

2. The Indian Contract Act, 1872

Date ___/___/___



Unit I: Nature of Contract

- Contract - an agreement enforceable by law.
- Agreement - Every promise and every set of promise forming [Sec. 2(e)] consideration for each other.
- Promise -
 - When the person to whom proposal is made [Sec. 2(b)] signifies his assent
 - Proposal is said to be accepted
 - Accepted Proposal is 'Promise'
- Enforceability by law -
 - An agreement to become Contract
 - must give rise to 'legal' obligation

* Essentials of a Valid Contract (Sec. 10)

- Offer & Acceptance or an Agreement -
 - Agreement is essential
 - Agreement is outcome of offer and Acceptance for consideration
- Free consent -
 - agree on same thing in same sense
 - not by coercion, undue influence, fraud, misinterpretation.
- Capacity of the parties -
 - age of majority
 - sound mind
 - not disqualified by law
- Consideration -
 - Quid pro Quo
 - something in return
- Lawful consideration and Object -
 - consideration and object must be lawful
 - not prohibited by law, immoral, opposed to public
- Not expressly declared to be void - agreement entered into should not be illegal or void

Other essential of a Valid Contract (not given in Sec. 10)

(i) Two parties → at least two parties → making the offer
→ accepting the offer

• natural person

• other person by legal existence
(company, LLP)

(ii) Parties must intend to create legal obligations → intention create legal obligations

- Social / Domestic agreements are not enforceable in court
- They do not create Contract

(iii) Possibility of performance of an agreement - • possible or capable of performance

- Impossible acts cannot be enforced

(iv) Other formalities to be complied with - in certain case → Writing or registration

(v) Certainty of Meaning - • must be certain • Not vague or indefinite

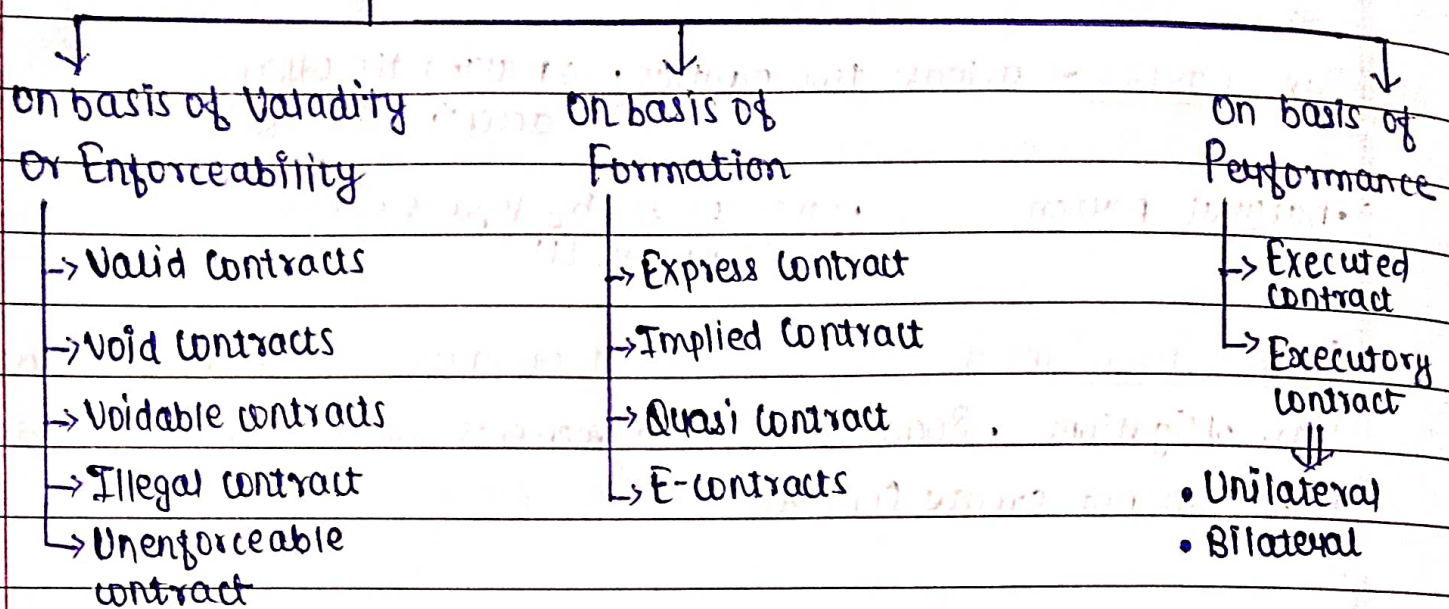
Agreement

- (i) Every promise / set of promise forming consideration for each other.
- (ii) wider term including legal and Social agreement.
- (iii) may not create legal obligation
- (iv) All agreements are not contract

Contract

- (i) Agreement enforceable by law
- (ii) narrow sense → legally enforceable agreement
- (iii) necessarily create legal obligation
- (iv) All contracts are agreements

* Types of Contracts :-



1) On the basis of the Validity :-

- (a) Valid Contract - • an agreement binding and is enforceable
• all essential elements of a valid contract are present
- (b) Void Contract - • contract which ceases to be enforceable becomes void
• when it ceases to be enforceable
[Cease: to stop]
- (c) Voidable Contract - • agreement enforceable at option of one person
• but not at option of other
→ when consent is not free
→ when a person promise to do something for other, but other person prevents from performing his promise
→ when party promise to perform in specified time → fails
- (d) Illegal Contract - • contract which law forbids to be made
• court will not enforce such contract & connected contracts
• All illegal contract are VOID
• but all VOID contracts are not necessarily illegal



- (e) Unenforceable Contract - • When a contract is good in substance
• but because of some technical defect cannot be enforced.

