

**Agreement:** Every Promise and every set of promises forming consideration for each other is called an agreement.

**Contract:** An agreement enforceable by law is called the contract.

**Void Agreement:** An agreement not enforceable by law is a void agreement.

<b>Agreement</b>	<b>Contract</b>
1. It is initial stage.	It is final stage.
2. It may be void.	It cannot be void.
3. Every agreement is not a contract.	Every contract is an agreement.

**Consent (Consensus ad idem) ( A meeting of minds):** Consent is defined as agreement of the contracting parties over the same subject-matter in the same sense. A valid and binding contract cannot take place if there is no consensus ad idem between the parties.

**Free consent:** Consent is said to be free when it is not obtained by means of Coercion, Undue Influence, Fraud, Misrepresentation and Mistake.

1. **Coercion:** Coercion is the committing or threatening to commit any act forbidden by the Pakistan Penal Code (PPC) 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. Coercion may proceed from a stranger to a contract. Coercion may be exercised against some third person and not necessarily against the contracting party.

*Explanation: It is immaterial whether the PPC is or is not enforce in the place where coercion is employed.*

2. **Undue Influence:** A contract is said to be induced by undue influence, when the relations between the parties are such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

- (i) **Real or Apparent authority:** A person, in authority, is in a position to dominate the will of the person over whom this authority is exercised. Such authority may be real as between: Employer and Employee, an officer and sub-ordinate, an Income tax officer and assessee, A police officer and an accused.

The authority is apparent where real authority does not exist, but the person is able to approach the other with a show of authority.

- (ii) **Fiduciary Relationship:** A fiduciary relationship is arises between the parties, when one of them stands in a position of trust to the other.

- (iii) **Affected Mental capacity:** Where one makes a contract with a person whose mental capacity is affected by the reason of age, illness, mental or bodily distress.

**Burden / Onus of Proof:** If a contract is induced by undue influence, the burden of proving that such contract was not induced by undue influence is upon the person in a position to dominate the will of the other i.e. the defendant.

	<b>Coercion</b>	<b>Undue Influence</b>
1.Nature	It is a physical threat either to property or person.	It involves use of moral force or mental pressure.
2.Unlawful/ Unfair	It involves committing or threatening to commit an unlawful act.	Here, the act may not be unlawful but it may only be unfair.
3.Criminal Liability	The party exercising coercion exposes himself to criminal liability under PPC besides an action on contract.	There is no criminal liability incase of undue influence.
4.Burden of Proof	In case of coercion, the onus of proof is on the plaintiff.	If a contract is induced by undue influence, the burden of proving that such contract was not induced by undue influence is upon the person in the position to dominate the will of the other i.e. defendant.
5.By whom employed	It may be exercised even by a stranger to a contract.	It is employed only by the contracting party who is in a superior position.
6.On whom employed	It may be exercised against third person and not necessarily against contracting party.	It may be exercise only against the contracting party who will may be dominated.
7. Relationship	Incase of coercion, the parties need not have any relationship.	For undue influence, there must be some relationship i.e. one of the parties must be in superior position as compared to other.

3. **Fraud:** Fraud includes any of the following acts committed by a party to a contract with intent. To deceive another party through it or to induce to enter into the contract.
- (i) False statement: Making of false statement knowing that it is false.
  - (ii) Concealment: The active concealment of fact by one having knowledge of the fact where seller sells goods already sold by him to a third person, his conduct amounted to active concealment or fraud.
  - (iii) Empty Promise: A promise made without any intention of performing it. Buying goods with the intention to not paying the price is a fraud.
  - (iv) Fitted Act: Any other act fitted to deceive
  - (v) Declared Act: Any such act or omission as the law especially declares to be fraudulent, according to Transfer of Property Act 1882, the seller of immovable property is required to disclose to the buyer any material defect in the property or in the seller's title to it, of which the seller is (and the buyer is not) aware and (which the buyer could) not discover with ordinary care. Such non-disclosure on the part of the seller is fraudulent.

**Silence as fraud:**

General Principle: Mere silence (as to facts like to affect the willingness of a person) to enter into the contract is not a fraud.

Exceptions:

- (i) Duty to speak: Silence is fraud when the person keeping silence is under duty to speak. Duty to speak arises where one contracting party reposes trust and confidence in the other.

