

## **BUSINESS LAW**

### **UNIT - I**

**Commercial Law** - Introduction- Meaning- Objectives - Sources- origin - (custom-law of England - Equity precedents nature of law.) Indian Contract Act,1872 – Contract- Definition- Obligation- Nature and Kinds of Contract - Elements of a Valid Contract - Formation of Contract.

### **UNIT - II**

Agreement -Contingent Contract, Quasi Contract - Types of contingent contract- Performance of a Contract - Discharge of a Contract - by performance mutual consent, by impossibility, by contract, by breach-Remedies for breach of Contract.

### **UNIT - III**

**Contract of Indemnity**- Introduction- Rights of indemnity holder and indemnifier- Guarantee-Definition, features, types, Revocation -Bailment - pledge. Hypothecation-charge mortgage-Meaning and definitions.

### **UNIT - IV**

**Agency** - creation of Agency - Kinds of Agent - Rights and Duties of Principal and Agent -Relation of Principal and third parties - Termination of Agency.

### **UNIT - V**

**Sale of goods Act 1930**- Definition of Sale and Agreement to sell - Condition and Warranties -Transfer of property - Transfer of title - performance - Remedies for breach- Unpaid Seller - Rights of unpaid seller - Auction sale - Rules relating delivery of goods.

# **THE INDIAN CONTRACT ACT, 1872**

**CONTRACT** - According to sec.2(h), a contract is defined as an agreement enforceable by law.

**AGREEMENT** - According to sec.2(e), every promise and every set of promises forming consideration for each other.

Consideration is the return benefit the parties to the contract get.

Agreement = Offer + Acceptance

**PROMISE** - According to sec.2(b), a proposal when accepted becomes a promise.

<b>AGREEMENT</b>	<b>Contract</b>
<b>Offer + Acceptance</b>	<b>Agreement + its legal enforceability</b>
<b>May create social or legal obligation</b>	<b>Creates only legal obligations between the parties.</b>
<b>All agreement do not become contracts</b>	<b>All contracts are based on agreements</b>

