

# Business Laws

## Indian Contract Act, 1872

**Offer** = Party expresses the willingness to do or not to do something & to obtain the assent of other parties.

✓ 'Mere expression of willingness does not constitute an offer.'

### **Types of Offer:**

- ✓ General Offer – Offer made to the public at large, and anyone can accept it.
- ✓ Specific Offer – Offer made to a specific person and only be accepted by the identified person.
- ✓ Cross Offer – Two parties exchange identical offers ignoring each other's offers.
- ✓ Counter Offer – Offer made in place of original offer with different terms & conditions.
- ✓ Standing or Continuing or Open Offer – Offer open for acceptance over a period of time.

### **Rules of Offer:**

- ✓ Capable of creating legal relations (no social agreements included).
- ✓ Certain + definite – If the person does not know what he has to accept, the offer is void.
- ✓ Communicated adequately to the offeree – Properly communicated.
- ✓ Assent of another party is required.
- ✓ Maybe conditional – If special terms are present in an offer, it shall be brought to the notice of another party.
- ✓ Acceptance not communicated should not be assumed as acceptance to offer – Non-compliance of any term of an offer shall not amount to acceptance.
- ✓ Offer may be specific or general.
- ✓ Offer is different from an invitation to offer.
- ✓ Offer may be express or implied.
- ✓ A statement of the price is not an offer.

**Acceptance** = When the person to whom the offer is made signifies his assent, the offer is said to be accepted.

### **Rules of Acceptance:**

- ✓ Acceptance can only be given by the person to whom the offer is made.
- ✓ Absolute + unqualified + expressed in a reasonable or proposed manner.
- ✓ Acceptance must be communicated reasonably or possibly.
- ✓ If the mode of acceptance specified must be accepted in the mode specified.
- ✓ Acceptance must be given in a specified or reasonable time.
- ✓ Silence will not amount to acceptance.
- ✓ Some conditions of the offer are performed for acceptance to offer.
- ✓ Offer can be accepted by the person who has the authority to accept.

### **Communication of Offer & Acceptance:**

- ✓ Communication of Offer is completed when it comes to the knowledge of the person to whom it is made.

### **Communication of acceptance: -**

- **Against Offeror:** In the course of transmission so that it is out of control of the acceptor.
- **Against Acceptor:** Letter of acceptance is received by the person to whom it is made.

### **Revocation of Offer & Acceptance:**

- ✓ Offer can be revoked at any time before the communication of acceptance is completed against the offeror.



- ✓ Revocation of acceptance can be made at any time before the communication of acceptance completed against the acceptor.

### **Communication of revocation of Offer & Acceptance:**

#### **✓ Communication of revocation of Offer: -**

- Against Offeror: When Offeror posts the letter.
- Against Offeree: When Offeree receives the letter.

#### **✓ Communication of revocation of Acceptance: -**

- Against Acceptor: When the letter is posted.
- Against Offeror: When the letter is received.

### **Lapse of Offer:**

- ✓ Notice of revocation - Notice of revocation to the other party before acceptance.
- ✓ Expiry of time fixed for acceptance - Offer is not accepted within the specified or reasonable time.
- ✓ Failure by acceptor to fulfil the condition for acceptance to offer - Condition precedent to offer not fulfilled.
- ✓ Death of offeror before acceptance - Death or insanity of the person making the offer.
- ✓ By a counteroffer - Rejection of the original offer.
- ✓ Acceptance is not in a prescribed manner; the offer gets lapsed.
- ✓ Due to any change in the law - The object of the offer becomes illegal due to change in any law.

**Agreement:** An offer, when accepted, becomes the agreement. In other words, an agreement is Offer/Proposal + Acceptance.

### **Nature of Contract:**

- ✓ Contract = Agreement + Enforceable by law.

### **Enforceability of law:**

- ✓ Consideration.
- ✓ Free consent.
- ✓ Parties shall be competent to contract.
- ✓ Lawful consideration and object.
- ✓ Legal possibility of performance.
- ✓ Not specifically declared to be void.

### **Types of contract:**

#### **✓ On the basis of validity or enforceability:**

- Valid contracts - Enforceable by law.
- Void contracts - Not enforceable by law.
- Voidable contracts - Enforceable by law at the option of one or more parties to the contract.
- Illegal contracts - Forbidden by law.
- Unenforceable contract - Not enforceable by law due to some technical defects (although not illegal).

