



INDIAN CONTRACT ACT

WHAT IS A CONTRACT?

Contract Act is one of the most central laws that regulates and oversees *all the business wherever a deal or an agreement* is to be reached at.

The **Indian Contract Act, 1872** defines the term “Contract” under its **section 2 (h)** as “**An agreement enforceable by law**”. In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

Agreement:

The Indian Contract Act, 1872 defines what we mean by “Agreement”. In its **section 2 (e)**, the Act defines the term agreement as “**every promise and every set of promises, forming the consideration for each other**”.

Promise:

The term “promise” : “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”.

“

Agreement = Offer + Acceptance.



www.zenmentors.com

Enforceable By Law:

For an agreement to change into a Contract as per the Act, it ***must give rise to or lead to legal obligations*** or in other words must be within the scope of the law.

Contract = Accepted Proposal
(Agreement) + Enforceable by law
(defined within the law)

TYPES OF CONTRACT – BASED ON FORMATION

Express Contract

The Section 9 of the Act defines what is meant by the term express: “Promises, express and implied —In so far as the proposal or acceptance of any promise is ***made in words, the promise is said to be express.***”

The communications could be entirely oral or written.

Implied Contracts

The second part of section 9 of the Act defines what is meant by an implied contract: “In so far as such proposal or acceptance ***is made otherwise than in words, the promise is said to be implied.***”

Intentions and Actions are more important .

TYPES OF CONTRACTS ON THE BASIS OF VALIDITY

➤ Valid Contracts

The Valid Contract is an agreement that is ***legally binding and enforceable***. It must qualify all the essentials of a contract.

➤ Void Contract Or Agreement

The section 2(j) of the Act defines a void contract as “A contract which ceases to be enforceable by law ***becomes void when it ceases to be enforceable***”. This makes all those contracts that are ***not enforceable by a court of law*** as void.

➤ Voidable Contract

These types of Contracts are defined in section 2(i) of the Act: “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 a voidable contract.”

TYPES OF CONTRACT – BASED ON PERFORMANCE

➤ Executed Contracts

A contract between two or more parties is said to be executed when the act or forbearance promised in the contract ***has been performed by one, both or all parties.*** Basically, it means that whatever the contract stipulated, has been carried out.

Mind is Everything What you think, you become

www.zenmentors.com

➤ Executory Contracts

Parties ***still have obligations to be fulfilled.*** In such contracts, the consideration can only be performed sometime in the future, hence the name executory contract.

- Bilateral / Unilateral

ESSENTIALS OF A CONTRACT

➤ Two Parties

A Valid Contract must involve ***at least two parties*** identified by the contract. One of these parties will make the proposal and the other is the party that shall eventually accept it.

➤ Intent Of Legal Obligations

The parties that are subject to a contract must have clear intentions of ***creating a legal relationship between them***. What this means is those agreements that are not enforceable by the law e.g. ***social or domestic agreements*** between relatives or neighbors are not enforceable in a court of law and thus any such agreement can't become a valid contract.

➤ **Writing and Registration :**

Contact need not be in writing Can be implied or oral .

In certain cases , need to be in writing - Sale of immovable properties.

➤ **Certainty of Meaning**

“I agree to pay Mr. X a desirable amount for his house at so and so location”. Terms have to be certain



➤ **Possibility Of Performance Of an Agreement**

Suppose two people decide to get into an agreement where a person A agrees to bring back the person B's dead relative back to life. Even when all the parties agree and all other conditions of a contract are satisfied, this is not valid because bringing someone back from the dead is an impossible task.

Free Consent

However, for a valid contract, we must have [free consent](#) which means that the two parties must have ***reached consent without either of them being influenced, coerced, misrepresented or tricked into it.***

Competency Of the Parties

Every person is competent to contract who is (1) of the ***age of majority*** according to the law to which he is subject, and who is (2) of ***sound mind*** and is (3) ***not disqualified from contracting by any law to which he is subject.***

Consideration

Quid Pro Quo means '***something in return***' which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable "consideration".

PROPOSAL OR OFFER

.....

Section 2 (a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

- The *person making the offer/proposal is known as the “promisor”* or the “offeror”. And the *person who may accept* such an offer will be the “*promisee*” or the “acceptor”.
- The offeror *will have to express his willingness* to do or abstain from doing an act. Only willingness is not enough. Or simply a desire to do/not do something will not constitute an offer.
- An *offer can be positive or negative*. It can be a promise to do some act, and can also be a promise to abstain (not do) some act/[service](#). Both are valid offers.

