# Unit-3:- Other essential elements of a Contract

- Capacity to Contract
  - Major
  - Sound mind
  - Not ~~expressly declared~~ disqualified by Law
- Free consent
  - Not caused by
    - Coercion
    - Undue influence
    - Fraud
    - Misrepresentation
    - Mistake
- Lawful Consideration & object
- Not expressly declared to be void

(1) **Capacity to Contract**:- In the terms of Section 11, "every person is competent to contract who is of ~~sound~~ the age of majority according to law to which he is subject and who is of sound mind and is not disqualified by law to which he is subject."

a, **Age of majority**: In India, age of majority is regulated by the Indian majority Act, 1875. Age of majority refers to the age of contracting person who shall attain the age of 18 or above. The person below 18 considered as the minor person who is incompetent for the purpose of contract

# Law relating to Minor's position/ agreement

a, **An agreement with minor is void ab initio**:- Contract with minor is void from the inception period. It is given in Section 10 that a person who is incompetent to contract cannot make a contract.

b, **No Ratification after retaining majority**:- A minor can't ratify the agreement on attaining majority as the original agreement is void ab initio and a minor after becoming a major cannot give subsequent approval.

eg→ X a minor makes a promissory note. On attaining majority he can't ratify it and if he makes new in place of old, it will be void.

(3) Minor canbe beneficiary to any contract :- Minor is not competent to any contract. It means he can't enforce any contract and his agreements are void abintio.

However, he canbe a benficiary to any contract. If X accepts the benefits in a contract from other party, the other party can sue the minor.

In the case of partnership, a minor can't be a partner to the firm but he can be admitted for benefits with the consent of all other partners.

(4) A minor can always plead ~~majority~~ minority :- A minor if he has represented his identity as a major he can always plead ~~majority~~ minority and he is not stopped to do so. The rule of estoppel can't be applied against minor. He canbe allowed to plea minority in defence

He can plead minority even though he has taken loan or entered into contract by falsely ~~representing~~ induced himself as a major

→ He is not liable to pay unless he spents the amount, if not then may be asked for repayment

(5) Liability for necessaries :- In case of necessaries suplied to the minor, he is legally bound to pay but not personally. It is govered by section 68 of ICA. A person can claim for necessaries suplied to minor. He is not liable to pay personally the amount he promise or value of necessaries but his property or estate is liable

→ To render minor's estate liable for necessaries two conditions must be satisfied,

a, The contract must be for goods reasonable necessary in the station of life

b, The minor must not have already the sufficient supply for these necessaries,

'Necessaries' means those things that are ~~sell~~ really and essentially needed ~~for~~ by a minor. It doesn't include any luxurious or unnecessary things.

Expenses on education, food, shelter etc for minor can be claimed

'Utility rather than ornament (सजावट cheeze) is the criterion (standard)' is regards by law under minor's Status in life.

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eg→ X brought a laptop for ₹70,000 on credit. But her assets could only pay 30,000. Thus shopkeeper can't claim the amount personally and could recover only from assets i.e 30,000

⑥ Contract by guardian - how far enforceable: - Though the minor's agreement is void ab-initio. However he can enter in to an agreement contract by his guardian which is a valid agreement. Guardian can enter contract under some certain circumstances which is is with competence of minor and for the benefit of minor.
However, all agreements entered by guardian are not valid.
In case of immovable property (purchase), guardian has no power to bind minor with it
Yet a contract entered into by a certified guardian (appointed by court), with the sanction of court for sale for minor's property, may be enforced by either party.

⑦ No specific performance: - A minor's agreement is void so it doesn't involves any performance because performance is void also of such void agreement

⑧ No insolvency: A minor shall not be declared insolvent as he is incapable of contracting. He is not personally liable for debts. The debts will be recoverable from his estate and rest declared as bad debts.

⑨ Partnership: - A minor is incapable to enter into partnership under the section 30 of Indian partnership Act, but he can be admitted to the benefits of partnership with consent of all other partners.

