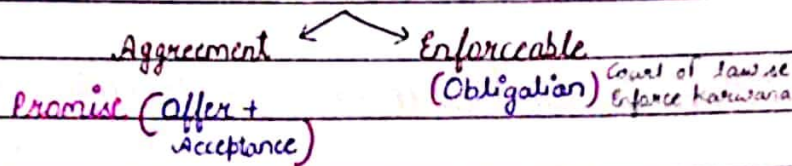


## Contract Act



Contract :- [Section 2(h)]

An agreement Enforceable by law.

- Agreement :- Section 2(e) (Proposal + acceptance)  
 Every promise & Every set of promises, forming consideration for each other.
- Promises :- Section 2(b) offer. अर्थात्/उत्तर  
 When a person to whom (proposal) is made (signifies) his assent therefore proposal is said to be accepted.
- Enforceability :- to create legal obligation.  
 An agreement to become a contract must give rise to a legal obligation.

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	Agreement (Sohi Dost)	Contract (Dost Totho)
Meaning	(Offer + Acceptance)	(Agreement + Legal Enforceability)
Scope	Wider (includes legal & social agreement).	Narrow (Only legally Enforceable agreement).
Legal Obligation	May not create legal Obligation. Not always grants rylt to parties	Necessarily creates legal Obligation. Grants Certain rylt to Every parties
Nature	All agreement are not Contract.	All Contracts are agreement.

$$A + E = C$$

$$A + E = C$$



(Section 10)

# 1. Essentials of Valid Contract →

Given in § 10  
Not Given in § 10  
but also considered Essential.

(a) Not given in Section 10 → (Applicable because of usage & Customs)

(i) Two parties :-

- Contract involve two parties → Either natural or artificial | Legal Existence.
- Parties should be ascertainable.
- One making offer & other accepting it.

(Caselaw :- State of Gujrat vs Ramarlal S & Co.)

Agreed Party (Plaintiff)      and      Defended Party

(ii) Parties must intend to create legal obligation :-

- Social / Domestic obligations are not enforceable.
- Contract should be enforced by court of law.

(Caselaw :- Balfour vs. Balfour)

(iii) Other formalities to be compiled in with certain cases :-

- In some contract may contain certain formalities which need to be compiled to make it enforceable.
- Some contract may be oral or in written.
- **Exception** :- In case of sale / purchase of immovable property it need to be in written & registered under law.

(iv) Certainty of Contract :-

Agreement must be certain & not vague or indefinite.      Ex. Oil.

(v) Possibility of performance of an agreement :-

Term of agreement should be capable of performance  
If it is impossible than can't be enforced.



Given in Section 10 →

(i) Offer & Acceptance / An agreement :-

→ Agreement is essential Element of a valid Contract.

(ii) Free Consent :- <sup>without pressure</sup> ~~consensus ad idem~~

→ Consent should be free without pressure.

→ They should agree upon some things at same time in same sense.

When Consent is vitiated by mistake, contract becomes void.

→ Consent is not said to be free without pr if Caused by CDFM.

(iii) Capacity of the parties :-

→ It means the legal ability of a person to Enter into valid Contract.

Section 11 of ICA → specifies Competent to Contract.

(i) a) Age of minority :-

→ must be 18 year of age (major)

→ minors, incompetent to Contract.

b) Is of sound mind :-

→ should be in his sense to understand implication of Contract.

c) Is not otherwise disqualified from Contracting by any law to which he is subject :-

→ Should not be disqualified by his status.

→ These are disqualified unless they fulfill certain formalities required by law.

→ Such persons are → an alien Enemy, foreign sovereign, convicts etc.

(iv) Consideration → <sup>Section 2(d)</sup> <sup>1st word</sup>

→ It is referred to as 'quid pro quo' → 'something in return'

→ A valuable Consideration means some rgt, int., Benefit, accruing to 1 party & forbearance.



