CHAPTER :- 2. INDIAN CONTRACT ACT, 1872.

UNIT - 1 :-

NATURE OF CONTRACTS

What is " Contract, " Agreement ", Promise " ?

Contract [Section 2(h)] :- Contract is defined as

- an agreement,
- enforceability by law.

Agreement [Section 2(e)] :- " Every promise and every set of promises, forming consideration for each other".

Promise [Section 2(b)] :- " When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise".

What is " Contract, " Agreement ", " Promise ?

Promise - offer (proposal) + acceptance.

Agreement - promise + Consideration.

Contract - Agreement + enforceability by law.

⇓

Sec. 2(b) = Sec. 2(a) + Sec. 2(b)

Sec. 2(e) = Sec. 2(b) + Sec. 2(d)

Sec. 2(h) = Sec. 2(e) + enforceability by law.

Essential elements of a valid Contract.

As given by Section 10

Not given by Section 10 but are also considered essential.

i) Agreement — Two parties

ii) Free Consent — Intention to Create legal relationship

iii) Competency of the parties. — Fulfilments of legal formalities

iv) Lawful Consideration — Certainty of meaning

v) Legal object — possibility of performance

vi) Not expressly declared to be void

Essential elements of a valid Contract.

* Offer and acceptance : Sec. 2(a) & (b) :-

Two parties: To an agreement, i.e one party making the offer and the other party accepting it.

Example :- A offers to B to sell his watch for Rs Rs. 500, does not give his acceptance. There is no Contract as there is no acceptance.

Ex:- 2 Pg:- 2.6.

2) Intention to create legal relationship:

Agreement of a social or domestic nature do not contemplate legal relationship.

Example: 3 Pg:- 2.6.

3) Legal formalities:
Wherever a particular type of Contract requires by law to be in writing and registered, it must comply with the necessary formalities as to writing, attestation and registration otherwise enforceable.

Example. 6 Where it requires an agreement to make a gift for natural love and affection, there it must be in writing and registered, to be valid.

Example:- 7 Contract of Insurance is not valid except as a written Contract.

4) Certainty of meaning:- Sec. 29: The agreement must be Certain and not vague or indefinite.

Example: 8 Pg:- 2.7
" ="

5) Possibility of performance of an agreement: Sec. 56.

=> The term of agreement should be capable of Performance

=> An agreement to do an act impossible in itself cannot be enforced.

6) Free Consent :- Sec. 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22

⇒ The Consent of the parties must be genuine

⇒ The term 'Consent' means parties to a Contract must agree upon the Same thing in the Same sense. i.e there should be Consensus-ad-idem.

Consent is said to be not free when it is vitiated by

Coercion, undue influence, fraud, misrepresentation or mistake.

⇒ In such Cases, the Contract becomes voidable at the option of the Party whose Consent is not free.

Example: 12: Pg: 2.8.

7) Competent parties : Sec. 11 & 12:

Every person is Competent to Contract provided,

a) Is of the age of majority according to the law to which he is subject, and.

b) Who is of Sound mind, and.

c) Is not disqualified from Contracting by any law to which he is subject.

8) Consideration :- 'Consideration' means an advantage or benefit moving from one party to the other. In simple words, it means 'Something in return' (quid pro quo). It may be past, present or future. But it must be real and lawful.

a) Lawful object : Sec. 23

object of the agreement must be lawful.
In other words, it means that object must not be

a) illegal,
b) Immoral, or
c) opposed to public policy.

10) The agreement not expressly declared void:-

=> The agreement must not be one, which the law declares to be either illegal or void.

=> Illegal agreement is an agreement expressly or impliedly prohibited by law.

Classification of Contract

On the basis of validity
- Valid Contracts
- Void Contracts
- Voidable Contracts
- Illegal Contracts
- Unenforceable Contracts

On the basis of formation
- Express Contract
- Implied Contract
- Quasi Contract
- E. Com. Contract

On the basis of Performance
- Executed Contracts
- Executory Contracts
  - Unilateral Contracts
  - Bilateral Contracts

i) **Valid Contract:** Contains all the essential elements of a Valid Contract.

ii) **Void Contract : Sec. 2(j):** A Contract, which ceases to be enforceable by law.

iii) **Voidable Contract : Sec. 2(i):** An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others.

A Contract may be voidable in the following situations:

i) When the Consent of party is not free is caused by Coercion, undue influence, misrepresentation or fraud.

ii) When a Person promises to do something for another person prevents him from performing his promise, the Contract becomes voidable at the option of first person.

iii) When a party to a Contract promise to perform a work within a specified time, could not perform with in that time, could not perform with in that time, the Contract is voidable at the option of promisee.

Distinction b/w void & voidable Contracts

Basis	void Contract	voidable Contract
Definition	Contract ceases to enforceable by law	Contract is enforceable at the option of the aggrieved party.
Nature	Contract becomes void either because of sudden and unexcepted events or of law changes, before the performance becomes due.	Contract becomes voidable when it is caused by coercion, undue influence, fraud and misrepresentation
Rights	Does not provide any legal remedy for the parties to the Contract	The aggrieved gets a right to rescind the Contract and to declare it void otherwise it remains valid.

4) **Illegal Contract** :- A Contract which is forbidden by law.

Note :- All illegal agreements are void but all void agreements or Contracts are not necessarily illegal.

Example 24 :- Contract that is immoral or opposed to public policy are illegal nature.