⑩ Minor can act as an agent. Minor can act as agent for his principal but he will not be liable to his principal for his acts.
A minor can draw cheque, endorse and deliver negotiable instruments without himself being liable

eg - A minor has bank A/C in his bank. He can draw cheque for his purchases but shall not liable for cheque bounces nor can be sued under court of law for any fraud done from his account

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(11) Minor cannot bind parent or guardian: In the absence of authority, an infant (a baby or very young child) ~~can't liable~~ is not capable of binding his parent even for necessaries.
The parents will only be liable if minor has acted like an agent for parents.

e.g.- A a minor entered with contract of buying scooty from the dealer mentioned that his parents will be liable for payment held parents will not be liable as contract was entered by a minor in their absence and out of their knowledge.

(12) Joint contract by minor & adult: In such a case, only major is liable. (Sain Das vs Ram chand) where there was joint purchasers one was minor and one major. Vender could only enforce contract against major and not minor.

(13) Surety for a minor: In the case of guarantee, when an adults stands for surety for minor then he (adult) is liable to third party.
There is direct relation between (surety) and 3rd party
eg → X guaranteed for pur. of phone by krish. In case of failure of payment by K, X will be liable

(14) Minor as shareholder: Minor can't be a shareholder of company ~~Thus~~ though his lawful guardian becomes a shareholder by transfer or transmission of fully paid shares to him
only benefits | dividend

Torts - tods phod

(15) Liable for torts :- Tort is a civil wrong. Minor is liable in tort unless tort is the breach of contract.
eg where minor borrowed a house for riding he lend horse to his friend who killed him.
(Minor is responsible / liable for his failure to return certain instruments which he had hired and passed to his friend.)

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Person of sound mind :- In the terms of Section 12 of ICA, "a person is said to be sound mind for the purposes of contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement 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 unsound mind, but occasionally of unsound, may not enter into contract when he is of sound mind.

→ Position of unsound mind person making a contract :- a contract by a person who is not a sound mind is void.

e.g. A lunatic patient, who is at intervals, of sound mind, may make a contract when he is of sound mind.

Contract by disqualified person :- Persons disqualified by Law from contracts, partially or wholly, such contracts by that persons are void. Incompetency to contract may arise from political status, legal status, corporate status etc.

Such as foreign Sovereigns, ambassadors, convicts, insolvent, alien enemy

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## Free Consent

↳ Two person or more said to consent when they agree upon the same thing ~~upon the~~ in the same sense

Consensus adidem (latin word)

→ Parties are said to be consented not only when they upon the same thing but also in same sense

→ Meeting of the minds upon the same thing and also in the same sense is essential element to free consent.

→ If they donot agree in the same sense there will be arisen of ambiguity in ~~them~~ terms of agreement.

→ There will be a error in the formation of any contract on the ground of absence of consent.

According to Section 14 (free consent), consent is said to be free when it is not caused by
1, Coercion Section 15
2, Undue influence Section 16
3, Fraud Section 17
4, Misrepresentation Section 18
5, Mistake, Subject to provision of Sections 20, 21, 22

→ When consent is caused by above then it is voidable at the option of party whose consent was so caused.

And

→ When consent is vitiated by mistake, it is void-ab-initio

## Elements

1, Coercion (Sec-15)
2, Undue influence (Sec-16)
3, Fraud (Sec-17)
4, Misrepresentation (Sec-18)
5, Mistake (Sec-20), 21, 22)

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## 1, Coercion (Section 15)

**Understanding**

Tenant property ko unlawful tarike se acquire karta hai ya damki deta hai ko property ko detain (Kabza) karega (property would be anything)
Detaining - custody me Rakhna
prejudice to any person - dabaav dalna / force karna contract me aane ke liye

In the terms of Section 15,
Coercion is committing or threatening to commit, any act forbidden by Indian Penal code or any unlawful detaining or threatening to detain any property ~~pre~~ to the prejudice ~~to~~ of any person whatever, with the intention of causing any person to enter into ~~an~~ agreement.

