INDIAN CONTRACT ACT, 1872

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- Essential of a valid contract (12 marks)
- All contracts are agreements but all agreements are not contract. Explain (12 marks)
- Free consent (6 marks)
- Minor agreement (6 marks) – Mohiri Bibi vs Dharmodas Ghosh – Void ab initio
- Void agreements (6 marks) – S. 26 – S. 30 + Bilateral mistake of fact
- Consideration (6 marks)
- No consideration no contract – 2 exceptions (2 marks)
- Consensus ad idem – 2 marks
- Proposal definition – 2marks
- Consideration definition – 2marks
- Revocation of offer and acceptance (6 marks)
- Invitation to offer examples (2 marks)

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SECTION 10 – ENFORCEABILITY BY LAW

- 1. Capacity to contract (S. 11, 12)
- 2. Free consent (S. 13 – S. 22)
- 3. Lawful object and lawful consideration (S. 23,24,25)
- 4. Agreements are not explicitly void (S. 26- S. 30)

- Offer

  Acceptance

  Offer + Acceptance = Promise

  Reciprocal Promise + Consideration = Agreement

- Agreement + Section 10 (enforceability by law) = Contract

INDIAN CONTRACT ACT, 1872

- Sec 1-Sec 75: General Provision
- Sec 76- Sec 123: Sale of Goods
- Sec 124- Sec 147 : Indemnity and Guarantee
- Sec 148- Sec 181: Bailment and Pledge
- Sec 182- Sec 238: Agency
- Sec 239- Sec 266: Partnership

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AGREEMENT

- Agreement= Offer + Acceptance
- Agreement= Promise 1+ Promise 2
- Agreement is set of reciprocal promises.
- Every promise and every set of promises, forming the consideration for each other, is an agreement.
- If agreement contains 10 conditions it becomes contract.

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ESSENTIAL CONDITIONS OF VALID CONTRACT

- Agreement
- Legal intention
- Proper offer
- Proper acceptance
- Lawful consideration
- Capacity
- Free consent
- Agreement should not explicitly void

- Express consent
- Implied consent
- Lalman Shukla vs Gauri Dutt
- Carbolic smoke ball case.

CONSIDERATION

- 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
- Illustrations – 3 – 4 examples
- Section 23, 24, 25

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CONSIDERATION

- Section 23 – Lawful object and Lawful consideration
- Illustrations – 2-3 unlawful consideration
- Section 24 – Consideration not partly illegal
  Illustrations

CONSENSUS AD IDEM

- Meeting of the minds on the same thing in the same sense.

- Valid contract
- Void ab initio – It is null from the beginning
- Void contract
- Voidable contract – contract can be void at the option of the aggrieved party

FREE CONSENT SECTION 14 – VOIDABLE

- CUte and Fine Manisha and Meghna
- C – Coercion
- U – Undue Influence (Allcard vs Skinner)
- F – Fraud
- M – Misrepresentation (Derek vs Peek)
- M – Mistake

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- Chinnaya vs Rammayya

- Past consideration

- Mistake of Law
- Mistake of Fact – Unilateral – Voidable
  Bilateral mistake of fact – void contract – Doctrine of Frustration (S. 56) – Doctrine of impossibility
  S. 65

- Ignorantia Facti Excusat, Ignorantia Juris Non Excusat
- Ignorance of fact will be excused but ignorance of law cannot be excused

- Vigilantibus Non Dormentibus Jura Subveniunt

  Law assist those who are vigilant and not those who sleep over their rights.

OBJECT AND CONSIDERATION

- Object – asking to do/refrain from
- Consideration – what you get in return

ESSENTIAL CONDITIONS OF VALID CONTRACT

- Lawful purpose
- Certain terms and conditions
- Possible of performance

- Contract means agreement enforceable by law.
- Agreement not enforceable by law is void agreement.

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INTENTION TO CREATE LEGAL RELATIONSHIP

- All commercial agreements have legal intention.
- Generally social and domestic agreements do not have legal intention.
- **Case: Balfour v Balfour**
- **Case: Meritt v Meritt**

INDIAN CONTRACT ACT, 1872

- Proposal
- Promise
- Consideration
- Agreement
- Enforceable
- Contract
- Void Agreement
- Voidable Contracts
- Illegal Agreement

PROPOSAL/OFFER

- Definition Sec 2 (a) of Indian Contract Act, 1872

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal

- Specific offer
- General offer
- Invitation to offer
- **Case: Carlill v Carbolic Smoke Ball case**

ESSENTIAL REQUIREMENTS OF VALID OFFER

- Offer must be made with a view of obtaining assent.
- Offer must be made with the intention of creating legal relationship.
- Offer must be certain. Offer must mention all terms and conditions.
- There must be communication of offer.
- Proposer can dictate terms under which offer may be refused or accepted.

