

CONTRACT

- **“IGNORANTIA JURIS NON EXCUSAT”**
- Means “ **Ignorance of law is no excuse**”
- Every person presume to know the law of the country in which he is a subject.

BUSINESS LAW (BL)

- Business law is also known as **Mercantile law, Commercial Law or Corporate Law.**
- **LAW :** “ Rule made by authority for the proper regulation of a community or society or for conduct in life”
- **Law** is the body of principles recognize and enforce by the state in administration of justice. – Salmond

- **CONTRACT:** Section 2(h) of ICA “ An agreement enforceable by law is known as contract”
- Definition of an **AGREEMENT** Sec.2(e) of ICA “ Every promise and every set of promises, for which there is a consideration for each other.”
- Sec.2(b) of ICA defines **PROMISE** as “ Who makes a proposal to a 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.”

- On analyzing the definitions of agreement following definitions of an agreement are
- **Plurality of persons** : There must be two or more persons to make a contract because one person can not enter into an agreement with himself.
- **Consensus-ad-idem** : Both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at the same time.
- **Legal Obligation Or Enforceability** : An agreement is said to be enforceable if it is recognized by the courts.

DIFFERENCE BETWEEN AGREEMENT AND CONTRACTS

- Sec.10 of ICA “ All agreements are contracts if they are made by the **free consent** of the **parties competent** to contract, for a **lawful consideration** with **lawful object** not hereby expressed declared to **void** “

ESSENTIALS OF A VALID CONTRA

- Following are the essentials of a valid or complete contract.
- **Plurality of persons.**
- **Consensus-ad-idem.**
- **Valid offer and acceptance.**
- **Capacity of parties.**
- **Free Consent.**
- **Lawful Consideration.**
- **Lawful Object.**
- **Agreement Not Expressly Declared Void.**
- **Legal formalities.**
- **Certainty.**
- **Possibility of performance.**
- **Intention to create Legal Relationship.**

EXPLANATION

- **Explanation of above essentials:**
 1. **Plurality of persons** : There must be two or more persons to contract because one person cannot enter into a contract with himself.
 2. **Consensus-ad-idem** : Both the parties to a contract must agree on the subject matter of a contract in the same sense and at the same time, there must be a meeting of minds.
 3. **Valid Offer and Acceptance** : There should be at least two parties to a contract, 'offerer' and 'offeree'. An offer to be valid must fulfil certain conditions such as it must tend to create legal relations, its terms should be clear and unambiguous, it must be communicated to the offeree etc.
- An acceptance must fulfil certain conditions such as it must be absolute and unqualified, in a prescribed manner, communicated by an authorized person before the offer lapses.

- **4. Capacity of Parties** : Sec.11 of ICA “ Every person is competent to contract if he is of the age of **Majority** and who is of **sound mind** and must not be declared **Disqualified** from contracting by any law to which he is subject.”
- **5. Free consent** : **Consent** means that the parties must have agreed on the same thing in the same sense.
- There is absence of “free consent”, if the agreement is induced by
 - a. Coercion.
 - b. Undue Influence
 - c. Misrepresentation.
 - d. Fraud. or
 - e. Mistake.
- If the agreement is vitiated by any of the first four factors, the contract is voidable and can not be enforced by the party guilty of coercion or undue influence etc.

- **6.Lawful Consideration** : Consideration is “ some return”.
- **No consideration, no contract”** .
- A promise to do something or to give something for no return is not enforceable by law.
- With certain exceptions.
- The consideration is lawful if it is Forbidden by law, or of such a nature that it would defeat the provisions of any law, or is Fraudulent ,or Involves or implies injury to the person or property of another, or Oppose to Public Policy.

- **7. Agreement Not Expressly Declared Void :** The IC has declared some agreements specifically void under 24 to 30 and 56. Agreements like “in restraints of marriage” “in restraint of trade” “in restraint of legal process” involving uncertainty; wagering and impossible are void.
- **8. Legal Formalities :** A contract must be oral or in writing. And in some cases it must be in writing and registered.
- Eg To make gift for natural love and affection.
- Exceptions: Implied contracts, Quasi contracts.

