

INDIAN CONTRACT ACT 1872

Unit -1

Contract is defined under the section 2(h)

Agreement is given in section 2(e)

Promise is given in section 2(b)

Section 10 contains-

- 1) Agreement
- 2) Free consent
- 3) Competency of parties
- 4) lawful Consideration
- 5) legal object

Capacity of the parties-

According to the section 11 of the Indian Contract Act 1872 every person is competent to contract who

- a) is of age of majority according to law to which he is subject and
- b) is of sound mind and
- c) is not otherwise disqualified from contracting by any law to which is subject.

A person must competent to contract must fulfill this about three qualifications.

Section 23 states that consideration or object is not lawful it is prohibited by law or it is such as word defeat to provision of law if it is fraudulent or involves injury to the person or property of another regards it as immoral or opposed to public policy.

Void Contract-

According to Section 2(J) a contract Which Ceases to be enforceable by law becomes void when it ceases to be enforceable. Thus a void contract is one which cannot be enforced by a court of law.

Voidable Contract-

According to Section 2(i) and agreement which is enforceable by a law at the option of one or more parties thereto but not at the option of the other or other is voidable contract.

According to Section 2(g) of Indian Contract Act an agreement not enforceable by law is void. The act has specified various factors due to which an agreement may be considered as void agreement one of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void.

According to Section 9 of Indian Contract Act 1872 if a proposal or acceptance of any promise is made in word the promise is said to be Express.

According to Section 6 if the accepter fails to fulfill the condition precedent to acceptance the proposal gets revoked.

According to **Section 2(a)** of Indian Contract Act 1872 when a 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 set to make proposal.

Section 8 of act provides that if anyone performing the condition of offer can be considered to have accepted the offer.

According to **Section 2(b)** the person to whom the proposal is made signifies his assent thereto proposal is set to be accepted. the proposal when accepted becomes a promise.

As per **section 7** of the act acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner and unless the proposal Prescribes the manner in which it must be accepted.

As per the **Section 4** of the act the communication of offer is complete when it comes to the knowledge of the person to whom it is made.

Section 3 of the act prescribes in general term to mode of communication namely
a] by any act and
b] by omission.

According to **Section 13** two or more person are said to have consented when they agree upon the same thing in the same sense.

According to **section 14** consent is free when it is not caused by corrosion undue influence fraud misrepresentation or mistake.

Definitions:

section 2(a) proposal-

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

Section 2(b) promisee

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.

Section 2(c) promisor and promisee-

- a]** The person making the proposal is called promisor.
- b]** The person accepting the proposal is called a promisee.

Section 2(d) consideration- When at the Desire of the promisor the promisee or any other person has done or abistained from doing or does or abstains from doing or promisee to do or to abstain from doing something such at or abstinces for promise is called a consideration for the promisee.

Section 2(e) Agreement-

Every promise and every set of promises forming consideration for each Other is an agreement.

Section 2(g) void agreement-

An agreement not enforceable by law is said to be void.

Section 2(h) Contract-

An agreement which is enforceable by law is a contract.

Section 2(i) voidable contract-

An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or other is a voidable contract.

Section 2(j) void contract-

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Section 2(b) acceptance-

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

Types of contract on the basis of Validity-

1. Valid contract

2 Void contract

3. Voidable contract

4. Illegal agreement

5,. Unenforceable contract

1] Valid contract-

An agreement which is binding and enforceable is a valid contract; it contains all the essential elements of a valid contract.

2] Void contract-

A contract which ceases to be enforceable by law becomes a void contract; it is one which cannot be enforced by a court of law.

3] Voidable contract-

An agreement which is enforceable by law at the option of one or more parties thereto but not at option of the other or other is a voidable contract.

4] Illegal agreement-

It is an agreement which the law forbids to be made. The court will not enforce such a contract but also the connected contract. All illegal agreements are void but all void agreements are not necessarily illegal.

5] Unenforceable contract-

Where a contract is good or substance but because of some technical defect i.e absence in writing barred by limitation etc. one or both the parties cannot sue upon it, it is described as an enforceable contract.

Types of contract on the basis of Formation:

1. Express contract-

2. Implied contract-

3. Quasi contract-

4. E-contract-

1] Express contract-

A contract would be an express contract if the terms are expressed by word or in writing.

Section 9 of the act provides that if a proposal or acceptance of any promise is made in word, the promise is said to be express.

2] Implied contract-

Implied contract in contrast comes into existence by implication. Most often the implication is by action or conduct of parties or course of dealing between them. **section 9** of the act contemplates such implied contract when it lays down that in so far as such a proposal for acceptance is made otherwise than in word, the promise is said to be implied.