INVITATION TO OFFER

- Sometimes a person may not offer to sell his goods, but makes some statement or gives some information with a view of inviting others to make offers on that basis.
- Examples
- Hoardings/ Advertisement by builders
- Admission form issued by college
- Announcement of conducting auction
- Advertisement calling for tenders
- Goods on display

INVITATION TO OFFER

- **Case: Pharmaceutical society of Great Britain v Boots cash Chemists Ltd.**
- **Case: Harvey V Facey**

  Bumper Hall Pen- name of property/place

  1st telegram sent by plaintiff- Will you sell bumper hall pen? Telegraph lowest cash price.

  2nd telegram sent by defendant- Lowest price for bumper hall 900 pounds.

  3rd telegram sent by plaintiff- We agree to buy bumper hall pen for 900 pounds.

TERMINATION OF OFFER

- Lapse of time
- Revocation of offer
- Death or insanity of offeror/ proposer
- Failure to complete a condition precedent
- Reject of offer by offeree
- Counter offer

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ACCEPTANCE

- Definition Sec 2(b) of Indian Contract Act, 1872

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

Case: Lalman Shukla V Gauri Dutta

ESSENTIAL REQUIREMENTS OF VALID ACCEPTANCE

- Acceptance must be absolute and unqualified.
- It must be communicated
- be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.
- It must be in response to offer.

ESSENTIAL REQUIREMENTS OF VALID ACCEPTANCE

- It must be given within the time specified or within reasonable time.
- It must be given by the offeree or his authorized person.

REVOCATION OF OFFER

- Offeror can revoke his offer at anytime before the offeree accepts by putting acceptance in a mode of transmission beyond his control.
- Acceptor can revoke his acceptance at any time before the acceptance reaches the offeror.

CONSIDERATION

- Meaning
- Consideration can be past, present or future.
- Consideration only at desire of promiser.
- Case: Durgaprasad v Baldeo
- Consideration may move from promisee or any other person
- Case: Chinnaya V Ramaya
- Consideration need not be adequate provided that there is free will.
- Consideration must be legal
- Consideration must be real.

CONSIDERATION

- Definition
- Illustration
- Section 23 – lawful
- Section 24 – partly illegal
- Section 25 – No consideration no contract

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EXCEPTION TO THE RULE OF "NO CONSIDERATION NO CONTRACT"

I. Natural love and affection

a) Agreement is in writing and is registered.

b) It must be made between persons who are standing in near relation to each other

c) It is made on account of natural love and affection. (**Rajlucky Dabee V Bhootnath Mookerjee**).

II. Past voluntary services

III. Time barred debt

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EXCEPTION TO THE RULE OF "NO CONSIDERATION NO CONTRACT"

IV. Bailment

V. Agency

VI. Completed gift

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PRIVITY OF CONTRACT

- Outsider can not derive any rights from contract.
- Outsider can not incur any obligation.
- **Case: Dunlop Pneumatic tyre Co. Ltd V Selfridge & Co. Ltd.**

PERSONS COMPETENT TO ENTER INTO CONTRACT

- Person who is of the age of majority
- Person of sound mind
- Person is not disqualified from contracting by any law

1) Alien enemy
2) Insolvent
3) Foreign ambassador

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MINOR'S POSITION UNDER CONTRACT ACT

- Agreement with minor is void ab-initio.
- Minor can however be promisee or beneficiary.
- Minor's agreement can not be ratified by minor on attaining majority.
- **Rule of estoppel** does not apply to minor.
- Minor can not be a partner in a partnership firm. He may however be admitted to the benefits of an already existing partnership.
- A minor can act as agent.

MENTAL INCOMPETENCE

- 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 is of unsound mind.
- Agreement entered into by person of unsound mind is void ab initio.

FREE CONSENT

- **“Free consent” defined**.—Consent is said to be free when it is not caused by—
- (*1*) coercion, or
- (*2*) undue influence, or
- (*3*) fraud, or
- (*4*) misrepresentation, or
- (*5*) mistake.

Consequences

Coercion
Voidable contract

Undue influence
Voidable Contract

Fraud
1. **Avoid the contract**
2. **Make the false representation true**
3. **Claim damages**

Misrepresentation
1. **Avoid the contract**
2. **Make the false representation true**

COERCION

Two ways of doing coercion

1) committing, or threatening to commit, any act forbidden by the Indian Penal Code
2) unlawful detaining, or threatening to detain, any property,

with the intention of causing any person to enter into an agreement.

