



# **ODISHA**

**Judicial Services Exam**

**CIVIL JUDGE CADRE**

**Odisha Public Service Commission**

**Volume - 5**



# ODISHA JUDICIARY EXAM

## CONTENTS

S.No.	Chapter Name	Section No.
<b>1.</b>	<b>India Contract Act, 1872</b>	<b>(Pg. 1)</b>
Ch. I	The Communication, Acceptance and Revocation of Proposals	3-9
Ch. II	Contracts, Voidable Contracts and Void Agreements	10-30
Ch. III	Contingent Contracts	31-36
Ch. IV	The Performance of Contracts, Contracts which must be performed	37-67
Ch. V	Certain Relations Resembling Those Created by Contract	68-72
Ch. VI	The Consequences of Breach of Contract	73-75
Ch. VII	Sale of Goods	76-123
Ch. VIII	Indemnity and Guarantee	124-147
Ch. IX	Bailment	148-181
Ch. X	Agency Appointment and authority of agents	182-238
Ch. XI	Partnership	239-266
<b>2.</b>	<b>The Indian Penal Code 1860</b>	<b>(Pg. 59)</b>
Ch. I	Introduction	1-5
Ch. II	General Explanations	6-52 A
Ch. III	Punishments	53-75
Ch. IV	General Exceptions	76-106
Ch. V	Abetment	107-120
Ch. V A	Criminal Conspiracy	120A-120 B
Ch. VI	Offences Against the State	121-130
Ch. VII	Offences Relating to The Army, Navy and Air Force	131-140
Ch. VIII	Offences Against the Public Tranquility	141-160
Ch. IX	Offences by Or Relating to Public Servants	161-171
Ch. IXA	To Offences Relating to Elections	71A-171 I
Ch. X	Contempts of The Lawful Authority of Public Servants	172-190
Ch. XI	False Evidence and Offences Against Public Justice	191-229 A
Ch. XII	Offences Relating to Coin and Government Stamps	230-263 A
Ch. XIII	Offences Relating to Weights and Measures	264-267
Ch. XIV	Offences Affecting the Public Health, Safety, Convenience, Decency and Morals	268-294 A
Ch. XV	Offences Relating to Religion	295-298
Ch. XVI	Offences Affecting the Human Body of Offences affecting Life	299-377

Ch. XVII	Offences Against Property of Theft	378-462
Ch. XVIII	Offences Relating to Documents and to Property Marks	463-489 E
Ch. XIX	The Criminal Breach of Contracts of Service	490-492
Ch. XX	Offences Relating to Marriage	493-498
Ch. XXA	Cruelty by Husband or Relatives of Husband	498 A
Ch. XXI	Defamation	499-502
Ch. XXII	Criminal Intimidation, Insult and Annoyance	503-510
Ch. XXIII	Attempts to Commit Offences	511

**3. Indian Partnership Act, 1932 (Pg. 177)**

Definition and Nature of Partnership  
 Relations of The Partners Inter Se  
 Relations of Partners to Third Parties  
 Incoming and Outgoing Partners  
 Dissolution of a Firm  
 Registration of Firm  
 Limited Liability Partnership Act, 2008

**4. The Sales of Good Act, 1930 (Pg. 208)**

Contract of Sale  
 Conditions & Warranties  
 Passing of Property  
 Transfer of Title  
 Performance of the Contract  
 Right of Unpaid Seller Against Goods

