

# Indian Contract Act

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# Topics:



- ☐ Indian Contract Law Definition
  - ☐ Essential Element Of Valid Contract
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# Indian Contract Law

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

- Under Section 2(h), the Indian Contract Act defines a contract as an agreement which is enforceable by law.
- Contract = Agreement + Enforceability at law

# Definitions Of Contract

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**Sir Fredrik Pollock**– *“Every agreement and promise enforceable by law is a contract”*.

**Salmond**– *“A contract is an agreement creating and defining an obligation between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of others”*.

**Anson**– *“The law of contract is that branch of law which determines the circumstances in which a promise shall be legally binding on the person making it”*.

# Essential elements of a valid contract

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In a business, agreement or arrangement assumes a huge part in smooth working between two gatherings. In straightforward terms, the agreement is a composed arrangement between two gatherings, which contains specific commitments and is upheld by the law.





# ESSENTIAL ELEMENTS OF A VALID CONTRACT

## Essential elements of a valid contract

1. Two Or More Parties
2. Offer And Acceptance
3. Intention to Create legal Relationship
4. Capacity of Parties
5. Free Consent
6. Possibility of Performance
7. Lawful Object and Consideration
8. Agreement not Expressly Declared as void
9. Agreement should be clear and define
10. Legal Formalities



## 1. Two Or More Parties



To create a valid contract, there must be two parties, and both the parties must be major, of sound mind, and not disqualified by law. A single person cannot constitute a contract.



# Case



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- ❑ X invites Y to the dinner. Why accepts the invitation but fails to turn up can X sue Y for the damage?
- ❑ Solution :
- ❑ X cannot claim any damages from Y because the agreement between X and Y is not enforceable by law. It is a social agreement and the usual presumption in such agreement is that parties do not intend to create legal relationship.



## 2. Offer And Acceptance



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Agreement = Offer + Acceptance

**Offer :** According to Section 2(A) of the Indian Contracts Act, 1872, When a person expresses his willingness to another person to do or to abstain from doing something and also obtain the consent of such expression, it is called an offer.

- Express offer: The offer made by using words spoken or written is known as an express offer.
- Implied offer: The offer which could be understood by a conduct of parties or circumstances of case.

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- ❑ **Acceptance** : The Indian Contract Act 1872 defines acceptance in Section 2 (b) as “When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise”
  - ❑ **Rules Of acceptance**:-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.

# Invitation to offer



Invitation to offer is step before offer. In this person includes another and make a offer to him/her. If the second person responds to invitation of offer made by first person then it leads to offer. In this terms and conditions are made clear. Acceptance of invitation of offer does not lead to contract, it leads to Offer only.

- Examples
  - ✓ Government tender
  - ✓ Recruitment advertisement
  - ✓ Railway timetable
  - ✓ Restaurant menu card

# The major differences between an offer and an invitation to offer are as follows –



## Offer

- It is an expression of interest by a person to another person to do something or not for an approval.
- It is stated in section 2 (a) of Indian Contract Act, 1872.
- enters into a contract.
- essential to make an agreement.
- If offer is accepted, then it becomes an agreement.

## Invitation Offer

- It is an expression of interest by one person to another and to invite the other person to an offer.
- not defined in Indian Contract Act, 1872.
- After negotiations, a contract is created.
- not essential to make an agreement.
- If party/person responds to an invitation, then it becomes an offer.

# Case



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- Eg :- A makes an offer to B to sell a computer . B gets back after six months accepting the offer . During these time A had sold the computer to another person .B claims an agreement is formed by acceptance of an offer . A long silence taken as disinterest and so A was correct in assuming that B was not interested in offer.



### 3. Intension to Create legal Relationship

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- ✓ Intension to create legal relations is one of the major part of elements in contract. We Can Define intention to create legal relations as an intension to enter into legally binding contract or agreement.
- ✓ Agreement of social or domestic nature are not enforceable by law.

# Case



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- Case: Rose & Frank Co v J.R. Crompton & Bros 1923 KB  
In this it was held that for creating a contract there must be a common intention of the parties who are entering into the contract.
- In this it was held that for creating a contact there must be a common intension of the parties who are entering into the contract.

## 4. Capacity of Parties

According to Section 11 of ICA,  
1872 –Every person is competent  
to contract who

- ❖ Age is Majority
- ❖ Sound Mind
- ❖ Not Disqualified







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

They are:-

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

# Case



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- *Peter is 17 years and 6 months old. He needs some money to go on vacation with his friends. He approached a moneylender and borrows Rs 25,000. As security, he signs some papers mortgaging his laptop and motorcycle. Six months later, when he attains the age of majority, he files a suit declaring that the mortgage executed by him when he was a minor is void and should be cancelled.*

## 5. Free Consent

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The parties must enter into an agreement with free consent . The parties should enter into an agreement with his own wish and will and not by coercion, undue influence, fraud, mistake or misrepresentation.



