

In this regard, it would be pertinent to note that from the point of view of legality, agreements are of the following types:

- (1) **Contract** – (discussed above).
- (2) **Void agreements [Section 2(g)]** – An agreement not enforceable by law is void e.g. an agreement of a minor (Sections 23 to 30 talk about such agreements).
- (3) **Voidable contracts [Section 2(i)]** – An agreement enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others e.g. when consent has been obtained by coercion, fraud, misrepresentation or undue influence. If the party concerned does not avoid it, the agreement is a contract.
- (4) **Illegal agreements** – Opposed to public policy e.g. an agreement to commit a crime or a tort. But certain agreements may be void or voidable but not illegal, depending upon the degree of its opposition to public policy e.g. an agreement in restraint of trade is void but not illegal.

Void agreement v. Voidable contract

Void agreement is a nullity from its very inception and no rights accrue. A voidable contract is valid until it has been avoided and rights accrue till then.

Consensus ad idem, read with definition of contract –The difficulties attendant upon a definition of contract in subjective terms have led to the formation of an objective theory which places little emphasis upon the meeting of minds and much more upon the legal expectations aroused by the conduct of parties. Section 2(h) defines a contract as an agreement enforceable by law.

The test of contractual intention is objective rather than its being subjective. The supreme court cited a passage from an English case in *Bahamas Oil Refining Co v. Kristiansands Tankrederie* which reads as "In deciding whether or not there was any contract in relation to a certain transaction or whether or not sufficient notice of a certain terms was given the law applies and not a subjective test" Further in *CWT v. Abdul Hussain Mulla Mohd Ali* 1988 the supreme court cited that in addition to the existence of an agreement and the presence of consideration there is also the third contractual element in the form of intention of the parties to create legal relations.

Consensus ad idem => Lord Hannen in *Smith v. Hughes* held that –It is essential to the creation of a contract that both parties should agree to the same thing in the same sense.

True consent is an agreement upon the same thing in the same sense as incorporated by section 13 of the Indian Contract Act and is at the root of every contract. True consent is said consensus ad idem.