



THE INDIAN CONTRACT ACT, 1872.

Concept of Law

- What is Law?

Law means rules in general terms. It is a set of rules regulating external human action and conduct of behavior of one individual in its dealing with another individual and the government.

Unless

- it made by the state
- The state is a sovereign state
- It receives due recognition
- It has some sort of security and uniformity in its application.

- AUSTIN
- SALMAND
- HOLLAND
- WOODROW WILSON
- ANSON

What is Business Law?

Prof. Jehangir M.J. Sethna,

Commercial or Mercantile Law also Known as the Law Merchant(The Lex Mercatoria),embraces all the legal rules concerning business transactions. It includes within its scope a variety of subjects – it includes every legal principle affecting or governing business transactions.

The Law of Contract in our daily life.

Right in Rem

Right in Personam

The Indian Contract Act, 1872.

Definition

Contract: Section 2(h)

“An agreement enforceable by law is a contract.”

Two constituent elements:

Agreement + Enforceability by law.

Agreement : Section 2(e)

“ Every promise and every set of promises, forming the consideration for each other, is an agreement.”

Two constituent elements:

Offer + Acceptance

Promise : Section 2(b)

“ A Promise, when accepted becomes a Proposal.”

“**A Contract** is an **Agreement**,

An Agreement Is a **Promise**, and

A Promise ,when accepted is a **Proposal**”

Kinds Of Contract

1. Valid contract.
2. Void contract.
3. Voidable contract.
4. Unenforceable contract.
5. Enforceable contract.
6. Executed contract.
7. Executory contract.
8. Unilateral contract.
9. Bilateral contract.
10. Express contract.
11. Implied contract.
12. Contingent contracts.
13. Quasi contracts.
14. Contracts on record.
15. Speciality contracts.
16. Simple contracts.
17. Electronic (E) contacts.

Kinds Of Agreements

1. Valid Agreements.
2. Void Agreements.
3. Voidable Agreements.
4. Unenforceable Agreements.
5. Illegal Agreements.

Essential elements of a valid contract .

1. Offer and Acceptance.
2. Creation Of Legal Relations.
C.L: Kalai Haldar v. Shaikh.
3. Lawful Consideration.
4. Lawful Object.
5. Capacity of Parties to Contract.
6. Free Consent.
7. Agreement must not be void.
8. Legal Formalities.
9. Certainty of Terms.
10. Possibility of Performance of the Contract.

When is an Agreement said to be a Contract.

Sec. 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
- are not hereby expressly declared to be void.

Thus, **“All agreements are not contracts but all contracts are agreements”.**

Distinguish between void and voidable contracts.

Void Contracts

1. **Definition:** S.2(g) An agreement not enforceable by law.
2. It **may be an illegal** agreement.
3. It can be **avoided by both the parties.**
4. **No damages** can be claimed.
5. The agreement **cannot become valid.**
6. **The third party will not get a valid title.**
7. **Essential elements** of a valid contract are **missing.**
8. Even on the expiry of a reasonable time, **it can never** become a valid contract.

Voidable Contracts

1. **Definition:** S.2(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others is voidable contracts.
2. It **may not be illegal.**
3. It can be **avoided only by the innocent party.**
4. In some cases **damages** can be claimed.
5. At the instance of the innocent party , the voidable contract **can become valid.**
6. If the right is transferred to the third party, before the contract is avoided, **he gets a valid title.**
7. The **consent is not free.**
8. If the aggrieved party does not repudiate the contract within a reasonable time, the **contract is valid.**

Distinguish between an Agreement and a Contract.

