

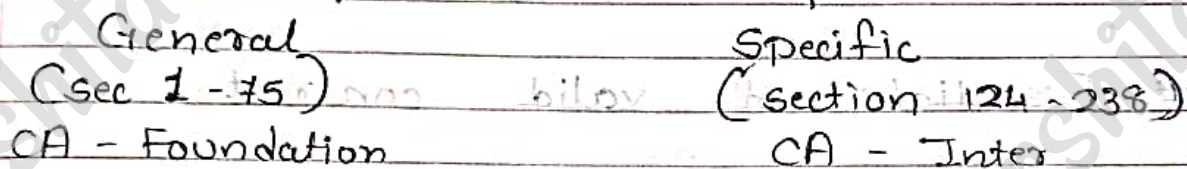
Unit - 1. Nature of Contract

• Introduction

→ Applicable to whole of India.

→ Came into force 1<sup>st</sup> Sept, 1872.

Indian Contract Act



# What is contract?

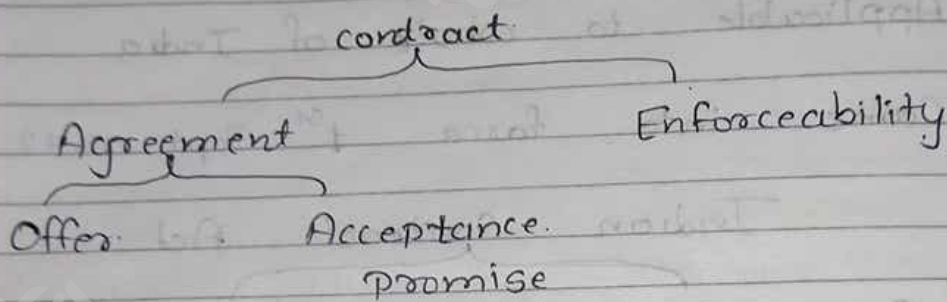
Sec 2(h) : An agreement enforceable by court of law.

# Agreement : Every promise and set of promises forming consideration for each other.

# Promise : 2(b)

When a person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted it becomes promise.

# Agreement must give rise to legal obligation (duty) which can be enforced in court of law



# Essentials of valid contract

# Not given in Section 10

1 Two parties:

A contract should involve at least two parties - one making offer and other accepting it

→ Parties can be Natural or artificial

C.L.: State of Gujarat vs. Ramani Lal S & Co

2 Parties **must** intend to create legal obligation:

• Contract should be enforced by court of law.

- Social / Domestic type of agreement are not enforceable.

Case : Balfour vs. Balfour  
law

3. Other formalities to be complied in certain cases :

- A contract may be oral or written.
- Some contract may contain **certain** formalities which need to be complied to make it enforceable.

ig:studious\_harshita

Example : In case of purchase / sale of immovable property, it needs to be in writing & registered under law.

4. Certainty :

- Contract should be certain, Indefinite & not vague.

Example : oil.

5. Possibility of performance :

- The terms should be capable of

performance. If impossible then it can't be enforced.

## # Section - 10 Essential of Contract.

### 1 • Offer & Acceptance

- Agreement is essential element of contract.
- Def<sup>n</sup> - Agreement + Promise

### 2 Free Consent :

- Two or more person are said to be in consent when they agree upon same thing in same sense.
- Consent should be free i.e. without any pressure.
- Consent is not said to be free if caused by coercion, Undue Influence, Fraud and misrepresentation.

### 3 Capacity of parties :

- Parties should be capable of performing contract.
- Sec - 11 A party is competent if

- has attain age of majority \*
- is of sound mind.
- Not disqualified from contracting.

#### 4. Consideration:

- It means 'Quid Pro Quo,' i.e. something in return.
- A valuable consideration means some right, Interest, benefit accruing to one party and forbearance, Detriment or loss to other.

#### L-2 5 Lawful consideration and object:

- Consideration or object should not be prohibited by law such that it should not defeat provisions of law

#### 6 Not expressly declared as void:

- The agreement must not be either declared as void or illegal.
- Illegal agreement are declared void and one prohibited by law
- Void agreement is one which has no effect

## \* Types of contract

+ On the basis of validity

### 1. Valid contract :

An agreement which is binding and enforceable and has all essential elements

### 2. Void contract : sec 2(j)

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

### 3. Voidable Contract : sec 2(i)

• An agreement enforceable by law at the option of one or more party but not the option of other is voidable contract.

• contract which are caused by coercion, undue influence, fraud & misrepresentation becomes voidable contract

### 4. Illegal Contract :

• It is a contract which law forbids

- Court will not enforce such contract or connected contract (collateral contract)
- All ~~vs~~ Illegal agreement are void but all void agreement are not illegal.
- Both cases are void - ab - initio.   
 = in a house before contract

### + Void Agreement

- An agreement not enforceable by law is VOID
- Factors - 1: Unlawfulness of object & consideration
- 2 - Destroy of subject matter.

### 5. Unenforceable Contract:

- Contracts which are not enforceable because of some technical defect.
- Contract can be sued after defect is remove.

## II On the Basis of Formation

### 1. Express Contract:

When terms of contract are expressed by words or in writing.

