

<u>COMPETENCY</u>
<p><b>11: Who are competent to contract</b> – Every person is competent to contract who is of the 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.</p>
<p><b>Majority Act, 1875 s 3: Age of majority of persons domiciled in India –</b></p> <p>(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.</p> <p>(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.</p> <p>Illustrations</p> <p>(a) Z is born in India on the first day of January, 1850, and has an Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.</p> <p>(b) Z is born in India on the twenty-ninth day of February 1852, and has an Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.</p> <p>(c) Z is born on the first day of January, 1850. He acquires a domicile in India. No guardian is appointed of his person or property of any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the day of January, 1868.</p>
<p><b>Kanhya Lal v. Girdhari Lal, ILR (1901) 23 All 301</b> - A minor is not liable on a promissory note executed by him because a minor's agreement is void.</p>
<p><b>Mohori Bibee v. Dharmodas Ghose, (1903) 30 IA 114 (PC)</b> – A minor mortgaged his property to secure a loan advanced by a moneylender; later, he sued to cancel the mortgage on the ground of minority. Held, a contract entered into by a minor is void ab initio and cannot be enforced against him.</p>
<p><b>Leslie Ltd. v. Sheill, [1914] 3 KB 607</b> – Even where a minor fraudulently misrepresents his age and obtains a loan, he cannot be made liable in an action that would in substance enforce a void contract. Therefore, the lender could not recover the money as a contractual debt.</p>
<p><b>Khan Gul v. Lakha Singh, AIR 1928 Lah 609</b> – Although a minor's contract is void, the court may, on equitable grounds, require the minor to restore benefits or property still traceable in his possession so as to restore the parties to the original position (<i>status quo ante</i>). This principle is based on the equitable doctrine of restitution, later recognised in Section 33 of the Specific Relief Act, 1963.</p>
<p><b>Indran Ramaswami Pandia Thalavar v. Anthappa Chettiar, (1906) 16 MLJ 422</b> – A promissory note executed after attaining majority in respect of money borrowed during minority is unenforceable without fresh consideration, because consideration furnished during minority cannot support the subsequent promise.</p>
<p><b>Anant Rai v. Bhagwan Rai, AIR 1940 All 449</b> – Although a minor's agreement is void and unenforceable, if the person, after attaining majority, voluntarily pays a debt incurred during minority, such payment is valid and cannot subsequently be recovered back, because a minor's agreement is merely void and not illegal. [Treated as gift]</p>
<p><b>Jamna Bai v. Vasanta Rao, AIR 1916 PC 2</b> – Where a document is jointly executed by a minor and an adult, the contract is void as against the minor, but it can still be enforced against the adult promisor if there is a joint promise by the adult to pay.</p>
<p><b>Indian Partnership Act, 1932 s 30</b> provides that a minor cannot become a full-fledged partner because partnership arises out of contract and a minor is incompetent to contract; however, with the consent of all the existing partners, a minor may be admitted to the benefits of partnership, entitling him to share in the profits and inspect the accounts of the</p>

~~~~~

firm, though he is not personally liable for the losses of the firm beyond his share in the partnership property.

**Dewan Singh v. Minerva Films Ltd., AIR 1958 Punj 310** – A minor may become a shareholder/member of a company in respect of fully paid-up shares, provided the articles of association do not prohibit it and no further liability is attached to the shares.

**Raghava Chariar v. Srinivasa Raghava Chariar, AIR 1917 Mad 631 (FB)** – Although a minor is incompetent to incur liabilities, he is capable of receiving benefits, and therefore a mortgage executed in favour of a minor who advanced the money is enforceable by or on behalf of the minor.

**Subrahmanyam v. Subba Rao, AIR 1948 PC 95** – A contract entered into on behalf of a minor by his guardian or manager is enforceable by or against the minor if the guardian acts within the scope of his authority and the contract is for the benefit of the minor.

**Bholanath v. Balbhadra Prasad, AIR 1931 All 294** – A guardian cannot bind a minor by a contract for the purchase of immovable property, because such a transaction may impose liabilities upon the minor and is not necessarily for the minor's benefit. Consequently, specific performance against the minor was refused.

**Raj Rani v. Prem Adib, AIR 1949 East Punj 165** – A guardian cannot validly bind a minor by a contract of personal service, because such a contract imposes personal obligations on the minor and is not specifically enforceable against him or her.

**Nash v. Inman, [1908] 2 KB 1** – A minor is liable only for "necessaries" supplied to him. Since the minor, a Cambridge undergraduate, was already adequately supplied with clothing, the fancy waistcoats and coats supplied to him were not necessaries, and the supplier could not recover the price. [Reference section 68]

**12: What is a sound mind for the purposes of contracting** – 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 his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

**Tilak Chand Charan Das v. Mahandu, AIR 1933 Lah 458** - Where a person is ordinarily of sound mind, the burden of proving unsoundness of mind at the time of execution of the document lies on the person challenging the validity of the transaction.

**Inder Singh v. Parmeshwardhari Singh, AIR 1957 Pat 491** - The case involved sale of property worth about Rs. 25,000 for only Rs. 7,000, and evidence was led that the seller was a congenital idiot incapable of understanding the transaction. The Court held the sale void because the person lacked the capacity to understand the nature and consequences of the transaction and to form a rational judgment regarding his own interest.

### Persons disqualified by law

**Esposito v. Bowden (1857) 7 E & B 763** – The outbreak of war renders contracts involving trading or intercourse with an enemy illegal and void, since a declaration of war operates as a prohibition on commercial dealings with the enemy. [Alien enemy]

**Code of Civil Procedure, 1908 s 86: Suits against foreign Rulers, Ambassadors and Envoys** provides that no foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing.

**Stephens v. Leach, (1690) 2 Vent 198** - Under old English common law, a convicted felon

