UNIT -1: INDIAN CONTRACT ACT, 1872

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1.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of contract and the essential elements of a valid contract under the Indian Contract Act, 1872
- discuss the different types of contract
- describe the capacities of parties to contract
- describe the significance of free consent to form a valid contract

1.2 INTRODUCTION

The law of contract is the oldest branch of the law relating to business. Just

as the safety and security in the society depends upon the rules and law, so the security and safety of businesses depend on the law of contract. Every day we enter into a number of contracts. For these reasons the study of the law of contract is very important for businessmen as well as for common people. The law of contract in India is contained in the Indian Contract Act, 1872. In this unit we are going to discuss the various provisions of this Act.

1.3 DEFINITION OF CONTRACT

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

According to Salmond- "A contract is an agreement creating and defining obligations between the parties." According to Sir William Anson- "A contract is an agreement enforceable at law made between two or more persons by whom rights are acquired by one or more to acts or forebearance on the part of the other or others."

From the definitions of the contract, we find that a contract is an agreement, the objective of which is to create a legal obligation. It essentially consists of two elements: (i) An agreement; and (ii) Legal obligation.

(i) **Agreement:** As per Section 2(e) "Every promise and every set of promises, forming the consideration for each other, is an agreement." Section 2(b) define the term promise "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise." An agreement, therefore, comes into existence only when one party makes a proposal or offer to the other party and that other party signifies his assent (gives his acceptance) thereto.

(ii) **Legal obligation:** To become a valid contract, an agreement must give rise to legal obligations between the parties. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. "All contracts are agreements but all agreements are not contract." Agreements of moral, social and religious nature are not contracts because they are not likely to create any legal obligation. For

example, a promise to lunch together with friends, a promise to attend a marriage or religious ceremony etc. are not contracts as per the Contract Act.

1.4 ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to Section 10 of the Indian Contract Act, "all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void."

Thus, to be a valid contract, the following elements should be present:

i. Offer and acceptance and intention to create legal obligations;
ii. Free consent of the parties;
iii. Capacity of the parties to enter in to contract;
iv. Lawful consideration;
v. Lawful object
vi. not expressly declared to be void

As the details of these essential conditions form the subject-matter of our discussion in subsequent units, we are discussing these in brief here:

i. **Offer and acceptance and intention to create legal obligations:** To be a contract, there must be an offer and the said offer must have been accepted. The party who makes the offer is called offeror and the other party to whom the offer is made is known as offeree. The offeror must communicate the offer to the offeree which is not an invitation and should be certain. Such offer and acceptance should create legal obligations between parties.

ii. **Free consent of the parties:** Free consent of all the parties to an agreement is another essential element of a valid contract. According to Sec.13 of the Indian Contract Act, 'consent' means that the parties must have agreed upon the same thing in the same sense. Thus, consent involves meeting of minds or consensus ad-idem i.e. agreeing upon the same thing in the same sense. Consent is not

treated as 'free consent' if it is induced by coercion, undue influence, fraud, misrepresentation or mistake.

iii. **Capacity of the parties to enter in to contract:** It is very essential to have sufficient capacity of the parties to make a contract valid. Section 10 of the Indian Contract Act, 1872, lay down that "all agreements are contract if they are made by the free consent of the parties competent to contract." The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court of law. According to Sec. 11 of The Indian Contract Act, 1872, a person who-

a. has not attained the age of majority,

b. is of unsound mind and

c. is disqualified from entering into a contract by any law to which he is subject, should be considered as not competent to enter in to any contract. Therefore, law prohibits a minor and a person of unsound mind and a person who is otherwise disqualified like an alien enemy, insolvents, convicts etc from entering into any contract.

Therefore, following persons are treated as incompetent to contract.

1) **Minor:** According to the Indian Majority Act, 1875, a minor is one who has not completed his or her 18 years of age. The law regarding minor's agreements may be summarized as under:

* **An agreement by a minor is void and inoperative as against him:** Law acts as the guardian of minors and protects their rights because minors are mentally immature. They do not possess the capacity to judge what is good or what is bad. In India an agreement with or by a minor is void ab-initio and inoperative. A minor is neither liable to perform what he has promised to do under a contract nor he is liable to repay money which he might have received under a contract.

