

Law of Contracts

Parties to Contract

The parties to a contract and those receiving the benefits of the contract may be different. Similarly, parties to a contract and the party from whom the consideration moves may also be different. Let us explore the following cases and identify the parties to the contract and the persons from whom the consideration moves.

Case 1: B and C get into an agreement whereby B will transfer the ownership of his laptop to C and C will pay Rs. 25,000 to B.

Case 2: B and C get into an agreement whereby B will transfer the ownership of his laptop to A and C will pay Rs. 25,000 to B. B delivers the laptop to A but C refuses to pay B.

Case 3: B and C get into an agreement whereby A will transfer the ownership of his laptop to C and C will pay Rs. 25,000 to B.

In case 1, the consideration for B is Rs. 25,000 and for C, the ownership of the laptop. There are only two parties to the contract. In case 2, the consideration for B is Rs. 25,000 and for C, the undertaking of B to give the laptop to A. Thus, both the parties have a consideration. It is incidental that a third party is benefiting from the contract.

In case 3, the communication of offer and acceptance and thus, the agreement, is between B and C. The rights and obligations should be on B and C. In this arrangement, B has not taken any responsibility which can be enforced. For the agreement to be binding, B must undertake to transfer the ownership of the laptop to C. In other words, consideration must move from the contracting parties and not a third person. Under the common law, the agreement between B and C is not binding. The Indian Contract Act, however, has made such contracts valid. Under the definition of consideration, it can move from 'any person', so long as it is at the 'desire' of the promisor. Thus, the above is an enforceable contract in the Indian law. An example of such contracts in business practice, is a contract where a buyer pays a retailer and the goods are delivered by the distributor. The retailer and the distributor, obviously, have some arrangement among themselves.

Benefit of Consideration to a Third Party

B and C get into an agreement whereby B will deliver certain goods to C, and C will pay Rs. 1 lakh to A. B delivered the goods to C but C failed to give the money to A. A is claiming to recover Rs. 1 lakh from C. A contract is a relationship between the contracting parties. Only the contracting parties acquire rights or liabilities towards each other. In the above case, A is not a contracting party, thus, he has no rights and obligations. The parties to a contract are in communication with each other or 'privity' to each other. Thus, the concept that only the contracting parties can have rights and obligations to each other is referred to as 'privity of contract'. Other persons are third parties or strangers to the contract.

The founding case on privity of contract is *Tweddle v. Atkinson*.¹ William Tweddle agreed to marry Miss Guy. Their fathers entered into a contract under which each promised to pay William, £100 after the wedding. William and Miss Guy got married. However, Mr. Guy died before paying the money. William was claiming the money from the executors of Mr. Guy's property. The court held that William could not claim the money since he was not a party to the contract. The court noted:

... it is now well established that at law, no stranger to the consideration can take advantage of the contract though made for his benefit. If it were, otherwise, a child might sue his own father in such a case as this.

Let us explore a case where A, B and C get into an agreement under which B will deliver certain goods to C, and C will pay Rs. 1 lakh to A. B delivered the goods to C but C failed to give the money to A. A is claiming to recover Rs. 1 lakh from C. In this case, A has privity of contract with C. However, no consideration has moved from A. Thus, A is a party to an agreement but the part of the agreement relating to A is not enforceable as it is not supported by consideration. The common law courts did not enforce agreements where consideration did not move from the person claiming rights under the agreement. In the *Tweddle v. Atkinson* case, the court stated the principle 'the consideration must move from the party entitled to sue upon the contract'. *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.* is another landmark judgement on consideration.

Court Case: *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.*

The case involves three parties, Dunlop Pneumatic Tyre Co. Ltd., Selfridge & Co. Ltd. and Dew & Co.² We will refer to them as Dunlop, Selfridge and Dew. Dunlop was the manufacturer of motor tyres and Dew was a dealer in motor accessories. Dunlop had a scheduled price for its products. It sold tyres to Dew at a discount of 10%. Dew could sell the tyres to the end users as well as to other retailers. Dunlop wanted to ensure that the tyres do not get sold to the consumer/last buyer at a price lower than the scheduled price.

¹ *Tweddle v. Atkinson*, (1861) 1 B & S 393.

Towards this, Dunlop had a written agreement with Dew under which Dew could not sell the tyres to customers at a price lower than the scheduled price. In the event of sale to a retailer or trade customer, Dew would take a written undertaking from that retailer or trade customer that the tyres would not be further re-sold at a price below the scheduled price. The text of the price maintenance agreement was provided by Dunlop. It stated: 'We agree to pay to the Dunlop Pneumatic Tyre Co. Ltd. the sum of £5 for each and every tyre, cover or tube sold or offered in breach of this agreement...'

Selfridge, a retailer of motor accessories, placed an order on Dew for Dunlop tyres. Dew obtained the tyres from Dunlop on the same day and delivered them with a price maintenance agreement to be signed. The agreement was signed by Selfridge. Selfridge however, sold the tyres to its customers at a price lower than the scheduled price. Dunlop moved the court to restrain Selfridge from further selling the tyres at a price lower than the scheduled price and claimed damages at the rate of £5 each for the tyres sold. The court ruled:

In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a ... right ... conferred on a stranger to a contract as a right to enforce the contract ... A second principle is that if a person with whom a contract ... has been made is to be able to enforce it, consideration must have been given by him to the promisor or to some other person at the promisor's request.

As neither of the above two requirements were fulfilled, Dunlop could not get relief from the court. The case brings out the following two principles of the common law:

1. Strangers to a contract have no rights, even if the contract is for their benefit.
2. Consideration must move from the person who is claiming rights in a contract. Consideration moving from another person is not adequate.

While the two concepts are logically consistent, these at times, lead to unfair results. For instance, even contracts made for the benefit of a particular person, give him no right to get it enforced. While framing the Indian Contract Act, 1872, one part of this difficulty was removed. The rule of privity of contract does apply in India, however, the requirement that consideration must move from a party to a contract to enable him to claim benefit is dispensed with. Section 2(d) of the Act defines consideration as:

(d) When, at the desire of the promisor, the 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 act or abstinence or promise is called a consideration for the promise:

² Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd, (1914-1915) All ER Rep 333.

Thus, under Indian law, consideration need not move from the promisee himself, it can move from ‘any person’. To illustrate the point, we could take up a case where A, B and C get into an agreement. Under the agreement, B was required to write a book for C, for which C would pay Rs. 10,000 to A. B wrote a book for C but C failed to give the money to A. A is claiming to recover Rs. 10,000 from C. In this case, A has not performed any act, but B has written the book. This is adequate consideration for A to claim benefits from C.

One of the few cases that have come before the Indian Supreme Court on the concept of privity, is the *M. C. Chacko v. State Bank of Travancore*. The Supreme Court, in its judgement, reiterated the principles established by the British courts:³

It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions, enforce the terms of the contract ... Under the English Common Law only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract ...

The doctrine of privity of contract is logical and consistent with the overall framework of agreements formed between parties. If it were, otherwise, anyone could interfere in contracts between two parties, to their inconvenience and detriment. At the same time, in the changed business context however, the doctrine of privity of contract leads to erroneous consequences. Let us consider the following illustrations:

1. M is a manufacturer, supplying its goods to a distributor, D, who in turn, sells them to a wholesaler, W. The wholesaler sells it to a retailer, R who sells an article to a buyer, B. The goods bought by B have a manufacturing defect. In such a situation, B can seek no remedy from the manufacturer M, even if it is clear that there is a manufacturing defect. B has privity of contract only with R. He can seek remedy only from R. R, in turn, can seek remedy from W, and W from D and D from M.
2. A husband, H, buys a hot water bottle from a chemist, C. The hot water bottle is made of poor quality material. In the course of its use by H's wife, W, the hot water bottle bursts, injuring her. W has no remedy from C, leave alone from the manufacturer of the bottle, as she has no privity of contract with C. In fact, she has no remedy. In view of this shortcoming, in 1986, the Consumer Protection Act carved out some remedies for consumers who are not party to a contract.
3. S receives a cheque from a person towards the payment for some goods supplied. The service provided by the bank on which the cheque is drawn, in encashing the cheque, is deficient and inadequate. S has no claims against the bank as he has no privity of contract with the bank. It is the account holder who has a contractual relationship with the bank.

