



## MOHANLAL SUKHDIA UNIVERSITY, UDAIPUR

### FACULTY OF LAW

#### FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

PAPER - II (PAPER CODE - 6001): (PAPER NAME - **CONTRACT - I**)

#### **(GENERAL PRINCIPLES OF CONTRACT (SECTION 1-75 & SPECIFIC RELIEF ACT, 1963)) COMPULSORY PAPER)**

Max. Marks: 100

Min. Marks: 36

**Note:** A. In order to ensure that students do not leave out important portions of the syllabus, examiners shall be free to repeat the questions set in the previous examination.

B. Leading cases prescribed under this paper may be read whenever they are relevant.

1. (A) Meaning, Elements and Characteristics of contract.  
(B) Basis of Contract.  
(C) Classification of Contract, Including the standard form of contracts.
2. (A) **Proposal:** Meaning, Elements and Characteristics of Proposal, Distinction between Proposal and Invitation of Proposal.  
(B) **Acceptance:** Meaning, Mode and Characteristics of Acceptance.  
(C) Communication, Revocation & Termination of Proposal & Acceptance.
3. **Consideration:**  
(A) Meaning, Definition and Elements of Consideration.  
(B) Unlawful consideration and object.  
(C) Concept of stranger to contract & exception of Privity of contract.  
(D) Exceptions to consideration.
4. **Capacity to Contract:**  
(A) Who cannot make a Contract, Who is minor and the place of minor under the law of Contract.  
(B) Person of unsound mind, nature of contract by person of Unsound Mind.  
(C) Person deprived of the capacity of contract.
5. **Free Consent:**  
(A) Meaning of Consent and the free Consent.  
(B) Factors rendering Consent not free and their effect upon the validity of Contract.
6. **Void Agreements:**  
(A) Agreements in restraint of marriage:  
(B) Freedom of trade and right to initiate legal proceedings.  
(C) Agreements involving uncertainty.  
(D) Wager and impossibility.  
(E) Contingent contract.
7. **Doctrine of Frustration**
8. **Certain relations resembling to those created by Contract (Quasi -Contract).**
9. **Performance of Contract:**  
(A) Who is liable to perform joint rights and joint liability and performance of reciprocal promises?  
(B) Time, Place and Manner of Performance.  
(C) Discharge from liability to perform the contract.  
(D) Novation

Omitted

*Omitted*

**10. Breach of Contract:**

- (A) Concept.
- (B) Remedies for breach of contract-
- (C) Damages - Measure of damages and remoteness of damages

**11. Specific Relief Act 1963.**

- (A) Specific Relief
- (B) Specific Performance of Contract
- (C) Rescission of Contracts
- (D) Cancellation of Instruments
- (E) Declaratory Decree, Needs, objects
- (F) Injunctions

**LEADING CASES FOR EXAMINATION:**

1. Balfour v. Balfour, [1919] 2 KB 571
2. Lalman Shukla v. Gauri Dutt, (1913) 11, ALL L.J. 489
3. Carlill v. Carbolic Smoke Ball Co. (1843) I.Q.B. 256.
4. Mohri Bibee v. Dharmodas Ghose, 30 I.A. 116.
5. Krell v Henry, [1903] 2 KB 740

**CASES FOR READING:**

1. Harvey v. Facey (Bumper Hall Pen case), [1893] AC 552
2. Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd., [1915] AC 847

**SUGGESTED READINGS:**

1. Anson's Law of Contract
2. Mulla : The Indian Contract Act (Student Edition)
3. Pollock & Mulla : Indian Contract Act
4. Atiyah P.S. : An Introduction to the law of Contract.
5. Pollock & Mulla : Indian Contract Act and Specific Relief Act.
6. V.G. Ramchandra : The Law of Contract in India.
7. Cheshire and Fifoot : The Law of Contract.
8. Chitty : Contracts (General Principles) Vol. - I
9. Avtar Singh: Law of Contract
10. Aqil Ahmed : Specific Relief Act
11. Avtar Singh : संविदा विधि
12. I.C. Saxena : संविदा विधि
13. S.K. Kapoor: संविदा विधि
14. Dr. R.L. Bhatt: संविदा विधि
15. Dr. Y.S. Sharma: संविदा विधि

# Contract - I (General Principles of Contract)

By Dr. Shilpa Seth

Substantive Law: defines rights & liabilities of individuals and collective bodies.

refers how facts of each case are handled & how eg.: → Criminal Laws → The IPC, 1860, Domestic Violence Act, 2005, etc.

to penalize or ascertain damages in each case.