In the leading case of Mohori Bibee V. Dharmodas Ghos a minor executed a mortgage for Rs.20,000, out of which he received Rs.8,000 from the mortgagee. Subsequently, the minor sued for setting aside the mortgage. The mortgagee claimed refund of Rs.8, 000 paid by him. The Privy Council held that a minor's agreement was absolutely void and the

minor was not liable to return the money.

* **A Minor can be a Promisee or a Beneficiary:** A minor cannot be bound by contract but he can be a lawful beneficiary. Any agreement which is of some benefit to the minor and under which he is required to bear no obligation, is valid.

* **A minor's property is liable for necessaries:** Under Section 68 of the Indian Contract Act, if a person incapable of entering into a contract, or anyone whom he is bound to support, is supplied by another person, with necessaries suited to his condition in life, the person, who has furnished such supplies is entitled to be reimbursed from the property of such person. It is to be noted that only minor's property is liable, minor is not personally liable for necessaries supplied to him.

* **No ratification on attaining the age of majority:** Ratification means subsequent adoption and acceptance of an agreement. A minor's agreement being void ab-initio has no existence in the eye of law. Therefore, a minor who has entered into an agreement during his minority, cannot be ratified by the minor on attaining the age of majority.

* **No estoppel against a minor:** According to section 115 of the Indian Evidence Act estoppel means "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing." The rule of estoppel is only a rule of evidence i.e. a rule of formal law. This rule is not applicable to minors.

* **No specific performance of a minor's agreement:** Specific performance means the actual carrying out of the contract as agreed. Neither the minor nor the other party can ask for the specific performance of a minor's agreement as the agreement by a minor is absolutely void.

* **No insolvency for a minor:** A Minor is incapable of contracting debts and hence he cannot be adjudged insolvent. Even for necessaries

supplied to him, he is not personally liable, only his property is liable.

* **A minor can be admitted to the benefits of partnership:** A minor cannot enter into an agreement of partnership, But under Section 30 of the Indian Partnership Act, 1932 with the consent of all the partners he can be admitted to the 'benefits of partnership'. Such minor will have a right to such share of the property or profits of the firm as may be agreed upon. The minor cannot participate in the management of the business and shall not share losses except when liability to third parties has been arisen but then too upto his share in the partnership asset.

* **A Minor can act as an agent:** A minor can become an agent, and by his acts done in the course of such an agency he shall bind the principal. However, a minor is not personally liable for negligence or breach of duty.

* **A minor cannot be member of a registered company:** A minor cannot be a shareholder of a company, since, he/she is incompetent to contract. A company can also refuse to transfer share in favour of a minor unless the shares are fully paid.

2) Persons of unsound mind: According to the Section 12 of the Indian Contract Act, 1872, a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon its interests.

The Section 12 of the Indian Contract Act, 1872 declares idiots, lunatics and drunkards as persons of unsound mind. The Act clearly mentioned that in India a contract by a drunken person is absolutely void. Illustration (b) to Section 12 of the Act has very clearly stated that a sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract so as to form rational judgment as to its effect on his interest, cannot contract when such deliriousness or drunkenness lasts.

Example: A patient in a lunatic asylum who at intervals is of sound mind, may contract during those lucid intervals.

3) Persons disqualified by any law to which they are subject: - Some persons are absolutely or entirely disqualified from contracting by any law. Alien enemy, foreign sovereigns and ambassadors, convict, married women, insolvent, Joint Stock Company and corporation incorporated under a special Act are the example of partially disqualified persons from contracting by law.

iv. Lawful consideration: The next essential element of a valid contract is the presence of consideration. Consideration would generally mean compensation for doing or omitting to do an act or deed. An agreement is legally enforceable only when each of the parties to it gives something and gets something. The something given or obtain is the price for the promise and is called 'consideration'. Only valid considerations are lawful. The consideration 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 involves or implies injury to the person or property of another; or is immoral; or is opposed to public policy. Every agreement of which the consideration is unlawful is void.

v. **Lawful object:** For the formation of a valid contract it is necessary that the parties to an agreement must agree for a lawful object. The object for which the agreement has been entered into must not be fraudulent or illegal or immoral or oppose to public policy or must not imply injury to the person or property of another.

vi. **Not declared to be void:** The agreement must not have been expressly declared to be void under the Act. The Contract Act 1872 treated the following agreement as void under different section of the Act.

a. Agreements made by incompetent parties. (Sec. 11).

b. Agreements made under a mutual mistake of fact. (Sec. 20).

c. Agreements with unlawful consideration or object. (Sec. 23).

d. Agreement whose consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. (Sec. 24).

e. Agreements made without consideration. (Sec. 25).

f. Agreements in restraint of marriage. (Sec. 26).

g. Agreement in restraint of trade. (Sec. 27).

h. Agreement in restraint of legal proceedings. (Sec. 28).

i. Agreement the meaning of which is uncertain. (Sec. 29).

j. Agreements by way of wager. (Sec. 30).

k. Agreements contingent on impossible event. (Sec.36)

l. Agreements to do impossible acts. (Sec. 56).



