

Module – I

The Indian Contract Act, 1872 – Part 1

- 1.1 Introduction
- 1.2 Definition of Contract and Agreement
- 1.3 Essentials of a Valid Contract
- 1.4 Classification / Kinds of Contract

The word contract is derived from the "Latin" term "Contractum" meaning "drawn together". This, therefore, denotes drawing together of two or more minds to form a common intention giving rise to an agreement. This means for a contract there should be meeting of minds.

What is a contract law?

Contract law is that branch of law which deals with making of legally valid agreements and also for interpreting these agreements.

Contract law is mainly about the enforcement of promises between two or more persons or parties. Courts do not enforce all promises. To enforce a promise, the court will look for the presence of certain essential elements. If all these elements are present, a court will hold that the agreement is a contract.

The law of contracts is the basis of business law because majority of the transactions in business, trade, occupation, commerce and even in profession and our day to day life are based on contracts.

The Partnership Act, The Sale of Goods Act, The Maharashtra Co-Operative Societies Act, The Negotiable Instruments Act, The Companies Act, The Consumer Protection Act belong to the law of contracts but for technical reasons are covered by separate Acts. However, the general principles of the contract law provided in the Indian Contract Act, 1872 are the basis of these contracts.

Features of Law of Contract:

The important features of law of contract are:

Introduction to Contract: The parties to a contract make the law for themselves (according to the provisions in the Indian Contract Act, 1872)

- b. The Contract Act is not exhaustive as it does not take into account all the relevant laws, it only lays down general principles.
- c. The Contract Act does not override customs or usages.

Objects of Law of Contract:

The object of law of contract is to introduce clarity and certainty in commercial and other transactions. How this is done can be explained by an example. P enters into a contract with A to deliver 1000 meters of "Gold Shirting" on a specified rate and a fixed date. Here, P can plan his activities on the basis of obtaining "Gold Shirting" on the date fixed. If this contract is broken by P, A will get damages (compensation) from the court and will not suffer loss.

Some agreements cannot be enforced through court of law.

Example: An agreement to play cards on Sunday at 6 p.m. or agreement to go to a cinema on Sunday at 6 p.m. because, in these agreements there is no intention to create any legal relationship, these agreements create only social relationship.

How is a contract made?

An offer is the starting point in the process of making of an agreement. Every agreement begins with one party making an offer and when the other party who desires to create a legal obligation, communicates to that party his willingness to do or not to do a thing as sought by the offeror or proposer. Thus, an agreement comes into existence from the acceptance of an offer.

Example: A offers to sell his pen to B for ₹. 10 when B says 'Yes' an agreement will come into existence.

Now, you would find that an agreement emerges from the acceptance of an offer. Therefore, acceptance is the second stage of completing a contract. An acceptance is the act of showing the assent to all the terms of an offer by the offeree.

An agreement which is enforceable by a court of law is called a contract. An agreement which is not enforceable by a court of law cannot be called a contract.

Example: An agreement between two persons to commit theft and share the property obtained through such theft.

When does an agreement become a contract?

An agreement becomes a contract when-

- a. It is made by free consent of parties
- b. Parties are competent to contract
- c. Agreement is made for a lawful object
- d. Agreement is made for a lawful consideration
- e. Agreement is not declared void by law.

The law relating to contracts in India is contained in the Indian Contract Act, 1872. This Act was brought into force from 1st September 1872. This Act was passed by British India and it is based on the principles of English Common Law. It is applicable to

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and the states except the state of Jammu and Kashmir. This Act determines the circumstances in which promise made by the parties to a contract shall be legally binding upon them

All of us enter into contracts everyday knowingly or unknowingly.

Examples

- Buying milk in the morning
- Giving loan to a friend
- Purchasing goods from a shop
- Boarding a bus
- Going to watch a movie
- Buying Newspaper in the morning etc.

This is how we enter into contracts though we are not conscious of it in these examples you would find that the parties themselves decide the terms and conditions. That is to say, the parties to the contract are the makers of law for themselves, they can frame any rules they desire as long as they do not violate any legal provision.

Thus, each contract creates some rights and duties upon the contracting parties. The Indian Contract Act, 1872 deals with the enforcement of these rights and duties upon the parties in India.

