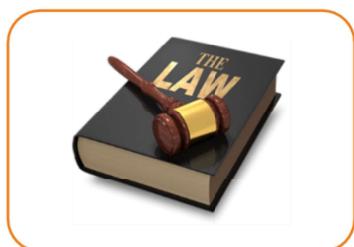
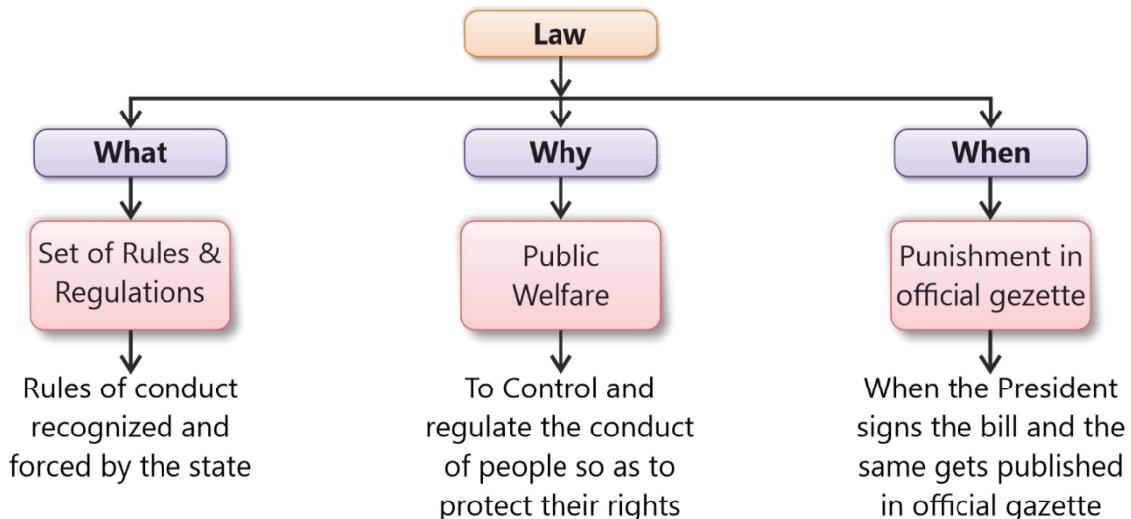


BASICS OF LAW



INTRODUCTION

What is Law

- Law is basically a '**set of rules**'.
- It can be defined as the rules of **conduct recognised and enforced by the state** to control and regulate the conduct of people.



Why is Law

- Law is made for **Public Welfare**. The Purpose of making Law is to protect their property and contractual rights with a view to securing justice, peaceful living and social security.
- Since the value system of society keeps on changing, the law should **be updated according to the requirements of the society**.



What is Business Law or Commercial Laws

- Business law is not a separate branch of law. In fact, it is a **part of Civil law** which **deals with the rights and obligations of mercantile persons arising out of business transactions.**
- These are the law relating to business, trade, commerce etc. It includes laws relating to various contracts, partnership, companies, negotiable instruments, insurance, carriage of goods, arbitration etc.



When Law gets Applicable

When the President signs the approved bill and the same gets applicable **when it is published in official gazette.**

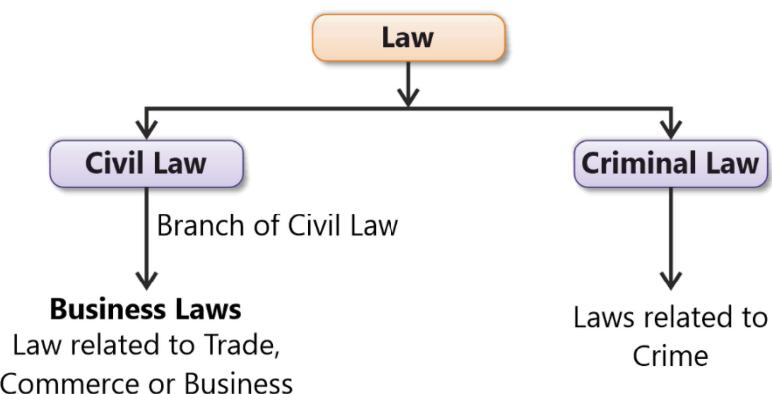


Sources of Indian Business Laws

- English Business/Mercantile Laws
- Indian Statute Law
- Judicial Decisions
- Customs and Usages



