

INDIAN CONTRACT ACT 1872

* Indian Contract Act (1872) →

Section 2(h) of the Indian Contract Act 1872 defines a contract as an agreement enforceable by law. Section 2(c) defines agreement as "every promise and every set of promises forming consideration for each other." Section 2(b) defines promise. In other words, "When the person to whom the proposal is signified his assent there the proposal is said to be accepted. A proposal when accepted, becomes a promise."

* The two elements of an agreement are following →

- i) Offer or a proposal
- ii) An acceptance of that offer or proposal

All agreements are not studied under the Indian Contract Act, as some of them are not contracts. Only those agreements which are

inforceable at law are Contracts. The Contract act is the law of those agreement which create obligation and in case of a promise by one party to the agreement.

* Essential elements of a valid Contract →

i) Agreement →

An agreement is composed of two elements offer and acceptance. The party making the offer is known as the offeror, the party to whom the offer is made is known as the offeree. There are essentially to be two parties to an agreement.

eg. → Where A who own two cars X and Y wishes to sell car X for rupees 30,000. B accept of A doesn't know that A own car X also. He thinks that A own only car Y and is offering to sell the same for the stated price. There is no contract because the contracting parties have not agreed on the same thing at the same time. A offering to sell his car X and B agree to buy car Y.

ii) Free and Genuine Consent →

The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be absent by misrepresentation

fraud, undue influence or mistake. If the consent is obtained by any of these flows, then the contract is not valid.

iii.) Intention to create legal relationship → As all ready mention there should be an intention on the part of the parties to the agreement to create a legal relationship. An agreement of a purely social or domestic nature is not a contract.

iv.) Parties Competent to Contract → The parties to a contract should be competent to enter into a contract. According to Sec 11, every person is competent to contract if he

- a.) Is of the age of majority
- b.) Is of the sound mind
- c.) Is not disqualified from contracting by any law to which he is subject.

Capacity may be due to minority or status. The flow in drinkness

v.) Agreements not declared illegal or void → There are certain agreements which have been

expressly declared illegal or void by the law. In such cases, even if the agreement process all the element of a valid agreement, the agreement will not be enforceable by at law.

* Classification of Contracts

Contracts may be classified into three terms

- 1.) validity or enforceability
- 2.) Mode of formation
- 3.) Performance

1.) Validity or enforceability → Contracts may be classified according to three validity has

- i.) valid
- ii.) voidable
- iii.) void contract or agreements
- iv.) illegal
- v.) unenforceable

As per section 2(i) a voidable contract is one which may be repudiated at the will of one of the parties, but until it is so repudiated it remains valid and binding. It is affected by a flaw (misrepresentation, fraud, sound mind)

any of these defect enables the Parties aggrieved to take steps to repudiated the Contract.

An agreement which is not enforceable by either of the parties to it is void Section 2 (i).

An Contract which cases to be enforceable by law becomes void when it enforceable.

An illegal agreement is one the Consideration or object of which

- i) Is forbidden by law
- ii) Defects the provision of any law
- iii) The Court regards it as immoral or posed to public policies.

An Unenforceable Contract is neither void nor voidable, but it can not be enforced in the court because it lacks some items of evidence such as writing, registration or stamping.

2.) Mode of formation →

There are different of formation of a Contracts. The term of a Contract may be stated in words such as written and spoken. This an express Contracts. Also the term of a Contract may be formation from the Conduct of the parties. This is an employee Contract (9).

Example - If a person enters into a bus for going to his destination and takes a ticket, the law will imply a Contract, from the very nature of the circumstances and obliges to pay for the journey.

3.0) Performance →

Another method of classification of Contract is in terms of the extent to which they have been performed.

- i) Executed
- ii) Executory

i) Executed →

An executed Contract is one wholly performed, nothing remains to be done in terms of the Contract.

Example - A contracts to buy bicycle from B for cash. A pays cash, B delivers bicycle.

ii) Executory →

An executory Contract is one which is wholly unperformed, or in which there remains something further to be done.

Example - On June 1st, A agrees to buy a bicycle from B. The Contract is to be performed on June 15th.

* Capacity of Contract →

Section II provides that "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 sound mind and is not disqualified from contracting by any law to which he is subject capacity of contract may arise from three types.