The Indian Contract Act, 1872 originally had 266 Sections:

- a. General Principles: Ss. 1 to 75
- b. Contract relating to Sale of Goods: Ss. 76 to 123
- c. Special kinds of Contract: Ss. 124 to 238
(Indemnity, Guarantee, Bailment, Pledge and Agency)
- d. Contract relating to Partnership: Ss. 239 to 266

The Indian Contract Act, 1872 contained elementary rules about Sale of Goods and Partnership. The development of modern business world required that new rules should be made for new principles. For this reason, in the year 1930 The Sale of Goods Act and in the year 1932 The Partnership Act were enacted and the provisions in the Indian Contract Act were repealed.

At present The Indian Contract Act contains:

- a. General Principles Ss. 1 to 75
- b. Special Contract Ss. 124 to 238

The Indian Contract Act, 1872 lays down general principles relating to

- a. Formation of a contract
- b. Performance of a contract
- c. Discharge of a contract
- d. Remedies for breach of a contract
- e. Quasi contracts
- f. Rules relating to special type of contract:

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Contract of Guarantee

Contract of Pledge

Contract of Indemnity

Contract of Bailment

Contract of Agency

The main purpose of law of Contract is to make "make Sure" the element of definiteness in mercantile transactions.

1. Indian Definition [S-2(h)] : A contract is an agreement enforceable by law. By analysis of this definition we find that a contract consists of two elements:
 - a. An agreement.
 - b. Enforceability by law. (To make sure something is done or obeyed.)

An agreement is enforceable at law when it fulfils certain conditions laid down in [S-10] of Indian Contract Act, 1872. According to this section, all agreements are contracts if they are made –

 - i. By the free consent of
 - ii. Parties competent to contract
 - iii. For a lawful consideration and a lawful object and
 - iv. Are not expressly declared to be void.

They should also fulfil legal formalities required by any law.

writing, registration, attestation, etc.
2. An agreement is defined under [S-2(e)] as every promise and every set of promises for giving the consideration for each other.
3. A Promise is defined [under 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, becomes a promise.

In other words, promise is an accepted proposal.

4. A Proposal is defined [under 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. Therefore, in order to form an agreement, there must be a proposal or offer by one party and its acceptance by the other.

Agreement = offer + acceptance.

Contract = Agreement + enforceability

(signify: means a sign or symbol.)

(assent: means that acceptance has been signified either in writing or by words of mouth or by performance of some act.)

"All contracts are agreements but all agreements are not contracts"/Test to ascertain whether an agreement is a contract or not?

The first step in a contract is always to make sure that a contract actually exists. There must be certain elements which should be present for a legally binding contract they are:

1. Offer /Proposal and Acceptance: Agreement should be based on lawful offer made by one party and its lawful acceptance by another party. There must be minimum two parties for creating a contract i.e. one party making the offer and the other party accepting it. Such an offer and acceptance should conform to other rules laid down in the Contract Act regarding valid offer and acceptance.
2. Intention to create legal relationship: There is no provision in this Act requiring an offer and its acceptance to be made with the intention of creating legal relationship. However, it is a settled principle of law "to create a contract there must be a common intention of the parties to enter into legal obligations."

The test is "what the parties had thought in their mind is not the matter, but what a reasonable person would think under the circumstances to be their intention." This test leads us to a conclusion that it is for the courts in each individual case to find out whether the parties had intended to enter into legal obligations or not? Where the parties making the offer do not think of creating legal relationship among themselves the offer cannot give rise to a valid contract. The parties to an agreement must have an intention to create legal relationship between them Social, friendly, moral, religious or domestic agreements are not contracts.

■ An agreement to have a cup of tea at a friend's house is a social agreement. A friendly agreement cannot be called contract.

■ If my brother offers me a lift by car to Pune from Mumbai, and I say to him that I will contribute to cost of the petrol and afterwards if I do not pay, there is no binding contract. This is a social and informal invitation. In general, arrangements of social nature are presumed not to be legally binding. On the other hand commercial agreements are presumed to be intended as binding contracts.

■ An agreement to buy a computer is a contract.

Balfour Vs. Balfour : A husband promised to pay to his wife a household allowance of £ 30 per month. Later on, they separated and husband failed to pay the amount.

It was held that this agreement was not intended to create legal relationship.