Branches of Law



Examples-

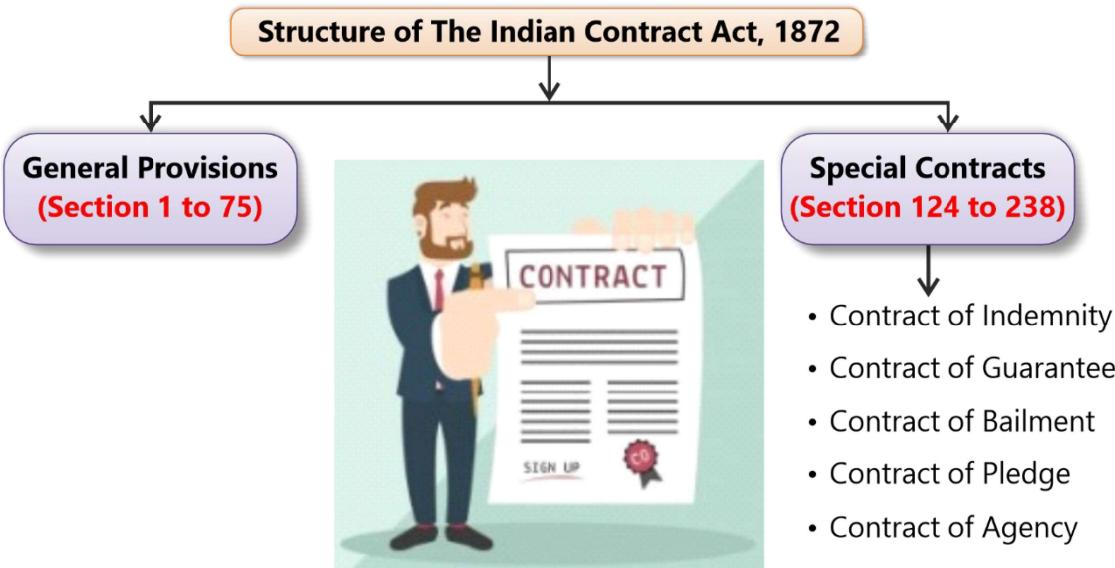
- The Companies Act, 2013
- The Indian Contract Act, 1872
- The Partnership Act, 1932
- The Sales of Goods Act, 1930
- The Limited Liability Partnership Act, 2008
- The Negotiable Instruments Act, 1881

Examples-

- The Indian Penal Code, 1860
- The Criminal Procedure Code, 1974
- The Evidence Act, 1872

1.1

NATURE OF CONTRACT



At the time of incorporation, it was known as The Contract Act, 1872 and contained the provisions of contracts as well as the provisions of partnership & sale of goods. Afterwards it became Indian Contract Act and the provisions related to Partnership & Sale of goods were repealed from this act on the promulgation of separate acts i.e., The Indian Partnership Act, 1932 and the Sale of Goods Act, 1930. Erstwhilsse there were four parts including Sale of Goods act and Partnership Act, but now Indian contract have two parts only.

THE LAW OF CONTRACT

Introduction

- The Law of Contract constitutes the most **important branch of Business, Mercantile or Commercial law**.
- The law relating to contract is governed by "**The Indian Contract Act, 1872**".
- It came into force on **September 01, 1872**.
- The preamble to the Act says that it is an Act "to define and amend certain parts of the law relating to contract".
- It extends to the **whole of India**.
- The Act is divisible into **two parts**.
- The **first part** **Section 1-75** deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature.
- The **second part** **Sections 124-238** deals with certain special kinds of contracts, e.g., Indemnity, Guarantee, Bailment, Pledge, and Agency.

Sections 1 Short Title, Extent and Commencement Date

Short Title: This act will be known as **The Indian Contract Act, 1872**

Extent/Scope: It will be applicable to all contracts made **throughout India**

Commencement Date: It came into force on **1st September 1872** with prospective effect

Note: This act is now applicable in Jammu & Kashmir since the revocation of article 370 and incorporation of Jammu & Kashmir Reorganisation Act, 2019

Definitions**Section 2(h) Contract**

An agreement enforceable by law is a contract. These definition indicate that a contract essentially consists of two distinct parts. First, there must be an **agreement**. Secondly, such an agreement must be **enforceable by law**.



Contract = Agreement + Enforceability by law(1)

Section 2(e) Agreement

Every **promise** or every set of promises forming **consideration for each other** is an agreement.



Now, Contract = Agreement (Promise + Consideration) + Enforceability by law(2)

Section 2(b) Promise

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.