→ ~~The coercion~~ It is not necessary that subject of coercion directed against other party, it may be also directed against third party which is not the party to the contract.

1, The contract caused by coercion is voidable at the option of one party who consent was so caused.
2, A person to whom money has been paid or anything under coercion must return it under Section 72
↑
→ Effects under Section 19
as the consequences of recission of voidable contract
3, The party rescinding contract (void) should, if he received any benefit, from other party, restore such benefit so far as may be applicable to the person from whom it was received. (Jha tak lega ho sake)

Exception of Section 19
In case of fraudulent silence, contract is not voidable if the party who se consent was so obtained had means of discovering truth with ordinary ~~dilence~~ diligence

eg-

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## Undue influence (section 16)

Under Section 16, 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 party and he uses that position to ~~use~~ obtain unfair/undue advantage over the other.

A person is deemed to be in position to dominate the will of another when:- (seems to be real)

a) where he holds real or apparent authority over other
b) where he stands in fiduciary relationship to other
c) where he makes a contract with a person whose mental health capacity is temporarily or permanently affected by reason of age illness or mental or bodily distress.

eg- old illeterate person

Fiduciary relationship - in which one party places special trust confidence

(eg) A man is suffering from disease. He is ~~influenced~~ induced by B's influence to pay unreasonable sum for his professional services

(B) employs undue influence

(eg) A being in debt to B. B, money lender contracts fresh loan on terms (unconscionable). undue influence
(Debtor-creditor)

(eg) A applies to banker for loan at the ~~time~~ when there is stringency in money market. The banker only accepts to give loan at high int. Rate. A accepts it.

Held, this is a transaction in ordinary course of business and contract is not induced by undue influence

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→ Elements of Undue influence (Section 16)

| | | |
|---|---|---|
| near Relation between the parties | Position to dominate the will | The object must be to take undue influence |

1, Near Relation between the parties:- A person can be influenced by the other when a near Relation between the party exists.

2, Position to dominate the will:- Relation of the parties exist in such manner that one of them is in a position to dominate the will of the other.

→ A person is deemed / presumed to be in such position in the following cases:-

a, Real & apparent authority:- Where a person holds a real authority over the other as in the case of master & servant, Doctor and patient, teacher & student etc.

eg 16- A father by reason of his authority over son can dominate the will of son.

b, fiduciary relationship:- Where relation of trust & confidence exists between the parties to a contract.

Such as father & son, Lawyer & client, Debtor & creditor, husband & wife, Teacher & student

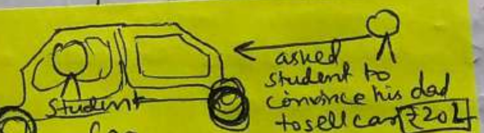
eg → By reason of fiduciary, Lawyer can dominate the will of client, trustee can dominate will of beneficiary

→ A spiritual guru induced his devotee to gift him to whole of his property in return of promise of salvation of devotee / being saved from evil

It is under undue influence (eg)

Fiduciary Relationship

| |
|---|
| Student can sue teacher on the ground of undue influence under provision of ICA |




in return of pass you in exams

Car M.P is ₹60 Lakhs

- Teacher is taking unfair advantage over student.
- Teacher is in the position to dominate will

c, Mental distress :- It is under undue influence where to take the consent on a contract where mental capacity of the person is temporarily or ~~permanently~~ permanently affected by reason of mental or body distress, illness or of old age.

eg- Doctor is deemed to be in position to dominate will of his patient.

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d, Unconscionable bargain :- when consent is given under undue influence and one of the parties is in the position to dominate the will of other party and contract is unconscionable i.e unfair.
It is deemed by law that consent is under undue influence
Unconscionable Bargain ~~means~~ are witnessed mostly in money-lending transactions and gift.

eg - A 18yrs old year boy, spend money and borrowed 90,000 bearing 24% p.m.
Held transaction is unconscionable, rate is exorbitant.

