

Contract : Meaning, Definition & Characteristics of a valid contract

Meaning of Contract [संविद का अर्थ]

The word 'Contract' is derived from the latin word "Contractum" which means 'meet together' or 'to bring together'. That is why you can say that bringing two or more person for the purpose of making agreement is called a Contract.

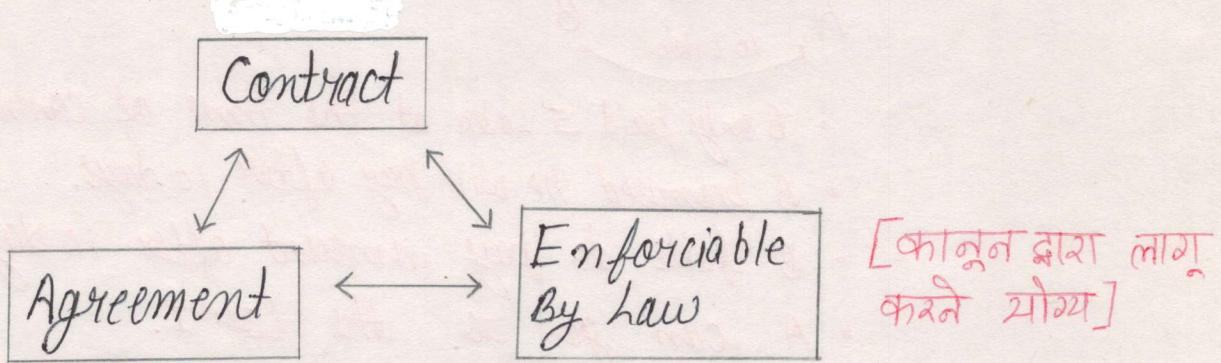
Contract is a legal term.

Definition of Contract [संविद की परिभ्राष्ट]

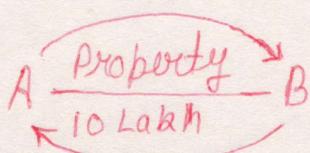
Section 2(h) of ICA, 1872, defines a contract.

"An agreement enforceable by law is a contract."

The contract consists of two major elements:



Offer_{2(a)} + Acceptance_{2(b)} + Consideration<sub>(optional)
2(d)</sub> ⇒ Agreement_{2(e)}



A - 10 Lakh
B - Property } Consideration

Enforceable by Law:

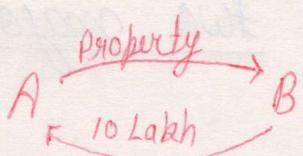
An agreement may be regarded as a contract if it is enforceable by law.

i.e., It give rise to such obligations as may be enforced by the Court.

Moral, social and religious obligations do not agreements because they do not create any legal duties.

Eg.: Ram says to Mohan, "Please come to my house, and then we shall go to cinema together." Mohan went to Ram's house but Ram could not spare time for movie due to some urgent work.

Here, Mohan cannot sue Ram for damages, if any, due to his not fulfilling the promise, the reason is that Ram was in social obligation only. Ram and Mohan has no intention to create any legal obligation.



- B only paid 5 Lakh at the time of contract.
- B promised he will pay after 10 days.
- B fails to pay amount after 10 days.
- A can go to the Court.

[Balfour v/s Balfour, 1919]

Wife

Husband

- Due to social obligation; the contract was not valid.

Remember :

- Promises should not be the sports of an idle hour or just metters of pleasantey, (~~enjoyment~~) never intended by the parties to have any serious effect whatsoever.
- Agreement made between husband and wife do not constitute contracts because they never intend to create any legal relation.

In sum, it has to be noted that the law of contract is concerned only with those obligations which ~~are~~ arise out of agreements, and with those agreements which create legal duties or relations.

Characteristics or Essentials of a Valid Contract :

Section 10 states that all agreements are contracts if they are made by -

- 1) Free consent of parties.
- 2) Competent to contract.
- 3) For a lawful consideration & with a lawful object, and
- 4) are not hereby expressly declared to be void.

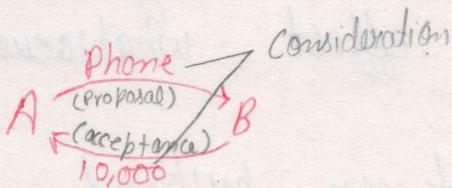
Thus, the essential elements or necessary conditions of an agreement to become a valid contract may be enumerated as follows -

(1) More than one parties [एक से आधिक पक्षकार] -

In order to create a valid contract, there must be two parties. A contract can't be constituted by a single person.

(2) Agreement [ठेटा॒व] - Offer and Acceptance

Eg.: A proposes to sell his phone to B for Rs. 10,000 and B accepts this proposal.



(3) Creating legal relations [ठेटा॒व का वैधानिक रूप में लागू होना]

A contract must be made with a view to creating legal relations.

It ~~mean~~ means that parties must intend that if one of them fails to perform his promise, one would be answerable in law for that failure.

Eg.: A father fails to pay his son the promised pocket pocket money. The son can't sue the father for failure of his promise because it was purely a domestic arrangement. It is thus clear that an agreement which does not result in creating legal relations is not a contract.

(4) Lawful Consideration [जैविक रूपीता]

Consideration means a reasonably equivalent or corresponding benefit passed on by the promisor to the promisee. It is something which is of some value in the eye of law.

Consideration must be lawful, i.e., it must not be forbidden by law, or not be fraudulent or must not involve or imply injury to the

person or property of another. Moreover, it must not be immoral or opposed to public policy.