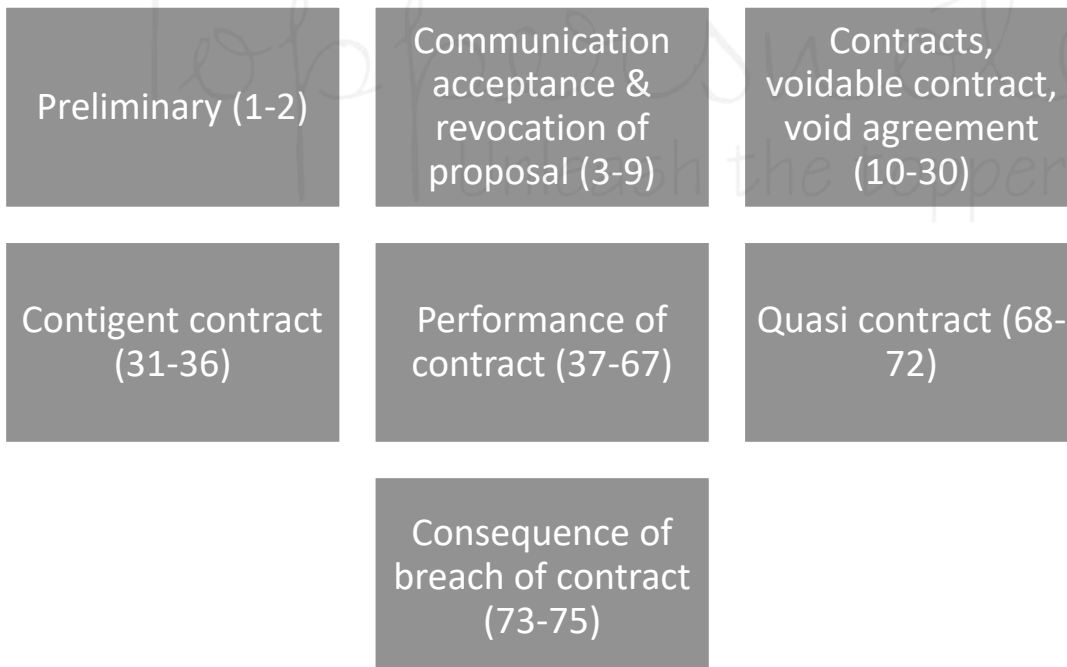
# **India Contract Act**

## The Indian Contract Act, 1872

- \* Act no 9,1872
- \* Governor general assent 25 April, 1872
- \* Came in force 1 September, 1872
- \* 3<sup>rd</sup> law commission
- \* Primarily it was in 4 parts

General Principles (1-75)	Sales of Goods (76-123)  Now different act  Sales of Goods act. 1938	Specific contract (124-238)	Partnership (239-266)  now different act  Partnership act 1932
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### General Principles (1-75)



- \* According to Salmond, contract is such agreement which create right & duties between the parties.
- \* According to arson (father of contract) contract is actionable promise or promise.

**Section 1:** apply on whole of India, except J&k

- \* Now in J&K also refer J&K reorganization act, 2019 schedule 5 entry 42.
- \* This act has superseding effect but not apply on following:
  - a. Any statute, act not expressedly repeated. (TPA, NI)
  - b. Any usage or custom of trade or incident which is not inconsistent with the act.
  - c. Omeda Khatun Vs Bogendra  
Contract act, doesn't have retrospective application.

**Section 2:**

- a. P- Proposal
- b. P- promise
- c. P- promiser & promisee
- d. C- consideration
- e. A- agreement
- f. R- reciprocal promises
- g. V- void agreement
- h. C- contract
- i. V- voidable contract
- j. V- void contract

**2(a) : Proposal:** wherever any person signifies to another his willingness to do or abstain from doing anything with the view to obtain the assent of other person is called proposal.

**2(b): Promise:** The person to whom proposal is made when he signifies his assent then that proposal is considered as accepted when the proposal is accepted it become promise.

**2 (c): Promisor:** Person who gives proposal.  
**Promisee :** Person who accepts proposal.

**2 (d): Consideration:** At the desire of promisor. Promisee or other person.

- \* **Past:** has done or abstain from doing.
- \* **Present:** does or abstains
- \* **Future:** promises to do or abstain from doing.

This is called consideration.

**2(e): Agreement:** every promise or set of promises forming consideration to each other is called agreement.

**2(f): Reciprocal Promise:** Promises which form the consideration or part of consideration for each other, is called reciprocal promises.

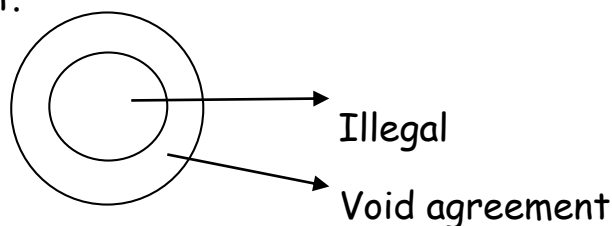
### Agreement

Void agreement 2(g)	Contract 2(h)
Such agreement which are not enforceable by law	Such agreement which are enforceable by law.