3. Lawful Consideration: Consideration must be included in any valid contract. Between the parties 'something of value' must be exchanged. It may be money, tangible object, the performance of an act, refraining from performance of an act etc. that is to say... An agreement to be enforceable at law must be supported by consideration. Consideration means "Something in return". An agreement is legally enforceable when one gets something in return for something.

The consideration may be –

- a in cash or kind

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- c. past, present or future

But the consideration must be real and lawful. An agreement to do something for others without getting anything in return is not enforceable.

Suppose, I promise to give you my Gold watch, but you do not give me anything in return. If I break my promise and keep my watch, you cannot go to court and make me to give Gold watch to you. This agreement is not binding because you did not give me anything in return (consideration) for my promise.

4. Capacity of Parties/Competency of Parties: The ability to know and understand the terms and conditions of the contract is called Capacity. For a contract to be legally valid, all the parties must have capacity. Generally, Major persons of sound mind have capacity to make a legally valid contract. Minor and persons of unsound mind do not have capacity to contract. That is to say,... The parties must be competent to contract i.e. capable of entering into a valid contract.

Every person is competent to contract if he is—

- a. of the age of majority
- b. of sound mind
- c. not disqualified from contracting by any law to which he is subject.

5. Free Consent : Two or more parties are said to consent when they agree upon the same thing in the same sense. The parties are said to be of the same mind when they agree about the subject matter in the same sense at the same time. Besides, the consent must be free from—

- a. Coercion
- b. Undue influence
- c. Fraud
- d. Misrepresentation and
- e. Mistake

6. Lawful Object : The object and purpose must be legal, for a contract to be valid. If its purpose is illegal because of law, the contract may become invalid. If the formation or performance of the contract is illegal - resulting into a crime, and or at or to opposing public policy or interest, the contract will become void. For example: any agreement that involves purchase of stolen goods or an illegal drug, or involves fraud or harming someone would be void. That is to say... The object of an agreement must be lawful i.e. it must not be (a) Immoral or (b) Opposed to public policy.

7. Agreement not declared void: The agreement must not have been expressly declared to be void.

Following agreements are declared to be void by Law :

Agreements in restraint of Marriage [S-26]

Agreements in restraint of Trade [S-27]

Agreements in restraint of Legal Proceedings [S-28]

Agreements having Uncertain Meaning [S-29]

Wagering Agreements [S-30]

8. Certainty of Terms: The agreement must be certain and not vague or indefinite. Uncertain means not fixed in point of time or occurrence, not sure to happen, of doubtful nature or tendency. Where the words of a contract are so vague that no definite meaning

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 can be assigned to one party, it is void for uncertainty.

██████ A agrees to sell to B "100 litres of oil". In this example, there is nothing to show what kind of oil was intended. The agreement is void for uncertainty. Moreover, there cannot be an agreement to agree in future i.e. There cannot be a contract to make a contract.

Any term in a contract which destroys the contract itself is void.

██████ A entered into an agreement with B to supply goods during a particular period of time. In this agreement there was a note "cancelling the contract without giving any reason, at any time". B terminated the contract during that period. Afterwards filed a suit for recovery of damages from B for breach of contract.

It was held- once the offer is accepted, any term in the contract which destroys the contract itself is void.

9. Possibility of Performance: The agreement must be capable of being performed.

An agreement to do impossible act is void.

██████ A promises to give `1,000 to B, if B can prove two parallel lines can meet each other. Such an agreement is void.

10. Form of a contract: The law does not prescribe any form of contract. Therefore, contracts may be in any form including oral and writing.

11. Legal formalities: The General rule is that an agreement may be:

a. either oral or b. in writing.

Writing Compulsory:

There are certain agreements which are required to be in writing.

Example: Lease, gift, mortgage of immovable property, negotiable instruments – such as Promissory Note, Bill of Exchange, cheque, etc.

Registration Compulsory:

- a. Documents of which registration is compulsory under [S-17] of the Indian Registration Act, 1908.
- b. Contracts made out of natural love and affection [S-25(1)].
- c. Transfer of Immovable Property. e.g. Land, flat, house, etc.
- d. Memorandum of Association, and Articles of Association of a Company.

All these elements must co-exist, only then it will be a valid contract. If one of them is non-existent, the contract may become illegal, void, voidable or unenforceable.