~~~~~



<p>suffered civil disability or “civil death,” resulting in suspension of certain civil rights during punishment.</p>
<p><b>Companies Act, 2013 s 4: Memorandum</b> - Any act beyond the objects and powers conferred by the memorandum is ultra vires, void, and incapable of ratification by shareholders.</p>
<p><b>Ashbury Railway Carriage &amp; Iron Co. v. Riche, (1875) LR 7 HL 653</b> - A company cannot enter into contracts beyond the objects stated in its memorandum; such ultra vires contracts are void.</p>
<p><b>Insolvency and Bankruptcy Code, 2016 s 141 (Restrictions on bankrupts) read with s 128 (Vesting of bankruptcy estate in bankruptcy trustee)</b> provides that the bankrupt loses independent control over property forming part of the bankruptcy estate, and proceedings concerning such estate are conducted subject to the bankruptcy framework and supervision of the bankruptcy trustee.</p>
<p><b>CONSENT</b></p>
<p><b>13: Consent defined</b> – Two or more persons are said to consent when they agree upon the same thing in the same sense.</p>
<p><b>14: Free consent defined</b> – Consent is said to be free when it is not caused by—</p> <ol style="list-style-type: none"> <li>(1) coercion, as defined in section 15, or</li> <li>(2) undue influence, as defined in section 16, or</li> <li>(3) fraud, as defined in section 17, or</li> <li>(4) misrepresentation, as defined in section 18, or</li> <li>(5) mistake, subject to the provisions of sections 20, 21 and 22.</li> </ol> <p>Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.</p>
<p><b>15: Coercion defined</b> – Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) 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 into an agreement.</p> <p>Explanation – It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.</p> <p>Illustration</p> <p>A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code (45 of 1860). A afterwards sues B for breach of contract at Calcutta. A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code (45 of 1860) was not in force at the time when or place where the act was done.</p>
<p><b>16: Undue influence defined</b> –</p> <ol style="list-style-type: none"> <li>(1) 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.</li> <li>(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another— (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b) 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.</li> <li>(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced,</li> </ol>





to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

Illustrations

- (a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.
- (b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.
- (c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.
- (d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

**17: Fraud defined** – 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 of his agent, or to induce him to enter into the contract: —

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one 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.

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 speak, or unless his silence is, in itself, equivalent to speech.

Illustrations

- (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.
- (d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

**18: Misrepresentation defined** – Misrepresentation means and includes —

- (1) 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;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to 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;  
(3) 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.

**19: Voidability of agreements without free consent** – When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception. —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation. —A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations

- (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A’s factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.
- (b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A’s factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A’s misrepresentation.
- (c) A fraudulently informs B that A’s estate is free from in cumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.
- (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A’s ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.
- (e) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B’s death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

**19A: Power to set aside contract induced by undue influence** – When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations

- (a) A’s son has forged B’s name to a promissory note. B under threat of prosecuting A’s son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.
- (b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

**20: Agreement void where both parties are under mistake as to matter of fact** – 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.

Explanation. —An erroneous opinion as to the value of the thing which forms the subject-





matter of the agreement, is not to be deemed a mistake as to a matter of fact.

Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

**21: Effect of mistakes as to law** – A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

Illustration

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

**22: Contract caused by mistake of one party as to matter of fact** – A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

**VOID AGREEMENTS**

In addition to s. 24 and 25 covered under consideration.

**26: Agreement in restraint of marriage, void** – Every agreement in restraint of the marriage of any person, other than a minor, is void.

**27: Agreement in restraint of trade, void** – Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—Saving of agreement not to carry on business of which good-will is sold.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

**28: Agreements in restraint of legal proceedings, void** – Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3.—Saving of a guarantee agreement of a bank or a financial institution.—This



~~~~~

section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation. —

(i) In Exception 3, the expression “bank” means—

(a) a “banking company” as defined in clause (c) of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(b) “a corresponding new bank” as defined in clause (da) of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(c) “State Bank of India” constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(d) “a subsidiary bank” as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959(38 of 1959);

(e) “a Regional Rural Bank” established under section 3 of the Regional Rural Banks Act, 1976(21 of 1976);

(f) “a Co-operative Bank” as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949(10 of 1949); (g) “a multi-State co-operative bank” as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949(10 of 1949); and

(ii) In Exception 3, the expression “a financial institution” means any public financial institution within the meaning of section 4A of the Companies Act, 1956(1 of 1956).]

**29: Agreements void for uncertainty** – Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations

(a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d) A agrees to sell to B “all the grain in my granary at Ramnagar”. There is no uncertainty here to make the agreement void.

(e) A agrees to sell B “one thousand maunds of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.

**30: Agreements by way of wager void** – Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing. —This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-

~~~~~



race.

Section 294A of the Indian Penal Code not affected. —Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