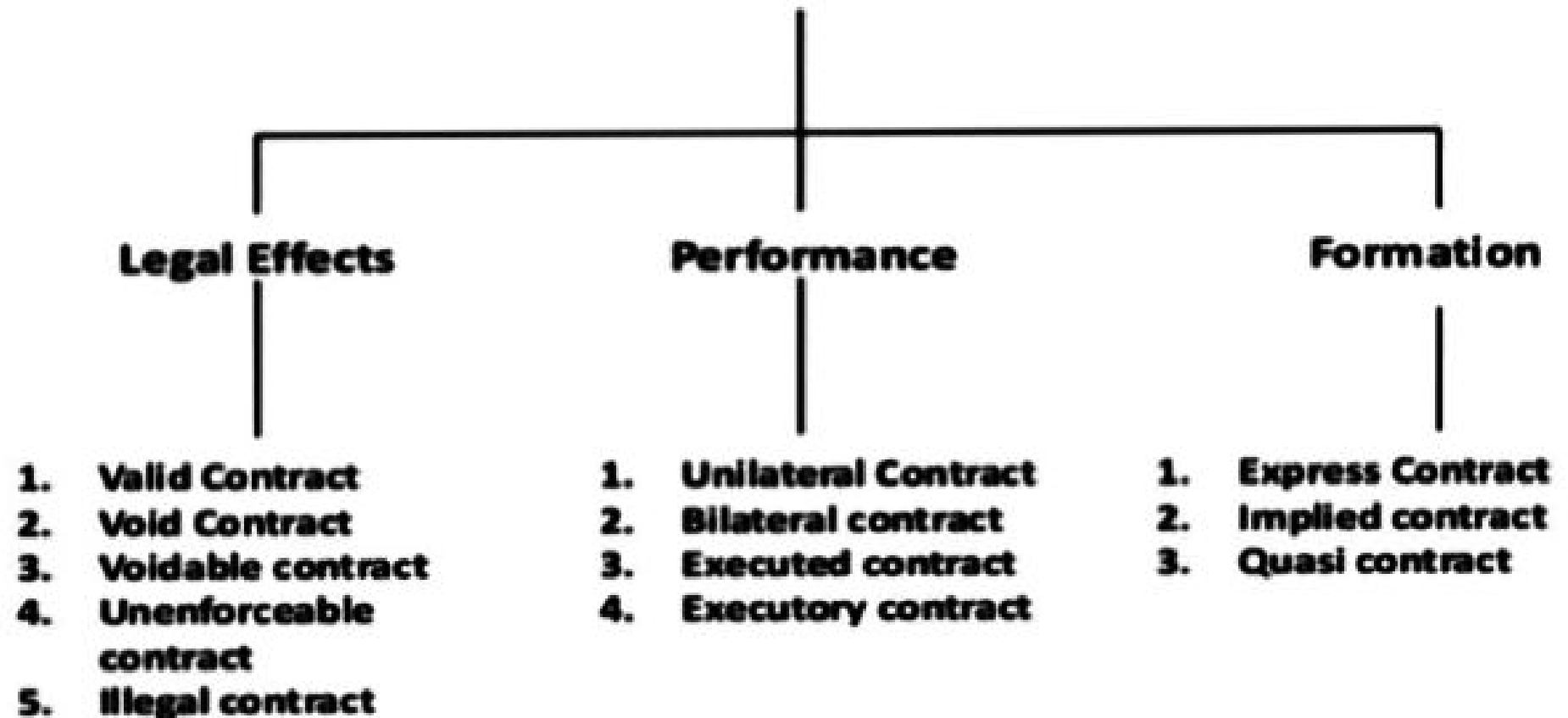
## **CONSENSUS - AD - IDEM-**

According to Sec.13, meeting of minds or identity of minds or receiving the same thing in same sense at same time.

# **ESSENTIAL ELEMENTS OF A VALID CONTRACT (Sec.10)**

1. A Valid Offer & acceptance.
2. Intention to create legal relationship.
3. Consensus – ad – idem.
4. Lawful Consideration.
5. Capacity to contract.
6. Free consent.
7. Legality of object.
8. Possibility of performance.
9. Writing & registration.

# Classification of contracts



# TYPES OF CONTRACTS- Based on Legal Effects

**Valid contract** - If all the condition are fulfilled it is called as a valid contract.

**Invalid contract** - In a contact if any one condition is not fulfilled.

**Is void (Void-ab-Intitlo)** - An agreement which is not valid from the beginning.

**Becomes void** - An agreement which is valid in the beginning but due to some supervening impossibility the contract becomes void.

**Voidable contract** - A contract which is valid unless until avoided by either the party.

**Illegal contract** - An agreement forbidden by law. It involves the commission of crime or violate public policy, or immoral in nature.

**Unenforceable contract** - It is valid but due to some technical defect the contract becomes void. In case defects are removed the contract is enforceable.(lack of registration, lack of signature etc.,)



# Based on formation

**Express contract** - When contracts are either in writing or in oral.

**Implied contract** - When contracts are neither in writing nor in oral but inferred from the acts or circumstances of a particular case.

**Quasi Contract:** It is not actually entered into by the parties but is something imposed on a party by law.

## **Based On Performance**

**Executed contract** - In a contract where both the parties have performed their obligation, there remains nothing to perform.

**Executory contract** - In a contract where both the parties are yet to perform their obligation.

**Unilateral contract** - In a contract one party has performed his obligation and other person is yet to perform his obligation.

**Bilateral contract** - In a contract where both the parties have performed their obligation. Bilateral & Executory are same and inter - changeable.

# Offer

- ▶ ***According to Sec.2(a), when a person signifies to another his willingness to do or to abstain from doing something with a view to obtaining the assent of that other to such an act or abstinence, he is said to make a proposal.***

## **TYPES OF OFFER:**

- *Express offer*
- *Implied offer*
- *Specific offer*
- *General offer*
- *Cross offer*
- *Counter offer*
- *Standing offer*

**Express offer** - When offer is given to another person either in writing or in oral.

**Implied offer** - When offer is given to another person neither in writing nor in oral.

**Specific offer** - When offer is given to a specific person.


**General offer** - When offer is given to entire world at a large.(Carlill Vs. Carbolic smoke ball Co.,)

**Cross offer** - When both the persons are making identical offers to each other in ignorance of other's offer.

**Counter offer** – When a person to whom the offer is made, instead of accepting the terms of the offeror desires modification of the same.

**Standing offer** - An offer which remains continuously enforceable for a certain period of time.

# ***Carlill Vs. Carbolic smoke ball Co.,)***

- (1) that the advertisement was not a unilateral offer to all the world but an offer restricted to those who acted upon the terms contained in the advertisement**
  - (2) that satisfying conditions for using the smoke ball constituted acceptance of the offer**
  - (3) that purchasing or merely using the smoke ball constituted good consideration and more people buying smoke balls by relying on the advertisement was a clear benefit to Carbolic**
  - (4) that the company's claim that £1000 was deposited at the Alliance Bank showed the serious intention to be legally bound.**
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# **LEGAL RULES FOR OFFER**

- ❖ ***Offer must be given with an intention to create a legal relationship.(Balfour Vs. Balfour)***
- ❖ ***Offer must be definite.(Taylor Vs. Portington)***
- ❖ ***There is a difference between offer, invitation to offer, invitation to sale. (Harris Vs. Nickerson)***
- ❖ ***Offer must be communicated. (Lalman Vs. Gauri Dutt). Communication of offer is complete only when it reaches the person to whom it is made.***
- ❖ ***Mere statement of price is not an offer.(Harvey Vs. Facey)***

# Acceptance

According to sec.2(b), when a person made a proposal to another to whom proposal is made, if proposal is assented there to, it is called acceptance.

