



A REVIEW OF THE INDIAN CONTRACT ACT, 1872 AND ESSENTIAL ELEMENTS OF A VALID CONTRACT

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Introduction:

As a result of increasing complexities of business environment, innumerable contracts are entered into by the parties in the usual course of carrying on their business. 'Contract' is the most usual method of defining the 'give and take' rights and duties in a business transaction. This branch of Private law is different from other branches of law in a very important respect. It does not prescribe so many rights and duties, which the law will protect or enforce; it contains a number of limiting principles subject to which the parties may create rights and duties for themselves. In a sense, parties to a contract are the makers of law for themselves. They can frame any rules they desire to the subject matter of their agreements, and law takes cognizance of their decision unless they are not legally prohibited.



CONTRACT :

According to Section 2(h) of the Act, the term contract is defined as "an agreement enforceable by law". On analysing the definition we find that, the contract is consist of two essential elements:

- an agreement, and
- enforceability by law.



1. The term 'agreement' given in Section 2(e) of the Act is defined as "every promise and every set of promises, forming the consideration for each other". Again Section 2(b) defines promise as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise".

Thus we say that, an agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto.

Agreement=Offer/Proposal+Acceptance

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

Thus from above definitions it can be concluded that –

Contract=Accepted proposal + Enforceability by law

On elaborating the above, it is obvious that contract comprises of an agreement which is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal giving rise to a binding contract. And Section 2(h) requires an agreement to be worthy of being enforceable by law before it is called 'contract'. Where parties have made a binding contract, they created rights and obligations between themselves.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to Section 10, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful



object, and are not hereby expressly declared to be void." The following essential elements must co-exist in order to make a valid contract:

1. Proper offer and Proper acceptance with intention to create legal relationship.
 2. Lawful Consideration and lawful object.
 3. Capacity to contract.
 4. Free Consent.
 5. Agreements not declared void or illegal.
 6. Certainty of meaning.
 7. Possibility of performance of an agreement.
 8. Necessary legal formalities.
- Intention to create legal relationship: The parties ought to have the intention to create an legal obligation between them through the form of offer and acceptance. They should have intention to impose duty on the promisor to fulfill the promise and bestow a right on the promisee to claim its fulfillment. It must not be merely a moral one but it must be legal. If such intention on the part of the parties is lacking at the time of making the contract, there will be no valid contract between them.
 - "Lawful consideration" and "Lawful object" is an essential element of a valid contract. Consideration is a technical word meaning thereby quid pro quo i.e. something in return. It must result in benefit to one party and detriment to the other party or a detriment to both.



- **Competent parties:** The parties to a contract must have capacity (legal ability) to make valid contract. In every case of there must be assent of the parties. If, therefore, either of the parties to an agreement is deprived of the use of his understanding or if he be deemed by law not to have attained it, there can be no such agreement which shall bind him. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided,