CLASSIFICATION OF OFFER

General Offer

A general offer is one that is made to the **public at large**. It is not made any specified parties. So any member of the public can accept the offer and be entitled to the rewards/[consideration](#). For example you put out a reward for solving a puzzle.

Specific Offer

A specific offer, on the other hand, is **only made to specific parties**, and so only they can accept the said offer or proposal. A offers to sell his horse to B for Rs 5000/-. Then only B can accept such an offer because it is specific to him.

Counter Offer

There may be times when a **promisee will only accept parts of an offer, and change certain terms of the offer**. This is known as a counteroffer. A counteroffer amounts to a rejection of the original offer.

RULES - OFFER

- Offer to give rise to Legal Consequences
- Offer must be Clear, not Vague
- Offer must be Communicated to the Offeree
- Offer may be Conditional
- Offer may be Expressed or Implied
- Offer can be Specific or General
- Mere supply of information - is not offer .
- Invitation to Offer is not offer

ACCEPTANCE

The [Indian Contract Act 1872](#) defines acceptance in Section 2 (b) as “***When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted.*** Thus the proposal when accepted becomes a promise.”

A offers to buy B's car for rupees two lacs and B accepts such an offer. Now, this has become a promise.

- **Acceptance can only be given to whom the offer was made**
- **It has to be absolute and unqualified**
- **Acceptance must be communicated**
- **It must be in the prescribed mode**

Communication of Offer

Section 4 of the Indian Contract Act 1872 says that the communication of the offer is complete ***when it comes to the knowledge of the person it has been made to.***

A writes to B offering to fix his roof for five thousand rupees. He posts the letter on 2nd July. The letter reaches B on 4th July. So the communication is said to complete on 4th July.

Communication of Acceptance

Mode of Acceptance

- Communication of ***Acceptance by an Act***: This would include communication via words, whether oral or written. So this will include communication via telephone calls, letters, [e-mails](#), telegraphs, etc.
- Communication of ***Acceptance by Conduct***: The offeree can also convey his acceptance of the offer through some action of his, or by his conduct. So say when you board a bus, you are accepting to pay the bus fare via your conduct.

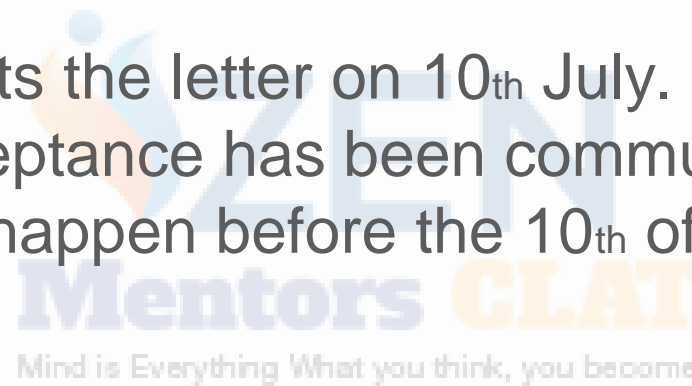
Timing of Acceptance

- As against the Offeror: For the ***proposer, the communication of the acceptance is complete when he puts such acceptance in the course of transmission.*** After this it is out of his hand to revoke such acceptance, so his communication will be completed then. So, for example, A accepts the offer of B via a letter. He posts the letter on 10th July and the letter reaches B on 14th July. For B (the proposer) the communication of the acceptance is completed on 10th July itself.
- As against the Acceptor: The communication in case of the ***acceptor is complete when the proposer acquires knowledge of such acceptance.*** So in the above example, A's communication will be complete on 14th July, when B learns of the acceptance.

Revocation of Offer:

Offer may be ***revoked anytime before the communication of the acceptance is complete against the proposer/offeror.*** Once the acceptance is communicated to the proposer, revocation of the offer is now not possible.

A accepts the offer and posts the letter on 10th July. B gets the letter on 14th July. But for B (the proposer) the acceptance has been communicated on 10th July itself. So the revocation of offer can only happen before the 10th of July.



Revocation of Acceptance

Acceptance can be revoked until the communication of the acceptance is completed against the acceptor.

The communication of the acceptance is complete against A (acceptor) on 14th July. So till that date, A can revoke his/her acceptance, but not after such date. So technically between 10th and 14th July, A can decide to revoke the acceptance.

