

INDIAN CONTRACT ACT, 1872

[NATURE OF CONTRACTS]

Contract $\Rightarrow$ Agreement + Enforceability by Law

- ① Period of Mavryas $\rightarrow$ contract $\rightarrow$ bilateral transactions $\rightarrow$ free consent
- ② Mughal Rule contracts were governed $\rightarrow$ Mohammodan Law of Cont. Arabic $\rightarrow$ Aqd $\rightarrow$ known as contract means a conjunction
Ijab $\rightarrow$ proposal, Qabul $\rightarrow$ acceptance
- ③ Hindu Law $\rightarrow$ minor, intoxicated person, old man or handicapped cannot enter into a valid contract
Narada Smriti $\rightarrow$ 8 years $\rightarrow$ infant
 $\rightarrow$ 8-16 years $\rightarrow$ boyhood
 $\rightarrow$ 16+ years $\rightarrow$ can enter a contract
- ④ British Period $\rightarrow$ English law was applied in the Presidency Towns of Madras, Bombay & Calcutta under the Charter of 1726 issued by King George of the East India Company

⑤ Indian Contract Act, 1872 -

Formed $\rightarrow$ 25 April, 1872

Force $\rightarrow$ 01 September, 1872

* The preamble to the Act says that it is "an Act" to define and amend certain parts of the law relating to contract.

* The Act mostly deals with the general principles and rules governing contracts.

* Divided into two parts:-

The First Part (Section 1-75)

deals with general principles of the law of contract therefore applies to all contracts irrespective of their nature

The Second Part (Section 124-238)

deals with certain special kinds of contracts. eg - Indemnity & guarantee, bailment, pledge and agency.

⑥ Contract - Section 2(h) of the Indian Contract Act 1872 "an agreement enforceable by law"

* Two essential elements -

(i) An agreement

(ii) its enforceability by law

(i) Agreement - Section 2(e)

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

* Promise - Section 2(b)

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. When proposal is accepted it becomes promise.

Thus, agreement is the result of proposal made by one party ~~for~~ to the other party and the other party give his assent, for some mutual consideration.

Agreement $\Rightarrow$ offer/Proposal + Acceptance + consideration

(ii) Enforceability by Law - An agreement to become law a contract must give rise to a legal obligation which means a duty enforceable by law.

BASIS	AGREEMENT	CONTRACT
Meaning	Every promise and every set of promises, forming the consideration for each other (Promise + consideration)	An agreement enforceable by law. (Agreement + Legal enforceability).
Scope	It has a wider scope including both legal and social agreement.	It has a narrow scope with the specification that contract is only a legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always provide rights to the parties.	It creates a legal obligation. A contract always provides/grants rights to the parties.
Nature	All agreements are not contracts.	All contracts are agreements.
Defined in	Section 2(e)	Section 2(h)

⑦ Essentials of a valid contract-

As given by Section 10 of Indian Contract Act, 1872-

- ★ Agreement
- ★ Free consent
- ★ competency of the parties
- ★ Lawful consideration
- ★ Legal object
- ★ Not expressly declared to be void (as per Section 24 to 30 and 56)

Not given but considered essential -

- ★ Two Parties
- ★ Intention to create legal relationship
- ★ Fulfillments of legal formalities.
- ★ certainty of meaning.
- ★ Possibility of performance
- ★



⑧ Section 10 of the Act - "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object & are not expressly declared to be void."

★ Two parties - one cannot contract with himself. A contract involves 2 parties - one party making the offer and the other party accepting it. A contract may be made by natural

persons and by other persons having legal existence. Ex-companies, universities, etc. Identity of the parties to be ascertainable.

★ Intention to create legal relationship - There should be an intention of creating legal relationship between parties.

★ Social or domestic agreements → not treated → contract → they are not enforceable in court of law.

★ Fulfilment of legal formalities - A contract may be written or spoken. As to legal effects, there is no difference between written or spoken contract.

For the interest → parties → written certain contracts → follow → other formalities → to make → an agreement legally enforceable.

