

# THE INDIAN CONTRACT ACT, 1872

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## \* Introduction :-

- This is one of the oldest in the Indian law, passed by legislature of pre-independence India and received its assent on 25<sup>th</sup> April, 1872.
- This act was introduced on 1<sup>st</sup> September, 1872

## \* Definition of contract :-

The term 'contract' is defined in section 2(h) of Indian Contract Act.

- "An agreement enforceable by law is contract.
- The contract consists of two essential elements:
  - i] an agreement
  - ii] it is enforceable by law.

## \* Definition of Agreement :-

"Every promise and every set of promises forming the consideration for each other.

Agreement = offer/proposal + Acceptance + consideration

Enforceable by law :-

An agreement to become a contract must give rise to a legal obligation which means a duty enforceable by law.

Contract = Agreement + Enforceable by law

Basis	Agreement	Contract
meaning	Every promises and every set of promises forming consideration for each other.	Agreement enforceable by law. Agreement + Enforceable by law.
scope	It is wider term including both legal and social agreement	It is used in a narrow sense with the specification that contract is only legal enforceable agreement.
Legal obligation	It may not create obligation.	Necessary creates legal obligation.
Nature	All agreement are not contract	All contracts are agreements

## \* Definition of offer:

The term proposal/offer has been defined in Section 2 (a)

→ "When one person signifies to another his willingness to do or not to do from anything, with a view to obtaining the assent of that another to such act or abstinence, he is said to be make proposal.

## Analysis of above definition.

1. The person making the proposal or offer is called the 'provisor' or offerer.
2. For a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.
3. An offer can be positive as well as negative.
4. The willingness must be expressed with a view to obtain the assent of other party to whom the offer made.

## \* Essentials:

i] Offer must be capable of creating legal relationship

Case law :- Balfour v. Balfour

ii] The terms of the offer must be definite and certain.

The terms offer must be definite, unambiguous and certain and not vague.

iii] Offer must be different from invitation to offer

An offer should be distinguished from an invitation to offer.

Basis	Offer	Invitation to offer
Meaning	Section 2 (a) of Act, an offer is the final expression of willingness by the offerer 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.

<p><i>intention of the parties</i></p> <p>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.</p>	<p>If a person has the intention of negotiating an term is called invitation to offer.</p>
<p><i>precedent</i></p> <p>An offer cannot be an act precedent to invitation to offer.</p>	<p>An invitation to offer is always an act precedent to offer.</p>

Case law : Harvey vs. Face (1893)

Case law : Mac Pherson vs Appanna (1951)

(v) offer should be communicated  
 Unless an offer is properly communicated, there can be no acceptance of it.

Case law : Lalman Shukla vs Gauri Dutt

Gauri announced a reward for anyone who found his nephew, Lalman. Lalman found the nephew in ignorance of reward. Held that, he is not entitled to reward as a person cannot accept an offer if he is unaware of its existence.

v] Offer can be express or implied  
An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct is called an implied offer.

vi] Offer can be conditional.  
Such conditional offer should be accepted along with the condition.

vii] Offer should not contain a term non-compliance of which would directly lead to acceptance.

Ex

A offer to sell his house to B for ₹ 2 crore. The offer was for 10 days and if does not reply within 10 days, A will treat the offer as accepted. This is an invalid offer.

\* Types of offer:

a] General offer: It is an offer made to public at large and hence anyone can accept and do the desired act (Carlill Vs. Carbolic Smoke Ball Co.)

In terms of section 8 of the Act, anyone performing the condition of the offer can be considered to have accepted the offer.

→ Until general offer is retracted or withdrawn, it can be accepted by anyone at anytime as it is continuing offer.

Case law: Carlill vs Carbolic Smoke Ball Co. (1893)

b) Specific offer: When the offer is made to a specific or a 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. [Boulton vs Jones]

Ex  
'A' offers to sell his car to 'B' at a certain cost. This is specific offer.

c) Cross offer: When two person parties exchange identical offer in ignorance at the time of each other's offer, the offer are called as cross offer.

