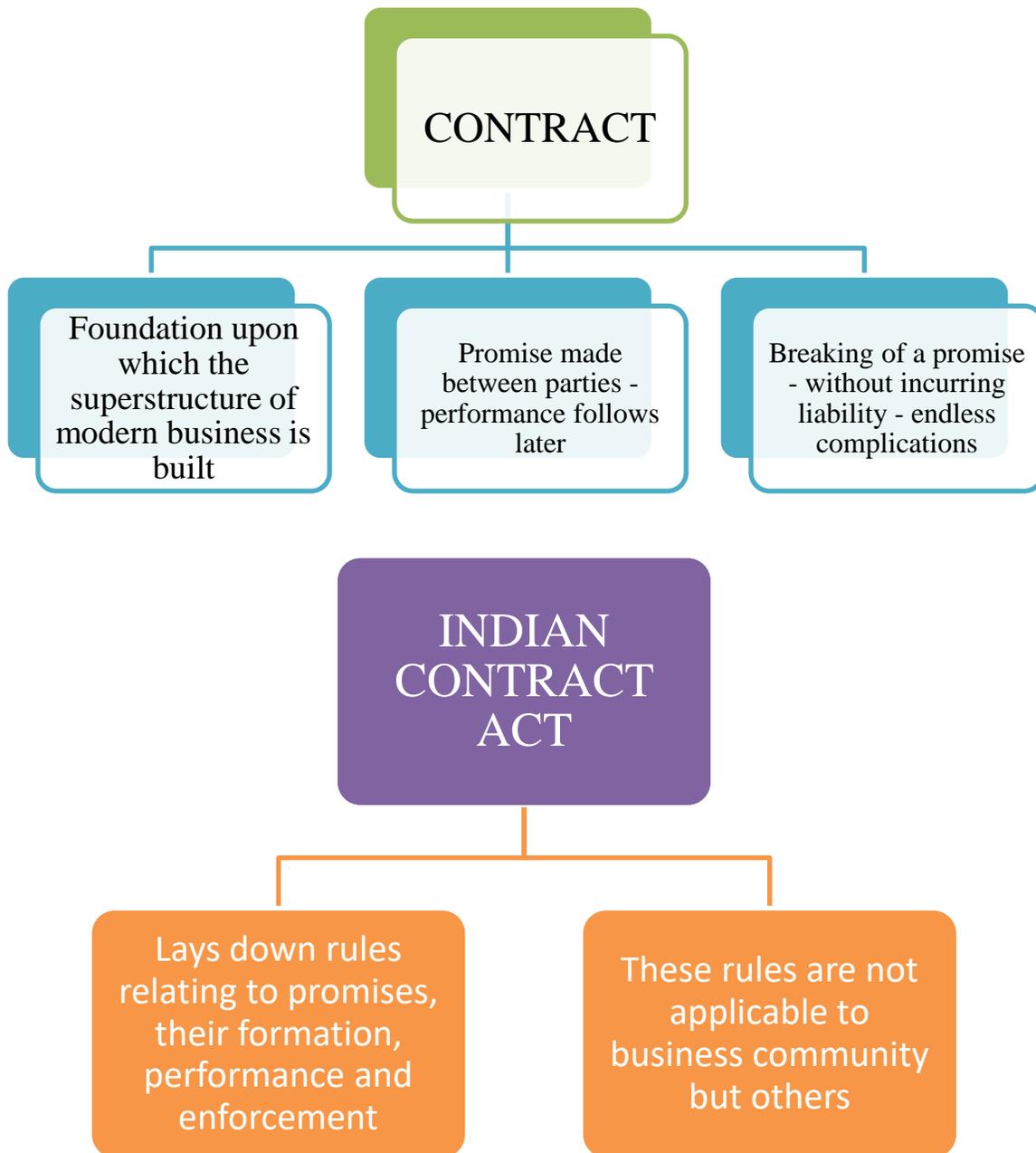
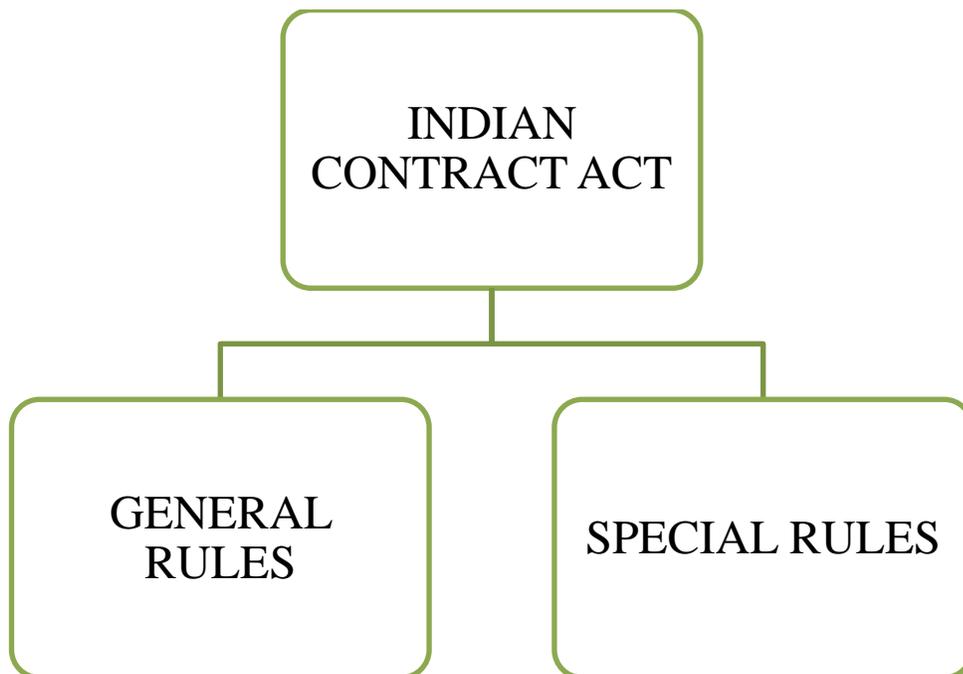
