

what is Contract ?

Sec 2(h) : An Agreement Enforceable by law

Sec 2(e) : Agreement is defined as every promise and Set of Promises forming Consideration for each other.

Sec 2(b) : when the person to whom proposal is made signifies his assent thereto proposal is said to be accepted proposal when accepted become Promise.

Enforceability of law:

It means Contract should create legal obligation between parties which can be Duty Enforceable.

Difference between Contract & Agreement

Basis of Difference	Agreement	Contract
• Meaning	Every Promise and every set of Promises, forming the Consideration for each other (P+C)	- Agreement Enforceable by law (Agreement + legal Enforceability)
• 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 legally Enforceable Agreement
Legal obligation	It may not create legal obligation. An Agreement does not always grant Rights to the parties	Necessarily Create a legal obligation A contract always grants certain rights to every party
Nature	All agreements are not Contract	All Contracts are agreement.

Essential of valid contract: (Not given in section 10:)

① Two Parties

- Atleast Two Parties are involve in making contract — one party making offer and other accepting it
- A contract may be made by natural person and artificial Jurisdiction person.

CASE LAW State of Gujarat v/s Ramanlal S & Co.

② Parties must Intend to Create legal obligation -

- There must be intension to Create legal obligation among Parties
- Social Agreement are Not Enforceable by law

CASE LAW Balfour v/s Balfour

③ other formalities to be compiled in certain Cases:

- A contract may be Oral or written
- in some cases contract has to be in written format
- Also some other formalities Need to compiled in certain cases.

Eg: Insurance Contract must be in writing or immovable property must be Registered

④ Certainty of Meaning

- Must not be vague or indifinite

⑤ Possibility of Performance of an Agreement

- Capable of Performance

Given in Section 10

① offer and Acceptance

② free consent

- Two or more parties are said to in consent when they agree upon same thing in same sense.
- There must Consensus ad idem (meeting of minds)
- Consent is not free when they are caused by coercion undue influence, fraud mistake.

③ Capacity of Parties

- It means legal ability of person to enter into contract
- Every person is competent who
 - Major - like 18+
 - Sound mind - sense understanding
 - Not disqualified

④ Consideration:

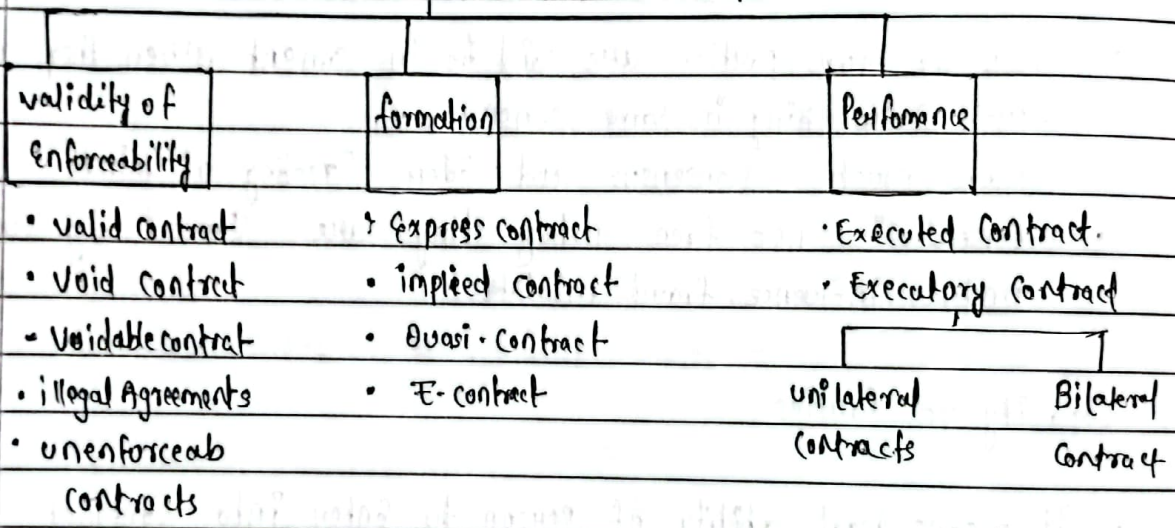
- It is referred to as Quid Pro Quo :- [Something in Return]
- It can be some Right interest Profit or benefit accruing to one party and some for bereance. Detriment undertaken by other

⑤ Lawful Consideration and object
 means - Contract is lawful not an unlawful like drugs

⑥ Not expressly as void

Types of Contract

⑦ Types of Contract on the basis of



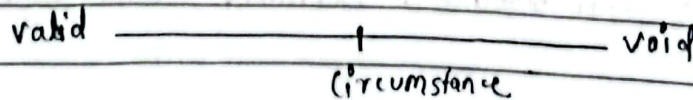
I On the Basis of validity:

① valid contract :

- Binding and Enforceable
- Contains essential Elements of contracts

② void contract :

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



Circumstance

- -Date Death

3 Voidable Contract

An Agreement enforceable by law at option of one or more Parties but not at option of others is voidable contracts.