→ Civil Laws → The Indian Contracts Act, 1872, The Companies Act, 2013, The Factory Act, 1948 The Transfer of Property Act, 1882 The Hindu Marriage Act, 1955 etc.

Procedural law: The law which tells about how the courts & officers dealing with the law act in giving effects to the substantive law of the land.

refers to the different processes through which a case proceeds.

eg.: → Civil Procedure Code, 1908 (CPC)

→ Code of Criminal Procedure, 1973 (Cr. PC)

Personal Law:

- Hindu law

- Muslim law

Codified Law: यह लौट भारती के माध्यम से लिया जाता है।

Uncodified Law: There are no proper section for these laws.

# The Indian Contract Act, 1872

Agreement vs Contract

(कानूनी)

समझता है



An agreement enforceable by Law.

Every promise and every set of promises, forming the consideration for each other.

Basis For Comparison	Agreement	Contract
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by Law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability.
Defined in	Sec 2 (e)	Sec 2 (h)
In Writing	Not necessarily	Normally written and registered
Legal Obligation	Does not create legal obligation	Creates legal obligation
One in other	Every agreement need not be a contract.	All contracts are agreements
Scope	Wide	Narrow

How agreement starts?

- proposal → when a person (promisor) offers something to someone else (promisee).
- Consent
- Promisor & promisee
- Proposal accepted is promise
- if broken is breach
- Every promise (forming consideration for each other) is an agreement.

Person → means means legal person, whose existence in the eye of Law. e.g. Companies, Govt. etc.

Promisor → The person who make proposal.

Promisee → The person accepting the proposal.

According to Sec 10 of Indian Contract Act, 1872; There are five essential element for a valid contract:

- 1) Competent Parties
- 2) Free consent
- 3) Lawful consideration
- 4) Lawful object.
- 5) Not barred by any Law.

It is not required for a valid contract to be in written.

Only those contracts which are done by the companies or for the transfer of property are required to be done in written.

According to Indian Contract Act 1872 sec 2 (h) the short definition of contract is

An agreement enforceable by law is a contract.

The definition of contract as per Indian Contract Act 1872 sec 2(b) is

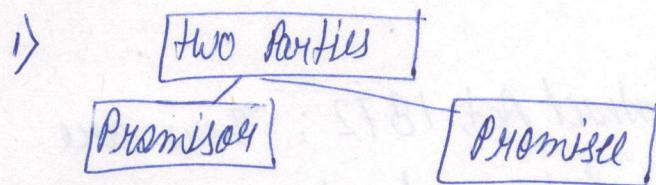
When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

A proposal, when accepted, becomes a promise.

As per sec 2(c) the definition of agreement is

Every promise and set of promises, forming the consideration for each other, is an agreement.

For a valid contract:



1) Any act or adstinance

2) Communication

Lalman ~~S~~ Shukla v/s Gauri Dutt, 1913 40 ALJ 489

This case is about the examination of the validity of a contract if there exists no acceptance.

Sec 3 → The proposal must be communicated to the person who is expected to accept the offer.

Offer + Acceptance = Agreement

Agreement + Enforceable by law = Contract

3) Obtain the consent

4) Certain

5) Intention to create a legal relationship.

Merritt v/s Merritt (1970)

Intention to create legal relations

Mr. & Mrs. Merritt built a house, where it was agreed to put it in joint names.

but

- Mrs Merritt has left Mrs. Merritt to live with another woman.
- So, Mrs. Merritt asked her husband for some arrangement to be made in future.
- Mr. Merritt agreed to \$40 per month & they signed a doc. with a condition.
- Mr. Merritt do not want to fulfill as what has been agreed in the documents after Mrs. Merritt has paid all the mortgage payments.
- When Mrs. Merritt want to claim the ownership of house, he didn't transfer the property to her.
- The court held that the agreement made by parties enforceable. Furthermore, the payment of mortgage was a detriment to Mrs. Merritt and her husband received benefit from that.