- **9. Certainty:** The contract must be certain or at least made certain. Eg. Quality or quantity of subject matter.
- **10. Possibility of Performance :** The agreement must be capable of being performed. This is based on Latin maxim **lex non cogit ad impossibilia** – which means law does not compel to do what is impossible.
- Impossibility can be
- Pre contractual impossibility : Agreement is void ab initio
- Post contractual impossibility : Contract becomes void. as **“Doctrine of Supervening Impossibility”** or **“ Doctrine of Frustration”**

- **11.Intention to Create Legal relationship** : The intention of both the parties entering into an agreement must be to create a legal relationship among them. Agreements of **social or domestic nature** do not create legal relations.
- Eg. If 'D' agrees to go to cinema with 'B' ,this is not a contract enforceable by law. Social obligations are not enforceable by law.
- The elements mentioned above must all be present.
- If any one of them is absent, the agreement does not constitute a contract.(With certain exceptions).From this it follows that **Every contract is an agreement but all agreements are not contracts."**

OFFER OR PROPOSAL

- Sec.2(a) of ICA defines OFFER as “ when one person s another his willingness to do or to abstain from doing any a view to obtaining the assent of that other to such abstinence , he is said to make an offer (proposal)”.
- For a lawful offer , the following conditions (Nature/Features) must be fulfilled .
- There shall be atleast two persons (Offeror and Offeree) competent to contract.
- The person (expressing willingness) has the intention to g of that other person to such an act or abstinence.
- One person expresses (signifies) his willingness to another or ‘b’ to abstain from doing anything.
- **Offeror or promisor** is the person making the proposal another.
- **Offeree or Promisee** is the person to whom offer or p made.

LEGAL RULES REGARDING A VALID OFFER

- An offer must be “ Expressed or Implied”.
- An offer must contemplate to give rise to ‘legal consequence’ and be capable of creating legal relationship.
- The terms of the offer must be certain and not vague or loose.
- “An invitation to an offer is not an offer”.
- An offer may be ‘ Specific or General’.
- An offer must be communicated to the offeree.
- An offer should not contain a term the compliance of which would amount to acceptance.
- An offer can be made subject to any terms and conditions.
- Two identical cross offers do not make a contract.

Explanation.....

- **An offer may be Expressed or Implied:** That offer can be expressed in words etc. At the same time offer can be implied e. runs buses in different routes at the scheduled time.

The offer must disclose the intention to create legal relation constitute an offer, the offerer must intend to create legal obligation to negotiation, Social invitation, Invitation to offer, offer made Excitement are the examples of a lack of contractual intention on the offerer.

The terms of an offer must be certain, not loose or vague: observes “ Unless all the material terms of the contract are agreed binding obligation”.

E.g. ‘X’ purchased horse from ‘Y’ and promise to by another if first lucky. ‘X’ refuse to purchase second horse ‘Y’ cannot enforce Porting ton)

An invitation to an offer is not an offer : An offer is different Invitation to Receive offer” or “ Invitation to Treat”(judicial because its objective is mere “ Circulation of Information”.

E.g. (a) An advertisement for sale of **goods by Auction** is not an Vs Nickerson).

Grainer and son Vs Gough.

Case:” The transmission of price list does not amount to a supply an unlimited quantity or quality specified”.

An offer may be Specific or General : General offer is made world at large or public in general. While Specific offer is made specific individual or individuals. It follows that an offer need not to an ascertained person, but it must be accepted by a definite person.

Case : “Carlill Vs Carbolic Smoke Ball Co.”

Reward of 100 pound to any person who contracts ‘influenza’ by consuming smoke balls.(Gen. Offer.)

6. An offer must be communicated to the offeree : Until the offer is known to the offeree there is no contract. Communication means to the knowledge of the offeree.

“ Doing anything in ignorance of an offer can never be treated as acceptance, for there was never a consequences of wills.This applies to both general and specific offer”.

Case : Lalman shukla Vs Gauridatt.

Servant found the absconded nephew of defendant with knowledge of the reward. Plaintiff cannot claim the reward.

Communication of “Special Terms”

In case of the contract as contained in Credit cards, Ticket Standard form Documents the more adopted rules by the courts are :

If the acceptor or promisee had no knowledge of special terms at the time of contract they are not binding upon courts.

Case.1. : Henderson Vs Stevenson. (Steamer ticket _ “ Dul Haven”. No reference for “special conditions” (PTO).Plaintiff lost and won the claim for the damages.)

Case.2. Parker Vs South East Railway Company.

Deposited luggage at clock room. Special terms reference on ticket (see back). Defendant not responsible for damages. (Special responsible for luggage exceeding 10 pounds, unless extra charge. Exemption to above rule :

“ The Doctrine of Fundamental Breach and Strict Construction Doctrine protects the unreasonable consequences if wide and exemption of clauses.

