

Department of Commerce (CA)

Semester: 3

BUSINESS LAW

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UNIT II

Capacity to Contract - Free Consent -  
Quasi Contracts - Contingent Contracts - Discharge  
of Contracts - Breach of Contract - Remedies  
for breach of Contract.

REFERENCE BOOK

BUSINESS LAW

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UNIT 2CAPACITY OF CONTRACT

Meaning: Capacity means competence of parties to enter into valid contract

Who are the parties incompetent to contract

- 1) Minor : A person who has not completed 18 years of age
- 2) Lunatic : A person who is mentally deranged due to mental strain but at intervals.
- 3) Idiot : A person who has lost his mental powers completely
- 4) Drunken or Intoxicated } A person suffers from temporary incapacity to contract at the time when he is drunk.
- 5) Alien enemy : A person who is not subject to the Republic of India
- 6) Corporation : It is an artificial person created by law
- 7) Insolvent : when a debtor's property vests in official receiver
- 8) Convict : A person when undergoing imprisonment

## FREE CONSENT

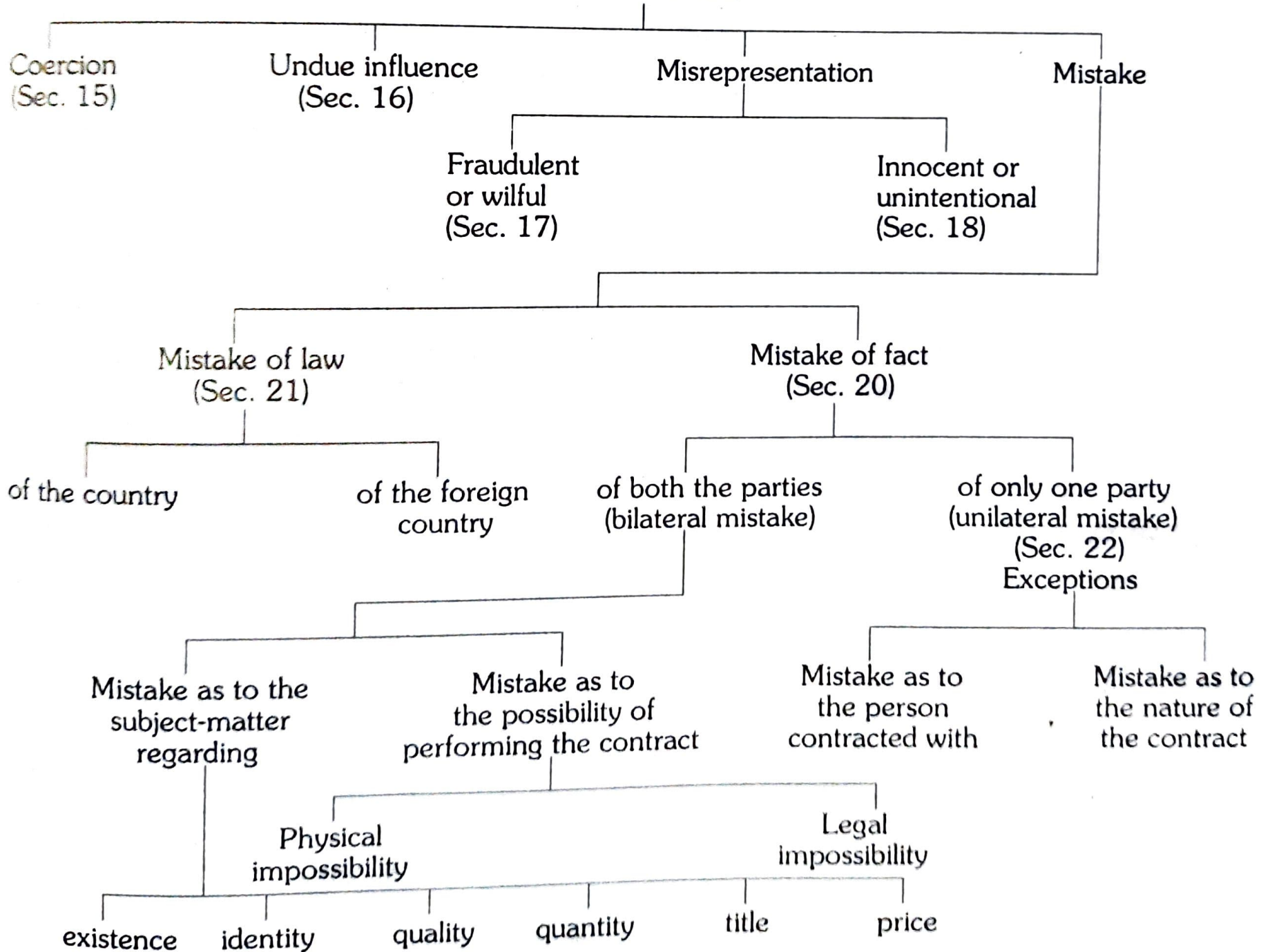
Meaning: Two or more persons are said to consent when they agree upon the same thing in the same sense