# Case



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## ❑ ChikkamAnnamiraju v Seshamma 1917 Mad

In this case it was held that the threat of committing suicide is amounting to coercion within the meaning of Section 15 of the Indian Contract Act 1872 and the consent is not set to be free when the consent is taken by coercion.

## 6. Possibility of Performance

Agreement must be capable of performance. If agreement is not capable of performance, it is void. In order to make an agreement valid, the terms of the agreement must be clear, certain and capable of performance. An agreement to do an impossible act is void.

It should be ensured that the legal duty actually exists. But if a man who already has a legal obligation undertakes to do something or to do something in any of the admissible ways

i.e. the person has forgotten the choice that the law allows him to take is a good consideration.



# Case



- X agreed to sell a particular horse to Y. Later on, it was discovered that the horse was dead at the time of making the contract. Advice the parties.
- Solution : the agreement is void because both the parties were under a mistake of fact regarding existence of the subject matter. It is practically not possible to sell a dead horse.

## 7. Lawful Object and Consideration

- ✓ Object and consideration of an agreement must be lawful.
- ✓ It must not be illegal, immoral, forbidden by any law or opposed to public policy.  
Consideration means something in return.
- ✓ Case: Durga Prasad v Baldeo 1880 All. 221  
In this case it was held that consideration given for the promise must be moved by the desire of the promisor it should not be moved by some other person and the promise given by some other person was held to be not a sufficient consideration to support the promise.



The below-mentioned considerations and objects are not lawful as per the Contract Act

If it is forbidden by law

If it is against the provision of any other laws

If it is fraudulent

If it damages somebody's person or property

If it is in the opinion of courts, immoral or against the public policies



# Case



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- X agrees to pay Y rupees 1,00,000 if Y kills Z. To pay Y, X Borrows rupees 1,00,000 from W who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also refuses to replay the loan to W. Advice Y and W.
- Solution : the agreement between X and Y is an illegal agreement because its object is unlawful. Hence, Y cannot recover anything from X. Since the main agreement between X and Y is illegal, the agreement between X and W which is collateral to the main agreement is also void and hence W cannot recover anything from X.

## 8. Agreement not Expressly Declared as void



The Indian Contract Act 1872 defines a void agreement as “an agreement that is not enforceable by law”. And there can be many times of void agreements, some of which we have covered in the previous articles. But the contract states certain agreements that are expressly declared as void agreements.

- An agreement expressly declared to be void under sections 24 to 30 of the Act or under any other law, is not enforceable and is, thus, not a contract. For example, an agreement in restraint of trade or wagering agreements, are not enforceable.



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- ☐ An agreement in restraint of marriage
  - ☐ An agreement in restraint of trade
  - ☐ An agreement by way of wager

# Case



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- X agrees to pay Rs. 1,00,000 to Y if Y does not marry throughout his life. Y promises not to marry at all but later on X refuses to pay Rs. 1,00,000. Advise Y.
- Solution : Y cannot recover anything. The agreement between X and Y is in restraint of marriage which has been expressly declared void under section 26.

## 9. Agreement should be clear and define

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- ✓ An enforceable contract requires certainty of terms. It must be clear to the parties what the terms of the contract are.
- ✓ The offer or agreement must be clear and complete in all sense. Both parties should communicate to ensure there is no lapse in the contract act.
- ✓ An offer stated by the offeror must be clear in its communication so as to facilitate acceptance. Lack of clarity will result in the voidance of the offer made.



# Case



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- X agrees to Marry Y. Y dies before the marriage takes place. Is it a void agreement?
- Solution it is not a void agreement. It is a void contract because it was valid when it was entered into but subsequently became void on the death of Y.

## 10. Legal Formalities

- ✓ A contract can be both in oral or in writing.
- ✓ Contract must be signed and attested by witness and registered if required by the law.
- ✓ However, it is advisable that the contract must always be in writing because it will be easier to prove in the court if any dispute arises between the parties in future. Contract must be signed and attested by witness and registered if required by the law.
- ✓ Illustration: X entered into an oral agreement with Y to sell his bike. This is a valid agreement.



# Case



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- X polished Y's shoes without being asked by Y to do so. Y does not make any attempt to stop X from polishing the shoes. Is Y bound to make any payment to X?
- Solution : Y is bound to pay because he has accepted X's implied offer by conduct.





# Thank You

Priyansh