Thus, while the doctrine of privity of contract has a sound foundation, in the context of consumerism and changed business practices, it can lead to undesirable consequences. Some of its shortcomings have been remedied through enactments. The Consumer Protection Act, 1986, is one such attempt. We will be taking it up for study later.

Trust and Privity of Contract

An exception to the doctrine of privity is the case of a beneficiary to a trust. Let us first understand the concept of a trust. The legal foundations of trusts are as old as those of contracts. Trusts are literally, about trust, that is, one person trusting another with something valuable. As human society is based on people co-operating with each other, entrusting must have had application since antiquity. The earliest literature on trust law dates back to Medieval Europe. If the owner of a land had to go away for some time, say for a crusade, he would transfer the land to a friend, for the benefit of his family. At times, dispute arose about the promise not being kept or the land not being administered adequately. In such cases, law only recognised the right of ownership of the person to whom the land was transferred. The family was not considered to have any right on the land. In other words, the family had no rights if the person ignored his promise and used the land for his own benefit.

Gradually, however, the evolution of law took care of this anomaly. The right of the family to demand that the person keeps his promise came to be recognised. The law became clear on the point that the ownership had indeed been transferred to the person. However, he could not use it for his own benefit. He had to use it for the benefit of the family members. Thus, the arrangement which came to evolve was that X, the owner of a property, became a settler by transferring the ownership of his land to Y, for the benefit of A and B. Thus, Y became the trustee, and A and B, the beneficiaries of the trust-property. The beneficiaries, A and B, came to have a right to enforce management of the property, by the trustee, according to the promise, and cautiously and judiciously, for their benefit. The idea of trusts later branched out into two specific forms, public trusts and private trusts. In a private trust, the beneficiaries are identifiable and specific, while in a public trust, the beneficiaries are not specific but general. In India, the Indian Trust Act, 1882, came to provide on the formation of private trusts and the rights of the beneficiaries.

Let us take an illustration. F transfers the ownership of a house to his friend, T, to manage and rent out. The benefit from the managing of the house has to go to F's son, S, for his education. S is not privy to the agreement between F and T. But as he is a beneficiary of a trust, he has a right to make claims on T. In the above case, F had created a trust in express terms. At other times, a relationship of trust can be implied. For example, a person gives old clothes to a volunteer for famine relief. The volunteer is under an implied relationship of trust to use these clothes only for the victims. He cannot appropriate them for his own

³ M. C. Chacko v. State Bank of Travancore, Trivandrum, AIR 1970 SC 504.

benefit. Trusts that are created by the implied conduct of parties are called constructive trusts. In several business relations, constructive trusts are created. One of the few cases on this theme is the *Klaus Mittelbachert v. East India Hotels Ltd.*

Court Case: Klaus Mittelbachert v. East India Hotels Ltd

Klaus Mittelbachert, a co-pilot in Lufthansa, brought a plane into Delhi.⁴ During the intervening period between his flights, he checked into the Hotel Oberoi Intercontinental. He visited the swimming pool of the hotel. While diving from the diving board, he met with an accident. He hit his head on the bottom of the swimming pool. He was taken out bleeding from the right ear and appearing to have been paralysed in the arms and the legs. Klaus filed a case against the hotel claiming damages for defective and negligent positioning of the diving board, which led to the accident. The hotel room was booked by Lufthansa, not Klaus. Thus, there was no privity of contract between Klaus and the hotel. The Delhi High Court noted:

The doctrine of privity of contract is subject to many exceptions, one of them being that a beneficiary can sue on a contract for enforcement of the benefit intended to confer on him by the contract. ... The contract for stay in the Hotel was between Lufthansa and the Hotel, entitling the crew of Lufthansa to stay as guest in the hotel. The beneficiaries are those who would stay and hence, the contract was for their benefit. Consequent to the breach of the contract, those who stay in the Hotel would be entitled to sue. Any other view of the law would create an anomaly. Those who are staying in the Hotel would not be entitled to sue because they were not parties to the contract. Lufthansa would not be entitled to sue as it has not suffered any injury. A view of the law creating such an anomalous situation cannot be sustained.

A trust usually involves a transfer of property and the benefit flowing from that property. In this case, while Klaus was a beneficiary of the contract, there was no transfer of property from Lufthansa to the hotel. Unless one constructs it broadly so as to infer that Lufthansa had a general arrangement to give money to the hotel for the benefit of its crew. The judgement brings out the inclination of the court to ignore the privity rule if the contract is specifically for the benefit of a person. The Supreme Court, in *M C Chacko v. State Bank of Travancore, Trivandrum*, summarised the position:

It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract.

⁴ Klaus Mittelbachert v. East India Hotels Ltd., AIR 1997 Delhi 201.

Summary

1. Only the contracting parties have rights and obligations towards one another. All others are strangers and can claim no rights and have no obligations.

Cases for Further Exploration

1. Reynold Ltd. imported electric irons made by Pinox Ltd., from UK, and sold these under the Pinox brand name. The electric irons were being sold to customers through a network of retailers. Baman bought an electric iron from one of the retailers, Ashok Electricals. While Baman was using it for the very first time, there was a spark and fire from the iron. Baman sustained injuries. His medical treatment cost him Rs. 12,000. Baman is claiming damages from Pinox Ltd.
2. Vimal bought a television set from Akash Electronics. The television set was manufactured by a reputed company based in Bangalore. The set turned out to have a manufacturing defect. Can Vimal claim damages from the manufacturing company?

Mc
Graw
Hill

Capacity to Contract

In the previous chapters, we have learnt that the claims for enforcement of an agreement arise only if it has consideration. However, all agreements, even if they have consideration, are not enforceable. One of the reasons for this can be that the parties are not competent to get into a contract. Let us explore the following contract.

Case: Sale by a Minor

It was only for five minutes that Raman had left his shop to his eight-year-old son, Deepak. Deepak always imagined that he was grown up enough to do all that his father did. A customer came up to the shop and asked the boy, “Could I have that electric iron.” The boy had seen his father sell things for Rs. 10. He thought Rs. 20 would be a good value for the iron. He asked for Rs. 20 for the iron. The customer paid the money and was about to leave when Raman came back. Raman attempted to intervene by asking the buyer to either pay Rs. 300 for the iron or return it. The customer pointed to the sign on the shop which said: ‘Goods once sold will not be returned’ and insisted on taking the iron away.

In the above communication, the basic elements of an offer and acceptance, leading to an agreement between the boy and the customer, are present. However, there can be questions about the validity of the agreement. A young person is not mature enough to fully understand the world around him. He neither understands the meaning of, nor the consequences of any agreement that he forms. Due to his tender age, he does not have the experiential and intellectual capacity to form agreements. Thus, agreements where one party is a minor should not be enforced. And as a minor is not capable of getting into an agreement, a contract never gets formed. Such agreements are called void agreements. Void stands for vacuum or nullity. Thus, a void agreement represents an agreement that never got formed.

The same is true for a person who is of unsound mind. A person of unsound mind does not understand the meaning and/or the consequences of an agreement.

Section 11 of the Contract Act, thus, stipulates that:

11. Who are competent to contract: 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.

Section 12 elaborates the meaning of a person of 'sound mind'.

12. What is a sound mind for the purposes of contracting: A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

In the area of business, a party claiming to be of unsound mind happens rarely. At times, a party to a contract might petition to get an agreement declared void on the grounds of the party being of unsound mind. A person may be of 'sound mind' due to a variety of factors affecting his mental health. From the point of view of law, the key guide while deciding such cases is whether the person, at the time of the formation of the contract, was capable of understanding the effect of the contract or not.

We will, however, take up the issue of a contract with a minor being void for further exploration. When does a person become of age so as to be able to understand the meaning and consequences of his actions? The law has fixed this age through the Indian Majority Act, 1875, at 18 years. A person below the age of 18 years is a minor. Thus, on turning 18, a person becomes capable of getting into a contract. It is for this reason that all standard forms for opening bank accounts, getting cell phones and credit cards, or opening email accounts have a stipulation that the person should be of 18 years of age. The law that a minor cannot get into a contract till the age of 18 years is of relevance for business. India, with its population distribution weighted towards the younger side, has a large population of minors. This group is also the target for several advertisements and marketing activities as potential customers of goods and services. How does a minor then become a consumer or a customer in the legal arrangement?