*Example: A father selling a horse to her daughter must disclose her if the horse is unsound as the daughter is likely to rely on her father.*

- (ii) Silence equivalent to speech: If silence is equivalent to speech as well as deceptive, then it is fraud.

*Example: Where a buyer inquires a seller whether the horse is sound and the seller remain silent. This is fraud if the horse is unsound.*

- 4. **Misrepresentation:** A representation when wrongly made, either innocently or intentionally, is termed as misrepresentation.

Types:

- (i) Unwarranted Statement: When a person makes a positive statement that the fact is true, where his information does not warrant it to be so, though he believes it to be true, this act amount to misrepresentation.
- (ii) Breach of Duty: Any breach of duty without any intention to deceive, which brings an advantage to the person committing it, by mistaking the other to it prejudiced is a misrepresentation.
- (iii) Mistake of Subject matter: If a party to an agreement induces the other party (however innocently) to commit a mistake as to the nature quality of the subject matter of agreement, there is misrepresentation.

<b>Fraud</b>	<b>Misrepresentation</b>
If consent of a contracting party is obtained by fraud other than fraudulent silence, the contract is voidable even if such induced party had the means of discovering the truth by exercising ordinary diligence.	If consent of a contracting party is obtained by misrepresentation, the contract is not voidable even if such induced had means of discovering the truth by exercising ordinary diligence.

**Effects if consent is not free:**

**Voidability of agreement without free consent:** A contract is voidable at the option of the party whose consent to the contract is obtained by means of coercion, undue influence, fraud or misrepresentation.

**Rights to insist on performance in case of affirmation:** Where the consent is obtained by fraud or misrepresentation, the representee is entitled to insist that the contract be performed and that he shall be put in the position in which he would have been if the representation made had been true.

**Exceptions:**

- 1) **Means of discovering the truth:** If consent of a contracting party is obtained by misrepresentation or by fraudulent silence, the contract is not voidable if such party has the means of discovering the truth with ordinary diligence.
- 2) **Unaffected consent:** A fraud or misrepresentation which has not affected the consent of the contracting party does not make such a contract voidable at the option of such a party.

**Consequences of rescission of voidable contract:**

- 1) The other party needs not to perform his contractual obligations under the contract. (Once the B has rescinded the contract, A cannot impose contractual obligation on B).
- 2) **Restitution:** When the contract becomes void, it need not be performed by either party but where any party has received benefit under such a contract from the other party he must restore it or make compensation for it to the other party.

**Loss of right of rescission of voidable contract:**

- 1) **Affirmation (express or implied):** If after becoming aware of his right to rescind, the aggrieved party affirms the transaction either by express words or by an act which shows an intention to affirm it, the right of rescission is lost.
- 2) **Lapse of reasonable time:** It may be treated as evidence of affirmation where the party misled fails to exercise his rights promptly on discovering the representation to be untrue or on becoming aware of the fraud or coercion. As such the right of rescission may also be lost by too long-a-day.
- 3) **Rights of innocent parties involved:** Since the contract is valid until rescinded, being a voidable contract, if before the contract is rescinded third parties, bona fide for value, acquire rights in the subject matter of the contract, those rights are valid against the third party misled, and the right to rescind will no longer be available.
- 4) **Restitution impossible:** If the party seeking rescission is not in a position to restore the benefits, he may have obtained under the contract.

**Void Agreement:**

- 1) **Incompetency of Party:** Section 11 of the Contract Act, 1872 indicates that “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”. In other words, An agreement in which one of the contracting parties is

an incompetent person, is a void agreement. Following persons are incompetent to enter into a contract:

- i) A Minor
- ii) A person of unsound mind
- iii) A person disqualified by law from making a contract

i) **Minor:**

- (a) **Age of Minority:** Every person shall be deemed to have attained his majority when he shall have completed his age of 18 years, and not before. In case, however a guardian has been appointed to the minor under the Guardianship of the Court of Wards, the age of majority is extended to the date when he completed his age of 21 years.
- (b) The rule of estoppel does not apply to a minor on the ground that if it applied it would give a handle to dishonest traders to obtain false declaration in writing from the minor that he was a major at the time of entering into contract transactions done by fraudulent representation are set aside and the court may direct the minor to restore the property to the other party.
- (c) A minor cannot be ordered to make compensation for a benefit obtained under a void agreement because it apply only to a case of contracts between competent parties.
- (d) If the minor has obtained any benefit, such a money on a mortgage, he cannot be asked to refund, nor can his mortgaged property be made liable to pay.
- (e) **Beneficial Contracts:** Any agreement which is of same benefit to the minor and under which he is required to bear no obligation, is valid. In other words, a minor can be a beneficiary.
- (f) **Ratification:** Ratification mean the subsequent adoption and acceptance of an act or agreement. A minor's agreement being a void, has no existence in the eye of law. It cannot be ratified by the minor on attaining the age of majority.

