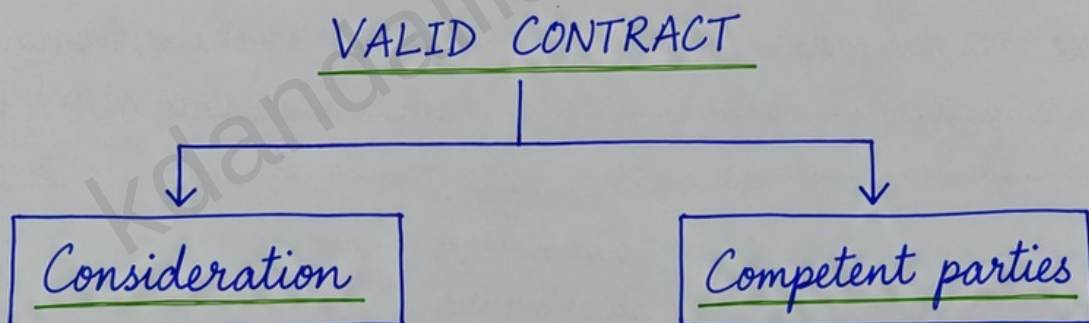


CONSIDERATION & CAPACITY - ROAD MAP

Q. What will we learn in Unit II ?

- (1) Meaning of consideration, s. 2(d).
- (2) Past, present and future consideration.
- (3) Rules about valid consideration.
- (4) Agreements without consideration: s. 25.
- (5) Privity of contract and its exceptions.
- (6) Capacity to contract: ss. 11 - 12.
- (7) Agreements with minors and their effects.
- (8) Important judicial decisions.



★ Note: Sections refer to the Indian Contract Act, 1872.

★ Exam approach:

- explain the rule,
- apply it to facts,
- then cite the case.

★ Remember: a promise and an enforceable contract are not always the same.

WHAT IS CONSIDERATION ?

Q. Define consideration under s. 2(d).

In simple terms, consideration is the act, promise or abstinence given in exchange for a promise.

* Section 2(d):

an act may be done by the promisee OR ANY OTHER PERSON, but it must be done AT THE DESIRE OF THE PROMISOR.

* Example 1:

A promises B ₹500 if B repairs A's bicycle.

→ B's repair is consideration for A's promise.

* Another example:

A agrees not to file a civil claim if B pays an agreed amount.

→ The promise to abstain may be consideration.

* Important:

consideration need not always be money.

* Formula:

Promise + something given in exchange = consideration.

* However:

enforceability also depends on the other requirements of law.

ELEMENTS OF SECTION 2(d).

Q - How do we identify consideration?

Step 1: Find the promisor - who makes the promise?

Step 2: Identify the act, abstinence or counter-promise.

Step 3: Ask whether it was done at the promisor's desire.

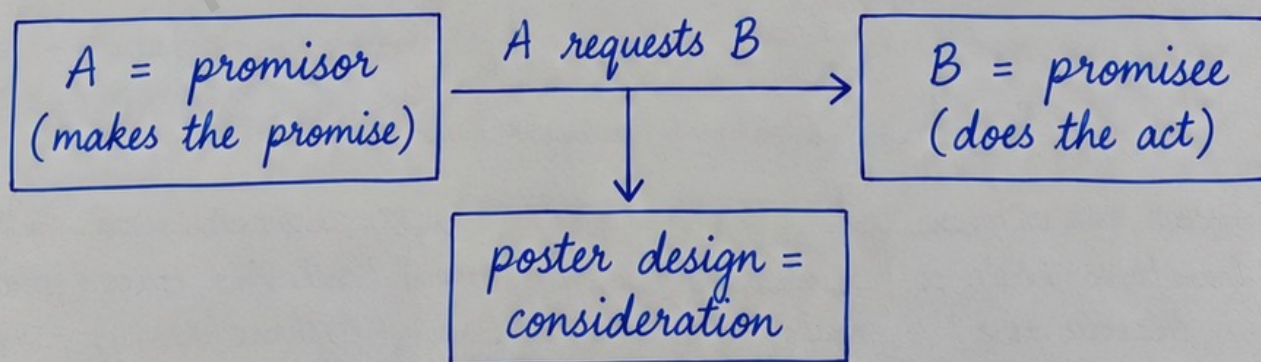
Step 4: Check whether it was done by the promisee or another person.

Step 5: Check legality and other rules.

Example:

A says, 'I will pay you ₹2,000 if you design my poster.'

B designs it because A requested it.



The request matters: merely doing a useful act for someone does not necessarily make that person legally bound to pay.

★ AT THE PROMISOR'S DESIRE is the central test.

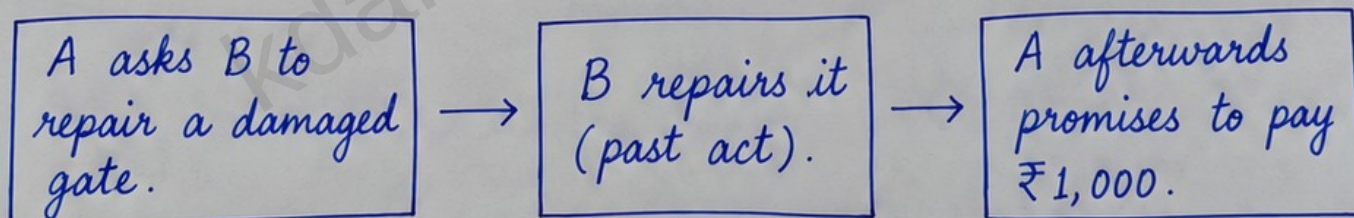
PAST CONSIDERATION

Q - Can an earlier act be consideration?

- In Indian law, s. 2(d) includes an act that 'HAS DONE' at the promisor's desire.
- Therefore, past consideration may be valid when the statutory conditions are fulfilled.

Example :

- * A asks B to repair a damaged gate.
- * B repairs it.
- * Afterwards, A promises to pay ₹1,000 for that requested repair.
- * B's act was performed before the promise to pay, but at A's desire.



Distinguish :

- * If B repaired A's gate without any request, the result needs analysis under s. 25(2), not an automatic assumption that every earlier favour is valid consideration.

