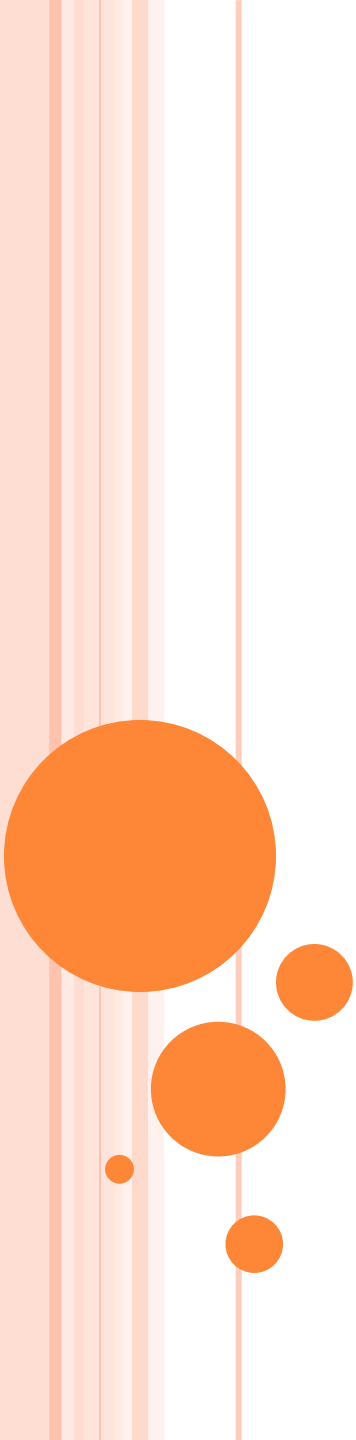




# FUNDAMENTALS OF CONTRACT

**BY:**

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# CONTRACT

1. “Every agreement and promise enforceable at law is a contract.” – Pollock
  2. “A Contract is an agreement between two or more persons which is intended to be enforceable at law and is contracted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act.” – Halsbury
  3. “A contract is an agreement creating and defining obligation between the parties” – Salmond
- Prior to the Indian Contract Act, English law of contract was followed in India.
  - Indian Contract Act has XI chapter. Law of contract creates *jus in personem* and not in *jus in rem*. The Indian Contract Act consists of the following two parts: (a) General principles of the Law of Contract. Sections 1 to 75 (b) Special kinds of contracts. Sections 124 to 238. These special contracts are Indemnity, Guarantee, Bailment, pledge and Agency.



