

Indian Contract Act, 1872

The **Indian Contract Act, 1872** prescribes the law relating to contracts in India and is the key act regulating **Indian contract law**.

The Act is based on the principles of English Common Law.

It is applicable to all the states of India.

It determines the circumstances in which promises made by the parties to a contract shall be legally binding.

Under Section 2(h), the Indian Contract Act defines a contract as an agreement which is enforceable by law.

The Act as enacted originally had 266 Sections and Contains

- General Principles of Law of Contract – Sections 01 to 75
- Contract relating to Sale of Goods – Sections 76 to 123
- Special Contracts- Indemnity, Guarantee, Bailment & Pledge and Agency – Sections 124 to 238
- Contracts relating to Partnership – Sections 239 to 266

At present the Indian Contract Act may be divided into two parts:

- Part 1: deals with the General Principles of Law of Contract Sections 1 to 75
- Part 2: deals with Special kinds of Contracts such as
 1. Contract of Indemnity and Guarantee
 2. Contract of Bailment and Pledge
 3. Contract of Agency.

Major Terms

1. Offer 2(a): When one person signifies to another his willingness to do or to abstain (**to stop yourself from doing something that you enjoy**) 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 2(b): When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

3. Promise 2(b): A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.

4. Promisor and promisee 2(c): When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.

5. Consideration 2(d): When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise.

Price paid by one party for the promise of the other technical word meaning QUID-PRO-QUO i.e., something in return.

6. Agreement 2(e): Every promise and set of promises forming the consideration for each other. In short,

7. Contract 2(h): An agreement enforceable by Law is a contract.

Therefore, there must be an agreement and it should be enforceable by law.

8. Reciprocal Promises 2(f): Promises which form the consideration or part of the consideration for each other are called 'reciprocal promises'.

9. Void agreement 2(g): An agreement not enforceable by law is void.

10. Voidable contract 2(i): An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.

11. Void contract 2(j): A contract becomes void when it ceases to be enforceable by law.

Acceptance

According to Section 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."

Rules: -

1. Acceptance should be absolute and unqualified. If the parties are not concurred on all matters concerning the offer and acceptance, there is no valid contract. For example, "A" says to "B" "I offer to sell my car for Rs.50,000/-. "B" replies "I will purchase it for Rs.45,000/-". This is not acceptance and hence it amounts to a counter offer.
2. It should be Communicated to the offeror. To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.
3. Acceptance must be in the mode prescribed. If the acceptance is not according to the mode prescribed or some usual and reasonable mode (where no mode is prescribed) the offeror may intimate to

the offeree within a reasonable time that acceptance is not according to the mode prescribed and may insist that the offer be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the offer. For example, "A" makes an offer to "B" says to "B" that "if you accept the offer, reply by voice. "B" sends reply by post. It will be a valid acceptance, unless "A" informs "B" that the acceptance is not according to the prescribed mode.

4. Acceptance must be given within a reasonable time before the offer lapses. If any time limit is specified, the acceptance must be given within the time, if no time limit is specified it must be given within a reasonable time.
5. It cannot precede an offer. If the acceptance precedes an offer, it is not a valid acceptance and does not result in contract. For example, in a company share were allotted to a person who had not applied for them. Subsequently, when he applied for shares, he was unaware of the previous allotment. The allotment of share previous to the application is not valid.
6. Acceptance by the way of conduct.
7. Mere silence is no acceptance.

Silence does not per-se amounts to communication- Bank of India Ltd. Vs. Rustom Cowasjee- AIR 1955 Bom. 419 at P. 430; 57 Bom. L.R. 850- Mere silence cannot amount to any assent. It does not even amount to any representation on which any plea of estoppel may be found, unless there is a duty to make some statement or to do some act free and offerer must be consent

1. Acceptance must be unambiguous and definite.
2. Acceptance cannot be given before communication of an offer.

Lawful consideration

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise". Consideration means 'something in return'.

An agreement must be supported by a lawful consideration on both sides. Essentials of valid consideration must include: -

- It must move at the desire of the promisor. An act constituting consideration must have been done at the desire or request of the promiser. If it is done at the instance of a third party or without the desire of the promisor, it will not be good consideration. For example,

"A" saves "B"'s goods from fire without being ask him to do so. "A" cannot demand payment for his service.

- Consideration may move from the promisee or any other person. Under Indian law, consideration may be from the promisee of any other person i.e., even a stranger. This means that as long as there is consideration for the promisee, it is immaterial who has furnished it.
- Consideration must be an act, abstinence or forbearance or a returned promise.
- Consideration may be past, present or future. Past consideration is not consideration according to English law. However it is a consideration as per Indian law. Example of past consideration is, "A" renders some service to "B" at latter's desire. After a month "B" promises to compensate "A" for service rendered to him earlier. When consideration is given simultaneously with promise, it is said to be present consideration .. For example, "A" receives Rs.50/- in return for which he promises to deliver certain goods to "B". The money "A" receives is the **present consideration**. When consideration to one party to other is to pass subsequently to the maker of the contract, is said to be future consideration. For example. "A" promises to deliver certain goods to "B" after a week. "B" promises to pay the price after a fortnight, such consideration is future.
- Consideration must be real. Consideration must be real, competent and having some value in the eyes of law. For example, "A" promises to put life to "B"'s dead wife, if "B" pay him Rs.1000/-. "A"'s promise is physically impossible of performance hence there is no real consideration.
- Consideration must be something which the promiser is not already bound to do. A promise to do something what one is already bound to do, either by law, is not a good consideration., since it adds nothing to the previous existing legal consideration.
- Consideration need not be adequate. Consideration need not be necessarily be equal to value to something given. So long as consideration exists, the courts are not concerned as to adequacy, provided it is for some value.