Key words :

- * HAS DONE = past act.

Question for revision :

- * Was the earlier act requested by the promisor?

PRESENT AND FUTURE CONSIDERATION★ PRESENT / EXECUTED :

an act is performed when the promise is made or accepted.

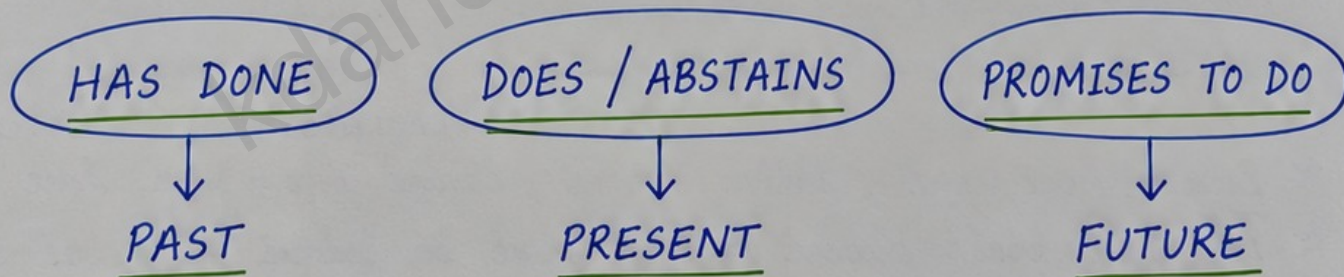
→ Example: At A's request, B pays ₹300 immediately in exchange for a book.

★ FUTURE / EXECUTORY :

parties promise acts to be performed later.

→ Example: A promises to deliver 20 chairs next week;
B promises to pay on delivery.

Their reciprocal promises are consideration.

★ Important :

these labels describe timing, not whether the contract is good or bad.

★ Examination tip :

State s. 2(d) first, then explain all three kinds with examples.

ESSENTIAL RULES OF CONSIDERATION

Five checks for valid consideration :

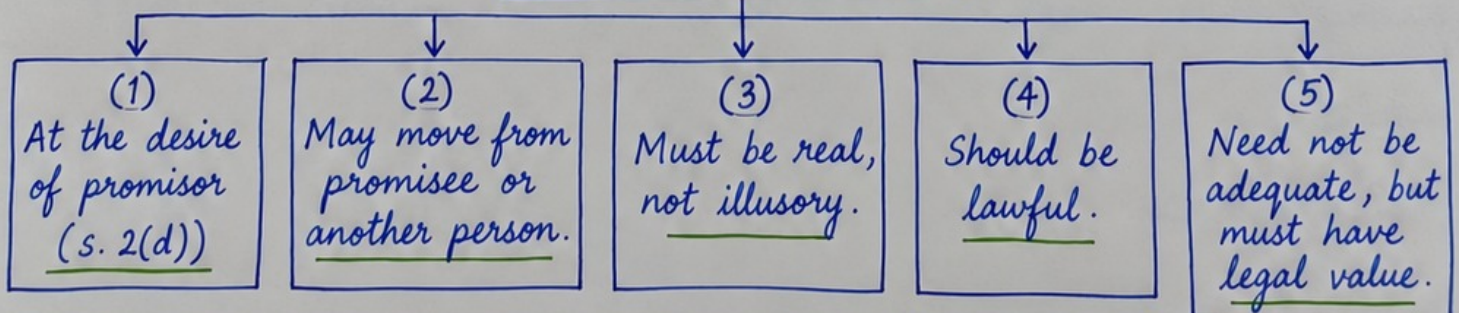
- ① At the desire of promisor (s. 2(d)).
- ② May move from promisee or another person.
- ③ Must be real, not illusory.
- ④ Should be lawful.
- ⑤ Need not be adequate, but must have legal value.

Example : A offers ₹ 5,000 for a painting that B agrees to make. The amount need not reflect market value if consent is free and other requirements are met.

Caution : An ordinary moral duty or mere personal gratitude does not by itself supply enforceable consideration.

Sufficiency v. Adequacy : Learn the difference between 'sufficiency' and 'adequacy': the law asks whether lawful consideration exists; courts do not normally measure whether the bargain was financially equal.

Consideration must



Revision question : Who requested the act ?

AT THE DESIRE OF THE PROMISOR

Q - Why is the promisor's request necessary?

Section 2(d) requires the act, abstinence or promise to occur at the promisor's desire.

A benefit received without a request is not automatically consideration for a subsequent promise.

Example A : Raj asks Meera to paint his wall and promises payment.

Meera agrees.

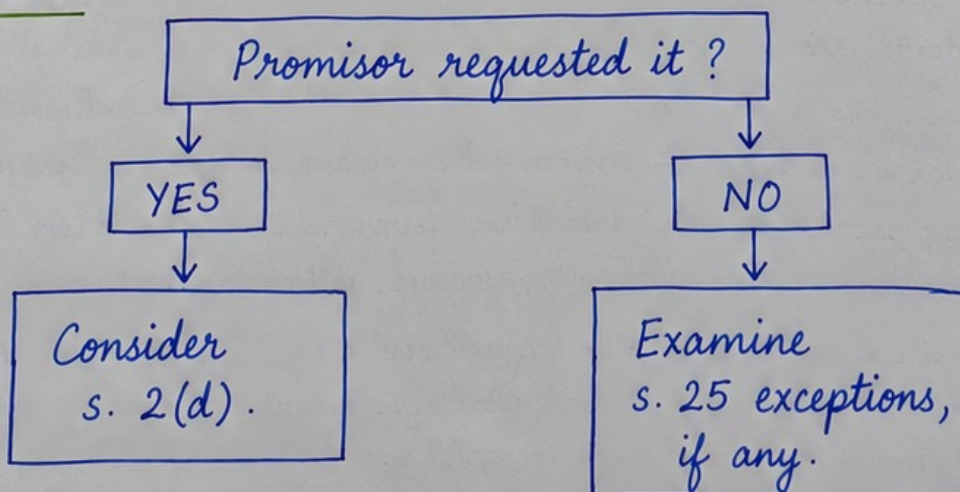
Her work is requested consideration.

Example B : Without Raj's request, Meera paints the wall on her own.

