



Remedies Arising out of Void and Voidable Contracts

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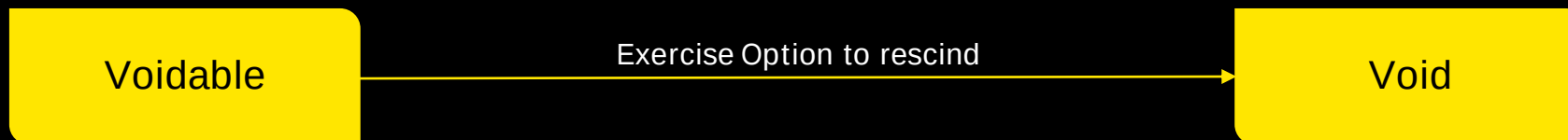
1. S. 64 – S. 72 of Indian Contract Act
2. Void and Voidable Contracts
Concepts:
 - Free Consent
 - Supervening Impossibility
 - Frustration
 - Force Majeure
 - Fraud
 - Mistake
3. Rescission
4. Unjust Enrichment and Defences

Readings from Bare Act

- ✓ S. 2 – g; i; j (Void and Voidable Contracts)
- ✓ S. 3 & 4 (Communication)
- ✓ S. 20, 21, 22 (Mistake)
- ✓ S. 27, 28, 29, 30
- ✓ S. 32 & 33 (Contingent Contracts)
- ✓ S. 56 (Impossibility)
- ✓ S. 64 – 67 (Remedies)
- ✓ S. 68 – 72 (Unjust Enrichment)

Void and Voidable Contracts

Type	Provision of ICA	Effect/Consequences as per ICA
Void	S. 2(g) An agreement not enforceable by law is said to be void S. 2(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable	S. 2(g) – void agreement is not enforceable by law. S. 66 – ‘when an agreement is discovered to be void ... <u>any person who has received any advantage</u> under the agreement or contract is bound to restore it, or to make compensation for it to the person whom he received it.
Voidable	S. 2(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.	S. 64 – Consequences of rescission of voidable contract S. 65 – Obligation of person who has received advantage under void agreement, or contract that becomes void.



Void and Voidable Contracts

Void

Agreement not enforceable by law

- Violation of ICA
- Violation of other applicable law

Elements:

- Free Consent
- Competent Party
- Lawful Consideration
- Lawful Object
- Not expressly declared void by S. 27, 28, 29, 30, 56
- Fail to comply procedural compliances

Instances:

- Mistake of Fact
- Mistake of Law
- Without Consideration
- Restraint of Marriage
- Restraint of Trade
- Restraint of Legal Proceedings
- Uncertain Agreements
- Wagering Agreements
- Contingent on Impossible Events
- Impossibility of Performance

Voidable

Exercise of Choice

- Discovered lack of Free Consent
- Subsequent supervening factors

Elements vitiating Free Consent:

- Coercion
- Undue Influence
- Misrepresentation
- Fraud
- Mistake (subject to S. 20, 21 & 22)

Instances:

- Lack of Free Consent
- Refusal of a Party to perform promise wholly
- Prevention of Performance
- Failure to perform within fixed time

Remedy of Rescission (equitable remedy)

Requirement	Modes of Exercise	When available	When NOT available
- Agreement should be voidable - Communicate the Decision (S.66)	- By Notice (S.66) - Order of a Court (S.27-30, SRA) - Burden of Proof on Party making the allegations - Property Transfer Matters - Rescission as a Defence (S.9, SRA)	- Lack of Free Consent - Refusal to Perform - Reciprocal Promises - Implied By Agreement – Amendment, Novation etc. - Failure to perform within specified time	- Affirmation (Ratification) - No possibility of Restitution 3rd Party Intervention - Severability - Delay or laches

Effect of Rescission

Compensation

Case: Singer Refusing to perform

Restitution

Case: Singer falling sick
Case: S.65 application

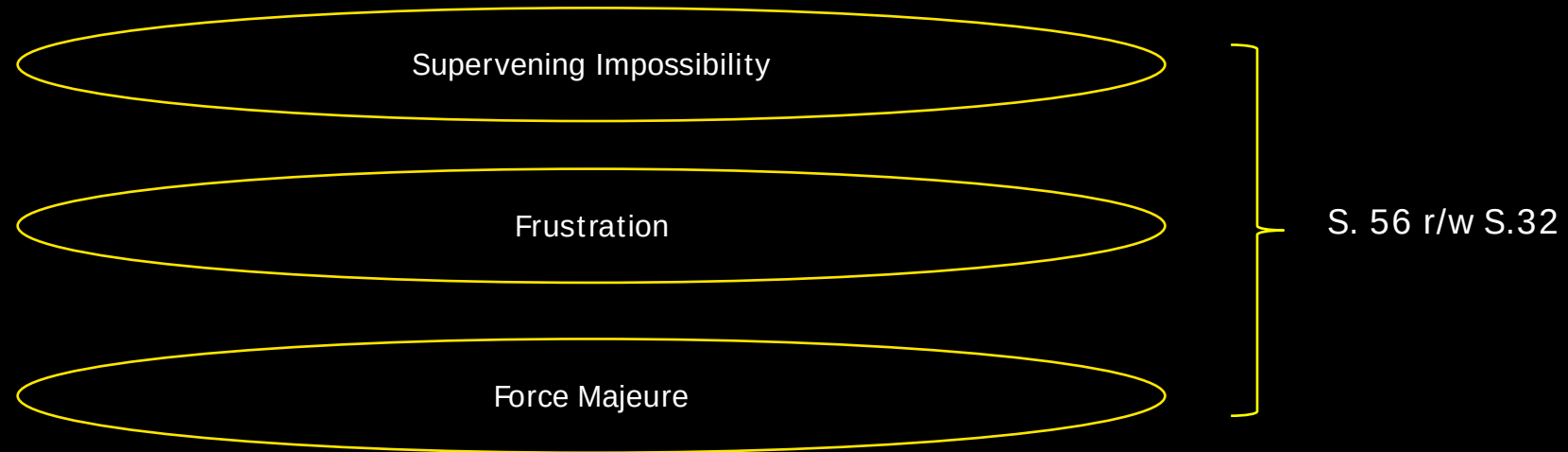
Rectification

Element of Mistake
Rectification of Instrument

Cancellation

Case: Misrepresentation by Minor

Other Factors



Defenses to Unjust Enrichment

Case Studies:

- Neighbour asked to take care of garden during absence
- Contract for Necessaries of Minor

Tests and Defences:

- Reasonably required?
- Actually Furnished?
- Genuine intent and not for self interest

When available	When NOT available
• Defendant was enriched from the benefit • Delivered lawfully by plaintiff • Not gratuitous act of plaintiff • Enriched at expense of plaintiff • Unjust to allow to keep the benefit	• Not delivered lawfully • Presence of gratuitous intent • No benefit enjoyed