



SYLLABUS

Class – B.Com. I Years

Subject – Business Law

UNIT – I	Indian Contract Act 1872- Definitions, Nature of Contract, Offer & Acceptance, Capacity of Parties to Contract, Free Consent and Consideration, Expressly declared void agreement, Performance of contracts.
UNIT – II	Breach of Contract, Remedies for breach of contract, Bailment and Guarantee Contracts. Special Contracts- Bailment, Pledge and Agency.
UNIT – III	Negotiable Instrument Act, 1881- Features, Promissory note, Bill of Exchange and Cheques, Holder and Holder in Due Course. Crossing of Cheque, types of Crossing, Dishonor and Discharge of Negotiable Instruments.
UNIT – IV	Consumer Protection Act 1930 - Main Provisions. Consumer Disputes, Redressal Mechanism. Monopoly and restrictive trade practices.
UNIT – V	Foreign Exchange Management Act 2000 (FEMA) - Objective and Main Provisions, Introduction to Intellectual Property Right Act - Copyright, Patent and Trademark.



Unit-I Subject: Indian Contract Act

The Indian Contract Act 1872

The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Scheme of the Act: - The scheme can be divided into two main groups:

1. General principles of the law of contract.
2. Specific kinds of contracts -
 - a. Indemnity and Guarantee
 - b. Contracts of Bailment and Pledge
 - c. Contract of Agency.

Meaning and Definition of an Agreement:

An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 "Every promise and every set of promises, forming the consideration for each other is an obligation."

Meaning and Definition of a Contract:

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation. The contract consists of two elements:

1. An agreement and
2. Legal Obligation i.e. enforceability by law.

Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 "An agreement enforceable by law is a contract."

Essential Elements of a valid Contract:

1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent:** "Consent" means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
 1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.



6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts

A. On the basis of Enforceability

1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.
Void Agreement: "An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void *ab initio*.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.
5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

B. On the basis of Creation:

1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.

C. On the basis of Execution

1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

D. On the basis of performance in relation to parties

1. **Unilateral Contract:** When one party has to perform his obligation, and the other party has performed his obligation at the time of formation of the contract or before it. This is why it is also called one-sided contract.
2. **Bilateral Contract:** When the obligations of both the parties are outstanding at the time of formation of contract. it is similar to Executory contract. It is also called contract with executory consideration.



Capacities of Parties

Meaning of Capacity to Contract

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three conditions :

- i. He has attained the age of majority;
- ii. He is of sound mind; and.
- iii. He is not disqualified from contracting by any other law to which he is subject.

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

- (i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
- (ii) Where the minor's property has been placed under the superintendence of a Court of wards.

2) PERSONS OF UNSOUND MIND

A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

1. Idiot
2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

Rules /effects as to or Nature of Minor's Agreements:

1. **Void ab-initio:** - Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. **Minor can be a promise or beneficiary:** - A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.



4. **Restitution/ Compensation possible:** - If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager:** - A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
 - i. The parent/ guardian/ manager acts within the scope of his authority; and
 - ii. The contract is for the benefit of the minor.
6. **No liability of parents:** - The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent:** - A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he can represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency:** - A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor:** - A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. **Minor shareholder:** - A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessaries of life:** - A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessaries of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

Definition of Consideration

Consideration is one of the essential elements of a valid contract. The term "Consideration" means something in return i.e. quid -pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:

" When, at the desire of the promiser ,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 a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- **It may move from the promise or any other person:** An act constituting consideration may be done by the promise himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that



even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)

➤ **It may be Past , Present or Future:**

- Past Consideration: The consideration which has already move before the formation of agreement.
- Present consideration: The consideration which moves simultaneously with the promise.
- Future Consideration: The consideration which is to be moved after the formation of agreement.

➤ **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.

➤ **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.

➤ **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

➤ **It must not be illegal, immoral or opposed to public policy.**

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule is "An Agreement made without consideration is void". Sec 25 & 185 deals with the **Exceptions** to this rule. These cases are:

1) Love & Affection: A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) Compensation for voluntary services: A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) Promise to pay a Time barred debt: A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) Completed gifts: There need not be consideration in case of completed gifts.

5) Agency: No consideration is necessary to create an Agency.

6) Contribution to Charity

STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract).

Free Consent

MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) **COERCION**

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or 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".