Raj later thanks her.

The initial act is not consideration at Raj's desire; any later promise requires separate legal analysis.

Decision Chart :



Case Reference : Durga Prasad v. Baldeo.

CASE — DURGA PRASAD v. BALDEO (1880)

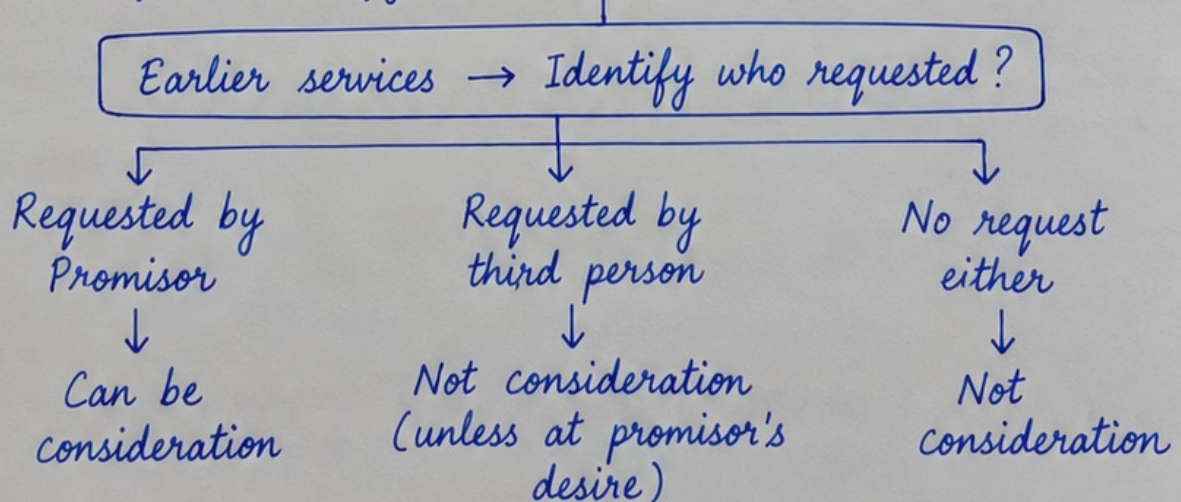
Facts : The plaintiff spent money constructing shops in a market, acting on the directions of the Collector. Afterwards, shopkeepers promised him a commission on goods sold.

Issue : Did the plaintiff's expenditure amount to consideration for the shopkeepers' promise?

Held : NO. The construction had not been undertaken at the desire of those shopkeepers. Their later promise therefore lacked consideration from the plaintiff's earlier act.

Legal principle : Under s. 2(d), consideration must move at the DESIRE OF THE PROMISOR, not merely at the request of a third person.

Application : Whenever a case includes earlier services, first identify WHO REQUESTED the service.



Memory line : Benefit to someone is not enough; look for the promisor's desire.

CONSIDERATION FROM A THIRD PERSON.

Q - Must only the promisee furnish consideration?

A - NO. Section 2(d) expressly says 'the promisee OR ANY OTHER PERSON'.

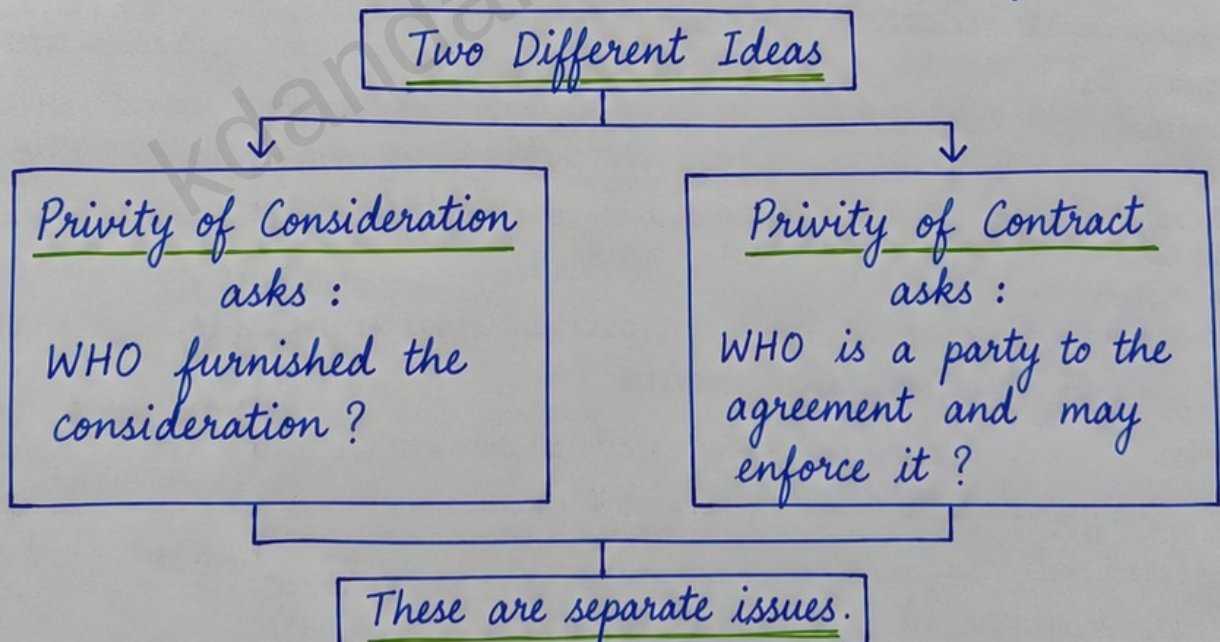
Therefore, Indian law recognises consideration provided by a person other than the promisee.

Example :

A transfers land to B on B's promise to pay A's daughter C an allowance.

A supplied consideration, while C is the intended beneficiary.

However, DO NOT CONFUSE this with the right to sue.



Important case : Chinnaya v. Ramayya.

Remember : A STRANGER TO CONSIDERATION is not necessarily a stranger to the contract.

CASE — CHINNAYA v. RAMAYYA (1882)

Facts: A woman transferred property to her daughter. As part of the arrangement, the daughter agreed to pay an annuity to the woman's sister. The sister was not the person who transferred the property.