(eg. contract of insurance → valid → written)

★ Certainty of Meaning - The terms agreement must be certain and not vague or indefinite.

★ Possibility of Performance - The terms → agreement → capable of performance.

Agreement → perform → impossible act → ☒ enforced.

⑨ Section 10 valid elements -

★ Agreement / offer and acceptance - Agreement is the essential element of a valid contract.

Section 2(c) ---, 2(b) ---. Thus

Agreement → outcome → offer & acceptance → consideration.

★ Free consent - Two or more person are said to consent when they agree upon the same thing in same sense.

consensus ad idem → meeting of the minds. Consent → Free → not caused → coercion, fraud, undue influence, misrepresentation and mistake.

★ Competency of the parties - capacity to contract → legal ability → enter into valid contract.

Section 11 :-

Qualification (a) - Person entering into a valid contract must be 18 years & above. Below 18 → Minor → incompetent to contract.

Qualification (b) - Sound mind → his senses → understand → implications of contract.

A lunatic, idiot, drunken or influence of intoxicant → not of sound mind.

Qualification (c) - Person entering → not be disqualified by his status → in entering. Alien enemy, foreign sovereigns, convicts, etc. can enter → fulfilling → formalities → required by law.

★ Lawful consideration - Quid Pro Quo → something in return.

Lawful consideration → either consist → rights, benefits, interest, or profit accruing to 1 party or loss, responsibility, forbearance, detriments → suffered → by other.

★ Legal object - object of the agreement must be lawful. [i.e. not prohibited by law, doesn't defeat provisions of law, is not fraudulent or involves injury to person or their property, not declared immoral by court and not oppose to public policy].

★ Not expressly declared to be void - Agreement → not be → illegal or void. Illegal agreement → expressly → prohibited by law. A void agreement has no legal effects.

a) on the Basis of validity:-

(i) valid contracts - An agreement which is binding and enforceable is a valid contract. It has all the elements of a valid contract.

(ii) void contract - Section 2(j) 'a contract which ceases to be enforceable by law becomes void when ceases to be enforceable'. Thus a void contract → cannot → enforced by law.

(iii) voidable contract - Section 2(i), an agreement which is to be 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 contract.

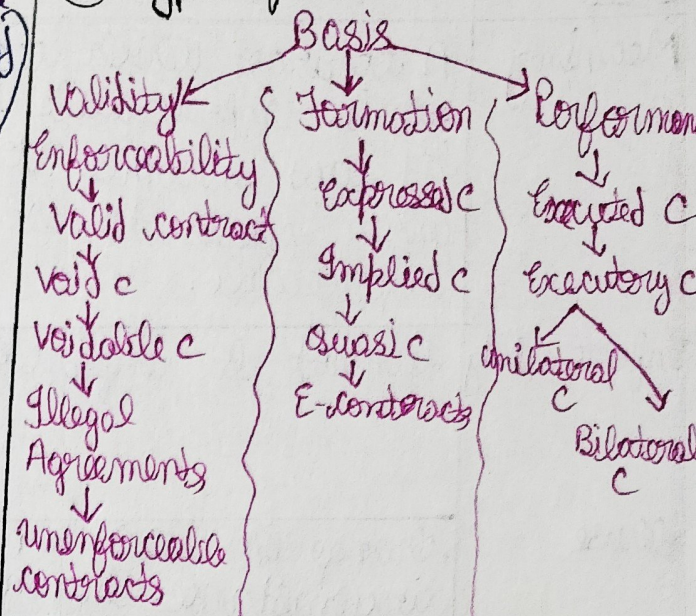
one of the parties → in position or → authorized → to avoid performing his part. contract is voidable →

★ consent → not free → caused by - coercion, fraud, undue influence, misrepresentation.

★ when one person promises to do a task for another person → other person → prevents him → contract → voidable at the option of 1 person.

★ Person → promises → task → within specified time → fails to perform → contract is voidable at the option of promisee.

10) Types of contract-



(iv) Illegal contract - contract which law forbids to be made court → will not → enforce → such contract but also → connected contracts.

