

Indian Contract Act, 1872



// Kanun ki apni ek duniya hai yeh apne sapne khud sajata hai aur apni duniya khud basata hai.....//

Unit 1

The Indian Contract Act, 1872

NATURE OF CONTRACT

Summary Notes
By CA Ankita Patni

* What is a Contract?

The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-



"An Agreement enforceable by law"

The contract consist of two essential elements -

- 1) an agreement and
- 2) Its enforceability by law.

* Agreement



a) Agreement = Offer + Acceptance

b) Enforceability by law = An Agreement to become a contract must give rise to a legal obligation which means duly enforceable by law.

Thus,

Contract = Agreement + Enforceability by law

AGREEMENT V/S CONTRACT

Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Offer + Acceptance)	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 creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT

As given by Section 10 of Indian Contract Act 1872		Not given by Section 10 but are also considered essential	
1	Agreement	1	Two parties
2	Free consent	2	Intention to create legal relationship
3	Competency of the parties	3	Fulfilments of legal formalities
4	Lawful consideration	4	Certainty of meaning
5	Legal object	5	Possibility of performance
6	Not expressly declared to be void [as per Section 24 to 30 and 56]	6	-

Thus, in order to create a valid contract, the following elements should be present:-

① Two Parties:-

- One cannot contract with himself.
- A contract involves at least two parties - one party making the offer & other party accepting it.
- A contract may be made by a natural person or by an artificial persons.

② Parties must intend to create a legal obligation:-

- There must be an intention on the part of parties to create a legal relationship between them.
- Social and domestic type of agreements are not enforceable in court of law
- Hence they do not results into valid contract.

Case law:- Balfour v. Balfour.

∴ Domestic agreement and the parties did not intend to create any legal relations.



- ③ **Other formalities to be complied with in certain cases:-**
- As to legal effects, there is no difference between a written contract and contract made by word of mouth.
 - In case of certain, contracts some other formalities have to be complied with to make an agreement legally enforceable.

- ④ **Certainty of meaning:-**
- The agreement must be certain and not vague or indefinite.

- ⑤ **Possibility of performance:-**
- The terms of agreement should be capable of performance.
 - An Agreement to do an act impossible in itself cannot be enforced.

Essentials

① **Offer and Acceptance:-**

- An agreement is the first essential element of a valid contract.

② **Free Consent:-**

- Two or more persons are said to consent when they agree upon a same thing in same sense at same time.
[consensus - ad - idem]

- Consent would be considered as free when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

③ Capacity of the parties:-

- Capacity to contract means the legal ability of a person to enter into a valid contract.
- Every person is competent to contract who:-

a) is the age of majority:-

The person entering into contract must be of 18 years of age

b) Is of sound mind:-

A person should be of sound mind i.e he should be in his senses so that he understands the implications of the contract at the time of entering into a contract.

c) Is not disqualified by law:-

A person entering into a contract should not be disqualified by his status, in entering into contracts, such persons are an alien enemy, foreign sovereigns, convicts, etc

④ Consideration:-

- It is referred to as quid-pro-quo i.e, something in return

⑤ **Lawful consideration and Object:-**

The consideration and object of the agreement must be lawful.

⑥ **Not expressly declared to be void:-**

The agreement entered into must not be which the law declares to either illegal or void.

TYPES OF CONTRACTS



* **On the basis of the liability:-**

① **Valid Contract:-**

- An Agreement which is binding and enforceable is a valid contract.
- It contains all the essential elements of a valid contracts.

② **Void Contract:-**

- A void contract is one which cannot be enforced by a court of law.

- Thus, a valid contract when cannot be performed because of some uncalled happening, becomes void.

③ Voidable Contracts:-

- An Agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contracts.
- It may arise from the fact that the contract may have been brought about by one of the parties by coercion, undue influence, fraud, Misrepresentation and Hence, other party has right to treat as a voidable contract.

④ Illegal Contracts:-

- It is the contract which law forbids to be made. The court will not enforce such contracts but also the connected contracts.
- An illegal agreements are void but all void agreements are not necessarily illegal

⑤ Unenforceable Contract:-

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

VOID CONTRACT V/S VOIDABLE CONTRACT

S. No.	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 contract.
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 of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his 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 a void contract. If it is not rescinded it becomes a valid contract.

