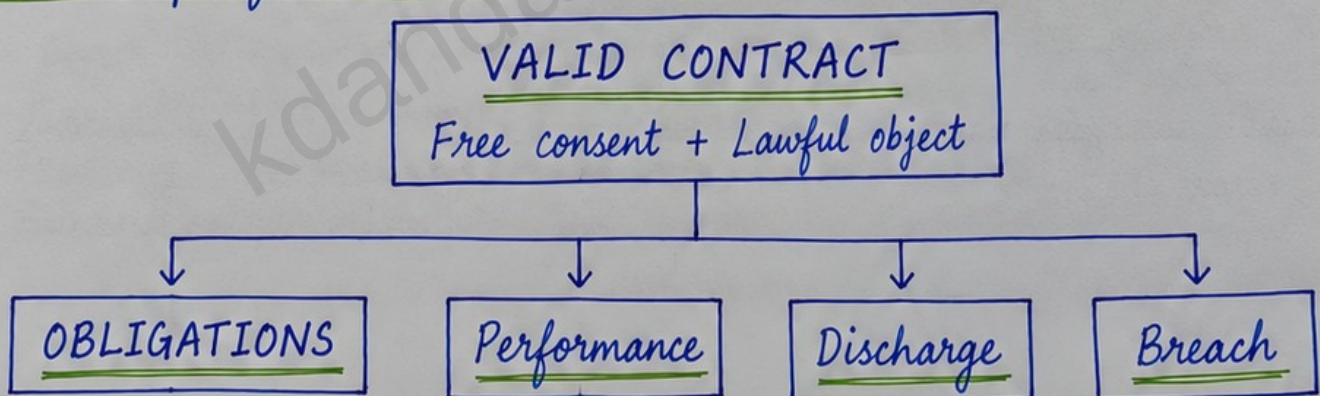


VALIDITY, DISCHARGE & PERFORMANCE

Q - What is covered in Unit III ?

1. Consent and free consent under ss. 13-14.
2. Coercion, undue influence, fraud, misrepresentation and mistake.
3. Lawful consideration and object under s. 23.
4. Ways in which contractual obligations are discharged.
5. Performance and reciprocal promises.
6. Impossibility and frustration under s. 56.
7. Actual and anticipatory breach.

Roadmap of the Unit :



Important : These notes follow the Indian Contract Act, 1872 and 2021 IPU Unit III syllabus.

Case study method : Facts → Issue → Held → Legal principle.

This unit asks not just HOW a contract is formed but WHETHER it remains binding and HOW the promises end.

CONSENT — SECTION 13

Q - What is consent?

Under s. 13, two or more persons consent when they agree upon the SAME THING IN THE SAME SENSE.

This is sometimes called consensus ad idem.

Example :

A offers to sell a particular red scooter, and B accepts knowing which scooter is meant.

→ There is agreement on the same subject.

Contrast :

A means scooter X and B believes the offer concerns scooter Y.

→ Investigate whether their apparent agreement is genuine.

Q - Does consent always mean FREE consent?

NO. Parties might appear to agree, but the decision may have been obtained through pressure or deception.

→ So apply s. 13 first, then s. 14.

Memory box :

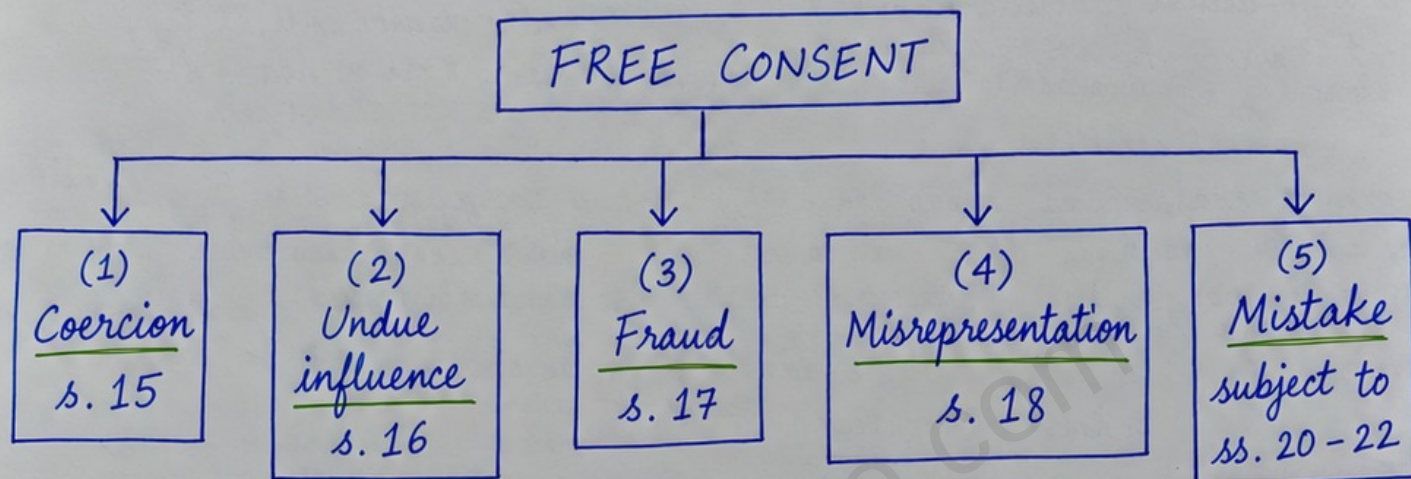
CONSENT = same thing + same sense.

FREE CONSENT = agreement without the prohibited causes listed in s. 14.

FREE CONSENT

Q - What is Free Consent ?

Section 14. Consent is free when it is NOT caused by :



Example : A agrees to sell land because B uses an unlawful threat. There may be consent, but it is not freely given.

Legal effect :

- Under s. 19, a contract induced by coercion, fraud or misrepresentation is generally VOIDABLE at the option of the party whose consent was caused.
- Under s. 19A, an agreement induced by undue influence may be set aside on just terms.
- Mistake has separate statutory effects, subject to ss. 20-22 (e.g. as to fact, law, identity, or quality).

Crucial :

'Void' and 'voidable' do not mean the same thing.

COERCION — SECTION 15

Q - What is coercion?

Coercion means committing or threatening to commit an act forbidden by the Indian Penal Code, OR unlawfully detaining or threatening to detain property, with the intention of causing a person to enter an agreement.

The statutory rule also addresses prejudice to any person, not merely the promisor or promisee.

Example 1: A unlawfully threatens B with violence so that B signs a sale agreement.

Example 2: A unlawfully refuses to return B's valuable documents until B signs an agreement.

Note: The inquiry focuses on unlawful pressure that CAUSED the consent.

Coercion can be exerted by a third person; it need not come from the other contracting party.