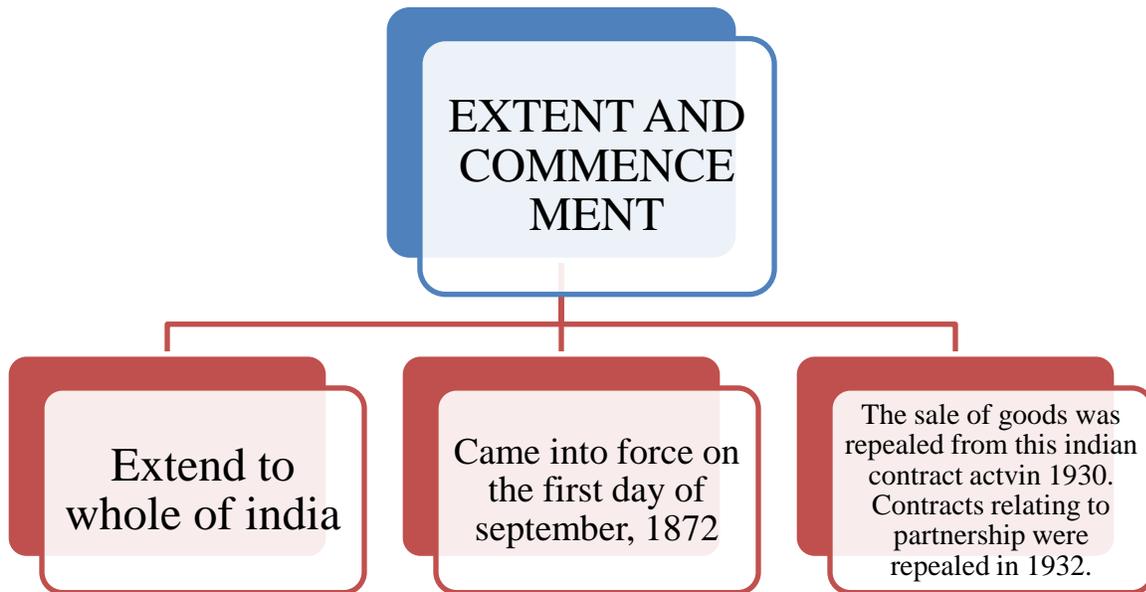
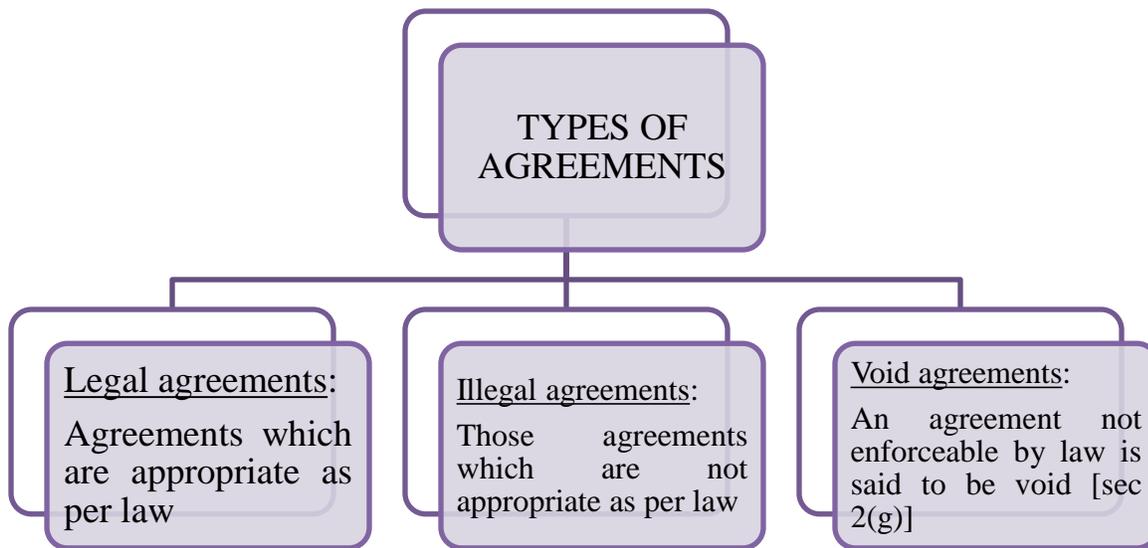