Basis of difference	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 punishment
Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

On the Basis of formation

① Express Contracts:-

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

② Implied Contracts:-

- Implied contracts in contrast come into existence by implication most often the implications is by action or conduct by parties or course of dealings between them.

- Terms and conditions are not known

- eg:- Where a coolie in uniform picks up a luggage.



③ Tacit Contracts:-

- The word tacit means silent.
- Tacit contracts are those that are inferred through the conduct of parties without any spoken words or written
- Terms & conditions are known.

- eg:- sale of given effect to at the fall of hammer in an auction sale.



④ Quasi Contracts:-

- It is 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
- eg:- finder of lost goods



⑤ E-Contracts:-

- When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts
- eg:- Buying product online through an application.



On the Basis of Performance

① Executed contract:-

When the act is done or executed, then the contract is an executed contract.

② Executory Contract:-

sometimes consideration is to be performed in future only and therefore these contracts are described as executory contracts.

Executory Contracts

Unilateral Contract

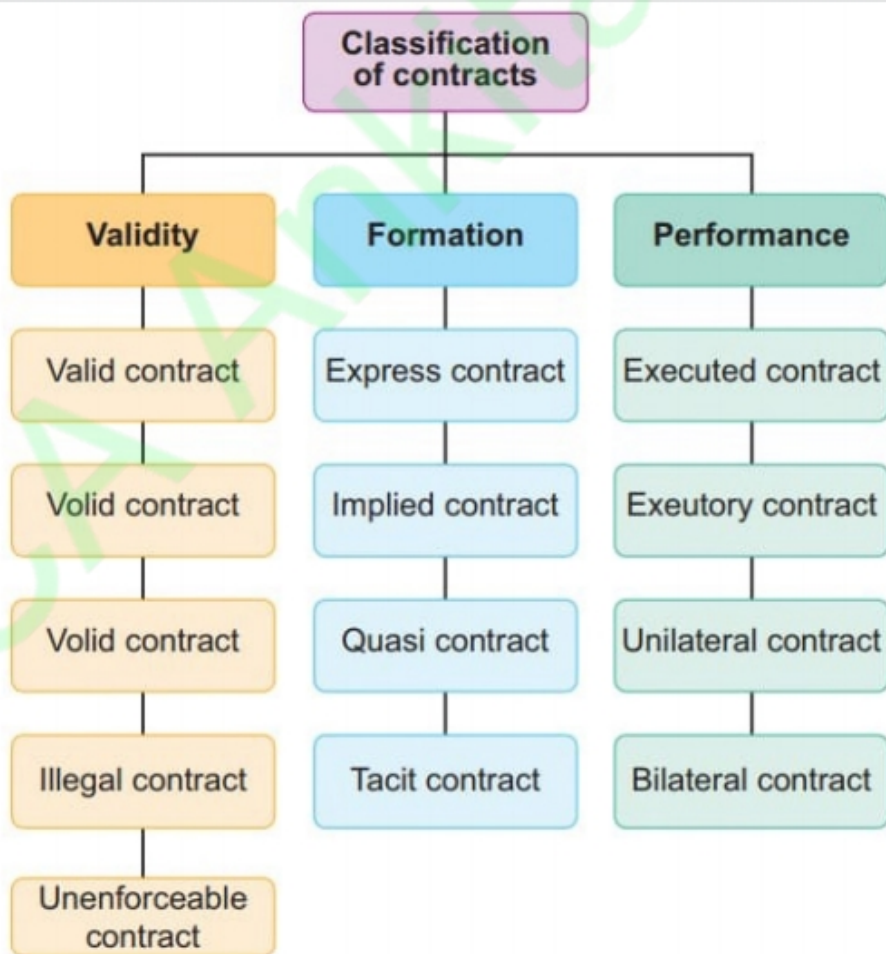
Bilateral Contract

* Unilateral Contract:-

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

* Bilateral Contract:-

A Bilateral Contract is one where the obligation or promise is outstanding on the part of both the parties.