# IMPORTANT TERMS

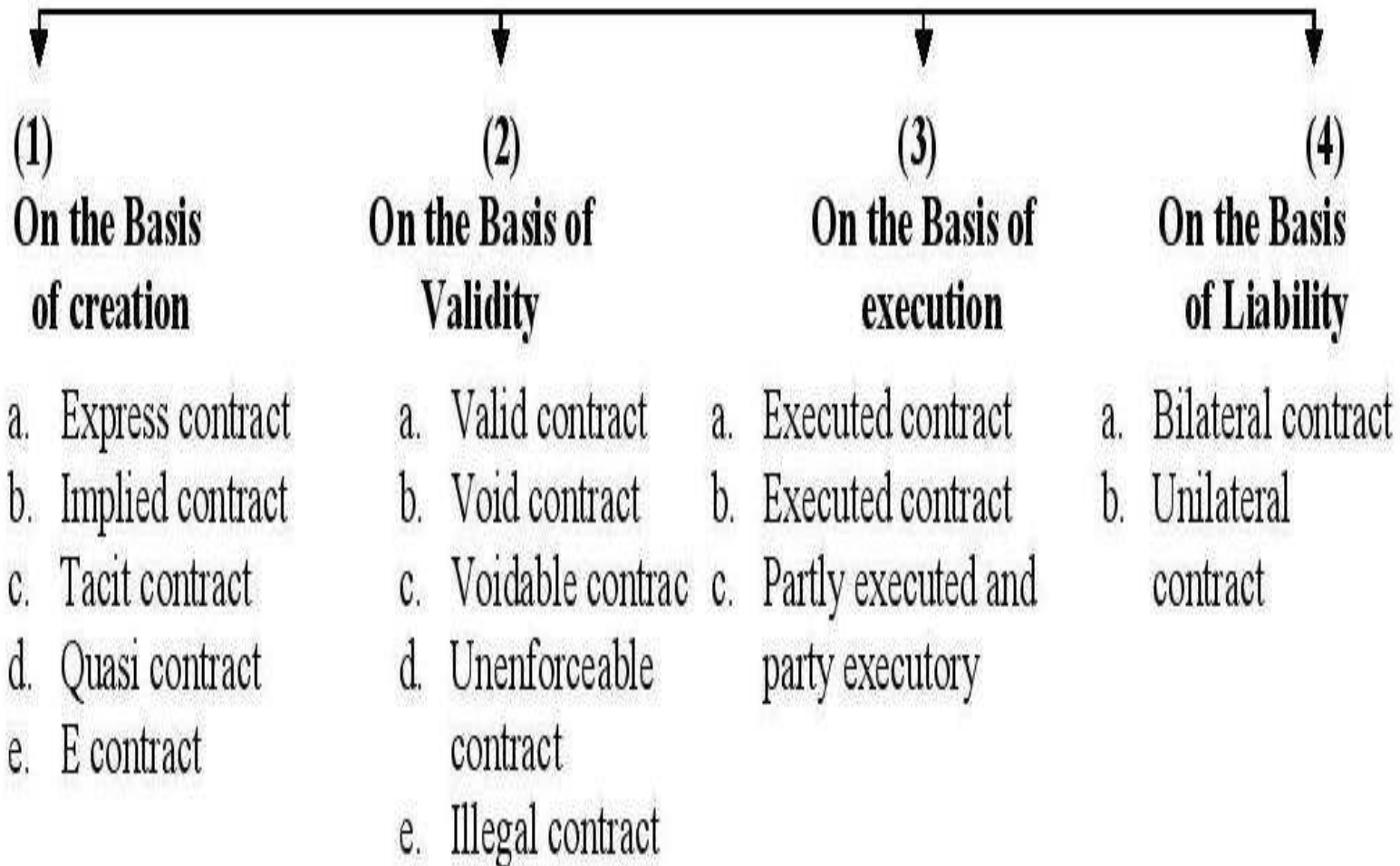
- Offer(i.e. Proposal) [section 2(a)]:-When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal.
- Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.
- Promise 2(b) :- A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
- Promisor and promise 2(c) :- When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.



- Consideration 2(d):- When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise. Price paid by the one party for the promise of the other.
- Agreement 2(e) :- Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.
- Contract 2(h) :- An agreement enforceable by Law is a contract.
- Void agreement 2(g):- An agreement not enforceable by law is void.
- Voidable contract 2(i):- An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.
- Void contract: - A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.



# Types of contracts :-



## Distinction between Contract & Agreement

| Basis                | Contract                                                                       | Agreement                                                                                      |
|----------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 1. Section :         | Sec. 2(h)                                                                      | Sec. 2(e)                                                                                      |
| 2. Definition :      | A contract is an agreement enforceable by law.                                 | Every promise or every set of promises forming consideration for each other is an agreements.  |
