

THE INDIAN CONTRACT ACT, 1872

UNIT -1: NATURE OF CONTRACTS

CONTRACT [section 2(h)] - “an agreement enforceable by law”

Two essential elements of contract:-

1. **Agreement** and
2. **Enforceable by law.**

AGREEMENT [section 2(e)] – “Every promise and every set of promise, forming the consideration for each other”.

AGREEMENT = OFFER/PROPOSAL + ACCEPTANCE

PROMISE [section 2(b)] - “When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise”.

Agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.

ENFORCEABILITY BY LAW – contract must give rise to legal obligation.

PROPOSAL ⇨ ACCEPTANCE ⇨ ACCEPTED PROPOSAL/AGREEMENT ⇨ LEGAL ENFORCEABILITY ⇨ CONTRACT

Difference between Agreement and Contract

BASIS	AGREEMENT	CONTRACT
MEANING	Every promise and every set of promise, forming the consideration for each other. Offer + Acceptance	Agreement enforceable by law. Agreement + legal enforceable
SCOPE	It's a wider term including both legal and social agreement	It is used in a narrow sense with the specification that contract is only legal enforceable agreement
LEGAL OBLIGATION	It may not create legal obligation . An agreement does not always grant rights to the parties.	Necessarily creates a legal obligation . A contract always grant certain rights to every party.
NATURE	All agreements are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT

As given by Section 10 of ICA, 1872

- ❖ Offer and acceptance or an agreement.
- ❖ Free Consent: Two or more persons are said to consent when they are **agree upon the same thing in the same sense.**
- ❖ Capacity of the parties: Every person is competent to contract who is of the **age of majority, sound mind and not otherwise disqualified by law.**
- ❖ Consideration: “quid pro quo” i.e **something in return**
- ❖ Lawful consideration and object: Not prohibited by law, fraudulent or opposed to public policy.

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- ♣ Not expressly declared to be void: Should not be illegal

Not covered by Section 10 of ICA, 1872

- ♣ Two parties.
- ♣ Parties must intend to create legal obligation: Intention is imp. **Social and Domestic are not enforceable.**
- ♣ Other formalities to be complied with in certain cases: Certain contracts to be in writing and registered too.
- ♣ Certainty of meaning: Must be certain not vague (not clear) or indefinite.
- ♣ Possibility of performance of an agreement: An agreement to do impossible act is not enforceable.

TYPES OF CONTRACT

ON THE BASIS OF THE VALIDITY:

- ♥ **Valid Contract**: An agreement which is **binding and enforceable**.
- ♥ **Void Contract**: Which **ceases to be enforceable by law** becomes void when it ceases to be enforceable (cannot be enforced by a court of law).
- ♥ **Voidable Contract**: An agreement which is **enforceable by law at the option of one or more parties thereto**, but not at the option or other or others is a voidable contract.

BASIS	VOID CONTRACT	VOIDABLE CONTRACT
MEANING	A contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	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 others, is a voidable contract.
CAUSE	Change in law or circumstances beyond the contemplation of parties.	If the consent of the party was not free .
PERFORMANCE OF CONTRACT	Cannot be performed	If the aggrieved party does not, within reasonable time, exercise his rights to avoid the contract, any party can sue the other for claiming the performance of the contract.
RIGHTS	No rights available to any party	The party whose consent was not free has the right to rescind the contract.

- ♥ **Illegal Contracts**: It is a contract which the law forbids to be made.

BASIS	VOID AGREEMENT	ILLEGAL AGREEMENT
SCOPE	Is not necessarily illegal	Is always void
NATURE	Not forbidden by law	Are forbidden under law
PUNISHMENT	Not liable for any punishment	Liable for punishment
COLLATERAL AGREEMENT	May be valid also	Are always void

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- ♥ **Unenforceable Contract:** Where a contract is good in substance but because of some technical defects i.e. absence in writing, barred by limitation etc. One or both the parties cannot sue upon it, it is described as an unenforceable contract.