Minor and Ownership of Property

In some arrangements, the contractual relationship is between the guardian of the minor and the business entity. For example, in the case of schooling of a child, the contractual relationship would be between the school and the guardian. The minor would be a beneficiary of the contract. The same would hold true in cases where a minor avails the services of health, transportation and entertainment. Some situations might involve a property or interest of the minor. A minor may inherit a property or get it as a gift. As a minor is not capable of contracting, he cannot utilise the property. In such cases, the guardian holds the property in trust for the minor. Let us first understand the relationship of trust.

In a trust, A contracts with B, whereby he transfers the ownership of a property to B. The requirement of the contract is that the property be utilised for the benefit of C. A is called the settler, B, the trustee and C, the beneficiary. Such relationships of trust are governed by the Indian Trust Act, 1882. The Act requires the trustee to act with prudence and caution and preserve the capital. It is only the benefit earned on the capital which is to be passed on to the beneficiary. In an arrangement of a minor and his guardian, the guardian becomes the owner of the minor's property and he manages it as a trustee. For example, when a bank account is opened for a minor, all the money deposited in the account, even if contributed by the guardian, passes from the guardian and re-vests in him as a trustee. The guardian can withdraw the money only for the benefit of the minor. When the minor attains maturity, the property would pass on to him.

Minor and Restoration of Benefit

We, however, see minors freely availing several goods and services on their own account. School-going children take the public bus transport and railways for getting around in the cities. College-going minors buy food in cafeterias, visit cinema theatres, travel by trains and buses, and shop for clothes and books. How is it that they are contracting when they do not have the capacity to contract? The contract law does not insist that no one can get into a relationship of exchange with minors. It only states that as minors do not have the capacity to get into a contractual relationship, an agreement entered into with them would not be enforceable. That is, in the case of a breach of such a contract, the parties would not have a remedy for the enforcement of the contract. In practice, if minors could not get into exchanges, it would be extremely inconvenient for their guardians as they would have to accompany them everywhere. Let us explore the approach of the law in case of a problem arising in an agreement with a minor.

Case: Loss to Minor

Dev was 17 years old. He bought a ticket for a music performance for Rs. 100. The terms on the ticket indicated that if the show got cancelled, the organisers would refund the full value of the ticket and give an additional compensation of Rs. 25. The performance got cancelled as the artists could not reach the city. Dev demanded a refund as well as the damages of Rs. 25. The organisers, however, claimed that Dev being a minor, no enforceable agreement existed between the parties, and so, they were not obliged to give him either the refund or the damages. In this case, as Dev was a minor, he had no capacity to enter into a contract. Thus, the terms of the contract are not operative and the organisers should not be required to give him the damages of Rs. 25. However, justice requires that the organisers refund the ticket price of Rs. 100. If there was never any contract between the parties, then the organisers have Rs. 100 that belong to Dev. This amount should be returned to him. Consider another case.

Case: Restoration of Benefit

Sushman is a 16-year-old boy. He has a computer, which he rents to Rahul for 10 days, with daily rental charges of Rs. 100. After using the computer for ten days, Rahul declares that as Sushman is a minor, there is no contract between Sushman and him. Rahul is refusing to give back the computer and the rental of Rs. 1,000. Rahul is not the owner of the computer; thus, justice demands that he must restore it to Sushman. Again, our sense of justice would insist that Rahul, having benefited from the use of the computer, should give Rs. 1,000 to Sushman. However, this would effectively amount to enforcing the agreement as a valid contract. Let us take up the following case where a minor benefits from a contract.

Case: Gaining Advantage

Akash is 16 years of age. He pretended to be a major and bought a portable CD player from a shop on credit. Having got the possession of the CD player, he refused to pay the money for the CD player. His claim is that he is a minor and thus, the contract is not enforceable against him. In this case, the minor is taking advantage of his age. The benefit is not just and he should be made to restore the CD player to the seller. The principle is that one should restore things and benefits to their rightful owner. This is known as the principle of restitution. Let us consider a variation of the above case. Akash having taken the CD player, proceeded to sell it. Thus, he does not have the CD player with him anymore. Should Akash be made to pay for the CD player? One perspective could be that since Akash has benefited illegitimately at the expense of the shop owner, he should be made to pay the price of the CD player. This would be doing justice to the shop owner. However, if we were to do this, it would amount to enforcing an agreement with a minor, which is not authorised by law.

Thus, the settled law is that agreements with minors are not enforceable and yet the courts, during the development of the law, while giving justice on the principles of equity, were getting close to breaching the principle. This gave rise to several court judgements from the British and Indian courts in the first half of 1900, elaborating the theme. The settled position on the question is now incorporated in the Specific Relief Act, 1963. We should know that the Specific Relief Act has a much wider application than contracts, leave alone the question of minors. In relation to a minor, Section 33(2)(b) provides the following:

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, (9 of 1872) the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

Thus, if a minor takes the plea of minority in fulfilling contractual obligations, the court would accept it and hold the contract unenforceable. However, it would restore the benefits to the other party.

Summary

1. Minors do not have the capacity to get into a contract. Thus, contracts formed with minors are void and unenforceable. The courts, however, in deciding on cases involving minors, give protection to the minors.



Void Contracts

Chandan and Yaksh get into a contract to carry out a theft and to share the loot. After a successful operation, they get into a dispute among themselves on how to share the loot. Chandan claims that it was agreed that he would get 60% of the loot while Yaksh is insisting that they share it equally. Chandan is claiming his rights under the contract.

1. What is wrong with this contract?
2. What remedy should the courts provide Chandan?

The very purpose of the State is to regulate society by specifying what individuals can do and what they must not do. The State enforces this by commanding obedience and penalising the violators. Therefore, leave aside implementing such contracts, the State would penalise the parties for infringing the law. The State would certainly not respect the interests of the parties to such contracts. In the first place, the parties should not have done an illegal act. Having done so, how can they come before the courts and ask for justice? Thus, contracts which detract from the law should not be enforced. There are, however, different aspects to a contract detracting from the law. In the above case, the object of the contract was to do an act prohibited by the law. Thus, the object of the contract itself was illegal. Let us take up the following two contracts to explore other ways in which illegality can taint a contract.

Ajay goes into a shop to buy a mobile phone. The shopkeeper tells him that he has two kinds of mobile phones. He offers genuine mobile phones for Rs. 1,800. However, he also has stolen mobile phones which he could sell for as little as Rs. 500. Ajay says, “No thank you. I would never buy a stolen one. Give me a proper one.” Another customer, Druv, who overhears the conversation, says to the shopkeeper, “Give me a stolen one.” Both the customers formed a contract with the shopkeeper.

The object of the contract in both the cases is the sale of a mobile phone. The object of the contract, on its own, is not illegal. However, the consideration in the second case, where Druv buys a stolen mobile phone, is tainted with illegality. Would the court enforce this contract? The answer is no. The consideration being illegal, the contract is tainted with illegality. The court would not enforce it. The courts have for long, thus, stated the principle:

It is an established principle, that the court will not lend its aid in order to enforce a contract entered into with a view of carrying into effect anything which is prohibited by law.

The question, therefore, is what all is prohibited by the law. At times, law prohibits an activity altogether. At other times, law only provides that a contract will be void or unenforceable. We also have to judge whether the part of the contract tainted with illegality brings down the whole contract or only a part of it. For example, the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Packaging Commodities) Rules, 1977, provide that no wholesaler or retailer will sell a packaged commodity at a price higher than the declared price on the package. A contract to sell at a higher price is prohibited by the law. However, this only makes the object of charging a higher price illegal. The rest of the contract stands. Performance at the declared price would be enforced.

A contracted to buy goods from B. B delivered stolen goods. The contract between A and B is not illegal. It is the execution of the contract by B which has the element of illegality. B should be bound by the contract to supply goods that are not stolen. To summarise, contracts tainted with illegality or contrary to law are not enforced. However, we need to discern as to what the law prohibits. Further, illegality of a contract needs to be distinguished from an illegality coming in at the time of execution of the contract. The India Contract Act expounds the above principles in Section 23.