Therefore, Mrs. Merritt was entitled to relief claimed.

- They already signed document that been agreed which ~~was~~ has a succinct and clear intention that parties bound by the obligations to the contract.

## Balfour v/s Balfour (1919)

(wife)

(husband)

- There was no intention to create legal relations.
- Case of Domestic agreement.
- Mr. Balfour has to go to the other country.
- Mrs. Balfour ~~has~~ was having some physical issues, so she can't go with him.
- Mr. Balfour promise (before going) to her that he will take care of her finances by paying £ 30 (30 Euro) every month.
- Due to long distance relationship they started fighting & Mr. Balfour stops sending money to her.
- The court said these are domestic agreement and is not a ~~not~~ contract.

Domestic and Social  
agreement doesn't  
have intention to  
create a legal  
relation

↑  
These are not contract  
And thus not enforceable  
by law

Difference between

Balfour v/s Balfour

Merritt v/s Merritt

- |                             |  |
|-----------------------------|--|
| 1) Oral Agreement           | 1) Written Agreement                       |
| 2) Unregistered             | 2) Registered                              |
| 3) This case is not tenable | 3) This case is tenable (valid/मान्य/लागू) |
| 4) This is not a contract   | 4) This is a contract                      |

Standard form of Contract:

OR

Private Legislation

OR

Compulsory contract

OR

Contract of Adhesion

- Uniformed

One sided contract which we need to accept to get the services. e.g. Companies job offer letter, Terms & Conditions of a service provider etc.

Protective Devices / protection of victims :- (दिग्देवता या फारसी)

(1) - Reasonable notice

Parker vs. Eastern Railway Company  
(1877) Volume - 2 C.P.D. 416

 Civil Petition Decisions  
(In this suit the ignorance of notice happened)

Henderson vs. Stevenson  
(1875) ~~Volume~~ 32 L.T. 702 (Ship case)

Mc Libon vs. Combaghini mariamal D France  
(1880) Vol. 6 series 229

(2) - The contract notice must be contemporaneous with the contract (एक-यहा समय के समानांतर होना चाहिए)

Ole vs. Marbora court line.

(1949) 1 K.B. 532

(1949) 1 AIR 127 CA

(3) - Contractual document (संधिदामक दस्तावेज़)

Chapelton vs. Berry Urban district council

(1940) 1 K.B. 532

(1940) 1 AIR 356

#### (4)- Misrepresentation (मानविकी)

Cartis vs Chemical Cleaning & Dyeing Company  
1951 (1) AIR 631

#### (5)- Unreasonable terms (अनुचित शर्तें)

Lily White vs Manuswami  
(AIR 1966 Madras HC pg.no. 13)

#### 6) Theory of fundamental breach of Contract:

Dorish vs Collins 1945 AIR 247

In this case Collins gives the dress to wash to someone else where; Dorish gets a receipt that Collins will wash the dress.

#### 7) Strict Construction of exemption clauses :

also called Rule of contra proferentem

- there is no chance of uncertainty.

#### 8) Liability under tort (संतोषी)

A wrongful ~~act~~ act

White vs John Warwick & Co. Ltd.

~~AIR~~ (1953)- 1 WLR 1285

what is major diff. b/w tort & crime

Tort of mischief in   
~~देवता~~ देवता

# Types of Contract

## Validity

- valid
- void
- Voidable [Either void or valid]
- Illegal agreements
- ~~An enforceable~~
- Unenforceable Contracts  
(having technical error)

## Formation

- Express
- Implied
- Contingent / collateral
- <sup>Imp</sup> Quasi contract

## Performance

- Executed Contracts
- Executory Contracts
- Unilateral contracts
- Bilateral contracts

1 March 2021

By Dr. Shilpa.

## Sec 10 : Valid Contract

- 1) Competent Parties <sup>sec 11, 12</sup> [Capacity to contract]
- 2) Free consent
- 3) Lawful Consideration
- 4) Lawful object
- 5) Not barred by any Law.
- 6) Intention to create legal relation.

At the time of contract, the intention to create a legal relation.

Standard contracts are always in print form.

There is no requirement of any document to form a contract.