Consent is free when it is not caused by

- 1) Coercion
- 2) Undue Influence
- 3) Fraud
- 4) Misrepresentation and
- 5) Mistake

For various flaws in consent is given in the following chart.

# Flaw in Consent



# Difference between coercion and undue influence

## Coercion

1. The consent is given under the *threat of an offence* (i.e., committing or threatening to commit an act forbidden by the Indian Penal Code or detaining or threatening to detain property unlawfully).

2. Coercion is mainly of a *physical character*. It involves mostly use of physical or violent force.

3. There must be intention of causing any person to enter into an agreement.

4. It involves a criminal act.

## Undue influence

1. The consent is given by a person who is so situated in relation to another that the other person is in a position to dominate his will. In other words, consent is given, under *moral influence*.

2. Undue influence is of *moral character*. It involves use of moral force or mental pressure.

3. Here the influencing party uses its position to obtain an unfair advantage over the other party.

4. No criminal act is involved.

## QUASI CONTRACT

### Meaning

Although there is no contract between parties, but they are put in the same position as if there were a contract between them.

### Kinds of Quasi Contract

1. Supply of necessities
2. Payment by an interested person
3. Obligation to pay for non-gratuitous acts
4. Responsibility of finder of goods
5. Mistake or coercion

### Contingent Contract

It is a contract to do or not to do something. If some event, collateral to such contract does or does not happen.

Example: A contract to pay Rs. 10000 if B's house is burnt. This is a contingent contract

### Characteristics of Contingent Contract

① Performance depends upon happening or non-happening of future event

② Event must be certain

③ Event must be collateral

(Page 9)

## Discharge of Contract

It means termination of the contractual relationship between parties. By this the rights and obligations created by contract comes to an end.