23. What considerations and objects are lawful and what not.- The consideration or object of an agreement is lawful, unless-

- it is forbidden by law; or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the Court regards it as immoral or opposed to public policy.

The section further declares:

Every agreement of which the object or consideration is unlawful is void.

The consideration or object of an agreement is unlawful if 'it is forbidden by law' or 'if permitted, it would defeat the provisions of any law.' In addition, the courts have the latitude to strike down contracts that are immoral or opposed to public policy. The following Supreme Court cases will illustrate the working of the provision.

Court Case: M. G. Brothers Lorry Service v. M/s Prasad Textiles

M/s. M. G. Brothers Lorry Service, a transport company, had the following terms of contract with the persons availing its service:¹

'No suit shall lie against the firm in respect of any consignment without a claim made in writing in that behalf and preferred within thirty days from the date of booking or from the date of arrival at the destination by the party concerned.'

The above was listed as Condition 15 in the Way Bill, which was given at the time of booking a consignment, with the company. The lorry service was carrying a consignment for M/s Prasad Textiles. It failed to deliver the consignment as the goods got destroyed in a cyclone. M/s Prasad Textiles did not move its claim within 30 days. Section 10 of the Carriers Act, 1865, however, provides as follows:

No suit shall be instituted against a common carrier for the loss of, or injury to goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

The transport company claimed that the terms of the contract had extinguished the rights of the consignee. On the other hand, the consignee claimed that they had a right to move the court under the Carrier Act, 1865. The Supreme Court noted:

Section 23 of the *Indian Contract Act* provides that the consideration or object of agreement was lawful, unless, inter alia, it was of such a nature, that, if permitted, would defeat the provisions of any law. In the instant case, it appears to us that if Condition 15 be permitted then it will defeat the provisions of Section 10 of the Carriers Act, even in a case notice, in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff. Even in a case where the plaintiff was unaware of the arrival of the goods at the destination or was unaware of a loss or damage, the plaintiff would not have any right to institute a suit if no claim was made and could not have been made within 30 days as stipulated in Condition 15 of the Way Bill. In that view of the matter, we are of the opinion that Condition 15 must be held to be void in view of Section 23 of the Indian Contract Act because its object was to defeat the provisions of Section 10 of the Carriers Act. This conclusion, in our opinion, follows from the construction of the section and Condition 15 of the Way Bill.

Court Case: Brij Mohan Parihar v. M. P. State Road Transport Corporation

Brij Mohan Parihar, who was an unemployed graduate, entered into an agreement with the Madhya Pradesh Road Transport Corporation (Corporation) to ply his bus as a nominee on the route Gwalior to Chinor via Dabra, for a period of five years ending on December 23, 1982.² The permit for the route was issued under the Motor Vehicles Act, 1939 to the Corporation. The permit of the Corporation was to expire on

¹ M.G. Brothers Lorry Service v. M/s. Prasad Textiles, AIR 1984 SC 15.

² Brij Mohan Parihar v. M.P. State Road Transport Corporation, AIR 1987 SC 29.

December 23, 1982. The Corporation applied for the renewal of its permit but since this took time for finalisation, it was issued temporary permits from time to time. Correspondingly, Mr. Parihar was permitted to ply his bus on a monthly basis during that period. Under the agreement, Mr. Parihar was liable to pay to the corporation, a nomination fees or supervision charges and additional taxes.

On August 12, 1984, the Corporation invited tenders from private operators for running buses as stage carriages as nominees of the Corporation. Mr. Parihar was aggrieved by the advertisement as this would take away his business of plying on the route. The Supreme Court appraised the contract between Mr. Parihar and the Corporation and referring to the provisions of the Motor Vehicles Act, noted:

The provisions of the Act and in particular, Sections 42 and 59 clearly debar all holders of permits, including the Corporation, from indulging in such unauthorised trafficking in permits. The agreement entered into by the petitioner with the Corporation is clearly contrary to the Act and cannot, therefore, be enforced. ... It follows that the advertisement issued by the Corporation is equally ineffective. The position would not be different even where the permit is issued in favour of the Corporation under Chapter IV of the Act. If the Corporation cannot run its vehicle under a permit issued to it, it must surrender it so that the Regional Transport Authority may grant the permit to some other deserving applicant or it must transfer it to somebody else with the permission of the Regional Transport Authority granted under Section 59 of the Act. It cannot, however, allow the permit to be used by somebody else to run his vehicle either for consideration or without consideration. If it does so, it would be exercising the power of the Regional Transport Authority. The Corporation cannot thus, indirectly clutch at the jurisdiction of the Regional Transport Authority. It is hoped that the Corporation will desist from entering into such agreements with third parties, which are wholly illegal and from continuing to allow them to run their vehicles as its nominees.

Court Case: B.O.I. Finance Ltd. v. Custodian

Some banks used to enter into contracts with different brokers for the purchase and sale of certain securities that were not listed on any stock exchange.³ The transaction consisted of two inter-connected legs. The first or the ready leg, consisted of the sale of securities at a specified price. The securities were sold and their price realised. The second or forward leg consisted of a sale-back of the same securities, to the banks at a later date, at a price determined on the first date. The government issued a notification under the Securities Contracts (Regulation) Act, prohibiting such forward contracts, that is, sale at a future date at a fixed price. It expressly permitted sale of securities by spot delivery, or the first leg of the transaction. The dispute in the case was about whether the entire agreement would become void or the two transactions could be severed. To appraise the case, we would need to note Section 57 of the Contract Act. It provides:

57. Reciprocal promise to do things legal, and also other things illegal.- Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

³ B. O. I. Finance Ltd. v. Custodian, AIR 1997 SC 1952.

The Supreme Court ruled:

Section 57 applies to cases where two sets of promises are distinct. When the void part of an agreement can be properly separated from the latter does not become invalid. The ready-forward transaction consists of two parts. In the ready leg, there is a purchase or sale of securities at a stated price, which is executed on payment of consideration for the spot delivery of the security certificates together with transfer forms. The full and absolute ownership of the title in securities vests in the purchaser, the entire property in the security passing immediately upon such delivery and payment. The seller is divested of all the rights, title and interests in the said securities. The forward leg is to be performed at a later date on the stated price being paid. The securities are to be delivered back when the title in interest therein would pass to the original seller. It is clear that such a ready - forward transaction consists of a set of reciprocal promises. The first set of promises was fully executed, but the second set remained executory. Section 57 of the Contract Act would thus be attracted to the present case, the effect of which would be that the first set of promises would constitute a binding contract but the second or the forward leg would be void and unenforceable. Neither the object, nor the consideration of the ready leg is illegal, unlawful or prohibited under Section 23 of the Contract Act. The forward leg is neither the consideration nor the object for entering into the ready leg. At best, it may be that the forward leg provided the parties with the motive for entering into the contract, but that would not affect the severability of the forward leg, which alone is declared illegal under the Securities Control Regulation Act. ...

... It is only the future sale or the re-sale of the securities at a later date which the notification did not permit. This latter part of the agreement could not have been entered into and is clearly severable and cannot affect the transfer of the title which had already taken place at the time of the execution of the ready leg. ...

Besides illegality, there are further grounds on which a contract can become void. Contracts that restrain legal proceedings are also void. This is understandable. It is the duty of the State and courts to give justice. A party taking away the right of an individual to go to a court is usurping the powers and role of the State. It is understandable that a contract of this nature should not be enforced. Section 28 provides:

28. Agreements in restraint of legal proceedings void- Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

The section, however, exempts arbitration proceedings. 'Arbitration' is a means by which contracting parties agree to submit their disputes to some other person(s) rather than to a court. This is mutually beneficial to the parties. Court proceedings can be expensive and time-consuming. The interest of the contracting parties often, however, is to get on with their agreement by quickly resolving any dispute. Further, as court proceedings are open, they make the terms of the dealings of the parties public. Both the contracting parties may not be interested in making their terms public. Thus, for long, contracting parties have found arbitration effective and useful. Considering this, Section 28 has exempted arbitration and the State has made enactments on arbitration to facilitate and govern it. The exemption reads:

Exception 1: This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Section 30 makes wager agreements void. It provides:

30. Agreements by way of wager void- Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Specialised Acts dealing with lotteries or forward trading, modify the application of the section or build upon it. Section 26 makes agreements in restraint of marriage void. It provides:

26. Agreement in restraint of marriage void- Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreements in ‘restraint of trade’ are also void:

Section 27. Agreement in restraint of trade void- Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 2 One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits; so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, with regard to the nature of the business.