Contract 2(h)	Voidable 2(i)	Void 2(j)
	Wherever agreement is enforceable At the option of only one party (Fraud)	when contract be enforceable (Both can't enforce)

Void contract	Voidable contract
Sec 2 (j)	Sec 2 (i)
It becomes void & nobody can enforce	It is valid till it is cancelled
Both party	One party
No legal remedy	One party has legal remedy
It can't be made valid contract	It can be made valid contract
If any person reviews goods then also no title.	If goods reviewed before becoming void then title also.

\* Void agreements are of several types and which against law, is called illegal agreement.



## Communication, Acceptance & Revocation of Proposal: (3-9)

Q. Is intention necessary for contract?

Ans.

- \* In sec 2(a) the word willingness is used instead of the word intention. So we have to use English law.
- \* Contract is of two types:
  - a. Family, social & moral contracts
  - b. Commercial contracts

Family, social & moral contracts	Commercial contracts
The general rule is that there is a presumption that parties didn't intend to do contract.	The general rule is that there shall be presumption wherever commercial matter then parties intention to do contract.
Balfour Vs Balfour (judge Lord Atkin)  Matter pertain to maintenance of wife & husband it was considered social contract.	Rose & Frank comp. Vs IR Crompton (Judge Lord Atkin)  Commercial matter are of serious nature so there must be intention.
John Vs Padvatton  Matter pertains to maintenance of mother and daughter consider family contract.	

### Indians law

- \* Benvarai lal Vs Sukh Darshan Daya  
The above English law is now recognized in India.
- \* Wherever intention of party is to be recognized then it shall be objectively taken; i.e. depend on facts & circumstances.

Q. What do you understand by standard form of contract?

Ans. The general rule is that contract generally is customaries; i.e. partied can make contracts according to their needs.

- \* But nowadays where institutions have has grown big then they publish rules and publication on back side of form and customer has to sign.



- \* Either has to take the whole contract or refuse it there is no effect of accepting few conditions.
- \* There is no effect of striking of few terms.
- \* This is called standard form of contract.  
Eg. Air ticket, Parking ticket.
- \* There are few exceptions where this rule does not apply:
  - a. Condition must be reasonable
  - b. It must be along the contract form.
  - c. Rule of fundamental breach shall apply (i.e. there must be no condition which end the main purpose.)
  - d. Rule of strict interpretation shall apply.
  - e. Person shall be liable under law of torts.
  - f. Not apply on 3<sup>rd</sup> position.

**Section 3:** Communication, acceptance & revocation of proposal shall be done by act or omission which intent to communicate.

Q. When proposal communication is complete?

Ans. Section 4, Para 1: when it is in the knowledge of the person to whom it is given.

- \* **Lalman Shukla Vs Gauri Dutt:**  
If person doesn't have knowledge then no acceptance shall be considered. Knowledge of proposal is condition pre-requisite.  
Eg. Child missing->servant->reward
- \* **R Vs Clark:**  
If person had forgotten regarding proposal while doing work then it shall be considered that he doesn't have knowledge.

**Offer/ Proposal: it is of two types:**

General offer	Specific offer
It is given to the whole world, any person can accept it	It is given to a specified person with whom.
It is of continuing nature.	Intention to do a contract.

**Section 8:** Wherever general offer is to be accepted then by following manner:

- a. By performing conditions.
- b. By accepting consideration for reciprocal promise.

\* **Carlill Vs Carbolic smoke Ball comp:** (1893 QB 256 (A) Judge Bowden)

In this person accepted general offer, by fulfilling conditions (influenza - regular use of inhaler reward 100 pounds)

**Section 9:** promises are of 2 types:

- a. Express = Words written or oral.
- b. Implied = according to circumstances.

Q. What is the difference between offer and invitation to offer?

Ans.

Offer	Invitation to offer
Definition of 2(a)	It is only invitation by which perso has knowledge.
It is a legal right	Not a legal right
When proposal is accepted it becomes promise.	When invitation is accepted it becomes offer.
If breached then compensation	No compensation action.
Eg. A $\longrightarrow$ B  (offer) (Acceptance)	Eg. A $\longrightarrow$ B  (Invitation to Offer)  Offer acceptance)

Q. How acceptance is done?

Ans.

