

CONTRACT

Contract may be defined as an agreement which is enforceable by law. It is a written

undertaking for execution of work or supply of materials or performance of any service.

An Agreement enforceable by law is a contract” . Therefore in a contract there must be

(1) an agreement and (2) the agreement must be enforceable by law. A contract is also an

“agreement creating and defining obligations between the parties” or an agreement

enforceable at law made between two or more persons, by which rights are acquired by one

or more to acts or forbearances on the part of the other or others.

An agreement comes into existence whenever one or more persons promise to one or

others, to do or not to do something, “Every promise and every set of promises, forming the

consideration for each other, is an agreement. Some agreements cannot be enforced through

the courts of law, e. g. , an agreement to play cards or go to a cinema. An agreement, which

can be enforced through the courts of law, is called contract.

The Contract Act is the law of those agreements which create obligations, and in case

of a breach of a promise by one party to the agreement, the other has a legal remedy

Parts of a contract

- Offer/Proposal
- Acceptance
- Agreed terms

Offer / proposal

When one person signifies to another his willingness to do a work, he is said to make a

proposal. Communication of an Offer: By words or by actions

Acceptance

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

1. Acceptance must be absolute
2. It must be communicated.
3. It must be according to the mode prescribed.
4. It must be given within the time specified or within reasonable time.

Essentials of a contract

1. Agreement.
2. Intention to create legal relationship.
3. Free and genuine consent.
4. Parties competent to contract.
5. Lawful consideration.
6. Lawful object.
7. Agreements not declared void or illegal.
8. Certainty of meaning.
9. Possibility of performance.
10. Necessary Legal Formalities.

1. Parties Competent to Contract:-

A person is competent to contract provided

- (a) He is of the age of majority according to the law to which he is subject.

A person

who is not a major according an agreement No contract shall be made by a subordinate

authority who has not been directed or authorised to do so.

- (b) He is of sound mind. A person is said to be of sound mind for the purpose of

making contract provided he is capable of understanding it and of forming a rational

judgement as to its effect upon his interest at the time when he performs the contract.

- (c) He is not disqualified from contracting by any law to which he is subject.

2. Free Consent of the parties:

Two or more persons are said to consent when they agreed that upon same thing in the

same sense. Consent is said free when:

(a) It is not caused under influence. The relations between the two parties performing

a contract are not such that one of the parties is in the position to dominate the will of

the others and uses that position to obtain an unfair advantage over the other.

(b) It is not caused by committing or threatening to commit any act forbidden by the

Indian penal code, or the unlawful detaining or threatening to detain any person to

enter into an agreement

(c) It is not caused by fraud.

(d) It is not caused by misrepresentation.

(e) It is not caused by mistake. Where both the parties do an agreement under a

mistake the agreement is avoidable.

3. Definite proposal and its acceptance:

Terms of contract must be precise and definite and there must be no room for ambiguity or

misconstruction therein. When one person signifies to another his willingness to anything,

he is said to make a proposal the communication of a proposal is complete when it comes

to the knowledge of the person to whom it is made. The acceptance must be absolute,

unqualified and expressed in some usual and reasonable manner. Acceptance is made by

performing conditions or receiving conditions.

4. The considerations or objects are lawful:

The consideration or object of an agreement is said to be unlawful if forbidden by

law or fraudulent or of such nature that, if permitted it would defeat the provisions of

any law or involves or implies injury to the person or property of another or opposed

to public policy or regarded as immoral by the court.

5. That the meaning shall be certain:

Agreement, the meaning of which shall be certain or capable of being made certain.

ESSENTIAL ELEMENTS OF A CONTRACT

An agreement becomes enforceable by law when it fulfils certain conditions.

These

conditions, which may be called the Essential Elements of a Contract, are explained below.

1. *Offer and Acceptance*: There must be a lawful offer by one part and a lawful

acceptance of the offer by the other and acceptance must conform to the rules laid down

in the Indian Contract Act regarding offer and acceptance.

2. *Intentions to create Legal Relationship*: There must be an intention (among parties) that the agreement shall result in or create legal relations. An agreement to dine at a

friend's house is not an agreement intended to create legal relations and is not a contract

But an agreement to buy and sell goods or an agreement to marry, are agreements

intended to create some legal relationship and are therefore contracts, provided the other

essential elements are present.

3. *Lawful Consideration*: Subject to certain exceptions, an agreement is legally enforceable only when each of the parties to it gives something and gets something. An

agreement to do something for nothing is usually not enforceable by law. The something

given or obtained is called consideration. The consideration may be an act (doing

something) or forbearance (not doing something) or a promise to do or not to do something. Consideration may be past (something already done or not done). It may also be present or future. But only those considerations are valid which are "lawful" .

4. *Capacity of Parties:* The parties to an agreement must be legally capable of entering into an agreement; otherwise it cannot be enforced by a court of law. Want of capacity arises from minority, lunacy, idiocy, drunkenness, and similar other factors. If any of the parties to the agreement suffers from any such disability, the agreement is not enforceable by law, except in some special cases.

5. *Free Consent:* In order to be enforceable, an agreement must be based on the free consent of all the parties. There is absence of genuine consent if the agreement is induced by coercion, undue influence, mistake, misrepresentation, and fraud. A person guilty of coercion, undue influence etc. cannot enforce the agreement. The other party (the aggrieved party) can enforce it, subject to rules laid down in the Act.

6. *Legality of the Object:* The object for which the agreement has been entered into must not be illegal or immoral or opposed to public policy.

7. *Certainty:* The agreement must not be vague. It must be possible to ascertain the meaning of the agreement, for otherwise it cannot be enforced.

8. *Possibility of Performance:* The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced.

9. *Void Agreements:* An agreement so made must not have been expressly declared to be void. Under Indian Contract Act there are five categories of agreements which are

expressly declared to be void They are:

1. Agreement in restraint to marriage.
2. Agreement in restraint of trade.
3. Agreement in restraint of proceedings.
4. Agreements having uncertain meaning.
5. Wagering agreement.
6. *Writing Registration and Legal Formalities:* An oral contract is a perfectly good contract, except in those cases where writing and/or registration is required by some statute. In India writing and/or registration is required by some statute. In India writing is required in cases of lease, gift, sale and mortgage of immovable property: negotiable instruments; memorandum and articles of association of a company etc. Registration is compulsory in cases of documents coming within the purview of Section 17 of the Registration Act, e. g. , mortgage deeds covering immovable property. The terms of an oral contract are sometimes difficult to prove. Therefore important agreements are usually entered into writing even in cases where wiring is not compulsory.