### 2. Implied Contract:

(i) It comes to existence by implication

(ii) Implication can be either by action or conduct of parties

(iii) When proposal or acceptance is made otherwise than in words, promise is said to be Implied.

### Tacit Contract:

- It means silent contract.
- It are those that are inferred through conduct of parties without any words spoken or written.

Example - ATM cash withdrawal

### 3. Quasi Contract:

- It is not actual contract but it resemble contract.
- Obligation are created by law under



certain circumstances

- No real contract exists as such, obligation created by law & not between parties.

#### 4. E - contracts :

When contract is entered into by two or more parties using electronic medium such as e-mail, is said to be E - contract.

- It is also known as EDI contract, mouse - click contract or cyber contract

### III On the basis of performance.

#### 1. Executed Contract :

When act is done or executed then it is executed contract

- It means obligation of both parties are performed.

#### 2. Executory Contract :

##### I Unilateral Executory :

When obligation of one party is performed but not of other party then it is Unilateral Executory Contract.

II Bilateral Executory Contract:  
when obligation of both parties are pending then it is bilateral executory contract.

\* **Proposal / Offer:**

**Defination:** when one person signifies to another to do his willingness to do or abstain from doing with a view to obtain assent of that other person. to such act or abstinence, he is said to make proposal.

\* **Essential of offer:**

1. Person making offer is promisor and person to whom offer is made is promisee.
2. For a valid offer party must express his willingness to do or not to do something.
3. willingness must be express with a view to obtain assent of other person.
4. Offer can be positive or negative.

## # Kinds of offer :

### → General Offer :

- made to public at large
- Anyone can accept it by doing desired act.
- Untill this offer is withdrawn or Retracted - anyone can accept it.

Case law : Carlill vs. Carbolic smoke ball Co.

### 2. Specific offer :

- made to specific or ascertained person
- can be accepted only by person to whom offer is made.

Case law : Boulton vs. Jones

### 3. Cross offer :

- when <sup>two</sup> parties exchange identical offer in ignorance at time of each other offer - it is cross offer.

- There is no binding contract.

### 4. Counter offer :

- when offeree offers qualified acceptance

મહત્વે પ્રાર્થના એ શક્તિશાળી હોવાનું છે.

of offer subject to modification and variation in terms of original offer. counter offer.

- It amounts to rejection of original offer.

### 5. Standing or continuing or open offer:

- Offer is allowed to remain open for acceptance over a period of time.
- Example : Tender.

### \* Essentials of valid offer

1. It must be capable of certaining legal relation.

- Offer must give rise to legal obligation i.e. to create legal relationship.

- Social invitation even if accepted does not amount to offer.

2. It must be certain definite & Not vague.

If offer is vague or indefinite its acceptance cannot create contract.

relationship.

→ E.g. oil.

3 It must be communicated to offeree.

- An offer to be complete, must be communicated to the person to whom it is made, otherwise no acceptance can be made.
- Acceptance in ignores of offer does not create valid contract.

Case law: Lalman Shukla vs. Gauri Dutt.

4. It must be made with a view to obtain assent of other party.

- Offer should include willingness to enter into contract & not merely disclosing the intention of making offer.

5. It may be conditional:

→ Offer can be made subject to terms and conditions of offerer

→ example. promisor asking for 100% advance payment

6. Offer should not contain a term, Non-compliance of which would amount to acceptance.

→ One cannot say that if acceptance is not communicated within time, offer would be considered accepted.

7. Offer can be general or specific.

8. Offer can be express or implied.

9. Offer is different from

→ A statement of intention & announcement.

→ Offer must be distinguish from answer to question.

Case law : Harvey vs face.

→ Statement of price not an offer.  
• quoting the price of products does not constitute offer.

→ An invitation to make an offer or to do business.

## Invitation to offer

35

શ્રી સુધીશક્તિ સર્કલ પ્રિન્ટ	
DL: / /	Page:

- Person making invitation does not make an offer rather invites other party to make an offer.
- Objective is to set out terms and condition on which he is willing to negotiate.

### \* Goods sold through Auction Sale

- Auctioneer does not contract with anyone who attends the sale.
- It is only advertisement to sell on terms which are to be finalised in auction.

### MIPMP Invitation to Offer

- How offer is distinguished from an invitation to offer.
- Offer is definite and capable of converting an Intention into contract.
- Invitation to offer is only circulation of an offer in an attempt to induce offers.
- Invitation to offer precedes offer.

→ Acceptance of Invitation to offer does not amount to acceptance but rather it generates offer.

Master Line → While deciding whether terms are offer Invitation to offer - look at intention of parties.

→ Example 1: Display of goods for sale in shop windows

- Quotation of prices sent in reply to query regarding price.
- Advertising Auction sales

\* Acceptance. section 2(b)

When a person to whom proposal is made signifies his assent thereto, proposal is said to be acceptance. Proposal when accepted it becomes promise.

\* Rules Regarding valid Acceptance

1. Acceptance can <sup>be</sup> only given only by person to whom offer is made

- In case of specific offer - It



can be accepted only by person to whom it is made

case law : Boulton vs. Jet Jones

- general offer : It can be accepted by any person, who has knowledge of offer.

case law : Carlill vs Carbolic smoke ball co.