In 2021 study context, s. 15 expressly referred to the Indian Penal Code.

Effect: s. 19 may make the contract voidable at the affected party's option.

CASE — CHIKKAM AMMIRAJU v. SESHAMMA (1917)

Facts : A husband threatened to kill himself if his wife and son did not execute a release deed. The courts found that the threat induced the deed.

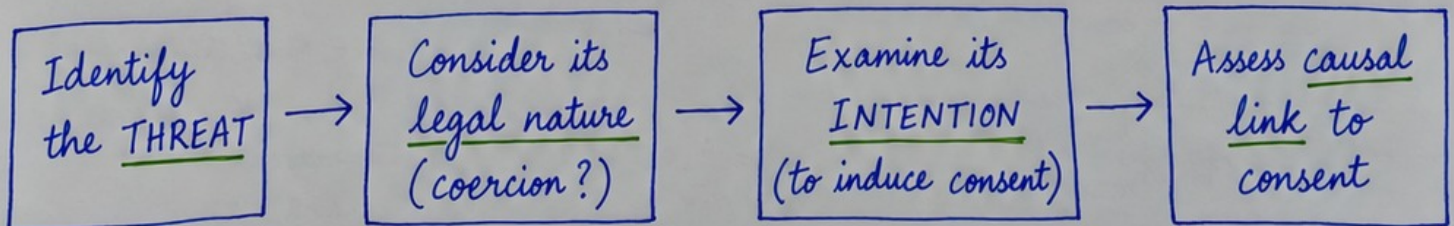
Issue : Could a threat of suicide amount to coercion under s. 15 ?

Madras High Court majority : YES, on the law and circumstances considered. The deed was obtained through coercion rather than genuinely free consent.

Principle : A threat directed at causing another to sign can invalidate free consent even though the threatened harm is to the person making the threat.

Note : This is a historic application under the penal law then in force; do not assume every modern situation is decided identically.

Exam steps : Identify the THREAT, its legal nature, its INTENTION, and its causal link to consent.



Case commonly cited as : Chikkam Ammiraju v. Chikkam Seshamma.

UNDUE INFLUENCE - SECTION 16

Q - What is undue influence?

Where relations between persons enable one to DOMINATE THE WILL of another, and that person USES the position to gain an UNFAIR ADVANTAGE, the contract is induced by undue influence.

Examples of potential dominance:

- authority over another,
- fiduciary relation,
- or age/illness/distress affecting independent judgment.

Examples:

- a caregiver pressuring a dependent patient into an unfair transfer.
- a trusted adviser exploiting reliance to secure a benefit.

Caution: A family relationship or unequal bargain ALONE does not prove undue influence. The facts must establish the statutory elements.

In certain unconscionable transactions the burden of proof may shift under s. 16(3).

Effect under s. 19A: The court may set aside the contract absolutely or on such terms as appear just.

Compare:

<u>COERCION</u> = unlawful threat.

≠

<u>UNDUE INFLUENCE</u> = abuse of dominance.

CASE — RAGHUNATH PRASAD v. SARJU PRASAD (1924)

Facts : A borrower attacked an extremely burdensome loan transaction, alleging undue influence.

Issue : Does an excessive or unfair bargain automatically prove undue influence?

Privy Council : NO.

- First establish that one party was in a position to dominate the other's will.
- Then determine whether the position was used to obtain an unfair advantage.
- An unconscionable bargain is important but is not a substitute for the initial inquiry into dominance.

Principle : Apply s. 16 in the proper order ; do not reverse the burden without the required foundation.

Exam sequence :

(1) Relationship and capacity to dominate ?



(2) Unfair advantage ?



(3) Burden of proof and evidence ?

Authority : AIR 1924 PC 60.

Caution : Economic need by itself is not enough in every case.

FRAUD — SECTION 17

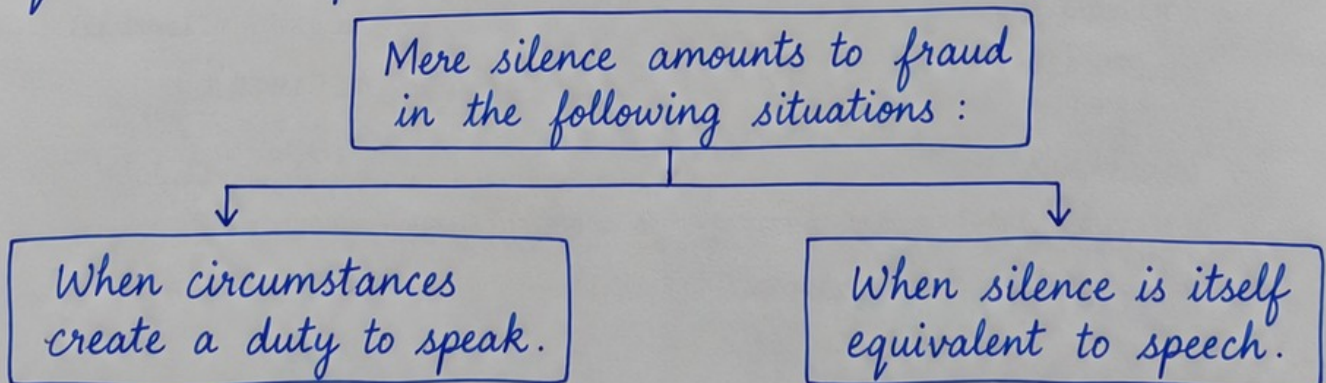
Q - What is fraud?

Deliberate deception involving, among other statutory forms:

- ① suggesting a fact as true while knowing or not believing it;
- ② actively concealing a known fact;
- ③ making a promise without intending to perform it;
- ④ other acts fitted to deceive; or
- ⑤ acts or omissions specially declared fraudulent by law.

Example: A knows a car has suffered serious flood damage but deliberately lies that it has never been damaged in order to induce B's purchase.

Important: Mere silence is not ordinarily fraud, UNLESS circumstances create a duty to speak OR silence is itself equivalent to speech.



Prove: that the deception CAUSED the consent.

Effect: Under s. 19, fraud usually makes the contract voidable at the affected party's option.

CASE — DERRY v. PEEK (1889), ENGLISH LAW.

Facts : A company stated in a prospectus that it had authority to use steam power, although official consent was still needed. The directors believed their statement to be true.

Issue : When does a false statement become fraudulent?

House of Lords : Fraud requires a statement made knowingly false, without belief in its truth, or recklessly without caring whether it is true or false.

Honest belief is important in distinguishing fraud from an innocent error.

Comparison for India : Use this case as a persuasive common-law illustration, but write Indian Contract Act ss. 17 and 18 for the controlling statutory rules.

Indian Contract Act, 1872Section 17 — Fraud

Fraud includes a false suggestion of a fact, made knowingly false, or without belief in its truth, or recklessly, with intent to induce another to act.