The wording of the provision appears harsh and sweeping. Binding and restraining others is the very essence of contracts. Thus, every contract would become void under Section 27. The courts, however, have interpreted the essence of Section 27 so as to distinguish between contracts which foster, from those which restrain. The genesis of the provision, in common law, is in the general sense of justice and equity, under which a person should not be deprived of his occupation, trade, or profession, the very means through which a person exists in the physical and social sense.

Summary

1. Void agreements are those agreements that are deemed to have not come into existence at all. These are not enforceable.
2. Contracts whose objects or consideration are unlawful are void.
3. Contracts in restraint of legal proceedings are void.

Voidable Contracts

Terms of a contract are the conditions that two or more parties have offered, accepted and thus agreed to. The parties may achieve the object of the contract. However, there may be a problem with the very process of formation of the agreement. Let us explore this theme with the following case.

Case: False Representation

Vijay wanted to buy a washing machine from a store and was exploring the options available. He had shortlisted three brands. In relation to one particular brand, the storekeeper said, “This is the most selling brand in India. I sell 20 of these machines every day and nobody has ever come back to me with a complaint.” Vijay went ahead and bought a machine of that brand. Now, Vijay is not very happy with the purchase. The machine works fine and is according to the description. But another brand was just as good and Rs. 3,000 cheaper.

Let us consider some variations of the above theme. One, the representation by the shopkeeper is correct. Thus, it is not a case of misrepresentation. Vijay has no remedy. Two, the brand is not the most selling brand. The statement by the storekeeper was a misrepresentation. Three, the storekeeper did not himself make the statement. However, on top of the washing machine, the store had put up a sign that read, ‘most selling washing machine in India’. The information was not correct. As we have seen earlier, communication can be secured through written words, spoken words, visuals or actions and gestures. The emphasis is on the communication being secured and not on its modality. Thus, misrepresentation can be done through any modality. If it were not for this communication, Vijay would not have bought it.

That the machine was the largest selling brand in India was not a term of the contract. The terms of the contract related to the specific brand and model of the machine for a price. Terms of a contract refer to only those conditions that the parties have offered, accepted and thus agreed to. The conclusion of an agreement could be preceded by other communications between the parties, which are not about the terms of the contract. ‘Representation’ is another word for ‘expression’ or ‘communication’. A particular representation could play a significant role in inducing the other party to get into a contract. If it were not for that representation, the party would not have got into the contract. When such a representation is incorrect, it becomes a ‘misrepresentation’. In situation 2, there was misrepresentation. As situation 3 brings out, misrepresentation, like any other communication, can be express or implied. Let us explore the following questions.

Vijay, though he has been a target of a misrepresentation, wants to go ahead with the agreement. Should he be allowed to go ahead with the agreement? Vijay does not want to go ahead with the agreement. Should he be allowed to set aside the agreement? The answer in both the cases is in favour of Vijay. If it were not for the representation, Vijay would not have got into the agreement. Thus, he should have the remedy of setting it aside. The contract is not void. It is a valid contract if Vijay does not object to it. At the same time, the contract can be turned into nullity at the option of the suffering party. As a result, such contracts are called voidable contracts, that is, they can remain valid or become void as per the choice of the suffering party.

In addition to misrepresentation, a contract can become voidable when the consent of an innocent party is obtained through fraud, coercion or undue influence. 'Fraud' is a specific form of misrepresentation. When misrepresentation is intentionally done to deceive a person so as to get into a contract, it is called fraud. We can now note the provisions on voidable contracts in the Indian Contract Act. Section 19 declares:

19. Voidability of agreements without free consent.- When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Section 15 defines coercion:

15. Coercion defined.- "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

An interesting case of coercion came up which explored the issue of whether some impositions of the law could be held as coercion under Section 15, to make a contract voidable.

Court Case: S. S. Sakhar Karkhana Ltd. v. C. I.T., Kolhapur

The Sugar Co-operative Societies of Maharashtra are governed by the provisions of the Maharashtra Co-operative Societies Act, 1960.¹ Its members are predominantly sugarcane farmers. Under the law, co-operatives have to compulsorily take deposits from its farmer members. The question that arose was about whether this was coercion and a ground for making the contract voidable. The Supreme Court ruled:

It has been pointed out that the member had no option but to agree for deduction on pre-ordained terms and there could not be in law, a contract creating deposit. This contention, however, does not appeal to us. A person by becoming the member of a Co-operative Society, volunteers to abide by the bye-laws of the Society, the real object of which is to provide for internal management of the

¹ S. S. Sakhar Karkhana Ltd. v. C. I.T., Kolhapur, AIR 2004 SC 4716.

Society, including rendering assistance to the members. There is an authority for the proposition that the bye-laws of the Co-operative Society constitute a contract between the Society represented by its managing body and its constituents. ... the mere fact that the contract has to be entered into in conformity with and subject to restrictions imposed by law does not per se impinge on the consensual element in the contract. "Compulsion of law is not coercion" and despite such compulsion, "in the eye of law, the agreement is freely made", as pointed out in *Andhra Sugars Ltd. v. State of A.P.* [AIR 1968 SC 599].

Undue Influence

Section 16 defines undue influence:

16. Undue influence defined.- (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

The section carries the following illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

The Supreme Court has thus commented on the section:²

The doctrine of undue influence under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence, spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance, obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English common law. The first sub-section of Section 16 lays down the

principle in general terms. By sub-section (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a person who has obtained an advantage over another by dominating his will may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.

A transaction may be vitiated on account of undue influence where the relations between the parties are such that one of them is in a position to dominate the will of the other and he uses his position to obtain an unfair advantage over the other. It is manifest that both the conditions have ordinarily to be established by the person seeking to avoid the transaction: he has to prove that the other party to a transaction was in a position to dominate his will and that the other party had obtained an unfair advantage by using that position. Clause (2) lays down a special presumption that a person is deemed to be in a position to dominate the will of another where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other or where he enters into a transaction with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. Where it is proved that a person is in a position to dominate the will of another (such proof being furnished either by evidence or by the presumption arising under sub-section (2)) and he enters into a transaction with that other person which on the face of it or on the evidence adduced, appears to be unconscionable, the burden of proving that the transaction was not induced by undue influence lies upon the person in a position to dominate the will of the other. But sub-section (3) has manifestly a limited application: the presumption will only arise if it is established by evidence that the party who had obtained the benefit of a transaction was in a position to dominate the will of the other and that the transaction is shown to be unconscionable. If either of these two conditions is not fulfilled, the presumption of undue influence will not arise and burden will not shift.

The Supreme Court has noted the likely cases where undue influence could arise:³

Generally speaking, the relations of solicitor and client, trustee and cestui que trust, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises.

Section 17 of the Contract Act defines fraud:

17. Fraud defined- "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that with regard to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

The section carries the following illustrations:

² Ladli Prashad Jaiswal v. Karnal Distillery Co. Ltd., AIR 1963 SC 1279.

³ M. Rangasamy v. Rengammal, AIR 2003 SC 3120.

- (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c) B says to A - "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.
- (d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Section 18 defines misrepresentation:

- 18. Misrepresentation defined.**- "Misrepresentation" means and includes-(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
 - (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Fraud and misrepresentation are similar since both are founded on false representation. Fraud is an intentional act while a misrepresentation can be innocent. In the case of misrepresentation, it can be asserted that the party petitioning to get the contract declared void, could have 'discovered the truth with ordinary diligence'. On the other hand, in the case of a fraud, the defence that the fraud could have been readily discovered is not available.

Remedy for Setting Aside Contracts

Both the parties to a contract are bound by it and must continue to perform their parts. In the case of a voidable contract, however, the innocent party can set aside the contract. Setting aside a voidable contract is called 'rescinding' a contract or 'rescission of a contract'. The innocent party needs to choose between the two options available to him, that is, whether to continue with the contract or avoid it. As a contract involves two parties, a selection in his own mind is of no consequence. It must be communicated to the other person. Till then, both the parties can work on the assumption that the contract is valid. Section 66 makes it clear that the communication to set aside the contract can be express or implied.