Case.3. M . Siddaligappa Vs T. Nataraj.

Dry cleaner’s terms that he will pay only eight times the amount charges, for any damage to or loss of the garment, held unreasonable.

“ Terms and conditions must be reasonable, so that they should be any body.

An offer should not contain a term the compliance of which would amounts to acceptance. Thus, an offeror can not say that if acceptance is communicated up to a certain date, the offer would be presumed to have been accepted. If the offeror does not reply, there is no contract, because no obligation to accept can be imposed on him, on the ground of justice.

An Offer can be made subject to any terms and conditions : An offeror may attach any terms and conditions to the offer he make. He may prescribe any mode of acceptance. – “By Registered Post Or Telegram” Etc.

Two Identical Cross Offers do not make a contract. When two parties make identical offers to each other in ignorance of others offer, the offers are “Cross Offers” which do not make a contract.

ACCEPTANCE

Sec.2(b) of ICA “ A Proposal when accepted becomes a **Promise**”

Acceptance defined as

“ When the person to whom proposal is made signifies his assent thereto, the proposal is said to be **accepted**”.

Acceptance is the manifestation of offeree of his assent to the terms of the offer.

Legal rules Regarding Valid Acceptance :

(Essentials of Valid Acceptance)

- Only a valid acceptance to a valid offer can establish legal relationship offeror and acceptor (offeree).

- Following are the essentials and legal rules of a valid acceptance:

Acceptance must be given only by the person to whom offer is made

Jones , A sold B his business without telling c , a customer. C sent an order to A. B received the order and executed it. C refused to pay the price. Held between C and B because C never made any offer to B).

Acceptance must be “Absolute and Unqualified”.

Sec.7(2) “ Even a slightest deviation from the terms of the offer acceptance invalid.”

Acceptance must be Expressed in some usual and Reasonable manner unless the proposal prescribes the manner in which it is Expressed. Implied (Tacit) Acceptance.

Sec.7 (2) says in case of deviated acceptance, "The proposer may within a reasonable time after the acceptance is communicated to him, insist that the proposal shall be accepted in the prescribed manner and not otherwise. If he fails to do so, he accepts the deviated offer."

Mental acceptance is ineffective. Acceptance must be communicated to the offeror, otherwise it has no effect.

This rule is based on "Consensus Ad Idem" (meeting of minds). The offeror cannot impose a condition that offeree's silence will be regarded as acceptance.

Case:1. **Felthouse Vs Bindley** (F offered to buy horse from his nephew. Nephew not replied but told B his auctioneer not to auction horse. B accepted by mistake. F filed case. Held, no contract because there was no communication of acceptance by nephew to F)

Case:2. **Brogden Vs Metropolitan Railway** (Letter of acceptance not signed and kept in drawer).

An Acceptance must be communicated by the acceptor:

Case: Powel Vs Lee (“ Post of Head Master”- informed about selection- Post canceled- No contract)

Acceptance must be given within a Reasonable time and Before the offer Lapses or Revoked :

Case: Shree Jayamahar co-op. Housing society Zenith Chemical Works Limited. (Applied for shares allotment till five months – refuse to accept- No contract.)

Acceptance must succeed the offer : E.g. Allotment of shares prior to application of shares.

Rejected offer can be accepted only, if Renewed

Privity of contract:

The basic principle underlying law of contracts is that a stranger to a contract cannot maintain a suit for remedy. The law entitles only those who are parties to a contract to file suits for exercising their rights. This is known as 'privity' of contract.

CONSIDERATION

“EX NUDO PACTO NON ORITUS ACTIO”

[From a Nude or Bare Promise, No Right of Action can arise]

Consideration is the one of the essential element of contract (sec.10).

Pollock “ Consideration is the **price** for which the promisee or the other is bought”

Sec.2 (d) of ICA defines “ When at the desire of the promisor the promisee or any other person has done or abstained from doing, or promises to do or to abstain from doing, so that such act or abstinence or promise is called a **Consideration** for the promise”.

Types of Consideration :

Present Consideration :

Past Consideration :

Future Consideration:

ESSENTIALS OF A VALID CONSIDERATION OR LE RULES OF A VALID CONSIDERATION:

Consideration Must Move at the Desire of Promisor: The act or abstinence must have been done at the desire of the promisor, not at the desire of any third party.