- Coercion may not have been exercised against party of the agreement. It may be directed at any person.
- It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.
- Consequences- When consent to an agreement is caused by coercion, the agreement is a contract voidable at the option of the party whose consent was so caused.

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UNDUE INFLUENCE

- A contract is said to be induced by “undue influence” where

1) the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other (for example- Employer and employee relationship Spiritual guru and disciple, parent and child, solicitor and client
2) uses that position to obtain an unfair advantage over the other.

- Burden of proof
- Unconscionable terms and conditions and one of the parties has obtained the benefits of transaction is in position to dominate will of other party e.g money lender and borrower
- Consequences - When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused

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FRAUD

- Fraud means any of the following acts committed by a party with intent to deceive another party or to induce him to enter into the contract:—

(*1*) the suggestion, as a false fact;

(*2*) the active concealment of a 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. (legal fraud)

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FRAUD

- Consequences- When consent to an agreement is caused by fraud the agreement is a contract voidable at the option of the party whose consent was so caused.

Contract will not be voidable-

1. If the party whose consent was so caused had the means of discovering the truth with ordinary diligence

Mere silence is not a fraud. There are 2 exceptions to this rule:

1. When there is duty to speak, keeping silence is fraud.
2. Person's silence is, in itself, equivalent to speech.

MISREPRESENTATION

- An innocent misstatement or false statement is known as misrepresentation.
- In case of misrepresentation, the person making the statement is innocent, and he makes the statement **without any intention to deceive other party.**
- Consequences- When consent to an agreement is caused by misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
- Difference between fraud and misrepresentation
- **Case: Derry V Peek**

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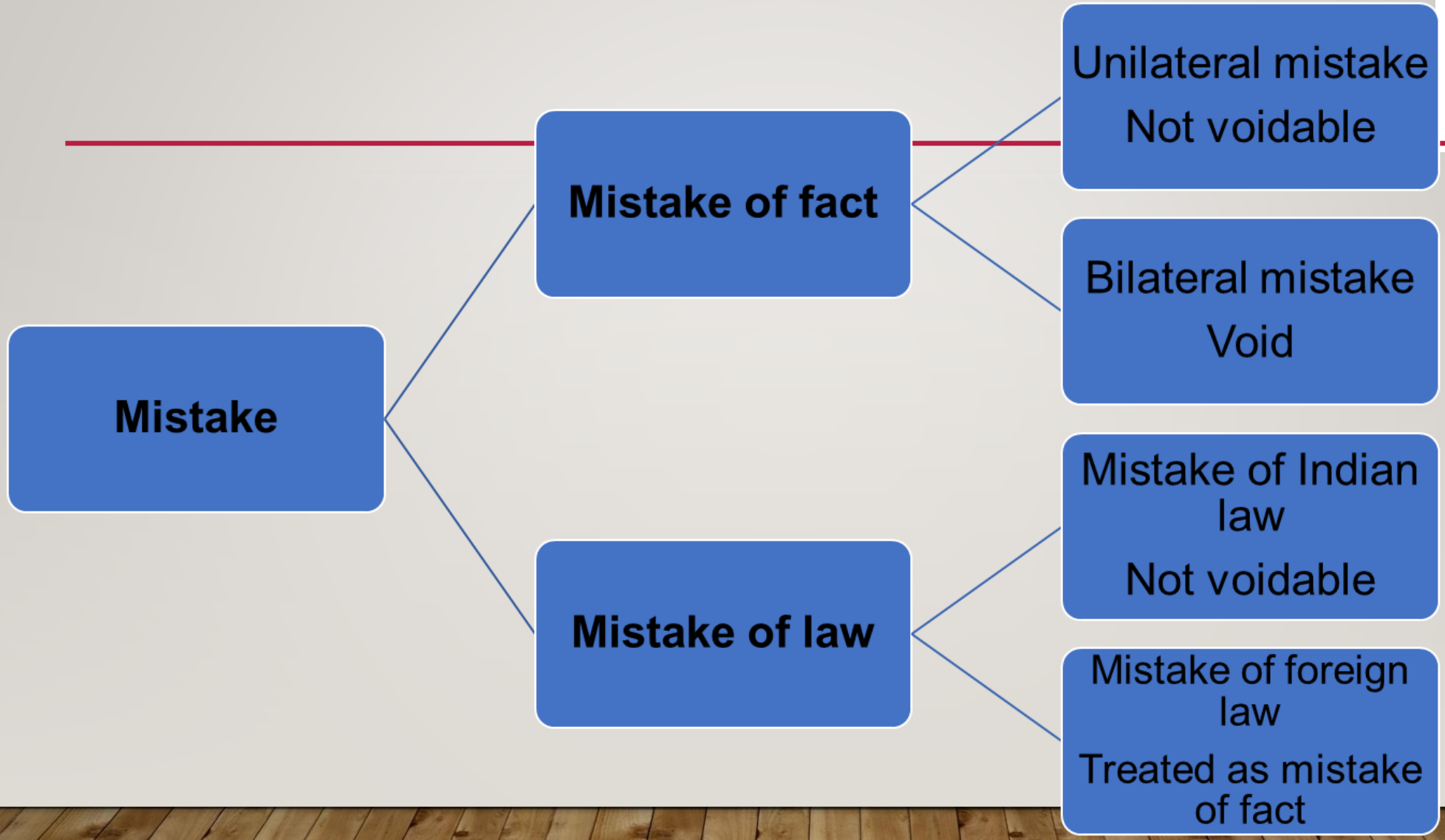
Mistake
Mistake of fact
Unilateral mistake
Not voidable
Bilateral mistake
Void
Mistake of law
Mistake of Indian law
Not voidable
Mistake of foreign law
Treated as mistake of fact