The Indian Contract Act, 1872





- **Agreements:** Sec 2(c): “Every promise and every set of promises, forming the consideration for each other is an agreement.”



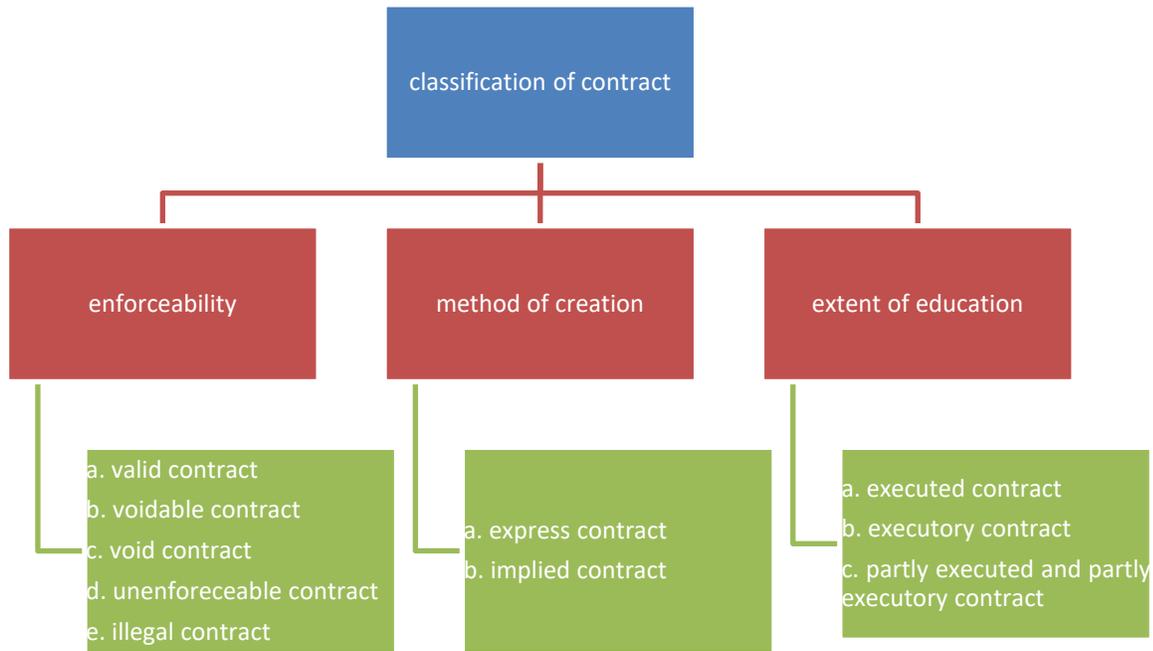
Enforceability:

- An agreement is said to be enforceable by law if it creates legal obligation
- Obligation is legal tie which imposes upon determined person or persons the necessity of doing or abstaining from doing a definite act or acts.
- If any agreement is incapable of creating a duty enforceable by law, it is not a contract.

■ **Contract [Sec 2(h)]:**

- “An agreement enforceable by law is a contract.”
 Proposal + Acceptance = Promise
 Promise + Consideration = Agreement
 Agreement + Enforceability = CONTRACT
- “All contracts are agreements but all agreements are not contracts.”
- “Agreements of moral, religion or social nature are not contracts.”
 - ✓ They are not likely to create a of duty enforceable by law
 - ✓ Parties never intend to create a legal obligation

Agreement	Contract
1. Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable as per law is a contract.
2. Offer and acceptance together constitute an agreement	An agreement + enforceability at law = contract
3. It may not create legal obligation	It creates legal obligations
4. An agreement is a wider concept contract	Only some agreement forms into a contract
5. All agreements are not contracts	All contracts are agreements
6. It is not final and binding on the parties	It is final; concluding and binding on the parties



Voidable contract	Void contract
1. A voidable contract takes its full and proper legal effect until it is set aside	A void contract is a nullity and no right would accrue there under from its commencement.
2. It is voidable at the option of one party. It is no contract if the aggrieved party wishes to cancel the contract.	It is no contract in the eyes of law from its very beginning.