Difference between void and voidable

Basis	void contract	Voidable Contract
1. 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 contracts.
2. Enforceability	A void contract cannot be enforced at all.	it is enforceable only at the option of aggrieved party and not at the option of other party.
3. Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
4. Performance	A void contract cannot be performed.	if the aggrieved party does not within reasonable time exercise ^{his} the right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5. Rights	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 so rescinded, it becomes voidable. if it is not rescinded it become a valid contract.

(4) Illegal Contract :

- Contract which law forbid to be made court can't enforce Contract and also connected Contracts are void
- All illegal agreement are void but all void agreement are Not illegal

Difference between Void Agreement & illegal Agreement

Basis	void Agreement	illegal Agreement
Scope	A void agreement is not necessarily illegal	an illegal agreement is always void
Nature	Not forbidden under law	Are forbidden under law
Punishment	Parties are not liable for any punishment under the law	Parties to illegal agreements are liable for punishments
collateral Agreement	its not necessary that agreement collateral to void agreements may also be voids. it may be valid.	Agreement collateral to illegal agreements are always void.

(5) unenforceable contract :

: Cannot be enforced due to some technical defect - absence in writing barred by limitation

II On the Basis of formation of contract

① Express Contract :

- Express by words or writing

② Implied Contract

- Comes into force by Implication
- Implication is by action or conduct of parties

- when proposal or acceptance is made otherwise than in words he is said to make implied contract

Tacit Contract :

it means silent contract which are inferred through conduct of parties without any words spoken or written

③ Quasi Contract

- Non an actual contracts but Resembles as a Contract
- It creates rights and obligation when No Real Contract Exist, such Rights and obligation are created by law

④ E Commerce

- Entered by two or more person by Electronic means
- known as EDI Contract or Cyber Contracts

III On the Basis of Performance

① Executed Contract

When obligation of both the parties are fulfilled then such contract are known as Executed Contracts

② Executory Contract

unilateral Executory Contract -

- when obligation of one party has been fulfilled and others parties obligation is pending then it is unilateral Executory contract

Bilateral Executory Contracts -

- when obligation of both the parties and pending then it is B.E.C

PROPOSAL / OFFER

Section 2(a): when one person signifies another his willingness to do or to abstain from doing anything with a view to obtain assent of that other to such act or abstinence, he is said to make proposal

Kinds of offer

General offer

Specific offer

Counter offer

Cross offer

Standing offer

① General offer: offer made to public at large and any one can accept it by performing desired Act

CASE LAW - Carlil vs Carbolic smoke Ball Co.

② Specific / Special offer: Made to specific person or ascertained person and can be accepted by that person only

CASE LAW - Boulton vs Jones

③ Cross offer: when two parties exchange identical offer in ignorance of each other's offer are known as cross offer.
There is no acceptance of offer

④ Counter offer: when offeree gives qualified acceptance of offer i.e. makes modification and variations in terms of offer then he said to make counter offer

⑤ standing offer: offer which is allowed to remain open for specified period of time is known as standing offer

Essential of offer

- ① it must be capable of creating legal relation
 - offer must give rise to legal relation
 - if legal relation do not exist then not a valid offer
 - Social Relation are not enforceable

② It must be Certain, definite and not vague —

• Terms of offer — should not be Vague

③ It must be Communicated to offeree —

(i) offer should be Communicated to person to whom it is made.

(ii) Unless Acceptance offer cannot be Accepted

(iii) An acceptance of offer in ignorance of it cannot be termed as acceptance.

CASE LAW — Lalman Shukla vs Gauri Dutt

④ It must be made with a view to obtaining the assent of the other party —

- It must be made with a view to obtain assent and not just merely Disclosing intention of offer

⑤ It may be conditional

- Can be made: Subject to terms and Condition

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

Ex- if A proposes to B to purchase his android mobile ₹ 5000 and if no Reply him in a week, A cannot assumed that B had accepted the proposal.

(7) Offer — Specific
General

(8) Offer — Express
Implied

(9) Offer is Different form

a) statement of intention and announcement

b) answer to question

CASE LAW → Harvey vs Facey

c) statement of price

d) An invitation to make an offer to do business

- Person making invitation does not make offer Rather invites other person to make offer

- His intention is to Enter into contract with other person if other person makes justifiable offer

(10) A statement of price is not offer

invitation to offer

(1) when party without expressing final willingness proposes certain terms on which he is willing to negotiate he does not make an offer Rather invites other person to make offer.