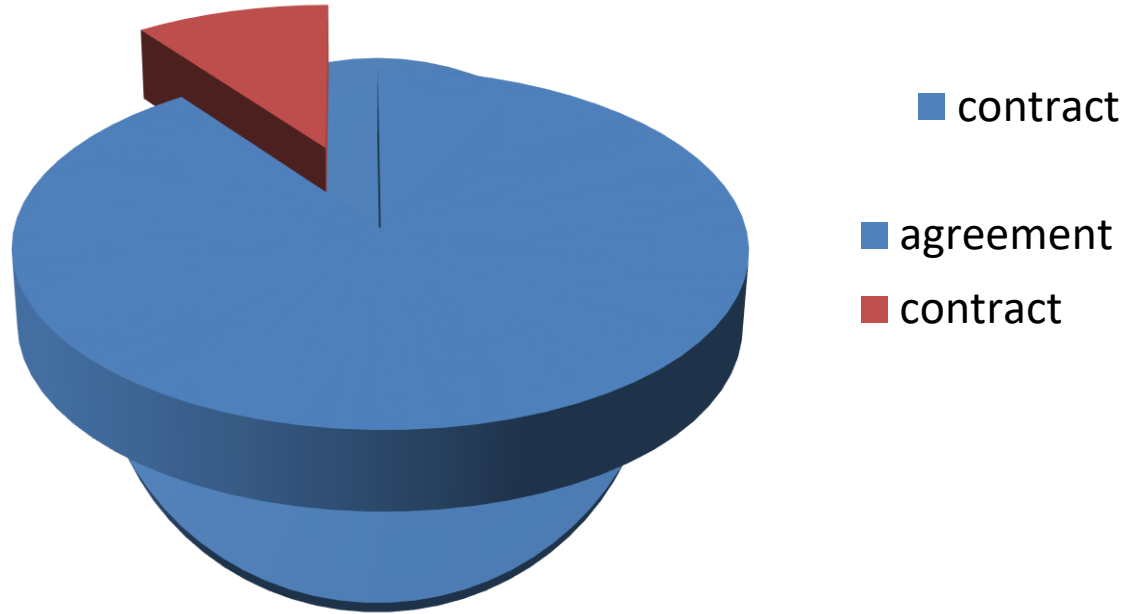
Agreement

1. **Definition:** S. 2(e) “Every promise and every set of promises forming a consideration for each other “
2. An agreement **may or may not create legal obligations.**
3. It is a **Right in Personam.**
4. An agreement is **a wider** term.
5. **Constitutes :** Offer+ Acceptance.
6. All agreements **are not contracts.**

Contract

1. **Definition :** S. 2(h) “An agreement enforceable by law.”
2. A contract **creates legal obligations.**
3. It is a **Right in Rem.**
4. A contract is **a narrower** term.
5. **Constitutes:** Agreement + Enforceable by law.
6. All contracts **are agreements.**

Column1



Proposal

Definition:

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”

Essentials of Valid proposal

1. Terms of an offer must be certain.
2. An Offer must contemplate creation of legal relations.

C.L.: Kalai haldar v. Shaikh.

3. An Offer may be expressed or implied.

C.L: Uptron rural district council v. Povell.

4. A mere statement does not constitute a binding promise.

C.L.: Harvey v. Facey.

5. To whom may an offer be made?

6. Offer must be communicated to the offeree.

C.L.: Lalman Shukla v. Gauri Dutt.

7. An Offer may be conditional.

C.L.: Pipraich Sugar Mills Ltd. V. Pipraich Sugar Mills
Mazdoor Union.

8. There should be an intention to be bound by it
as soon as it is accepted.

C.L.: Nutakki Seshastanam v. Collector of land
Acquisition.

9. How long does an offer remain open?

10. When is communication of an offer said to be
completed?

Kinds Of Offer/Proposal

- Expressed offer
- Implied offer
- General Offer.
- Specific Offer.
- Cross Offer.
- Counter Offer. C.L: Hyde v. Wrench
- Auction Sales.
- Standing or Open Offer.
- Distinguish Between Offer and Invitation to Offer.

Counter Offer

- A
- (Offeror)
- Rs.1000
- (Offeree) No
- (Offeree)no

- B
 - (Offeree)x
 - No
-
- Rs.900(Counter offer)
 - (Offeror)
 - Ok fine I agree for rs.1000

Acceptance - S. 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.”
- An offer when accepted becomes a contract

The person making the Proposal is called the

- Proposer
- Promisor
- Offeror

The person accepting the proposal is called the

- Proposee
- Promisee
- Offeree

Essential Of a Valid Acceptance

- 1) Who Can Accept the Offer?
- 2) Mode of Acceptance.
- 3) Acceptance must be absolute and unconditional.
- 4) Acceptance must be communicated to the offeror.
- 5) Mental Acceptance is no acceptance in law.
C.L : Felthouse v. Bindly.

