract between the near relatives on account of natural love and affection and it is written & registered then no need of consideration.
- Wherever there is promise to compensate wholly or partly to that person who has voluntarily done something to the promisor or promisor was legally compelled to do (past consideration).
- Time barred Debt: Wherever any promise in writing & signed by person or his agent for payment of any debt which could be enforced but due to period of limitation it is barred by law (limitation stops the remedy not the right).
- In all the above no need of consideration. It is the question of that how much consideration should be there.
- Even if less consideration is given then also full assent. The transaction is valid not void.
- Wherever legality of gift is in question then this section not applies. If gift is actually made (refer TPA also).
- Inadequate consideration:
- Indian law is clear.

Section 63 :

- Wherever there is any promise then he may remit or dispense performance of promise (partly or wholly)
- Similarly, he can extend the time or accept satisfy as he deems fit (by another thing)
- English law: Pinnel rule, 1602 -> wherever agreement between two parties and consideration shall be given, if less consideration is given then it shall not be accepted.

• **Foakes Vs Beer:**

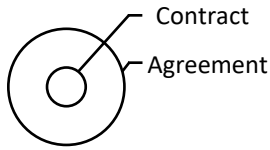
By this case the above principle was confirmed and also stated that person shall give principle as well as interest.

- But now exceptions have come to this rule also:
 - a. Promissory estoppels
 - b. Payment before time
 - c. Scheme of composition (adjustment)
 - d. Part payment by third party.

CHAPTER – 2

Contract, Voidable contract & Void Agreement (10-30)

- All contracts are agreement, but all agreements are not contracts.



Contract = Agreements which are enforceable by law. (refer sec 10 of ICA)

Section 10 : Wherever any agreement completes following conditions then it is enforceable by law.

- Free consent (13-22)
- Competence of parties (11-12)
- Lawful consideration (23)
- Lawful object (23)
- Not expressly declared void (fraudulent transfer) (refer sec 53, TPA)

Wherever contract must be in writing, in presence of witness registration then this section has no effect on them.

Eg. Sale deed in TPA

- Registration Act shall supersede.



Q. Who is competent to contract ?

Ans. Section 11: Every person is competent to contract who:

- Has attained the age of majority.(age)
- Who is of sound mind.(medical qualification)
- Not disqualified by law from contracting.(legal qualification)

Eg. Insolvent

Q. Who is sound mind ?

Ans. Section 12:

- Every person who understands the contract & form rational judgment regarding effect upon his interest, then he is competent to contract.
- If a person can't do then such contract is void.
- If there is any person who is generally unsound but for same time he is sound mind then;
 - If contract during soundness -> contract is void.
 - If it is during unsoundness -> contract is void.

Q. The rule of Mohri bibi has evolved explain. What is the present position?

Ans. Minor = Indian majority Act, 1875

- Previously there was sec 3&4, according to which a person is major who has attained 18 years of age and wherever guardian is appointed or property is in superintendence of court of wards, their age 21 years.

- Presently, act no 33, 1999. Which same in force on 16/12/1999.
- In this instead of sec 3&4 only sec 3 was stored major is who has completed 18 years of age.
- In English law, also same. After family reform act, 1969; all have same age.
- **Mohri Bibi Vs Dharam das Ghosh**

Wherever agreement is of minor, then it is void abinitio. It included following things:

- a. Borrowing money or promise to borrow.
 - b. Sale of goods, except necessity.
 - c. Contract of accounts
- In all the above matters no enforcement by minor or against him.

Q. Can there be restitution ?

Ans. Because agreement is void abinitio then there can't be any restitution.

- Leslie Vs Shell:

Wherever restitution there following rules:

- a. There must not be any alternation in property.
 - b. Doesn't apply on money.
 - c. Property must not be further sold.
- In old SRA & in ICA, restitution was applicable only in voidable contract so Mohri Bibi didn't revive any benefit. (refer sec 39 & 41 of SRA 1877)
 - Now there is amendment in SRA (SRA, 1963 sec 31&33) & ICA (sec 64&65)
 - If now minor goes to court to get the contract declared void then he has to restore the benefit.
 - Similarly, if any person on the ground of minority defends in court then he has restore the benefit or give compensation.