- 66. Mode of communicating or revoking rescission of voidable contract.**- The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

The innocent party, in addition to being freed from the obligations of the contract, can claim compensation for damages. Section 75 provides:

75. Party rightfully rescinding contract entitled to compensation.- A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

At the same time, it is a general principle that no one should get undue benefit from another. Section 64 provides this principle:

64. Consequences of rescission of voidable contract.- When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Let us review some courts cases on voidable contracts.

Court Case: Mithoolal Nayak v. Life Insurance Corporation of India

Mr. Mahajan Deolal took out a policy with an insurance company, which was later nationalised and taken over by the Life Insurance Corporation of India (LIC). Despite having undergone treatment by a doctor for serious ailments just a few years back, he made a false statement in the policy to the effect that he had not been treated by any doctor.⁴ The Supreme Court noted:

Mahajan Deolal must have known that it was material to disclose this fact to the respondent company. In his answers to the questions put to him, he not only failed to disclose what it was material for him to disclose, but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailment as anaemia or shortness of breath or asthma. In other words, there was a deliberate suppression, fraudulently made by Mahajan Deolal. Fraud, according to Section 17 of the Indian Contract Act, 1872 (IX of 1872), means and includes inter alia, any of the following acts committed by a party to a contract, with intent to deceive another party or to induce him to enter into a contract-

- (1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true; and
- (2) the active concealment of a fact by one having knowledge or belief of the fact.

Judged by the standard laid down in Section 17, Mahajan Deolal was clearly guilty of a fraudulent suppression of material facts when he made his statements on July 16, 1944, statements which he must have known were deliberately false.

Section 66 provides for restitution of benefit in cases where one party rescinds a voidable contract. As the LIC was setting aside the contract, the question about whether it should pay back the premium amount came up. The Supreme Court ruled.

⁴ Mithoolal Nayak v. Life Insurance Corporation of India, AIR 1962 SC 814.

... one of the terms of the policy was that all moneys that had been paid in consequence of the policy would belong to the company if the policy was vitiated by reason of a fraudulent suppression of material facts by the insured. ... where the contract is bad on the ground of fraud, the party who has been guilty of fraud or a person who claims under him, cannot ask for a refund of the money paid. It is a well-established principle that courts will not entertain an action for money had and received, where, in order to succeed, the plaintiff has to prove his own fraud. ...

The Supreme Court, thus, held it to be a fraud.

Court Case: Delhi Development Authority v. Skipper Construction Co. (P) Ltd.

A builder had made bookings for three times the number of units actually available.⁵ The Supreme Court construed it to be a fraud under Section 17(3), as this amounted to a promise which could never be fulfilled. The Supreme Court noted:

In our view, builders are not in law, supposed to enter into agreements with more number of buyers than there are flats, unless each of the buyers in excess of the number of available units of accommodation is put on notice that his purchase will depend upon the availability of units of accommodation. Accepting booking from excess number of buyers without adequate notice to them about the contingent nature of their contracts cannot be said to be fair dealing. On top of that to say that these amounts paid by the buyer will not carry interest is wholly unconscionable. In this case, Skipper entered into a large number of bookings, nearly three times the available units of accommodation, and collected monies. This was fraudulent, as per the earlier finding of this Court dated January 15, 1995. Skipper, therefore, cannot be allowed to rely upon the term relating to 'contract to the contrary' and escape the payment of interest. Once there is fraud, the inducement for payment by the purchasers cannot be traced to the agreement.

A transaction completed before the innocent party exercises his option of turning the contract void is valid. The Supreme Court has noted:⁶

It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime, acquire rights and interests in the matter which they may enforce against the party defrauded.

The Supreme Court quoted from a British case:⁷

The fact that the contract has been induced by fraud does not make the contract void or prevent the property from passing, but merely gives the party defrauded a right on discovering the fraud to elect whether he shall continue to treat the contract as binding or disaffirm the contract and resume the property. If it can be shown that "the party defrauded" has at any time after knowledge of the fraud, either by express words or by unequivocal acts, affirmed the contract, "his" election is determined forever. The party defrauded may keep the question open so long as he does nothing to affirm the contract.

⁵ Delhi Development Authority v. Skipper Construction Co. (P) Ltd., AIR 2000 SC 573.

⁶ Ningawwa v. Byrappa Shiddappa Hireknrabar, AIR 1968 SC 956.

⁷ Clough v. L and N. W. Ry., (1871) LR 7 Ex 26.

Summary

1. Voidable contracts are those which can be set aside at the option of the suffering party to a contract.
2. Coercion, undue influence, misrepresentation and fraud make a contract voidable.



Mistake and Contracts

Formation of agreements is about meeting of minds. There may be a distinctive offer and acceptance. Yet, there may be no meeting of minds between the parties. Among other reasons, one reason due to which this could happen is that one or both of the parties could be mistaken about the agreement. The mistake could be about the identity of the contracting parties or the subject matter of the contract.

Mistake of Identity

The disputes arising out of mistake of identity have a common problem. Schematically expressed, A misrepresents to B that he is C, towards a contract for a sale of goods. B ends up giving the goods to A and awaiting the receipt of his cash consideration. A is actually a rogue and sells off the goods to X. X is a bonafide buyer. The fraud is discovered and the goods are found in possession of X. A can either not be found or has no money to pay. Now, a seller cannot transfer the ownership of goods if he does not have the ownership of it in the first place. In such cases, possession of the goods is restored to the owner. As a result, the question whether there had been a meeting of minds between A and B or not becomes important. If B intended to contract with C only, there was no meeting of minds. The goods would be restored to B. On the other hand, if B was dealing merely with the person before him, there would be deemed to have been a meeting of minds between A and B. In such a case, the goods would not be restored to B. In the above case, undoubtedly, B entered into the contract due to A's misrepresentation. B can set aside the contract. However, a contract is set aside only if it is capable of being set aside. If A has already sold the goods, the very basis of setting aside has been consumed by the sale. B can only obtain a right to be paid the money.

The theme has puzzled the courts for over more than 150 years. Business practices have changed during these years, but the problem of a rogue making misrepresentations manifests itself even in the new situation. In fact, the practice has found space to flourish due to the Internet and the practice of payment through credit cards. For example, a person enters a store and uses a stolen credit card. The question that arises then is, did the store make a valid contract with the person before them? Similarly, a person could use another person's identity or a fake identity for internet transactions. In such cases, can the contracts entered into with the impostor be held to be valid? Let us explore some cases which have come before the British courts.

Court Case: Cundy v. Lindsay

A person, A. Blenkarn, resided at 37, Wood Street, London and wrote to Lindsay & Co, linen manufacturers based in Belfast, ordering certain goods. The letter mentioned the address as 37, Wood Street, and it was signed 'A. Blenkarn & Co.' in such a way as to look like 'A. Blenkiron & Co.'. Blenkiron & Sons was a very reputed firm located at 123, Wood Street, London. Lindsay knew about the reputed firm and that it carried on its business from Wood Street, London, but they did not know the number of the premises. They entered into some correspondence with them and ultimately, supplied the goods ordered, addressing them to 'A. Blenkiron & Co., 37, Wood Street.'

The fraud was discovered and Blenkarn was convicted of obtaining goods by false pretences. Before that, however, Blenkarn had sold the goods to Cundy in the ordinary course of business. The issue before the court was whether the contract was void due to a mistake of identity or it was voidable on grounds of misrepresentation. If the contract was void, Blenkarn could not have passed the ownership in the goods to Cundy and Lindsay would have the goods restored to them. Decide.

Court Case: King's Norton Metal Company Ltd. v. Edridge, Merrett & Company Ltd.

A rogue named Wallis, got notepaper printed in the name of Hallam & Co. and, pretending to be carrying on business in that name, ordered a ton of brass rivet wire from the manufacturers, King's Norton Metal Company Ltd. The letter pad represented that he was in business in a big way, running a large factory and having several depots and agencies. King's Norton delivered the wire on credit and Wallis promptly sold it to Edridge, Merrett & Company Ltd. King's Norton Metal Company Ltd. remained unpaid and are claiming to have the goods restored to them as there was no meeting of minds between the parties. Decide.