Section 18 — Misrepresentation

Misrepresentation is a false suggestion of a fact, made without an intention to deceive, and includes an innocent misrepresentation.

Revision question : Did the speaker know the statement was false, or honestly believe it?

Reminder : Fraud and innocent misrepresentation may produce different legal consequences.

MISREPRESENTATION - SECTION 18

Q - What is misrepresentation?

A misleading assertion or conduct of the kinds described in s. 18, made without the dishonesty necessary for fraud. It includes:

- ① a positive assertion not warranted by the speaker's information even if believed true;
- ② a breach of duty that misleads and gives advantage without intent to deceive; and
- ③ innocently causing another to mistake the substance of the subject matter.

Example: A tells B that a machine is two years old, relying on incorrect records and believing them. B buys because of that claim. The statement may be misrepresentation if statutory conditions are met.

Unlike FRAUD, the person may genuinely believe the statement.

Under s. 19 the agreement may be voidable if consent was caused, but note the exception involving ordinary diligence for certain misrepresentation and fraudulent silence.



Note: Do not assume every harmless mistake cancels a contract.

FRAUD vs MISREPRESENTATION

Q - What is the difference?

<u>FRAUD (s. 17)</u>	<u>MISREPRESENTATION (s. 18)</u>
• Dishonest statement or deliberate deception. • A person knows the statement is false, has no honest belief, or acts as the law describes.	• Misleading statement or conduct without the dishonesty that makes it fraud.

Example of fraud:

A knowingly lies about a building's condition to induce B.

Example of misrepresentation:

A repeats an incorrect fact believing it to be true.

Shared rule:

Under s. 19, both can make a contract voidable IF they cause consent, subject to statutory conditions.

Special caution:

For misrepresentation and certain fraudulent silence, an affected party who had the means of discovering the truth with ordinary diligence cannot necessarily avoid the contract under s. 19. Fraudulent ACTIVE deception is a different question.

Remember:

Do not say every inaccurate statement equals fraud.

MISTAKE — SECTIONS 20, 21 & 22

Q - What if the parties misunderstand a fact?

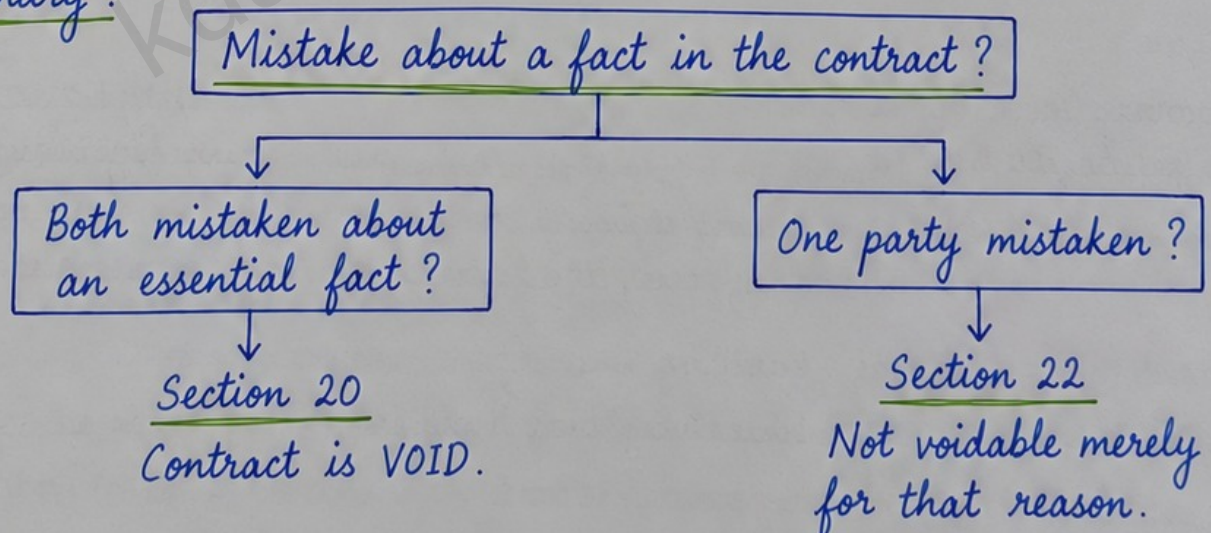
SECTION 20: If BOTH parties are under a mistake of fact essential to the agreement, it is VOID.

Example: A and B contract for a particular horse, unknown to both it died before the agreement.

SECTION 21: Mistake as to Indian law ordinarily does not make a contract voidable; a mistake as to foreign law has the same effect as a mistake of fact.

SECTION 22: A contract is not voidable merely because ONE party was under a mistake of fact. However, exceptional cases may show no genuine consent at all.

Summary:



Case illustration: Raffles v. Wichelhaus.

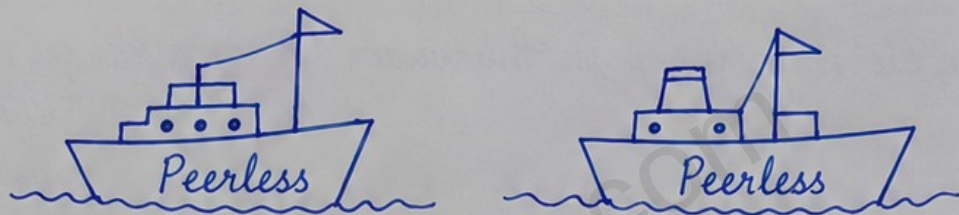
Memorise: Mistake of FACT vs. Mistake of LAW.

CASE — RAFFLES v. WICHELHAUS (1864)

Facts : A contract provided for delivery of cotton on a ship named 'Peerless' sailing from Bombay.

There were TWO ships named Peerless sailing at different times.

Each side referred to a different vessel.



Issue : Had they agreed on the SAME THING IN THE SAME SENSE ?

English court : The ambiguity prevented the claim from succeeding on the parties' differing understandings.

Principle : Where the essential identification of the subject is uncertain and the parties mean different things, genuine agreement may be absent.

Indian exam use : Consider s. 13 (consent) and, where conditions are satisfied, s. 20 (bilateral mistake).

Warning : This is an ENGLISH authority, useful by comparison; use the Indian Contract Act as the governing law.

Memory aid : 'TWO PEERLESS SHIPS — ONE NAME — TWO MEANINGS'.

LAWFUL OBJECT — SECTION 23

Q - Must a contract have lawful consideration and object?

YES. Under s. 23, consideration or object is unlawful if:

- ① it is FORBIDDEN BY LAW ;
- ② if permitted, it would DEFEAT any law ;
- ③ it is FRAUDULENT ;
- ④ it involves or implies injury to a person or property ;
- ⑤ the court regards it as IMMORAL ; or
- ⑥ it is OPPOSED TO PUBLIC POLICY.

