



Indian contract Act, 1872 (Part-2)

[Academic Script]

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INTRODUCTION:

- The word Contract is derived from a latin word 'Contractum' which means "draw together".
- It means drawing together of two or more minds who have a common intention which gives rise to an agreement.
- Agreement: "Every promise or every set of promises forming the consideration for each other is an agreement."
- AGREEMENT = OFFER + ACCEPTANCE
- Contract: "An agreement enforceable by law is a contract."
- CONTRACT = AGREEMENT + ENFORCEABILITY BY LAW

THE ESSENTIALS OF A VALID CONTRACT:

1. Offer and Acceptance:

For creating a contract there must be minimum two parties. Also there must be a proposal by one party and acceptance by the other party which should be in conformity to the rules laid down in the Act.

2.Lawful Relationship:

The intention of the parties must be to create lawful relationship amongst them. Social and domestic agreements do not form a part of a valid contract as they do not intend to bind the parties. For example: an agreement to have a cup of tea at a friend's house is a simple social agreement.

3.Lawful Object:

The purpose of the agreement must be lawful. It must not be (a) illegal (b) immoral and (c) opposed to public policy. Every agreement where the object is unlawful is void.

4.Lawful Formalities:

The agreement may either be in oral or in writing. There are certain agreements which are required to be in writing, attested and registered, if so required by law.

5.Lawful Consideration:

A bare promise without any consideration do not form part of a valid contract. An agreement to be enforceable by law must be supported by consideration. An agreement to do something without taking anything in return is generally not enforceable by law. Thus, for an agreement to be valid something must be given in return of something (Quid Pro Quo)

6.Capacity of Parties:

The parties entering into a contract must be competent i.e. capable to enter into a contract. A person is not capable of entering into a contract if he:

- (a) Is a Minor
- (b) is of Unsound Mind (c) is Disqualified by Law

7.Free Consent:

When two or more parties agree upon the same thing in the same sense they are said to have given their consent for the agreement.

Moreover, an agreement in order to be

enforceable, must be based on the free consent of all the parties.

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

(a) Coercion (b) Undue Influence (c) Fraud

(d) Misrepresentation (e) Mistake

A contract entered into by way of Coercion, Undue Influence, Fraud and Misrepresentation is Voidable whereas a contract entered into by way of Mistake is Void.

8.Certainty of Terms

The terms and conditions of the Contract must be specific and certain. It must not be vague.

9.Possibility of Performance

For an agreement to be valid, the agreement must be capable of being performed. An agreement to do an act which is impossible in itself is void. For example: if X promises to give Rs. 5,000 to Y if Y can prove that two parallel lines can meet each other, such an agreement is

void. Impossibility of performance can be existing impossibility or subsequent impossibility.

10. Void Agreement

As per Indian Contract Act, the agreement must not have been expressly declared to be void. Following Agreements are expressly declared to be void:

- (a) Agreement in restraint of Marriage
- (b) Agreement in restraint of Trade/Commerce
- (c) Agreement in restraint of Legal Proceedings
- (d) Agreement having uncertain Meaning
- (e) Wagering Agreement

THE CLASSIFICATION OF CONTRACTS

Contracts are classified as per (a) validity (b) formation and (c) performance

(1) CLASSIFICATION AS PER VALIDITY:

An agreement enforceable by law is a contract. If any of the essential elements is missing the contract may be void, voidable, illegal or unenforceable.

(a) Void agreement

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

It means null which does not create any validity or rights and obligation on any person.

For example: an agreement made by a minor is void.

Those agreements which do not comply with the requirements of Sec.10 of the Act are void abinitio. i.e. right from the beginning.

Void Contract

'A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.'

An agreement, which was legal and enforceable earlier becomes subsequently void due to impossibility of performance or change of law.

Thus, an agreement not enforceable by law is a void agreement. In such a case no contract comes into existence. But in case of a void

contract, a contract does come into existence but subsequently ceases to be enforceable by law.

(b) Voidable Contract

'An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of other or the others, is a voidable contract.'

A voidable contract is one which can be avoided by one of the parties to the agreement.

Contracts brought about by coercion, undue influence, fraud and misrepresentation are voidable.

It is to be noted that it is open to the parties to exercise his option to elect whether to be bound by the contract or to disown or repudiate (cancel) it. If the party decides to disown it, the contract becomes void; but if the party fails to do so, the contract continues to be valid till the option is being exercised.