Proposal / Offer

Essentials of a offer are:

- ① The person making the proposal or offer is called the 'promisor' or 'offeror'. The person to whom the offer is made is called the 'offeree' and the person accepting the offer is called the 'promisee' or 'acceptor'.
- ② for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.
- ③ The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.
- ④ An offer can be positive as well as negative

Classification of Offer



① General offer:-

- It is an offer made to public at large and hence anyone can accept and do the desired act.

Case law:- Carlill v. Carbolic smoke ball Co.



② Specific / 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 offer are called cross offers
- There is no binding contract in such a case because offer made by a person cannot be construed as acceptance of the another's offer.

④ Counter offer:-

- When the offeree offers to qualified acceptance of the offer. subject to modifications and variations in the terms of original offer, he is said to have made a counter offer amounts to rejection of original offer.

⑤ Standing or continuing or open offer:-

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

Essentials of a valid Contract

① It must be capable of creating legal relations:-

- Offer must be such as in law is capable of being accepted and giving rise to legal relationship
- A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

② It 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 It must be communicated to the offeree:-

- An offer, to be complete, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it.
- An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.

Case law:- Lalman Shukla V. Gauri Dutt



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

- And not merely with a view to disclosing the intention of making an offer.

⑤ It may be conditional:-

- An offer can be made subject to any terms and conditions by the offeror.

⑥ Offer should not contain a term the non-compliance of which amounts to acceptance:-

- Thus, one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

⑦ The offer may be either specific or general:-

⑧ The offer may be express or implied:-

⑨ Offer is different from:-

(i) A mere statement of intention:-

- eg:- A father wrote his son about his wish of making him the owner of all his property is mere a statement of intention.

(ii) An invitation to offer:-

- In case of 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.
- His objective is to send out the invitation that he is willing to deal with any person who, on the basis of such invitation, is ready to enter into contract with him subject to final terms and conditions.

(iii) A statement of price is not an offer:-

- Quoting the price of a product does not constitute it an offer.

(iv) A mere communication of information:-

* following are examples of invitation to offer to buy or sell:-

- ① An invitation by a company to the public to subscribe for its shares.
- ② Display of goods for sale in shop windows.
- ③ Advertising auction sales and
- ④ Quotation of prices sent in reply to a query regarding prices.

Difference between Offer and An Invitation to Offer

Basis	Offer	Invitation to offer
Meaning	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 chooses to accept it.	Where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.
Intention of the parties	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.	If a person has the intention of negotiating on terms it is called invitation to offer
Sequence	An offer cannot be an act precedent to invitation to offer	An invitation to offer is always an act precedent to offer

* Acceptance:-

Definition of Acceptance:-

"When the person to whom the proposal is made signifies his assent

The proposal is said to be accepted.

The proposal when accepted becomes a promise"

Acceptance



Relationship between Offer and Acceptance:-

- The 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.



• According to Sir William Anson

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

• This means as soon as the train of gun powder is lighted it would explode. Train of gun powder [offer] in itself is inert., but it is the lighted match [acceptance] which causes gun powder to explode.



Legal Rules regarding a valid acceptance:-

① Acceptance can be given only by the person to whom offer is made:-

• In case of specific offer, it can be accepted only by the person to whom it is made.

Case law :- **Boulton vs. Jones**

∴ Held, as the offer was made to Boulton, There was no contract between Boulton and Jones.



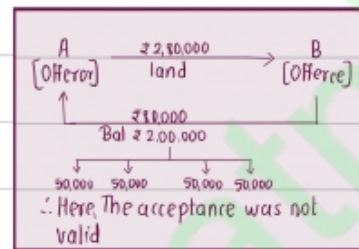
- In case of general offer, it can be accepted by any person who has the knowledge of the offer.

[Carlill vs. Carbolic smoke ball co. (1893)]

② Acceptance must be absolute and unqualified:-

- Acceptance is valid only when it is absolute and unqualified.

Case law:- Neale Vs. Merret



Case law:- Union of India v. Bahulal

③ The Acceptance must be communicated:-

- To conclude a contract between the parties, the acceptance must be communicated

Case law:- Brogden vs. Metropolitan railway Co.

④ Acceptance must be in prescribed mode:-

- Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner.