ON THE BASIS OF FORMATION:

- ◆ **Express Contract:** If the terms are *expressed by words or in writing*
- ◆ **Implied Contract:** Come into *existence by implication*(by law or by action)
- ◆ **Tacit contract:** *By conduct of parties* without any words spoken or written.
- ◆ **Quasi-contract:** It is a contract in which there is no intention on part of either party to make a contract *but law imposes a contract upon the parties.*
- ◆ **E-contracts:** *Contract through electronic* means such as emails is known as e-commerce contracts.

ON THE BASIS OF PERORMANCE OF THE CONTRACT:

- ♣ **Executed Contracts:** When the *act is done or executed* or the forbearance (tolerance) is brought on record, then the contract is an executed contract.
- ♣ **Executory contract:** The consideration is reciprocal promise or obligation. Such *consideration is to be performed in future only* and therefore these contracts are described as executory contract.
 - Unilateral contract:** *One sided contract*, one party performed his duty or obligation and other obligation is outstanding.
 - Bilateral contract:** Where the *obligation or promise is outstanding on the part of both the parties.*

PROPOSAL/OFFER [SECTION 2(a)] OF THE ICA, 1872

DEFINATION: “When one person signifies to another his willingness to do or abstain from doing anything (*mujhe padhane se rokne ka offer*) with a view to obtaining the assent of that to such act or abstinence, he is said to make a proposal”.

CLASSIFICATION OF OFFER:

- ♣ **General offer:** *Offer made to public at large* and hence anyone can accept and do the desired act.
- ♣ **Special offer:** Offer is made to *a specific or an ascertained person.*
- ♣ **Cross offer:** When *two parties exchange identical offers* in ignorance at the time of each other’s offer, the offers are called cross offer.
- ♣ **Counter offer:** When the *offeree offers to qualified acceptance* of the offer subject to modification and variations in the terms of original offer, he is said to have a counter offer also called conditional acceptance.
- ♣ **Standing or continuing or open offer:** Offer which is allowed to *remain open for acceptance over a period of time.* Eg.: tenders invited for supply of goods.

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ESSENTIALS OF VALID OFFER:

- ♥ ***It must be capable of creating legal relations:*** Valid offer in eyes of law. Social and domestic are not covered.
- ♥ ***It must be certain, definite and not vague:*** Otherwise it cannot create any contractual relationship.
- ♥ ***It must be communicated to the offeree:*** Otherwise there can be no acceptance of it.
- ♥ ***It must be made with a view to obtaining the assent (formal agreement to something) of the other party.***
- ♥ ***It may be conditional:*** Can be made subject to any terms and conditions by the offeror.
- ♥ ***Offer should not contain a term the non compliance of which would amount to acceptance:*** Thus one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.
- ♥ ***The Offer may be either specific or general.***
- ♥ ***Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, casual equity, a prospectus and advertisement:*** “An invitation to make an offer” the person making the invitation does not make an offer rather invites the other party to make an offer.
- ♥ ***The offer may be express or implied.***
- ♥ ***A statement of price is not an offer.***

WHAT IS INVITATION OF OFFER?

An invitation to offer is ***only a circulation of an offer it is an attempt to induce offers and preceded a definite offer.*** It is the process of negotiation. Offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Mere statement of lowest price is not offer intention is to seen. E.g. invitation by a company to the public to subscribe for its shares.

ACCEPTANCE [SECTION 2(b)] of the ICA, 1872

DEFINATION: “When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise”.

RELATIONSHIP BETWEEN OFFER AND ACCEPTANCE

“Acceptance is to offer what a lighted match is to a train of gun powder”.

- ◆ Offer can be withdrawn just before it is accepted.
- ◆ Acceptance converts the offer into a promise and then it is too late to revoke it.
- ◆ Offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.
- ◆ Offer remains an offer as long as it is not accepted but becomes a contract as soon as it is accepted.