→ 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.

d] Counter offer :- When the offeror offer to qualified acceptance of the offer subject to modification and variation in the terms of original offer, he is said to have made a counter offer. Counter-offer amount to rejection of the original offer. It is called as conditional acceptance.

e] 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.

→ Tenders that are invited for supply of goods is a kind of standing.



## \* Lapses of offer / Revocation of offer

→ An offer should be accepted before it lapses. An offer may come to an end automatically, an end in any of the following ways stated in Section 6 of the Indian Contract Act.

### 1. By communication of notice of revocation by offeror

- An offer may come to an end by communication of notice of revocation by the offeror
- An offeror can revoke his offer at any time before he becomes bound by it.

### 2. By lapse of time

- Where time is fixed for the acceptance of the offer, and it is not collected/accepted within the fixed time.
- The offer comes to an end automatically on the expiry of fixed time.

### 3. By failure to accept condition in conditional offer.

- Where, the offer requires that some condition must be fulfilled before the acceptance of offer, the offer lapses, if it is accepted without fulfilling the condition.

### 4. By the death or insanity of the offeror / offeree

- Where, the offeror dies or becomes insane, the offer comes to end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes acceptance.

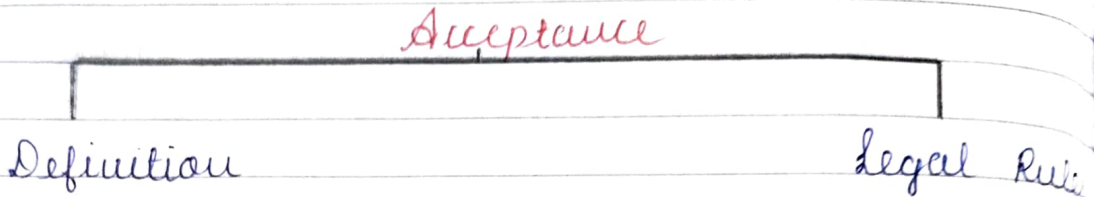
### 5. By Counter-offer by the offeree

- Where, a counter-offer is made by offeree, then the original offer automatically comes to end, as the counter-offer amounts to the rejection of the original offer.

## 6. By rejection of offer by the offeree

- Where, the offeree rejects the offer, the offer may come to an end.
- Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it.
- The rejection of offer may be express or implied.

## 7. By subsequent illegality

\* Acceptance :

- The term acceptance has been defined in section 2 (b)
- "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.
- A proposal when accepted become a promise.

\* Legal Rules of Acceptance

1. The acceptance must be communicated.

Case law : Brogden Vs. Metropolitan Railway Co.

2. The acceptance must be communicated by a person who has authority to accept.

Case law - Boulton Vs. Jones.

3. The acceptance must be absolute and unqualified.

→ As a conditional acceptance is counter offer.