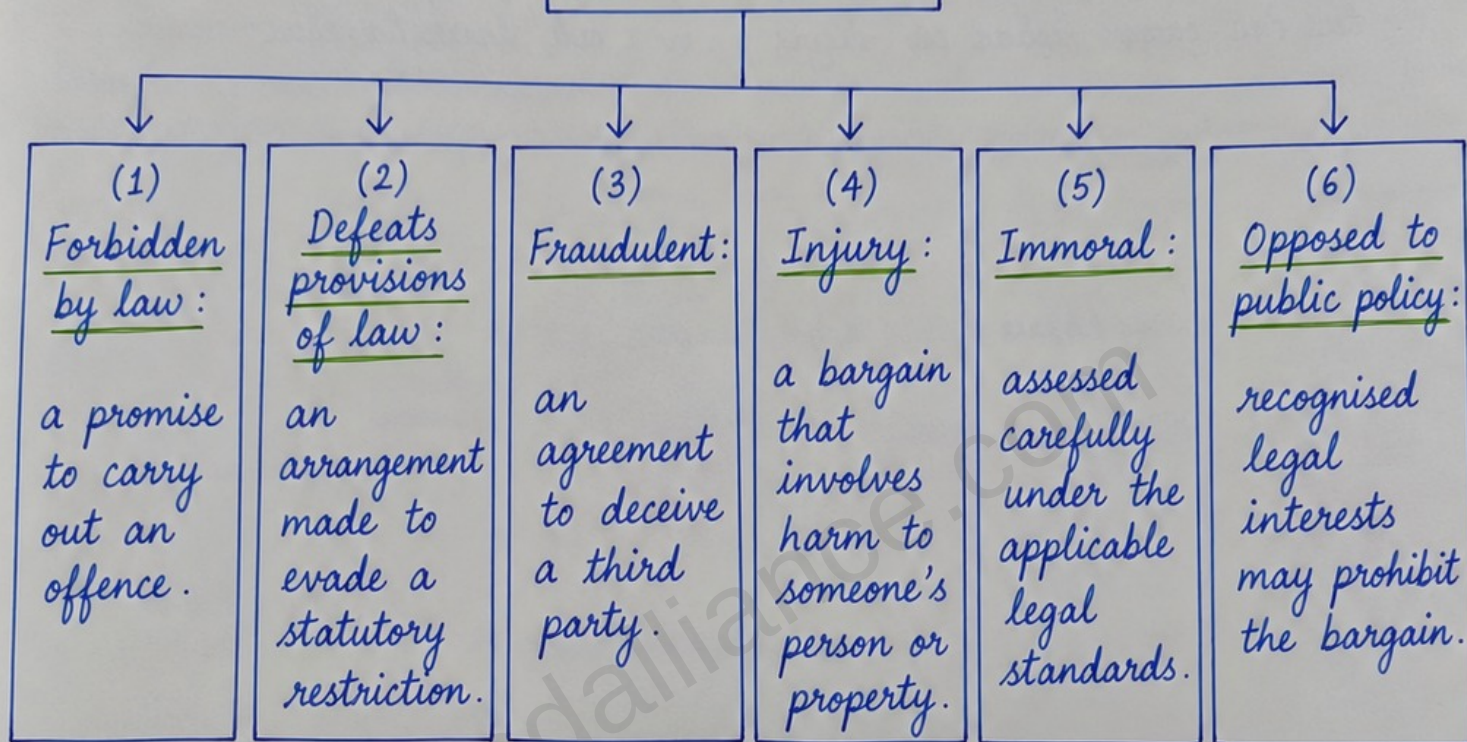
An agreement with an unlawful consideration or object is VOID.

Example : A promises to pay B for falsifying evidence.
The object is unlawful and the court will not enforce it.

Contrast : A pays B for lawful printing work.
This may be ordinary legal consideration.

Important : The court's refusal to enforce is different from merely finding the price unfair.

Case to compare : Gherulal Parakh v. Mahadeodas Maiya.

SIX GROUNDS OF UNLAWFUL OBJECT.SECTION 23Note 1: Exam caution:

'Public policy' is not a free licence to reject any bargain a judge dislikes; the legal ground must be justified.

Note 2:

A contract may be VOID for reasons other than illegality. An unenforceable wager under s. 30 is not automatically an unlawful object under s. 23.

Remember: The distinction: VOID does not always mean ILLEGAL.

SECTION 24 - PARTLY UNLAWFUL AGREEMENTS.

Q - What if part of the consideration or object is unlawful?

Section 24 states when an agreement is VOID because unlawful and lawful parts are combined in the statutory manner.

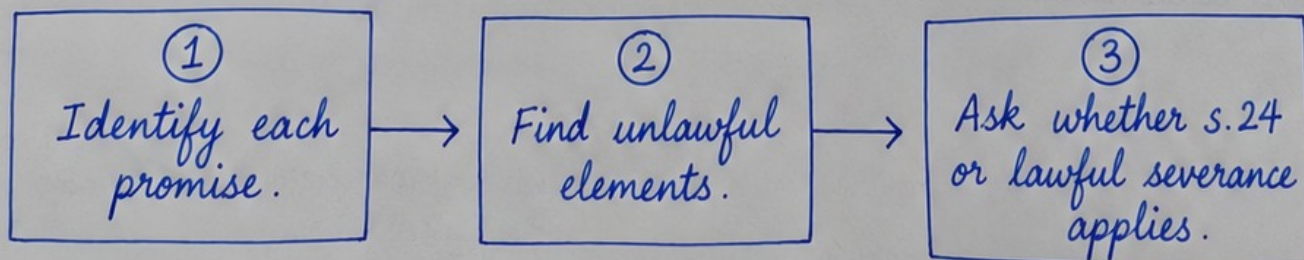
Example: A agrees to manage B's lawful shop and also knowingly carry out an illegal activity in exchange for one inseparable salary. The mixture may make the agreement void.

Question: Are the lawful and unlawful parts genuinely independent, or is there one inseparable bargain?

Distinguish: the statutory rule from 'severability': in some contracts independent valid promises may survive when unlawful provisions can lawfully be separated.

Do not automatically delete bad words and enforce the rest; examine the agreement and statute.

Three-step method:



Reference: Indian Contract Act, ss. 23 - 24.

CASE - GHERULAL PARAKH v. MAHADEODAS MAIYA (1959)

Facts : A partnership arrangement involved carrying on wagering transactions. A dispute arose about whether the partnership was unlawful merely because the wagers themselves were void.

Issue : Does a wagering agreement's VOID status under s. 30 automatically make related contracts ILLEGAL under s. 23 ?