The consideration or object of an agreement is lawful, unless and until it is:

1. Forbidden by law: If the object or the consideration of an agreement is for doing an act forbidden by law, such agreement are void. for example,"A" promises "B" to obtain an employment in public service and "B" promises to pay Rs one lakh to "A". The agreement is void as the procuring government job through unlawful means is prohibited.

2. If it involves injury to a person or property of another: For example, "A" borrowed rs.100/- from "B" and executed a bond to work for "B" without pay for a period of 2 years. In case of default, "A" owes to pay the principal sum at once and huge amount of interest. This contract was held void as it involved injury to the person.
3. If courts regards it as immoral: An agreement in which consideration is object of which is immoral is void. For example, An agreement between husband and wife for future separation is void.
4. Is of such nature that, if permitted, it would defeat the provisions of any law:
5. is fraudulent, or involves or implies injury to the person or property of another, or
6. Is opposed to public policy. An agreement which tends to be injurious to the public or against the public good is void. For example, agreements of trading with foreign enemy, agreement to commit crime, agreements which interfere with the administration of justice, agreements which interfere with the course of justice, stifling prosecution, maintenance and champerty.
7. Agreements in restraint of legal proceedings: This deals with two category. One is, agreements restraining enforcement of rights and the other deals with agreements curtailing period of limitation.
8. Trafficking in public offices and titles: agreements for sale or transfer of public offices and title or for procurement of a public recognition like Padma Vibhushan or Padma Shri etc. for monetary consideration is unlawful, being opposed to public policy.
9. Agreements restricting personal liberty: agreements which unduly restricts the personal liberty of parties to it are void as being opposed by public policy.
10. Marriage brokerage contract: Agreements to procure marriages for rewards are void under the ground that marriage ought to proceed with free and voluntary decisions of parties.
11. Agreements interfering marital duties: Any agreement which interfere with performance of marital duty is void being opposed to public policy. An agreement between husband and wife that the wife will never leave her parental house.
12. consideration may take in any form-money, goods, services, a promise to marry, a promise to forbear etc.

Competent to contract

Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor i.e. an individual who has not attained the age of majority i.e. 18 years in normal case and 21 years if guardian is appointed by the Court.
2. He should be of sound mind while making a contract. A person cannot who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. Similarly if a person is usually of sound mind, but occasionally of unsound mind, may not make a valid contract when he is of unsound mind.
3. He is not disqualified from contracting by any other law to which he is subject

There are other laws of the land that disqualify certain persons from contracting. They are:-

- Alien enemy
- Foreign sovereigns, diplomatic staff etc.
- Artificial persons i.e. corporation, companies etc.
- Insolvents
- Convicts
- Pardanashi Women

Free Consent

According to Section 13, "two or more persons are said to be in consent when they agree upon the same thing in the same sense (*Consensus-ad-idem*). According to Section 14,

Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements Vitiating free Consent

1. Coercion (Section 15): "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45,1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. For example, "A" threatens to shoot "B"if he doesn't release him

from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

2. Undue influence (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another;

- Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. an income tax authority over to the assessee.
- Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee.
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"

3. Fraud (Section 17): "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract. Mere silence is not fraud. a contracting party is not obliged to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, then keeping silence is fraud. or when silence is in itself equivalent to speech, such silence is fraud.

4. Misrepresentation (Section 18): "causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. Mistake of fact (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

CONTRACT OF INDEMNITY

124. "Contract of indemnity" defined A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

125. Right of indemnity-holder when sued - The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contract to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

CONTRACT OF GUARANTEE

126. "Contract of guarantee", "surety", "principal debtor" and "creditor" - A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety", the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Consideration for guarantee Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

128. Surety's liability The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

129. Continuing guarantee A guarantee which extends to a series of transactions, is called, a "continuing guarantee".

130. Revocation of continuing guarantee A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

131. Revocation of continuing guarantee by surety's death - The death of the surety operates, in the absence of any contract to the contrary, as a revocation of the continuing guarantee, so far as regards future transactions.

CONTRACT OF BAILMENT

148. "Bailment", "bailor" and "bailee" defined - A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation: If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. Delivery to bailee how made - The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

150. Bailor's duty to disclose faults in goods bailed - The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risk; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

151. Care to be taken by bailee - In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

CONTRACT OF PLEDGE

172. "Pledge", "Pawnor", and "Pawnee" defined - The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called "pawnor". The bailee is called "pawnee".

173. Pawnee's right of retainer - The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect to the possession or for the preservation of the goods pledged.

174. Pawnee not to retain for debt or promise other than for which goods pledged - presumption in case of subsequent advances - The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise of other than the debtor promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. Pawnee's right as to extraordinary expenses incurred - The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. Pawnee's right where pawnor makes default - If the pawnor makes default in payment of the debt, or performance, at the stipulated time, or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. Defaulting pawnor's right to redeem - If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, on that case, pay, in addition, any expenses which have arisen from his default.

Agency, Appointment and authority of agents

182. "Agent" and "principal" defined - An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

183. Who may employ agent - Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. Who may be an agent - As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent, so as to be responsible to the principal according to the provisions in that behalf herein contained.

185. Consideration not necessary - No consideration is necessary to create an agency;

186. Agent's authority may be expressed or implied - The authority of an agent may be expressed or implied.

187. Definitions of express and implied - An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. 188. Extent of agent's authority - An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do so such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

189. Agent's authority in an emergency - An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss and would be done by a person of ordinary prudence, in his own case, under similar circumstances.

190. When agent cannot delegate - An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature or agency, a sub-agent must, be employed.

201. Termination of Agency - An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Termination of Agency, where agent has an interest in subject-matter - Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.