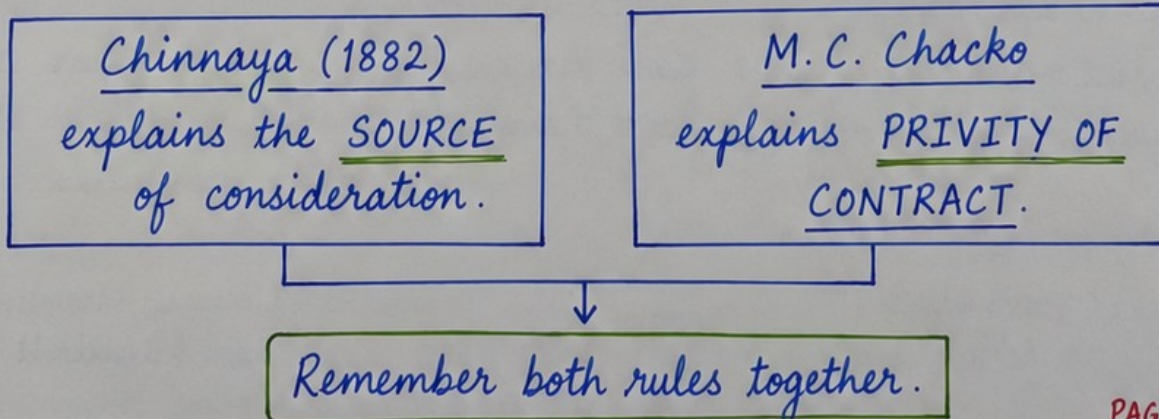
Issue: Can consideration move from someone other than the promisee?

Held: Indian law permits consideration to move from the promisee OR ANY OTHER PERSON under s. 2(d).

Legal principle: A person need not personally supply consideration in every contract to which that person is a party.

Note: This decision is discussed with the wider arrangement of related deeds, so do not use it to claim that any stranger to any contract can sue.

Exam comparison:



ADEQUACY OF CONSIDERATION

Q - Must consideration be equal in value?

A - Generally, NO.

Section 25, Explanation 2 states that inadequacy alone does not make an agreement void if consent is freely given.

Example: A voluntarily sells a valuable old bicycle to B for ₹100. A court does not automatically cancel the bargain merely because the price seems low.

BUT inadequacy may be considered when deciding whether consent was freely given.

Distinguish:

ADEQUACY

= how much value?

SUFFICIENCY

= is there something legally recognised as consideration?

In examinations, write that consideration must exist and be lawful; it need not be commercially fair.

Low price alone $\neq$ no consideration.

Separate issue: Fraud, coercion, undue influence or misrepresentation may affect free consent.

REAL AND LAWFUL CONSIDERATION

Q - Can an impossible or unlawful promise count as valid consideration?

A promise must be genuine, with legal value, and the object and consideration must satisfy the law.

Example 1 :

A promises payment if B provides a lawful tutoring service — ordinary consideration.

Example 2 :

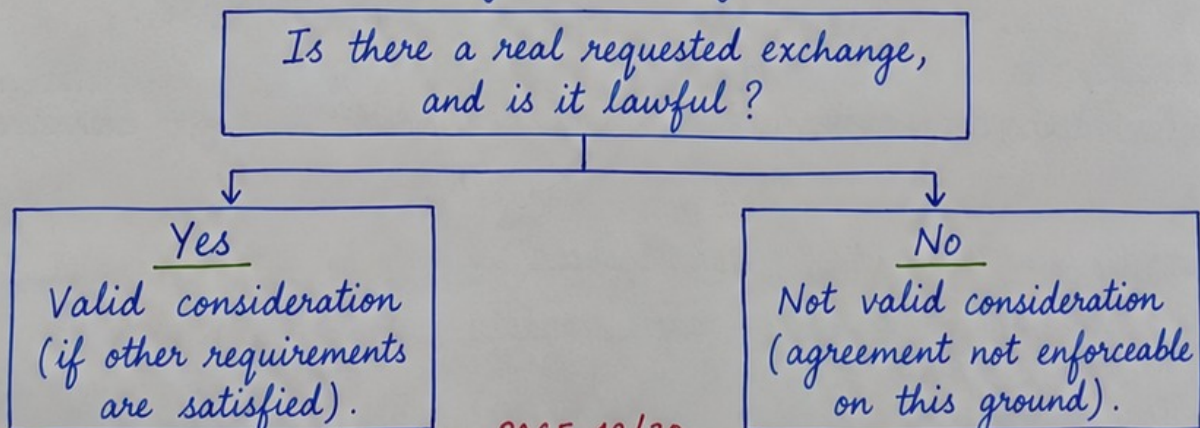
A promises payment for an illegal act — the law will not enforce such a bargain merely because money was promised.

Example 3 :

A promises an act physically impossible from the start — examine s. 56 and the circumstances; do not treat it as an ordinary enforceable exchange.

Relevant Provisions

- s. 2(d) : Defines consideration.
- s. 23 : Deals with lawful consideration and object.
- s. 25 : Deals with agreements without consideration.

Key Takeaway

SECTION 25 — GENERAL RULE

Q - Is a promise enforceable without consideration?

General rule : An agreement made without consideration is VOID, subject to the statutory exceptions.

This is often remembered as 'No consideration, no contract', but the phrase has important exceptions.