2. > On the basis of Formation :-

- (a) Express Contract - • If terms are expressed → by words
→ by writing

- (b) Implied Contract - • come into existence by implication
• proposal or acceptance made other than in words or writings

→ Tacit Contract - • Tacit means silent • conduct of parties without any words spoken or written

- (c) Quasi Contract - • not an actual contract b/w parties
• created by law under certain circumstances

- (d) E- contracts - • contract is entered into by two or more parties,
• by using electronic means
• also known as → EDI [Electronic Data Interchange] Contract, Cyber Contract, and Mouse-click contract

* On the basis of Performance :-

1. > Executed Contract - • when the act is done or executed
• forbearance is brought on record (not doing activity)

2. > Executory Contract - • pending contract

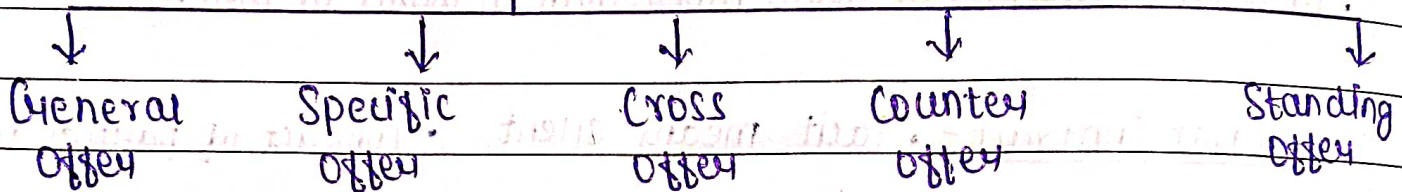
- (a) Unilateral → • one party performed his obligation, • other party outstanding

- (b) Bilateral → when both parties' obligation are outstanding

* Proposal / Offer [Sec. 2(a)]

- When one person signifies to another
- his willingness to do
- or abstain from doing anything
- with a view of obtaining the assent of the other
- Such act or abstinence → he is said to make an offer

Classification of Offer



- 1.) General Offer - • Offer made to public at large • anyone can accept and do desired act • until withdrawn → can be accepted by anyone at any time [Continuing offer]

Case law: Carrill v/s Carbolic Smoke Ball Co. [1893]

- 2.) Specific Offer - • Offer made to specific / ascertained person • can be accepted only by ascertained person

Case law: Boulton v/s Jones

- 3.) Counter offer - • When the offeree offers to qualified acceptance of offer • Subject to modification in terms of original offer • It leads to rejection of original offer • also known as **CONDITIONAL ACCEPTANCE**

- 4.) Cross offer - • when two parties exchange identical offers • in ignorance at the time of each other's offer • No binding contract • Offer made by a person cannot be construed as acceptance of another's offer

5.7) Standing / Open / Continuing Offer - • offer allowed to remain open for acceptance • over a period of time

• Essentials of a Valid Offer:-

- (i) It must be capable of creating legal relation
- (ii) It must be certain, definite and not VAGUE / INDEFINITE
- (iii) It must be communicated to the offeree → if not → NO ACCEPTANCE
- (iv) It must be made with a view to obtaining the assent of other party
- (v) It may be conditional
- (vi) Offer should not contain a term the non-compliance of which amount to acceptance
- (vii) It may be General or Specific
- (viii) It may be Express or Implied
- (ix) Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus or Advertisement

• Invitation to Offer

- when 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.

* Acceptance [Sec. 2(b)]

- When the person to whom proposal is made,
- signifies his assent
- Proposal is said to be accepted
- The proposal when accepted → becomes PROMISE

• Legal Rules regarding Valid Acceptance

- (i) Acceptance can be given only by the person to whom offer is made.
- (ii) Acceptance must be absolute and unqualified
- (iii) The acceptance must be communicated
- (iv) Acceptance must be in prescribed mode
- (v) Acceptance must be given within the specified time limit, if not defined $\rightarrow$ given within the reasonable time
- (vi) Mere silence is not acceptance
- (vii) Acceptance by conduct / Implied Acceptance

• Communication of Offer and Acceptance

$\rightarrow$ Communication of Offer is complete when it comes to the knowledge of the person to whom it is made.

• • receiving the letter • reading the letter

↓
In case of proposal by Post

$\rightarrow$ Modes of Acceptance :-

- (a) Communication by act - expression of words $\rightarrow$ written or oral
- (b) Communication by omission to do something
- (c) Communication by conduct

$\rightarrow$ Communication of Acceptance - In terms of Section 4, it is complete :-

- (i) as against the proposer $\rightarrow$ • when it is put in the course of transmission to him • out of power of the acceptor to withdraw the same.
- (ii) as against the acceptor $\rightarrow$ when it comes to the knowledge of the proposer

- In case of Telephone / Telex or Fax - Acceptance is received by the offeree.

In case of call drops / disturbance → NO VALID CONTRACT

- In case of Special conditions → conveyed tacitly or even without making him realise

→ Standard form of Contract :-

- Standard form of contract may be applicable on the another person
- who is subjectively unaware of the contents of document
- party wanting to enforce the contract, has given notice
- But the acceptor will not incur any contractual obligation → if document is printed & delivered → in such a state → which does not give a REASONABLE NOTICE.

* Revocation of Offer and Acceptance

→ [Sec. 5] ⇒ Proposal can be revoked → any time before → communication of its acceptance is complete → as against proposer

→ Acceptance may be revoked → any time before → communication of acceptance is complete → as against acceptor

• Modes of Revocation :-

- (a) by notice of revocation
- (b) by lapse of time
- (c) by non-fulfillment of the condition precedent
- (d) by Death or Insanity
- (e) by counter offer
- (f) by non-acceptance of offer by prescribed mode
- (g) by subsequent illegality