(2) ITO is act precedent to offer

offer

Specific

Can be acceptance

only by specific person

Boulton vs Jones

General

Any person who

performs condition

Carlill vs Carbolic smoke Ball Co

Acceptance

"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"

Legal Rules Regarding Acceptance :

(1) Acceptance can be given only by person to whom offer is made.

(2) Acceptance must be absolute and unqualified

Section 7.

- Acceptance must be as per terms of offer, It should not be changed
- If terms of offer are changed then it amounts to counter offer

(3) Acceptance must be communicated

(i) To conclude Contract between parties offer must be communicated to offeree perceptible form

② It means while Accepting offer offeree should have knowledge of offer

CASE LAW → Brogden vs Metropolitan Railway Co.

④ Acceptance must be in prescribed mode

- when mode in prescribed it must be expressed in that manner
- if not in prescribed manner and proposer does not insist on it then it can be presumed that has assented to it

⑤ Time
Acceptance should be given

Prescribed Time	if No time stipulated (Reasonable time)
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⑥ mere silence is not Acceptance

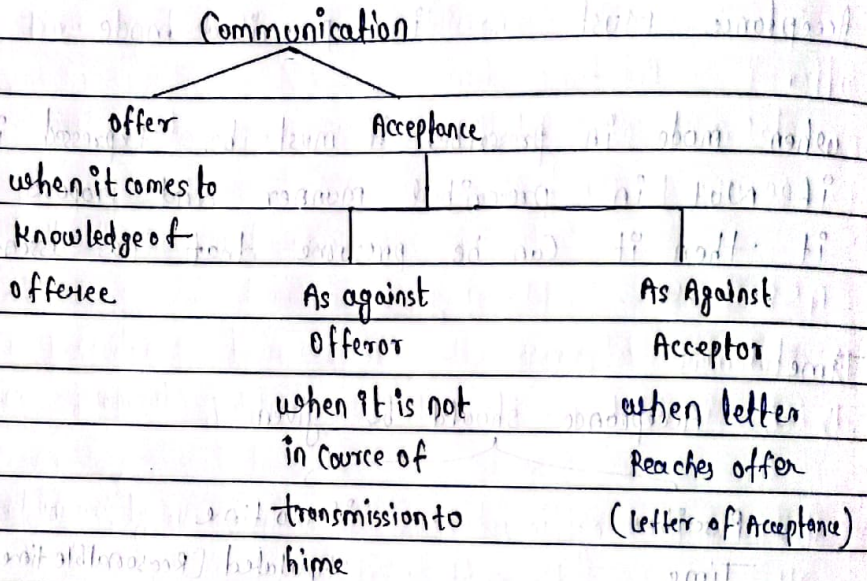
① offer can't be treated as acceptance from mere silence

② if by previous conduct silence [acts] to acceptance then mere silence will be acceptance