CHECK YOUR PROGRESS

Q. 1: What is meant by contract?

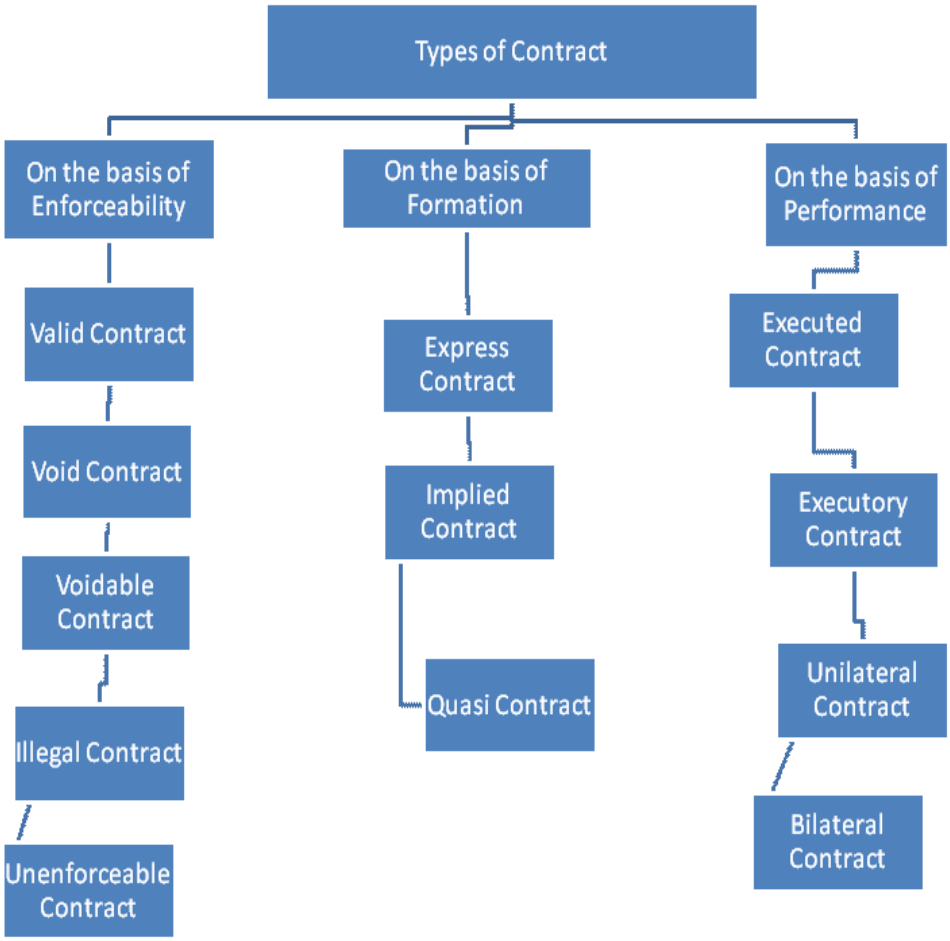
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Q. 2: Mention two essential conditions of a valid contract.

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1.5 CLASSIFICATIONS OF CONTRACT

In terms of enforceability, formation and performance, contracts may be classified in the following way:

1.5.1 On the Basis of Enforceability

On the basis of enforceability, contract can be classified as follows:

- **Valid Contract:** The agreements which are enforceable in a court of law are called Valid Contracts. An agreement becomes enforceable by law when all the essential elements of a valid contract are present.
- **Void Contract:** An agreement not enforceable by law is said to be void. A void contract is a contract which ceases to be enforceable

by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.

- **Voidable Contract:** According to Section 2(i) "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract". However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

  Usually contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue influence, misrepresentation or fraud. Such a contract is voidable at the option of the aggrieved party i.e. the party whose consent was so obtained.