1. **Voidable Contract** : (which can be made void) : If a contract which can be rejected by one of the parties on legal grounds, it is called voidable contract. A voidable contract is valid and binding unless the party entitled (the party who has legal ground to reject the contract) avoids it. That is to say, ... A voidable contract is one which can be avoided by some of the parties to the agreement. A contract is voidable when it is such that it can be avoided by the person entitled to avoid it.

[S- 2(i)] says – An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of other or others is called voidable contract.”

Contract is brought about by coercion, undue influence, fraud and misrepresentation or voidable contracts. Because, the consent obtained in such cases is not real or genuine consent.

The party whose consent is not free may avoid the contract if he so desires. If the party fails to exercise his option to avoid, then the contract continues to be valid.

In the law of contract a voidable contract is one where there is no free consent because of coercion, undue influence, fraud and misrepresentation. The party whose consent is thus procured has a right to have it set aside.

2. **Void contract** : (not legally valid or having no legal force) [S.2(g)] : An agreement not enforceable by law is said to be void i.e. an agreement which ceases to be enforceable by law becomes void.

A contract to import goods from a foreign country becomes void when a war breaks out between the importing and the exporting country.

e.g. Agreements by way of wager.

A void contract is not a contract at all. It is not binding and no legal action can be taken if it is broken.

Agreements which do not fulfil the requirements of section 10 are void ab initio i.e. right from the beginning. They never pass the stage of agreement to the stage of a contract.

Void Contract	Voidable Contract
In a void contract no obligation or right arises or accrues to parties to the contract from a void contract. Such contracts are not covered by law.	Avoidable contract continues at the option of one party; it is the desire of one party either to rescind it or continue; it is enforceable at the option of one party and is covered by law.
A void contract can give rise to no legal liability since transaction is nullity.	Avoidable contract remains valid until rescinded.
A void contract cannot confer any right.	Avoidable contract confers enforceable right till it is not essential.
The contract becomes void when it ceases to be enforceable.	A contract becomes voidable only when consent to agreement is obtained by coercion, undue influence, fraud or misrepresentation.
A void contract cannot be made valid by	Avoidable contract can be made valid by the

If parties to the contract by their consent party who has a right to rescind it by giving up his right of rescinding it.

3. Unenforceable Contract: It is a valid contract in law, but it is not enforced in a court of law because of some technical defect.

Contract barred by law of limitation or absence of writing, etc.

In the event of breach of such contracts, the aggrieved party will not be entitled to the legal remedies. (cannot file a case and obtain judgement in his favour).

4. Express Contract: When the terms of a contract are reduced into writing or are agreed upon by spoken words at the time of its formation, the contract is said to be an express contract.

[S-9]: A contract is said to be express when it is entered into by words spoken or written.

5. Implied Contract: A contract in which the terms of the contract are inferred from the act, conduct or dealings between the parties or from the surrounding circumstances is called an Implied Contract. This is a contract where the law presumes a man to have promised to perform. These are the contracts not fully expressed in words, it is to be inferred from the act or conduct.

- a. going by a public bus.
- b. taking a cup of tea in a restaurant.
- c. lifting luggage to be carried out of a railway station.
- d. obtaining a ticket from automatic weighing machine.

[S-9]: Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. An implied promise results into an Implied contract.

6. Quasi Contract: (which seems like): A contract is intentionally entered into by the parties. On the other hand, a Quasi contract is created by law. Thus, certain obligations which are not contracts but are considered to be so by law, are called Quasi contracts.

When one person obtains a benefit at the expense of another and the circumstances are such that he ought, equitably to pay for it, the law will compel payment, even if there is no contract between the parties, by which payment is promised. The parties will be put in the same position as they would have occupied, as if there is a contract between them. Such cases of obligations are known as Quasi contracts. It is not at all a contract. It is deemed a contract by law. [S-68-72] deal with Quasi contracts.

7. Executed Contract: (that which is done): Where nothing remains to be done by either party, and where the transaction is completed at the moment when the agreement is made, the contract is said to be executed. A contract where the parties have performed their obligations under the contract is called an executed contract.

A agrees to sell his car to B for ₹ 20,000. When A will give the car and B will pay ₹ 20,000 the contract is said to be executed. i.e. when both the parties perform their part of obligation under the contract.

8. Executory Contract: (which is still being carried out): It is a contract in which something is to be done after the contract is made. A contract where the parties are yet to perform their respective promises is called an executory contract.