#### **✓ On the basis of formation:**

- Express contracts - Made by words, either spoken or written.
- Implied contracts - Made through the implication of an action.
- Tacit contracts (Part of implied contracts) - Made silently.
- Quasi contracts - Made by an obligation of law.
- E-contracts - Made through electronic means.



### ✓ On the basis of performance:

- **Executed contracts** - The consideration for the contract has been given by both parties
- **Executory contracts** - The obligation for the contract is to be performed in future
- **Unilateral contracts** - One party perform his obligation and the other party's obligation is outstanding.
- **Bilateral contracts** - The obligation is outstanding on the part of both parties.

**Consideration** = Consideration is doing something or abstain from doing something + at the desire of promisor + move to the promisee or any other person + may be past, present or future.

### Legal rules of Consideration:

- ✓ Consideration may move to the promisee or any other person who is stranger to consideration. *Something in return (Quid pro quo)*
- ✓ Performance of act is executed & performance of a promise is executory.
- ✓ Consideration can be for services performed in the past.
- ✓ Consideration need not be adequate.
- ✓ Performing an act to which a person is legally bounded is no consideration.
- ✓ Consideration must be real and of some value.
- ✓ Consideration must not be unlawful, immoral or against public policies.

**The doctrine of Privity of Contract** = A stranger to a contract cannot sue the parties to the contract.

### Exceptions to 'Privity of Contract':

- ✓ A person in whose favour a charge or interest in the property has been created.
- ✓ An agreement of marriage, partition or other family arrangements made for the benefit of a person.
- ✓ A female member can enforce a provision made for marriage & other expenses.
- ✓ Any condition or duty running with land purchased.
- ✓ In case of a person acknowledging someone else's liabilities.

### The validity of an agreement without consideration:

- ✓ An agreement made out of natural love & affection + parties stand in near relation + in writing + registered under the law.
- ✓ Compensation for past voluntary services (Contract already performed in the past).
- ✓ Promise to pay time-barred debts (Rules of Limitations Act are applicable).
- ✓ No consideration is necessary to create an agency - Acts done by the agent will be valid even appointed without any consideration.
- ✓ Completed gifts are not considered as consideration - A thing gifted shall be completely transfer to such person.
- ✓ Contract of bailment does not require consideration (A part of gratuitous bailment).
- ✓ No consideration required for charity.)

### Competency to contract:

- ✓ Attained age of majority (any person of 18 years or above).
  - ✓ **Sound mind** = Parties able to make rational judgements related to the contract they entered.
  - ✓ A person is **not disqualified by law.**
- Person disqualified by law = Alien enemy + convicts + foreign diplomats + company working beyond object clause.

### Position of Minor's agreement:

- ✓ An agreement with a minor is void-ab-initio.
- ✓ Minor can only accept benefits through a contract.
- ✓ Minor can always plead his minority in defence.
- ✓ A minor's agreement cannot be validated even after the attainment of his majority.



- ✓ A minor's guardian can enter into a valid contract on the minor's behalf.
- ✓ A contract with a minor for necessities is valid, and the minor's property is liable, not minor personally.

**Free consent** = When two or more persons agree upon the same thing in the same sense.

**Elements disqualifying Free Consent** = Coercion + Undue influence + Fraud + Misrepresentation + Mistake.

**Coercion** = Committing or threatening to commit any act forbidden by the Indian Penal Code + unlawful detaining or threatening to detain any property + to cause any person to enter into an agreement.

- ✓ A contract induced by coercion is voidable.
- ✓ Any person receiving benefit by coercion restore such benefit.

**Undue Influence** = One of the parties in a position to dominate the will of the other party + obtain an unfair advantage over the other party.

- ✓ One of the parties holds real or apparent authority, or
- ✓ stands in a fiduciary relationship, or
- ✓ contract with a person having low mental capacity, physically challenged or old illiterate person.

**Fraud** = An untrue fact which someone who doesn't believe to be true + deliberately hiding any fact + promise made without the intention of performing it + any deceiving act + any act declared fraud by law.