All illegal agreements are void but all void agreements are not necessarily illegal. Section 2(g) - an agreement not enforceable by law is void.

(v) unenforceable contract - A contract which is good in substance but due to some technical defect i.e., absence in writing, barred by limitation, etc. one or both the parties can't sue upon it is an unenforceable contract.

Basis	Void contracts	Voidable contracts
Meaning	A contract which ceases to be enforceable by law becomes void when ceases to be enforceable.	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.
Enforceability	Cannot be enforced	can be enforced at the option of aggrieved party and not at the option of other
Cause	change in law or circumstances beyond the contemplation of parties.	When consent of the parties was not free.
Performance of contract	can not be performed	If aggrieved party does not exercise his right to avoid the contract within a reasonable time, any party can sue the other party for claiming performance of contract.
Rights	Does not provide any legal remedy to any party.	Party whose consent was not free has the right to rescind the contract within a reasonable time, if done it is void if not rescinded it is valid.

Basis	Illegal Agreements	Void Agreements
Nature Scope	All illegal agreements are void	Void Agreements not necessarily illegal.
Punishment	There exist punishment for the parties.	No punishment
Collateral Agreement	Agreement collateral to illegal agreement → void	Agreement collateral to void A not necessarily void → Valid too.
Scope Nature	Forbidden under law	Not forbidden under law.

b) on the Basis of Formation -

(i) Express contract - when $\rightarrow$ terms $\rightarrow$ expressed by words or in writing.
Section 9 $\rightarrow$ Proposal or acceptance of any promise is made in words, promise is said to be express.

(ii) Implied contract - come $\rightarrow$ existence $\rightarrow$ through implication $\rightarrow$ arises $\rightarrow$ action / conduct of the parties / course of dealing between them.
Section 9 $\rightarrow$ Proposal or acceptance made in otherwise than in words, the promise is said to be implied.

Tacit contract - Tacit means silence. It inferred through $\rightarrow$ conduct of parties $\rightarrow$ without words written or spoken.

(iii) Quasi contract - Not an actual contract but resembles to be created by law under certain circumstances. Law creates & enforce legal rights & obligations when no real contract exist.

(iv) E-contracts - Two or more parties enter into a contract $\rightarrow$ electronic mode $\rightarrow$ email. They create network & link with other network $\rightarrow$ EDI (Electronic Data Inter change). Helps doing Business transactions using E mode. EDI contract, cyber contract & mouse click contract.

c) on the Basis of Performance -

(i) Executed contract - consideration $\rightarrow$ in a contract $\rightarrow$ act or forbearance. Act is executed $\rightarrow$ forbearance is brought on record.

(ii) Executory contract - consideration $\rightarrow$ reciprocal promise / obligation $\rightarrow$ cons. should / is to be performed in future only.

unilateral bilateral

* Unilateral contract - one sided contract. one party has performed his duty / obligation, other party is outstanding.

* Bilateral contract - Promise / obligation is outstanding on the part of both parties.

① Proposal / offer - 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 a proposal.

Essential -

(i) Person making the proposal $\rightarrow$ promisor / offeror - to whom made $\rightarrow$ offeree, who accepts $\rightarrow$ promisee / acceptor.

(ii) Party making is must express his willingness to do or not to do something.

(iii) Willingness must be express with the view to obtain the assent of the other party.

(iv) Positive or Negative

Types -

(i) General offer - Made to public at large, anyone can accept $\rightarrow$ do the desired act.

Section 8 - Anyone performing the conditions of the offer can be considered to have accepted the offer. until the offer is retracted or withdrawn anyone can be accepted by anyone at any time as it is a continuing offer.

(ii) **Special/Specific offer** - Made to a specific person & should be accepted → specified person.

(iii) **Cross over** - Two parties makes exchange identical offers in ignorance at the time of each other's offer. No binding contract.

(iv) **Counter offer/conditional acceptance** - When offeree accepts the offer with certain modifications & variations to the original offer. Amounts to rejection of original offer.