3) The object must be to take undue advantage :- object must to ~~not~~ take undue advantage where consent is not made free and one person is in position to dominate the will of them
eg A teacher asked her student to marry her daughter. if consent was made under ~~of~~ undue influence. Teacher has taken undue advantage. She is in the position to dominate the will of her daugher and ~~tea~~ student

4) Burden of proof :- Burden of proving the absence of use of dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of other

⇒ Power to set aside contract under undue influence
resind
When consent is caused by undue influence, it is voidable at at the option of whose consent was so caused.

eg - a money lender advances ₹1lakh to B and by undue influence induces B to execute a bond for ₹ 2lakh with int 6% p.m.
→ Court set aside the bond, ordering B to repay 1Lakh with int

Fraud (Section 17) means and includes any of the following acts committed by one party ~~or~~ to a contract with his connivance or by an agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into contract
1, the suggestion as a fact, of that which is not true, by one who believes it to be true
2, active concealment of the fact by one have knowledging or belief of fact
3, a promise made without intention of performing it
4, any other act fitted to deceive
5, any such act or omission as law specially declares to be fraudulent

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(eg) 1, ~~A sells a horse~~ to B, by auction ~~with knowing the fact to~~

→ **Effect of fraud upon validity of contract:-** When consent to an agreement caused by fraud, the contract is voidable at the option of party defrauded and has following remedies

1, He can rescind the contract within a resonable time
2, He can sue for the damages
3, He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true

→ **Mere silence is not fraud** } very important

A party to a contract is under no obligation to disclose all the truth to other party.

The Rule of 'Caveat Emptor' says let the purchaser be aware is applicable to contracts. There is no duty to speak in some cases and silence doesnot amount to fraud

→ There is no duty to disclose all the facts which are in knowledge of both the parties.

(eg) A sells by auction to B, a horse which A knows to be unsound. A doesnot disclose this fact about unsoundness of horse.

Held This is not fraud by A.

**Silence is fraud when**
- Duty of person to speak
- where silence itself is equivalent to speech

1, Duty of person to speak:-
Where the circumstances are such that it is duty of person to speak - Such as in the contracts of Uberrimae fidei (contracts of utmost good faith)
- Fiduciary Relationship
- Contract of insurance
- Contract of marriage
- Contract of family settlement
- Share allotment contracts

2, Where silence itself is equivalent to speech:-
eg where A says to B, "if you donot reply in week then I shall assume it as acceptance / if you do not deny it.

→ In the case of fraudulent silence, contract is not voidable if consent was obtained had means of discovering truth with ordinary ~~dilence~~ diligence (sec. 19 exception)

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Duty of person to speak when:-

1, Fiduciary Relationship:- Where the relation of trust and confidence exist between the parties. The person to whom trust and confidence is reposed is under a duty act with utmost good faith and make full disclosure of all materials facts concerning the contract.

(Eg) A broker was asked to buy shares for client. He sold his own shares without disclosing this fact.
The client was entitled to avoid contract or to claim secret profit made by broker as the relationship between broker and client was of utmost good faith

(Regier Vs. Campbell)

2, Contract of Insurance:- In the contracts of marine, fire, life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise insurer is entitled to avoid contract

3, Contract of marriage:- Every material fact shall be disclosed by the parties in the contract of marriage eg disclosure of medical condition

4, Contract of family settlement:- This also requires full disclosure (disclosure of all assets & liabilities)

5, Share allotment contracts:- Persons issuing Prospectus at the time of public issue of Shares/debentures by a joint stock company have to disclosure all facts within their knowledge

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Misrepresentation (Section 18)

It means and includes

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

2, where there is breach of duty without any intention to deceive which brings an advantage to him

3, When a party caused, even ~~to~~ though done innocently, the other party to make a mistake as to subject matter.

(eg) A tolds B that C will be made the director of company. A received this information from M, not directly from C. B applies for shares on the faith of this information which turns out to be false.