## **LEGAL RULES FOR ACCEPTANCE**

- **Acceptance must be absolute and unconditional.**\_(Neale Vs Merret)
- **Acceptance must be given as per the mode prescribed by the offerer.**
- **Acceptance must be given before the lapse of time or within reasonable time.**
- **Acceptance may be given by any person in case of general offer**

- **Acceptance must be given by the person to whom the offer is made or by an authorised person. ( Powell Vs Lee)**
- **Acceptance must be communicated. (Bordgon Vs. Metropolitan Rly. Co.)**
- **Mental acceptance is no acceptance or acceptance must not be derived from silence.**
- **Acceptance must not be precedent to offer.**



# Communication of Offer and Acceptance

According to Section 4,

The communication of offer is complete when it comes to the knowledge of the person to whom it is made.

The communication of acceptance is complete—

- ▶ **As against the proposer**— when it is put in to a course of transmission to him so as to be out of the power of the acceptor.
- ▶ **As against the acceptor** – when it comes to the knowledge of the proposer.

# Revocation of offer and acceptance

- ▶ A proposal may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards.
- ▶ An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards.

**M, by a letter posted on 1<sup>st</sup> June, offers to sell his car to N for 5 lakhs. The letter reaches N on 3<sup>rd</sup> of June. N accepts the offers by a letter posted on 5<sup>th</sup>. The letter reaches M on 7<sup>th</sup>.**

**Communication of offer – 3<sup>rd</sup> June.**

**Communication of acceptance –  
as against the proposer – 5<sup>th</sup> June**

**As against the acceptor – 7<sup>th</sup> June**

**Proposal can be revoked – before 5<sup>th</sup> June**

**Acceptance can be revoked – before 7<sup>th</sup> June**

**Lapse of offer:**

- ▶ Revocation**
- ▶ Lapse of time**
- ▶ Death or Insanity of offerer**
- ▶ Counter Offer**
- ▶ Acceptance not as per the prescribed mode**
- ▶ Destruction of subject matter of contract**
- ▶ Rejection of offer by offeree.**


**B offered to sell his house to A for Rs. 50,000. A accepted the offer by post. On the next day, A sent a telegram revoking the acceptance which reached B before the letter. Is the revocation of acceptance valid? What would be the effect if both the letter of acceptance and the telegram of revocation of acceptance reach B at the same time?**

# CONSIDERATION

- ▶ *According to sec 2(d) consideration is defined as “when at the desire of the promisor , or 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 an act or absinence or promise is called a consideration for the promise*

***A party to an agreement who promises to do something must gain something in return. This something in return is called consideration.***

## **LEGAL RULES AS TO CONSIDERATION**

- 1) Consideration must always be provided at the desire of the promisor.  
[Durga Prasad v. Baldeo ]**
  - 2)It may be provided by the promisee or any other person.  
[Chinnaya v. Ramayya ]**
  - 3)It may be past ,present or future .**
  - 4)It need not be adequate . It must be of some value in the eyes of law.**
  - 5)It must be real , certain and possible. (Harvey Vs Gibbons)  
(Stilk Vs Myrick).**
  - 6)It must not be illegal , immoral or opposed to public policy .**
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## **Contract without consideration is void – Exceptions**

- ▶ ***Love & affection ( Venkataswamy Vs Rangaswamy)***
- ▶ ***Compensation for voluntary service***
- ▶ ***Promise to pay a time - barred debt***
- ▶ ***Completed gift***
- ▶ ***No consideration is necessary to create an Agency***
- ▶ ***Charity (Kedarnath v. Gauri Mohamed ) (Abdul Aziz Vs Masum Ali)***
- ▶ ***Guarantee by surety***



# 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.*

*(Dunlop Pneumatic Tyre Co. Vs Selfridge and Co Ltd)*

## Exceptions

- 1) A trust or a charge
- 2) Marriage settlement, partition or other family arrangements .(Shubbu ammal Vs Subramaniam)
- 3) Estoppel (Acknowledgement)
- 4) Assignment of contract .
- 5) Contract with agent .
- 6) Covenants running with land .