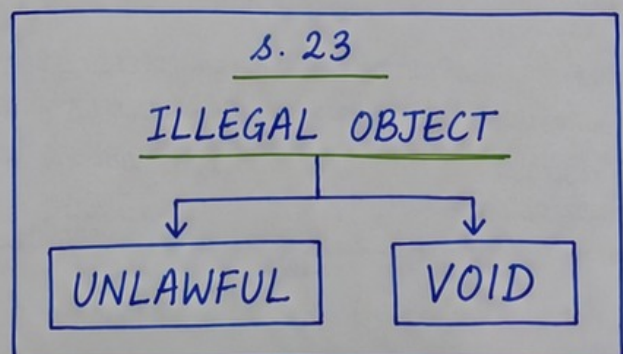
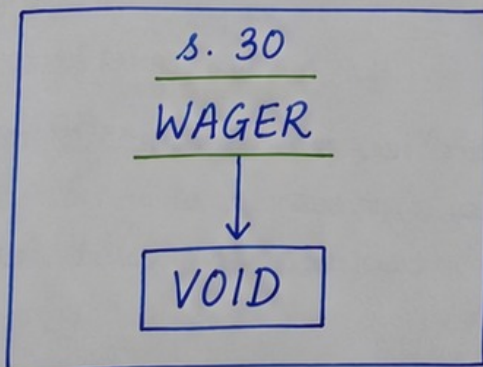
Supreme Court : NO.

A wager is void and unenforceable under s. 30, but it is not for that reason alone an activity forbidden by law under s. 23. Thus collateral arrangements require separate analysis under law.

Citation : AIR 1959 SC 781.

Principle : VOID and UNLAWFUL are different legal categories.

Caution : Other specific gaming laws may prohibit particular conduct; investigate the governing statute.



HOW DOES A CONTRACT END ?

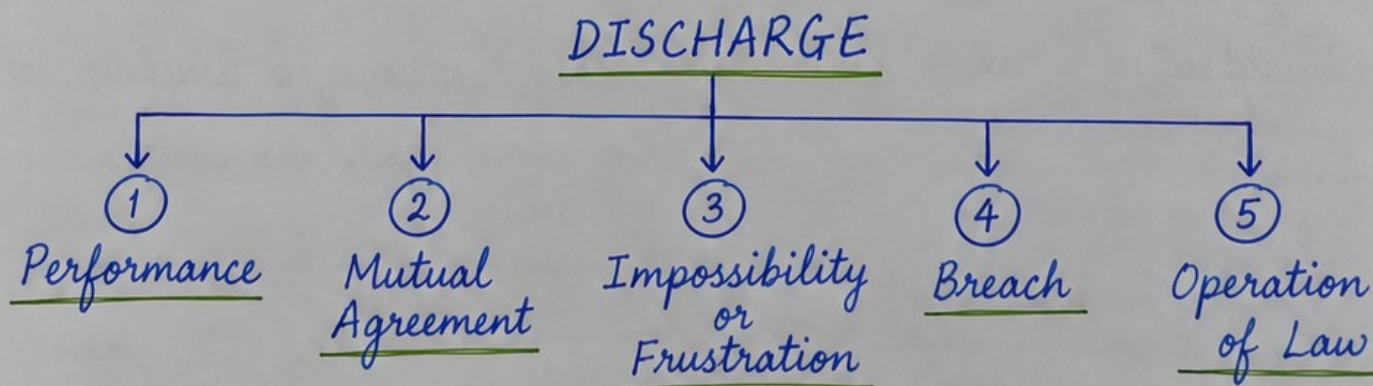
Q - What is discharge of contract ?

Discharge means the contractual obligations come to an end through a recognised legal method.

Main routes:

- ① PERFORMANCE - agreed promises completed.
- ② MUTUAL AGREEMENT - e.g., novation, rescission, alteration, remission.
- ③ IMPOSSIBILITY or FRUSTRATION - s.56 when legally established.
- ④ BREACH - refusal or failure to perform, sometimes allowing the innocent party to end the contract and seek remedies.
- ⑤ OPERATION OF LAW - certain events such as death in personal-service promises or other relevant legal rules.

A further issue can be limitation or loss of legal remedy.



Caution: Merely making performance inconvenient or costly does NOT always discharge the contract. First identify the contractual obligation and the precise legal event.

PERFORMANCE — SECTION 37

Q - What must contracting parties do?

Under s. 37, parties must PERFORM or OFFER TO PERFORM their respective promises unless performance is dispensed with or excused under the Act or another law.

Example: A agrees to supply desks; B agrees to pay. Both must carry out their promises on the agreed terms.

Q - Who may perform?

Under s. 40, when the parties intended that the promisor personally perform, that person must do so; otherwise performance by a competent substitute may be possible.

Example: A famous portrait painter promises to paint B's portrait personally. Another painter cannot automatically replace A.

Section 37 also addresses binding legal representatives unless a contrary intention appears.

Study question: Was the promise personal, or could an authorised person perform it?

Memory: PERFORMANCE = doing what one promised according to law.

TENDER OF PERFORMANCE — SECTION 38

Q - What if the promisor is ready but the promisee refuses performance?

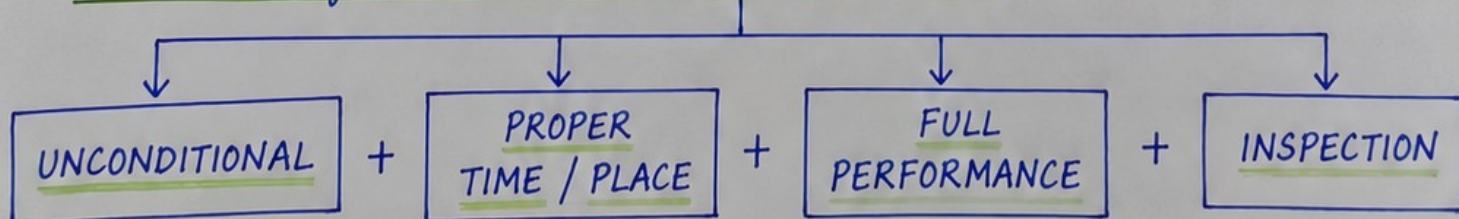
The law recognises a valid OFFER OF PERFORMANCE, often called 'tender'.

To qualify under s.38, the offer must be unconditional; made at a proper time and place; and give the promisee reasonable opportunity to ascertain ability and willingness to perform the whole obligation.

For an offer to deliver goods, there should be a reasonable opportunity for inspection.

Example: A arrives at the agreed warehouse on the agreed day with all 50 ordered chairs and offers delivery. B refuses without justification. A proper tender may protect A against liability for non-performance and preserve A's contractual rights.