Held, The statement amounts to misrepresentation because information was not received directly from C. It is secondary

(eg) A believed that engine of motorcycle to be in good condition. A without checking it told B that motorcycle was in good condition. B on this fact bought it which later on proved to be defective engine

Held, A's statement is misrepresentation as it turns to be false

(eg) A selling his horse to B, tells him horse is sound. B believed to this ~~fact~~ statement although he has no sufficient ground for the belief. B finds the horse to be unsound.

Held, representation made by A is a misrepresentation

(eg) A buy an article thinking worth ₹1000 in fact it's only ₹500. There is no misrepresentation on the part of seller (Valid contract)

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→Page no. 155 _ Differences 1, Coercion and Undue influence
2, Fraud and misrepresentation

→ Legal effects of agreement without free consent (Section 19)

→ When the ~~contract~~ of consent is caused by fraud, coercion or misrepresentation, it is voidable at the option of that party whose consent is so caused

→ Further a party to contract, whose consent was so caused, if he thinks fit, insist that contract shall be performed and that he shall be in the same position in which he would have been, if the representation had been made true.

Exception, But a person who had means of discovering truth, with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation or silence amounting to fraud.

(eg) - A by misrepresentation leads B to believe that 750 tons of sugar is produced per annum in factory of A. B examines the account of factory and if ordinary deligence had been exercised by B that only 500 tons produced. Even after, B purchases the factory with misled by such misrepresentation.
∴ B cannot repudiate the contract on the ground of A's misrepresentation

⇒ When the party to contract commits fraud or misrepresentation ~~leads~~ but the other party misled by such fraud, the contract cannot be avoided later
Thus, when a seller deliberately conceals a fraud in order and buyer may not discover it even if he inspects goods and he does not makes any inspection, buyer can't avoid the contract.

Mistake:- It is an innocent or erroneous belief which leads the party to ~~con~~ misunderstand the others. (It can be bilateral (when both parties to the contract under a mistake)
or Unilateral (when one of the parties ~~to~~ contract under a mistake)

→ Mistake is unintentional act, omission or error arising from unconsciousness, ignorance, forgetfulness, imposition or misplaced confidence

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Mistake

Mistake of Law | Mistake of fact

1, Mistake of Law:- A mistake of Law does not render a contract void as one cannot take excuse of ignorance of Law of his Country. But if mistake of Law is caused through inducement of another, contract may be avoided
Mistake of foreign Law is excusable and is treated as mistake of fact, Contract may be avoided on such mistake

2, Mistake of fact:- Where the contracting parties misunderstood each other ~~and~~ are at cross purposes, there is bilateral or mutual mistake, Where both parties are under a mistake as to a matter of fact essential to agreement, agreement is void

eg A offers to sell his Black car to B, B thinks he is purchasing Red car. Both parties are thinking about different subject matter. (agreement is void)

→ legality of object & consideration

According to Section 23, the object and consideration is Lawful unless(except) in following:-

1, It is forbidden by Law
2, Or it is as would defeat the provision of Law
3, It is fraudulent
4, It involves injury to the person or property of person
5, The court regards it as immoral
6, opposed to public policy

Section 23 states every agreement of which the object and consideration is unlawful is void

1, When consideration & object is ~~fraudulent~~ forbidden by Law:- Acts forbidden by Law are those which are punishable under statute and are those prohibited by regulations or orders made in exercise of authority conferred by legislature

e.g- A license to cut grass given to X by Forest Dep under Forest Act. One term of license is that licensee should not assign his int without permission of forest officer and fine is prescribed for a breach of condition

But condition is not obligatory under Forest Act

If X breach condition, agrees to assign his interest under licence to B, agreement will be valid.
Here, assignment is not prohibited by law, condition against assignment has been imposed only for administrative purpose or protection of Revenue.

Dowry is also forbidden by law.