Case law: Union of India vs. Bahulal

4. Acceptance must be within a specific / reasonable time.

5. Acceptance can be express or implied

Case law: Lily white vs. Mammeswamy

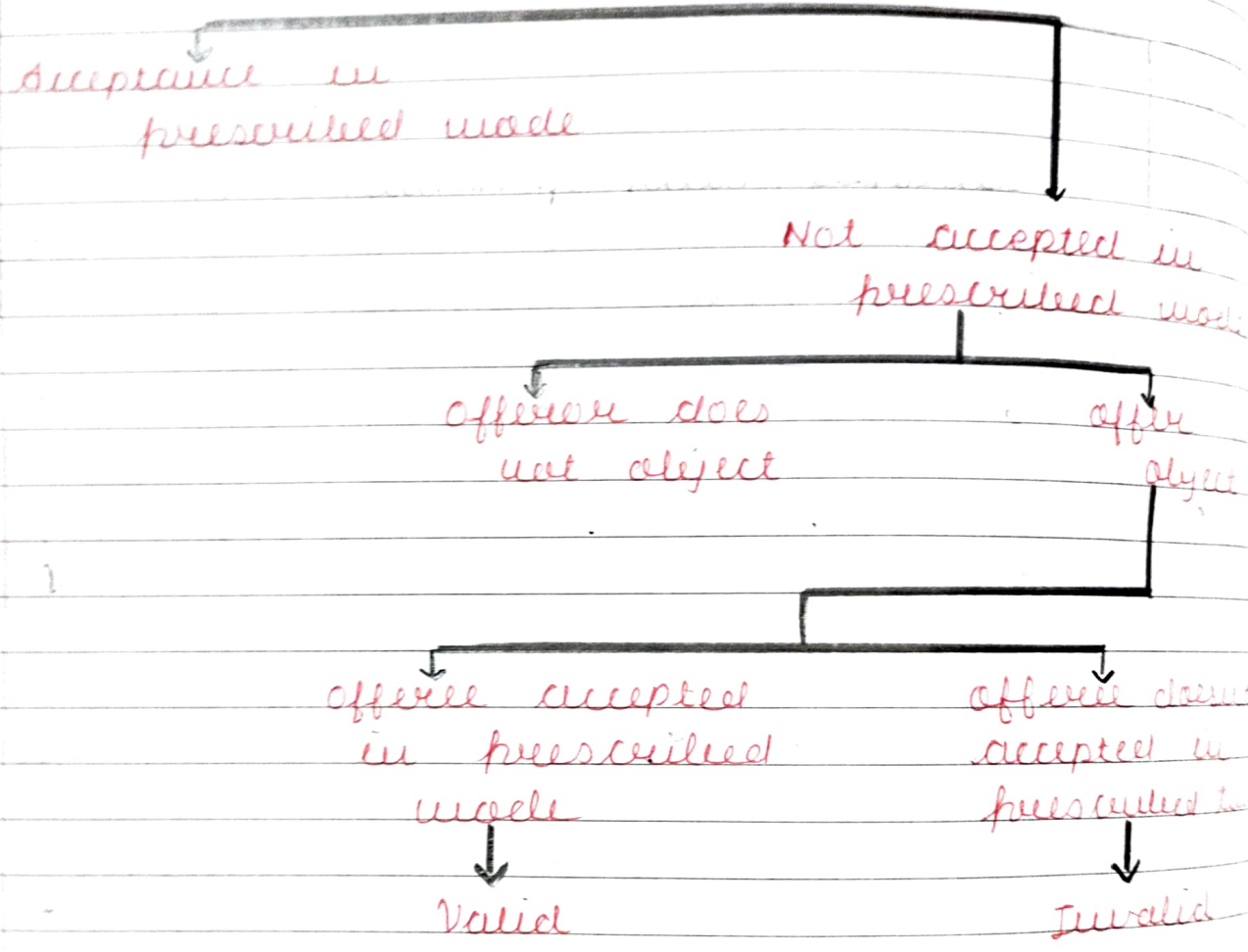
6. Mere silence does not amount to acceptance