LEGAL RULES REGARDING A VALID ACCEPTANCE:

- ♣ **Acceptance can be given by the person to whom offer is made.**
- ♣ **Acceptance must be absolute and unqualified:** Acceptance is valid only when it is absolute and unqualified and is **also expressed in some usual and reasonable manner** unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, the it must be accepted accordingly.
- ♣ **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance **must be communicated in some perceptible (that can be seen or felt) form.**
- ♣ **Acceptance must be in the prescribed mode.**
- ♣ **Time:** Acceptance must be **within specified time limit, if no time specified the within reasonable time.** Reasonable time depends upon the facts and circumstances of the particular case.
- ♣ **Mere silence is not acceptance: Mere silence or failure to answer is not acceptance,** unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
- ♣ **Acceptance by conduct/implied acceptance:** When a person **performs the act intended by the proposer** as the consideration for the promise offered by him, the performance of the act constitute acceptance.

COMMUNICATION OF OFFER AND ACCEPTANCE

COMMUNICATION OF OFFER: *“Communication of offer is complete when it comes to the knowledge of the person to whom it is made”. When proposal is made by post, the communication will be complete when the letter containing the proposal reaches the person to whom it is made. Mere receiving the letter is not sufficient, he must receive or read the message contained in the letter.*

COMMUNICATION OF ACCEPTANCE:

- ♣ **Modes of acceptance:**
 - ◆ **Communication by act:** Would include any **expression of words** whether written (letters, telegrams, faxes, emails and advertisement) or **oral** (telephone messages). Communication include any conduct.
 - ◆ **Communication of acceptance by ‘omission’ to do something:** Omission is conveyed by **a conduct or a forbearance** on the part of one person to convey his willingness or assent.
- ♣ **When communication of acceptance is complete.** It is complete,
 - ♥ **As against the proposer(jo acceptance file kar raha hai),** when it is **put in the course of transmission** to him so as to be out of the power of the acceptor to withdraw the same.
 - ♥ **As against the acceptor,** when it comes to **the knowledge of the proposer.**

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- ♣ Where a proposal is accepted by a letter sent by the post,
 - ♣ As against the proposer, when the *letter of acceptance is posted*
 - ♣ As against the acceptor, when the *letter reaches the proposer*
- ♣ Acceptance over telephone or telex or fax: The contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received.
- ♣ Communication of special conditions: *Special conditions are tacitly* (implied without being directly stated eg. Conditions of travel printed are printed at the back of the tickets) and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

COMMUNICATION OF PERFORMANCE:

Communication of a proposal is complete when it comes to the knowledge of the person to whom it is meant.

- ♣ From the viewpoint of proposer, when the acceptance is *put in to a course of transmission*, when it would be out of the power of acceptor.
- ♣ From the view point of acceptor himself, it would be complete *when it comes to the knowledge of the proposer*.

At times the offeree may be required to communicate the performance (or act) by way of acceptance. In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.

RECOVATION OF OFFER AND ACCEPTANCE

Communication of revocation (of the proposal or its acceptance) is complete.

- ◆ As against the person who makes it when it is *put into a course of transmission to the person to whom it is made* so as to be out of the power of the person who makes it, and
- ◆ As against the person to whom it is made, when it *comes to his knowledge*.

If you revoke your proposal made to me by a telegram, the revocation will be complete, as far as you are concerned when you are dispatched the telegram. But as far as i am concerned, it will be complete only when i receive the telegram.

Revocation of acceptance by me will be complete when i dispatch the telegram and against you, it will be complete when it reaches you.

- ◆ **Contract through post:** The acceptor or can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.
- ◆ **Contract over telephone:** Contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror, otherwise there will be no contract, as communication of acceptance is not complete.

REVOCATION OF PROPOSAL OTHERWISE THAN BY COMMUNICATION

MODES OF REVOCATION:

- ♥ *By notice of revocation.*
- ♥ *By lapse of time:* The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- ♥ *By non fulfilment of condition precedent:* Where the acceptor fails to fulfil a conditions precedent to acceptance the proposal gets revoked.
- ♥ *By death or insanity:* when it comes to the knowledge of the acceptor.
- ♥ *By counter offer.*
- ♥ *By the non acceptance of the offer according to the prescribed or usual mode.*
- ♥ *By subsequent illegality.*

CA Vardhaman Daga