Q. Whether principle of estoppel applies on minor ?

Ans. Not apply because he can lie regarding his age.

Q. Whether Minor shall be liable in law of torts ?

Ans. Johnson Vs Pye -> minor is neither liable in contract nor in law of torts.

Q. Whether minor can ratify ?

Ans. Because contract of minor is void abinitio so he can't ratify.

- Dir to the above reasons no benefit was given to Mohri Bibi.
- In Mohri Bibi the principle was clearly laid down that neither by him nor against him contract is enforceable.
- Doe to this many minors had problem.
- Mir Swarajan Vs Faruddin Mohd. Chaudhary -> In this minor could not enforce the contract.

Present Position

In following cases there can be enforcement by or against minor;

- a. Necessity: wherever any person provides minor or incapable person with necessity then he can get contract enforced.
 - Amount shall be recovered from property.
 - Chappel Vs cooper -> necessity not only include food shelter and checking it includes education also. It depends on standard of living of person.'
 - Nash Vs Inman -> if minor doesn't pay then it can be recovered from his property.

- b. Wherever contract is beneficial for minor then it can be enforced.
- **Shri Kakulam Subramaniyam Vs Kurru Subaba Rao:**
Wherever matter of 'pious' obligation it is for the benefit of minor so guardian can sell the property.
- c. Contract of marriage
- d. Contract of apprenticeship
- These entire contracts can be enforced.

Consent: "consensus Ad Idem" i.e. meeting of the minds/same thing in the same sense.

- It is called consent.
- Free consent
 - C = Coercion (sec 15)
 - U = Undue influence (sec 16)
 - F = Fraud (sec 17)
 - M1 = Misrepresentation (sec 18)
 - M2 = Mistake (sec 20,21,22)
- C,F,M1 = Voidable (sec 19)
- V = Voidable (sec 19 A)

Section 15:

Coercion can be defines as:

- a. To do an act or threaten to do any act which is forbidden by IPC. (special law is also included in IPC)
- b. Unlawfully detaining or threatening to detain any property by which any person has prejudice.
- c. With the intention of above, that any person enter into an agreement.
 - It is not necessary that IPC is or is not in the place where the coercion is employed.
 - In English law it is called 'Duress'

Coercion	Duress
On property also	Only on body
To any person	Only party his wife or children
By any person	By party or by any person in his knowledge
Not necessary	Immediate act

Case:

1. **Askari Mirza Vs Bibi Jai Kishore** - more extensive than English law.
2. **C. amir raju Vs C. Seshamma Reddy** - question was whether by threat of suicide agreement is coercion? Court held that the word used is act not forbidden in IPC as section 309 of IPC is neither prohibited nor punished so it is coercion.
3. **Kishan lal kalra Vs NDMC** - If any person is given threat under Internal security act, then it is also coercion.

Q. Whether to publish truth, coercion?

Ans. No, publishing truth is not coercion.

- Wherever coercion then agreement shall be voidable at the option of the person from who consent was taken.

Section 16: undue influence can be defined as:

- a. Wherever two parties are in a relationship in which one party is in a position to dominate the will of another.
- b. & he uses his position to obtain unfair advantage then it is called undue influence.
 - It can be identified by following manner:
 - (i) Real authority= judge & accused
Apparent authority = employer & employee
fiduciary relationship = Advocate & client
 - (ii) Mental capacity (age, illness etc.)
- c. Contract is unconscionable -> the court shall consider undue influence.
 - Also refer sec 111 of IEA & sec 19 A of ICA.
 - Such agreement shall be voidable at the option of the party whose consent was taken.
 - Merely by beloved relationship, there is no presumption.
 - Billachi Vs Paperan - as soon as rear or apparent authority presumption (sine qua non) prima Facie.
 - Saxon Vs Saxon - merely position is not sufficient, usage must be
 - Wajid khan Vs Raja Evaz Ali
 - Raghunath Vs Sarju Prasad Sahu -
If by contract it is shown, there is unconscionable then undue influence & wherever money is required urgently, then it is not undue influence.