If the transaction of immovable property which exceed Rs. 100 it should be in a proper document & registered

Or also if it is related to company law or partnership firm.

## 1) Competent Parties :— Sec 11, 12

मजबूत प्रतिकार

→ Major — 18 years

→ Sound mind

→ Not disqualified by Law

Major:-

Any contract which is not done by competent party is void contract.

M. Imp Full Question [Mohri Biwi Vs Dharmodas Gosh] 1903

Imp principle

Doctorine of Estoppel  
- when a fact is accepted it can't be denied. Direct or behaviour acceptance.

It was said first time that if a minor will do a contract then

it will be void from starting.

void-ab-initio

This principle is not applied in case of minor.

- Sec 64 of Indian Contract Act for void contract; Any deal happens will be reverted. **Doctrine of Subrogation** ↓  
or deal amount
  - Sec 65 for voidable contract; if contract is void, any deal happens will be reverted or in the ~~initial~~ position.
- In case of minor it is ~~not~~ considered only considered as void-ab-initio. Minor will not be liable for any deal.

→ Specific Relief Act - 1963 (Sec - 41)  
(not valid in case of minor)

[ Lezlee V/s Sheel ] In this case the minor represent himself as major & took money.

[ Khan Gul V/s Lakha Singh ]  
AIR 1928 Lah 603

### Void-ab-initio

It means the  
Doctrine of Subrogation,  
Doctrine of Estoppel,  
sec - 64 and sec - 65  
will not be applicable

In Specific Relief Act - 1963 Act Sec - 33 was inserted.  
to give discriminatory power to apply law on minor.

### Sound Mind:

- The person should be in capacity to take decision with all his senses present.

### Not disqualify by court:

- Civil death (21-212T)
- Insolvency
- Prisoner (during his prison time)
- Foreign enemy
- Foreign Ambassador / Envoy

## 2) Free Consent (Sec - 14)

A free consent which is not taken under coercion, undue influence,

### a) Coercion : (प्रपादन)

[Rangnayakamma v/s Alwarsetti] {  
- Voidable Contract  
- death of husband in very young age  
- pressure to debt a child of any relative to allow funeral.  
- IPC 297 (To insult a dead body)

[Muthachettiar v/s Karuppanchetti] {  
- Unlawful detention  
- account was not ready to handover the accounts

### b) Undue Influence : (Sec - 16) (अस्वयक अस्ति)

(जिद्दा में किया जाने वाला काम)

(जहाँ किसी कारण से हम मना नहीं कर पाए)

will domination of one by someone & took advantage of that.

जहाँ इस बारे में  
जहाँ ही भाव में  
सदाचारी व्यक्ति  
के दबाव है।

→ Dominate the will of the other (voidable)

◦ Real or apparent authority (e.g., Boss & Employee)

◦ fiduciary relationship (जहाँ विश्वास हो) (विश्वास पर आधारित संबंध)  
Manu Singh v/s Umadutt Pandey

◦ Mental and bodily distress

Sher Singh v/s Prithi Singh

→ Unfair advantage.  
(voidable)

- False statement
- Active concealment of fact
- Promise without any intention to perform.
- Any other act to deceive
- Fraudulent in eyes of law.

Silence amounts to Fraud?

- "Silence amounts to speech".
- "Duty to speak" - fiduciary relationship
- "Change in facts" - Before acceptance

[With v/s 'O'flengas]

- doctor - clinic - per day income 1L (approx.)
- want to sell clinic
- after proposal
- income goes down  
1L to 20K (approx.)
- Change in fact. (income change)

- Disclose of half truth

(Where no need to speak & if speak half truth is delivered)

## d) Misrepresentation (sec 18) - (voidable)

- Unintentional
- Positive assertion
- no intention to deceive other party.

### 1) Positive assertion / Statement

[Cossen Steam Navigation Co. v/s Sudarshan Dharmse]

### 2) Breach of Duty

### 3) Make a Mistake → "Misrepresentation of facts"

Difference b/w Fraud & Misrepresentation

Fraud	Misrepresentation
Intentional	* Unintentional
Tort + offence	not under tort & no offence
Void contract + compensation	Void contract (Doctrine of subrogation)

# Mistake (मूल्य) - Sec 13, 20, 21, 22

## Mistake of Law

Mistake of Indian Law      Mistake of foreign Law      Mistake of Personal Rights

## Mistake of facts

Common mistake  
Mutual mistake  
Unilateral mistake

## Indian Law

Mistake as to the identity of the parties

Bolten v/s John's

Mistake as to sub matter of the contract

Kapoor v/s Phibbs

Nargis Das v/s Chotulal Mishra

Different subject matter in mind Refels v/s Vikals

Price of subject matter 13 Rs. v/s 30 Rs.