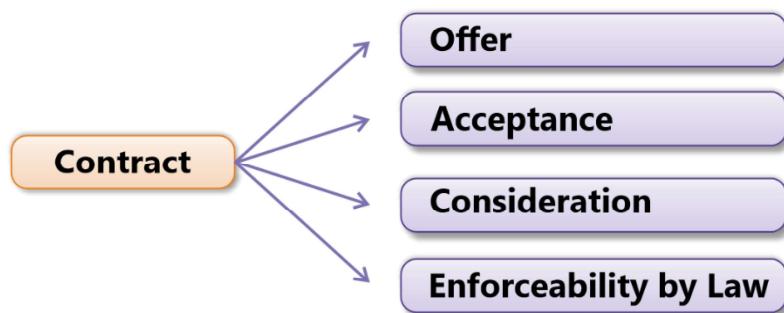
Thus, Offer + Acceptance = **Promise**.

Now equation will be

Contract = Offer + Acceptance + Consideration + Enforceability by Law(3)

Section 2(a) Proposal/Offer

When one person **signifies to another his willingness to do or to abstain from doing anything**, with a view to obtain the assent of that other, to such act or abstinence, he is said to make a proposal.





- The person giving an offer is called an **offeror**.
- The person to whom the offer is made is called **offeree**.
- Offeree may or may not accept the offer.

Section 2(c) Once the Proposal is accepted, the offeror becomes a **Promisor**, and the offeree becomes a **Promisee**.

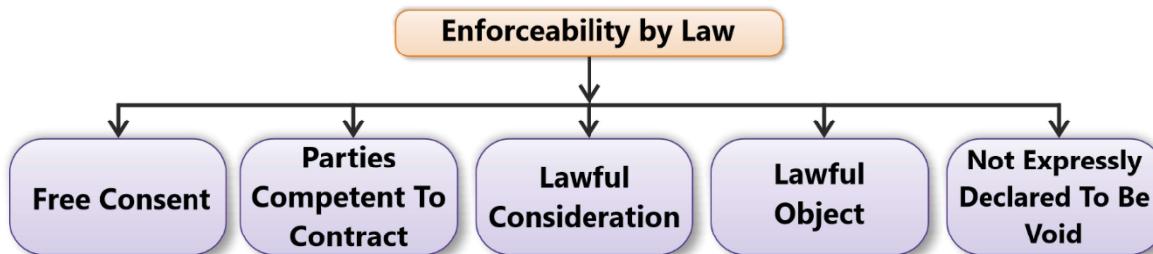
Difference between Agreement and Contract

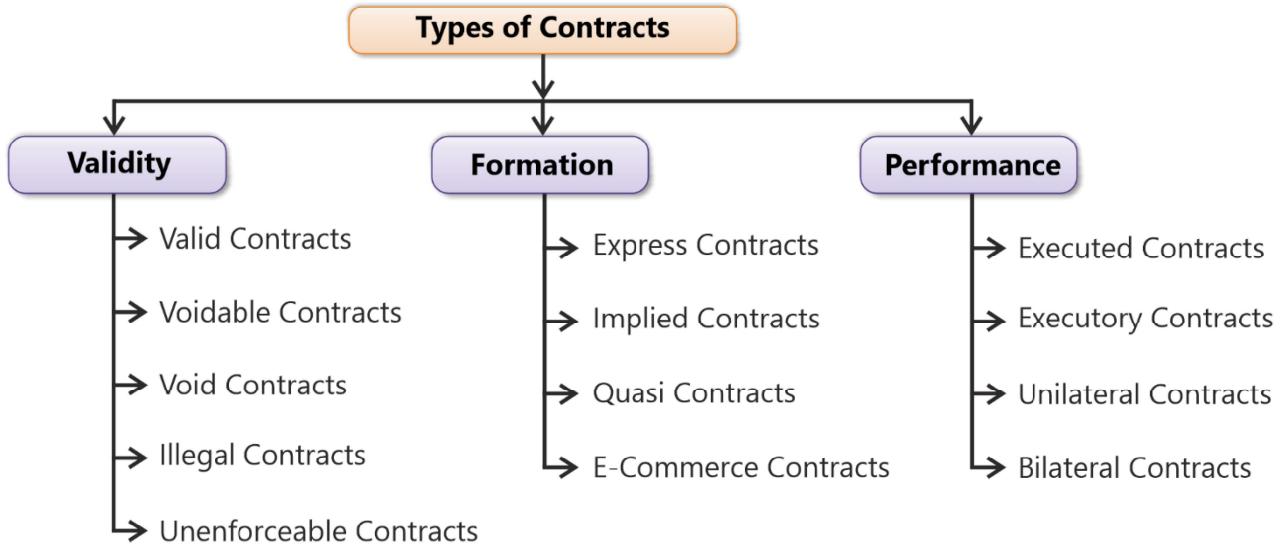
Basis Of Differences	Agreement [Section 2 (e)]	Contract [Section 2 (h)]
Meaning	Every promise and every set of promises, forming the consideration for each other. (Offer+ Acceptance)	Agreement enforceable by law. (Agreement + Legal enforceability)
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation . An agreement does not always grant rights to the parties.	Necessarily creates a legal obligation . A contract always grants certain rights to every party.
Nature	All agreement are not contracts .	All contracts are agreements .