Section 17: Fraud can be defined as it means & includes any act committed by party or his agent or with his connivance with intent to deceive by:

- a. Any suggestion which is not true & person making it does not believe it to be true.
 - Misrepresentation can be defined as positive assertion which is not true but person making believes it to be true.
- b. Active concealment of fact (eg. Interview from police case)
- c. Promise without intention to perform (eg. Cheque bounce)
- d. Act fitted to deceive (eg. Janam patri)
- e. Any other omission which is declared fraudulent under law (eg. Sec 53 of TPA, i.e. fraudulent transfer.)
 - Silence is not connivance, unless
 - i. Duty to speak
 - ii. Silence = speech
 - Uberrima fides = contract between person of utmost trust. In such contract it is the duty to speak.
 - Haji ahmed Vs Abdul gani khan -> in general matters there is no duty to speak i.e. stranger has no duty to speak, so there is no fraud.
 - If there is change in circumstances then person has to be informed.
 - Half thing told & half thing silence = half truth
 - Glucksten Vs Barnes -> In this court held that the whole thing must be told.

In following matters right ends:

- a. When party affirms
- b. After lapse of time

- c. Interference of other person.
- d. Sec 19: wherever consent by other.
- e. Wherever party himself could have discovered as person, there no fraud shall be considered. Such contract shall be voidable at the option of the person against who fraud has been committed.

In following matter silence is equal to fraud:

- (i) Uberrima fides
- (ii) Transfer of immovable property
- (iii) Appropriation of shares
- (iv) Contract of partnership
- (v) Indemnity contract
- (vi) Fiduciary relationship

- **Derry Vs Peek lord Herschell :**

In false statement of fraud, following things are

- a. Knowingly
- b. Does not believe to be true

- **R.C. thakur vs Gujarat State housing board :**

Intention although how much good but if false statement then it shall considered fraud.

- **Gauri Shankar Vs Joshi Amba Shankar family trust :**

If anything done where it is clear that intention was to commit fraud then it shall be considered as an act fitted to deceive.

Section 18 : Misrepresentation defined as

- a. Anything which is not true, but person making it considers it to be true.
- b. Breach of duty without intention & other person either has advantage or claim.
- c. Any mistake innocently.
 - The meaning of misrepresentation is false statement but the person making it doesn't know that he is giving a false statement/evidence.
 - Chote lal Vs shiv nath -> karta sold the property by innocent mistake, the contract shall be voidable.
 - Oriental bank Vs John fleming
Signing without reading is also considered to be misrepresentation.
 - Oceanic steam navigation Vs Sundar Das here, there was +ve assertion i.e. capacity was more, than it is misrepresentation.
 - As per **sec 19**, such contracts shall be voidable.
 - If by ordinary diligence it would be known then person is not liable.

Mistake (sec 13, 20-22)

Section 13 : Wherever there is no consent there is no legal relationship there.

Such agreements are void-ab-initio.

Section 20, 21, 22 : there is no consent but due to any reason object/ prupose can't be fulfilled.

- **Smith Vs Hughes** - in this case difference was stated.
- In section 13 there is no consent & in sec 20,21,22, person is mislead & gives consent.
- Any mistake as to valuation is not mistake.

Wherever there is mistake of fact & it is of following types:

i. Identity of parties - wherever 2 persons are of the same name, then contract can be with wrong person.

- a. Case: cundy Vs lindsay -> two shops of the same name, so mistake.
- b. Jagan Nath Vs Secretary of State, India -> there 2 brothers were of the same name so contract with the wrong person, it was considered mistake.

ii. Mistake related to subject matter -

Courtier Vs Hostie - when parties were doing contract, they did not know that the subject matter was already sold. So, contract was considered as 'void'.

Principle of 'res extimta' - wherever subject matter is destroyed & parties do not know then such contract shall be void.

iii. Regarding nature & content of contract :

Foster Vs Mackinon - in this person did not know that he is signing on B.O.E. he was told that he was signing on guarantee. So considering mistake, it was considered as 'void'.

Section 20 : Agreement is void when both parties are under mistake as to matter of fact.

- When both parties to agreement are under a mistake as to matter of fact essential to the agreement the agreement is void
- Value of thing – Subject matter of agreement not to be deemed a mistake.