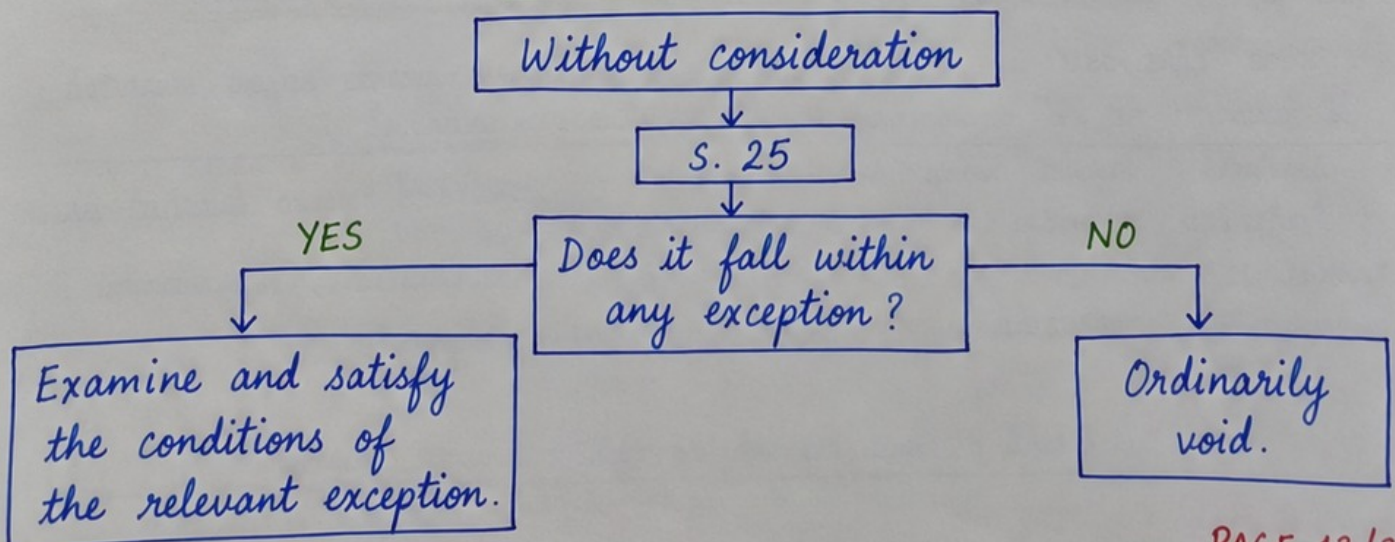
Three express exceptions in s. 25 :

- ① Written and registered agreement on account of natural love and affection between near relatives.
- ② Promise to compensate for certain past voluntary acts or acts the promisor was legally compellable to do.
- ③ Signed written promise to pay a time-barred debt.

Further notes :

- The validity of gifts actually made is not affected.
- Mere inadequacy of consideration is not by itself fatal.

Test under Section 25



SECTION 25(1) — LOVE & AFFECTION

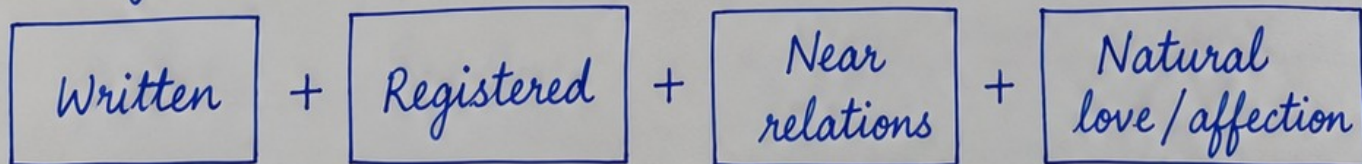
Conditions must be satisfied together :

- ① Promise is expressed in WRITING.
- ② It is REGISTERED under the applicable registration law.
- ③ Parties stand in a NEAR RELATIONSHIP.
- ④ Promise is made on account of NATURAL LOVE AND AFFECTION.

Example : A written, registered promise between closely related persons may qualify if it genuinely arises from love and affection.

Caution : Being relatives does not automatically establish affection, and an oral promise is not enough for this exception. Do not replace any condition with a general statement like 'family promises are binding'.

Memory box :



Practice : A merely tells a cousin, 'I will give you ₹1 lakh'. Which statutory requirements are missing?

SECTION 25(2) & 25(3).EXCEPTION 2 — Compensation for a past voluntary act :

A promise to compensate, wholly or partly, a person who has already voluntarily done something for the promisor, or done something the promisor was legally compellable to do, may be valid.

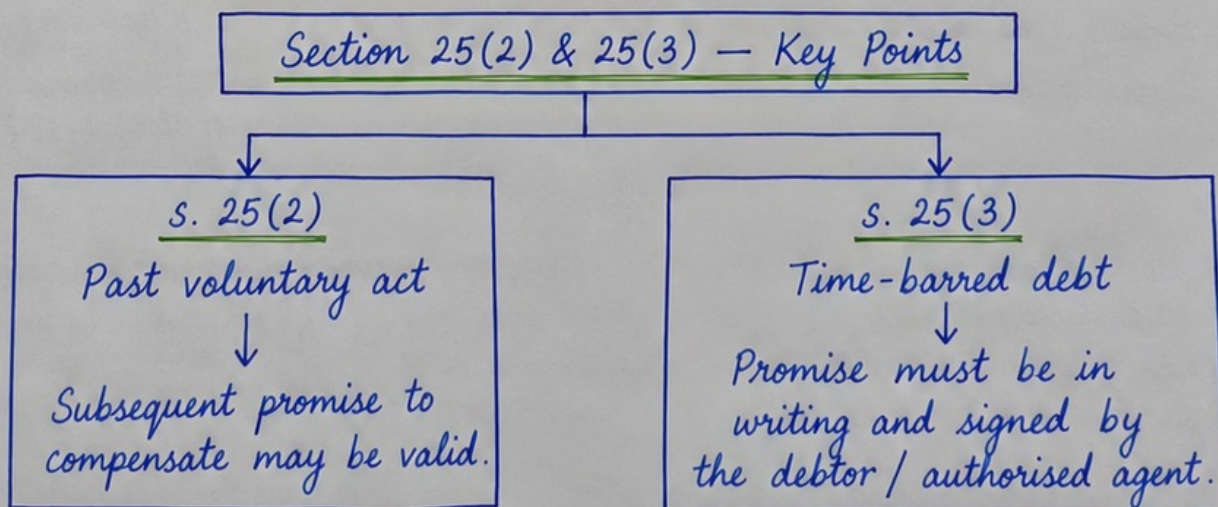
Example : A finds B's lost purse and returns it. B afterwards promises a reward.

Analyse : s. 25(2) recognises that a subsequent promise to compensate A may be valid, even though A was under no legal duty to find and return the purse, because the act was done voluntarily.

EXCEPTION 3 — Time-barred debt :

A promise to pay all or part of a debt barred by limitation may be valid if made in WRITING and SIGNED by the debtor or a duly authorised agent.