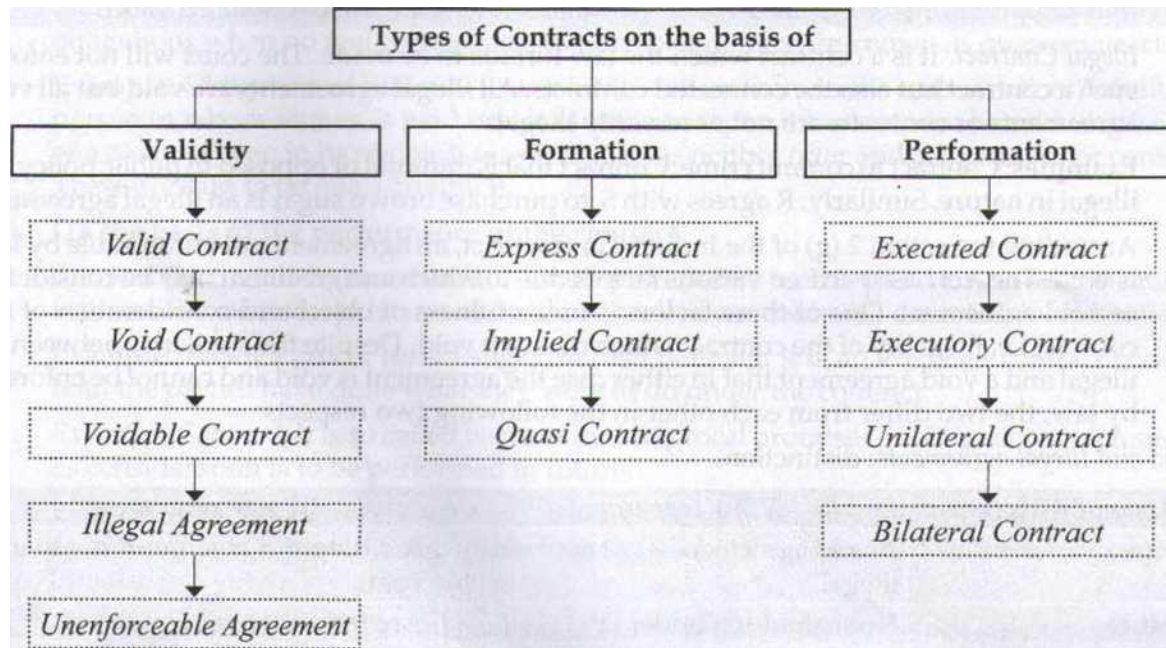
In other words (a) a minor, (b) a person of unsound mind (a person of unsound mind can enter into a contract during his lucid intervals) and (c) a person disqualified from contracting by any law to which he is subject, e.g. an alien enemy, foreign sovereigns and accredited representatives of a foreign state, insolvents and convicts, are not competent to contract.
 - a. is of the age of majority according to the law to which he is subject, and
 - b. who is of sound mind, and
 - c. is not disqualified from contracting by any law to which he is subject.
- **Free consent:** The consent of the parties must be genuine. The term 'consent' means parties to a contract must agree upon the same thing in the same sense, i.e. there should be consensus- ad-idem. Consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such cases, the contract becomes voidable at the option of the party whose consent is not free.



- The agreement not expressly declared void: The agreement must not be one, which the law declares to be either illegal or void. A void agreement is one, which is without any legal effects. Illegal agreement is an agreement expressly or impliedly prohibited by law.
- Certainty of meaning: The agreement must be certain and not vague or indefinite.
- Possibility of performance of an agreement: The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.
- Compliance of necessary legal formalities: Wherever a particular type of contract requires by law to be in writing and registered, it must comply with the necessary formalities as to writing, attestation and registration otherwise unenforceable.

TYPES OF CONTRACT

Different types of contracts may be classified as follows:



1. On the basis of the validity

- **Valid Contract:** An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.
- **Void Contract:** It is a contract without any legal effect and cannot be enforced in a Court of Law. Section 2(j) defines a void contract as "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable or more the parties but not at the option of the other or others is a voidable contract."
- **Illegal Contract:** It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void but all void agreements or contracts are not necessarily illegal.



- **According to Section 2 (g)** of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void.
- **Unenforceable Contract:** Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract.

2. On the basis of the formation of contract

- **Express Contracts:** A contract which is made by words either spoken or written is said to be an express contract. According to Section 9 insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express.
- **Implied Contract:** By implied contract means implied by law (i.e.) the law implies a contract though parties never intended. According to Section 9 insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.
- Tacit Contract is said to be tacit when it has to be inferred from the conduct of the parties.
- **Quasi-Contract:** A quasi-contract is not an actual contract but it resembles to a contract. It is created by law under certain circumstances the law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts.



3. On the basis of the performance of the contract

- **Executed Contract:** If the consideration for the promise in a contract (i.e., any act or forbearance) is given or executed, such type of contract is called contract with executed consideration.
- **Executory Contract:** It is so called because the reciprocal promises or obligation which serves as consideration is to be performed in future.
- **Unilateral Contract:** A unilateral contract is a one-sided contract in which only one party has to perform his promise or obligation to do or forbear.
- **Bilateral Contract:** Where the obligation or promise in a contract is outstanding on the part of both the parties, it is known as bilateral contract made by the mutual meeting of the parties. The contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror, otherwise there will be no contract, as communication of acceptance is not complete. If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

Modes of revocation: A proposal may be revoked by any of the following methods:

- (a) By notice revocation.
- (b) By lapse of specified time or reasonable time.
- (c) By the death or insanity of the offeror or the offeree.
- (d) In case of nonfulfilment of conditions of offer.



- (e) In case of counter offer.
- (f) By rejection of offeree.

Conclusion :

The law relating to contracts is contained in the Indian Contract Act, 1872. This paper contains the general principles of the Law of Contracts. In broadest prospect, a contract is an exchange of promises by two or more persons that is an agreement creating an obligation to do or to refrain from doing a particular act, which is enforced by law.

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