Case : Durga Prasad Vs Baldeo. (Construction of the shops in the market at the desire of the collector by D- Shopkeepers promised to pay commission to D on sold articles-D sued them for not paying-Held Cannot collect commission from shopkeepers because shops are not built at the desire of D)

Consideration may move from the Promisee or any other person: Sec.2(d). “Consideration need not move from the promisee alone but may proceed from a third person”.

“A **Stranger to Consideration** Can sue on a contract provided he is a **Party** to the Contract”—Called the **DOCTRINE OF CONSTRUCTIVE CONSIDERATION**.”

Chinnaiah Vs Ramayya”.

‘A’ an old lady gifted her property to her daughter ‘B’. ‘B’ should pay annuity to A’s brother ‘C’ – Held that ‘C’ can sue.

A Stranger to Contract Cannot Sue : As per **Doctrine of Privity of Contract** - Privity is essential for enforcing contract (he must be a party to the contract, otherwise a stranger cannot sue).

Case: Dunlop Pneumatic Tyre Co. Vs Selfridge & Co. (1915)

A dealer purchased tyres from the Dunlop Co. and sold them to a retailer (Selfridge & Co). The retailer sold them below the market price. Dunlop Co. cannot file a case against Selfridge & Co. because there is no privity of contract between Dunlop Co. and Selfridge & Co.

Case: Iswaram Pillai Vs Sonnivaveru.

'A' mortgaged his property to 'B' in consideration of 'B's' promise to pay A's debt to 'C'. 'C' cannot file a case against 'B' because he is not a party to the contract.

"A Stranger to contract cannot Sue, but a Stranger to Consideration can sue"

- **Exceptions to “ A Stranger to Contract Cannot Sue”**
[Exceptions To “ Doctrine of Privity of Contract”]
- There are special Clause in contract act called as **Cardinal Principles** That says that stranger to contract cannot sue.
- **But there are certain exceptions to this law and in following cases the “Third Party” [Stranger To contract] can sue:**
 - Marriage Settlements , Partition And other arrangements:
 - Assignment of the Contract: The Assignee can sue.
 - Beneficiary of a Trust:
 - Contract Entered through an Agent: A principal can sue.
 - Estoppel or Acknowledgement: When the promisor by his conduct admits or acknowledges liability, or constitute himself as the agent to the third party’ he shall be estopped from denying any liability.
 - Charge Created in favour of certain person on Immovable Property. The beneficiary can enforce the charge.

•The Consideration may be Past (Executed), Present or Future: The words used in Sec.2(

.....

has done or abstained from doing(Past), or has abstain from doing (Present) or promises to abstain from doing (Future Consideration).

•Consideration must be something of Value in the

Eyes of Law: Where consideration is Phisically impossible (make a dead man alive), Legally Impossible, Uncertain Consideration (uncertain or vague), Illusory or Deceptive consideration.

(Promise to perform public duty or perform a contract already made with the promisor.)

- **Consideration may be an act, abstinence or return**

The consideration may be positive (to act) Negative (A

- **Consideration must be lawful:** Not some illegal act
paying one to do crime.

- **A Contract must be supported by Consideration:**
“ No consideration no contract”.

- **Consideration need not be adequate:** But must have value, however slight. Inadequate of consideration invalidate a contract. E.g. Ram involuntarily agreed bicycle for Rs. 50.(of Rs. 500) to Karan. it becomes contract.

There must be Mutuality: i.e. Each party must do or do something. A gratuitous promise, as in the subscription for charity, is not enforceable

EXCEPTION TO THE RULE “ NO CONSIDERATION NO CONTRACT”.

Sec.25 of ICA, specifically states that “ **Subject to certain exceptions, agreements without consideration are void**”

- Exceptions to the Rule “No Consideration contract” are as follows:

Agreement made on Natural Love and Affection

Agreement to Compensate for Past Voluntary

Services:

Agreement to Pay a Time Barred Debt:

Completed Gift:

In case of Contract of Agency:

Permission by the Promisee of performance of a promise:

Contribution to Charity:

Explanation to above Exceptions:

(1) Agreement made on account of Natural Love and Affection { Sec.25(1) }: An agreement without consideration is valid provided:

It is made on account of love and affection.

It is between parties standing in near relation to each other.

It is expressed in writing. It is registered under the law at the time being in force.

All these above essentials must be present to enforce an agreement made without consideration.

