

- Indian Contract Act

- Definition of a contract: Sec. 2(h) :

- *"An agreement enforceable by law is a contract."*

- **Flow of the definition:**

Contract ---- Agreement ---- Promise

Accepted proposal ----- Proposal/offer

- Definition Of a proposal: Sec. 2(a)

When one person, signifies to another, his willingness to do or to abstain from doing anything,

with a view to obtaining the assent of that other to such act or abstinence,

he is said to make a proposal.

- Rules of a valid proposal:
- It may be express or implied.
- It must contemplate to give rise to legal relationship.
- Terms must be certain.
- It may be specific or general.

- **Rules of a valid proposal:**
- **Invitation to offer is not an offer.**
- **Offer must be communicated**
- **Special terms must be communicated in a special manner**
- **Offer should not contain a term the non-compliance of which would amount to acceptance.**

- Definition Of acceptance: Sec. 2(b)
- When a person to whom the offer is made, signifies his assent thereto, the offer is said to be accepted.

Rules of a valid acceptance:

- The person to whom the offer is made must give it.
- It must be absolute and unqualified.

- **Rules of a valid acceptance:**
- **Mental acceptance is ineffectual.**
- **It must be expressed in the prescribed manner or in some usual manner.**
- **It must given within a reasonable time.**
- **It must succeed the offer.**

- ***'Every contract is an agreement but every agreement may not be a contract'***

- ***Essentials of a valid contract:***

- **Offer and acceptance**
- **Intention to create legal relationship**
- **Lawful consideration**

- **Essentials of a valid contract:**

- **Capacity of the parties**
- **Free consent**
- **Lawful object**
- **Certainty of terms**
- **Possibility of performance**
- **Writing and registration**

- Consideration: Sec. 2 (d)
- 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 abstain from doing something,
 - such act or abstinence or promise is called as Consideration for the promise.

- **Essentials of valid consideration:**

- **Consideration must move at the desire of the promisor**
- **Consideration may move from the promisee or any other person**
- **It may be past, present or future**
- **It must be something of value**

- **Exceptions to the rule No consideration no contract:**
- **Agreement made on account of natural love and affection**
- **Agreement to compensate for past voluntary acts**
- **Agreement to pay a time barred debt**
- **Completed gift**
- **Contribution to charity**

- **Competency of parties to a contract:**
- **Sec.10 states:**
“Essential ingredient of a valid contract is that the contracting parties must be competent”

- Competency of parties to a contract:

- Sec 11 says:

**“Every person is competent to contract;
who is of 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”**

Who is a Minor?

- As per Indian Majority Act:

a person below age of eighteen years under normal circumstances

and

a person below age of twenty one years in case of a guardian being appointed for his person or property

- Effects of agreement with or by a minor

- Usually it is Void – ab - initio
(absolutely void and inoperative)
- No ratification on attaining age of majority
- No estoppel against a minor

- Effects of agreement with or by a minor
- Minor is however responsible for necessities provided to him during his minority
- Minor can be admitted to benefits of partnership
- Beneficial agreements are valid
- minor is eligible to get benefits but can not be responsible towards liabilities

- **Sound mind: 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 judgement as to its effects on his interests”**

- **Disqualified from contracting:**

- **Alien enemies**

- **Foreign sovereigns**

- **Convicts**

- **Insolvent**

- **As per any other law applicable**

- **Consent = consensus ad-idem**
- **i.e. 'Agreeing upon the same thing in the same sense'**
- **Free Consent: Section 14--**
Consent is said to be free when it NOT caused by any one of the following
 - **Coercion**
 - **Misrepresentation**
 - **Mistake**
 - **Undue influence**
 - **Fraud**

Coercion: (Sec 15)

" It is

- a) Committing or threatening to commit, any act forbidden by Indian Penal Code, or**
- b) 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"**

Coercion: (Sec 15)

- **Effect of Coercion:**
- **Contract is voidable at the option of the party whose consent was so obtained**
- **Burden of proof that coercion was used lies on the aggrieved party.**

Undue Influence: Sec 16(1)

"A contract is said to be induced by undue influence where,

- i) 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**
- ii) he uses the position to obtain an unfair advantage over the other."**

Undue Influence: Sec 16(1)

Effects of Undue influence

- **Agreement is voidable at the option of the party whose consent is so caused**

Undue Influence

In a position to dominate the will of the other means:

a) Where he holds a real or apparent authority over the other, for eg. master & servant, judge and the accused, doctor and a patient etc.