- **Illegal contract:** A contract is illegal if its objective or consideration: (a) is forbidden by law; or (b) is of such nature that, if permitted, would defeat the provisions of any law or (c) is fraudulent; or (d) involves or implies injury to a person or property of another, or (e) court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio i.e. unenforceable from the very beginning.

  Example: There is a contract between A and B according to which B has to murder C for a consideration of Rs. 100000/- from A. It is an illegal contract.

- **Unenforceable contract:** A contract which has not properly fulfilled legal formalities is called unenforceable contract. That means unenforceable contract suffers from some technical defect like insufficient stamp, absence of writing etc. After rectification of that technical defect, it becomes enforceable or valid contract.

1.5.2 On the Basis of Formation

On the basis of formation, contract can be classified as follows:

- **Express Contracts:** The contracts where both the offer and acceptance constituting an agreement enforceable at law are made in words spoken or written, it is an express contract. For example: A has offered to sell his house to B and B has given acceptance. It

is Express Contract.

- **Implied Contract:** The contracts where both the offer and acceptance constituting an agreement enforceable at law are made otherwise than in words i.e. by act or conduct of the parties, it is an implied contract. Sitting in a bus can be taken as example to implied contract between passenger and owner of the bus.
- **Quasi Contract:** In case of quasi contract there will be no offer and acceptance. In fact, there will be no Contractual relations between the partners. Such a contract which is created by virtue of law is called quasi contract. Sections 68 to 72 of the Contract Act stated the situations where the court can create quasi contract.
  - Sec. 68: When necessaries are supplied
  - Sec. 69: When expenses of one person are paid by another person.
  - Sec. 70: When one party is benefited by the activity of another party.
  - Sec. 71: In case of finder of lost tools.
  - Sec. 72: When payment is made by mistake or goods are delivered by mistake.
- **When necessaries are supplied:** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. E.g. A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.
- **When expenses of one person are paid by another person:** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

  For example, B holds land in Bengal, on a lease granted by A, the

Zamindar. The revenue payable by A to the government being in the arrears, his land is advertised for sale by the government under the revenue law. The consequences of such sale will be annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.

When one party is benefited by the activity of another party: When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

For giving rise to right of action under this Section the following three conditions must be fulfilled:

(i) The thing must have been done lawfully in good faith.

(ii) The thing must have been done by a person not intending to act gratuitously, i.e. it must have been done with the intention of being paid for.

(iii) The person for whom the act is done must have enjoyed the benefit of the act.

Example (a) A, a trader, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay for them to A.

Example (b) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

1.5.3 On the Basis of Performance

On the basis of performance contract can be classified as follows:

- **Executed Contract:** An executed contract is one where all the parties to the contract have fully performed their share of obligation and nothing remains to be done by any party under the contract.
- **Executory Contract:** An executory contract is a one where

the terms, obligations and promises have not yet been performed. For example A agrees to let his house to B from first day of the next month and B in consideration promises to pay A Rs 5000 per month, the contract is executory because it is yet to be carried out.

- **Unilateral Contract:** Unilateral contract is one sided contract in which only one party has to perform his duty or obligation.
- **Bilateral Contract:** A bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.



CHECK YOUR PROGRESS

Q.3: What is mean by void contract?

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Q.4: What is mean by implied contract?

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1.6 FREE CONSENT

According to Sec.13 of the Indian Contract Act, 'consent' means that the parties must have agreed upon the same thing in the same sense. According to Section 14 'Consent' is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. The various causes leading to flaw in consent will now be discussed in the following sub- sections-

1.6.1 Coercion

According to Sec. 15 of the Contract Act, "Coercion is the committing or threatening to commit, any act forbidden by Indian Penal Code, or the unlawful

detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter in to an agreement."

The following points can be derived from the above definition.