**Section 7:** Acceptance must be absolute (100%) & unqualified (No if no but).

- \* If no specific manner is stated then by usual & reasonable manner.
- \* Wherever specific manner then in that manner only.
- \* If not done then promisor can insist and return or; if doesn't fo then it shall be considered that he has accepted in that manner only.
- \* Cross offer = offer in exchange of offer. (both parties don't know)

- \* Counter offer = in this person knew about the offer but instead of accepting he gave another offer (if & but)
- \* Harvey Vs Facie Bumper Ball pen  
The question was minimum price is 900 pound.  
It is not acceptance because here only information was given.
- \* Mc Pherson Vs Appamma  
Wherever there is acceptance it must be unqualified & absolute.

Q. What do you understand by 'Gun powder & match stick' theory of Arson?

Ans.

- \* If applies on English law that if proposal is accepted once then it becomes promise and if consideration is given then agreements & if agreement is enforce by law then it shall become contract.
- \* It is similar to if match stick is placed near gun powder then explosion is invertible hence nobody can stop it. Similarly in English law if acceptance is given, it shall become promise and gentleman has to keep his promise.
- \* In English law, there is no revocation i.e. once acceptance is given it becomes promise. It can't be reverted back.
- \* In addition law, there is revocation.

Q. How revocation is done?

Ans. Section 6: by following manner:

New LCD in India

N = Notice

L = Lapse of time ( if no time then after reasonable time)

C = Condition Precedent

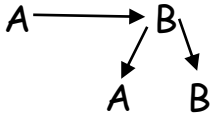
D= Death of proposer before accepting

I = Insanity

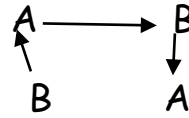
## Acceptance

Because in Indian law there is revocation so there is difference in English & Indian law.

English law



Indian law



English law	Indian law
In English law as soon as acceptance is given it becomes contract because there is no revocation.	Since in Indian law there is revocation so there is a difference in the rule of acceptance.
In English law as soon as 'B' post the letter and it is out of his control (letter in post box)	In Indian law, as soon as letter is posted communication is completed against proposer (completed against 'A')
Then it shall be considered that acceptance is completed with regard to both promisor & acceptor : a. Complete against 'A' b. Complete against 'B'	English law & Indian law is same with regard to the proposal.
Even if letter is not received then also on the date of posting the letter contract is completed.	In Indian law the difference is regarding 'B' (acceptor) for him communication shall be completed when it comes to the knowledge of proposer (In the knowledge of 'A')

\* **Adams Vs Lindsay:**

Even if letter is not receive or delayed then also no effect on the contract because contract was completed as soon as the letter of acceptance was posted.

## Revocation

\* Not is English law but it is in Indian law (sec 4 Para 3, sec 5, 6).

**Section 4 Para 3:**

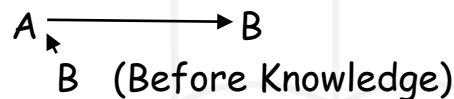
- \* Wherever any person is revoking as soon as he puts the thing in course of transmission and it is out of his reach (letter is posted), then against that person communication is completed.
- \* Wherever it comes to the knowledge of other person then communication is completed against that person.
- \* Proposal & acceptance both can be revoked.

**Section 5:**

- \* Wherever proposal is to be revoked then it can be revoked at any time before acceptance is completed against the proposer.

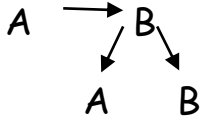
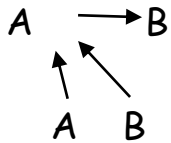


- \* Wherever acceptance is to be revoked then anytime when acceptance is not completed against the acceptor.



Q. What is the difference in law of post & Instantaneous medium ?

Ans.

Post	Instantaneous
	
<p>If letter is lost, then also communication is completed &amp; contract is formed.</p>	<p>'B' had replied but due to disturbance (noise of plane) could not hear the reply.</p> <p>So no contract takes place.</p>
<p>Edam Vs Lindsay</p>	<p>Wherever matter is of instantaneous medium then communication shall be completed only when it is in the knowledge of the proposer.</p>

Entrees Vs Mills Far East corp.

There is difference in the law of letter and instantaneous medium.

## Indian Law

- \* Bhagwan Das Govardhan Das Kedia Vs Girdhari Lal Purshottam Lal & sons  
In India also the above rule has been accepted.

**Consideration:** at the desire of promisor.

- \* Promise or other person.
  - \* Past; has done or abstain from doing.
  - \* Present; does or abstains.
  - \* Future: promises to do or abstains from doing.
- This is called consideration.