| 3. Enforceability :  | Every contract is enforceable                                                  | Every promise is not enforceable.                                                              |
| 4. Interrelationship | A contract includes an agreement.                                              | An agreement does not include a contract.                                                      |
| 5. Scope :           | The scope of a contract is limited, as it includes only commercial agreements. | Its scope is relatively wider, as it includes both social agreement and commercial agreements. |
| 6. Validity :        | Only legal agreements are called contracts.                                    | An agreement may be both legal and illegal.                                                    |
| 7. Legal Obligation  | Every contract contains a legal obligation.                                    | It is not necessary for every agreement to have legal obligation.                              |



# Essentials of a Valid Contract



Two Parties

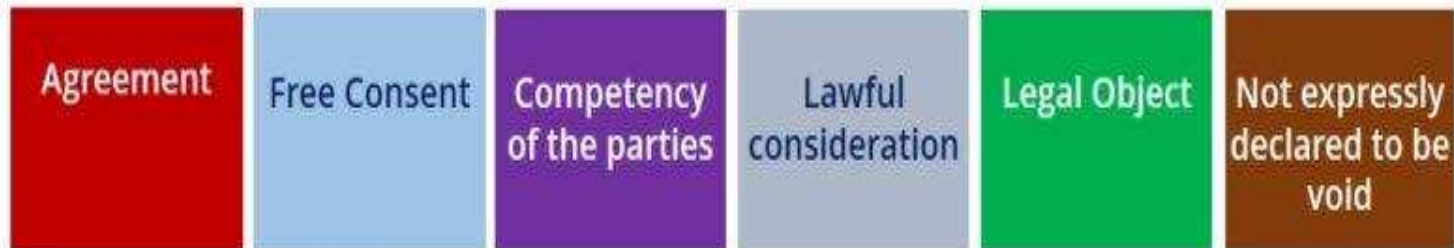
- Offeror
- Offeree

Intention to create legal binding

Fulfillment of requirements by other Law

clear and specific meaning of contract, no vague terms

Performance of contract must be possible



Contract must have an agreement

Agreeing on same thing with same sense

On the basis of

- Age (18 years)
- Sound mind
- Not disqualified by Law

The consideration must not be against public policy or to harm someone etc.