# **Capacity 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

a) *Minor*

b) *unsound person*

c) *others*

*i.e alien enemy,*

*insolvent,*

*convict,*

*company/corporation against MOA /*

*AOA .*

# **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 who comes under superintendence of law/legal representative.***

# **Rules governing minors agreement**

- ▶ ***Rule 1 : judges are counsellors , jury is the servant , law is the guardian .***
- ▶ ***Rule 2:in case minor entered into a contract which is unlawful , illegal , immoral he is also prosecutable & punishable under the relevant law.***

# Legal rules

- ▶ **An agreement with minor is void ab initio and he is not liable to return the benefits received under a void agreement.**  
**[Mohiri Bibi v. Dharmadas Ghase]**
- ▶ **Minor can be a beneficiary**  
**[Abdul Gaffar Vs Prem piar lal]**
- ▶ **Minor cannot ratify his agreement on attaining the age of majority**  
**(Smith Vs King)**
- ▶ **He can enter into contract for his necessary**  
**[Robert v. Gray ]**
- ▶ **Minor can be a shareholder**
- ▶ **Minor cannot act as a partner**
- ▶ **Minor can act as an agent**
- ▶ **A Minor is liable for punishment for criminal offences.**

# **Unsound person**

- ▶ **According to sec(12) a person generally sound, occasionally unsound can enter into a contract when he of sound mind**
- ▶ **A person generally unsound occasionally sound can enter onto contract when he is sound mind.**

## **Persons of unsound mind:**

- 1) **Lunatic,**
- 2) **Idiots,**
- 3) **Drunken or intoxicated persons.**

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


**Lunatic:** A lunatic suffers from intermittent conditions of sanity and insanity.

**Idiot:** An idiot does not possess understanding power at all. It is a permanent condition and the contract is void.

**Drunken Person:** When a person is drunk he losses his capacity to form a rational judgment during that time.



# Other persons disqualified from contracting

- ▶ **Alien Enemies**– One whose country is at war with India.
  - ▶ **Foreign Ambassadors**– They are representatives of foreign countries. They can enter into a contract but legal action can be taken only with permission of CG.
  - ▶ **Convicts**– Convict is a person in jail.
  - ▶ **Insolvents**– A person whose debts are more than his assets. His property will come in to the possession of the official receiver.
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# **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**

# **COERCION**

**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.**

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

**1.The committing or threatening to commit any act forbidden by the Indian Penal Code**

**2.The unlawful detaining or threatening to detain any property.**

### **Chikkim Ammiraju vs. Seshamma:**

**In this case a person threatened his wife and son that he would suicide if she doesn't transfer her property in his brother's favour. The wife and son executed the release of the deed under the threat . Held the threat of suicide amounted to coercion within Sec 15 and the release deed was therefore voidable.**


**This also is a very important case to prove that threat to commit suicide amounts to coercion.**

### **Ranganayakamma vs. Alwar Setty:**

# **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 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**



# **Essentials of undue influence**

1. There are two persons
2. The relations are satisfying between them
3. One must dominate the other
4. There must be unfair advantage
5. It involves the moral pressure

There is an undue influence between the following persons:

- Principal and agent
- Superior and subordinate
- Doctor and patient
- Father and son
- Teacher and student
- Promoter and company
- Master and servant
- Spiritual advisor and devotee

- ▶ **Among the following relations there is no undue influence**
  - 1.wife and husband**
  - 2.landlord and tenant**
  - 3.debtor and creditor**

### **CASE: Raniannapura vs. Swaminathan**

**A poor Hindu widow was persuaded by a money lender to agree to pay 100% rate of interest on money lent by him. She needed the money to establish her right to maintenance. It was a clear case of undue influence and the court reduced the rate of interest to 24%.**

- ▶ **Mannu Singh Vs Umadat Pandey**
- ▶ **Shersingh Vs Prithi Singh**

<b>Coercion</b>	<b>Undue Influence</b>
<b>Law does not presume coercion under any circumstances.</b>	<b>Law presumes coercion under some circumstances.</b>
<b>It may be exercised by a stranger to a contract.</b>	<b>It is exercised only by a party to the contract.</b>
<b>It involves threat to one's life or property.</b>	<b>It involves the use of one's position to advantage</b>
<b>It amounts to commission of crime punishable under IPC.</b>	<b>It does not amount to commission of crime punishable under IPC</b>