Eg.: A promises to obtain for B an employment in a government organisation for which B promises to pay Rs. 100 000 ^{consideration} to A. Here consideration is unlawful as it amounts to a bribe which is forbidden by law.

(5) Capacity of parties to contract [पक्षकारों में संविदा करने की क्षमता] -

Section 11 of Contract Act states that the following persons are competent to contract:

- (i) who is of the age of majority according to the law to which he is subject,
- (ii) who is of sound mind, and
- (iii) who is not disqualified from contracting by any law to which he is subject.

Thus, a minor, lunatic, idiot and a drunken person cannot enter into a valid contract (with a few exceptions).

(6) Free Consent [स्वतंत्र सहमति] -

Section 14 of Contract Act states that consent is said to be free, when it is not caused by:

- (i) Coercion, sec. 15 [दबाव / अवश्यकता]

(ii) Undue Influence, sec. 16 [अनुचित प्रभाव]

(iii) Fraud, sec. 17 [छोड़ा]

(iv) Misrepresentation, sec 18 [फटकाना]

(v) Mistake, sec. 20-22 [गलति / गलत]

However, in case of mutual mistake, the agreement will be void.

(7) Lawful Object (वैधानिक उद्देश्य) -

Section 23 of Contract Act states that the object of the contract is not lawful if it is :

(i) Illegal,

(ii) Defeats the provisions of any law,

(iii) Is fraudulent,

(iv) Immoral or opposed to public policy and

(v) It involves or implies injury to the person or property of another.

Eg.: A hires a house from B for use as a gambling place. Gambling being an illegal act, the contract of hiring is void.

It is to be noted that for a contract to be valid, both consideration and object of agreement must be lawful.

(8) Certainty of meaning [अर्थ की निश्चितता] -

Section 29 of Contract Act, agreements the meaning of which is not certain or capable of being made certain, are void.

Therefore, to form a valid contract, it is absolutely essential that its terms must be clear and must not be uncertain, (अनिश्चित) vague (अस्पष्ट) or indefinite. (अनिश्चित कालीन)

Eg.: A agrees to sell B bike. [It is not a valid contract as the price of bike & the which bike is not clear] It is to be noted that if the meaning of the agreement could be made certain from the circumstances of the case, it will be treated as a valid contract.

A $\xrightarrow[\text{60000}]{\text{TVS Bike}}$ B is a valid contract.

(9) Agreement not expressly declared void [अधिनियम द्वारा समझाई / ठहराव रूप से शून्य घोषित नहीं किया गया है] -

Agreements mentioned in Section 24 to 30 of the Act have been expressly declared to be void.

They include :

- (i) agreement having consideration and object unlawful in part;
- (ii) agreement without consideration (with a few exception);
- (iii) agreement in restraint of marriage; Sec. 26
(अवशेष)
- (iv) agreement in restraint of trade; Sec. 27

(v) agreements in restraint of legal proceedings;

(vi) agreements having uncertain meaning; Sec 29 and,

(vii) agreements by way of wager (दाव/वाकी/शर्त) Sec 30

These agreements are not enforceable by Courts.

(10) Possibility of performance [विषयादन की संभावना] -

Section 56 of Contract Act states that an agreement to do an act impossible in itself is void.

Eg.: A promises B to make him immortal.
 This agreement is void because of impossibility of its performance. (उत्तर)

This is based on the maxim "Lex non cogit ad impossibilia", i.e., "Law does not compel (विवश) to do what is impossible."

(11) Completion of legal formalities [कानूनी औपचारिकताओं को पूरा करना] -

Contract Act does not require a contract in writing for its being valid. An oral agreement is as good as a written one.

But in certain cases the Contract Act has specified that the agreement must be made in writing or be registered. In such situations, the agreement must comply (पालन करना) with the necessary formalities in relation by writing, registration, stamping, attestation, witnesses etc.

A. Contract Which Must Be In Writing

- (i) A promise to pay a time-barred debt (~~समयवधु रुपा~~)
- (ii) lease, gift, sale or mortgage (~~प्रीरवी~~) of immovable property.
- (iii) Negotiable instruments like bills of exchange, promissory notes, cheques etc.
- (iv) Transfer of shares in a joint stock company.
- (v) Memorandum and Articles of Association of a limited company.
- (vi) Contracts of insurance
- (vii) Arbitration agreements [पंच-तियोग समझौता]
मान्यवधुता [Sec 7 of the Arbitration & conciliation Act, 1996]

```
graph LR; A -- Dispute --> B; A -- Dispute --> C((Arbitrator)); B -- Dispute --> C
```

Arbitrator 1, 3, 5, 7 की संभवा में हो सकते हैं।
जो की अपना विफ़ाय independently देते हैं।

 - A & B के बीच में dispute है।
 - दोनों party court में नहीं जाकर dispute बाहर ही sort out करना चाहती है।
 - तो यह दोनों द्वारा तीसरे व्यक्ति C को appoint करते हैं। जो arbitrator करना चाहता है।

B. Contract Which Must Be In Writing And Registered

- (i) Contract made without consideration on account of natural love and affection of parties standing in near relation to each other.
- (ii) Contracts relating to transfer of immovable property under the Transfer of Property Act, 1882.
- (iii) Contracts or documents which need compulsory registration under section 17 of Registration Act, 1908.

Eg.: Instruments of gifts of immovable property,
leases of immovable property for more than
one year, etc.

- (iv) Memorandum and Articles of Association, Debentures, Mortgages and Charges under the Companies Act, 2013
- (v) Transfer of motor vehicles under the Motor Vehicles Act 1939.