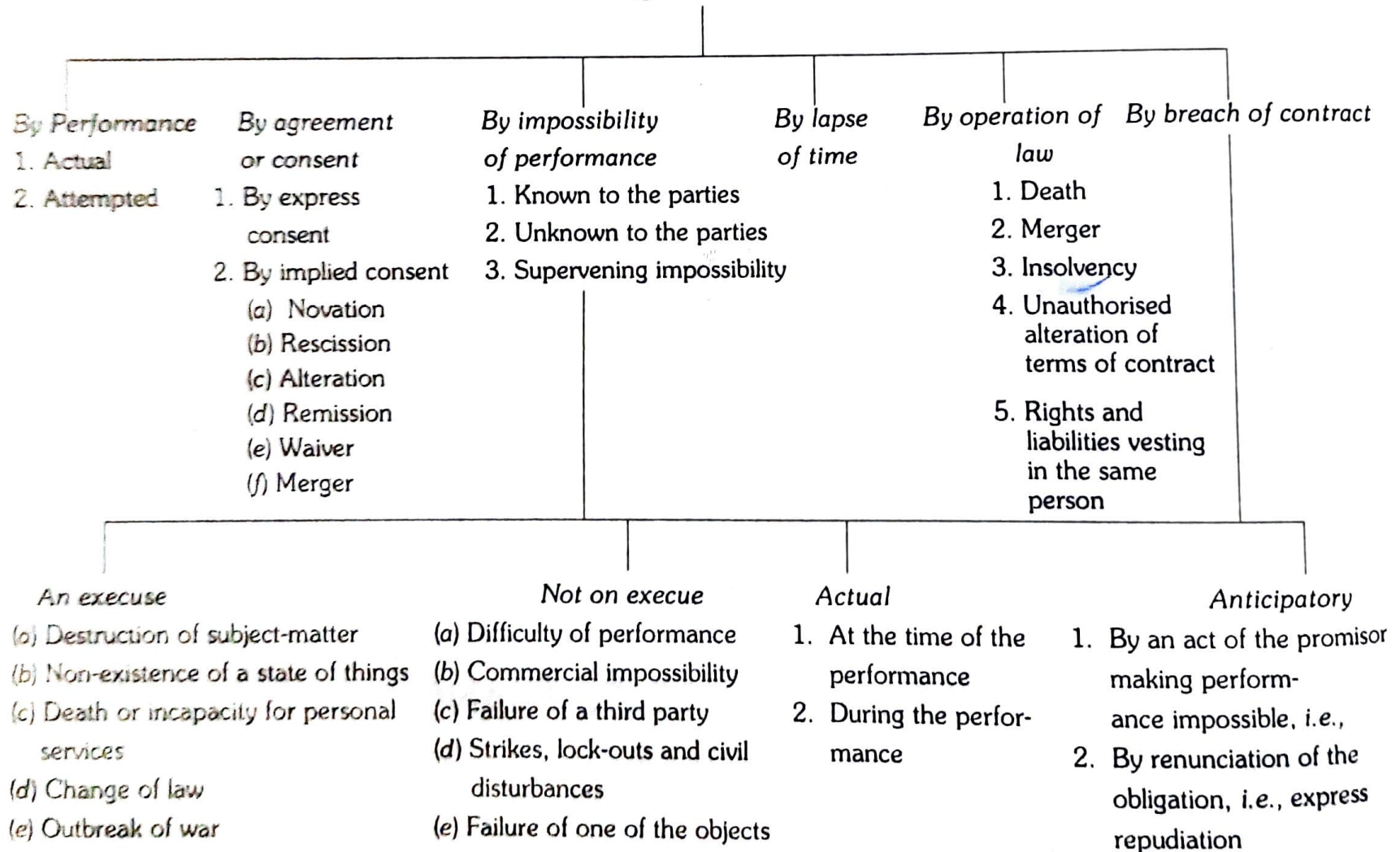
Modes of discharge of Contract.

- 1) By Performance
- 2) By agreement or consent
- 3) By impossibility of performance
- 4) By lapse of time
- 5) By operation of law
- 6) By breach of Contract

## 2. DISCHARGE BY AGREEMENT OR CONSENT

As it is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated. The rule of law in this regard is as follows : *Eodem modo quo quid constituitur, eodem modo destruitur*, i.e., a thing may be destroyed in the same manner in which it is constituted. This means a contractual obligation may be discharged by agreement which may be expressed or implied.

### Discharge of Contract





## Remedies for Breach of Contract

Breach of Contract means breaking of obligations which a contract imposes

When a contract is broken the injured party has the following remedies

1. Rescission of Contract
2. Suit for damages
3. Suit upon Quantum Meruit
4. Suit for Specific performance
5. Suit for injunction

### Damages:

Damages are monetary Compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of contract.

### Types of damages

- 1) Ordinary damage
- 2) Special damage
- 3) vindictive or Exemplary damages

4. Nominal damage
5. Damage for loss of reputation
6. Damage for inconvenience and discomfort
7. Mitigation of damages
8. Difficulty of assessment
9. Cost of decree
10. Damages agreed upon in advance

### Quantum Meruit

It means "as much as earned"

### Types of Quantum Meruit:

- 1) when an agreement is discovered to be void
- 2) when something is done non gratuitously
- 3) when there is an express or implied contract to render services but there is no agreement as to remuneration
- 4) when the completion of contract is prevented by other party
- 5) when the contract is divisible
- 6) when the invisible contract is badly performed