⑤ Time:-

Acceptance must be within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.

⑥ Mere silence is not acceptance:-

- The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer.

⑦ Acceptance must by conduct / Implied Acceptance:-

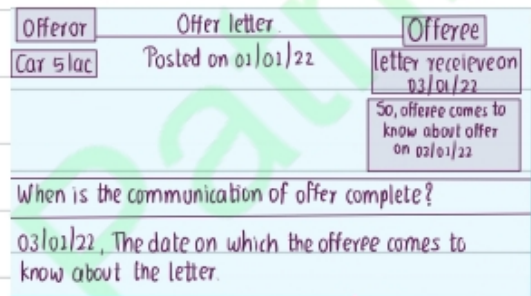


* Communication of Offer and Acceptance:-

① Communication of Offer:-

- "The communication of offer is complete when it comes to the knowledge of the person to whom it is made"
- Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

• Thus, it can be summed up that when a proposal is made up by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.



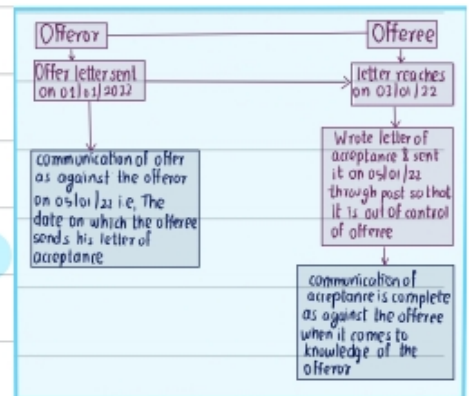
② Communication of Acceptance:-

• Communication of acceptance is complete :-

i) As against the proposer, 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.

ii) As against the acceptor, when it comes to the knowledge of the proposer

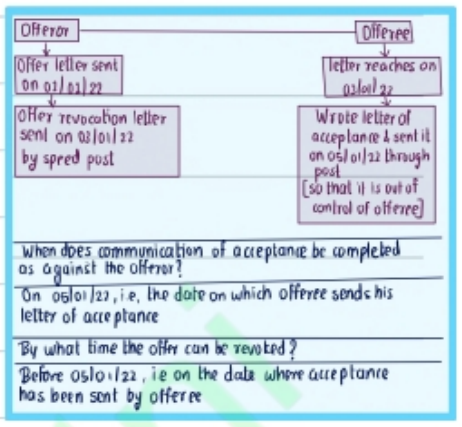
- However, from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer



* Revocation of Offer and acceptance:-

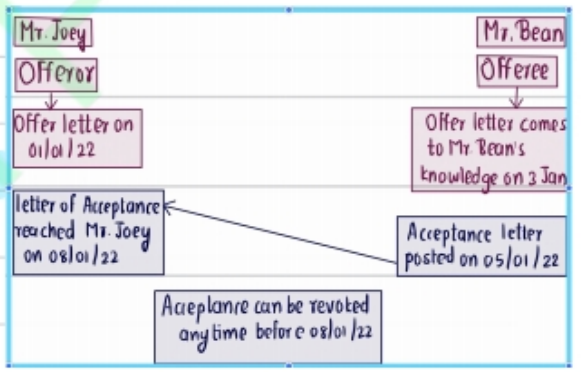
① Revocation of Offer:-

- The offeror can revoke his offer before it is accepted.
- If he does so, the offeree cannot create a contract by accepting the revoked offer.



② Revocation of Acceptance:-

- A proposal can be revoked at any time before the communication of its acceptance is complete as against proposer.
- An acceptance may be revoked at any time before the communication is complete as against the acceptor.



* Modes of revocation of offer.

1) By notice of revocation:-

2) 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 the reasonable time.

3) By Non-fulfilment of condition:-

Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

4) **By death or insanity :-**

Death or insanity of the proposer would result in automatic revocation of proposal.

5) **By counter offer:-**

6) **By the non-acceptance of the offer according to the prescribed or usual mode. :-**

7) **By subsequent illegality :-**

* **Communication of special conditions:-**

- Sometimes there are situations where there are contracts with special conditions.
- These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him realizing it.

Case law :- **Lily White vs. R Mannuswamy**



TAKE IT EASY