Enforceability By Law

Section 10 All agreements are contracts if they are made by the **free consent** of the **parties competent to contract** for a **lawful consideration** with a **lawful object** and are **not expressly declared to be void**.

If all the 5 conditions are fulfilled, then all agreements will become contracts.





ON THE BASIS OF VALIDITY

1. Valid Contract.

An agreement to constitute a valid contract must have **all the following essential elements** as under:

Essential Elements of a Contract

- Free Consent
- Capacity of parties
- Lawful consideration
- Lawful object
- Not expressly declared VOID
- Valid Offer and Acceptance → **Parties must Intend to Create Obligations**
- Consensus Ad idem
- Certainty of Performance
- Other legal Formalities
- Two Parties



In order to create a valid contract, there are **certain other additional conditions** which must be fulfilled, apart from those mentioned above:

(i) Two Parties:

- One cannot contract with himself.
- A contract involves **at least two parties ie.,** One party making the offer and the other party accepting it.
- A contract may be made only by natural persons and by other persons having legal existence e.g. companies, universities etc. It is necessary to remember that **identity of the parties should be ascertainable.**

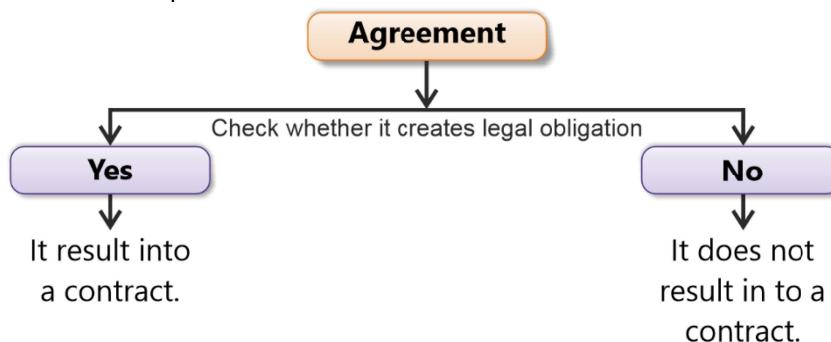


Relevant Case Law : State of Gujarat vs. Ramanlal S & Co.

When on dissolution of a partnership, the assets of the firm were divided among the partners, the sales tax officer wanted to tax this transaction. It was held that it was not a sale. The partners being joint owner of those assets cannot be both buyer and seller.

(ii) Parties must Intend to Create Obligations:

There must be an intention to create a legal relationship between the parties.



Relevant Case Law: Balfour v/s Balfour

An agreement had been made between a husband and wife to provide the wife with a monthly allowance. The agreement wouldn't be enforceable in the court of law even when the husband failed to do so, since it was a social agreement and not made with the intention to create a legal relationship.

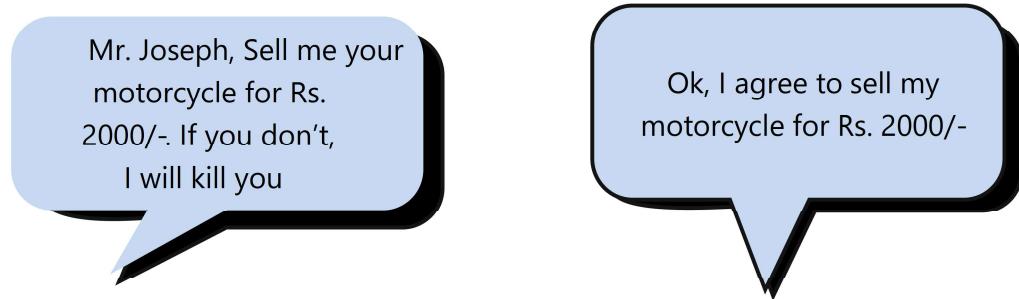
2. Voidable Contracts

As per **Section 2(i)**, 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 a voidable contract.