(v) **Standing/continuing/open offer** - When offer is allowed to remain open over a period of time for acceptance.

Valid essential of an offer -

(i) **Capable of creating legal relation** - **Ship** - accepted by law, legal relationship. Social invitation → X legal relationship.

(ii) **Definite, certain, X vague** - to create contractual relationship.

(iii) **Must be communicated to the offeree** - to get acceptance, an acceptance of an offer, in ignorance of the offer, X acceptance, No legal rights.

(iv) **Made with the view to obtain the assent of the other party** - Not with a view of disclosing the intention to make an offer.

(v) **Conditional** - offeror can include any terms/conditions.

(vi) **Not certain a term the non-compliance of which would amount to acceptance**. Acceptance ^{not} within a certain time, no reply, not accepted.

(vii) **General or Specific**

(viii) **Implied or expressed**

(ix) offer is different from a mere statement of intention, invitation to offer, communication of info, prospectus & advertisement.

★ Statement of intention/announcement.
★ Diff. from an ans. to a ques.
★ Statement of price is not offer.
★ Invitation to make offer / do business - prospectus/advertisement.
(x) **Statement of price is not offer.**

(1) **Invitation to offer** -
offer → definite → capable → contract.
Invitation to offer → circulation of offer → induce offer → act precedent to making offer → it's acceptance → X contract → ✓ offer through Negotiation.

[Negotiation/ offers to receive offers]

Basis	OFFER	INVITATION
Meaning	Section 2(a)	When a party without expressing his willingness Final proposes certain terms on which he is willing to negotiate, he is not making an offer just inviting other party to make offer on those terms.
Intention of the parties	When the offeror is willing to be bound by the offer as soon as the other accepts, he is making an offer.	Person has intention of negotiating on terms → ITO.
Requirement	cannot be act precedent to ITO.	always an act precedent to offer.

(13) Acceptance → Section 2(6) when the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted, the proposal when accepted becomes a promise.

Essentials of valid acceptance →

(i) Acceptance must be given from the person whom the offer is made. [Specific & General offer].

(ii) Acceptance absolute & unconditional / unqualified - usual or reasonable manner, unless prescribed in proposal.

(iii) Communicated - Perceptible form → conditional acceptance → X acceptance → counter offer, → offeror must have knowledge of offer → X acceptance.

(iv) Prescribed mode - if not → proposer → X inform → accepted by him.

(v) Time - Specified time → if not → reasonable time → offer lapse.

(vi) Mere silence - not acceptance unless indicated by previous conduct of the offeror.

(vii) Conduct / Implied acceptance - Section 8 - Performance → condition → proposal, acceptance → consideration → reciprocal promise → offered with a proposal.

(iv) Communication of offer - Section 4 the communication of offer is complete when it comes to the knowledge of the person to whom it is made. [Read & Received]

Communication of acceptance → Mode complete

* Mode of acceptance - Section 3

By act / By emission, intending thereby to communicate to other

• By act - words spoken / written. conduct like positive acts / sign

so that the person understands it.

• By emission - By conduct / performance on the part of one party to convey willingness.

• By conduct

* Communication of accp. complete → Section 4

• Against proposer - put in the course of transmission & out of the power of acceptor to withdraw the same.

• Against acceptor - comes to the knowledge of proposer.

* Post → " same

* Telephone, fax → acceptance is received.

* Communication of special conditions - Special conditions → tacitly, acceptance → tacitly.

* Communication of Performance - Performance of the contract is a mode of acceptance of the offer as per Section 8.

Sometimes law doesn't require words → performance → acceptance

(15) Revocation of offer & Acceptance - Section 5 - Proposal can be revoked at any time before communication of its acceptance is complete as against the proposer. An acceptance can be revoked at any time before the communication of acceptance is complete as against the acceptor.

complete → Proposer → Receives
Accepter → sends

Modes → By notice of revocation
→ By lapse of time → By death / insanity
→ Non-fulfilment of conditions precedent [Section 6] → Subsequent illegality
→ counter offer → X Prescribed Mode.