1. Coercion implies (a) committing or threatening to commit any act forbidden by Indian Penal Code, or (b) unlawful detaining or threatening to detain any property, with the intention of causing any person to enter into an agreement.
   In Ranganayakamma Vs. Alwar Setti (1889) the question before the Madras High Court was regarding the validity of the adoption of a boy by a widow. A Madrasi gentleman died leaving a young widow. The relatives of the deceased threatened the widow to adopt a boy otherwise they would not allow her to remove the dead body of her husband for cremation. The widow adopted the boy and subsequently applied for cancellation of the adoption. It was held that her consent was not free but induced by coercion.
2. The act constituting coercion may be directed at any person, and not necessarily at the other party to the agreement. Likewise it may proceed even from a stranger to the contract.
   A threatens to shoot B if he does not sold his land to C. B agrees to sold his land to C. Here, B's consent has been caused by coercion.
3. It does not matter whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Effect of Coercion

A contract brought about by coercion is voidable at the option of the party whose consent was so caused (Sec.19). This means that the aggrieved party may either exercise the option to affirm the transaction and hold the other party bound by it, or repudiate the transaction by exercising a right of rescission. As per Section 64, if the aggrieved party opts to rescind a voidable contract, he must restore any benefit received by him under the contract to the other party from whom received.

1.6.2 Undue Influence

According to Section 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."

A person is deemed to be in a position to dominate the will of the other: (a) where he holds a real or apparent authority over the other, e.g. the relationship between master and the servant, police officer and the accused; (b) where he stands in a fiduciary relation to the other. Such relationship is exist in the following cases: father and son, guardian and ward, solicitor and client, doctor and patient, trustee and beneficiary etc. (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.

Difference between Coercion and Undue Influence

Now let us discuss the differences between coercion and undue influence-

Nature of Action: Coercion involves physical force and sometimes only threat. Undue influence involves only moral pressure.

Involvement of criminal action: Coercion involves committing or threatening to commit any act prohibited or forbidden by law, or detaining or threatening to detain a person or property. In undue influence there is no such illegal act involved.

Criminal liability: The party exercising coercion exposes himself or herself to criminal liability under Indian Penal Code. There is no criminal liability in case of undue influence.

Exercise by whom: Coercion need not proceed from the promissory. It also need not be directed against the promisee. Undue influence is always exercise by one on the other, Who are parties to the contract.

Enforceability: Where there is coercion, the contract is voidable. Where there is undue influence the contract is voidable or court may set aside or enforce it in a modified form.

1.6.3 Fraud

According to Section 17, Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his

agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-

(a) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(b) the active concealment of a fact by one having knowledge or belief of the fact;

(c) a promise made without any intention of performing it;

(d) any other act fitted to deceive;

(e) any such act or omission as the law specially declares to be fraudulent.

Can Silence be Fraudulent?

The explanation to Section 17 declares that "mere silence as to facts likely to affect the willingness of a person to enter in to a contract is not fraud, unless:

(i) The circumstances of the case suggest that it is the duty of the person keeping silence to speak, or

(ii) Silence is, in itself, equivalent to speech"

It therefore follows that:

a. As a rule mere silence is not fraud because there is no duty cast by law on a party to a contract to make a discloser to the other party, of material facts within his knowledge.

b. Silence is fraudulent, if the circumstances of the case are such that 'it is the duty of the person keeping silence to speak'

(iii) Silence is fraudulent where the circumstances are such that 'silence is, in itself equivalent to speech.' For example, X says to Y "if you do not deny it, I shall assume that the car is in good condition." Y says nothing. Hence, Y's silence is equivalent to speech. If the car is not in good condition Y's silence is fraudulent.

Effect of Fraud

A party, who has been induced to enter into a contract by fraud, has the following remedies available to him:

a) He can rescind the contract i.e. he can avoid the performance

of the contract,

b) He can ask for restitution and insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representation made had been true.

c) The aggrieved party can also sue for damages, if any. Fraud is a 'civil wrong' hence compensation is payable.

1.6.4 Misrepresentation

Misrepresentation is the giving of false information by one party (or his/her agent) to the other before the contract is made, which induces them to make the contract.

According to Section 18 "Misrepresentation" 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;

(b) any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(c) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Difference between fraud and misrepresentation

a) In case of fraud the person making the representation knows it fully well that his statement is false. In case of misrepresentation, the person making the statement believes it to be true which might later turn out to be untrue.

b) Fraud is a civil wrong which entitles a party to claim damages in addition to the right of rescinding the contract. Misrepresentation gives only the right to avoid the contact and there can be no suit for damages

c) In case of misrepresentation, the fact that plaintiff had means of

discovering the truth by exercising ordinary diligence can be a good defence against the repudiation of the contract, whereas a defence cannot be set up in case of fraud other than fraudulent silence.

Explanation.-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak2, or unless his silence, is, in itself, equivalent to speech.