- A voidable contract is one **which may be repudiated at the will of one or more of the parties but not at the will of the other or others.** However, until it is so repudiated, it remains valid and binding.

- A voidable contract is one which a **party can put to an end**. He can exercise his option, **if his consent was not free**.



- The contract will **however be binding, if he does not exercise his option** to avoid it within a reasonable time.

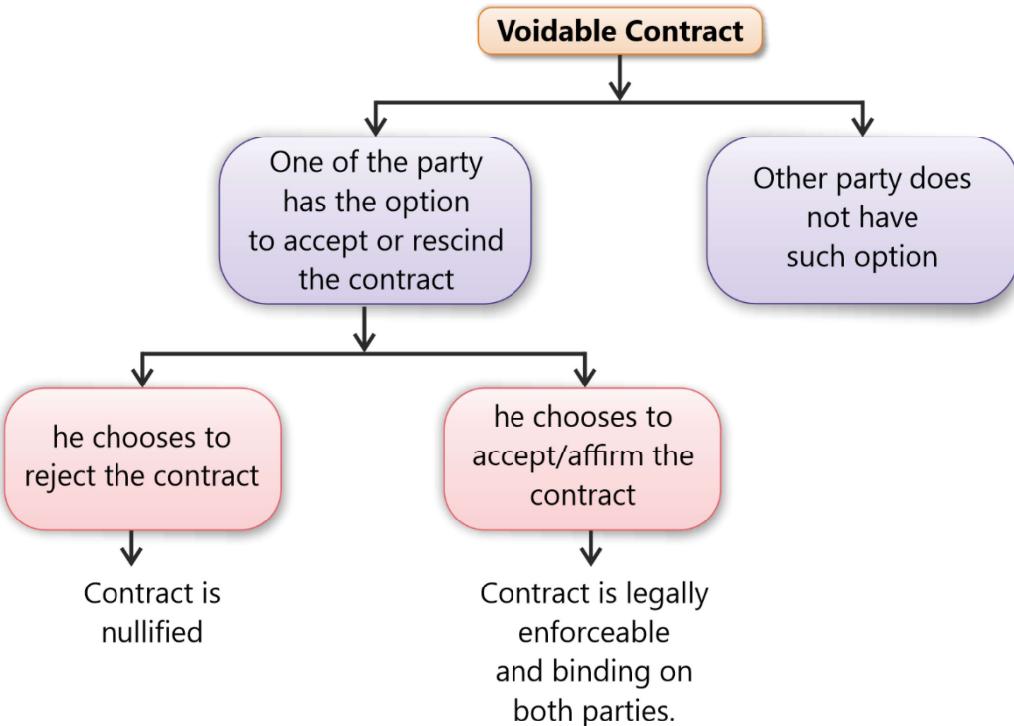


Miss Nancy



Mr. Joseph

Here the Contract is voidable at the option Mr. Joseph. Miss nancy is not allowed to rescind the contract.



3. Void Contracts

As per **Sections 2(j)** A contract which **ceases to be enforceable by law becomes void when it ceases to be so enforceable**

- A void agreement is **one which is destitute of all legal effects**.
- It **cannot be enforced** and confers no rights on either party.
- It is really **not a contract** at all as it is non-existent.



NATURE OF CONTRACT

Note:

Void Agreements: As per **Sections 2(g)** All agreements which are **not enforceable by law** are known as void agreements. These are **Void-ab-initio (Void from the very beginning)**.

Distinction between a Void Contract and Voidable Contract

S.NO.	BASIS	VOID CONTRACT [Section 2(j)]	VOIDABLE CONTRACT [Section 2(i)]
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	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 a voidable contract.
2	Enforceability	A void contract cannot be enforced at all .	It is enforceable only at the option of aggrieved party and not at the option of other party.
3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free .
4	Performance of contract	A void contract cannot be performed .	If the aggrieved party does not , within reasonable time, exercise his right to avoid the contract , any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time . If so, rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

4. Illegal Contracts

When either object of the contract or consideration of the contract which were **lawful at the time of formation of contract subsequently become illegal**, the contract becomes illegal

- It is a contract which the **law forbids** to be made.
- The court will **not enforce such a contract and also the connected contract. Collateral Agreements to such contracts will also be tainted with illegality** and are, therefore, **not enforceable**.
- **All illegal agreements are void but all void agreements are not necessarily illegal.** Despite this, there is similarity between them is that in both cases they are **void ab initio and cannot be enforced by law**.



