

INDIAN CONTRACT ACT, 1872

What is Contract?

- A written or spoken agreement intended to be enforceable by law.
- An agreement enforceable by law is a contract. [Section 2(h)]
- A contract is an agreement made between two or more parties, which the law will enforce.

Definations.

- **Proposal (Offer)** - 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.
- **Promise** - When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.
- Eg – A offers to sell his car to B. B accepts the offer. it becomes a promise and can be treated as an agreement between A & B.

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- The person making the proposal is called the "promisor and the person accepting the proposal is called the promisee":
- **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.

Continued...

- **Agreement** - Every promise and every set of promises, forming the consideration for each other, is an agreement.
- **Contract** - An agreement enforceable by law is a contract.
- An agreement not enforceable by law is said to be void.
- **CONTRACT = AGREEMENT + LEGAL OBLIGATION**

Relationship

- Offer/Proposal -> Acceptance -> Promise -> Agreement -> Contract.

Contracts

Contracts –

- **Contract** - An agreement enforceable by law is a contract.
- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Kinds Of Contract

- Valid Contracts, Void Contracts & Voidable Contracts
- Unenforceable Contracts & illegal Contracts
- Executed Contracts & Executory Contracts
- Express Contracts & Implied Contracts
- Unilateral Contracts & Implied Contracts
- Quasi Contracts

Kinds of Contract.

- Void contract – A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- Valid Contract – A contract that fulfills all the legal requirements such as existence of agreement, intention for creating legal relations, certainty etc. is said to be valid. The absence of an essential element will render the contract void, voidable, illegal or unenforceable.
- Eg when valid becomes void - A promises to sell his luxury car to B. If B dies or goes mad before the money changes hands, the contract would become void.

Kinds of Contract

- Voidable Contracts – An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of others is a voidable contract.
- Eg: A agreed to sell his house to B for Rs 5000. the consent of A was obtained by the use of force. The contract is voidable at the option of A.
- A agrees to supply 500 tins of mustard oil at B's warehouse for Rs 500 per tin within the fortnight. A however fails to do so within the stipulated time. The contract has become voidable at the option of B.

Kinds of Contract

- Executed contract – Where both the parties have performed their obligations, it is executed contract.
- Executory Contract - Where neither of the parties have performed their obligations, ie both the parties are yet to perform their promises, the contract is executory

Kinds of Contract

- Implied Contract – The terms of a contract are inferred from the conduct or dealings between the parties. When proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. Such implied promise leads to Implied Contract.
- Quasi Contract – Certain relations resemble those created by a contract. Certain obligations which are not contracts in fact but are so in contemplation of law are Quasi Contracts.
- Eg : Case of a delivery boy who by mistake delivers grocery to wrong address. The owner of the house consumes the supply. Will the owner be held for payment? Yes since he man will be held liable for payment as the law aims to create an obligation upon a non-contracting party to avoid injustice.

Kinds of Contract

- 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.
- Speciality Contract – It is a contract which is in writing, signed, sealed & delivered by the parties.

Kinds of Contract

- Unenforceable Contract – When a contract is valid otherwise, but cannot be enforced by one or both the parties because of some technical flaw it is described as an unenforceable contract.
- Illegal Contracts – An illegal agreement is one which the law specifically forbids.
- Eg: A agrees to pay B Rs 100000/- for killing C. A managed the amount by taking a loan from X to pay B. X was aware of the purpose of the loan. The agreement between A & B is illegal. Even if B kills C then he/she cannot recover the agreed amount from A through a legal action. Basically the agreement between A & B is illegal in the eyes of law.

Essential elements of a Valid Contract.

Sec 10

1. Proposal & Acceptance.
2. Consideration.
3. Capacity of parties to contract.
4. Free Consent.
5. Agreement should not be expressly declared void.

Continued

6. Writing & Registration, if so required by law.
7. Legal Relationship.
8. Certainty.
9. Possibility of Performance.
10. Enforceable by law.

Proposals

Proposal - 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.

Essentials of Proposal:

1. Beyond expression of willingness, there must be something in the nature of a request.
2. Proposer cannot dictate terms.
3. An offer must be intended to create & capable of creating legal relations.

Communication of proposals.

- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- **Eg** - A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

Acceptance

- When one person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.
- Proposal when accepted becomes promise.
- The person making the proposal is called the *Promisor* and person accepting the proposal becomes *Promisee*.

Essentials of Acceptance.

1. Acceptance must be absolute and unqualified.
2. It must be expressed in some usual & reasonable manner.
3. Mental Acceptance is not sufficient in Law.
4. Acceptance must be communicated to the offerer.
5. Acceptance must be by a certain person.

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6. Acceptance must be given within a reasonable time.
 7. Acceptance must be given before the offer lapses or is revoked or is withdrawn.
 8. Acceptance of proposal is acceptance of all terms.