In the above illustration, if A has not delivered the car and B has not paid the price, the contract will be an executory contract. It may also be that a contract may be partly

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executed and partly executed. In the above illustration, if A has delivered the car but B has not paid the price, the contract is executed as to A and executory as to B.

9. Simple Contract: All contracts not made under seal are simple contracts. These contracts are also known by its earlier name Parol Contracts. These contracts may be made orally or in writing or implied from conduct or by custom or by law. However, they must always be supported by consideration.
10. Contingent Contract: A contract to do or not to do something if some event, collateral to such contract, does or does not happen. [S.31]

Example: A contract to pay B ₹ 10,000 if B's house is burnt.

Here, liability of A arises only when a particular event takes place i.e. burning of B's house. This is an event, collateral to the main contract.

11. Standard form contract or contract of adhesion: A standard form contract or contract of adhesion is a contract between 2 parties where the terms and conditions of the contract are made by one of the parties to the contract and the other party is placed in a "take it or leave it" situation/position with little or no ability to negotiate terms more favourable to him. Adhesive contract means weaker party has no choice as to its terms.

- a. Insurance Policies: Here, the insurer decides what it will or will not insure and also the language of the contract.
- b. Contract with Government Agencies: These are usually the contracts for and on behalf of the government including the President of India and or the Governor of the state. Here, the clauses of the contract are made by the government agency based on laws, rules and regulations. These contracts are legal, but there is no possibility for negotiations by the party.

Three requirements of [Art. 299] of the Constitution of India

- i. Contract should be made in the name of President or Governor, as the case may be;
- ii. It must be executed by authorised person;
- iii. Such person must execute the contract in the prescribed manner in the name of President or Governor, as the case may be.
- c. Other examples: Contract for electricity, gas, telephone, mobile connection etc.

Example: Standard form contract or contract of adhesion is a type of contract, a legally binding agreement between two or more parties to do certain acts, in which one side has all the bargaining power and uses that power to write the contract primarily to his advantage. These contracts are enforceable. In fact, many businesses will never conclude their volume of transactions if the parties individually start negotiating terms of every contract.

An example is a standard form contract that offers goods and/or services to consumers without giving them opportunity to negotiate terms that would benefit the interest of the consumer. When this happens, the consumer cannot obtain the desired goods and/or services unless he agrees to all the terms of the contract.

12. E-Contract

In the modern times, the conventional ways of doing business have become out-dated. Businesses, both existing and new are trying to create an online individuality and an e-

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Contract is and, according to the needs of the society and business.

E- contract is a part of e- business. Here, business is done with an extra element – The contract here takes place through internet. These electronic contracts are born out of the need for speed, ease and efficiency. In the electronic age, the whole contract can be made in short time with parties finalizing and agreeing to an electronic copy of a contract.

E- contract helps to draft and negotiate successful contracts for business. An electronic or digital contract is an agreement drafted and signed in an electronic form. An electronic contract can be drafted in the same manner in which a normal hard copy agreement is drafted.

██████████ An agreement is drafted on a computer and sent to the other party by an e-mail. The other party, in turn, e-mails it back with acceptance.

Q.1 Answer the following Questions

1. Discuss the various elements of a valid contract.
2. "Contract is an agreement enforceable by law." Comment and discuss the minimum conditions required for an agreement if it is to be enforceable in a court of law.
3. Discuss briefly the essentials of a valid contract.
4. What is a contract? What are its constituent elements? Discuss the essentials of a valid contract.
5. "All agreements are not contracts but all contracts are agreements." Discuss the statement explaining the essential elements of a valid agreement.
6. Discuss briefly the nature of a contract, giving its essential requirements.
7. Elucidate the definition, indicating clearly the various elements of a valid contract.
8. What tests would you apply to ascertain whether an agreement is a contract?
9. Define a contract. What is the distinction between an agreement and a contract? Enumerate different kinds of contracts.
20. Explain different kinds of contracts.
21. What is an E- contract? Explain various kinds of contract.

Q.2 Distinguish between:

1. Void and voidable and Unenforceable contracts.
2. Agreements and Contracts.
3. Contract and Quasi contract.

Q.3 Write short notes on:

1. Quasi contracts. 2. Void agreement.
3. Standard form contract. 4. E- Contract.

Q.4 Define and explain proposal.

1. 'All agreements are not contracts but all contracts are agreements'. Discuss the essentials.