UNLAWFUL OBJECT

In following cases, object has been considered to be unlawful:

1. It is forbidden by law.
2. It would defeat provisions of any law.
3. It is fraudulent.
4. It involves or implies injury to the person or property of another.
5. Court regards it as immoral or opposed to public policy.

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AGREEMENT IN RESTRAINT OF MARRIAGE

- If there is any agreement by which boy/ girl is being stopped from marrying a person of his/her choice then such agreement is not valid and can not be enforced.
- Agreement in restraint of marriage of any person is void.
- Such agreement restricts a person's freedom to marry any person of his/ her choice is against public policy and is void.

AGREEMENT IN RESTRAINT OF LEGAL PROCEEDINGS

- It is everyone's right to file legal action when there is wrong against that person.
- Agreements in restraint of legal proceedings is void.
- Exceptions:

1) Agreement to refer dispute to arbitration is valid.
2) Territorial restriction- Agreement is subject to the jurisdiction of the court situated in Mumbai, such agreement is valid.

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AGREEMENT IN RESTRAINT OF TRADE

- In India, every person has right of freedom to carry on trade, business, profession of his/her choice.
- An agreement which restricts a person from practicing a lawful profession, trade or business is void.
- Exceptions:

1. Sale of goodwill
2. Partner's agreement
3. Contract of service- An agreement of service under which an employee agree that he will serve a particular employer for certain duration and that he will not serve anybody else during that period, is a valid agreement. (Charlesworth V Mac Donald)

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AMBIGUOUS AND UNCERTAIN AGREEMENTS

- Agreements the meaning of which is not certain or capable of being made certain are void.
- Examples:

1. A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
2. A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

WAGERING AGREEMENTS

- Wagering agreements are void. Those agreements are unenforceable by law.
- A wagering agreement is an agreement under which money or money's worth is payable, by one person to another on happening or non-happening of a future uncertain event.
- In wagering agreements, parties have opposite views regarding uncertain event.
- Exceptions:

1. Stock market
2. Horse racing in which winner will get price of Rs.500/- or more

- Whether lottery is wagering agreement? Can a person declared as winner of prize money on lottery sue for recovery on prize money?

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CONTINGENT CONTRACT

CONTINGENT MEANS UNCERTAIN

- Performance of contract depends on uncertain event.
- Examples- Insurance contract. Payment of money by Insurance company to policy holder is performance of contract.
- Both parties desire same outcome. Example- Guarantee contract and agreement between buyer and seller (goods are on the ship coming from Singapore)
- Essentials of contingent contract

1. Uncertain event
2. Performance of contract depends on uncertain event

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DIFFERENCE BETWEEN WAGERING AGREEMENT AND CONTINGENT CONTRACT

WAGERING AGREEMENT

- Both parties desire opposite outcome.
- Uncertain event is sole determining factor. For e.g. Betting on cricket. (century by a player)
- All wagering agreements are contingent in nature
- Wagering agreements are void.
- The parties have no other interest in event except winning or losing of the amount of the wager.

CONTINGENT CONTRACT

- Both parties desire same outcome.
- Uncertain event is only collateral. Death or damage is secondary event. Main event is insurance company is making payment to policyholder.
- Contingent contract may not be of wagering nature. All
- Contingent contract is valid.
- Insurance policy. Interested in life. Connection with event.