Case: Rajlaxmi Devi Vs Bhootnath. (Husband given property to wife due to some dispute - But not out of love and affection. Not enforceable.)

(2) Agreement to compensate for Past Voluntary Services:[Sec.25(2)] A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration.

E.g. 'A' saves 'B' from an accident. "B" promises to 'A' Rs. 10,000.

The contract is valid. www.FirstRanker.com

(3) Agreement to Pay a “Time Barred Debt”

{Sec.15(3)}- is enforceable by law. Provided following conditions should fulfill:

- * There must be an Expressed promise to pay a Time Barred Debt .
- * The debt must be such that, the creditor might have enforced payment but for the “Law of Limitation of Suits”.
- * Writing and signed.
- * The promisor himself must be liable for the debt.

Case: **Pestonji Vs Meher Bai**. (Widow cannot enforce her husband's promissory note. It must be an express promise, In writing and Signed.)

(4) Completed Gift {Sec.25}: If a person gives or transfers property to another according to the provision of the “Transfer of Property Act” He cannot subsequently demand the property back on the ground that there was no consideration.

(5) In case of contract of Agency: According to Sec of ICA, no consideration is required to create an Agency.
(6) Remission by the promise, of performance or promise: (Sec.63) for compromising a due debt by agreeing to accept less than what is due, no consideration is necessary.

(7) Contribution to Charity : A promise to contribute to charity, though gratuitous, would be enforceable; if on the faith of the promised subscription, the promisee incurs liability.

Case.1: Kedarnath Vs Gorie Mohammed (Town committee's construction- Incurred liability. (Valid contract.)

Case.2: Abdul Azeez Vs Masum Ali. (Fundraising for construction of Mosque- Liability not incurred –Cannot claim.

FREE CONSENT

Sec.13. of ICA defines **CONSENT** as “Two or more persons to have said to have consented when they agree upon the same thing in the same sense”

“Consensus Ad –Idem” is a condition essential for the formation of a valid contract.

Absence of consent may arise from a number of causes, namely-

- By reason of an error as to the identity of the person with whom the contract is entered into;
- By reason of an error as to the nature of the contract itself;
- By reason of an error as to the subject matter of the agreement.

FREE CONSENT Sec.14 define Free Cons
Consent is said to be Free when it is not caused

Coercion (Sec.15)

Undue Influence (Sec. 16)

Fraud (Sec.17)

Misrepresentation(Sec.18)

Mistake subject to the provision of Sec.20,2

In the absence of “ Free Consent” the contract
out to be either Voidable or Void depending u
nature of the flaw in consent. If the contract is ca
“bilateral mistake” the agreement is void.

COERCION

Sec.15 defines Coercion as “ Coercion committing or threatening to commit, an act forbidden by Indian Penal Code, or the unlawful detaining or threatening to detain’ any property to the prejudice of any person to enter into an agreement.”

In short , it can be said coercion is there when consent is obtained by –

- Threatening to commit any act which is forbidden by the IPC.
- Threatening to detain any property.
- Committing any act which is forbidden by the IPC.
- Unlawful detaining any property.

Effect of Threat to Commit Suicide:

A “ Suicide” and a “ Threat to Commit Suicide” are punishable but an “ attempt to commit suicide” is punishable under IPC.

A Threat to commit suicide does not amount to coercion as considered by Madras high court in the case of “ Amiraju Vs Chikkam Sheshamma”.

In this case husband threatens to commit suicide if son did not execute a release deed in favour of his brother in respect of certain property.

Effect of Threat to File a Suit:

To threaten a criminal or Civil prosecution does not constitute Coercion because it is not an act forbidden by law. But to file a suit on a false charge constitutes coercion, for such an act is forbidden by the IPC.

As per Sec.64., if the aggrieved party opts to rescind a voidable contract, he must restore any benefits received from the other party.

DURESS : (jures) In English law coercion is called as Duress-means “ illegal imprisonment either actual or threatened violence over the person (body/ Physical) or another party or wife or children with a view to obtain the consent of that party to the agreement.”

UNDUE INFLUENCE :(UI)

Sec.16(1) defines UI as “ A contract is said to be in “UI” where the relations subsisting between the in a position to dominate the will of the will other that position to obtain an unfair advantage over th

A person is Deemed to be in a position to dominate the other;(Presumption of UI)

(A) where he stands in a “**Fiduciary Relation**” (relation and confidence) to the other. E.g. Father and son, Solicitor and Client , Trustee and Beneficiary , Promoters and Company And Guardian and Ward.