Case law: Featherstone vs. Bindley

7. Acceptance by conduct / implied acceptance

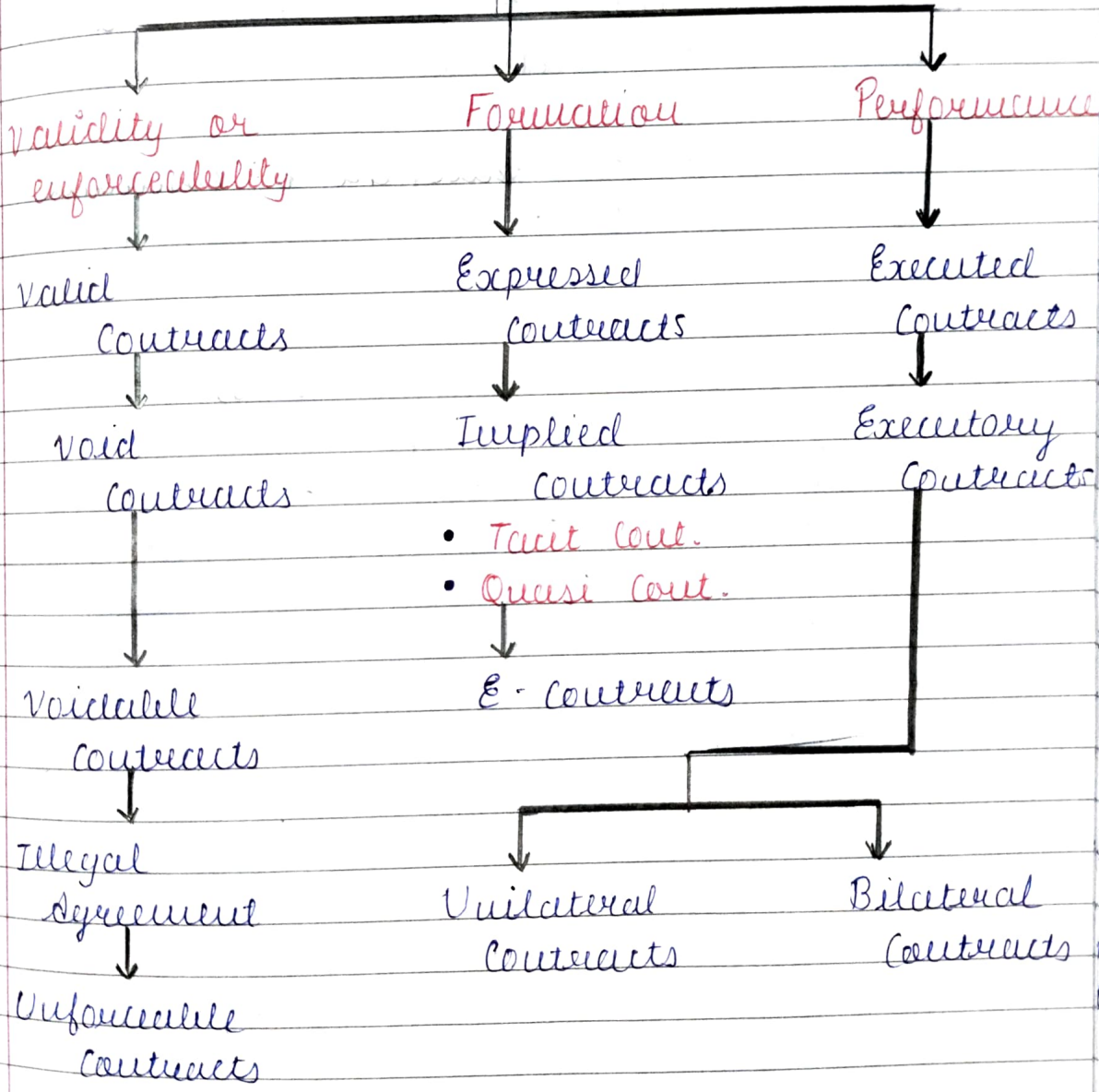
→ Acceptance can be expressed in words or even implied by conduct.

8 Acceptance should be via prescribed mode of communication



\* TYPES OF CONTRACT :

Types of contract on the basis of



## 1. On the basis of validity

1. Valid contract :- An agreement which is binding and enforceable is valid contract.

→ It contains all the essential elements of valid contract.

## 2. Void Contract - Section 2 (J)

→ "A contract which ceases to be enforceable by law because void when it ceases to be enforceable"

→ Thus a void contract is one which cannot be enforced by a court of law.

Example :- Mr X agree to write a book with a publisher. After a few days, X dies in an accident.