Example 25: R agrees with S, to purchase brown sugar, it is an illegal agreement.

3) unenforceable Contract: When a Contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitations etc. one or both the parties cannot sue upon it, it is describe as an unenforceable Contract.

Eg:- Unsigned cheque.

Classification of Contract [on the basis of formation]

i) Express Contract: By words spoken or written.

Ex :- pg :- 2:13

ii) Implied Contract: Where the proposal or acceptance is otherwise than in words (By action or Conduct of parties).

Ex :- Pg :- 2:13

iii) Quasi Contract: A quasi - Contract is not created by words spoken or written or Conduct of parties. It is created by law under certain circumstances.

Ex :- pg :- 2:14

iv) E - Contract: Contract is entered into by two or more parties using electronics means, such as e-mails is known as e- Commerce Contracts. These are known as EDI Contracts or Cyber Contracts or mouse click Contracts.

Classification of Contract [on the basis of Performance]

* Executed Contracts: Both the parties have performed their respective obligations.

Eg. Pg: 2.14

* Executory Contract: Both the Parties have yet to performa their obligations.

Eg. Pg: 2.14.

* Unilateral or one-sided Contract:

* Bilateral Contract:

Ex: 36: A promises to sell his plot to B for Rs. 1 lacs cash down, but B pays only Rs. 25,000 as earnest money and promises to pay the balance on next Sunday. Here both have to perform their duties yet.

1) The Indian Contract Act came into force on

a) 1st September, 1872.

b) 15th September, 1872.

c) 1st October, 1872

d) 15th October, 1872,

2) The term 'Contract' defined in which of the following Sections of the Indian Contract Act?

a) Section 2(a)

b) Section 2(b).

c) Section 2(e).

d) Section 2(h).

3) A promise is

a) offer + enforceability

b) offer + legal obligation,

c) offer + acceptance.

d) offer only.

1) A Contract is an agreement.

PROPOSAL / OFFER : Sec 2(a)

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

~~Ex~~ Example : 3) :- Mr. X says to Mr. Y, "will you purchase my Car for Rs. 10,000?" Now Mr. X is making an offer to Mr. Y.

Thus, for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something. There must be an expression of willing to do or not to do some act by the offeror.

Parties to Contract

⇒ 'Promisor' or "offeror". The person making the proposal or offer.

⇒ "offeree" the person to whom the offer is made.

⇒ 'Promisee' or 'acceptor". The person accepting the offer.

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Types of offer

1. General offer: offer made to the world at large.

=> It is an offer made to the public in general and hence anyone can accept and do the desired act.

=> Section 8: of the Indian Contract Act, points out that performance of the Conditions of a proposal is an acceptance of the proposal.

2) Specific offer: offer made to a definite person.

=> When offer is made to a definite a person, it is known as specific offer and such offer can be accepted only by that specified person.

3) Cross offer: When two parties make identical offers to each other.

When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called Cross offers. There is not binding contract in such a Case, as the Court will not Consider one offer as offer and the other as the acceptance and therefore there is no Contract.

4) Counter offer: When offeree imposes Conditions which have the effect of modifying or varying the offer.

=> When the offeree accepts the offer with modifications and variations in the terms of original offer, he is said to have made a Counter offer. Counter offer amounts to rejection of the original offer.

5) Standing or Continue or open offer: offer to public at long open for acceptance for certain period of time

=> An offer is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer.

Legal Rules of offer

1) The offer must be capable of creating legal relations.

A social invitation, even if it is accepted, does not create legal relations.

2) The offer must be certain, definite and not vague.

If the terms of an offer are vague, or indefinite, its acceptance cannot create any contractual relationship.

3) The offer must be communicated: An offer, to be complete, must be communicated to the person to whom it is made. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not create any right on the acceptor.

4) The offer must be made with a view to obtaining the consent / assent of the offeree.

5) An offer may be conditional: An offer can be made subject to any terms and conditions by the offeror. The offeree will have to accept all the terms of the offer, otherwise the contract will be treated as invalid.

6) The offer should not contain a term the non compliance of which would amount to acceptance.

7) An offer may be specific or general: Any offer can be made to either public at large or to the any specific person.

8) The offer may be expressed or implied: An offer may be made either by words or by conduct.

9) Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and advertisement.

a) A statement of intention and announcement.

b) offer must be distinguished from an answer to a question.

Example 54:- Case law: Harvey vs: Facie [1893]:-

In the given case, the Harvey through a telegram facie two questions namely (1) will you sell us Bumper Hall pen? (And) Telegraph lowest cash price

Facie replied:- through telegram that the "lowest price for Bumper Hall pen is ₹ 900". Harvey sent another telegram stating "we agree to buy Bumper Hall pen at ₹ 900". However, the facie refused to sell the property at the price. Harvey ~~sued~~ sued the defendants contending that they had made an offer to sell the property at ₹ 900 and therefore they are

It was decided: By the Privy Council that while Harvey had asked two questions. Facts replied only to the second question by quoting the price but received their answer with regard their willingness to sell. This, they made no offer at all.

c) The offer must be distinguished from an invitation to offer:-

An invitation to offer is different from offer. Quotation Catalogues, advertisements in newspaper for sale are not offer. These are invitations to Public to make an offer. Bidding in an auction is also an invitation to offer.

ACCEPTANCE. Sec 2(b)

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.

Definitio

-r

No

To S