Quantity of sub matter Henckle v/s Pept

Mistake as to the Nature of transact  
Pratap v/s Puniya

कुलारियाडी v/s बनारसी

Identity to the sub matter

Regarding existence of sub. matter Cortier v/s Hestayre

Title/Rights related

Substance of the sub matter

Different subject matter in mind

Price of subject matter

Quantity of sub matter

Related to quality

## Mistake of Indian Law :

"Ignorantia Juris non excusat or ~~excuse~~ ignorance of Law is no excuse"

## Mistake of Personal Rights :

[ Cooper v/s Phibbs 1867 LR (2) 149 ]  
Law Records

- Cooper was not aware of his right.  
(कूपर की जानकारी (विवाद) कूपर को दी गयी थी)
- It was accepted that cooper was don't know about his right.

[Bottom Bolton vs Johns (1957) 27 L.J. X 117 : 157 G.R. 232]

- Broke burst sold Johns business to Bolten and Bolten was unaware
- Bolten ask to send the books & the bill was raised by John & bolten saw the difference in the bill.

Mistake of identification of subject matter:

(संविधा की विषय वर्त्तमान मूल) (Subject matter)

Mistake of existence of subject matter:

[Cortier vs Hesdye (1856) 5 H.L.C 673]

- Some wheat was going from Australia to England via ship.  
(A) (B)
- B sold the wheat in advance. (before it reaches to B).
- Because of too much heat the wheat were sold in transit only to avoid the wheat damage.
- Now there is no existence of the wheat for the person it was sold by B.

Mistake of Title:

[Kapoor vs Phibbs 1867 H.L. 149]

- दाता मालिक
- The right to catch was of मालिक
- ~~दाता~~ मालिक was thinking that the title was with daughter of his uncle.
- In real the original title was with ~~दाता~~ मालिक

## Mistakes in substance of subject matter:

[Nargis das Kothari v/s Chotolal Misra 1925 ILR 50  
Cal. HC 615]

[Sekh Bros. v/s Orshnes 1957 AC 136 PC]

## Different subject matter in mind:

[Rafels v/s Verabs 1864 Hallstone & Cottatman 906  
Challatman]

- Pearlers named ship
- One was going to in October & another in December.
- There is the misunderstanding.

## Mistake regarding price of the subject matter:

Agreement done with different amount, it is void.

## Quantity of the subject matter:

[Hawke v/s Pef 1817 Law Reports (X) 7]

## Mistake regarding to quality of the subject matter:

## Mistake as to nature of the transaction:

[Pratap v/s Punya AIR 1977 MP HC 108] → breach of trust  
→ property sold by pratap

[Dulria Devi v/s Jangardan Singh AIR 1990 SC 1173]

(उद्देश्य की वैधता) Legality of Object (Sec 10)  
(Sec 23)

Forbidden by Law  
(विधि द्वारा निषिद्ध)  
Defect in the provision of Law  
(विधिक उपकरण  
को विकल करना)

Fraudulent (कपटपूर्ण)  
Injury to person or property  
(वाइर पा संपत्ति  
को नुकसान)

Immoral (अनामिक)  
opposed by public policy  
(लोकनिति के विरुद्ध)

## Consideration

(उत्तम)

By Dr. Shilpa

2 Ques In Exam

\* Privity of Contract संविदा के संसाफ़ का सिक्काना

OR

Stranger to contract cannot sue

संविदा से अज्ञाती व्यक्ति वाले बड़े नहीं हो सकते



Exception are there in family matters.

so, in that the party who is not a part of contract can perform the contract.

At the desire of promisor, promisee or any other person has done or abstained (विरुद्ध) from doing or does or promises to do or to abstain to doing something such act or abstinence or promisee is called a consideration for the promise.