Purpose of business

(v) Lawful Consideration & Object :-

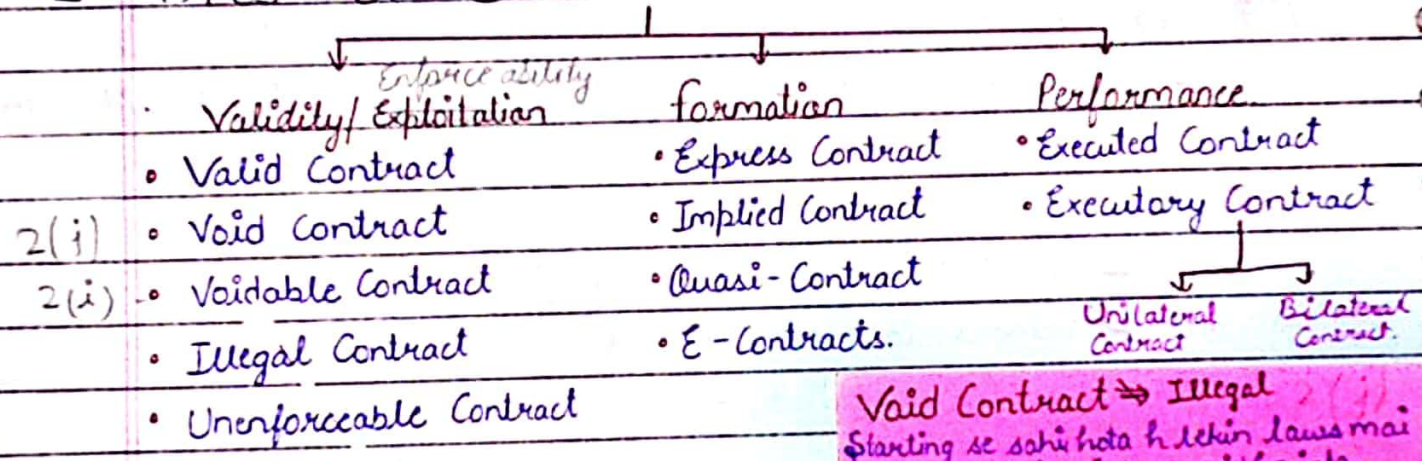
- Consideration & Object must be lawful.
- Object is not lawful if it is prohibited by law/immoral/against public policy.

(vi) Not Expressly declared to be void :-

- A void agreement is one without any legal effects.
- An illegal agreement is an void agreement expressly/ implied prohibited by law.

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2. TYPES OF CONTRACT :-



On the basis of Validity :-

i) Void Contract :- Section 2(j)

- A contract which ceases to be void when it ceases to be enforceable
- A void Contract is one which can't be enforced
- When Contract is void, it is not a purpose of identifying it, it is called a (void) contract.

Void Contract ⇒ Illegal (j)  
 Starting se sahi hota h lekin laws mai change hone ki wajah se void ho jata.  
 Voidable → (CUFM)  
 बिना free consent missing ho.  
 Valid → Enforceable by law.  
 Illegal Contract ⇒ Void  
 Starting se law ki against h.  
 Unenforceable Contract → (Thora sa element missing hota h.)

Types of Contract on Validity.

(ii) Valid Contract :- Section 2(h)

- An agreement which is binding & enforceable is a valid Contract.
- It contains all Essential Elements of a valid Contract.



{ Void Agreement  $\neq$  Void Contract }  
{  $\text{ग़ैर वाजिब करार}$   $\neq$   $\text{वाजिब करार}$  }  
Contract Karne ke baad  
Karna. Horse ka manna.

Page No.

Date

(iii) Voidable Contract :- Section 2(i)

→ An agreement which is enforceable by law at option of one/more parties thereto, but not at the option of other is called a voidable Contract.

→ Right to rescind to aggrieved party within reasonable time.

(iv) Illegal Contract :- Section 2(g)

→ These are void by inception. 'Void ab initio'

→ Forbidden under law.

→ The Court will not enforce such laws. (Collateral Contract)

→ Parties to illegal agreements are liable for punishment.

(v) Unenforceable Contract :- Contract can be valid after removing defect.

→ Where a Contract is good in substance but becoz of some technical defect (absence in writing, barred by limitation etc) one or both the parties can't sue upon it.

On the Basis of formation (Section 9)

i) Express Contract :- (Section 9)

→ If a proposal or acceptance of any promise is made in words/written the promise is said to be Express.

Contract b/w  
Natural  
Contract

(ii) Implied Contract :-

→ It came into existence by implication.

→ When proposal or acceptance is made otherwise than in words, the Contract is said to be implied.

Contract  
b/w Natural  
& Artificial  
Person.

→ Implication can be either by action/conduct of parties.

Tacit Contract :- (part of implied contract)

→ These are those that are inferred through the conduct of parties without any words spoken or written.