The object or purpose must also be legal.

Not declared as void or illegal by law

# ESSENTIALS OF A VALID CONTRACT

- Offer and Acceptance: There must be a clear offer by one party and an acceptance of that offer by the other party. The terms of the offer and acceptance must be definite and certain.
- Intention to Create Legal Relations: Both parties must have the intention to create legal relations, and the contract must not be of a social or domestic nature where legal relations are not presumed.
- Lawful Object: The object of the contract must be lawful. It must not be illegal, immoral, or opposed to public policy.
- Consideration: Consideration is something of value exchanged between the parties to the contract. It can be in the form of money, goods, services, or a promise to do something. Consideration must be sufficient but need not be adequate.
- Capacity to Contract: Both parties must have the legal capacity to enter into a contract. This means they must be of legal age, of sound mind, and not disqualified by law.



- Free Consent: The consent of both parties must be freely given, without any coercion, undue influence, fraud, misrepresentation, or mistake.
- Certainty and Possibility of Performance: The terms of the contract must be certain and capable of being performed. If the terms of the contract are vague, uncertain, or impossible to perform, the contract may be void.
- Legal Formalities: Some contracts must be in writing, such as contracts for the sale of immovable property or agreements that cannot be performed within one year. Additionally, certain contracts may require registration, stamping, or notarization to be legally enforceable.



# OFFER

- Under the Indian Contract Act, 1872, an offer is defined as a proposal made by one person to another with the intention to enter into a legally binding agreement. The person making the offer is called the "offeror" and the person to whom the offer is made is called the "offeree".
- There are two types of offers under the Indian Contract Act:
  1. Specific Offer: A specific offer is an offer made to a specific person or group of persons. For example, if A offers to sell his car to B for Rs. 5 lakhs, it is a specific offer.
  2. General Offer: A general offer is an offer made to the public at large. For example, if a company offers a reward of Rs. 1 lakh to anyone who provides information leading to the arrest of a particular criminal, it is a general offer.



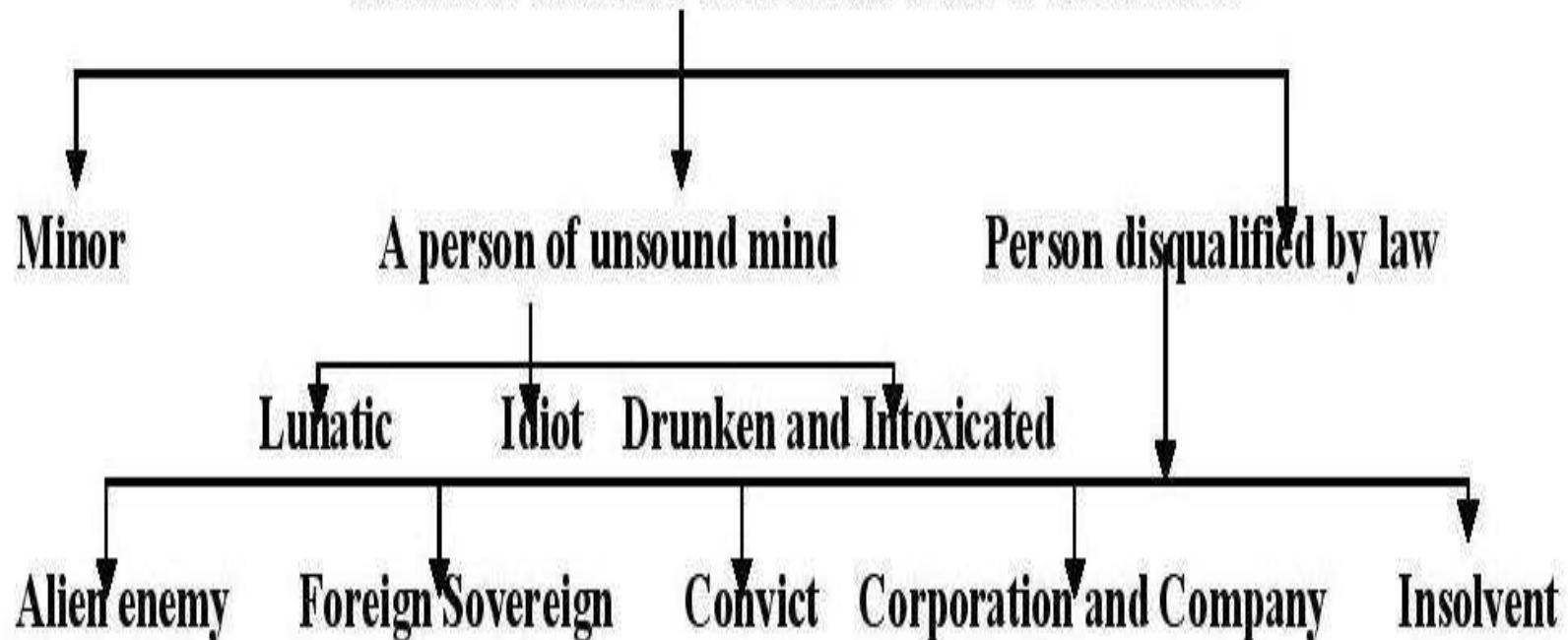
- It is important to note that an offer must be distinguished from an invitation to offer. An invitation to offer is an invitation to enter into negotiations or make an offer.
- For example, a shopkeeper displaying goods in his shop window is not making an offer to sell those goods but is inviting customers to make an offer to buy them.