- 6) Acceptance must be made within the time limit or within the reasonable time.
- 7) Acceptance must be made before the offer lapses.
- 8) No Acceptance without the knowledge of the offer.

Communication – Section. 3

“ The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances are deemed to be made by –

- 1) Any act ; or
- 2) Omission;

of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating”

Communication of Offer - section.4

- “The Communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.”

Communication of Acceptance - Section.4

“As against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor,
as against the acceptor, when it comes to the knowledge of the proposer”

Communication of revocation of Offer and Acceptance - section. 5

“ A Proposal may be revoked at anytime before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at anytime before the communication of the acceptance is complete as against the acceptor and not afterwards”

Communication of a revocation is complete section. 4

“ As against the person who makes it, when it is put into the course of transmission to the person to whom it is made, so as to be put out of the power of the person who makes it, as against the person to whom it is made, when it comes to his knowledge.”

Communication of Revocation Offer

- 1) By Communication of notice of revocation.
- 2) By lapse of time.
- 3) By failure to accept condition precedent.
- 4) By death or insanity of the offeror.
- 5) By counter of the offeree.
- 6) By not accepting the offer according to the prescribed or usual mode.
- 7) By rejection of offer by the offeree.
- 8) By change in law.

Communication of Revocation

Acceptance

- Acceptance by post, letters lost or delayed in postal transaction.
- Acceptance must be by a certain person.
- C.L: Carlill v. Carbolic smoke ball co.
- 3) Acceptance of proposal is the acceptance of all the terms.
- C.L: Mackillican v. Compaigns Messageries Maritimes de France.
- 4) Communication of acceptance in case of an agent.
- 5) Acceptance on loudspeakers.

Consideration – 2(d)

- In general terms it means:
“ something in return”
- In Latin term it is called as
“ Quid-pro-que”
- It was first recognized in case of
Curie v. Misa

The promisor must suffer a detriment or loss because of the promise by the promisee

- But later in the case of
Thomas v. Thomas

There must be a detriment or a loss suffered by either or both the parties because of the reciprocal promises.

Abdul Aziz v. Muzum Ali

**Kedarnath v. Gauri
Mohammad**

Consideration

Definition

Section 2(d)

“When ,

- At the desire of the promisor,
- Promisee or any other person,
- Has done or abstained from doing something, or
Does or abstains from doing something, or
Promises to do or abstained from doing something,
- Such act or abstinences' of promise is called consideration for the promise.”

Essential of a valid consideration

1. At the desire of the promisor,
C.L: 1) Durga prasad v. Baldev.
2) Lampleigh v. Brathwait.
2. Promisee or any other person,
C.L: 1) Tweddle v. Atkinson.
2) Chinnaya v. Ramaiya.

A stranger to the contract can sue

- **Or any other person**

1. Charge or trust

C.L: Khwajha mohammad khan

v.

Hussaine Begum

2. Beneficiary.

3. Estoppel.

4. Insurance contracts.

5. Assignee of a contract.

6. Marriage settlement ,partition or any other family arrangement.

C.L: Duropati v. Jaspat rai

7. Agent

3) Kinds of consideration

- ❖ Has done or abstained from doing something,
(Past consideration or Executed consideration)
or
- ❖ Does or abstains from doing something,
(Present consideration)or
- ❖ Promises to do or abstained from doing
something,(Future consideration or Executory
consideration)

4) Such act or abstinences' of promise is called consideration for the promise.”

- Consideration need not be adequate.
- Consideration must be real and not illusory.
- Forbearance to sue is a good consideration.
- Something other than the promisor's existing obligation.
- Consideration must be Lawful.

“No Consideration, No Contract”

- General rule is – “ No consideration, no contract”
- “Ex nudo-Pacto Non-Oritur Actio”
No action arises on a contract without consideration

Exceptions to the rule:

“No Consideration, No Contract” – S.25

1. An Registered agreement made on account of natural love and affection.
C.L: Rajlukhy Dabee v. Bhootnath
2. Agreement for compensation for voluntary service.
3. Promise to pay time barred debt.
4. No consideration is necessary to create an Agency.
5. Gift.