In a position to dominate the will of the other means:

b) where he stands in a *fiduciary relation* to the other

- (fiduciary relation = relation of mutual trust and confidence) eg. Father & son, Guru & disciple**

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.

Misrepresentation: Sec 18—

"It means and includes-

a) the positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true:

or

_b) any breach of duty, which without any intent to deceive, gains an advantage to the person committing it, by misleading other person to his prejudice

or

_c) causing, however innocently, a party, to make a mistake as to the substance of the thing which is the subject of the agreement

Fraud: Sec 17—

It means and includes any of the following acts committed by a party to the contract—

- i)The suggestion that a fact is true when it is not true, by the one who does not believe it to be true**
- ii)The active concealment of a fact by a person who has knowledge or belief of the fact**
- iii)A promise made without any intention of performing it**
- iv)Any other act fitted to deceive**
- v)Any such act or omission as the law specially declares to be fraudulent**

- Representation =

- statement of fact made by one party to another
- either before or at the time of contract
- relating to some matter essential to the formation of the contract
- with an intention to induce the party to enter into the contract

An innocent wrong statement

= Misrepresentation

**A deliberate or intentional statement to deceive the
other = Fraud**

Effects of Misrepresentation

- **The aggrieved party has two options**
 - 1. He can rescind the contract, treating it as voidable**
 - 2. He may affirm the contract and insist that he shall be put in a position in which he would have been, if the statement was true.**

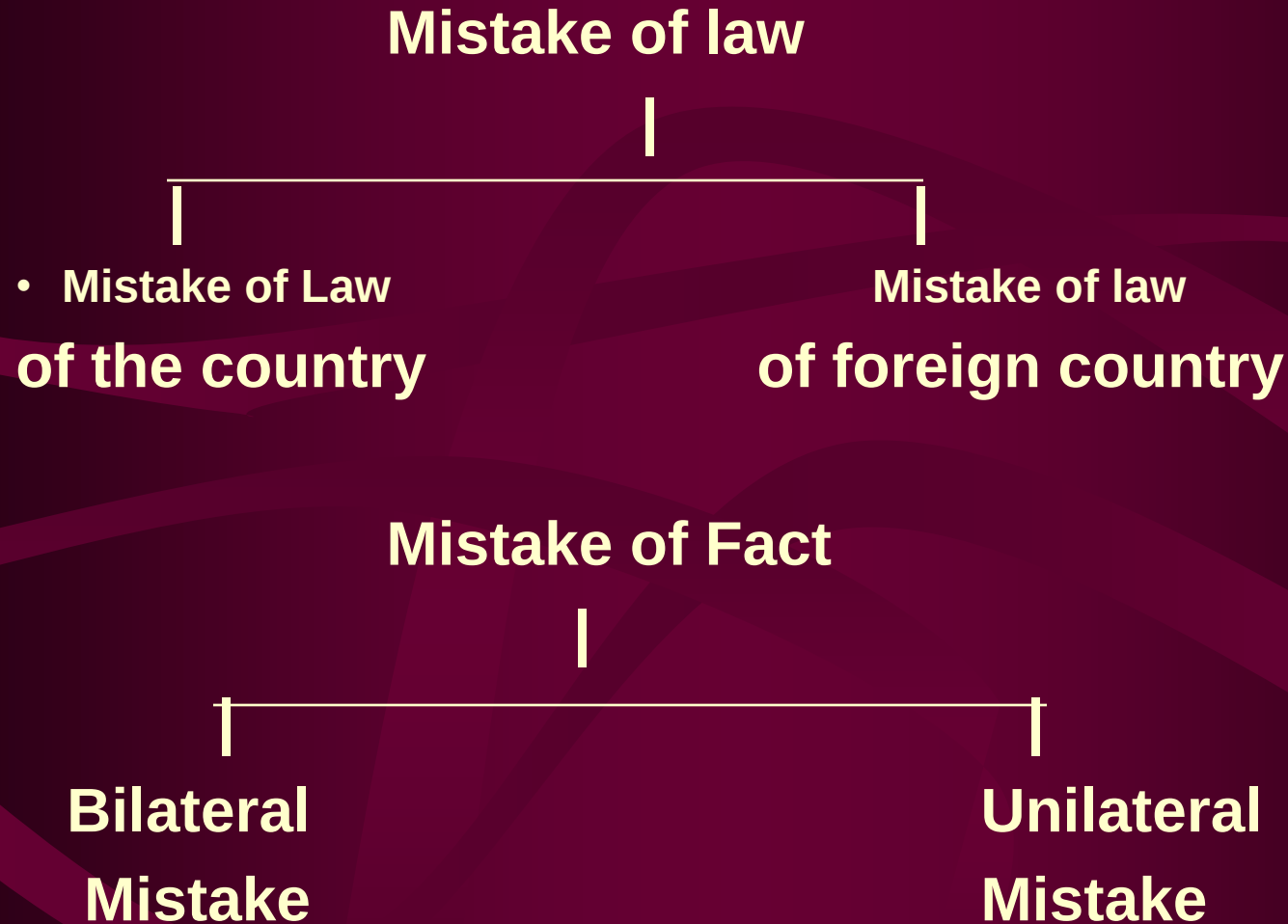
- Effects of Fraud:

The aggrieved party has three remedies

- 1. He can rescind (set aside) the contract, treating it as voidable**
- 2. He may affirm the contract and insist that he shall be put in a position in which he would have been, if the statement were true.**
- 3. He can also sue for damages, if any, because fraud is a civil wrong and hence compensation is payable**

Mistake= erroneous belief concerning something

Mistake can be of Law Or of Fact



Mistake of law of one's own country is no excuse.

Mistake of foreign law however stands on the same footing as mistake of fact

Bilateral mistake =

- a) Both parties to an agreement misunderstood each other and are at cross purposes**
- b) Mistake relates to a fact and not to judgment or opinion etc.**
- c) The fact must be essential to the agreement**

- **Bilateral mistake:**

- Ø Mistake as to the existence of the subject matter of the agreement

Effect: (agreement void)

- Ø Mistake as to the identity of the subject matter

Effect: (agreement void)

- Ø Mistake as to the title of the subject matter

Effect: (void ab-initio)

Bilateral mistake:

Ø Mistake as to the quantity of the subject matter

Effect: (agreement void)

Ø Mistake as to the quality of the subject matter

Effect: (agreement void)

- **Unilateral Mistake :**
- **only one of the contracting parties is mistaken as to a fact material to the contract**

Effect of Unilateral Mistake:

- **Contract remains valid unless caused by misrepresentation or fraud.**
- **Where the mistake is caused by misrepresentation or fraud the contract becomes voidable at the option of the aggrieved party.**

Cases where agreement does not give rise to any contract in spite of a unilateral mistake:

- Ø Mistake as to the identity of the person contracted with, where such identity is important**
- Ø Mistake as to nature and character of the written document.**
- Reason for these two exceptions is that the mistake is so fundamental as to go to the roots of the agreement**

Discharge of contract

- o by performance- actual or attempted (tender)
- o by mutual consent or agreement
- o by supervening impossibility
- o by lapse of time
- o by operation of law
- o by breach of contract

Essentials of a valid tender:

Ø It must be unconditional

Ø At a proper time and place

Ø Must be of the whole obligation contracted for

Ø Must give a reasonable opportunity to the promisee for inspection of goods

Essentials of a valid tender:

- Ø Must be made to the proper person
- Ø Must be made by a person who is in a position and is willing to perform
- Ø In case of money, the exact amount should be tendered

Refusal to accept a properly made 'Tender':

- The contract is deemed to have been performed by the tenderer (promisor).
- A suit for breach can lie against the promisee.

