

Indian Contract Act, 1872

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➤ Introduction –

- 1) **INDIAN CONTRACT ACT, 1872** governs law relating to contracts in India.
- 2) The Act was **passed by British India** and is based on the principles of English Common Law.
- 3) This Act is applicable to **whole of India including Jammu and Kashmir**.
- 4) The Act came into effect from **1st September, 1872** and applies to all contracts in India.

➤ Important Definitions under the Act –

1) Proposal – Sec 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.

2) Acceptance – Sec 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**

Person making the proposal is called the “**promisor**”, and the person accepting the proposal is called the “**promisee**”.

3) Agreement – Sec 2(e)

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

In simple words, Agreement = Offer + Acceptance

4) Void Agreement – Sec 2(g)

An agreement not enforceable by law is said to be void.

5) Contract – Sec 2(h)

An agreement enforceable by law is called as contract.

In simple words, Contract = Agreement + Enforceability

6) Voidable Contract –

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 every agreement contract?**

1) **No**, every agreement is not a contract.

2) An agreement to become a contract must give rise to a **legal obligation (duty)**

An agreement can be –

3)

↓
Social obligation
↓

↓
Legal obligation
↓

- a) An agreement giving rise to social obligation is not a contract.
- b) Not covered under ICA, 1872 (Indian Contract Act, 1872)

- a) Agreement giving rise to legal obligation is a contract
- b) Covered under ICA, 1872

Example-

- a) An agreement between two persons to go together to the cinema, or for a walk, or for a dinner is an agreement of social nature and not covered under Indian Contract Act, 1872.
- b) Domestic agreement between husband and wife is also not a contract.

4) Every contract is an agreement, but every agreement is not a contract

➤ Difference Between Agreement and Contract

BASIS FOR COMPARISON	AGREEMENT	CONTRACT
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability
Defined in	Section 2 (e)	Section 2 (h)
In writing	Not necessarily	Normally written and registered
Legal obligation	Does not create legal obligation	Creates legal obligation
One in other	Every agreement need not be a contract.	All contracts are agreement
Scope	Wide	Narrow

➤ Essential elements of a valid contract

Essential elements of a valid contract –

Under Section 10 –

- a) Agreement
- b) Free Consent
- c) Competency of the parties
- d) Lawful Consideration
- e) Legal object
- f) Not expressly declared to be void

Not given under section 10 but still are essentials of valid contract –

- a) Two parties
- b) Intention to create legal relationship
- c) Legal formalities
- d) Certainty of meaning
- e) Possibility of performance

1) Two parties –

There should be at least 2 parties for a contract.

2) Offer –

There shall be an offer or proposal by one party

3) Acceptance –

Offer made should be accepted by the other party

4) Lawful consideration –

The agreement shall be supported by lawful consideration

5) Lawful object –

The object and consideration of the contract shall be legal

6) Competent (capacity) to contract – Section 11

a) The parties to the contract shall be competent to contract

b) For a person to become competent to contract –

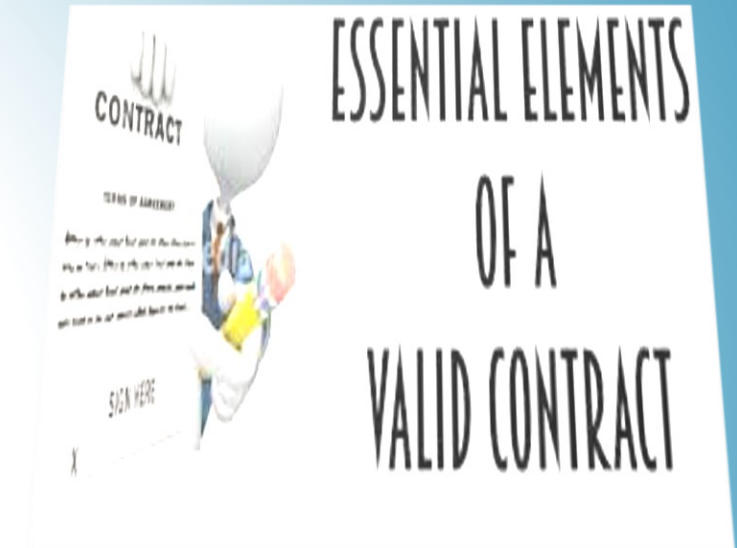
- Such person should be major (18+)
- Such person should be of sound mind (Section 12)
- Such person should not be disqualified by law

7) Free consent –

a) There shall be free consent between the parties to the contract

b) Consent is said to be free when the following elements are absent (Section 14)

- Coercion (Section 15)
- Undue influence (Section 16)
- Fraud (Section 17)
- Misrepresentation (Section 18)
- Mistake (Section 20, 21, 22)



8) Intention to create legal relationships –

The intention of the parties to a contract must be to create a legal relationship between them.

Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract

9) Possibility of performance –

The agreement should be capable of being performed

Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced

10) Legal formalities –

Legal formalities if any required for particular agreement such as registration, writing, they must be followed



Offer -

A) 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

B) Types of offer –

- 1) **General Offer** - It is an offer to the whole world.
- 2) **Specific offer** - It is an offer made to a particular person or group of persons.
- 3) **Express offer** - It is an offer which is made by words either oral or in writing.
- 4) **Implied offer** - It is an offer which is made by conduct or gesture of the parties.
- 5) **Counter offer** - When a person to whom the offer is made does not accept the offer [as it is] he counters the condition. This is called counter offer.



- 6) **Cross offer** - When two offers of same terms and conditions cross each other at same time, it is called cross offer.
- 7) **Standing offer** - An offer is a standing offer if it is intended to remain open for a specified period

C) Essentials of valid offer –

1) Offer may be expressed or implied –

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

2) Offer may be specific or general –

- a) A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.
- b) A general offer is an offer made to the public at large.

3) Offer must create Legal Relations -

An offer to be valid must create legal relationship between the parties. Say for example a dinner invitation extended by A to B is not a valid offer.

4) Offer must be Clear, not Vague –

The terms of an offer should not be vague (not clear / confusing)

For e.g. - A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

5) Offer must be Communicated to the Offeree –

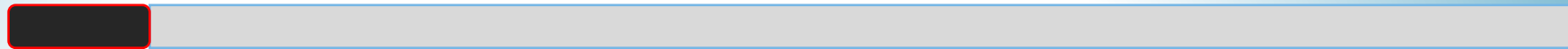
No offeree can accept the proposal without knowledge of the offer (*Lalman Shukla v. Gauri Dutt.*)

6) A statement of price is not an offer

7) Offer cannot contain a Negative Condition –

The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.

8) **A mere statement of intention is not an offer.** Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled



Thank you