CONSIDERATION

Section 2(d) of the Indian [Contract Act, 1872](#) :

At the desire of the promisor if the promisee either

- Does something (in the past, present or future) OR
- Abstains from doing something (in the past, present or future)

Then, this act of doing or abstinence is called Consideration.

Kinds of Consideration :

Past

Consideration can be ***given before the promise is made by the promisor***. This is past consideration.

Peter employs John to work on his field during the months of agricultural harvesting. He promises to pay John an amount of Rs 5,000 for his services when he sows the new crop in the fields. The services of John in the past constitute a valid consideration.

Past Voluntary services

A person might ***render voluntary services without any request or promise from another***. If the person receiving the services makes a subsequent promise to pay for the services, then such a promise is enforceable

Peter finds John's wallet on the road. He returns it to him and John promises to pay Peter Rs 500 for his services. This is a valid contract.

Present

If the ***promise and consideration take place simultaneously*** then it is present or executed consideration. An example is Peter goes to a shop, buys a bag of chips and pays for the same on-spot.

Future

When the ***consideration for a promise moves after the contract is formed***, it is a future or executor. It is also valid if it depends on the condition.

Peter promises to create architectural plans for John's new house. John promises to pay Peter an amount of Rs 50,000 provided the plans are approved by his wife.

AGREEMENTS WITHOUT CONSIDERATION

➤ Natural Love and Affection:

Agreement is in writing and registered between two parties in close [relation](#) (like blood relatives or spouse), based on natural love and affection, then such an agreement is enforceable even without consideration.

➤ Past Voluntary Services

➤ Gifts

The rule of no consideration no contract does not apply to gifts.

➤ Charity

If a person undertakes a liability on the promise of another to contribute to charity, then the contract is valid. In this case, the no consideration no contract rule does not apply.

CAPACITY TO CONTRACT

According to Section 11

Three main aspects:

- 1 Attaining the age of majority**
- 2 Being of sound mind**
- 3 Not disqualified from entering into a contract by any [law](#) that he is subject to**

Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in [India](#) is defined as **18 years**.

A Contract made with a Minor is Void

Since any person less than 18 years of age does not have the capacity to contract, **any agreement made with a minor is void ab-initio** (from the beginning).

A Minor can be a Beneficiary of a Contract

While a minor cannot enter a contract, **he can be the beneficiary of one**. Section 30 of the [Indian Partnership Act, 1932](#), also specifies that while a minor cannot become a partner in the [partnership firm](#), the benefits of the firm can be extended to him.

A Minor is always given the Benefit of being a Minor

Even if a minor falsely represents himself as a major and takes a loan or enters into a contract, he **can plead minority**. The **rule of estoppel cannot be applied against a minor**. He can plea his minority in defence.

Person of Sound Mind

According to Section 12 of the Indian Contract Act, 1872, for the purpose of entering into a contract, a person is said to be of sound mind if he is *capable of understanding the contract* and being able to assess its effects upon his interests.

Disqualified Persons

Foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.

FREE CONSENT

Section 14 of the Act says that consent is considered free consent when it is not caused or affected by the following,

- 1 Coercion
- 2 Undue Influence
- 3 Fraud
- 4 Misrepresentation
- 5 Mistake



Coercion (Section 15)

Section 15 of the Act describes coercion as

- ***committing or threatening to commit*** any act forbidden by the law in the [IPC](#)
- ***unlawfully detaining or threatening to detain*** any property with the intention of causing any person to enter into a contract

Now the effect of coercion is that it makes the ***contract voidable***. This means the contract is voidable at the option of the party whose consent was not free.

Undue Influence (Section 16)

It states that when the relations between the two parties are such that ***one party is in a position to dominate the other party, and uses such influence*** to obtain an unfair advantage of the other party it will be undue influence.

Eg: Lawyer and client ; Doctor and Patient

Fraud (Section 17)

fraud is when a party convinces another to enter into an agreement by making [statements](#) that are

- ***suggesting a fact that is not true***, and he does not believe it to be true
- the ***active concealment of facts***
- ***a promise made without any intention*** of performing it
- any other such act fitted to deceive

Misrepresentation (Section 18)

Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the ***misrepresentation is innocent, i.e. not intentional***. The party making the statement believes it to be true.

MISTAKE OF LAW AND MISTAKE OF FACT

Mistake of Law

If the mistake is regarding Indian laws, ***the rule is that the ignorance of the law is not a good enough excuse.*** This means either party cannot simply claim it was unaware of the law.