Modes of discharge by Mutual consent –

- **Novation**
- **Alteration**
- **Rescission**
- **Remission**
- **Waiver**

Cases where doctrine of supervening impossibility applies---

- **Destruction of subject matter**
- **Failure of ultimate purpose**
- **Death or personal incapacity of the Promisor**
- **Change of law**
- **Outbreak of war**

Discharge by operation of law –

- Death of any of the parties
- Insolvency
- Merger of rights
- Unauthorized material alteration

Discharge by Breach of contract--

- Actual
- Anticipatory

Remedies for Breach of contract:

- Rescission of the contract
- Suit for damages
- Suit upon quantum meruit
- Suit for specific performance
- Suit for injunction

Remedies for Breach of contract:

- **Rescission of the contract when not available:**

when owing to change in circumstances parties can't be put in original position

Where third party has acquired rights for value

Where only part of contract is rescinded and contract is not severable

Remedies for Breach of contract:

- **Specific performance not allowed:**

where damages is adequate

contract of personal volition

impossible to supervise

contract ultra-vires

Remedies for Breach of contract:

- **Quantum Meruit arises when:**

A contract is subsequently discovered to be void for some technical reasons

a person rendering goods or services has not done so gratuitously

when there is no contract as to remuneration for work rendered, a reasonable amount is to be paid

Damages

are decided based on remoteness of consequences

only for loss actually suffered

Also for inconvenience suffered or loss of reputation

aggrieved party should try to mitigate loss

Different kinds of damages:

- Ordinary or general or compensatory damages
- Special damages (i.e. damages in contemplation of the parties at the time of the contract)
- Exemplary, punitive or vindictive damages
- Nominal damages
- Liquidated
- Penalty

- Quasi Contracts:

1. Claim for necessaries supplied to a person incapable of contracting
2. Reimbursement to a person paying money due by another in payment of which he is interested
3. Responsibility of finder of goods
4. liability of a person to whom money is paid or things delivered by mistake or under coercion

- **Contract of Indemnity:**

It is a contract by which one person promises to save the other from any loss caused to him by the conduct of the promisor himself or by conduct of any other person.

- **Indemnity holder or indemnified = one protected**
- **Indemnifier = one who gives protection**

Rights of indemnified:

- ☐ Can recover all damages
- ☐ All costs which he may be compelled to pay in any Suit

Rights of Indemnifier:

- ☐ Right of Subrogation
- ☐ Most other rights of a suerty

Contract of Guarantee:

- ❑ Three parties**
- ❑ Contract of surety is independent of one with principal debtor**
- ❑ Contract between creditor and surety is fiduciary – creditor should disclose everything material**

Types of Contract of Guarantee:

- ☐ Oral or Written
- ☐ Specific and Continuing (specific = irrevocable, continuing = can be revoked for further transactions)
- ☐ Whole or partial debt

Rights and obligations of creditor:

- ☐ **Demand payment from surety**
- ☐ **If surety insolvent proceed against him too**
- ☐ **Not to change terms of contract**
- ☐ **Not to release principal debtor**
- ☐ **No extension or other facility to be given to principal debtor**

Rights of Surety:

- ❑ **Against principal debtor**
 - ❑ **Right of subrogation**
- ❑ **Rights against co-sureties**

Discharge of Surety:

- ☐ By notice of revocation
- ☐ By death of surety
- ☐ By variance in terms of contract
- ☐ By release of principal debtor
- ☐ By loss of security