For Ex: X coerces Y into entering into a contract for the sale of Y's car to X. This

contract can be avoided by Y (but not by X). X cannot enforce his contract but Y can, if he chooses, against X.

(c) Illegal Contract

An illegal agreement is one which is against a law in force in India which means the one which is criminal in nature or which breaks some rule of basic policy.

It is a nullity and cannot be enforced at law.

Therefore, 'all illegal agreements are void, but all void agreements are not necessarily illegal.'

For ex. An agreement with a minor is void, but not illegal.

(d) Unenforceable Contract

Though valid in all respects, due to some lack of technical requirements for enforceability.

For Ex. Lack of signature or proper stamp.

(e) Valid Contract

An agreement becomes a contract when all the essential elements (Sec.10) of a contract are present. It creates legal obligations enforceable at law.

(2) CLASSIFICATION ACCORDING TO FORMATION:

(a) Express Contracts:

A contract is said to be express when it is entered into by words spoken or written.

(b) Implied Contracts:

A contract is one which is not expressly agreed upon between the parties but is inferred from the acts or conduct of the parties.

(c) Quasi Contract:

A contract which does not fulfil the requirements of a contract is not a contract at all. It is created by law which rests on the principle that 'A person shall not be allowed to enrich himself unjustly at the expense of another'.

(3) CLASSIFICATION ACCORDING TO PERFORMANCE:

(a) Executed Contract:

When both the parties perform their part of the obligations under the contract, the contract is said to be executed.

(b) Executory Contract:

When both the parties have yet to perform their obligations, the contract is said to be executory. It may also be in some cases that the contract is partly executed and partly executory.

PROPOSAL AND ACCEPTANCE:**PROPOSAL (OFFER)****Definition:**

“When one person signifies to another

- (1) His willingness to do or to abstain from doing anything,
- (2) With a view to obtaining the assent of that another to such act or abstinence,
- (3) He is said to make a proposal.”

Legal Rules as to Offer:**(1) Offer must be capable of creating legal relationship**

If an offer is not intended to create legal relationship, it is an offer in the eyes of law. It must be of such a nature as would result in a valid

contract when accepted by the party to whom it is made.

(2) Communication of Offer

Unless an offer is properly communicated, there can be no acceptance at all. An acceptance in ignorance of the offer is a nullity and does not create any obligation.

(3) The terms of the offer must be definite and certain

The terms and conditions of the offer must be certain and not vague.

(4) The offer may be general or specific

When an offer is made to a definite person it is specific but when it is not for a specific person but to the world at large, it will be a general offer.

(5) The offer may be conditional

An offer may be conditional but the conditions have to be properly communicated. An offeree cannot plead ignorance of the conditions and it will be binding to the offeree.

(6) Offer must be made with a view of obtaining the assent of the other party

An offer must be addressed to another person with an intention that the person will give their assent which creates legal relationship between them.

(7) Offer must not thrust the burden of acceptance

Offer should not force the other party to accept it. It should not contain a term whereby the non-compliance of which may be assumed to have accepted the offer.

ACCEPTANCE:

Definition:

"The proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise".

Legal Rules as to Acceptance:

(1) It must be absolute and unqualified(unconditional):

A conditional or a qualified acceptance is no acceptance at all. An acceptance with variation is no acceptance at all but it is a counter-proposal which the offeror may accept or not.

(2) It must be expressed in some usual manner:

If acceptance has to be as per the prescribed mode it must be done accordingly. In cases where no manner is stated it can be in some usual manner.

(3) It must be by the party named in the offer:

A specific offer which is made to a particular person is to be accepted by him alone whereas a general offer can be accepted by any member of the public and can be accepted by anyone.

(4) It must be communicated:

As we have discussed earlier, just like offer acceptance also has to be communicated to the offeror. Only mental acceptance is no acceptance at all. A contract will bind only when the acceptor has done something to signify his intention to accept.

In certain conditions it is not necessary to express the acceptance but can be inferred from

(a) express conduct – (i) By performance of conditions (ii) By acceptance of consideration (iii) By accepting a benefit as service.