Mistake of foreign law is in fact treated as a mistake of fact under the [Indian](#) Contract Act.

Mistake of Fact



Bilateral Mistake

When ***both [parties](#) of a contract are under a mistake of fact essential to the agreement,*** such a mistake is what we call a bilateral mistake. Here both the parties have not consented to the same thing in the same sense, which is the definition of consent. Since ***there is an absence of consent altogether the agreement is void.***

For example, A agrees to sell to B his buffalo. But at the time of the agreement, the buffalo had already died. Neither A nor B was aware of this. And so there is no contract at all, i.e. the contract is void due to a mistake of fact.

Unilateral Mistake

A unilateral mistake is when ***only one party to the contract is under a mistake***. In such a case the contract will not be void

Exceptions :

- When Unilateral Mistake is as to the ***Nature of the Contract***. In such a case the contract can be held as void.
- When the Mistake is regarding the ***Quality of the Promise***.
- Mistake of the ***Identity of the Person contracted with***.

EXPRESSLY VOID AGREEMENTS

Agreement in Restraint of Marriage

Any agreement that restrains the marriage of a major (adult) is a void agreement. This does not apply to minors.

A agrees that if B pays him 50,000/- he will not marry such an agreement is a void agreement.

Agreement in Restraint of Trade

An agreement by which any person is restrained from plying a trade or practising a legal [profession](#) or exercising a business of any kind is an expressly void agreement. Such an agreement violates the constitutional rights of a person.

Agreement in Restraint of Legal Proceedings

An agreement that prevents one party from enforcing his legal [rights](#) under a contract through the legal process (of courts, arbitration, etc) then such an agreement is expressly void agreement.

Wagering Agreement

- Must contain a promise to pay money or money's worth
- Is conditional on the happening or non-happening of a certain event
- The event must be uncertain. Neither party can have any control over it

DISCHARGE OF A CONTRACT

A [contract](#) creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end.

Discharge by Performance

When the parties to a contract ***fulfill the obligations arising under the contract within the time and manner*** prescribed, then the [contract](#) is discharged by performance.

Discharge by Mutual Agreement

If all parties to a contract ***mutually agree to replace the contract with a new one or annul or remit or alter it***, then it leads to a discharge of the original contract due to a mutual agreement.

Discharge by the Impossibility of Performance

- An unforeseen ***change in the*** [law](#)
- ***Destruction of the subject-***[matter](#) essential to the performance
- A declaration of ***war***

Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for [performance of a contract](#). If the promisor fails to perform and the ***promisee fails to take action within this specified period, then the latter cannot seek remedy*** through law. It discharges the contract due to the lapse of time.

Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes ***insolvency or death of the promisor***.

Discharge by Breach of Contract

If a party to a contract ***fails to perform his obligation according to the time and place*** specified, then he is said to have committed a breach of contract.

REMEDIES FOR BREACH OF CONTRACT

Rescission of Contract

When ***one of the parties to a contract does not fulfill his obligations, then the other party can rescind*** the contract and refuse the performance of his obligations.

Sue for Damages

Claim ***compensation for loss or damages*** caused to them in the normal course of [business](#).

- **Liquidated Damages**: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- **Unliquidated Damages**: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

Sue for Specific Performance

This means the party in breach will actually have to ***carry out his duties according to the contract***.

Injunction

An injunction is a court order ***restraining a person from doing a particular act.***

Quantum Meruit

Quantum meruit literally translates to “***as much is earned***”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he ***must be paid a reasonable remuneration for the part of the contract he has already performed.***

TYPES OF DAMAGES

Ordinary damages

On the breach of a contract, the suffering party may incur some damages ***arising naturally***, in the usual course of events.

Special Damages

A party to a contract might ***receive a notice of special circumstances affecting the contract***. In such cases, if he breaches the contract, then he is liable for the ordinary damages plus the special damages.

Vindictive or Exemplary Damages

Wrongful dishonour of cheque by a banker because it causes loss of reputation and credibility.

Damages for Deterioration caused by Delay

In cases where goods are being transported by a carrier and he ***delays the delivery of goods causing them to deteriorate***, the affected party can file a suit for damages for deterioration by the delay

CONTINGENT CONTRACTS

An absolute contract is one where the promisor performs the contract without any condition. Contingent contracts, on the other hand, ***are the ones where the promisor performs his obligation only when certain conditions are met.***

In a ***life insurance contract***, the insurer pays a certain amount if the insured dies under certain conditions. The insurer is not called into action until the event of the death of the insured happens. This is a contingent contract.