ii) **A Person of unsound Mind:** According to Section 12 of the Contract Act, 1872, A person is said to be of sound mind for the purpose of making a contract if (at the time when he makes it) he is capable of:

- understanding it
- forming a rational judgments as to its effect by his interest

**Special Situation:**

- (i) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- ii) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

iii) **Disqualified Persons:**

- (i) **Alien Enemies:** An alien (citizen of a foreign country) living in India can enter into a contracts with citizens of India during peace time only. On the declaration of war between his country and India, he becomes an alien enemy and cannot enter into any contract. Alien friend can contract but alien enemy cannot.
- (ii) **A Convict:** A convict is the one who is found guilty and is imprisoned. During the period of imprisonment, a convict is incompetent:
  - to enter into contracts
  - to sue on contracts made before conviction
- (iii) **Insolvent:** An adjudged insolvent is competent to enter into certain types of contracts i.e. he can incur debts, purchase property or be an employee but he cannot sell his property which vests in the official receiver.
- (iv) **Married Woman**
- (v) **Foreign Ambassador**
- (vi) **Joint Stock Co.**

- 2) **Mistake of Facts:** An agreement where both the parties are made under mistake of fact essential to the agreement, it is void.

Mistake must relate to some fact and not to judgment or opinion. An erroneous opinion as to the value of the thing which forms the straight matter of the agreement is not to be deemed a mistake of fact.

- Error In consensus
- Bilateral and mutual mistake (**Void**)
- Unilateral Mistake
- Mistake as to the identify of party (**Void**)

Types of Mistake  
Classification of Mistake  
(Khalid pg.28)

- 3) **Mistake of Foreign Law:** Where both the parties to an agreement are under a mistake as to the interpretation of the foreign law, the agreement is void.

Mistake of the Law of Land: An Agreement is neither void nor voidable on the ground of unilateral mistake relating to the law of land, because ignorance of law is no excuse.

- 4) **Consideration and / or object unlawful:** Every agreement of which the object or consideration is unlawful is void. The consideration or object is unlawful in the following cases:

- (i) When it is forbidden by law
- (ii) When if it is of such a nature that (if permitted) it would defeat the provisions of any law
- (iii) When it is fraudulent
- (iv) When it implies injury to the person or property of another
- (v) When it is regarded by the court as immoral or opposed to the public policy

- 5) **Consideration and object unlawful (In part):** where the object or consideration of an agreement is unlawful in part and if it is not separable from the lawful part, the whole agreement is void.
- 6) **Agreement without Consideration:** An agreement made without consideration is void.

Exceptions:

- (i) **Natural Love and Affection:** A written and registered agreement based on natural love and affection between near relatives is enforceable without consideration.
- (ii) **Past Voluntary Service:** Where a person with the knowledge of the promisor or otherwise than at his request does some service and the promisor undertakes to recompense him the promise does not need consideration to support it.
- Requirement:
- a) The act voluntarily done must have been done for a promisor who was in existence at the time when the act was done.
- b) The act done must have been done for a promisor who is competent to contract at the time when the act was done.
- (iii) **Time Barred Debt:** A written and sign promise to pay either whole or any part of time barred debt is enforceable without consideration.
- (iv) **Remission (Waiver):** Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. (Comments pg.32)
- (v) **Gratuitous Bailment:** A bailment of goods made without exchange of any consideration is a valid contract.

- 7) **Restraint Marriage:** Every agreement is restraint of the marriage of any person is void.  
Exception: The only exception is in favour of a minor.

- 8) **Restraint of Trade:** Every agreement by which any one is restraint from exercising a lawful profession, trade or business is void.