1.6.5 Mistake

According to Section 20 of the Indian Contract Act, 1872, mistake means "an erroneous belief about something". If the agreement is made under an erroneous belief it cannot be said that the parties enjoyed free consent i.e. both the parties shall understand the same thing in the same sense.

Elements of Mistake

1. Mistake must be bilateral. Unilateral mistake is no mistake.
2. The mistake must be in relation to some fact.
3. The fact concerned must be essential to the agreement.
4. As regards mistake of law, if there is mistake of about Indian Law then it is not considered as a mistake of fact to an Indian. But a mistake of law of foreign country is a mistake of fact.

Types of Mistake

Mistake may be of two types: Mistake of law and Mistake of fact.

Mistake of Law

Mistake of law may be of following types:

a) A mistake of law of the country or

b) A mistake of law of foreign country.

a) A mistake of law of the country: Everyone is deemed to be abide by law of his country. "Ignorance of law is no excuse", therefore mistake of law is no excuse and it does not give right to the parties to avoid the contract. Section 21 of the Contract Act declares that "A contract is not voidable because it was caused by a mistake as to any law in force in India." Accordingly no relief can be granted on the ground of mistake of law of the country.

b) Mistake of foreign law: Mistake of foreign law stands on the same footing as the mistake of fact.

Mistake of Fact

Mistake of fact may be of two types viz. bilateral mistake and unilateral mistake.

Bilateral Mistake: Where the parties to an agreement misunderstood each other and are at cross purposes, there is a 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 shall be void". Thus for declaring an agreement void ab-initio under this section, the following three conditions must be fulfilled:

i. Both the parties must be under a mistake;

ii. Mistake must relate to some fact and not to judgment or opinion etc;

iii. The fact must be essential to the agreement.

b) Unilateral Mistake: When only one of the contracting parties is mistaken as to a matter of fact, the mistake is a unilateral mistake. Section 22 provides that "a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact." Unilateral mistakes do not affect the validity of the contract unless they concern some fundamental fact and the other party is aware of the mistake. An unilateral mistake may be:

- Mistake as to the nature of the transaction: A contract shall be void if a party to the contract without any fault of his own makes a mistake about the very nature of the contract. It

may be because of blindness, illiteracy, or servility of the person signing the contract or due to the trick or fraudulent misrepresentation as to the nature of the document.

- Mistake as to identity of the contracting parties: The person or with whom the contract is to be made must be identified correctly by the other party. It is a fundamental mistake on the part of the other party not to recognise the correct person. The principle of the contract holds good only when the identity of the contracting party is given importance.



CHECK YOUR PROGRESS

Q. 5: What is meant by misrepresentation?

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Q.6: What is meant by bilateral mistake?

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1.7 LET US SUM UP

In this unit we have discussed the following points of the law of contract:

- Contract is an agreement enforceable by law.
- To become a valid contract an agreement must have the essential elements like- Offer and acceptance; Intention to create legal relationship; Capacity of the parties; Consideration; Free consent; Lawful object etc.
- Contracts may be classified in terms of enforceability,

formation and performance.

- Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.



1.8 FURTHER READING

1. Commercial Law (including Company Law and Industrial Law); by Arun Kumar Sen and Jitendra Kumar Mitra
2. Principles of Mercantile Law; by R.P Maheshwari and S.N. Maheshwari
3. Elements of Mercantile Law; by N.D Kapoor
4. Business Regulatory Framework; by K. C Garg, V. K. Sareen and Mukesh Sharma



1.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1. A contract is an agreement enforceable by law.

Ans. to Q. No. 2. Two essential elements of a valid contracts are (a) Offer and acceptance and intention to create legal obligations; (b) Free consent of the parties.

Ans. to Q. No. 3. A void contract is a contract which ceases to be enforceable by law.

Ans. to Q. No. 4. The Contracts where both the offer and acceptance constituting an agreement enforceable at law are made otherwise then in words i.e. by act or conduct of the parties, it is an implied contract.

Ans. to Q. No. 5. Misrepresentation is the giving of false information by one party (or her or his agent) to the other before the contract is made, which

induces them to make the contract.

Ans. to Q. No. 6. Where the parties to an agreement misunderstood each other and are at cross purposes, there is a bilateral mistake.



1.10 MODEL QUESTIONS

Q. 1: Define contract.

Q. 2: What is meant by capacities of parties to enter into contract?

Q. 3: What is meant by void contract?

Q. 4: Classify the contracts on the basis of formation.

Q. 5: Define fraud.

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