Unlawful Consideration and Object.-

S.23

“ The consideration or object of an agreement is lawful, unless

1. It is forbidden by law; or
2. It is of such a nature that if permitted, it would defeat the provisions of any law; or
3. It is fraudulent; or
4. It involves or implies injury to the person or property of another; or
5. If the court regards it as immoral, or opposed to public policy.

Agreements against Public Policy

- 1) Agreement between Citizens of Enemy countries.
- 2) Agreements for maintenance or champerty.
- 3) Agreements for stifling of prosecution.
- 4) Agreements for marriage brokerage.
- 5) Agreements interfering in the Administration of Justice.
- 6) Agreements interfering Public duties.
- 7) Agreements for sales of Public offices.
- 8) Agreements in Restraint of marriage.
- 9) Agreements in Restraint of Legal Proceedings
- 10) Agreement to defraud creditors.

- 11) Agreements to defraud Third Persons.
- 12) Agreements to create a monopoly.
- 13) Agreements for waiver of illegality.
- 14) Agreements in restraint of trade.
- 15) Agreements between Lawyers and Clients.
- 16) Foreign Awards.

If any foreign award is viewed as contrary to

- (a) The fundamental policy of Indian law, or
- (b) The interest of law, or
- (c) The fundamental principles of justice or morality,

It will be deemed to be against Public policy.

- 17) Non-compliance of court 's orders.
- 18) Agreements for Partly unlawful consideration or object.

Capacity to Contract

- Section 11.
- “ Every person is competent to contract who is
- Of the age of majority according to the law to which he is subject, and
- Who is of a sound mind, and
- Is not disqualified from contracting by any law to which he is subject.”

A Person is **competent to contract** if:

- ❖ He is of the age of **majority**.
- ❖ He is of a **sound mind**, and
- ❖ He is **not disqualified by any law** to which he is subject.

Thus , there are 3 classes of persons who are **disqualified from entering into a contract**.

They are:

- **Minors**
- Persons of **unsound mind**
- Persons **disqualified by statutes**.

Position of Agreements with a Minor

- The Indian Majority Act IX Of 1875.
- Section 3 of the Act declares that
“ Every Person Domiciled in India shall be deemed **to have attained his majority** when he shall have completed his age of **eighteen years** and not before.

However of a minor whose person or property or both, **a guardian has been appointed by a court** or where a minor's property is taken over by a **court of wards**, the minority continues upto the completion of his age of **twenty one years**.

Effects of Minor's agreement

(A) Unenforceable Agreements:

- Minor's agreement is void-ab-initio.
C.L.: Mohiri bibi v. Dhurmodas Ghose
- No Ratification of a minors contract.
- No estoppel against a minor.
- A minor cannot be declared insolvent.
- A minor cannot be a shareholder.
- Liability of a person making a promise with a minor in favour of another person.
- Liability of a person standing as a surety for a minor.
- Minor as an agent.
- Contract by parents or guardian under certain circumstances.
C.L. : Raj Rani v. Prem Adib

(B) Enforceable Agreements:

- Contracts for the benefit of a minor.
- Minor's property liable for necessities.
- Minor as a partner.
- Right to hold property or interest.

Agreements by person of Unsound Mind – S.12

- A contract with a person of unsound mind is void.
- S.12 states that-
“ A Person is said to be of a sound mind for the purpose of making a contract, if, at the time when he makes it , he is capable of understanding it and forming a rational judgement as to its effect upon his interest.”

It further specify that

“ A person who is usually of a unsound mind, but occasionally of sound mind , may make a contract when he is of sound mind.

A person who is usually of a sound mind , but occasionally of unsound mind , may not make a contract when he is of unsound mind.”

Factors Effecting Soundness of Mind

1. Agreements by an Idiot. (Eshwaar)
2. Agreements by a Lunatic.(Sadma)
3. Agreement by a Drunkard.
4. Presumption of soundness and unsoundness of mind.
5. Contracts by a person of unsound mind for his benefit.

Agreements by Disqualified Persons

1. Artificial Persons: Incorporated bodies.
2. Convicts.
3. Foreign Sovereign.
4. Alien enemy.
5. Insolvents/ Bankrupts.