(B) Where he holds a **Real or Apparent Authority** over e.g. Relationship between Master and Servant, Doctor and Patient , Solicitor and Client.

- ▣ **C. Where a Party Makes a contract with a person whose capacity is Temporarily, or Permanently affected by real Illness, or Mental or Bodily Distress.**

Presumption of UI is not there in the following cases in which it has to be proved.

- ▣ **Husband and Wife.**
- ▣ **Mother and Daughter.**
- ▣ **Grand son and grand father.**
- ▣ **Land lord and Tenant.**
- ▣ **Creditor and Debtor.**
- ▣ **When consent to an agreement is got with UI the agreement is a voidable contract at the option of the aggrieved party.**

▣ MISREPRESENTATION (SEC 18)

- ▣ A Representation is a “statement or assertion made by one party to the other, before or at the time of contract, regarding a matter or circumstance essential to the formation of the contract with an intention to induce other party to enter in to contract.”
- ▣ A Representation when wrongly made, either innocent or intentional is termed as Misrepresentation.
- ▣ Misrepresentation includes _____
- ▣ a. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true.
- ▣ b. Any breach of duty which, without an intent to deceive, induces an advantage to 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.

Essentials of Misrepresentation:

1. In this a representation should be made innocently with honest belief as to its truth and without any desire to deceive the other party, either expressly or Impliedly.
2. The representation must relate to facts material to the contract.
3. The representation must be untrue; or must have become untrue.
4. The representation must have induced or have become instrumental in inducing the other party to enter into the contract.

- **FRAUD (Sec.17)**
- **Definition: Fraud means and includes any of the following committed by a party to contract, with his connivance or agent with intent to deceive another party there to or his induce him to enter into contract:**
- **The suggestion as to a fact, of that which is not true, by one who does not believe it to be true.**
- **The active concealment of a fact by one having knowledge of fact.**
- **A promise without any intention of performing it.**
- **Any other act fitted to be deceive.**
- **Any such act or omission as the law specially declares to fraudulent.**

Mistake

- ▣ Mistake may be defined as a erroneous belief of part of the parties to the contract concerning something pertaining to the contract.
- Different kinds of Mistake
 - ▣ i] Mistake of fact
 - ▣ a) Bilateral
 - ▣ b) unilateral
 - ▣ ii] Mistake of Law
 - ▣ a) mistake of law of land
 - ▣ b) mistake of foreign law

Capacity of Parties.

- Sec.11.of ICA states that “ Every person is competent to contract who is of the age of majority according to the law to which he is a subject, and who is of sound mind, and not Disqualified from contracting by law to which he is a subject.”

- Sec.11 states that following persons to be incompetent to enter into contract:
- (a) Persons Disqualified by any law to which they are subject, e.g. Alien Enemies, Foreign Sovereigns and Ambassadors, Insolvents, Convicts etc.
- (b) Minors.
- (c) Persons of Unsound Mind i.e. Idiots, Lunatics and Drunken Person.

- **Persons Incapable to Enter into Contract Status:** Following categories of persons are included as Disqualified Persons :

(a) Alien Enemy. (b) Corporations and Joint Stock Companies.

• (c) Convicts. (d) Insolvent.

• (e) Foreign Sovereigns and Ambassadors.
Married Women.

• (g) Trade Unions:

- MINOR (INFANT)
- Sec.3. Of ICA," a Minor is one who has not completed his 18th year of age." So a person becomes major after the completion of 18th year of life.
- Exception to above rule: When a minor's property is taken over by "court of wards and management. In either cases minority continues up to the completion of the 21st year.

- The Rules Governing Minor's Agreement
Which are based on two principles:
- (1) Law protects minors against their inexperience and against the possible improper designs of those more experienced.

It has been rightly observed that "the law protects minors and preserves their property and estates, excuses their negligence and undue delay in enforcing a right such as to disentitle their counselors, the jury the

- **MINOR'S AGREEMENTS:**

Indian contract act 1872, has given a special privileged position to a minor. He is allowed to take advantage of his acts but does not incur any kind of obligation. The law regarding minor's agreements can be summed up as follows.

(1) A minor's contract is altogether void and a minor therefore cannot bind himself by a contract.

