

# Law of Contract

**Introduction:** The law of contract is the child of commerce. It is not only the merchant or trader but every person who lives in the organised society, consciously or unconsciously enters into contracts from sunrise to sunset. When a person buys a computer or hires a taxi, or takes a credit card from a bank or gives loan to another, or he does booking for DJ for marriage party, he enters into and performs contracts though he may be unaware of this fact.

The essential part of the contract is that promises are protected and enforced. Generally, legally enforceable promises are contracts.

The law of contract is mainly concerned with three questions:

- (1) Is there an agreement?
- (2) Can the parties to such agreement enforce it in a court of law?
- (3) How they can enforce it ?

The law of contract does not lay down rights and duties which the law enforces, it consists rather of a number of

limiting principles, subject to which the law will uphold. A person is only entitled to enforce his contractual right in a reasonable way and the court will not support an attempt to enforce them in an unreasonable way.

### FORMATION OF CONTRACT:

When one person makes an offer and the other accepts the same, there arises an agreement when this agreement is enforceable by law it becomes a contract.

The essence of a contract is meeting of the wills of the parties. There must be consensus ad idem. The contracting parties must agree to the same thing in the same sense. There must be meeting of the mind of the parties. The meeting of minds should be objective, i.e. manifestation of mutual assent. There is mutual and final assent for an agreement to be binding between the parties

### Contract Defined:

Anson defines contract as 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 other or others.

Salmonds definition of 'contract' states-

'A contract is an agreement creating and defining

obligations between the parties'.

According to Pollock-'every agreement and promise enforceable at law is a contract'.

Clause (h) of section 2 of the Indian Contract Act, 1872 defines 'Contract' as under-

"An agreement enforceable by law is a contract."

Thus, to arrive at a contract there must be-(1) An agreement, and (2) The agreement should be enforceable by law.

There may be some agreement which may not be enforceable by law and such agreements cannot be contract within the meaning of section 2(h). Thus, every contract is an agreement but every agreement is not necessarily a contract.

### **Agreement :**

As per section 2(e), "Every promise and every set of promises, forming the consideration for each other, is an agreement".

Thus it is clear from this definition that a 'promise' is an agreement. What is a 'promise' ?

The answer to this question is contained in section 2(b) which defines the term as, " When the person to whom the

proposal is made signifies his assent there to, the proposal is said to be accepted. A proposal when accepted becomes a promise". An agreement involves proposal or offer by one party and acceptance of the same by the other party. It requires existence of two or more persons that is plurality of persons.

A reading of clause (a), (b), (c), (e), and (h) of section 2 of the act shows that a contract is an agreement is a promise, a promise is formed by an acceptance of a proposal and there must be a promisor who makes the proposal and a promisee who accepts it. The 'proposal' appears to be synonymous to the word 'offer' as used

in English law In English law, one who makes the proposal is generally called the 'offeror' and the person to whom the proposal is made is called the 'offeree'.

Thus an agreement is the outcome of two consenting minds that is consensus ad idem;

**Thus, Agreement = offer (or proposal)+ acceptance of offer**

**Agreements Enforceable by Law:**

What agreements are enforceable by Law? Section 10 of the Indian Contract Act, 1872 lays down the conditions for the enforceability. It provides that all agreements are

contracts if they are made by the free consent of the parties, competent to contract for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. If we analyse this provision, we find that the following are the essential conditions, which must be satisfied for an agreement to become a contract:

- (a) The parties must be competent to contract;
- (b) There must be free consent of the parties;
- (c) It must be for a lawful consideration and lawful object; and
- (d) the agreement must not be expressly declared to be void.

The two parties enter into obligations to each other, i.e., one party undertakes to do or to abstain from doing some definite act or acts in return for some specific conduct or act on the part of the other party. The obligation must be such as is enforceable by law. In other words, it should not be merely a moral, social or religious obligation.

These obligations do not form agreements because they do not create any legal duties. It means that the parties must intend that if one of them fails to perform his promise, one would be answerable in law for that failure.