| <b>Offer</b>                                                                                                                                                                                       | <b>Invitation to offer</b>                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>➤ Show his readiness to enter into a contract, it is called as an offer</li> <li>➤ Purpose of entering contract</li> <li>➤ Results in a contract</li> </ul> | <ul style="list-style-type: none"> <li>➤ Person invites offer to make an offer to him.</li> <li>➤ Purpose of enter offer</li> <li>➤ Results in offer.</li> </ul> |
| <p><b>Example</b></p> <p>Application filled in by a prospective applicable to the Institution, a student seeking admission in educational Institution.</p>                                         | <p><b>Example</b></p> <p>Issue of prospectus by a Company, an education Institution.</p>                                                                         |



## Parties unable to Enter into a contract



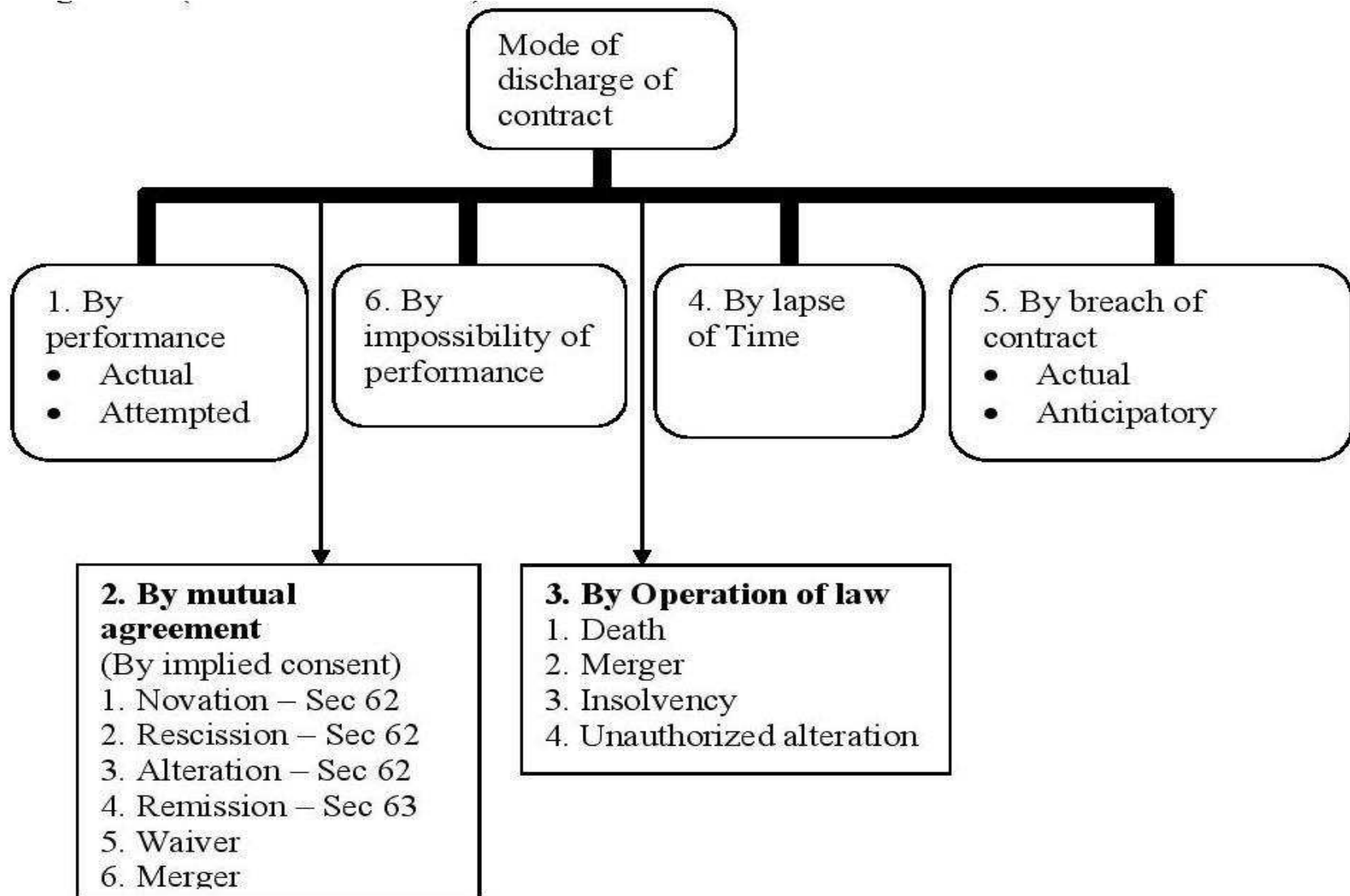
# FREE CONSENT

- Free consent is one of the essential elements of a valid contract under the Indian Contract Act, 1872. It means that the parties to the contract must enter into the agreement freely, without any coercion, undue influence, fraud, misrepresentation, or mistake.
- Coercion refers to the use of force or threats to make someone enter into a contract against their will. For example, if a person signs a contract under duress or threat of harm, their consent is not free.
- Undue influence refers to situations where one party has an unfair advantage over the other party and uses that advantage to persuade them to enter into a contract. This can occur in cases where a person is in a position of trust or confidence with the other party.
- Fraud refers to situations where one party deliberately makes a false statement or conceals important information to induce the other party to enter into a contract. If a person is induced to enter into a contract based on fraudulent misrepresentation, their consent is not free.



- Misrepresentation refers to situations where one party makes a false statement, but does so innocently, without any intention to deceive. If a person is induced to enter into a contract based on a misrepresentation, their consent is not free.
- Mistake refers to situations where one or both parties enter into a contract based on a misunderstanding of the facts or the terms of the agreement. If a person enters into a contract based on a mistake of fact, their consent is not free.
- In conclusion, for a contract to be valid, the consent of the parties must be free and not obtained through coercion, undue influence, fraud, misrepresentation, or mistake. If the consent is not free, the contract may be voidable or unenforceable.





# MODE OF DISCHARGE OF CONTRACT

- Performance: A contract can be discharged by performance, i.e. when both parties fulfill their respective obligations under the contract.
- Mutual Agreement: A contract can also be discharged by mutual agreement between the parties. This can be done by way of a new contract, rescission, or alteration of the existing contract.
- 1. Novation: Novation occurs when a new contract is substituted for an existing contract. This requires the consent of all the parties involved and results in the discharge of the original contract. The new contract may involve new parties, new terms, or a new mode of performance.
- 2. Rescission: Rescission occurs when the parties to a contract agree to terminate the contract and return to their original positions as if the contract never existed. This can be done by mutual agreement or by a court order.