Section 21 : Effect of mistakes as to law

- A contract is not voidable because it was caused by a mistake as to any law in force in India. But a mistake of law not in force in Indian (foreign law) has the same effect as a mistake of fact.

Section 22 : contract caused by mistake of one party as to matter of fact. A contract is not voidable merely because it was caused by one other party to it, being under a mistake as to matter of fact.

Section 23 : What consideration & object are lawful & what not?

Ans. wherever there are following agreement there it is considered as unlawful object & consideration & such agreement is void.

i. Forbidden by law :

- **Kateshwar Mittal Vs Ramagappa** - wherever without license, illicit liquor there object is forbidden by law, so it is void.
- **Ajit Singh Vs Kakhbir Singh** - so person can put clog on right of redemption.

ii. If permitted then defeat the provisions of law 3:

- **Pagazzonic Vs K.C. Sethia** - In India includes foreign law with which India has friendly relation.
- **Surasai balari debi Vs Mohan Mazumdar** - wherever income tax on service law is infringed then no enforcement.

iii. Injury to person or property :

- **Ram swaroop Vs Bansi** - wherever interest rate is high, then it promotes slavery, so it is injury.

iv. Immoral :

- **Pearve Vs Brookes** - all transactions with prostitutes are immoral.
- **Dwarampudi Vs K. Ramiya** - If due to illicit relationship any gift is given, then it is void.

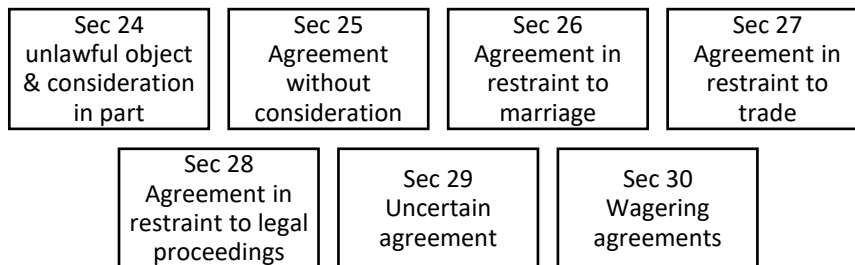
v. Opposed to public policy :

- **Gherulal Parakh Vs Mahadevdas** - for public policy person has to see the social structure.
- **Monini jain Vs State of Karnataka** - Educational institutions can't take capitation fees.
- **Champerty** - share in winning the case.

Following are considered public policy also:

- a. Trade with enemy
- b. Corruption in public policy
- c. Interference in administration of justice
- d. Marriage brokerage contract
- e. Champerty
- f. Dealing with employees which are unfair.

Void Agreement



Section 24 : Agreements void, if consideration & object there are several considerations or for several objects, there is one consideration, then if even one out of them is unlawful then the whole agreement shall void.

Section 26 : Agreement in restraint of marriage is void, except minor.

Section 27:

Q. What do you understand by agreement in restraint to trade?

Ans. Wherever there is any agreement which restrains any trade, business or profession then it is void to that extent.

- If restraint is partial also (even 1%) then also agreement is void.
- Difference in sec 27&28 is sec, 28 restraint shall be absolute i.e. there can be partial restrain also. While in sec 27 even in partial restrain also, it is void.

Madhav Chandar Vs Rajkumar - In an area there were two shops contract that one shop shall be closed. Such agreement is void.

Nord Vs Maxim Nodder Felt Guns co. - here two agreements were done:

- a. Plaintiff shall not do business for 25 years.
- b. Shall not do agreement with adverse party.

Court held (a) part is valid because it has time period whereas (b) part is void because it restraint from doing business.

The above rule has following exceptions:

- a. Exception by legislation:
 - (i) Sec 27 (exception)—wherever goods has been sold then such restrain can be done.
 - (ii) Sec 11, 36 & 54 of partnership act.
- b. Judicial procedure:
 - (i) Trade combinations: wherever there is trade combination then court shall see that what the object is. If regulation of work then it shall be permitted. But if monopoly is to create then such contract shall be void.
 - (ii) Exclusive sale agreement : if the object of agreement is to increase the sale of the product then court shall give permission, but if monopoly then no permission.
 - (iii) Relation with employees: during employment restriction is valid. After employment void.