② Acceptance must be absolute and unqualified :

Section 7 : Acceptance is valid only when it is absolute & unqualified.

It should also be expressed in reasonable manner unless proposal prescribes manner.

③ The Acceptance must be communicated

- To conclude contract between Parties acceptance must be communicated in some perceptible form.
- Conditional acceptance is counter offer

- Further when offer is accepted offeree must have knowledge of offer made to him.

Case law: Brogden vs. Metropolitan Railway Co.

④ Acceptance must be in prescribed mode.

- when mode is prescribed acceptance should be in that manner.
- when proposal does not insist on proposal being accepted in manner prescribed after it has been accepted otherwise - proposal is presume to have consented acceptance.

⑤ Time :

- Acceptance must be given within specified time.
- If no time stipulated it should be reasonable time and before offer lapses.
- Reasonable Time depends upon facts and circumstances of case

⑥ Mere silence is not acceptance.

→ Acceptance of offer cannot be implied from silence of offeree or his failure to answer unless by previous conduct silence is evidence of acceptance.

Case law: Felthouse vs. Bindley

⑦ Acceptance by conduct or implied acceptance.

- Section 8: performance of condition of proposal or acceptance of any consideration for a reciprocal promise which may be offered with proposal constitutes acceptance.

It can be any other mode than verbal and written communication.

\* Communication to offer and acceptance

1. When parties are face to face there is no problem of communication because offer and acceptance is instantaneous.

- In such case question of revocation do not arise.

2. Difficulty arises when contracting parties are at distant location and they utilise services of post and telephone.

\* Communication of offer :

Communication of offer is complete when it comes to knowledge of person to whom it is made.

\* Communication of Acceptance :

→ Following are modes of acceptance.

a) communication by act :

• It would include any expression of words whether oral or written.

- It includes letter, fax, Email etc.
- It would include any act or conduct which intends to communicate through positive acts or signs.

### b) Communication of acceptance by omission to do something:

- Such omission is conveyed by conduct or forbearance on part of one person to convey his willingness to another.
- Silence would not be treated as omission.

### c) Communication of acceptance by conduct:

- Behaviour of person can also communicate acceptance
- Example - Boarding a bus, drop a coin in machine etc.

Communi

42

\* Communication of Acceptance is complete - Section 4.

a) As against proposer:

- when it is put in course of transmission to him so that it is out of power of acceptor.

b) As against acceptor:

- when it comes to the knowledge of proposer.

→ where a proposal is accepted by a letter sent by post, a communication of acceptance will be complete as against proposer when letter of acceptance is posted and as against the acceptor when letter reaches proposer.

\* Acceptance over telephone or telex or fax.

- Acceptance is complete as soon as it is received by offeror, however
- However in case of call drop & disturbances it will not be valid contract.

## \* Communication of special condition

1. Some times there are situation where contract with special conditions arise.
2. special condition are conveyed tacitly or expressly
3. Tacit acceptance is valid only when conditions are reasonable

case law : Mukt Mukul Datta vs. Indian Airlines

2. Lilly white vs. Manhuswami

## \* Standard form of contract :

- It is well established that a standard form of contract may be enforced on another who is subjectively ~~unaware~~ unaware about contents of document
- One should note that circumstances of case should be reasonable otherwise acceptor will not incur any contractual obligation

- If notice that does not any reasonableness then it shall not be valid.

case law : Raipur transport vs Ghanshyam co.

### \* Communication of offer Performance

- From view point of proposer:

- when acceptance is put in course of transmission so that it is out of power of acceptor

- From view point of acceptor himself:

- when it comes to knowledge of proposer.

+ In case of general offer communication of performance is not necessary

+ Performing conditions of offer also amounts to accepting a contract.



## \* Revocation of offer and acceptance.

### sec 4: communication of revocation

#### 1. As against person who makes it:

- when it is put in course of transmission to the person to whom it is made so that it is out of power of person who makes it.

#### 2. As against person to whom it is made when it is come to the knowledge of person,

~~- when it~~

## # Till when revocation is possible

1. Proposal can be revoked at any time of before communication of acceptance as against proposer is completed.

2. Acceptance can be revoked at any time before communication of acceptance is complete against acceptor.

In English Law once acceptance is given it cannot be revoked.

## \* Modes of Revocation

1. Notice of Revocation

2. Lapse of time.

→ when offer specifies time and acceptance is not given within specified time.

→ where time is not prescribed, acceptance should be given within reasonable time.

Case law: Ramsgate Victoria hotel vs Monte Fiore.

3. By non fulfillment of condition precedent

→ where offer contains conditions and acceptor fails to fulfill it, proposal automatically gets revoked.

→ In order to accept contract, ~~proposer~~ <sup>the acceptor</sup> need to fulfill condition imposed by offeror.

4. By Death or insanity

→ Death or insanity of proposer would result in automatic revocation of proposal but only if such fact is known to acceptor

5 By Counter Offer.

6 By Non - Acceptance of offer in prescribed mode

7 By subsequent illegality