- 1.) Minority
- 2.) Mental in Competents
- 3.) Status

1.) Minority →

According to section (3) of the Indian majority acts, 1875, a minor is a person who has not completed 18 years of age:

- i.) Where a guardian of a minor person or properties has been appointed under the guardian and wards acts 1890.
- ii.) Where the superintendence on minors properties is assumed by a court of wards.

2.) Mental in Competents →

We have been years that one of the essential element of a

valid contract is that the parties to the contract must be competent to contracts and a person must be of sound mind so as to be competent to contract Section 10 and (2) Section 12 lays down a test of soundness of mind its reads and flows terms : →

"A person is said to be unsound mind for the purpose of making a contract, if at the time when he makes it he is incapable of judgment as to its effects upon his interest."

"A person who is usually of unsound mind. But occasionally sound mind."

3.) Status →

Besides minors and person of unsound mind there are some other person who are incompetent to contract partially or wholly so that the contract of such person are void in competency to contracts may arise from political status Corporate status, legal status etc.

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Free Consent

It is essential to the creation of a contract that both parties agree to the same thing in the same sense. When two or more person agree upon the same

think in the same sense. There are said to consent. Ex - A agree to sell his his car 1983 model for rupees 80,000 B agree to buy the same. There is a valid contract since A and B have consented to the same subject matter.

* Free Consent defined Section (14) →

Consent is said to be free when it is not caused by.

1.) Coercion →

Section 15, 19, 72 Coercion is (I) the committing or threatening to commit any act by the Indian Penal Code (II) the unlawful detention threatening to detain any property of any person whatsoever, with the intention of causing any person to enter into an agreement.

2.) Undue Influence →

Consists in the improper exercise of a power over the mind of one of the contracting parties by the other. According to Section 16, A contract is said to be induced by undue influence where the relations subsisting between the parties is a position to dominate the will of the other and uses that exercise

position to often and unfair advantage over the other.

3.) Fraud →

(Section 17 and 18) fraud means includes any of the following acts committed by a parties to a contract (or with his) Confidence or by his or agent with intent to another parties ~~there~~ to or his agent or to induce him to enter into the Contract.

- i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true.
- ii) The active facts by one having knowledge or believe of the facts.

4.) Miss Representation →

Miss representation (Section 18 & 19) like ~~fraud~~ ^{fraud} miss representation is an correct or false statement but the in accuracy is not due to any diseared to defraud the other party, it is innocent the party making it believes it to be true.

Section 18 of the Contract act classify cases of miss representation into three groups as following -

i.) The positive assertion, in a manner not warranted by the information of the person making it of that which is not true.
Eg → X learns from A that y would be director of the Company to be formed. X tells with to B. In order to induce him to purchase shares of that Company an B does show. This is misrepresentation by X, A believed in the truthness of the statement and has the information was derived not from y but from A and was man hear say.

ii.) Any breach of duty which without and intent to deceive, give and advantage to the person committing it, by misleading an other to the claiming under him.

iii.) Causing, how ever innocently, a party to an agreement to make a mistake as to the substance of thing which is the subject of the agreement.

* Mistake →

Mistake may be defined as an erroneous believe concerning something. Mistake is of two kind.

- i.) Mistake of fact
- ii.) Mistake of law

i.) Mistake of fact →

either be

A mistake of facts may

a.) Bilateral →

When both the parties to the agreement are under a mistake of fact essential to the agreement, the mistake is called a bilateral mistake of fact and the agreement is void.

Eg → A agree to buy from B a Certain house. It turns out that the horse was dead at the time of the fact. The agreement is void

b.) Unilateral →

In the case of Unilateral mistake, that is where only one party to a Contract is under a mistake, the Contract generally speaking is not invalid (Section 20) read, "A Contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact."

Some assumptions of unilateral mistake.

→ Where the unilateral mistake is as to the nature of the Contract.

→ mistake as to quality of the promise.

ii) Mistake of law → (Section 21) mistake of law be-

a.) Mistake of law of the land →

In this regard, the rule is "Ignorantia juris non excuset". That is ignorance of law is no excuse. Following this principle, (Section 21) declares that a contract is not voidable because it was caused by a mistake as to any law in force in India.

b.) Mistake of foreign law →

The above maxim that "ignorance of law is no excuse" applies only to the law of the country and not to foreign law. The mistake of foreign law is to be controlled as a mistake of fact.