Contrasting example: A offers only 5 of 50 chairs where entire delivery was due. This may not be valid tender.

Checklist for a valid tender (s.38)

RECIPROCAL PROMISES — SECTIONS 51-54

Q - What are reciprocal promises?

Promises where each party's performance is connected to the other's.

Example : A promises to build a wall, while B promises to pay the agreed price.

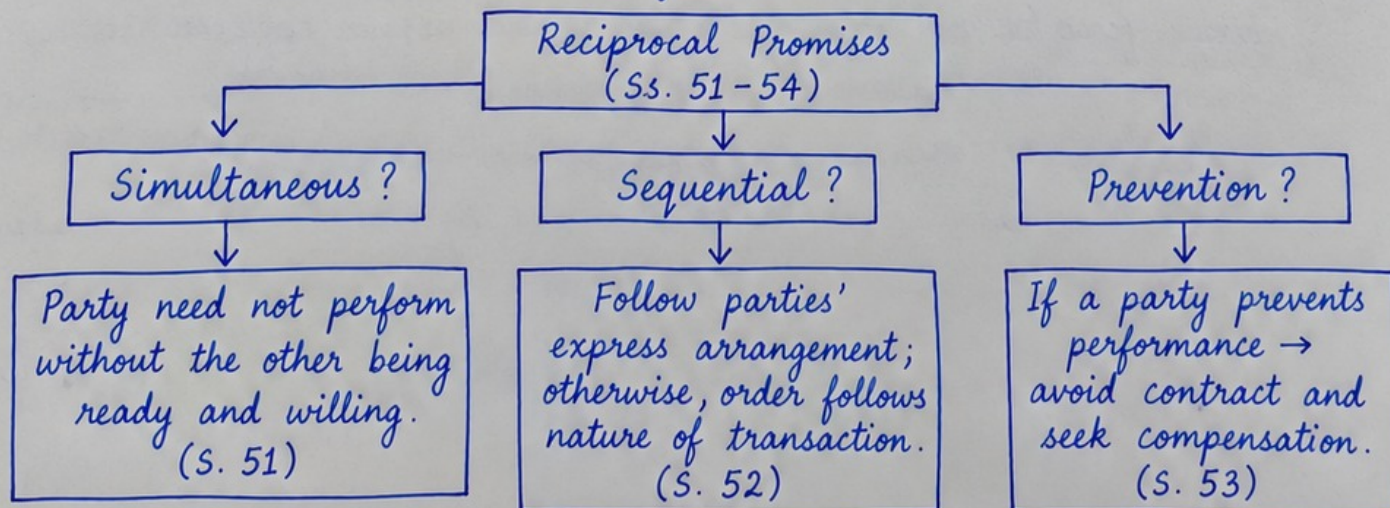
SECTION 51 : If promises must be performed simultaneously, a party need not perform without the other being ready and willing.

SECTION 52 : Parties' express arrangement governs order; otherwise order follows the nature of the transaction.

SECTION 53 : If a party prevents the other from performing, the prevented party may avoid the contract and seek compensation for loss caused.

SECTION 54 : When one promise must be performed first and it is not performed, that party cannot claim performance of the reciprocal promise and may owe compensation.

Summary Flowchart



Remember : Timing and mutual dependence matter.

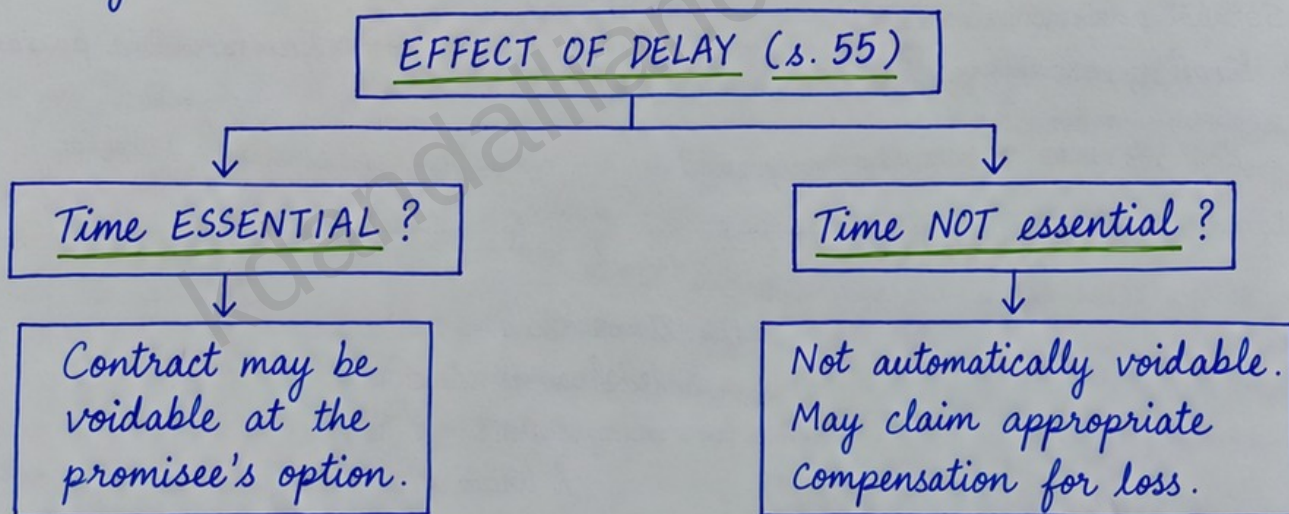
TIME & PLACE — SECTIONS 46-50, 55

Q - When must a promise be performed?

If a contract specifies a time and place, begin with those terms. Otherwise, ss. 46-50 supply rules for reasonable time, appropriate applications, fixed days, and the manner and place of performance.

SECTION 55

- If time was intended to be ESSENTIAL, delay may make the contract voidable at the promisee's option.
- If time was NOT essential, delay does not automatically make it voidable, though appropriate compensation for loss may be available.



Example: A wedding venue promises a hall on the wedding date; timing may be vital.

Contrast: A routine service completed a day late may require evaluation rather than automatic cancellation.

Accepting late performance can affect a claim for delay compensation; examine the requirement of notice under s. 55.

Memory:

TIME ESSENTIAL? → possible option to avoid.

NOT essential? → assess loss and remedies.

DISCHARGE BY AGREEMENT — SECTIONS 62-63SECTION 62

- Parties may substitute a NEW contract for an earlier one (NOVATION), or mutually RESCIND or ALTER the original contract. Then the original need not be performed.

Example : A and B agree to replace a delivery contract with a fresh settlement agreement.

SECTION 63

- The promisee may dispense with or REMIT performance wholly or partly; extend time; or accept any satisfaction the promisee thinks fit.

Example : A is owed ₹5,000 but voluntarily agrees to accept ₹4,000 in satisfaction.