Note : The old debt's original limitation issue does not disappear; the signed promise is the operative basis.



Avoid : A mere oral promise to pay a time-barred debt is not valid.

GIFTS AND CHARITABLE PROMISES

Rule: Section 25, Explanation 1 preserves gifts actually made.
A completed gift differs from a bare promise to make a future gift.

CHARITABLE SUBSCRIPTIONS:

A general promise to donate money is not always enforceable.
Ask whether the promisee acted on the promise and incurred a legal obligation.

Case 1: Kedarnath Bhattacharji v. Gorie Mahomed (1886).

A subscriber's promise was enforceable when construction liability had been incurred in reliance on the subscription.

Case 2: Abdul Aziz v. Masum Ali (1914).

A promise to donate to a mosque fund was not enforced when the promisee had incurred no liability on its strength.

Compare:

Promise + obligation
incurred at request



may be enforceable.

Bare gratuitous promise
+ no such action



generally unenforceable.

Note: These cases turn on their facts.

PRIVITY OF CONTRACT

Q - What does 'privity' mean?

Ordinarily, only a PARTY to a contract can enforce its terms. A person outside the agreement generally cannot sue merely because the contract would benefit that person.

Example: A promises B that A will pay C ₹1,000.

C is not automatically entitled to sue A under every such agreement. Check for an applicable exception.

Different questions:

① PRIVITY OF CONSIDERATION:

Who furnished the consideration?

In India, it can be promisee or any other person.

② PRIVITY OF CONTRACT:

Who is legally entitled to enforce the agreement?

Usually the parties, subject to recognised exceptions.

Distinction:

- Stranger to consideration may still be a contracting party.
- Stranger to contract generally lacks a direct contractual claim.

Leading Supreme Court case:

M.C. Chacko v. State Bank of Travancore.

CASE — M.C. CHACKO V. STATE BANK (1969).

Facts : A father guaranteed a bank debt. A family property deed later directed his son to bear liability arising from the guarantee. The creditor bank sought to enforce that deed against the son and his allotted property.

Issue : Did the deed create a charge for the bank, and could the bank, a non-party, enforce it?

Supreme Court held : The deed did NOT create a charge in favour of the bank. The bank was not a party and could not enforce those covenants through the facts presented.

Principle : A third person generally cannot enforce a contract, subject to recognised exceptions such as trust beneficiaries and family arrangements.

Citation : (1969) 2 SCC 343.

Study note : Do not claim that all third-party beneficiaries may sue. Ask if the particular exception is proved.

EXCEPTIONS TO PRIVITY

The general rule has carefully recognised exceptions.

1. TRUST BENEFICIARY :

A person for whose benefit an enforceable trust is created may enforce rights under the trust.

2. FAMILY OR MARRIAGE ARRANGEMENT :

A beneficiary may enforce a genuine arrangement in qualifying circumstances.

3. ASSIGNMENT :

A valid assignee may enforce an assigned contractual right, subject to law and contractual terms.

4. AGENCY :

Where an authorised agent contracts for a principal, the principal may acquire rights even though the agent signed.

5. ACKNOWLEDGMENT OR ESTOPPEL :

Special facts may support enforcement where a promisor acknowledges an obligation; establish the legal basis.

Important : These are not automatic escape routes.

In every problem, identify the contract, claimant, and exact exception.

Key authority : M.C. Chacko.

CASE — KHWAJA MUHAMMAD KHAN (1910)

Case : Nawab Khwaja Muhammad Khan v. Nawab Husaini Begum.

Facts : Before a marriage, the father-in-law executed an agreement to pay the future bride a monthly allowance. Specific immovable property was charged to secure it. When payments stopped, she sued though she had not signed the document.

Issue : Could the intended beneficiary enforce the settlement?

Privy Council : YES, on these facts.

The arrangement expressly benefited her and charged specified property for her allowance.

Principle : A beneficiary under a qualifying marriage settlement or charge may have enforceable rights even without being a party to the instrument.

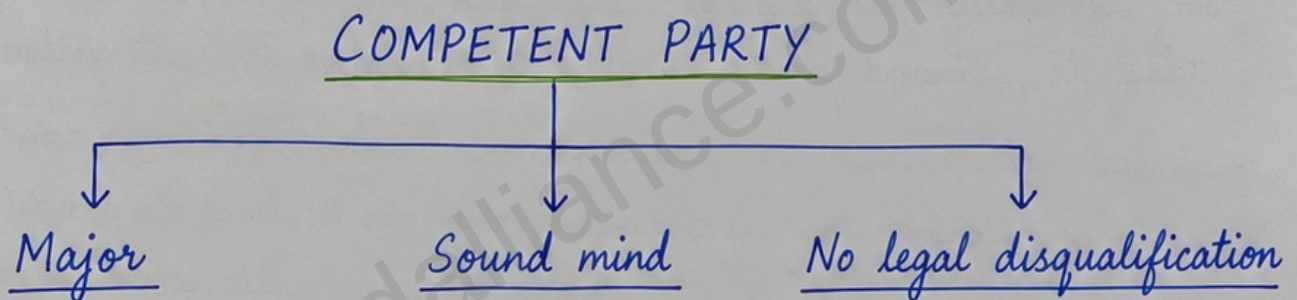
Exam caution : Do not read it as removing the privity rule generally. Compare M.C. Chacko, where no such charge was created.

CAPACITY — SECTION 11

Q - Who can enter into a valid contract ?

Section 11 requires a person to be :

- (1) of the age of majority according to applicable law ;
- (2) of SOUND MIND when contracting ; and
- (3) NOT DISQUALIFIED from contracting by any law to which that person is subject.



Example : An adult who understands the agreement and is not legally disqualified usually satisfies capacity requirements.

Caution : Capacity is not the same as FREE CONSENT.

An adult may have capacity but still face coercion or fraud.

Question in problems : Was the party competent on the relevant date and at the time of agreement ?

Source : Indian Contract Act, 1872, ss. 11 and 12 .