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I ∞ BOPAL

- I
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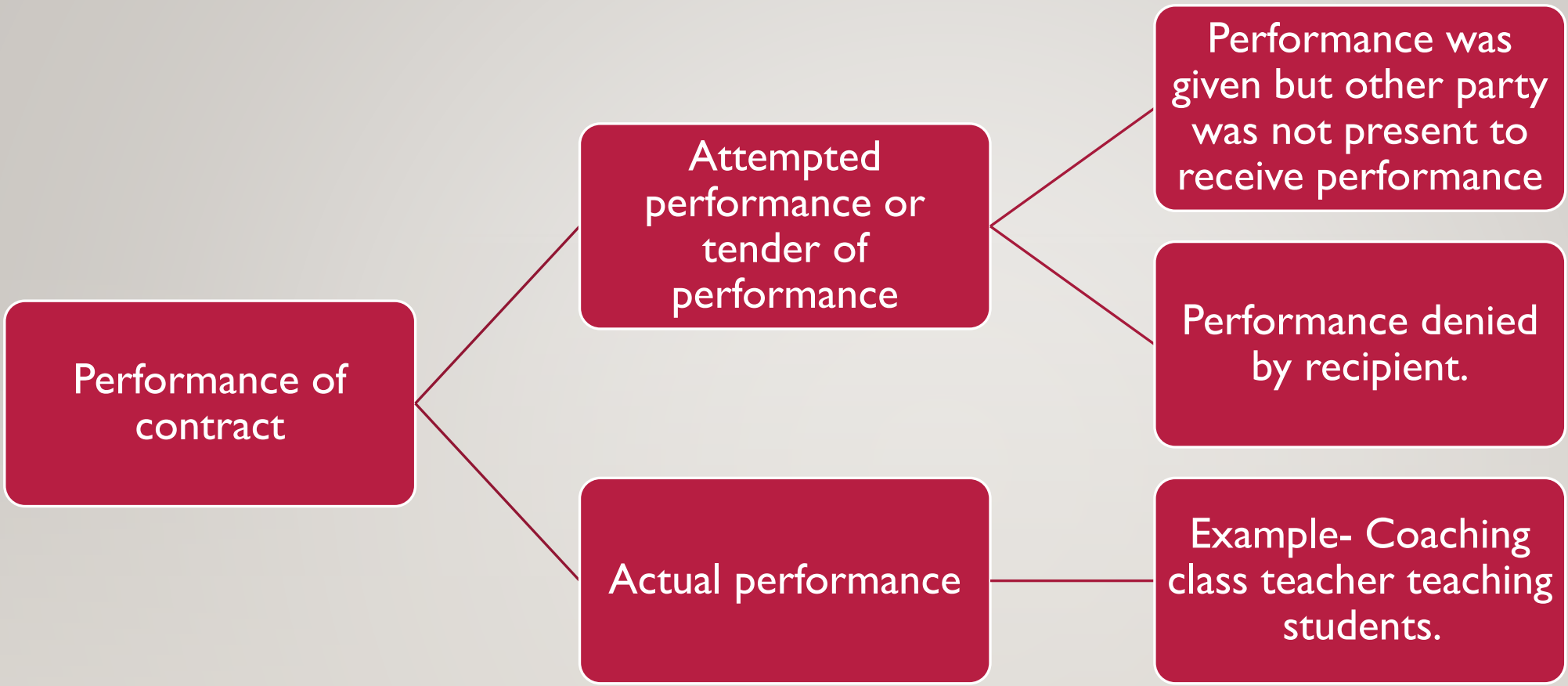

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PERFORMANCE OF CONTRACT

- Who must perform the contract?

1. Promisor himself
2. Agent of promisor
3. Legal representative of promisor (Death of promisor)

If the performance of contract requires personal skills, then contract can not be enforced against the representatives of the deceased party. For example- A promises to paint a picture for B by certain day at certain price. A dies before that day. The contract can not be enforced either by A's representatives or by B.

- Void Ab Initio – S. 11 Minor
- Voidable – Free Consent (Coercion, Undue Influence, Fraud, Misrepresentation, Unilateral mistake)
- Void – Bilateral Mistake, (S26-S30), Doctrine of Frustration, Mistake of Contract Law

ESSENTIALS OF PERFORMANCE

1. Performance must be unconditional.
2. Performance must be at proper place and time.
3. The promisee must be given an opportunity to ascertain that the goods are according to the contract.