- Indian s. 63 permits remission without requiring fresh consideration in the ordinary way.

Distinguish :

<u>NOVATION</u>	<u>RESCISSION</u>	<u>ALTERATION</u>	<u>REMISSION</u>
Substitute new agreement for an earlier one.	Cancel the original contract by agreement.	Change agreed terms of the original contract.	Promisee voluntarily releases all or part of performance.

Note : Always check that the relevant party has genuinely agreed or exercised the statutory power.

IMPOSSIBILITY — SECTION 56

Q - What if performance becomes impossible?

Section 56 has THREE important aspects.

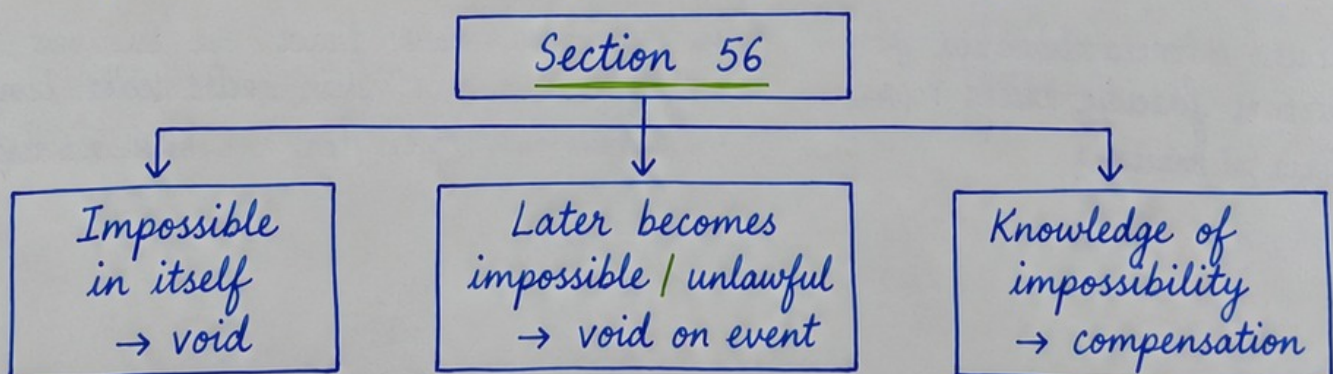
- ① An agreement to do an act impossible IN ITSELF is void.
- ② A contract to do an act that LATER becomes impossible or unlawful, through an event the promisor could not prevent, becomes void when the event occurs.
- ③ A promisor who knew, or ought reasonably to have known, the act was impossible or unlawful while the promisee did not may owe compensation.

Example: A contracts to rent a particular hall for a concert; a fire destroys it before the event without either party's fault. Frustration may arise.

WARNING: Mere rise in cost, financial difficulty or inconvenience is NOT ordinarily enough.

Carefully distinguish contract's FORCE MAJEURE clause from statutory frustration.

Leading Indian case: Satyabrata Ghose v. Mugneeram Bangur.



CASE — SATYABRATA GHOSE v. MUGNEERAM BANGUR (1954)

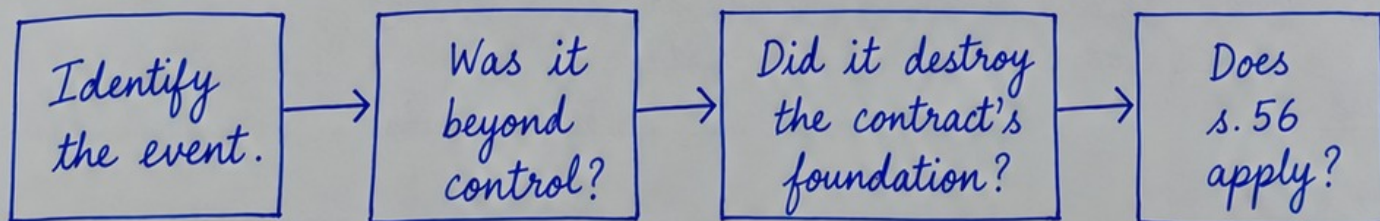
Facts: The parties agreed to sell a plot in a development project. During wartime, the Government temporarily requisitioned the land. One party argued that the contract was frustrated.

Supreme Court:

- The word 'impossible' in s. 56 is NOT limited to literal or physical impossibility.
- However, not every serious delay or change of circumstances destroys the foundation of the contract.
- On these facts, the contract was NOT frustrated by the temporary requisition.

Principle: Ask whether a supervening event has fundamentally defeated the promised performance, not simply made it harder.

Citation: AIR 1954 SC 44.

Exam approach:

Note: Never assume a government order automatically ends every contract.

CASE — ALOPI PARSHAD & SONS v. UNION OF INDIA (1960)

Facts : A contractor appointed to purchase and supply ghee for army purposes faced substantial increases in costs and claimed higher remuneration because conditions had changed.

Issue : Could unforeseen hardship permit the court to rewrite the agreed price?

Supreme Court : NO, not simply for that reason.

Changes in circumstances and commercial difficulty do not allow a court to depart from express contractual terms while maintaining the contract.

Principle : Commercial hardship is not automatically the same as impossibility or frustration.

Citation : AIR 1960 SC 588.

Comparison :

Satyabrata Ghose

Examines fundamental frustration under s.56.

Alopi Parshad

Warns against treating a bad bargain as a new bargain.

Revision :

'Costly to perform' does not ordinarily mean 'legally impossible to perform'.

FORCE MAJEURE vs FRUSTRATION

Q - What if an extraordinary event occurs?