# **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.**

**1. 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**


**2. The active concealment of a fact by a person having knowledge or belief of the fact.**

**3. A promise made without any intention of performing it**

**4. Any other act fitted to deceive**

**5. Any such act or omission as the law specially declares to be fraudulent**

## **The essentials of fraud are:**

- 1. There must be a representation or assertion and it must be false.**
  - 2. The representation must relate to a fact.**
  - 3. The representation must have been made with the intention of inducing the other party to act upon it.**
  - 4. The representation must have been made with a knowledge of its falsity.**
  - 5. The other party must have subsequently suffered some loss**
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# MISREPRESENTATION

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

**Misrepresentation is a false representation of fact made by a party to an agreement with out any intention to deceive the other party.**

### **Derry vs Peek**

#### **Essentials of Misrepresentation:**

- 1. There must be a representation or assertion and it must be false and his intention is not to deceive the other party.**
- 2.The representation must relate to a fact.**
- 3.The representation must have been made with the intention of inducing the other party to act upon it.**
- 4.The person making it should honestly believe it to be true.**
- 5.The other party must have subsequently suffered some loss**

# Mistake

- ▶ Mistake can be defined as “ an incorrect idea or opinion about something.

## Types of Mistake:

### 1) Mistake of Law

a) Indian Law – Ignorance of law is no excuse.

b) Foreign Law– Void

### 2) Mistake of Fact

a) Bilateral Mistake

b) Unilateral Mistake

## **Bilateral Mistake:**

According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

### **Bilateral Mistake as to the subject matter:**

- 1. Mistake as to the very existence of the subject matter.**
- 2. Mistake as to the identity of the subject matter.**
- 3. Mistake as to the quality of the subject matter.**
- 4. Mistake as to the quantity of the subject matter.**
- 5. Mistake as to the title of the subject matter (Cooper Vs Phibbs)**
- 6. Mistake as to the price of the subject matter (Webster Vs Cecil)**

## **Bilateral mistake as to the possibility of performing the contract:**

- 1. Physical Impossibility**
- 2. Legal Impossibility**

## **Unilateral Mistake:**

**When one of the parties to the contract is under a mistake as to the matter of fact, it is known as unilateral mistake.**

**A contract is not voidable merely because it was caused by one of the parties to it being under a mistake.**

# Exceptions

- ▶ When there is a mistake as to the identity of the person contracted with. (Sowler Vs Potter)
- ▶ When there is a mistake as to the nature of the contract. (Foster Vs Mackinnon)




# Agreement with unlawful object

According to section 23, The object of the agreement is lawful unless “it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent or it involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public policy.

**Every agreement of which the object or consideration is unlawful is void.**

# Unlawful Agreement

- ▶ An agreement in restraint of marriage.
  - ▶ An agreement in restraint of trade.
  - ▶ An agreement in restraint of legal proceeding.
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## Wager Contract (Sec 30)

**A wager contract is a contract in which one person promises to another to pay money or money's worth by the happening of an uncertain future event in consideration for other person's promise to pay if the event does not happen.**

# Essential Elements of Wagering

- ▶ **There are two persons.**
- ▶ **There must be an uncertain future event.**
- ▶ **No control over the event by both the parties.**
- ▶ **There must be a reciprocal promise.**
- ▶ **Others are not interested in the contract.**

**In a wrestling bout, A tells B that wrestler no.1 will win. B challenges the statement of A. They bet with each other over the result of the bout. This is a wagering agreement.**

# Contingent Contract(sec 31)

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. It is also called a conditional contract.

## Essential Elements of a Contingent Contract:

- ▶ There are two persons.
- ▶ There must be an uncertain future event.
- ▶ Some control over the event but not absolute control.
- ▶ There is no reciprocal promise between the persons.
- ▶ Others may be interested in the contract.
- ▶ It is a valid contract.

# Rules Regarding Contingent Contracts

- ▶ Contingent contracts dependent on happening of an uncertain future event cannot be enforced until the event has happened.( Sec 32 )
- ▶ Where a contingent contracts is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible.( Sec 33 )
- ▶ If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.( Sec 34)

# Rules Regarding Contingent Contracts

- ▶ **Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced if the event does not happen or its happening becomes impossible before the expiry of that time.( Sec 35 )**
- ▶ **Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether or not the fact is known to the parties. (Sec 36)**

## Differences Between a Wagering Agreement and a Contingent Agreement:

### ▶ Wager agreement

- ▶ **There is a reciprocal promise.**
- ▶ **It is a void contract.**
- ▶ **Others are not interested in the contract.**
- ▶ **It is contingent in nature.**

### Contingent agreement

- ▶ **There is no reciprocal promise.**
  - ▶ **It is a valid contract.**
  - ▶ **Others are interested in the contract.**
  - ▶ **It may not be wagering in nature.**
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