Court Case: Phillips v. Brooks Limited

Phillips was a jeweller in Oxford Street, London. A customer entered his shop and asked to see some pearls and rings.¹ He selected some pearls at the price of £ 2550 and a ring at the price of £450. He took out a cheque book and wrote out a cheque for £ 3000. While signing it, he said, "You see who I am, I am Sir George Bullough." He then proceeded to give an address in St. James's Square. Phillips knew that there was a Sir George Bullough. He quickly checked in a directory and confirmed to his satisfaction that Sir George indeed lived at the mentioned address. Phillips said, "Would you like to take the articles with you?" The

¹ Phillips v. Brooks Limited, (1919) 2 KB 243.

customer replied, "You had better have the cheque cleared first, but I should like to take the ring as it is my wife's birthday tomorrow." Hearing this, Phillips let him have the ring.

The cheque was dishonoured. The person was not Sir George Bullough, but someone named North. He was subsequently convicted of obtaining the ring by false pretences. In the meantime, however, North had pledged the ring to Brooks Limited for £ 350, again on an assumed name - Firth. Brooks Limited had acted bonafide. The question in this case was whether or not the property had so passed to the swindler as to entitle him to give a good title to any person who gave value and acted bona fide without notice. Decide.

Court Case: Shogun Finance Ltd. v. Hudson

This is a contemporary case. The prevailing arrangement for buying a car in the UK is that the customer selects a car on display in the motor dealer's showroom.² The dealer then telephones the finance company with whom he ordinarily deals and gives them the details of the driving licence that the customer produces as proof of his identity. The finance company verifies from the electoral register, the licence-holder's name and address, and then, checks whether there are any outstanding debts registered against him. If they approve the transaction, the dealer completes the forms; the man makes a down-payment and drives off with the car.

In this case, a person went into the showrooms of Chris Varieva Ltd. in Leicester. He told the sales manager, Mr Bailey, that his name was Patel and that he wanted to buy a Mitsubishi Shogun that was on display. They agreed on a price, subject to the obtaining of hire purchase finance. The seller had an arrangement with Shogun Finance Limited. Mr. Bailey passed on the details given by the person as Durlabh Patel of 45, Mayflower Road, Leicester. The finance company checked the data base and approved the sale. The person signed the contract form of Shogun Finance Limited. The form and the driving license were faxed to the finance company. The clerk at Shogun Finance Limited compared the signatures on the faxed copies of the driving licence and the agreement form and had no reason to believe that they were different. They told the dealer that the proposal was accepted. The dealer accepted a 10 per cent deposit in cash and handed the vehicle over to the person.

The person was a rogue. He sold off the car to Mr. Hudson, who was a bonafide buyer. Thereafter, the rogue could not be traced. Under the law in UK, a sale made by a person of a vehicle in possession on hire-purchase is a valid transfer of ownership. Shogun Finance Limited maintains that there was no valid hire-purchase contract with the rogue and therefore, they continue to be the owners of the car. Their claim then, is to have the car restored to them from Mr Hudson. Decide.

² Shogun Finance Ltd. v. Hudson, (2004) 1 AC 919.

Unilateral Mistake: Subject Matter

In the previous section, we were discussing situations where one person was mistaken about the identity of the other. Another similar situation could be one where one of the parties is mistaken about the subject matter of the contract. The party is, of course, not subjectively mistaken, in the sense that he is not aware of the mistake. If he were, he would have corrected his mistake. But the other person is well aware that he is mistaken. A case on this theme is *Hartog v. Colin & Shields*.³ Collins & Shield were negotiating to sell 30,000 Argentine hare skins to Hartog. In the verbal and written communications between the parties, according to standard practice, the price was being negotiated on per piece basis. Finally, the offer which Hartog received from Collins & Shield mentioned the price on per pound basis. This made the price to become one-third of what was being negotiated between the parties. Hartog immediately accepted the offer and claimed the goods at the contracted price. The court ruled that there was an offer and acceptance but there was no meeting of minds. Thus, no agreement had been formed between the parties. Such cases where a person, realising the mistake of the other, gets into a contract to take advantage of the mistake are known as ‘snapping up’. Let us explore a contemporary case on ‘snapping up’, *Chwee Kin Keong and Others v. Digilandmall.com Ltd.*, from the Singapore High Court. What makes it interesting is that it involves buying through the internet.

Court Case: *Chwee Kin Keong v. Digilandmall.com Ltd.*

Digilandmall.Com Ltd. is a company that sells information technology related products over the Internet, to consumers.⁴ As part of its business, it operates a website owned by Hewlett Packard (HP) at <http://www.buyhp.com.sg>, where only HP products are sold. The defendant also sells HP products on its own website at <http://www.digiland.com>. A related website for corporate clients and re-sellers is owned and operated by a related entity, Digiland International Limited.

DIL conducted a training session at the premises of Digilandmall.Com Ltd. for its employees, about the use of a new template for the webpages. The new template interlinked all the three webpages and allowed price changes to be reflected in all of them simultaneously. For the purposes of training the employees, a real product number, “HP 9660A”, was inserted in the new template and fictitious prices were inserted for demonstration. The same evening, an employee inadvertently uploaded the training template. The price of

³ *Hartog v. Colin & Shields*, King's Bench Division, (1939) 3 All ER 566.

⁴ *Chwee Kin Keong and Others v. Digilandmall.com Pte Ltd*, (2004) 2 SLR 594.

the advanced and commercial purpose laser printers, which was \$3,854 before the inadvertent uploading, became \$ 66.

The general arrangement that was followed was that the customer made the offer and paid by credit card, following which the server generated an automated acceptance, leading to the formation of a contract between the parties. After the uploading, there were altogether 1,008 purchase orders for the laser printers, placed by 784 individuals. There were 11 individuals who had ordered more than 50 laser printers. The company refused to supply the contracted goods. Six of the buyers who had ordered a large number of printers moved the court. The company claimed, among other things, that no contract had got formed as there was a mistake in relation to the subject matter of the contract. Decide.

Mutual Mistake

At times, both the parties can be mistaken about a crucial aspect of the contract. They can either both hold the same mistaken view or they can be at cross-purposes in holding different, but mistaken views. For example, in *Tarsem Singh v. Sukhminder Singh*,⁵ the buyer and seller of a piece of land had different units of measurement in mind for the sale. The Supreme Court noted:

'Bigha' and 'Kanal' are different units of measurement. In the northern part of the country, the land is measured in some states either in terms of 'bighas' or in terms of 'kanals'. Both convey different impressions regarding the area of the land. The ... parties were not *ad idem* with respect to the unit of measurement. While the defendant (Tarsem Singh) intended to sell it in terms of 'kanals', the plaintiff (Sukhminder Singh) intended to purchase it in terms of 'bighas'. Since these units relate to the area of the land, ... it was with regard to the area of the land that the parties were suffering from a mutual mistake. The area of the land was as much essential to the agreement as the price which, incidentally, was to be calculated on the basis of the area.

Thus, the parties were mistaken about an essential aspect of the contract. As the parties were not *ad idem*, the contract was not enforceable. Section 20 of the Indian Contract Act declares a contract void where both the parties are mistaken. It reads:

20. Agreement void where both parties are under mistake as to matter of fact.- Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

When both the parties to a contract are mistaken, it is called 'mutual mistake'. In contrast to this is 'unilateral mistake' where only one party is mistaken. Section 22 of the Contract Act provides as follows:

⁵ *Tarsem Singh v. Sukhminder Singh*, AIR 1998 SC 1400.

22. Contract caused by mistake of one party as to matter of fact.- A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

The communication between the contracting parties is to be judged by the viewpoint of an objective bystander. Further, a mistake may be fundamental so as to disable the constitution of the agreement in the first place. Invariably, the mistake is induced by one of the parties.

Summary

1. When a party knows that the other person is mistaken and despite this, goes ahead and forms an agreement, it is called 'snapping up'. In such cases, no enforceable agreement is formed as there is no meeting of minds.
2. When party A intends to form an agreement with B only, and C pretends to be B and gets into an agreement with A, no enforceable agreement is formed.
3. When both the parties to an agreement are mistaken about a substantive aspect of the agreement, the agreement is not enforceable.