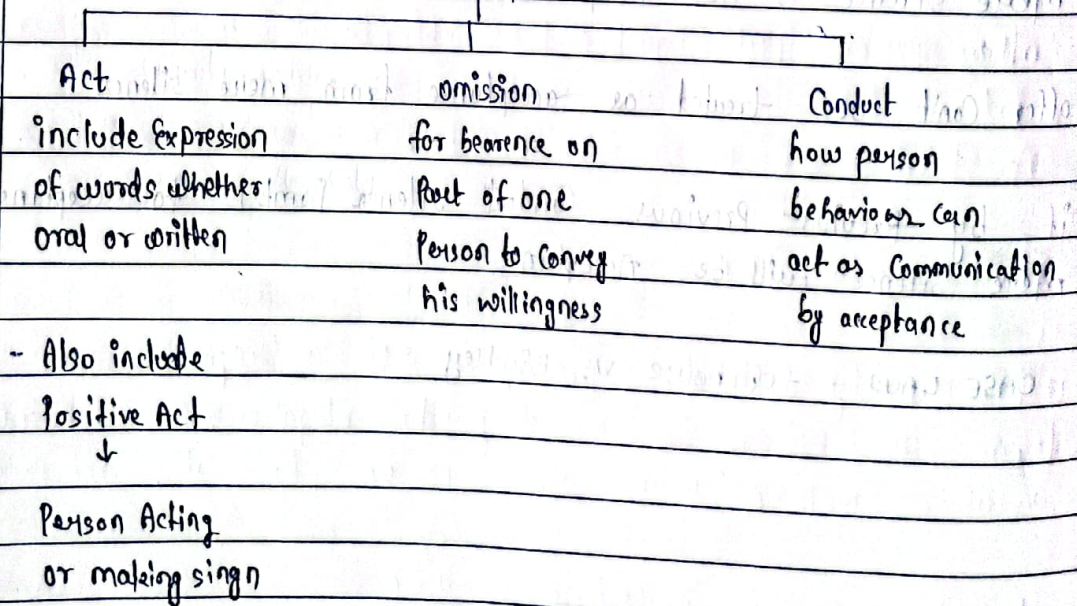
CASE LAW - Felthouse vs Bindley

(17) Acceptance by conduct and implied acceptance

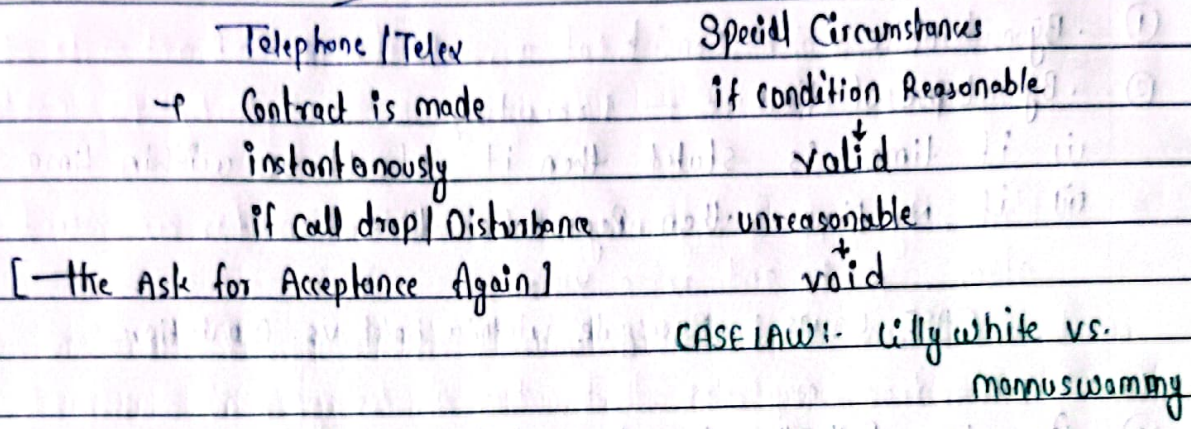
(ii) Performance of Condition of Proposal or Acceptance of Consideration for Reciprocal Promise shall be treated as Acceptance



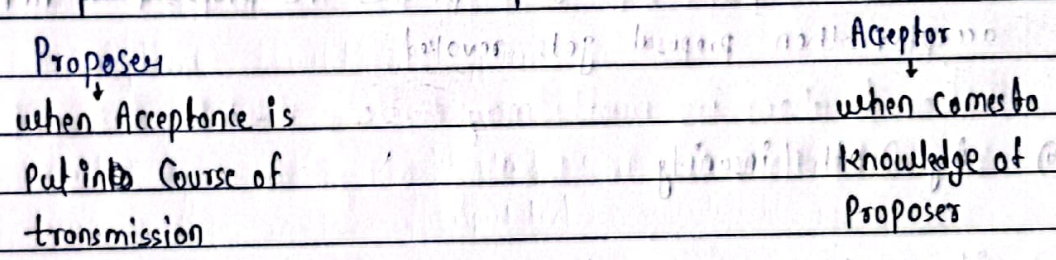
modes of Acceptance



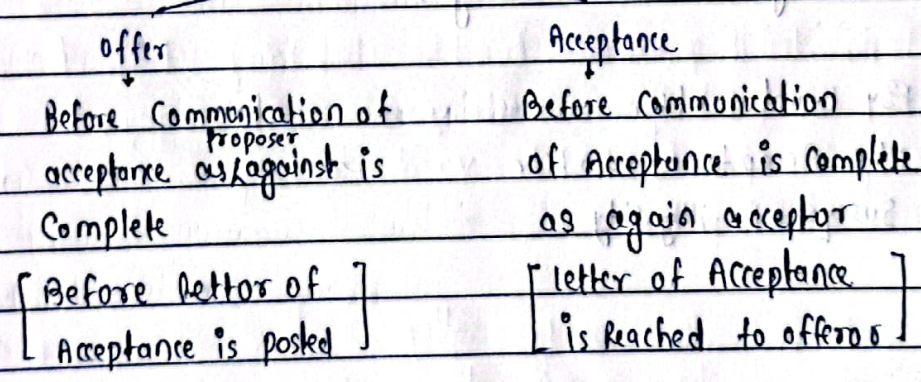
Acceptance



Communication of Performance



Revocation



Modes of Revocation:

① By Notice:

② By lapse of time:

(i) if time is stated then it should be within time

(ii) if no time then Reasonable time

CASE LAWS: Ramsgate Victoria Hotel vs. Montefiore

③ By Non full fulfillment of condition precedent:

If condition precedent to acceptance the proposal is not accepted by acceptor then proposal gets revoked

④ By Death / Insanity

It would automatically cancel the offer provides other person has knowledge about insanity.

⑤ By Counter offer

⑥ Non Acceptance of offer

⑦ Subsequent illegality