JOINT PROMISE

- When two or more persons make a joint promise, the promisee may compel any [one or more] of such joint promisors to perform the whole of the promise.
- If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
- Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise.
- Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.

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APPROPRIATION OF PAYMENT

Repayment of Rs.30000/- shall be adjusted against loan as per choice of sequence by-

1. Debtor
2. Creditor
3. Time wise appropriation including time barred debt.

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APPROPRIATION

- 1st – 1,00,000 – house – 31st Dec 2024
- 2nd – 50,000 – car – 01 May 2024
- **3rd – 10,000 – personal – 01 March 2024**

- Creditor – Dr. Shonal John
- Debtor – Chandan

- Chandan – Rs. 20,000 - 30 April 2024

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APPROPRIATION OF PAYMENT

- 1. Debtor
- 2. Creditor
- 3. Time barred debt

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ALTERNATIVE PROMISE, ONE BRANCH BEING ILLEGAL

- In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.
- *Illustration*
- A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.
- This is a valid contract to deliver rice, and a void agreement as to the opium.

- A promises to B to pay Rs. 1000 for delivery of 10 kgs of rice **and** 50 grams opium. This is void agreement
- A promises to B to pay Rs. 1000 for delivery of 10kgs of rice **or** 50 grams of opium. This is a valid contract for 10kgs of rice but void agreement for 50 grams of opium.

TIME AND PLACE OF PERFORMANCE

- Time and place for performance is decided by parties to contract. Parties are free to decide time and place of performance.
- E.g.- A promises B to deliver goods at B's warehouse on 10th March 2022 at 10 am.
- Sometimes time and place is not decided then certain rules will apply.
  - Place – Warehouse, Workplace
  - Time: During business or working hours
  - Date: Within Reasonable Time

NO APPLICATION IS TO BE MADE AND NO TIME IS SPECIFIED

- Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.
- *Explanation*.—The question "what is a reasonable time" is, in each particular case, a question of fact.

TIME IS SPECIFIED AND NO APPLICATION TO BE MADE

- When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.
- *Illustration*
- A promises to deliver goods at B‟s warehouse on the first January. On that day A brings the goods to B‟s warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

TIME IS ESSENCE OF CONTRACT

- In case where time is essence of contract and contract is not performed at or before that time then contract becomes voidable at the option of promisee.
- In case where time is not essence of contract and contract is not performed at or before that time then contract does not become voidable but the promisee is entitle to compensation from the promisor for any lose occasioned to him by such failure.

DISCHARGE OF CONTRACT

A. Performance of contract

B. Discharge by agreement/ by mutual consent

   1. Novation (Substitute old contract with new contract)
   2. Rescission (Cancellation of contract)
   3. Alteration change in terms & conditions in existing contract)
   4. Remission (Partial waiver)
   5. Waiver (full waiver)

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DISCHARGE OF CONTRACT

C. Discharge by frustration

- An agreement to do an act impossible in itself is void.
- A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
- Compensation for loss through non-performance of act known to be impossible or unlawful

WHAT SHALL BE CONSIDERED AS IMPOSSIBLE

- By destruction of subject matter of contract
- Death or disability of person
- By subsequent disability
- Change in circumstances

However impossibility does not mean mere commercial difficulty.

WHAT SHALL BE CONSIDERED AS IMPOSSIBLE

- By destruction of subject matter of contract –Horse dies – Bilateral mistake - void
- Death or disability of person – Painter example
- By subsequent disability – Painter example
- Change in circumstances – change in law, raw material deficit

However impossibility does not mean mere commercial difficulty.

QUASI CONTRACT

- Quasi- Partly or almost
- Contract- Agreement enforceable by law
- It is the obligation created by law in the absence of an agreement.
- Difference and similarities between contract and quasi contract

Differences	Contract	Quasi-contract
Proposal	Yes	No
Acceptance	Yes	No
Agreement	Yes	No
Consideration	Yes	Yes
Enforceable by law	Yes	Yes

INGREDIENTS

- There is no offer and no acceptance.
- One person has done some act for benefit of other person. (Benefactor and beneficiary)
- Benefit was given with non-gratuitous intention. (intention to get something in return)
- Law creates a contract between two parties. It does not arise from any agreement of the parties concerned, but it is imposed by the law.

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QUASI-CONTRACT

Quasi-contract is based on:

- Principle of equity or
- Doctrine of unjust enrichment (benefit)
- No man must grow rich out of another persons loss.