② When consideration or object ~~defeats~~ todna provision of Law. The words stated must be taken as limit to defeating intention which law has expressed. Court looks at the real intention of parties. If intention of parties is to defeat the provisions of law, court will not enforce it.

eg. The Hindu law is defeated by an agreement to give son in adoption in consideration of annual allowance to natural parents. (Real parents se child leke pase deke adopt kiya)

(eg)

③ When it is fraudulent:- Agreements which entered to promote fraud is void.
illegal movement of goods
eg- an agreement for sale of goods for purpose of smuggling out of country is void. The price of goods sold can't be recovered.
(party ne pase diye for bhi milege)

④ When consideration involves any injury to person or property of another.
'Injury' means criminal or wrongful harm.
In the following eg, the object or consideration is unlawful as it involves injury to person or property of another.

eg- An agreement to print book in violation of another's copyright is void, as object or consideration cause injury to property of another.
It is forbidden by law relating to copyright.

eg- A promises to repay his debt by doing manual labour work for period and agrees to pay int. at an exorbitant rate in case of default.
This consideration is illegal as it imposes what amounts to slavery.
It involves injury to person. (Slavery opposed to public policy)

⑤ When consideration is immoral - (not accepted in society) consideration is unlawful, being immoral is following
eg- Where P gives money to D, a married woman to obtain divorce from her husband, and D agreed to marry him.
P was not entitled to recover money since agreement was under to get divorse and promise of marriage was against good morals.

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(6) When consideration is opposed to public policy:-
In the law public policy contains trading with enemy, stifling of prosecution, champerty, maintenance, interference with course of Justice, marriage brokerage, sales of public offices.
→ Agreements tending to create interest against duty, create monopolies and agreements not to bid at an auction are also opposed to public policy
→ In the name of public policy, freedom of contract is restricted by Law for good for the community.

→ Agreements opposed to public policy:-
(1) Trading with enemy:- Any ~~trade~~ trade with the person owing allegiance to govt. at war with Indian without license of govt. is said as it is opposed to public policy
→ The agreement to trade offends against public policy by tending prejudice the int. of State in times of war.
eg:- India entered in war like situation with China. Mr A entered contract, such contract is void as object is opposed to public policy. Such like Tik tok and PUBG provides internal information about country, were banned and ~~on~~ any contract were dissolved.

(2) Stifling Prosecution:-

(3) Maintenance & Champerty:- (Page 1.73) PPT) Imp.
Maintenance is an agreement in which person promises to maintain suit in which he has no int. (Genuine) (B demands some maintenance in money)
(eg) A offers B 2000 if he sues C for a ~~co~~ bonafide case just to threatened/annoy C cuz C has unlawfully detained property of A
→ Champerty is an agreement in which a person agrees to assist another in litigation ~~(Mukadma)~~ in exchange of promise to hand over portion of proceeds of action [litigation in exchange Mukadma]
eg- A agrees to pay expenses to B if he sues C and B agrees to pay half of amt. received form such suit

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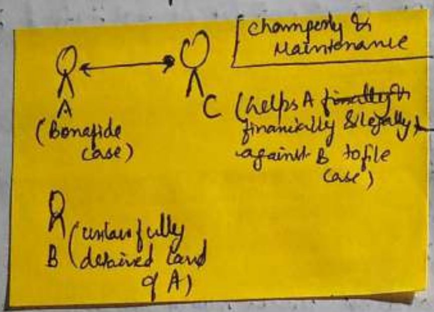
→ Agreement for supplying funds by way of maintenance / champerty is valid unless
a) It is unreasonable so as to be unjust to other party
b) It is made by malicious motive like gambling in litigation or oppressing other party by encouraging unrighteous suits with malafide case




C
may demand some share in land recovered — Champherty
want some money to sue — Maintenance

Indian law (case banana)
Bonafide case — Valid
Malafide case — Void

④ Trafficking relating to public offices and titles:-

Titles
→ eg IAS interview ke liye pese dena

→ An agreement to trafficking in public office is opposed to public policy as it interferes with the appointment of the person best qualified for the service of public.
→ Public policy requires that there should be no money consideration for the appointment to an office which the public is interested

eg * An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment. (void)