- Depends on happening or non-happening of a certain event
- The event is collateral to the contract
- The event should be uncertain

QUASI CONTRACT

The word 'Quasi' means pseudo. Hence, ***a Quasi contract is a pseudo-contract.***

There are cases where the law implies a promise and imposes obligations on one party while conferring rights to the other ***even when the basic elements of a contract are not present.***

It is based on the maxim: "No man must grow rich out of another persons' loss."

Mind is Everything What you think, you become

Peter and Oliver enter a contract under which Peter agrees to deliver a basket of fruits at Oliver's residence and Oliver promises to pay Rs 1,500 after consuming all the fruits. However, Peter erroneously delivers a basket of fruits at John's residence instead of Oliver's. When John gets home he consumes the fruit basket .

Features of a Quasi Contract

- 1 It is usually ***a right to money*** and is generally (not always) to a ***liquidated sum*** of money
- 2 The right is ***not an outcome of an agreement*** but is imposed by law.
- 3 The right is ***not available against everyone*** in the world but only against a specific person(s). Hence it resembles a contractual right.

Section 68 – Necessaries Supplied to Persons Incapable of Contracting

Imagine a person ***incapable of entering into a contract*** like a lunatic or a minor. If a person ***supplies necessaries*** suited to the condition in life of such a person, then he can get reimbursement from the property of the incapable person.

Section 69 – Payment by an Interested Person

If a person ***pays the money on someone else's behalf*** which the other person is bound by [law](#) to pay, then he is entitled to reimbursement by the other person.

Section 70 – Obligation of Person enjoying the benefits of a Non-Gratuitous Act

- The ***act that is done or thing delivered was lawful***
- He did ***not do so gratuitously***
- The other person ***enjoyed the benefits***

Section 71 – Responsibility of Finder of Goods

If a person finds goods that belong to someone else and takes them into his custody, then he has to adhere to the following responsibilities:

- Take care of the goods as a ***person of regular prudence***
- ***No right to appropriate*** the goods
- Restore the ***goods to the owner*** (if found)

www.zenmentors.com

Section 72 – Money paid by Mistake or Under Coercion

If a person receives money or goods by mistake or under coercion, then he is ***liable to repay or return it.***

CONTRACT OF INDEMNITY

To ***indemnify something basically means to make good a loss.*** A [contract](#) of indemnity basically involves ***one party promising the other party to make good its losses.*** These losses may arise either due to the conduct of the other party or that of somebody else.

A promises to deliver certain goods to B for Rs. 2,000 every month. C comes in and promises to indemnify B's losses if A fails to so deliver the goods. This is how B and C will enter into contractual obligations of indemnity.

A contract of insurance is very similar to indemnity contracts. Here, the insurer promises to compensate the insured for his losses. In return, he receives [consideration](#) in the form of premium

CONTRACT OF BAILMENT AND PLEDGE

Bailment

Is a ***delivery of goods for some purpose on an understanding that they are to be returned after the achievement of such purpose.*** In case of a [contract](#) of bailment, there is only the change of [possession](#) and not [ownership](#).

Bailor remains the owner of the goods; bailee only gets the possession of such goods. The person who delivers the goods is known as bailor. The person to whom such goods are delivered is known as bailee.

Pledge :

It is a special type of bailment. It is ***a bailment of goods as security for payment or performance of duty.*** The person who pledges the goods (or bailor) is the pledgor or pawner. The person to whom such goods are deposited is known as pledgee or pawnee.

It is the duty of the Pawnee to take care of the goods pledged. In a [contract of pledge](#), any type of documents, goods, securities can be pledged.

CREATION OF AGENCY

There are two parties in the agency system one is the principal and another the agent. An agent is a person acting on behalf of his principal. It's a ***connecting link between the principal and the third party.***

As per section 182, an agent is a person who ***brings his principal into the contractual relations with the third parties.***

- The ***principal appoints or employs an agent*** under the [contract of agency](#).
- Thus, an agent is the link that connects the principal to the third parties.
- An agent ***binds the principal by his acts.***
- A ***principal is responsible*** for the acts of the agent to the third parties.
- When an agent acts for his principal, he has the capacity of his principal.