## English law

- \* Dutton Vs Poole
  - \* Twedle Vs Alkinson (Judge Witman)
- By these matters two principles came into existence.
- a. Priority of consideration
  - b. Priority of contract.

### a. Priority of consideration:

In English law, it is clear that consideration must be given by only parties not other person.

Suit can only be by that person who has given consideration other person can't see.

Indian law in the definition of consideration it is made clear that "promise or other persons" i.e. consideration shall be given by any other person also.

There is a difference between Indian & English law.

### \* Chimayya Vs Ramaiyya:

In Indian any one can give consideration, not need to be party.

**b. Priority of contract:**

- \* This rule pertain to enforcement of contract that who can enforce the contact.
- \* Indian & English law both are same i.e. only to parties to contract can enforce the contract. Not the stranger.
- \* But in India exception to this also prevail where strangers can also sue.
- \* **M.C. Chacko Vs State Bank of tranvercore**  
The general rule is that only parties to contract can sue not other person except of exceptional circumstances.

**Exceptions are**

- a. Where matter is of trust or charge or interested person, then any person can sue who has interest or get it enforced.

**Khwaja Mohd. Khan Vs Husaini Begum** - matter pertain to "Kharcha-e-paandaan" in Muslim law, the bride's father instituted the suit.

- b. Wherever mater is of family settlement partition, compromise there all the person can sue whose rights are affected.

**Draupadi Vs Jaswanth Rai** - wherever matter pertain to compromise in cruelty & maintenance then every person who is interested with the permission of court can sue.

- c. **Acknowledgment:** wherever person has given acknowledgment in front of third person and on this ground entered into the contract then he can sue.  
Eg: Estopped

- d. **Covenant ramming through land:** wherever there is any land in which ther is any charge or covenant then it can be enforced.

**Tulk Vs Musley** - If purchase knows that there is any covenant on land then it can be enforced.

**Q. Is consideration must in constant?**

**Ans.** the general rule is that contract is not without consideration if it is done without consideration then such contract shall be void.

- \* There are exceptions to this rule:
  - a. Sec 25 of ICA
  - b. Gratuitous Bailment
  - c. Agency
  - d. Partnership

### Section 25:

- \* Wherever any contract between the near relatives on account of natural love and affection and it is written & registered then no need of consideration.
- \* Wherever there is promise to compensate wholly or partly to that person who has voluntarily done something to the promisor or promisor was legally compelled to do (past consideration).
- \* Time barred Debt: Wherever any promise in writing & resigned by person or his agent for payment of any debt which could be enforced but due to period of limitation it is barred by law (limitation stops the remedy not the right).
- \* In all the above no need of consideration. It is the question of that how much consideration should be there.
- \* Even if less consideration is given then also full assent. The transaction is valid not void.
- \* Wherever legality of gift is in question then this section not applies. If gift is actually made (refer TPA also).
- \* Inadequate consideration:
- \* Indian law is clear.

### Section 63:

- \* Wherever there is any promise then he may remit or dispense performance of promise (partly or wholly)
- \* Similarly he can extend the time or accept satisfy as he deems fit (by another thing)
- \* English law: Pinnel rule, 1602 -> wherever agreement between two parties and consideration shall be given, if less consideration is given then it shall not be accepted.



\* **Foakes Vs Beer:**

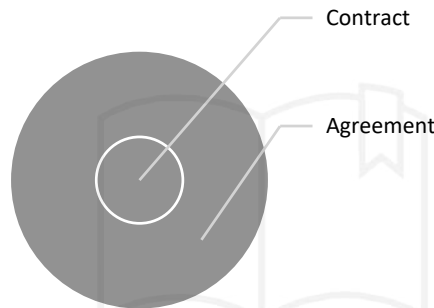
By this case the above principle was confirmed and also stated that person shall give principle as well as interest.

\* But now exceptions have come to this rule also:

- a. Promissory estoppels
- b. Payment before time
- c. Scheme of composition (adjustment)
- d. Part payment by third party.

**Contract, Voidable contract & Void Agreement (10-30)**

\* All contracts are agreement, but all agreements are not contracts.