→ An agreement to procure a public recognition like Padma bushan Vibushan for reward is void

→ Mr A gives ₹ 1,00,000 to officer to give his son job in Forest department. On failure Mr. A can't recover as such contract amount to trafficking in public offices (opposed to public policy)

⑤ Agreements tending to create monopolies:- Agreements having for their object the establishment of monopolies are opposed to public policy (void)

eg 2 enterprises entered into agreements to manufacture oxygen cylinders and supplying at very high rates (monopoly during covid period

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(6) Marriage brokerage agreements:- An agreement to negotiate marriage for reward, known as marriage brokerage contract, is void

eg. (Page 1.74) Ankita mam book
Ranbir ask Alia's dad that ask alia to marry me I will give you ₹30,00,000/-
(Marriage brokerage agreement b/w Alia Dad and Ranbir)

Note:- Marriage bureau only provides information & doesn't negotiate marriage for reward

(7) Interference with course of Justice:- (Biased Judge decision)
An agreement whose object is to induce any judicial officer of state to act partially or corruptly is void (opposed to policy)

eg. A gives reward ₹1,00,000 to B if B (intended witness) absenting himself in court of law

→ Any agreement to influence legislation is void

(8) Interest against obligation:- Means ⇒ Agent takes commission from principal and also takes money from third party } (purchasing house)

Such agreements are:-

1, An agreement by an agent to receive without principal's consent compensation from another for performance of his agency (invalid)

2, A, who is the manager of firm, agrees to contract with X if X pays ₹2,00,000/- privately (void)

(9) Consideration unlawful in part:- By virtue of Section 24, if any part of single consideration for one or more objects, or any part of several considerations for ~~single~~ single object, is unlawful (void)

The general rules states where legal part of a contract can be severed from illegal part, bad part may be rejected (drugs) and good part can be retainted (car). Altogether (void agreement)

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# Void Agreements

(1) Agreement in restraint of marriage (Section 26) (prevent someone from marrying)
Every agreement in restraint of marriage of any ~~other~~ person other than minor, is void. So if a person agrees ~~to~~ not ~~for~~ to marry for a good consideration is not a binding agreement (void)

(2) Agreement in restraint of trade (Section 27) :- An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extend void.
But it has some ~~exp~~ exceptions, where the person sells goodwill of business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as buyer carries on a like business, such an agreement is valid.

→ The local limits within seller of goodwill agrees not carry similar business must be reasonable.

→ Under Section 36 of IPA 1932, if an outgoing partner makes an agreement without ~~out~~ from continuing partner that he will not carry on business similar to that of the firm within a specific period or within local limits, such an agreement, though in restraint of trade, will be valid, if restrictions ~~are~~ imposed are reasonable

→ Under Section 11 an agreement between partners not to carry same business / or competing business during continuance of partnership is valid

→ However, if an agreement of service by which an employee binds himself, during term of his agreement, not to complete with his employer is not in restraint of trade

eg- B, a surgeon, employs A as an assitant for a term of 2yrs & A agrees not to practice as a surgeon during these 2 yrs. A can be restrained by injunction if starts independent during these yr.

eg- An agreement by manufacturer to sell during certain period his production to wholesale merchant is not in restraint of trade

Similarly, agreement among sellers of commodity not sell commodity for less than fixed period is not an agreement in restraint of trade

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- certain exceptions to restraint of trade is void
  - Statutory Provisions
    - Goodwill
    - IPA, 1932
    - LLP Act, 2008
  - Judical interpretations
    - Trade combinations
    - Service agreements
    - Sole or exclusive Dealing Agreements & Franchise

(Section-28)

③ Agreement in restraint of legal proceedings:- It is the one by which one party thereto is restricted from enforcing his rights through a court or which abridges the usual period for starting legal proceedings. (void agreement)