→ Also called Silent Contract.



(iii) **Quasi-Contract :-** *2 standard*  
 → It is not actual contract but it resembles Contract.  
 → Obligations are created by law under certain circumstances.  
 → No real Contract exists as such obligations are created by law & not b/w parties.  
 → It is a contract in which there is no intentional part of either party to make a contract but law imposes a contract upon parties.

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(iv) **E-Contracts :-**  
 → When a contract is entered into by two or more parties using electronic means is known as E-commerce Contract.  
 → Also known as EDI Contract, mouse click Contract / Cyber Contract.

On the basis of Performance

On formation Basis →  
 1. Express Contract → बातों ही बातों में (written or oral)  
 2. Implied Contract → इशारों ही इशारों में (By conduct)  
 3. Tacit Contract → Silent contract  
 3. Quasi Contract → कोई contract nhi hote bs legal duty ban jati h law ki wajha se  
 4. E Contract →  
 On Performance Basis →  
 1. Executed → Contract में consideration पूरा हो गई है  
 2. Executory → Consideration pending h.  
 ↳ Unilateral: 1th party ki consideration pending  
 ↳ Bilateral: Dono parties ki consideration pending h.

(i) **Executed Contract :-**  
 → When the act is done or executed brought on record, then the contract  
 → Obligation of parties are done.

(ii) **Executory Contract :-**  
 → Such consideration is to be performed in future only & therefore these contracts are described as Executory Contracts.

a) **Unilateral Contract →**  
 → One party duty is performed but other party obligation is pending.

b) **Bilateral Contract →**  
 → Where obligation of both parties are pending.



### 3. Proposal / Offer

Definition of offer / proposal: Section 2(a)

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

Essentials of a proposal / offer are:—

1. Make Promise → Promiser / offeror  
Accepting Promise → Promisee / acceptor.
2. Must to Express his willingness 'to do' or 'not to do'.
3. An offer can be positive as well as negative.
4. The willingness must be Expressed with a view to obtain the assent of the other party to whom the offer is made.

Classification of Offer:—

1. General Offer:— (Section 8)

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

→ Anyone performing the conditions of the offer can be considered as to have accepted the offer, until the general offer is retracted withdrawn.

(Case law → Carlill vs Carbolic Smoke Ball Co) (1893)

2. Special / Specific offer:—

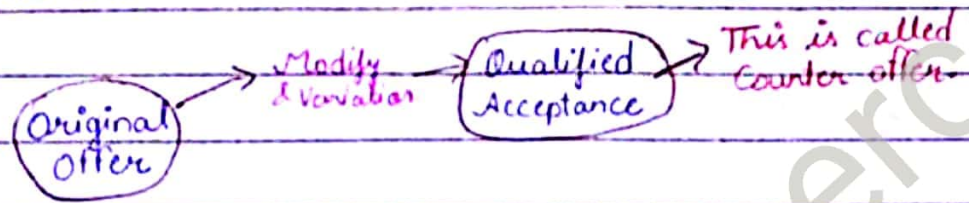
→ When the offer is made to a specific or an ascertained person, it is known as special offer.

(Case law → Boulton vs. Jones)



### 3. Counter Offer:-

- When offer offers qualified acceptance of offer subject to modifications & variation in terms of original offer.
- Counter offer amounts to rejection to the original offer. It is also called Conditional Acceptance.



### 4. Cross Offers :- → Not Exist in real life.

- When two parties Exchange identical offers in ignorance at the time of Each others offer are called Cross offers.
- There is no binding Contract in such Cases.

### 5. Standing / Continuing / Open Offer :-

- An offer which is allowed to remain open for acceptance over a period of time is known as standing offer.
- Tenders invited for supply of goods is a kind of standing offer.

## 4. Essential of a valid Offer:-

### 1. It must be Capable of Creating legal relations:-

- If offer does not intend to give rise to a legal Consequences & creating legal relations, it is not considered as a valid offer in the eye of law.

A social invitation even if it is accepted, does not Create legal relations becoz it is not so intended.

### 2. It must be Certain, definite & not vague:-

- If terms of offer are vague or indefinite, its acceptance can't create any contractual relationship.



3. It must be Communicate to the offeree :-

→ An offer to be Completed, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it.

→ Unless an offer is Communicated, there can be no acceptance by it.