**Obligation :**

An agreement to become a contract must give rise to a legal obligation or duty. An agreement which give rise to a social obligation is not a contract. Obligation is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts.

### **Consensus ad idem :**

The essence of an agreement is the meeting of the minds of the parties in full and final agreement, there must, in fact, be consensus ad idem. Before there can be an agreement between two parties there must be consensus ad idem. This means that the parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time.

Example : A, who owns two horses named Rajhans and Hansraj is selling horse Rajhans to B. B thinks he is purchasing horse Hansraj. There is no consensus ad idem and consequently no contract.

### **Essential elements of a valid contract :**

According to Section 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, and are not hereby expressly declared to be void".

The following essential elements must co-exist in order to

make a valid contract.

**1) Offer and Acceptance :** In the first instance, the parties ought to have the intention to create a legal obligation between them through the form of offer and acceptance. They should have intention to impose duty on the promisor to fulfill the promise and bestow a right on the promisee to claim its fulfillment. It must not be merely a moral one but it must be legal.

**2) Lawful Consideration :** The second aspect to look for is the presence of "lawful consideration" which is an essential element of a valid contract. Consideration is a technical word meaning thereby quid pro quo, that is, something in return. It must result in benefit to one party and detriment to the other party or a detriment to both.

Example : A agrees to sell his books to B for Rs 100, B's promise to pay Rs 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay Rs 100.

If the two essential elements are there, we can say that there is a contract, which prima- facie will hold good, or at least we can say that there is an existence of contract, although some more necessary elements of validity may be wanting.

**3) Capacity to Contract :** The parties to a contract must have capacity (legal ability) to make a valid contract. In every case of contract, there must be assent of the parties. The assent presupposes a free, fair, and serious exercise of the reasoning faculty. If, therefore, either of the parties to an agreement is deprived of the use of his understanding or if he were deemed by law not to have attained it, there can be no such agreement, which shall bind him. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided.

a) is of the age of majority according to the law to which he is subject;

b) who is of sound mind; and

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

In other words (i) a minor, (ii) a person of unsound mind (a person of unsound mind can enter into a contract during his lucid intervals) and (iii) a person disqualified from contracting by any law to which he is subject, for example, an alien enemy, foreign sovereigns and accredited representatives of a foreign state, insolvents and convicts are not competent to contract.

**4) Free Consent :** The consent of the parties must be



genuine. The term 'consent' means parties to a contract must agree upon the same thing in the same sense, i.e., there should be consensus ad idem. Consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such cases, the contract becomes voidable at the option of the party whose consent is not free.

Example : A threatened to shoot B if he (B) does not lend him Rs. 2,000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

**5) Lawful Agreement :** The agreement must not be one, which the law declares to be either illegal or void. A void agreement is one, which is without any legal effects. An illegal agreement is an agreement expressly or impliedly prohibited by law.

Example : Agreement is restrained of trade, marriage, legal proceedings etc are void agreements. Those agreements prohibited by the Indian Penal Code, for example, Threat to commit murder or publishing defamatory statements or agreements, which are opposed to public policy, are illegal in nature.

**6). Possibility of performance:** Yet another essential feature of a valid contract is that it must be capable of

performance. Section 56 lays down that "An agreement to do an act impossible in itself is void." If the act is impossible in itself, physically or legally, the agreement cannot be enforced at law.

Example : A agrees with B to discover treasure by magic. The agreement is not enforceable.

**7). Certainty:** Section 29 of the contract act provides that "Agreements, the meaning of which is not or capable of being made certain, are void." In order to give rise to a valid contract the terms of the agreement must not be vague or uncertain. It must be possible to ascertain the meaning of the agreement, for otherwise, it cannot be enforced.

Example: A, agrees to sell B "a hundred tons of oil" There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

**8). Writing and registration:** According to the Indian Contract Act, a contract may be oral or in writing. But in certain special cases it lays down that the agreement, to be valid, must be in writing or /and registered.

**9). Not expressly declared void:** The agreement must not have been expressly declared to be void under the Act.

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