- ✓ Contract induce by fraud is voidable – Party can rescind the contract or sue for damages.
- ✓ 'Mere silence is not a fraud' = No duty to disclose facts that are within the knowledge of both parties.

✓ **When silence is a fraud: -**

- Duty of person to speak when – Parties have fiduciary relationship + insurance + marriage + family settlements + share allotment.
- Silence is equivalent to speech.

**Misrepresentation** = Any untrue fact believed to be true by all the parties to contract.

- ✓ Misrepresentation is made with no intention to deceive.
- ✓ Any person who misleads can avoid the contract.

**Mistake** = An innocent or incorrect belief which misleads both parties to understand each other.

- ✓ **Unilateral mistake** = When one party to contract is under a mistake.
- ✓ **Bilateral mistake** = When both the parties to contract are under a mistake.
- ✓ Ignorance of Indian Law is no excuse.
- ✓ Ignorance for Foreign Law can be treated as a mistake of fact.

**Unlawful object & consideration:**

- ✓ Consideration is punishable under any law.
- ✓ Consideration defeats the provision of any law.
- ✓ Fraudulent object.
- ✓ Consideration defeats any rule for the time being in force in India.
- ✓ Consideration involves any injury to any person or property of another person.
- ✓ Consideration is immoral or opposing the moral values of society.
- ✓ **Consideration is against public policies or the interest of the public: -**
  - Trading with a person of an enemy country without the Government's permission.
  - Obstruction of justice or tampering of legal proceedings.
  - Sharing of financial proceeds from the success of a lawsuit.
  - Purchasing of public office or any public awards like Bharat Ratna, Padma Shri, etc.



- Agreements creating monopolies in the market.
- Agreements involving the procurement of a person for marriage.
- Agreements related to restricting any person from doing business or trade.
- Agreements restricting parental rights or individual's rights.

### Exceptions to agreements in Restraint of Trade:

- ✓ **Sale of Goodwill** - A person sold his business goodwill to another, then he shall not carry such business until and unless otherwise agreed.
- ✓ **Exceptions under Indian Partnership Act, 1932:**
  - Agreement between partners to not carry any other business than that of the firm.
  - Agreement between the outgoing partner and continuing partners.
  - Agreement to carry any other business than that of the firm after the dissolution.
  - Agreement between the buyer of goodwill and the partners.
- ✓ **Agreement between employer & employee** - Employee binds himself to not to compete with the employer.

### Agreements expressly declared void:

- ✓ Agreements with incompetent people.
- ✓ Agreements with an unlawful object or consideration.
- ✓ Agreements made under a mutual mistake of material fact.
- ✓ Agreements made without consideration.
- ✓ Agreements in restraint of marriage, trade or legal proceedings etc.

**Wagering agreements** = Agreement to pay money upon determination of an uncertain event.

- ✓ Agreements by way of wager are void.
- ✓ **Characteristics of wagering agreements** = promise to pay money or money's worth + promise must be unconditional + uncertainty of event + two parties having an equal chance of a win or lose + no party have interest in the event.

### Transactions similar to wagering agreements:

- ✓ **Void transactions:** -
  - **Lottery transactions** - Illegal under the Indian Penal Code. Not a game of skill and knowledge.
  - **Crossword Puzzles** - Solutions already prepared with the editor of the newspaper.
  - **Speculative transactions** - Gambling is illegal.
  - **Horse race transactions** - Price payable to the bet winner is less than ₹500.
- ✓ **Valid transactions:** -
  - Chit fund.
  - **Games of skill and athletic competition** - Not illegal until the prize money exceeds ₹1,000
  - **Commercial or share market transactions** - Delivery of goods or shares is taken or given.
  - Contract of insurance.

**Contingent agreements** = Contract depending upon happening or non-happening of an uncertain event.

### Enforcement of Contingent contract:

- ✓ Enforcement on the happening of an event.
- ✓ **Enforcement on non-happening of an event** - Enforced when the event becomes impossible.
- ✓ **Happening of an event within fixed time** - Enforced if the event happens within a fixed time.
- ✓ **Non-happening of an event within fixed time** - Enforced if the event becomes impossible within a fixed time.



- ✓ The contract is deemed impossible due to the future actions of a living person – The contract not enforceable.
- ✓ Contingent contract on impossible events – Always be void.