→ Acceptance in ignorance of offer does not Create valid Contract.

(Caselaw :- Lalman Shukla vs Gauri Datta)

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

→ Offer should include willingness as to enter into Contract not merely disclosing the intention of making of offer.

5. It may be Conditional :-

→ An offer can be made subject to any terms & Conditions by the offeror.

→ Acceptance should be absolute.

6. Offer should not contain a term the <sup>non-compliance</sup> non-Compliance of which would amount to acceptance :-

→ One can't say that if acceptance is not Communicated within time offer would be Considered accepted.

7. The offer may be Either specific or general :-

→ Any offer can be made to Either public at large or to the any specific purpose.

8. The offer may be Either Express or implied :-

→ An offer may be Either by words or by conduct.

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9. Offer is different from a mere statement of intention or invitation of offer, e-mere communication of information, a prospectus & advertisement:-

→ A statement of intention and announcement.

→ Offer must be distinguished from (an ans to a ques)

→ A statement of price is not an offer.

→ An invitation to make an offer or do business (Tender)

→ 'Quoting the price of product does not constitute offer'

(Caselaw Harvey vs Face)

5. Invitation to Offer:-

→ An offer should be distinguished from an invitation to offer. An offer is definite & capable of converting an intention into a contract.

→ An invitation to offer is an act precedent to making an offer.

→ Acceptance of an invitation to an offer does not result in the contract & only an offer emerges in process of negotiation.

→ Intention with which such statement is made - ascertain it is offer.

→ Former case → ~~IT~~ Offer      Latter Case → IT Offer

→ Person making invitation does not make an offer rather invites other party to make offer.

→ Objective to set out terms & conditions on which he is willing to negotiate.

Goods sold through auction sale:-

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



→ offer is distinguished from ITO.

- offer is definite & capable of converting an Intention into contract.

- ITO is only circulation of an offer in an attempt to induce offer.

- ITO precedes offer.

- Acceptance of ITO does not amount to acceptance but rather it generates offer.

- While deciding whether terms are offer / ITO - look at intention of parties.

Example → Display of goods for sale in shop windows.

**# Imp.**



## 6. Acceptance :- Sec Section (b)

When the person to whom the proposal is made signifies his assent, therefore proposal is to be accepted becomes promises.

Relationship b/w offer & acceptance →

Acceptance is a lighted match to a train of gun powder.

As soon as offer is accepted, it becomes Contract.

Legal rules of a valid acceptance →

(i) Acceptance can be given only by the person to whom offer is made :- In specific offer, it can be accepted only by the person to whom it is made.

(Caselaw :- Baillan vs Jones 1857)

(ii) Acceptance must be absolute & unqualified :- Section 7.

As per sec 7, Acceptance is valid only when it is absolute & unqualified & is also expressed in some usual & reasonable manner unless the proposal prescribes the manner in which it must be accepted.

(iii) The acceptance must be Communicated :-

→ To conclude Contract b/w parties, the acceptance must be communicated in some perceptible form.

(Caselaw Brogden vs. Metropolitan Railway Co. (1877))

→ Conditional Acceptance when accepted is called Counter offer.

→ Where an offer made by the intended offeree without the knowledge that an offer has been made to him can't be deemed as an acceptance thereto.

(Caselaw --- Bhagwandas vs Girdharilal)



→ A mere variation in the language not involving any difference in substance would not make the acceptance ineffective.

(Case law --- Heyworth vs. Knight)

(iv) Acceptance must be in a prescribed mode:-

→ Where the mode of acceptance is prescribed in proposal, it must be capable in that manner. The proposer is presumed to have consented to acceptance.

v) Time :-

→ Acceptance must be within reasonable time, if no time is stipulated and before offer lapse.

→ Reasonable time would depend on facts & Circumstance of Case.

vi) Mere silence is not acceptance:-

→ The acceptance of an offer can't be implied from the silence of offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

(Case law Fellhouse vs Bhindley)

(vii) Acceptance by conduct / Implied Condition:-

→ 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.

→ The performance of the condition of the proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitute an acceptance of proposal. (Section 8)

→ It can be any other mode than verbal & written communication.



Effective & proper Communi. prevents avoid  
revocation & misunderstanding b/w parties

## 7. Communication of offer & Acceptance :-

→ When parties are face to face there is no problem of Communication becoz offer & acceptance is instantaneous. In such case ques of revocation do not arises.