The McGraw Hill logo is displayed in white text on a light pink rectangular background. The text is arranged in three lines: 'Mc' on the top line, 'Graw' on the middle line, and 'Hill' on the bottom line. The font is a bold, sans-serif typeface.

Restitution and Quasi-Contracts

Let us explore the principles of restitution with the following case.

Case: Car Dealer

Universal Motors Ltd. is a car dealer. It sells domestically manufactured as well as imported cars. Pratap wanted to buy a car of a particular model, manufactured in Germany. Towards this, he was required to sign a pre-printed order form, offering to buy the specific model of the car, for a specified price, from Universal Motors. Universal Motors also required him to pay the full amount of Rs. 32 lakhs along with the offer document. It followed this practice in the cases where it had to import a car for a customer. It did not want to commit to the customer lest it were unsuccessful in importing the car. On the other hand, it also did not want the customer to back out after it had initiated the process to import the car. Pratap waited for four months to get his car. Every time he made an enquiry, he got the same reply- “We are in the process of getting it for you.”

There was a strike in the company manufacturing the car. After the strike, the company restructured its activities and discontinued the production of the specific model Pratap had ordered. Universal Motors informed Pratap after six months of the order that they would not be able to get the car for him. Following this, Pratap claimed a refund of the money and damages. The company was reluctant to return the money to Pratap.

Pratap had only made an offer to the Universal Motors. The offer had not been accepted, it was still awaiting a decision from the Universal Motors. There was no contract between the parties to govern their relationship. Thus, there is no basis for Pratap to demand damages. However, the money belongs to Pratap and the Universal Motors must return it to him. No person should appropriate another's property or enrich himself at the expense of others. Let us further assume that Universal Motors does return the money to Pratap. Thereafter, Pratap claims that in these six months, he would have put the money on the stock and earned Rs. two lakhs on it. Thus, Universal Motors should be made to pay him an additional Rs. two lakhs. Capital or property yields benefits. The benefits belong to the owner of the property. Pratap has a valid demand in claiming accrual on the money. In this context, let us consider the following possible uses that Universal Motors could have made of the money held by them for the six months:

1. They did not encash the cheque.
2. They encashed the cheque and put it in an ordinary bank account.
3. They speculated on the stock with the money and made a profit of Rs. three lakhs.
4. They speculated on the stock with the money and made a loss of Rs. two lakhs.

Should it make any difference as to how Universal Motors actually used the money? In response to Pratap's demand, Universal Motors could claim that he could as well have lost money on the stock. The best way of resolving the counter claims would be to go by how ordinary and reasonable people deploy their property. A reasonable person would not keep capital idle by not encashing a cheque or keeping the money at home. On the other hand, a reasonable person would not deploy money on speculative and risky investments. Putting the money in an ordinary account would be the reasonable step. This would yield an ordinary bank interest. Thus, Universal Motors should pay the ordinary bank interest on the amount, for six months, to Pratap. Let us apply this principle to the following case.

Case: Earth Movers

Earth Movers Ltd. applied for a tender to hire out a bulldozer at the rate of Rs. 90,000 per month. The tender was one among the three that were short-listed. On the request of the party inviting tenders, Pawan Construction Ltd, Earth Movers Ltd. gave them their bulldozer to try out its suitability. Pawan Construction Ltd. made intensive use of the equipment for doing their work, for 20 days, and then returned it along with a letter intimating them that their tender had been rejected. Earth Movers Ltd. is claiming Rs. 60,000 as rental for 20 days.

There is no contract between the parties, thus, the terms in the offer are of no consequence. However, Pawan Construction Ltd. have enriched themselves by using an equipment which did not belong to them. They must restore the benefit to Earth Movers Ltd. The benefit may not necessarily be the rental rate quoted in the offer. It should be a reasonable amount.

The principle applied above is an old one, evident in the Roman expression: *Nul ne doit senrichir aux depend des autres*, that is, 'No one ought to enrich himself at the expense of others'. In the course of development of common law, it came to be known as the 'principle of restitution'. Law today, has several branches. Most of these branches were developed in the 20th century. Earlier, there were only limited branches, like contracts, trust and equity. At that time, the closest the principle of restitution came to was contract. Thus, it was accommodated within contract law as quasi-contract. That is, even if there is no

contract, we would take it like a contract. Later, common law developed it as a separate field. The development of the field was thus summarised in *Fibrosa v. Fairbairn* by Lord Wright:¹

. any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law, which has been called quasi-contract or restitution.

The principle got written down in the Indian Contract Act under a chapter titled Quasi-Contract. Section 70 provides:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

The Supreme Court explored the application of this section in *State of W.B. v. M/s. B. K. Mondal and Sons*.

Court Case: State of W.B. v. M/s. B. K. Mondal and Sons

Mondal and Sons got into a contract to put up temporary storage godowns in Arambagh in the District of Hooghly, for use by the Civil Supplies Department of the State of Bengal.² They completed the contract and were paid for it. While they were doing the work, they were requested by the Sub-Divisional Officer, Arambagh, to submit an estimate for the construction of a *kutchra* road, guard room, office, kitchen and room for clerks at Arambagh, for the Department of Civil Supplies. The Additional Deputy Director of Civil Supplies visited Arambagh and instructed them to proceed with the construction in accordance with the estimates submitted by them. Similarly, another work was taken up and completed on a letter written by the Sub-Divisional Officer, Arambagh. The administration failed to pay the bills submitted by Mondal and Sons.

There must have been some internal problem within the administration in getting the money released. Mondal and Sons filed a suit for recovery of the pending amount. All contracts with the Government have to be in writing and executed in the name of the President now, while at that time, they had to be in the name of the Governor-General. As this had not been done, there was no contract between the parties. Failing to get damages under the contract law, Mondal and Sons claimed that they were entitled to receive the payment of the pending bills under Section 70. The Supreme Court explored the meaning, scope and application of Section 70:

¹ *Fibrosa v. Fairbairn*, (1943) AC 32.

² *State of W.B. v. M/s. B. K. Mondal and Sons*, AIR 1962 SC 779.

It is plain that three conditions must be satisfied before this Section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing, he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered, must enjoy the benefit thereof. When these conditions are satisfied, Section 70 imposes upon the latter person, the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this Section, it would be useful to illustrate how this Section would operate. If a person delivers something to another, it would be open to the latter person to refuse to accept the thing or to return it; in that case Section 70 would not come into operation. Similarly, if a person does something for another, it would be open to the latter person not to accept what has been done by the former; in that case again, Section 70 would not apply. In other words, the person said to be made liable under Section 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under Section 70 arises. Taking the facts in the case before us, after the respondent (Mondal and Sons) constructed the warehouse, for instance, it was open to the appellant (State of WB) to refuse to accept the said warehouse, and to have the benefit of it. It could have called upon the respondent (B. K. Mondal and Sons) to demolish the said warehouse and take away the materials used by it in constructing it; but, if the appellant (State of WB) accepted the said warehouse and used it and enjoyed its benefit, then different considerations come into play and Section 70 can be invoked.

Section 70 applies only when money, goods or services are given without a contract. In case there is a contract between the parties, the terms of the contract would govern the relationship. The Section applies to all cases where there is no contract. There is no contract in the case of a void contract or where a voidable contract has been set aside. The Supreme Court noted in *Mulamchand v. State of M.P.*:³

But if money is deposited and goods are supplied or if services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable. In other words, if the conditions imposed by Section 70 of the Indian Contract Act are satisfied, then the provisions of that section can be invoked by the aggrieved party to the void contract. ... The important point to notice is that in a case falling under Section 70, the person doing something for another or delivering something to another, cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So, where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.

The principle has also been expressed in other provisions of the Contract Act. Section 64 and 65 provide:

64. Consequences of rescission of voidable contract.- When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable

³ *Mulamchand v. State of M.P.*, AIR 1968 SC 1218.

contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.- When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

The courts, however, do not restore benefits when a person does not come before the court with clean hands. For example, in the case of a contract where a party has acted fraudulently, or a contract is void as its object or consideration was unlawful, the court would not restore benefits.

Summary

1. It is a basic tenet of justice that no person should unjustly enrich himself at the expense of others. A corollary of this is that the benefit should be resituated to the person.
2. The principle of unjust enrichment and restitution has been put in the chapter on quasi- contracts in the Contract Act.