Contract = Agreements which are enforceable by law. (refer sec 10 of ICA)

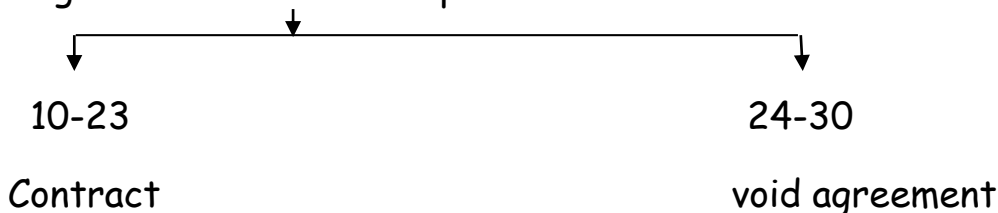
**Section 10:** Wherever any agreement completes following conditions then it is enforceable by law.

- a. Free consent (13-22)
- b. Competence of parties (11-12)
- c. Casual consideration (23)
- d. Lawful object (23)
- e. Not expressly declared void (fraudulent transfer) (refer sec 53, TPA)

Wherever contract must be in writing, in presence of witness registration then this section has no effect on them.

Eg. Sale deed in TPA

\* Registration Act shall supersede.



Q. Who is competent to contract?

Ans.

**Section 11:** Every person is competent to contract who:

- a. Has attained the age of majority.(age)
  - b. Who is of sound mind.(medical qualification)
  - c. Not disqualified by law from contracting.(legal qualification)
- Eg. Insolvent

Q. Who is sound mind?

Ans.

**Section 12:**

- \* Every person who understands the contract & form rational judgment regarding effect upon his interest, then he is competent to contract.
- \* If a person can't do then such contract is void.
- \* If there is any person who is generally unsound but for same time he is sound mind then:
  - a. If contract during soundness -> contract is void.
  - b. If it is during unsoundness -> contract is void.

Q. The rule of Mohri bibi has evolved explain. What is the present position?

Ans. Minor = Indian majority Act, 1875

- \* Previously there was sec 3&4, according to which a person is major who has attained 18 years of age and wherever guardian is appointed or property is in superintendence of court of wards, their age 21 years.
- \* Presently, act no 33, 1999. Which same in force on 16/12/1999.
- \* In this instead of sec 3&4 only sec 3 was stored major is who has completed 18 years of age.
- \* In English law, also same. After family reform act, 1969; all have same age.
- \* Mohri Bibi Vs Dharam das Ghosh  
Wherever agreement is of minor, then it is void abinitio. It included following things:
  - a. Borrowing money or promise to borrow.
  - b. Sale of goods, except necessity.
  - c. Contract of accounts
- \* In all the above matters no enforcement by minor or against him.

Q. Can there be restitution?

Ans. Because agreement is void abinitio then there can't be any restitution.

\* **Leslie Vs Shell:**

Wherever restitution there following rules:

- a. There must not be any alternation in property.
  - b. Doesn't apply on money.
  - c. Property must not be further sold.
- \* In old SRA & in ICA, restitution was applicable only in voidable contract so Mohri Bibi didn't revive any benefit. (refer sec 39 & 41 of SRA 1877)
- \* Now there is amendment in SRA (SRA, 1963 sec 31&33) & ICA (sec 64&65)
- \* If now minor goes to court to get the contract declared void then he has to restore the benefit.
- \* Similarly if any person on the ground of minority defends in court then he has to restore the benefit or give compensation.

Q. Whether principle of estoppel applies on minor?

Ans. Not apply because he can lie regarding his age.

Q. Whether Minor shall be liable in law of torts?

Ans. Johnson Vs Pye -> minor is neither liable in contract nor in law of torts.

Q. Whether minor can ratify?

Ans. Because contract of minor is void abinitio so he can't ratify.

- \* Due to the above reasons no benefit was given to Mohri Bibi.
- \* In Mohri Bibi the principle was clearly laid down that neither by him nor against him contract is enforceable.
- \* Due to this many minors had problem.
- \* Mir Swarajan Vs Faruddin Mohd. Chaudhary -> In this minor could not enforce the contract.

### **Present Position**

In following cases there can be enforcement by or against minor;

- a. **Necessity:** wherever any person provides minor or incapable person with necessity then he can get contract enforced.
  - o Amount shall be recovered from property.
  - o Chappel Vs cooper -> necessity not only include food shelter and checking it includes education also. It depends on standard of living of person.'