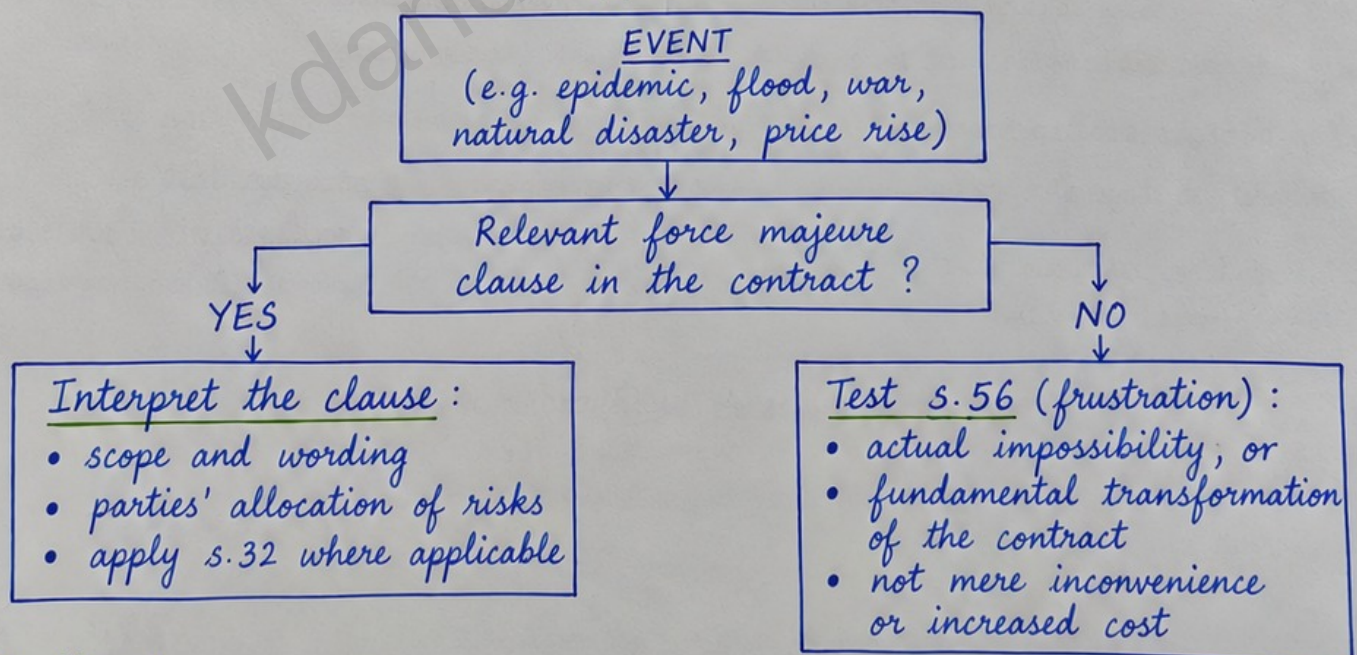
First READ THE CONTRACT.

If it contains a force majeure clause covering the event, interpret its wording and the parties' allocation of risks, including s.32 where applicable.

If no suitable contractual provision applies, analyse s.56 frustration.

Indian case: Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80.

Supreme Court explained the distinction between contractual force majeure and statutory frustration; a rise in imported coal prices did not by itself relieve parties of agreed obligations.

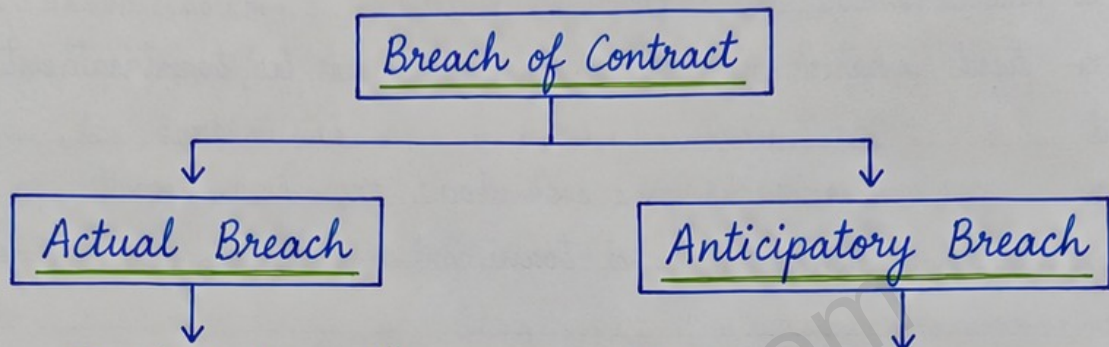
ApproachCaution :

- An epidemic, flood or price rise does NOT automatically cancel every contract; terms and facts matter.
- Explain actual impossibility or fundamental transformation, not inconvenience alone.

ACTUAL & ANTICIPATORY BREACH

Q - What is breach of contract?

Failure or refusal to perform a binding promise when performance is required.



A party fails to perform at the due time or during performance.

Example: A promises delivery on 10 June but does not deliver on that date.

Before performance is due, a party clearly refuses or disables themselves from performing the whole promise.

SECTION 39:

The promisee may put an end to the contract unless, by words or conduct, the promisee indicates acquiescence in its continuation.

Example: On 1 June, A clearly tells B that A will not deliver on 10 June.

Historical English case: Hochster v. De La Tour (1853)

allowed action after an unmistakable refusal before the start date.

Important: A mere worry or uncertain statement may not be a clear repudiation.

Remedies will be studied in Unit IV.

CASE LAW QUICK-REVISION CHART

<u>Case</u>	<u>Principle</u>
1. Chikkam Ammiraju v. Chikkam Seshamma (1917)	A THREAT OF SUICIDE USED TO OBTAIN A RELEASE DEED was coercion on the case facts. This case is NOT about accusations or social status.
2. Raghunath Prasad v. Sarju Prasad (1924)	Prove a position to dominate will before finding undue influence.
3. Derry v. Peek (1889, English)	Fraud requires knowing falsehood or recklessness, not mere error.
4. Raffles v. Wichelhaus (1864, English)	Two 'Peerless' ships; ambiguity meant no common assent.
5. Gherulal Parakh v. Mahadeodas Maiya (1959)	A wagering contract can be void without being automatically illegal.
6. Satyabrata Ghose v. Mugneeram Bangur (1954)	Temporary requisition did NOT frustrate the contract; s. 56 not literal impossibility only.
7. Alopi Parshad v. Union of India (1960)	Higher costs do not let a court rewrite a contract.
8. Energy Watchdog v. CERC (2017)	Force majeure wording differs from frustration; higher coal prices alone insufficient.
9. Hochster v. De la Tour (1853, English)	Clear refusal before due date can be anticipatory breach.

UNIT III — FINAL REVISIONStatute map :

s.13	→	Consent.
s.14	→	Free consent.
s.15	→	Coercion.
s.16	→	Undue influence.
s.17	→	Fraud.
s.18	→	Misrepresentation.
ss.19-19A	→	Voidable effects (when consent not free).
ss.20-22	→	Mistake (of fact and law).
ss.23-24	→	Unlawful consideration and object.
ss.37-39	→	Performance and refusal to perform.
ss.51-55	→	Reciprocal promises and time for performance.
s.56	→	Impossibility (frustration).
ss.62-63	→	Discharge by agreement (novation, alteration, rescission).

Practice questions :

- ① Consent vs free consent?
- ② Coercion vs undue influence?
- ③ Fraud vs innocent misrepresentation?
- ④ Explain mistake of fact and law.
- ⑤ When is an object unlawful?
- ⑥ Void vs illegal : discuss Gherulal.
- ⑦ Modes of discharge of contract?
- ⑧ Conditions of valid tender?
- ⑨ Explain frustration under s.56 with Satyabrata.
- ⑩ Actual vs anticipatory breach?

Sources :

- Indian Contract Act, 1872 (official statute).
- Court decisions studied in these notes.