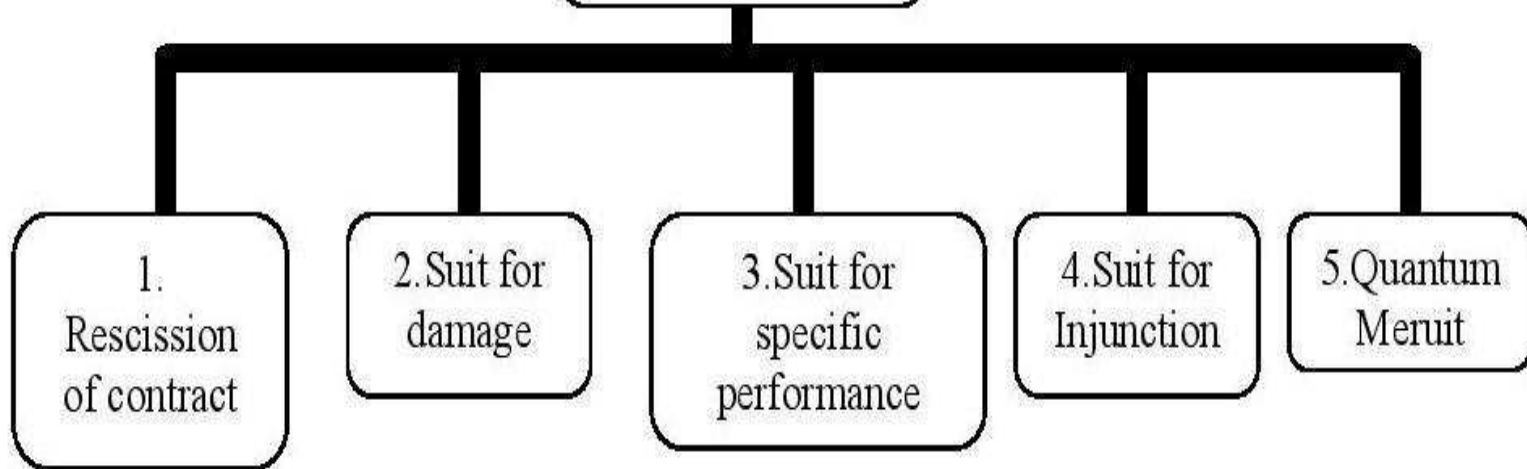
3. Alteration: Alteration occurs when the parties to a contract agree to modify the terms of the existing contract. This can be done by mutual agreement or by operation of law.
4. Remission: Remission occurs when a party to a contract agrees to accept a lesser performance than what was originally agreed upon. This can be done by way of compromise or by operation of law.
5. Waiver: Waiver occurs when a party to a contract voluntarily relinquishes its rights under the contract. This can be done by express or implied conduct.
6. Merger: Merger occurs when a contract is discharged because its terms have been merged into a subsequent contract. This can occur when a contract is renewed or extended, and the new contract incorporates the terms of the original contract.



- Operation of Law: A contract can be discharged by operation of law. This includes situations such as death or insolvency of one of the parties, the destruction of the subject matter of the contract, or change in the law.
- Lapse of Time: A contract may be discharged by the lapse of time if it is for a fixed period or if it is meant to be performed within a specified period, and that period has expired.
- Breach of Contract: If one party fails to fulfill its obligations under the contract, it constitutes a breach of contract, and the innocent party may choose to discharge the contract.
- Impossibility of Performance: If the performance of a contract becomes impossible due to reasons beyond the control of the parties, such as natural disasters, the contract is discharged.



## Remedies for Breach of contract



# REMEDIES FOR BREACH OF CONTRACT

- When a contract is breached, the innocent party may be entitled to various remedies under the Indian Contract Act, 1872. Some of the commonly available remedies for breach of contract are:
- Rescission: Rescission is the remedy that allows the innocent party to terminate the contract and discharge its obligations under it. This remedy is typically available when the breach is fundamental and goes to the root of the contract.
- Suit for damages: The most common remedy for breach of contract is a claim for damages. Damages are a monetary compensation that the innocent party is entitled to recover from the party in breach. The damages may include compensatory damages, which are intended to put the innocent party in the position it would have been in if the contract had been performed, and/or punitive damages, which are intended to punish the party in breach.



- Specific performance: Specific performance is a remedy that requires the party in breach to perform its obligations under the contract. This remedy is typically available when damages would not be an adequate remedy, such as in cases involving unique or rare goods.
- Injunction: Injunction is a remedy that prevents the party in breach from doing something that would violate the terms of the contract. This remedy is typically available in cases involving contracts for services, where a breach could cause irreparable harm to the innocent party.
- Quantum meruit: Quantum meruit is a remedy that allows the innocent party to recover the reasonable value of the work done or services provided under the contract, even if the contract is not fully performed. This remedy is typically available when the party in breach has received a benefit from the innocent party, but has failed to perform its obligations under the contract.
- In conclusion, the choice of remedies available to the innocent party will depend on the nature and extent of the breach, as well as the specific terms of the contract. It is important for parties to understand their rights and obligations under a contract and seek legal advice in case of a breach.