SOUND MIND - SECTION 12

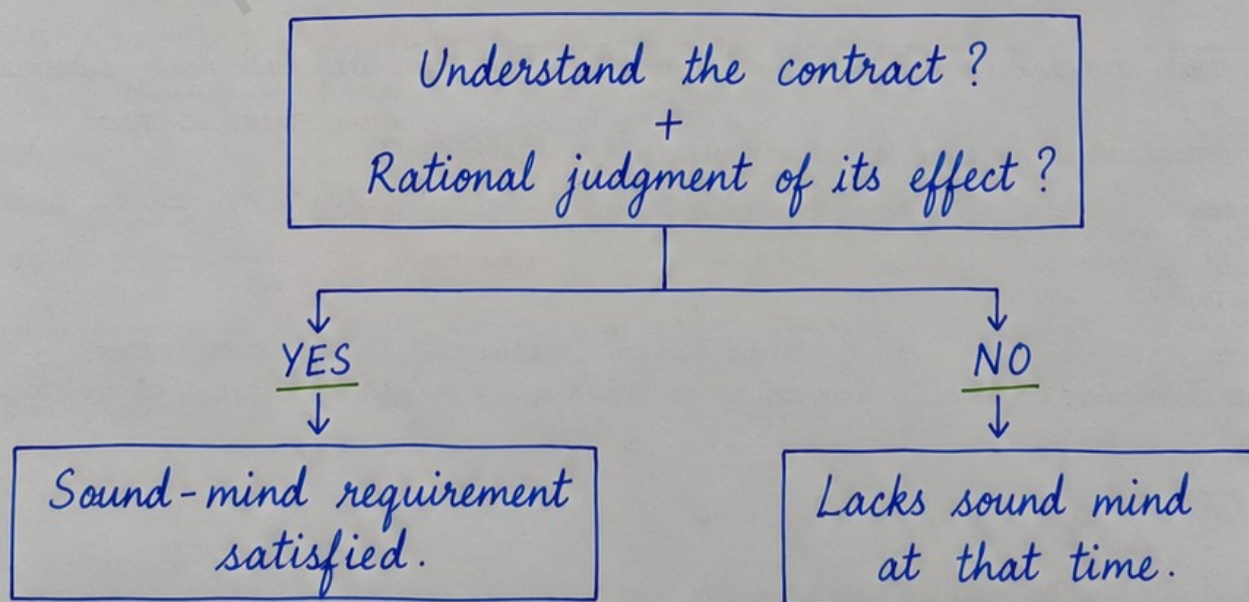
Q - What is a sound mind for contracting?

A person must be capable of UNDERSTANDING the agreement and of forming a RATIONAL JUDGMENT about how it affects that person's interests, at the time of making it.

Example 1: A person who ordinarily experiences mental illness may contract during a lucid period if the statutory test is satisfied.

Example 2: A person normally of sound mind may lack capacity while severely intoxicated and unable to understand the agreement or judge its effects.

Point: The law examines the PERSON'S CONDITION AT THE TIME, not simply a label or diagnosis.



Always apply the facts carefully.

WHO IS A MINOR ?

Q - What is the usual age of majority in India ?

Under the Indian Majority Act, 1875, the general age is 18 years.

A person below 18 is a MINOR for these ordinary contract-law purposes.

Under s. 11 of the Indian Contract Act, a minor is not competent to contract.

Example: Riya, aged 17, signs a document borrowing ₹50,000.

Analyse it under Mohori Bibee, not as an ordinary adult loan.

Important: Do not assume the minor's false claim to be 18 necessarily makes the loan enforceable.

Record three questions:

- ① How old was the person when the agreement was made ?
- ② What type of transaction was it ?
- ③ Was it for necessities or otherwise for the minor's benefit ?

Court approach depends on the precise relief requested.

CASE — MOHORI BIBEE v. DHARMODAS GHOSE (1903).

Facts : Dharmodas Ghose, a minor, mortgaged his property to secure a loan. The lender's agent knew that he was a minor. The mortgage was challenged.

Issue : Could the mortgage be enforced against the minor as an ordinary contract ?

Privy Council held : NO.

A minor is not competent under s. 11 ;
the agreement was VOID FROM THE BEGINNING
(void ab initio).

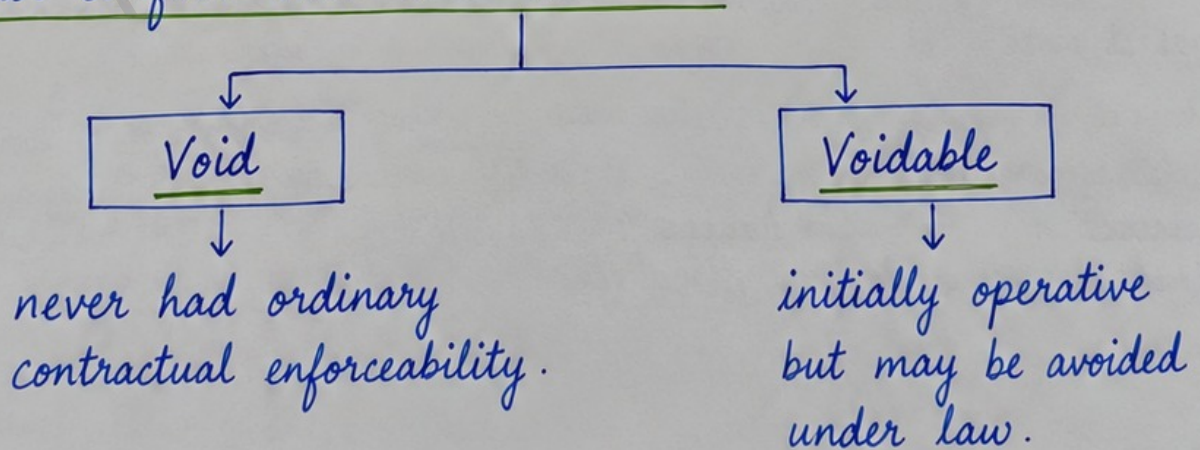
Important : It was not merely a valid contract that the minor could later choose to cancel.

This is the foundational authority on minors' contractual incapacity.

Application : Begin any problem involving a minor's purported contract with this case, then separately examine special statutory provisions, beneficial arrangements and appropriate restitutionary relief.

CONSEQUENCES OF A MINOR'S AGREEMENT.