CLAIM FOR NECESSARIES SUPPLIED TO A PERSON INCAPABLE OF CONTRACTING OR ON HIS OWN

- If necessaries are supplied to a person who is incapable of contracting e.g. minor or person of unsound mind or any one whom he is legally bound to support, the supplier is entitled to claim their price from the property of such person.

a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B‟s property.

b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B‟s property.

- However, if such person has no property, nothing would be realizable
- Price only of necessaries and not of articles of luxury, can be recovered from the property.

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REIMBURSEMENT OF MONEY PAID, DUE BY ANOTHER

Where-

1. One person is interested in payment of money.
2. Another person is bound by law to pay same but he fails to pay.
3. Payment was made by person with non-gratuitous intention.

Quasi-contract is created. The person who fails to make payment must reimburse to person who made payment.

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OBLIGATION OF PERSON ENJOYING BENEFIT OF NON-GRATUITOUS ACT

Where-

1. One person is doing something or delivering anything to another person
2. No intention to do act gratuitously
3. Another person has enjoyed benefits

Then the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

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FINDER OF GOODS – S. 71

- A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a **bailee**.
- Ordinarily speaking, a person is not bound to take care of goods belonging to another, left on a road or other public place by accident but he takes them into his custody, an agreement is created by law.
- Although there is no contract between owner and finder of goods, the finder is considered as a bailee and must take as much care as owner of goods will take.

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LIABILITY OF PERSON TO WHOM MONEY IS PAID OR THING DELIVERED BY MISTAKE OR UNDER COERCION S. 72

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

(*a*) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

QUANTUM MERIUT

- Quatum meriut means **as much as earned.** (Proportionate payment).
- It is also based on principle of equity.
- When a person has done some under a contract, and the other party repudiated the contract, or some event happens which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.
- Essentials of an action of quatum meruit are as follows:

1. One of the parties makes a breach of contract or prevents the performance of it by other side
2. The party injured by the breach of the contract has already performed a part of it.

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DISCHARGE OF CONTRACT – AGREEMENT OF PARTIES

- Novation
- Alteration
- Rescission – Short
- Remission – Partly Waiver
- Waiver – Full waiver

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BREACH OF CONTRACT

- Discharge by breach of contract occurs when a party does not fulfill his obligations.
- Kinds of breach

1) Actual breach- Actual breach takes place when performance is due and one party fails to perform his part.
2) Anticipatory breach- Anticipatory breach of contract takes place when a party repudiates it before time fixed for performance has arrived.

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REMEDIES FOR BREACH OF CONTRACT

Once a party commits a breach of the contract, the other party becomes entitled to the following reliefs:

1. Rescission (cancellation of contract) and damages - A person who rightfully rescinds that contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.
2. Damages- It is a monetary sum fixed by the court to compensate the injured party.
3. Specific performance of contract
4. Injunction – Mandatory or Restrictory (Prohibitory)

- S. 27 – Agreement in restraint of trade, business, profession is Void
- Exception – Sale at Goodwill

TYPES OF DAMAGES

- Ordinary damages/ Direct damages
- Special damages/ indirect damages
- Vindictive/ exemplary damages
- Remote damages
- Nominal damages
- Liquidated damages and penalty

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TYPES OF DAMAGES

- Ordinary damages/ **Direct damages**
- Special damages/ indirect damages
- Vindictive/ exemplary damages
- Remote damages
- Nominal damages
- Liquidated damages and penalty

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ORDINARY/GENERAL DAMAGES

- When the contract is broken, the natural and direct loss suffered by aggrieved party is called as 'general damages'/ 'ordinary damages' and aggrieved party can claim such damages .
- For example- A makes a contract to procure 50 bags of wheat from B at Rs. 200 per bag. On the day of delivery B fails to deliver and A has to procure the wheat from the open market where he has to pay Rs.400 per bag (i.e Rs. 200 more than what he would have paid to B for quantity of wheat). The loss of Rs.200 is ordinary loss and A is entitled to claim the same from B.

ORDINARY DAMAGES

- A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

SPECIAL DAMAGES

- A loss that arises out of special unusual circumstances prevailing at time of breach of contract is called special damages.
- **Hardley V Baxendale (1854)**
- The following are situates in which the aggrieved party is entitled to such damages:
  1. Special damages can be claimed only if there is a **special loss** the aggrieved party.
  2. Bothe the parties to the contract are **aware of special circumstances** leading to such loss.
  3. The contract envisages the **payment** of special damages.