- An illegal agreement is an **unlawful agreement**. Such an agreement, like the void agreement has no legal effects as between the immediate parties.

Distinction between a Void Agreement and Illegal Contract

BASIS	VOID AGREEMENT [Section 2(g)]	ILLEGAL CONTRACT
Scope	A void agreement is not necessarily illegal .	An illegal Contract is always void .
Nature	Not forbidden under law.	Are Forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment
Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void .

5. Unenforceable Contract

- Where a contract is good in substance but **because of some technical defect** i.e., absence in writing, barred by limitation, registration or stamping etc. they can't be made enforceable in the eyes of law.

For instance, an agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under-stamped.

- One or both the parties **cannot sue upon it**, it is described as an unenforceable contract.

An unenforceable contract is neither void nor voidable, but it cannot be enforced in the court because it lacks some technicalities of any other law.

ON THE BASIS OF MODE OF FORMATION

1. Express Contracts



- A contract would be an express contract if the **terms are expressed by words or in writing**.
- Sections 9** of the Act provides that if a proposal or acceptance of any promise is **made in words or in writing**, the promise is said to be express.
- It is standard form of contract usually entered into.



NATURE OF CONTRACT

2. Implied Contracts

- Most often the implication is **by action or conduct of parties or course of dealings** between them or **circumstances of the case**.
- Sections 9** of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made **otherwise than in words**, the promise is said to be implied.



Tacit Contracts

- The word **Tacit means silent**.
- Tacit contracts are those that are inferred through the **conduct of parties without any words spoken or written**.

3. Quasi Contracts



Sometimes, the **obligations are created by law** (regardless of agreement) these obligations are known as quasi contracts. There is no exchange of promise in this kind of contract.

- The **law creates and enforces legal rights and obligations** when no real contract exists. Such obligations are known as quasi-contracts.
- In other words, it is a contract in which there is **no intention on part of either party** to make a contract, **but law imposes a contract** upon the parties.
- These type contracts imposed by law and are based on the **principle of equity that means "no person is allowed to enrich himself at the cost of others"**.

4. E-Contracts

When a contract is entered into by two or more parties **using electronics means**, such as e-mails is known as e-commerce contracts.



- In electronic commerce, different parties/persons create networks which are linked to other networks through EDI-Electronic Data Inter change.
- This helps in doing **business transactions using electronic mode**.
- These are known as **EDI contracts or Cyber contracts or mouse click contracts**

ON THE BASIC OF PERFORMANCE

1. Executed Contracts

A contract where all the parties to the contract performed their respective promises is known as **Executed Contract**. When the **act is done or executed or the forbearance is brought on record**, then the contract is an executed contract.



2. Executory Contracts

A contract under which **whole or something is still remained to be performed** by the party/parties to the contract. Such **consideration is to be performed in future** only and therefore these contracts are described as executory contracts.



3. Unilateral Contracts

It is one **where offeror promises to do something only when the offeree has done his desired act**. In such contract if the offeree performs task, then offeror is bound for the performance. If offeree does not, offeree is not bound to perform. Unilateral contract is a one-sided contract in which **one party has performed his duty or obligation fixed in contract if the other party's obligation is outstanding**.

4. Bilateral Contracts

It is one wherein there is an **obligation on the part of both the parties** to contract to do or to refrain from doing a particular thing. A Bilateral contract is one where the **obligation or promise is fixed on the part of both** the parties at the time of contract, and both have to perform the obligations.

ON THE BASIS OF RECOGNITION IN ENGLISH LAW

1. Contract of Record:

- It is either a Judgment of a Court or a Recognizance.
- A **Judgement** is an obligation imposed by Court upon one or more persons in favour of another/others. In real sense, it is not a Contract, as it is not based upon any agreement.
- Recognizance** is a Bond by which a person undertakes before a court or Magistrate to observe some condition e.g. to appear on summons.
- Contracts of Record derive their **binding force from the authority of the Court**.

2. Contract under Seal:

- A Contract under Seal is one which **derives its binding force from its form alone**.
- It is in **writing and signed, sealed** and delivered by the parties.
- It is also called a **Deed or a Specialty Contract**.