The essential elements of coercion are

- (1) Committing or threatening to commit any act forbidden by Indian Penal Code.
 - (2) Unlawful detaining or threatening to detain any property.
 - (3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
 - (4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.
- 2) **UNDUE INFLUENCE** : It is kind of moral coercion.
Sec. 16(1) defines undue influence as, "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 other and uses that position to obtain an unfair advantage over the other".
- (a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.
 - (b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.
 - (c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.
- Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) **MISREPRESENTATION**

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

- (1) By positive statement.
- (2) By breach of duty.
- (3) By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

- (1) There must be a representation or omission of a material fact.
- (2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.
- (3) The representation or omission of duty must have induced the party to enter into contract.
- (4) The representation must be wrong but the party making the representation should not know that it is wrong.

4) **FRAUD**

Fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

- (1) The suggestion that a fact is true when it is not true by a person who does not believe it be true.
- (2) The active concealment of the fact by a person having knowledge or belief of the fact.
- (3) A promise made with out any intention to perform it.
- (4) Any other act fitted to deceive.
- (5) Any such act or omission as the law specifically declares to be fraudulent.

5) **MISTAKE**

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.



When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

- (1) Mistake of law, (a) Mistake of law of the country. (b) Mistake of foreign law. (c) Mistake of private rights of the parties
(2) Mistake of fact, (A) Bilateral Mistake : (1) Mistake as to subject mater : (a) Mistake regarding existence (b) Mistake regarding identity (c) Mistake regarding title. (d) Mistake regarding price (e) Mistake regarding quality (f) Mistake regarding quantity (2) Mistake as to the possibility of performance (a) Physical impossibility (b) Legal impossibility (B) Unilateral Mistake : (1) Mistake as to identify of the person contracted with. (2) Mistake as to the nature of contract.

Distinction between an Agreement and a Contract

Table with 3 columns: Basis of distinction, Agreement, Contract. Rows include Definition, Creation, legal rights and obligations, Necessity, Legally binding, and Concept.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

Table with 3 columns: Basis of distinction, Void Agreement, Void Contract. Rows include Definition, Time when becomes void, and Restitution.



	granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	contract is discovered to be void or becomes void.
4. Description in the Act	Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

Basis of distinction	Void Agreement	Voidable Contract
1. Definition	An agreement not enforceable by law is said to be void.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2. Period of validity	It is void from the beginning i.e. void ab initio	It is valid till it is avoided by the aggrieved party to the contract.
3. Legal existence	It is nullity, hence, does not exist in the eye of law.	It has its existence in the eye of law till it is repudiated.
4. Change in status	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
5. Causes	Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
6. Transfer of title	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
7. Restitution	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right restitution is available if the party elects to avoid the contract.
8. Damages	No party as a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfilment of the promise.

**DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT**

Basis of distinction	Void Contract	Voidable Contract
1. Definition	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. Will of the party	Its validity is not affected by the will of any party. It is decided by the Law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
4. Causes	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Secs. 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

Basis of distinction	Void Agreement	Illegal Agreement
1. Definition	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law, is illegal.
2. Effect on collateral agreement	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. Scope	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All ill agreements are void.
4. Restitution	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis of distinction	Coercion	Undue influence
1. Definition	Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises 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.
2. Relations	In case of coercion, relation between the parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.



3. Intention	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. Nature of force	It involves physical force.	It involves moral force.
5. Kind of act	It involves criminal act.	It does not involve criminal act.
6. Direction	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. Who exercise	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8. Remedies	A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoid the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A]

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Basis of distinction	Fraud	Misrepresentation
1. Meaning	A fraud is an intentional misrepresentation or concealment of material fact to induce the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party to induce the other party to enter into a contract.
2. Intention	Fraud is committed with an intention to deceive	There is no such intention.
3. Belief in the facts	The person committing a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
4. Suit for damage	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. Defence	A party cannot set up a defense that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defense that the aggrieved party had means of discovering the truth.

DISTINCTION BETWEEN CONTINGENT CONTRACT AND WAGERING AGREEMENT

Basis of distinction	Contingent contract	Wagering agreement
1. Meaning	A contingent contract is a contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay a certain amount of money to the other on the happening or non-happening of a specific event.
2. Nature of event	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Event is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise in a contingent contract.	The wagering agreement consists of reciprocal promises.
4. Interest in the subject matter	The parties are interested in the subject-matter of such contracts.	The parties to a wagering agreement have no other interest.



	Therefore, the happening or non-happening of the event is material for them.	interest in the subject matter of the agreement except the winning or losing the money at stake.
5. Validity	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharashtra and Gujarat it is illegal.
6. Nature of contract	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.