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EXAMPLE OF SPECIAL DAMAGES

- A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

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- Contractor – Dr. Shonal John
- Suryakant – Landlord
- Chandan – Tenant – 1st January 2024

- Contractor – House – Suryakant – 25th December 2023.
  - 1. Damages – built – 1st beach of contract
  - 2. One month Rent – Suryakant - 1st Feb 2024
  - 3. Damages – compensation – 2nd breach of contract

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EXEMPLARY OR VINDICTIVE DAMAGES

- Sometimes the breach of a contract may hurt the party's reputation. The party's goodwill is damaged and there is emotional shock.
- In such circumstances, if the court feels that ordinary damages are not enough compensation for the loss of reputation or emotional damage suffered by the aggrieved party, the court may impose exemplary damages on the defaulter.
- The objective of exemplary or vindictive damages in not only to compensate the aggrieved party, it is also to punish the defaulter.

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NOMINAL DAMAGES

- **Injuria Sine Damnum**
- When the aggrieved party has not in fact suffered any loss by reason of the breach of contract, the damages recoverable by him are nominal, i.e **very small.**
- Such damages is warning to the defaulting party that it has committed breach of contract.
- A makes a contract to procure 50 bags of wheat from B at Rs. 200 per bag. On the day of delivery B fails to deliver and A has to procure the wheat from the another supplier at the **same price** i.e Rs. 200 per bag. Now B has not suffered any loss but in order to maintain discipline in the business industry, court can ask B for the payment of nominal damages., so that the person can not make breach of contract very easily.

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REMOTE DAMAGES

- Damages are measured by the loss actually suffered by the party. The loss must naturally arise in the usual course of things from the breach; or it must be such as parties knew, when they made the contract, to be likely to result from the breach of it. Therefore a party is not liable for loss which is too remote.
- If seller defaults in in delivering goods to buyer, the buyer can recover difference between contract price and market price as damages but buyer can not recover losses that he has suffered due to stoppage of production in his factory because this is remote consequences. The buyer is under duty to keep his loss to a minimum by buying his material elsewhere so as to keep his business going.

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- A 10 kgs of raw material for price of Rs. 100 to B on 1st January 2024
- Breach of contract
- B – 10kgs – C for a price of Rs. 150 on 10th January 2024

LIQUIDATED DAMAGES AND PENALTY

LIQUIDATED DAMAGES

- The amount is almost equal to the expected loss to the aggrieved party.
- The court can not increase or decrease the amount.

PENALTY

- The amount is much more than expected loss to the aggrieved party. It is sum mentioning maximum damages.
- The court has a right to reduce the amount.

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LIQUIDATED DAMAGES AND PENALTY

- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.
- A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

- Liquidated damages
  - Ordinary damages (Direct damages)
  - Special damage (Indirect damages) – **Harvey vs Braxendale** (special loss, both parties aware, contract mentions payment)
  - Exemplary damages/Vindictive damages – View of punishment
  - Nominal damages – Injuria Sine Damnum
  - Remote Damages
- Penalty

- Nerolac ----- Ramesh (Shop Owner) – supply paint by 1st Jan 2024 **(10th jan 2024)**
- Ramesh ----- Suresh (painter) – supply paint by 7th Jan 2024 **(15th Jan 2024)**
- Suresh ----- Dharmesh (house owner) – house paint by 1st February 2024 **(15th Feb 2024)**

- Nerolac – Compensation to Ramesh for (1st Jan – 10th Jan 2024) – Direct damages
- Ramesh (aware of contract between Suresh and Dharmesh) – Compensation Suresh (7th Jan – 15th Jan) – Direct damages
  Indirect Damages – Suresh to Dharmesh
- Suresh – Compensation Dharmesh (1st Feb – 15th Feb 2024) – Direct Damages

ALL AGREEMENTS ARE NOT CONTRACT . S. 10

- 1. **Capacity to contract** (S. 11, S. 12 – Mohiri Bibi Case) – Void ab initio
- 2. **Free Consent** (Coercion, Undue Influence, Fraud, Misrepresentation, Mistake) – Voidable except for Bilateral Mistake (S. 13 – S. 22) (Derry vs Peek)
- 3. **Lawful consideration and lawful object** (S. 23,24,25) (dabee vs Mookerjee)
- 4. **Agreement should not explicitly void** (S. 26 – S. 30)

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QUASI CONTRACT – UNJUST ENRICHMENT

- S. 68 – Necessities – Minor/unsound mind person – from his property
- S. 69 – Tenant and landlord – obligation to pay taxes back
- S. 70 – Mistake of goods by neighbor – and used – reimburse
- S. 71 – finder of goods – bailee
- S. 72 – Price/money – mistake/coercion – give it back

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