Exception: When the goodwill of a business is sold, the seller may be restraint from carrying on a similar business under an agreement. The following condition must be satisfied:

Restriction:

- a) The restriction must be reasonable.
- b) The restriction should specify the local limits.
- c) The restriction should apply only for such period for which the business sold is actually carried on by the buyer.
- d) The restriction should be from carrying on a similar business only.
- 9) **Restraint of Legal Proceeding:**
- a) An agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract by the usual proceedings in the ordinary court is void.

b) An agreement which limits a time period within which the contractual rights may be enforced is void.

Exceptions:

Arbitration: A written agreement between the parties to refer a present or future dispute to arbitration is valid and binding.

10) **Uncertain Agreement:** An agreement, the terms and conditions of which are not certain or capable of being made certain, is void.

For example: An agreement to agree in the future is void because there is no certainty whether the parties will be able to agree.

11) **Wagering Agreement:** An agreement made by way of wager is void agreement.

Collateral Agreement: All agreement knowingly made to assist the making or carrying out of any wagering agreement are void.

Exception:

Horse race: An agreement to pay a sum of money to the amount of Rs.500/- or upwards to the winner of any horse race is valid and binding.

12) **Impossible Act:** An agreement to do any impossible act is a void agreement.

13) **Agreement contingent on impossible event:** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not the parties to the agreement at the time when it is made.

14) **Alternative promise, one branch being illegal:** In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

15) **Reciprocal Promise** (to do things legal, and also other things illegal): Where persons reciprocally promise, firstly, to do certain things which are legal and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

**Wagering Agreements:**

**Definition:** An agreement by which two persons professing to hold opposite views touching the issue of a future uncertain event mutually agree that, depending on the determination of that event, one shall win from the other and that other shall pay or hand over to him a sum of other money or stake.

**Features of a wagering agreement:**

1) **Uncertain Event:** The performance of the bargain must depend upon the determination or uncertain event. A wager generally contemplates a future event but it may even relate to an event which has already happened in the past but the parties are not aware of its result.



- 2) **Mutual Chances of Gain or Loss:** The second essential element is that upon the determination of the contemplated event, each party should stand to win or loss. If there are no such mutual chances of gain or loss, there is no wager.
- 3) **Control Over the event:** Neither party should have any control over the happening of an event one way or the other. If one of the parties has the event in his own hands, the transaction lacks as essential element of a wager.
- 4) **No Interest other that stake:** Neither party should have any interest in the happening of the event other than the sum or stake, he will win or lose.

### Contingent / Conditional Contracts:

**Definition:** A contract the performance of which independent upon the happening or non-happening of some event collateral to the contract is called a contingent contract.

<b>Illustration of Contingent Contracts</b>	
<b>Contract of Insurance</b>	<b>Contract of Indemnity</b>
Where the liability of the insurer depends upon the occurrence of an event viz damage or destruction arising out of fire.	This is the contract to make good the loss arising out of the conduct of the indemnity holder, or any other person is a contract contingent upon the act of a party.

### **The Rules of Contingent Contracts:**

#### **A) Happening of event:**

- 1) **Uncertain future event:** A contract the performance of which is contingent, on the happening of an uncertain future event cannot be enforced by law, unless and until that event has happened. If the happening of the event becomes impossible such a contract becomes void.
- 2) **Specified Uncertain Event:** A contract the performance of which is contingent, on the happening of a specified uncertain event within a fixed time becomes void. If the event has not happened at the expiry of the time fixed or if the happening of the event ahs become impossible before the time fixed.

#### **B) Non-Happening of event:**

- 1) **Uncertain future event:** A contract the performance of which is contingent on the non-happening of an uncertain future event can be enforced, when the happening of that event becomes impossible and not before.
- 2) **Specified uncertain event:** A contract the performance of which is contingent, on the non-happening of a specified uncertain event within a fixed time may be enforced by law, when the time fixed is expired and such event has not happened, or if (before the expiry of the time fixed) it becomes certain that such event will not happen.

- C) **Conduct of Person:** If the future event on which the contract is contingent is the way in which the person will act at an unspecified time, the event shall be considered to become impossible,

when such person does anything which makes it impossible that he should so act within any definite time.

- D) **Agreement Contingent on impossible event:** If an agreement is contingent on the happening of an impossible event, that agreement is void. This is immaterial whether the impossibility of an event is or is not known to the parties at the time of formation of agreement.