1. A minor's ordinary contractual agreement is VOID AB INITIO - invalid from its inception.
2. It cannot simply become binding through later ratification after majority. A fresh enforceable agreement requires appropriate lawful basis and conditions.
3. A minor generally does not incur ordinary contractual personal liability merely by signing an agreement.
4. The position differs when a minor receives BENEFITS or NECESSARIES; examine the specific rule, not the word 'void' alone.
5. Do not confuse 'void' and 'voidable':



Example: A loan signed at 17 cannot be treated as a normal valid adult loan merely because the person later turns 18.

Core case: Mohori Bibee.

MINOR'S MISREPRESENTATION & RESTITUTION

Q - If a minor falsely says 'I am 18', does that make the contract valid?

NO. A minor's legal incapacity generally cannot be removed through estoppel or false statements of age. But the court may separately consider RESTITUTION: restoring benefits or property received, within the applicable legal limits.

Leading case :

Khan Gul v. Lakha Singh, AIR 1928 Lah 609.

In a dispute involving a minor who had misrepresented his age in a land transaction, the Full Bench considered protection from contractual liability alongside equitable restoration of benefits.

Exam caution :

A restitution order is not permission to enforce the void bargain as an ordinary contract.

Specific Relief Act, 1963, s. 33 :

May be relevant to restoration when an instrument is cancelled or resisted for incapacity.

Always distinguish :

- contractual damages,
- returning an identifiable benefit, and
- equitable relief.

NECESSARIES — SECTION 68

Q - Who pays for necessities supplied to a minor?

Section 68 allows a supplier of necessities suited to the person's condition in life to claim reimbursement from the property of someone incapable of contracting.

The rule also covers necessities for persons whom the incapable person is legally bound to support.

Important: It does not make the minor personally liable under an ordinary contract.

Examples: Essential food, suitable clothing, medical treatment or necessary education, depending on circumstances.

Luxury goods are not automatically necessities.

Comparison:

<u>Ordinary minor's loan</u>	<u>Genuine necessities</u>
Void contract	Possible reimbursement from the minor's estate under s. 68.

Comparative English case:

Nash v. Inman (1908), where fashionable clothes were not established as necessities because the minor was already supplied adequately.

WHEN CAN A MINOR BENEFIT?

Do not confuse inability to contract personally with inability to receive legal BENEFITS.

- (1) A minor may be the beneficiary of an arrangement designed for that minor's benefit.
- (2) A guardian can sometimes enter a binding transaction on a minor's behalf within legal authority, for NECESSITY OR BENEFIT.

Case: Srikakulam Subrahmanyam v. Kurra Subba Rao
(Privy Council, 1948)
discusses contracts made by a competent guardian for a minor's benefit.

- (3) Under s. 184 of the Indian Contract Act, a minor may act as an AGENT, although not responsible to the principal as an adult agent would be.
- (4) Under s. 30 of the Indian Partnership Act, a minor may be admitted to the BENEFITS of partnership with consent of all partners, not become a full partner.

Key distinction: Receiving benefits is not the same as assuming ordinary contractual burdens.

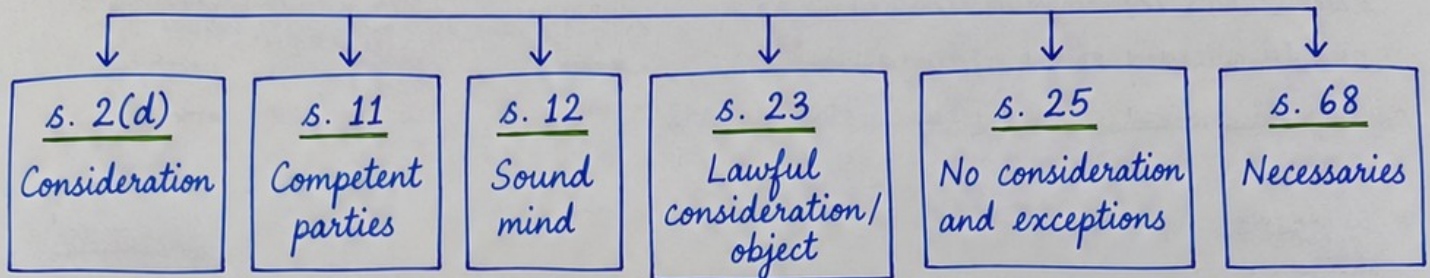
CASE LAW QUICK-REVISION CHART

<u>CASE</u>	<u>RULE</u>
Durga Prasad v. Baldeo (1880)	Act done at the promisor's desire is good consideration.
Chinnaya v. Ramayya (1882)	Consideration may come from a third person.
Kedarnath Bhattacharji v. Gorie Mahomed (1886)	A promise made for charity, when acted upon, creates a legal liability.
Abdul Aziz v. Masum Ali (1914)	A bare promise to make a donation is not enforceable.
M.C. Chacko v. State Bank (1969)	Rule of privity applies; exceptions must be shown.
Khwaja Muhammad Khan v. Husaini Begum (1910)	A marriage settlement creating a charge is enforceable.
Mohori Bibee v. Dharmodas Ghose (1903)	An agreement by a minor is void ab initio.
Khan Gul v. Lakha Singh (1928)	Minority, misrepresentation and restitution are distinct.
Srikakulam Subrahmanyam v. Kurra Subba Rao (1948)	A guardian can enter into a beneficial contract for the minor.

CASE METHOD = Facts → Issue → Held → Principle → Application.

UNIT II — FINAL RECAP & PRACTICE

Statutory map:



Practice questions:

- ① Explain consideration and its Kinds.
- ② Discuss rules of valid consideration with cases.
- ③ Explain s. 25 exceptions.
- ④ Differentiate privity of contract and privity of consideration.
- ⑤ Explain M.C. Chacko and recognised exceptions.
- ⑥ Discuss minor's agreements with Mohori Bibee.
- ⑦ What is sound mind under s. 12?
- ⑧ Can a minor be liable for necessities?
- ⑨ Explain a minor's misrepresentation and restitution.
- ⑩ Discuss guardian transactions for benefit.

Sources to study:

- Indian Contract Act, 1872.
- Indian Majority Act, 1875.
- Indian Partnership Act, 1932.
- Judicial decisions listed in these notes.

END OF UNIT II — KEEP REVISING