### Performance of the contract:

#### ✓ By promisor himself.

- If any skills required to perform a contract, the promisor has to perform the contract himself.
- ✓ In case of the death of the promisor, his representative may perform the contract.
- ✓ If the promisee accepts performance from a third person, not enforceable to perform by the promisor.
- ✓ **Agent** – The promisor may employ a competent person to perform the contract.

#### ✓ **Joint promisors:** -

- All such persons must jointly fulfil the promise.
- If anyone dies, his legal representative, along with surviving promisors.
- If all joint promisors die, their legal representative must jointly fulfil the promise.

### Joint Promisors:

- ✓ Joint promisors are jointly & severally liable.
- ✓ A creditor can claim the amount from any of the joint promisors.
- ✓ Any joint promisor paying the whole amount can claim from other joint promisors.
- ✓ Release of any one joint promisor from his liability does not discharge the other joint promisors.

### Effect of refusal to accept the offer of performance:

- ✓ The promisor is not responsible for the non-performance of the promise.
- ✓ Such an offer must fulfil certain conditions = unconditional + made at proper time & place + promisee have a reasonable opportunity of seeing the thing which is offered in the promise.

### Effect of refusal of the party to perform promise:

- ✓ Promisee may put an end to the contract, or
- ✓ may decide to continue the contract.

### Time & place for the performance of promise:

- ✓ **No time fixed** – reasonable time decided by circumstances or norms of trade.
- ✓ **No place is fixed** – Duty of promisor to ask the place of delivery or to fix a reasonable place.
- ✓ The time fixed & performance to be made by promisee – duty of promisee to inform usual hours & place to perform.
- ✓ **The time fixed & performance not to be made by promisee** – Promisor can perform his obligations during usual business hours.
- ✓ **Promisee specified time, place & hours** – Promisor must perform as per the instructions of the promisee.

### Performance of reciprocal promises:

- ✓ A reciprocal promise can be performed simultaneously by both parties.
- ✓ If an order of performance is fixed, reciprocal promise to be performed in that order.
- ✓ If one party prevents another to perform the promise, another party may end the contract.
- ✓ If a promise contains legal & illegal part, the legal part is valid & illegal part is void.

### Contracts that need not be performed:

- ✓ **Novation** – Parties substitute a new contract in place of an old, then old contract is not performed.
- ✓ **Rescission** – When a contract is cancelled by parties to the contract, the contract is not performed.
- ✓ **Alteration** – When a contract is altered, the original contract is discharged & is not performed.



✓ **Remission** - Promisee can remit or dispense contract wholly or partly.

### **Effect of failure to perform the contract on time:**

- ✓ **Time is an essential factor** - To accept the performance & no compensation shall be claimed or to cancel the contract.
- ✓ **Time is not an essential factor** - Contract cannot be cancelled & at maximum, compensation can be claimed.

### **Discharge of contract:** *Khatam*

- ✓ **Discharge by the performance** - Parties fulfil their obligations within time & in a specified manner.
- ✓ **Discharge by mutual agreement** - Novation, rescission, alteration or remission.
- ✓ **Discharge by the impossibility of performance.**
- ✓ **Discharge by lapse of time** - When a contract is not performed within a specified time.
- ✓ **Discharge by operation of law** - Due to death or insolvency of promisor or promisee.
- ✓ **Discharge by breach of contract** - When any one party defaults in performing the contract.

### **Impossibility of performance:** *cancel*

- ✓ **Impossibility existing at the time of contract.**
- ✓ **Subsequent impossibility:**
  - Destruction of subject matter after the formation of the contract.
  - Non-occurrence of things necessary to contract after the formation of the contract.
  - Any party to the contract becomes incapable of performing the contract.
  - Impossible to perform the contract due to any change in the law by the Government.
  - The contract shall be dissolved when intervened by Government legislative or administrative.
  - Performance of the contract becomes impossible due to any economic changes.