Exceptions:-

1, An contract in which parties agree that any dispute between them ~~say~~ in respect to any subject shall referred to Arbitration and that only amount awarded in such arbitration (process of settling disputes) shall be recoverable is valid. (matter public nhi hota)

2, Similarly, a contract in which parties agree to refer to arbitration any question which has already arisen or may arise in future, is valid, but such contract must be in writing. Arbitrator (retired Judge)

④ Agreement meaning of which is uncertain (sec-29):- an agreement, the meaning of which is not certain, is void, but the meaning thereof is capable of being made certain, such agreement is valid

(eg)- A agrees to sell B, a hundred tons of oil. What kind of oil? agreement is void for uncertainty. But agreement would be valid if A only deals in cocunut oil (its meaning would be capable of being made certain)

(Refer sticky note)

⑤ Wagering agreement (Section 30)- (agreement of wager is void)
It is an agreement involving payment of a sum of money upon determination of an uncertain event. The essence of wager is that each side stand to win/lose depending upon ~~the~~ ~~or~~ the way an uncertain event and neither of the parties has legitimate interest. If the parties have control on the event, agreement is not wager.

eg- A promises to pay ₹10,000 if it rains. B promises to pay ₹10,000 if it does not rain.

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Essentials of wagers - essence of wager is that each side is to win/Lose

1, There must be promise to pay money or money's worth
2, Promise must be conditional on an event happening or not happening
3) There must be uncertainty of event.
4, There must be 2 parties, each party ~~must~~ stand to win/Lose
5, There must be common intention to bet at the timing of making such agreement (interest in wager and.)
(at the Loss of 1 party, other party is winning)
6, Parties should have no interest in event except for stake

Transactions similar to Wager (Gambling)

(1) Lottery transactions:- A lottery is a game of chance and not of skill/knowledge where prime motive is gambling (wagering transaction)
Even if lottery is sanctioned (not illegal) by govt it is wagering trans.
The only effect of such sanction is that person responsible for running lottery will not be punished under Indian penal code.
→ Lotteries are illegal and even collateral transaction ~~in which~~ which ~~passed~~ to it are tainted with illegality

(2) Crossword Puzzles and competitions:- in which prizes depend upon correspondence of competitor's solution with previously prepared solution kept with editor of newspaper is a lottery (wagering transaction)
(luck factor is required, winner is selected by lottery)
Contract is void-ab-initio (prizes are awarded on basis of skill & intelligence)
(Case Law - State of Bombay vs. R.M.D)
According to Prize Com. Act, 1955 prize competitions in games of skill are not wagers provided the prize money doesnot exceed (1000)

(3) Speculative Transaction:- an agreement or share market transaction where parties intend to settle difference between contract price and market price of certain goods ~~on~~ on a specified day, is gambling and hence void.
(If the parties have intention of settle down price from the starting period, such contract is wagering)

(7/115) PPT

(4) Horse Race transactions: It is a competition where prizes are awarded to bet winner is less than ₹500/-, is a wager
eg A & B enters into agreement in which A promises to pay ₹1,00,000 provided chetak wins comp. (not a wager)

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→ Transactions resembling with wagering transaction but are not void
(Section 30 not applicable)

(kitty parties)
① chit fund:- This is a wagering transaction but it is not void where a certain no. of people decide to contribute a fixed sum of money for specified period and at the end of month, the amount so contributed will be paid to lucky winner of lucky draw.

② Commercial transactions and share market transactions:- In these transactions in which delivery of goods or shares is intended to given or taken, do not amount to wager. It is based on speculations.

③ Games of skill & Athletic Competition - Crossword puzzles, picture competitions & athletic com. where prizes are awarded on the basis of skills & intelligence, are valid.
Acc. to Prize com. Act, 1955 prize com. in games of skill are not wagers provided prize money does not exceed ₹1000

④ A contract of Insurance:- It is type of ~~wag~~ contigent contract
uncertainty
and is valid (different from wagering contract)

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