■ **Sec 2(f): Reciprocal Promises:** “Promises which form the consideration or part of the consideration for each other are called reciprocal promises.” All agreements are contracts if they are made by the following:

- a. Parties to the contract
- b. Parties to the contract must exercise free consent
- c. It must be for a lawful consideration and a lawful object
- d. An agreement must not be expressly declared to be void.

■ **Executed contracts:** ‘Executed’ means that which is done. An executed contract is one in which both the parties have performed their respective obligations.

Executory contract: ‘Executory’ means that which remains to be carried into effect. An executory contract is one which both the parties have yet to perform their obligations.

Essential elements of a contract:

- a. Proposal and acceptance: one person shall signify or make a proposal or offer to the other with a view to obtaining the acceptance of that another person to whom the offer is made. A proposal when accepted becomes a promise.
- b. Consideration: every contract consists of two parties – i. promisor and ii. Consideration for the promise. A promise is often made in return for a promise. As a general rule, agreement without consideration is void. The promise for a promise in return is consideration. An agreement is a contract, only if it is made for a lawful consideration and with a lawful object.

- c. Capacity of parties to contract: section 11 of the Act states 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.
- d. Free consent: parties to a contract must give their free consent. The parties must be at ad-idem i.e. both the parties are said to consent when they agree upon the same thing in the same sense (sec 13).
- e. An agreement must not be expressly declared to be void: a void agreement is not enforceable by law as per sec 2(g). It does not give rise to any rights and obligations. Void agreements are not enforceable.
- f. Writing and registration: contract can be made express or implied ways. The contract must be in writing and registered, if so required.

■ Consideration [Sec 2(d)]

“When at the desire of the promisor or promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing something, such an act or abstinence or promise is called a consideration for the promise.”

When a party to an agreement promises to do something he must get “something” in return. This “something” is defined as consideration.

Essentials of a valid consideration:

1. It must move at the desire of the promisor
2. It may move by the promisee
3. It must be past, present or future
4. It need not be adequate
5. It must be real
6. It must not be illegal, immoral or opposed to public policy

Stranger to contract:

It is general rule of contract that only parties to contract can sue and be sued on that contract. This rule is known as ‘Doctrine of privity’ i.e. relationship between the parties to contract.

Exception to this rule:

1. A trust or a charge
2. Marriage settlement; partition or other family arrangements
3. Contract with agent
4. Assignment of contract

5. Estoppel – A rule of evidence whereby a person is barred from denying the truth of a fact that has already been settled.

Contract without consideration is void.

Exceptions to this rule are as under:

1. Love and affection
2. Compensation for voluntary service
3. Promise to pay a time – barred debt
4. Completed gift
5. Charity

No consideration – no contract

■ **Capacity to contract:** The following are the conditions for a person to enter into a contract:

- i. He must be a major
- ii. He must be of sound mind
- iii. He must not be disqualified by any other law

Disqualified persons to enter into a contract:

- a. Minor
- b. Unsound mind
- c. Other cases: alien enemy, insolvent, convict, company, corporation against MOA / AOA

MINOR: According to Indian majority Act sec (3) minor is defined as any person the age of 18 years. In the following cases a person is said to be minor if he does not complete the age of 21 years:

- a. Any person under the guardian and wards act, 1890
- b. Any person who comes under the superintendence of law/ legal representations

Rules governing minor's agreement:

- i. Rule 1: Judges are counselors
Jury is the servant
Law is the guardian
- ii. Rule 2: In case minor entered to a contract which is unlawful, illegal, immoral, he is also prosecutable and punishable under the relevant law.

Legal Rules:

- a. An agreement with minor is void – ab – initio
- b. Minor can be a promisee
- c. Minor cannot ratify his agreement on attaining the age of majority
- d. Minor as a shareholder
- e. Minor as a partner
- f. Minor as an agent
- g. Minor as a member of trade union
- h. No estoppel against minor
- i. He can plead his minority
- j. He can enter into contract for his necessity
- k. On behalf of minor his parents, guardian or any other person can enter into void contract to acquire movable property

UN SOUND PERSON:

- a. According to sec 12, a person generally sound, occasionally unsound can enter into a contract when he is of sound mind.
- b. A person generally unsound occasionally sound can enter into contract when he is of sound mind.
- c. Persons of unsound mind are also called as lunatic, idiots, drunken or intoxicated persons.