→ Difficulty arises when contracting parties are at distant location & they utilize services of post & telecom.

### Communication of offer :- (Section 4)

→ It is complete when it comes to knowledge of person to whom it is made.

### Communication of an acceptance :-

#### (i) Communication by an act :-

→ It would include any Expression of words whether written or oral.

→ Communication would include any conduct intended to communicate like positive signs an act so that other person understands what the person 'acting' or 'making signs' means to say or convey.

#### (ii) Communication of acceptance by 'omission' to do something :-

→ Such omission is conveyed by a conduct or by forbearance on the part of one person to convey his willingness or assent. However silence would not be treated as Communication by omission.

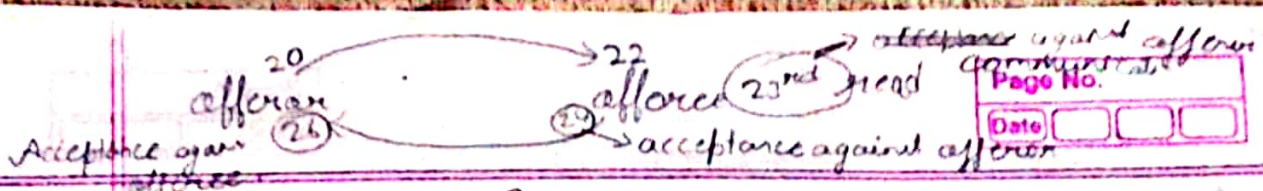
#### (iii) Communication of acceptance by conduct :-

→ Behaviour of person can also Communicate acceptance.

& Drop a coin in weight machine. etc.

(Caselaw ... Central Bank Yeobnal vs Vyankatesh (1949))





Page No.

Date

Communication of acceptance is Complete →

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 knowledge of proposer.

→ Where a proposal is accepted by a letter sent by post, 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 in case of call drop, & disturbances it will not be valid contract.

Communication of Special Condition →

- Sometimes there are situations where contract with special condition arise.
- Special conditions are conveyed tacitly or expressly.
- Tacit Acceptance is valid only when conditions are reasonable.

(Caselaw.... *Mukul Dutt vs. Indian Airlines 1962*  
*Lilywhite vs Mavruswamy 1966*)



### 8. Standard form of Contract →

→ It is well established that a standard form of Contract may be enforced on another who is subjectively unaware about the contents of document.

→ One should note that circumstances of case should be reasonable otherwise acceptor will not incur any contractual obligation.

If notice does not give any reasonableness than it shall not be valid.

(Caselaw: Raipur transport co. vs (Chanshyam))

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### 9. Communication of Performance :-

From viewpoint of Proposer →

→ When acceptance is put in course of transmission so that it is out of power of acceptor.

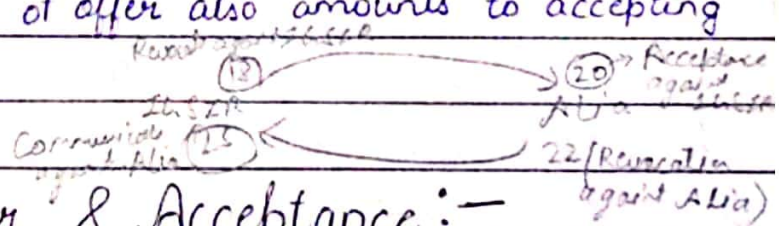
From viewpoint of acceptor →

→ When it comes to knowledge of proposer.

In Case of General Offer →

→ In it, communication of performance is not necessary

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



### 10. Revocation of Offer & Acceptance :-

Communication of Revocation :- (Section 4)

1. As against person who made 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 comes to knowledge of person.

### # Till when Revocation is Possible: - Section 5

→ Proposal can be revoked at any time before Communication of acceptance as against proposer is Completed.

→ Acceptance can be revoked at time before Communication of acceptance is complete as against acceptor.

In English law once acceptance is given it can't be revoked.

Sir                      Alia

### Modes of Revocation →

1. Notice of Revocation @beingcommerce

2. Lapse of time →

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

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

(Caselaw Ramsgate Victoria hotel vs. Montelione)

3. By non-fulfilment of condition precedent →

→ where offer contains condition & acceptor fails to fulfill it, proposal automatically get revoked.

→ In order to accept contract, acceptor 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 →

# Revocation must be done with faster mode of Communication