3] Quasi contract-

A quasi contract is not an actual contract but it resembles a contract. It created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists; such obligations are known as quasi contracts. In other words it is a contract in which there is no intention on part of either party to make a contract but law imposes contract upon the parties.

4] E-contract-

When a contract is entered into by two or more parties using electronic means such as email is known as E-Commerce in Electronic Commerce different parties/ person create network which are linked to other networks through Ed1 electronic data interchange this help in doing business transactions using electronic modes. This are known as EDI contract or cyber contract or Mouse click contract.

Types of contract on the basis of performance:

1.Executed Contract-

2.Executory Contracts-

1] Executed contract-

The consideration in a given contract could be an act or forbearance. When the act is done or executed for the forbearance is brought on record, then the contract is an executed contract.

2] Executory contract-

In an executory contract the consideration is a reciprocal promise or obligation; such consideration is to be performed in future only and therefore these contracts are described as an executory contract.

2 Types of Executory Contract:

a] Unilateral contract-

Unilateral contract is a one-sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.

B] Bilateral contract-

A bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

Types of Offer:

1] General offer-

It is an offer made to the public at large and hence anyone can accept and do the desired act in term of **Section 8** of Act anyone performing conditions of the offer can be considered to have accepted the offer until the general offer is withdrawn, it can be accepted by anyone at any time as it is a countinueing offer.

2] Special offer-

When the offer is made to a specific or an ascertained person, it is known as specific offer. specific offer can be accepted only by that specified person to whom the offer has been made.

3] Cross offer-

When two parties exchange identical offers in ignorance at the time of each other's offer. The offers are called cross offer. There is no Binding contract in such a case because an offer made by a person cannot be Construed as an acceptance of the other offer.

4] Counter offer-

When the offeree to qualified acceptance of the offer subject to modification and variations in the term of original offer, he is said to have made to a counter offer counter offer is amounts to rejection of the original offer it is also called conditional acceptance.

5] Standing offer-

An offer which Is allowed to remain open for acceptance over a period of time is known as standing continuing or Open offer tenders that are invited for supply of goods in a kind of standing offer.

Modes of Revocation of offer-

- 1] By notice of revocation
- 2] Buy lapse of time
- 3] By non fulfillment of condition precedent
- 4] By date of Insanity
- 5] By counter offer
- 6] By the non acceptance of the offer according to the prescribed or usual mode
- 7] By subsequent illegality.

Some IMP Distinguishes:

	<u>Agreemets</u>	<u>Contract</u>
<u>Meaning:</u>	Every promise farming the consideration for each other (offer + acceptance)	Agreement enforceable by law (agreement + legal enforceability)
<u>Scope:</u>	It is a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
<u>Legal obligation:</u>	It may not create legal obligation and agreement does not always grant right to the parties.	Necessarily create a legal obligation a contract always grants certain rights to every party.
<u>nature:</u>	All agreement are not contracts.	All contracts are deffinetly agreement.

	<u>Void contract</u>	<u>Voidable contract</u>
<u>Meaning:</u>	A contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable but not at the option of one or more of the parties thereto but not at the option of other is a voidable contract.
<u>Enforceability</u> :	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of the other party.
<u>Cause:</u>	Contract become void due to change in law or change in circumstances beyond the contemplation of parties.	A contract become a voidable contract if the consent of a party was not free.
<u>Performance of contract:</u>	A void contract cannot be performed.	If the aggrieved party does not within reasonable time, exercise is right to avoid the contract, any party can sue the other for claiming the performance of the contract.
<u>Rights:</u>	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time if he resigned its become a void contract.

	<u>Void agreement</u>	<u>Illegal agreement</u>
<u>Meaning:</u>	A void agreement is not necessarily illegal.	An illegal agreement is always void.
<u>Nature:</u>	Not Forbidden under law.	Forbidden under law.
<u>Punishment:</u>	Parties are not liable for any punishment under law.	Parties of illegal agreement are liable for punishment.
<u>Collateral agreement:</u>	It's not necessary that agreements Collateral to void agreement may also be void. It may be valid also.	Agreement to Collateral to illegal agreements are always void.

	<u>Offer</u>	<u>Invitation to offer</u>
<u>Meaning:</u>	Section 2(a) of the act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party choose to accept it.	When a party without expressing his final willingness proposes a certain term on which he is willing to negotiate he does not make an offer but invites the other party to make an offer on those terms.
<u>Intention of the parties:</u>	If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.	Intention of the negotiation on term it is called intention to offer.
<u>Sequence:</u>	Offer cannot be a precedent to invitation to offer.	An invitation to offer is always an act Precedent to offer.