### **Exceptions to the impossibility of performance:**

- ✓ **Difficulty in performance** - Contract is not discharged by the fact that the contract has become impossible to perform.
- ✓ **Impossibility due to failure of third-person** - When promisor relies on the third person's work for the contract & the third person is failed, the contract is not discharged.
- ✓ **Sticks lockouts and civil disturbances** - Such events do not discharge a contract unless the parties had specifically agreed in this regard at a time when the contracts were made.
- ✓ **Failure of one of the objects** - Contracts are made for several objects, and if one of the objects has failed, the contract is not discharged.
- ✓ **Discharge by lapse of time** - A contract should be performed within a period as specified and prescribed by the law of limitation.
- ✓ **Discharge by operation of law** - A contract may be discharged by operations of law which may include the death or by insolvency etc., of parties to the contract.
- ✓ **Discharge by breach of contract** - Breach of contract may be an actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed a breach.

### **Breach of contract:**

- ✓ **Anticipatory breach of contract** - Occurring before the time fixed for performance.
  - Expressed by words spoken or written.
  - By the conduct of one of the parties to contract.
- ✓ **Actual breach of contract** - When one of the parties refuses to perform the contract on the due date.
  - Breach at the time of performance due.



➤ Breach during the performance of the contract.

### Types of damages:

- ✓ **Ordinary damages** = Naturally arise in the normal course of things.
- ✓ **Special damages** = Some special circumstances affecting the contract + not recoverable unless circumstances not brought to the knowledge of the defendant.
- ✓ **Inductive or exemplary damages** = breach of promise to marry + wrongful dishonour of customer's cheque by the banker.
- ✓ **Nominal damages** = When a party suffered has proved a breach of contract + suffered no real damages.
- ✓ **Damages for deterioration caused by delay** = Deterioration caused to goods by delay recovered from the carrier.

### Penalty & Liquidated damages:

- ✓ **Liquidated damages** = Sum fixed in the contract represent a genuine estimated loss to the party by future breach of contract.
- ✓ **Penalty** = Sum fixed in the contract does not represent any genuine loss but force the other party to complete the contract in a fixed time.

### Remedies for breach of contract:

- ✓ **Suit for damages** – Suffered party can claim damages for breach of contract.
- ✓ **Rescission of contract** – Contract broken by one party; another party may rescind the contract & is entitled to compensation for any damages.
- ✓ **Suit upon 'Quantum Meruit'** – According to the quantity of work done.
- ✓ **Suit for specific performance** – The party suffered may ask for the completion of the contract.
- ✓ **Suit for injunction** – Party does something which he has promised not to do. The court may issue an order of injunction and restrains that party from doing what he promised not to do.

### Quantum Meruit:

- ✓ When a person has begun the work, and before he could complete it, the other party terminates the contract. The party can claim the amount for work done.
- ✓ When the work is done and accepted but subsequently turns out to be void. The person who performed the work is entitled to the amount for work done.
- ✓ A person does some act or delivers something intending to receive payment for it.
- ✓ When a contract is divisible, and the party not in default has enjoyed the benefit of part performance.
- ✓ When a person performs a complete contract, but in a bad way, the suffered party is entitled to claim damages.

**Quasi-contracts** = Contracts intend to prevent the benefit of one person at the cost of another.

### Types of quasi-contracts:

- ✓ **Claim for necessities supplied to persons incapable of contracting** – Person must be minor or lunatic + necessities were suitable to him at the time of sale.
- ✓ **Payment by an interested person** – Person must be interested in making payment + defendant under a legal obligation to pay + payment by the one who is interested.
- ✓ **Liability to pay for non-gratuitous acts** – A person lawfully does an act or delivers something + not intending to give gift + person who enjoys benefit bound to make compensation.
- ✓ **Responsibility of finder of lost goods** – to take proper care of the property as a man of ordinary prudence + no right to appropriate the goods + restore the goods if the owner is found.
- ✓ Money paid by mistake or under coercion must be paid back.



### **Appropriation of payments:**

✓ It is done in the following order: -

- Appropriation by the debtor to discharge some particular debt.
- Appropriation by the creditor to discharge any debt at his discretion.
- When neither party makes any appropriation, debts shall be discharged in the order of time.

### **Succession and Assignment:**

- ✓ **Succession:** Benefits of a contract are succeeded to by process of law.
- ✓ **Assignment:** The transfer of contractual rights or liability by a party to the contract to some other person who is not a party.

## **Sale of Goods Act. 1930**