- (2) Minor can be a promisee or a beneficiary
- (3) Minor's agreement cannot be ratified by him on attaining the age of majority.
- (4) No rule of Estoppel applicable against minor.
- (5) Minor cannot be asked to refund the benefit

(6) A minor can always plead minority.

(7) Minor's parents are not liable.

(8) Minor cannot be adjudicated as Insolvent.

(9) Minor cannot enter into contract of partnership.

- (10) Minor's Estate is is liable for necessar
supped to him.
- (11) Minor can be a agent.
- (12) Minor cannot be the member of a
company.
- (13) No specific performance of an agree
entered into by minor.
- (14) Surety for a minor.

EXPLANATION TO ABOVE RULES.

(1) A minor's contract is void ab-initio: Law acts as the guardian of minor and protects their rights, because their mind is not mature enough to take the decision.

The Privy council affirms this view in “*Mohd. Bibi Vs Dharmodas Ghosh*”. (Minor mortgaged property for Rs. 20,000.-Received Rs.8000)

It was held that the mortgage was void and repayment of advance Rs.8000 not accepted as he has used that amount.

(2) A minor can be a beneficiary or promisor

If a contract is beneficial to a minor it can be enforced by him. Thus a minor can purchase immovable property or can execute a promissory note.

(3) Minor's agreement cannot be ratified him on attaining majority. A minor borrowed a sum of money by executing a simple promissory note for it and after attaining majority executed a second promissory note is not maintainable.

(4) No rule of Estoppel against a minor: "Estoppel arises when one is precluded from denying the truth of anything which he has represented as a fact, although it is not a fact."

(5) Minor cannot asked to refund to refund benefit: If the minor has obtained any benefit by taking advantage of his minority, such as money on a mortgage, he cannot be asked to refund, nor can his mortgaged property be made liable.

(6) A minor can always plead minority. Law protects minor from contracted liability. if a minor makes a fraudulent misrepresentation as to his age agreements with him are void and a minor is not prevented from setting up the plea of minority as there cannot be any estoppel against the statute.

(7) Minor' parents are not liable: However acting as an agent of the guardian, guardian could be held liable for his act. A contract the guardian of minor is valid and can be enforced by or against guardian, but such agreement should be for the benefit of minor and should be within authority.

(8) Minor cannot be adjudicated as Insolvent: Even for necessities of life he is not personally held responsible, only his property is liable. Minor cannot be declared insolvent.

(9) Minor cannot enter into a contract of partnership: But under Sec.30.of Indian Partnership Act, minor can be admitted to the benefits of partnership.

(10) Minor's estate is liable for Necessaries supplied to him: (Sec.68) Necessaries are those things without which an individual cannot reasonably exist.

Things suited to the condition of the minor be classified as **Necessaries**, which are as follows:

- (a) Wedding presents for a bride of a minor.
- (b) Debt incurred for performing funeral obligations of the father of a minor.
- (c) Funds supplied to a minor for the maintenance of a minor female in the family.

- (d) Expenses reasonably incurred in defense of litigation threatening minor's property.
- (f) Loan to a minor to save his property from sale in execution of a decree.
- (g) Things without which an individual cannot reasonably exist...
- (h) Articles required to maintain a particular person in the state and degree in life, in which he is living.

Insolvent : An un discharged insolvent can not be appointed as a magistrate, or elected to a office of local authority.

Sec 274. Of Companies act 1956, a person who is un discharged insolvent is disqualified from becoming a Director.

Foreign Sovereigns and Ambassadors: Foreign Sovereigns and Ambassador (accredited representatives of a foreign state) enjoy a special privilege in that they can not be sued in our courts, but they can, if they choose to enter into a contract and then enforce these contracts in our courts.

- **An Alien Enemy : An Alien (the subject of a foreign state)is a person who is not a subject of the Republic India. He may be alien friend or alien enemy. Contract with alien enemy(A person whose state is at war with the Republic of India) During the continuance of war, an alien enemy can neither contract with an Indian subject nor can be sue in Indian court.**
- **Contracts made before the war may either be suspended or dissolved.**

Corporations and Joint Stock Companies: A company or corporation is a artificial person created by law and having a separate legal entity. It cannot enter into contracts which are personal in nature. E.g. it cannot enter into contract to marry.

Convicts : A Convict is one who is “ found guilty and is imprisoned, during the period of imprisonment, a convict is incompetent.

Married Women : A women married or single, in Indian law is under no disability regards entering into contract.Only in English law it was applicable.Since 1935 the disability is not applicable.