INDIAN CONTRACT ACT 1872

Unit-2

Consideration section 2(d)-

When at the desire of the promisee or any other person has done or abstained from doing or does or absence from doing or promises to do or abstain from doing something such an act or abstinence for promisee is called consideration for the promisee.

Consideration is an act doing something.

Consideration is abstinence-abstain from doing something.

Consideration must be at the desire of the promisor.

Consideration may move from promisee or any other person.

Consideration may be past present or future.

consideration= Promise/Performance that parties exchange with each other.

Form of consideration= some benefit write or profit to one party / some detriment loss or forbearance to the other.

Legal rules regarding consideration-

i) Consideration must move at the desire of the promisor:

Consideration must be offered by the promisee or the third party at the Desire or request of these implies return element of consideration.

An act done by the desire of the third party is not consideration.

A person cannot demand any reward for his service as the act been done voluntary (free of cost).

ii) Consideration may move from promisee or any other person:

In India consideration may proceed from the promisee or any other person who is not a party to the contract. As per section 2(d) there can be a stranger to a consideration but not stranger to a contract.

iii) Executed and Executory consideration:

A consideration in the performance of an act is set to be executed when it consists in a promise it is said to be Executory. The promise by one party may be the consideration for an act by some other party and vice versa.

iv) Consideration may be Past Present or Future:

In order to support a promise a past consideration must move by a previous request.

v) Consideration need not to be adequate:

Consideration need not to be of any particular value. It need not be approximately for equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value, something in return not be equal to something given. It can be considered a bad bargain of the party.

Section 25 states that an agreement to which the consent of the promise given is not void merely because the consideration is inadequate.

But as an expectation if it is shockingly less and the other party alleges that his consent was not free then this inadequate consideration can be taken as an evidence in support of his allegations.

vi) Performance of what one is legally bound to perform:

Performance of any act by a person who is legally bound to perform the same cannot be consideration for any contract. Hence such contract is void for want of consideration.

vii) consideration must be real and not illusory:

It must be something to which the law attaches some values.

viii) Consideration must not be unlawful in moral or opposed to public policy:

Only presence of consideration is not sufficient it must be lawful. Anything which is Immoral or opposed to public policy also cannot be valued as valid consideration.

Suit by third party:

Through under Indian Contract Act 1872 the consideration for an agreement may proceed from a third party. The third party cannot sue on contract only a person who is party to contract can sue on it.

Different form of stranger to a contract: Even a stranger to a contract may enforce a claim in the following cases-

a) In case of trust-

A beneficiary can enforce his right under the trust through he was not a party to the contact between the settler and the trustee.

b) In case of family settlement-

The member of family who originally had not been parties to the settlement may enforce the agreement.

c) In case of certain marriage contract/agreements:

A provision may be made for the benefit of person he may file the suit through he is not party to the agreement.

d) In case of assignment of a contract:

When the benefit under a contract has been assigned the assignee can enforce the contract.

e) Acknowledgement of estoppel:

When the promisor by his conduct acknowledges himself as an agent of the third party it would result into a binding obligation towards third party.

f) In the case of convenient running with the land:

The person who purchase land with notice that the owner of land is bound by certain duties affecting land the covenant affecting the land may be enforce by the successor Of the seller.

g) Contract entered into through an agent:

The principal can enforce the contract entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Validity of an agreement without consideration Section 25(1):

A contract May only be enforceable when consideration is there but in the following case the agreement though made without consideration will be valid and enforceable.

Natural love and affection:

- 1) It must made out of natural love and affection between the parties.
- 2) Parties must stand in near relationship to other.
- 3) It must be in writing.
- 4) It must also be registered under the law.

Compensation for post voluntary services: A promise to compensate wholly or in party a person who has already voluntarily done something for the promisor is in enforceable under **Section 25(2)**.

In order that a promise to pay for the party voluntary service binding the following essential service must be exist:

- 1) The service should have been rendered voluntarily.
- 2)The promise must have been rendered for the promise.
- 3) The promisor must be in existence at the time when service was rendered.
- 4) The promisor must have intended compensate the promise.

Promise to pay time barred debt:

Under **section 25(3)** where the promise in writing signed by the person making it or by his authorized agent is made to pay a debt barred by limitation it is valid without consideration.

Agency:

According to **Section 185** no consideration is necessary to create an agency.

Complimented gift:

According to Section 25 nothing in the section shell affect the validity as between the donor and donee of any gift actually made.Thus does not require any consideration.

Bailment:

According to section 148 bailment as a delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose the good will either be returned or disposed. of according to the direction of the person delivery them. No consideration is required to affect contract of Bailment.

Charity:

If a promisee undertake the liability on the promise to contribute to Charity there the contract shall be valid.