Here the contract become void due to impossibility of performance of the contract



### 3. Voidable Contract

→ As per section 2 (i), "an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract"

\* Void agreement: All agreement which is not enforceable by law from the beginning.

### 4. Illegal agreement

→ It is an agreement which the law forbids to be made. The court will not enforce such a agreement but not also enforce connected contracts

→ All illegal agreement are void but all void agreement are contracts are not necessarily illegal.

Basis of difference	Void agreements	Illegal agreements
Scope	A void agreement is not necessarily illegal.	All illegal agreements are 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 is not necessary that agreements collateral agreement may also be void. It may be valid also.	Agreement collateral to illegal agreements are also void.

## 5. Unenforceable Contracts

→ Where a contract is good in substance but because of some technical effect i.e. absence in writing demanded by, imitation, etc., one or both the parties cannot sue upon it, it is described as an unenforceable contract.

## II] On the basis of formation of Contract

### 6. Express Contract

→ A contract would be an express contract if the terms are expressed by word or in written.

→ section 9 of the act provide that if a proposal or acceptance of any promises is made in words the promise is said to be express

### 7. Implied Contracts

→ Implied contracts in contrast comes into existence by implication

→ Most often the implication is by law and or by an action

#### i] Tacit Contracts

#### ii] Quasi Contracts

## 8. E-Contracts

→ When a contract is entered into two or more parties using electronic means, such as e-mails is known as E-contracts

→ These are known as EDI contracts or cyber contracts or mouse click contracts.

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Section 11 - Minor

Section 12 - Unsound Mind

Section 13 - Consent

Section 14 - Free Consent

Section 15 - Coercion

Section 16 - Undue influence

Section 17 - Fraud

Section 18 - Misrepresentation

Section 19 - Effect of voidable contracts

Sec - 20, 21, 22 - Mistake

Section 23, 24 - Unlawful object and <sup>Section</sup> Unlawful consideration

Section 25 - Void ~~to~~ No consideration  
No contract.

Section - 26 - Agreement in Restraint of Marriage

Section 27 - Agreement in Restraint of Trade

Section 28 - Agreement in Restraint of legal proceeding.

Section 29 - Agreement the meaning of which is uncertain

Section 30 - Wagering agreements.

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## UNIT-2 CONSIDERATION

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### \* Introduction :-

→ The term 'consideration' may be defined as the price of promise.

→ This term is used in the sense of quid pro quo. (i.e. something<sup>in return</sup>)

→ This 'something' which a party gets in the return is consideration.

### \* Definition

→ The term 'consideration' is defined in Section 2 (d) of the Indian Contract Act, as follows;

→ "When at the desire of promisor, promisee or any other person did or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee."

## \* Legal Rules of Consideration :-

1. The consideration ~~may~~ must ~~be~~ made at the desire of promisor.

- An act or abstinence, which forms consideration for the promise, must be promised to be done according to the desire of promisor.

Case law :- *Durga Prasad Vs. Baldeo*.

2. It may ~~be~~ made from the promisee or any other person.

- Consideration may ~~be~~ made from promisee or if the promisor has no objection from any other person.

Case law :- *Chinnayya Vs. Ramayya*.

3. Consideration can be past, present or future.

- It can be executed or executory. But in England, past consideration is no consideration.

#### 4. Consideration need not be adequate

- Consideration need not to be of any particular value.
- It need not to be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- It can be below market value.

#### 5. It must be real and not illusory.

- The consideration to be valid must be 'real' and 'valuable' and must not be imaginary.

#### 6. It must not be illegal, immoral, or opposed to public policy

- The consideration given for an agreement must be lawful one.
- Where the consideration to a contract is illegal, immoral or against public policy, the court do not allow an action on such contract.



7. Consideration can be executed or executory.
8. It can be positive or negative
9. Consideration for act which a person is legally bound to perform is not a valid consideration.