Communication of an acceptance

The communication of an acceptance is complete, -

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge, of the proposer.

Eg : B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted as against B, when the letter is received by A.

Revocation of proposals and acceptances

Revocation of proposals and acceptances.

- A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
- An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards

Capacity of parties to Contract.

An agreement becomes a contract if it is entered between the parties who are competent to Contract.

Every person is Competent to contract

1. Who is of the age of majority according to the law. (not an minor) (Sec 11)
2. Who is of sound mind. (Sec 12)
3. Who is not disqualified by any law. (Sec 13)

The position of Minor's Agreements

- An agreement with or by minor is void *ab initio*
- Contracts for the benefit of Minor
- No ratification of agreement on attaining majority
- Liability of Minor's parents and guardians
- Minor as a Partner

Person of Unsound Mind

- Sec 12 – A person is said to be of unsound mind for the purpose of making contract, if at the time when he makes it, he is capable of understanding it & of forming rational judgment as to its effects upon his interests.
- Sec 12 further states – (1) a person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind & (2) a person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

Other Persons Disqualified by Law

- Alien Enemy
- Foreign Sovereigns and Ambassadors
- Corporations
- Convicts
- Insolvents

Free Consent (Sec 14)

"Free consent" - Consent is said to be free when it is not caused by –

- 1) coercion,
- 2) undue influence
- 3) fraud,
- 4) misrepresentation,
- 5) mistake.

Consent (Sec 13) is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Coercion (Sec 15)

Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 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.

Eg - A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

Undue influence (Sec 16 & 19A)

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.

Eg - A had given advance 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. Here A employs undue influence.

Fraud (Sec 17 & 18)

"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;

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- 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.
- 4) Any other act fitted to deceive;
- 5) Any such act or omission as the law specially declares to be fraudulent.

Misrepresentation (Sec 18 & 19)

"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.

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- 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.

Contingent contract

"Contingent contract" defined –

A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Essential characteristics of a contingent Contract –

1. There should be existence of a contingency, happening or non happening of some event in future.

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2. Contingency must be uncertain.
3. The event must be collateral, for example, incidental to the contract.

Eg – A contracts to pay B Rs 10,000 if B's house is burnt. This is a contingent contract as A will pay B only if his house burns and not otherwise.

Wagging Contracts.

It is agreement by mutual promises, each of them conditional on the happening or not happening of an unknown event.

All wagers are contingent but all contingent contracts are not wagers.

Quasi Contracts (Sec 68-72)

- Quasi Contract is an obligation resembling that created by a contract.
- It is implied Contract.
- The essentials of formation of contracts are absent.
- There is no agreement at all.

Types of Quasi Contracts.

- Where a person supplies necessaries to a person incapable of contracting, he is entitled to be reimbursed from that property of such incapable person.
- A person who is interested in the payment of money which another is bound by law to pay is entitled to be reimbursed by other.
- A person to whom money is paid by mistake or under coercion, must repay or return it.

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- When a person lawfully does anything not intending to do so gratuitously & other person enjoys benefit thereof, the later is bound to make compensation to the former.
- A person who finds the goods belonging to another is subject to the same liabilities as a bailee of goods. He is entitled to retain the goods until he receives the lawful charges or compensation.

Discharge of Contract.

Discharge means “ termination “ of a contract.

The contract may be discharged in any of following ways –

1. By performance.
2. By death.
3. By refusing tender of performance.
4. By breach of Contract.
5. By impossibility of performance.

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6. By agreement or by consent.
7. By promisee failing to offer facilities for performance.
8. By operation of law.
9. By unauthorized material alteration of a contract.
10. Discharge by lapse of time.

Breach of Contract

Breach of contract is non performance of contract.

Remedies for breach of contract to Aggrieved party.

1. Suit for specific performance – The court directs party committing breach to perform the promise according to the terms of the contract.
2. Suit for injunction – An injunction is an order of Court directing person to do or refrain from doing some act which is subject matter of contract.

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3. Suit for damages, for the loss sustained – In case of breach of contract, injured party can claim for damages caused due to breach.

 4. Quantum meruit – Quantum meruit means as much as earned or deserved or as much as is merited. A person can claim payment for the work done or goods supplied.

Indemnity (Sec 124-127)

- A contract by which one party promises to save the other from any loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called Contract of Indemnity (sec 124).
- The person who promises to make good the loss is called the Indemnifier & the person whose loss is made good is called as Indemnified.
- Indemnity like any other contract must have all essentials of a valid contract

Contract of Guarantee (Sec 126)

- A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called Surety, the person in respect of whose default the guarantee is given is called Principal Debtor & the person to whom the guarantee is given is called as Creditor.