- (b) Implied Conduct –(i) Acceptance of an offer by conduct (ii) Acceptance communicated to an agent
- (c) Waiver of communication of acceptance
- (d) Acceptance by post

(5) It must be done within a reasonable time

Acceptance must be done within time-limit if prescribed in the offer. If not it has to be done within a reasonable time which depends upon the circumstances of each case.

Q.4. DISCUSS THE ELEMENTS OF CONSIDERATION:

As per Section 2 (d) of the Indian Contract Act, Consideration is defined as:

- (a) When at the desire of the Promisor,
- (b) the promisee or any other person,
- (c) (i) has done or abstained from doing, or
(ii) does or abstains from doing or
(iii) promises to do or to abstain from doing,
- (d) something,
- (e) such an act or abstinence or promise is called consideration for the promise.

Legal Rules as to Consideration:

(1) It must move at the desire of the promisor:

Any act done voluntarily without any compulsion or at the request of the third person do not form a valid consideration.

(2) It may move from the promisee or any other person:As per Indian Law, a stranger to the consideration can sue to enforce the contract.

(3) It may be past, present or future:

(a) **Past Consideration:** when the consideration of one party was given before the date of the promise, it is called past.

(b) **Present or executed Consideration:** when the consideration is given simultaneously with the promise.

(c) **Future or executory Consideration:** when it is given at a future date.

(4) Something:

Law requires the presence of consideration, but does not inquire about its adequacy. It need not be adequate to the promise. It is

either in case of some benefit or detriment (loss).

(5) It must be real and not illusory: The consideration must be valuable and not imaginary. It is not considered real if it is due to Physical or Legal Impossibility.

(6) It must not be illegal, immoral or opposed to public policy: the consideration must be a lawful one.

'NO CONSIDERATION NO CONTRACT'

As per Salmond: "A promise without consideration is a gift but for consideration is a bargain".

Section 25 suggests an agreement is declared to be void unless supported by consideration.

To this general rule there are certain **exceptions:**

- (1) Natural love and affection
- (2) Compensation for Voluntary services
- (3) Promise to pay a time-barred debt
- (4) Agency
- (5) Completed Gift

THE CONTRACTUAL CAPACITY OF PARTIES:

As per Section 11:

"Every person is competent to contract

- (1) Who is of the age of majority according to the law to which he is subject and**
- (2) who is of sound mind and**
- (3) is not disqualified from contracting by any law to which he is subject."**

(1) MINOR'S AGREEMENT:

Definition: As per Section 3 of the Indian Majority Act, 1875; every person domiciled in India is deemed to have attained his majority when he has completed his age of 18 years.

To this rule there are two exceptions;

- (a) When a guardian for the minor is appointed by a Court of Law and
- (b) When a minor's property is taken over by the Court of Wards for management.

In either of these cases, minority continues upto the completion of 21st year.

THE LAW REGARDING MINOR'S AGREEMENT:

- (1) Minor's Agreement is Void ab initio
- (2) A minor can be a promisee or a beneficiary
- (3) No ratification
- (4) Claim for necessities
- (5) No Estoppel
- (6) Restitution or compensation
- (7) No specific performance
- (8) No insolvency
- (9) Minor as a Partner
- (10) Minor as an Agent
- (11) Minor along with a major
- (12) Position of minor's guardian
- (13) Liability for Torts

(2) PERSONS OF UNSOUND MIND:

As per Section 12:

"A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, is capable of understanding it and of forming a rational (practical) judgement as to its effect upon his interests."

TEST OF SOUNDNESS OF MIND:

Whether at the time of the contract, the person has

- (a) Capacity to understand the business concerned, and
- (b) ability to form a rational judgement,
- (c) as to its effect on a person's interest.

CONTRACT IN LUCID INTERVAL:

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

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

(3) DISQUALIFIED BY LAW:

Following persons are not qualified for the purpose of entering into a contract:

- (a) Aliens
- (b) Corporations
- (c) Professional Incapacity
- (d) Felon or Convicts.
- (e) Foreign Sovereign
- (f) Married Women
- (g) Insolvency

SUMMARY

In today's session we started with an introductory knowledge on Indian contract act. We started with the essentials of a valid contract, classification of contracts on the basis of validity, formation & performance and the rules for proposal & acceptance. Further we also learnt about various elements of consideration along with the statement "No consideration no contract". Lastly we ended our session by identifying contractual capacity of various parties.