

# Introduction

What is contract??

# syllabus

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- 3. Definition of contract**
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# History of Contract Act, 1872

It was enacted mainly with a view to ensure reasonable fulfillment of expectation created by the promises of the parties and also enforcement of obligations prescribed by an agreement between the parties. The **Third Law commission of British India** formed in 1861 under the **stewardship of chairman Sir John Romilly**, with initial members as **Sir Edward Ryan, R. Lowe, J.M. Macleod, Sir W. Erle** (succeeded by **Sir. W.M. James**) and Justice Wills (succeeded by **J. Henderson**), had presented the report on contract law for India as **Draft Contract Law (1866)**. The Draft Law was enacted as **The Act 9 of 1872 on 25 April 1872** and the **Indian Contract Act, 1872** came into force with effect from **1 September 1872**.

# History of Contract Act, 1872

Before the enactment of the Indian Contract Act, 1872, there was no codified law governing contracts in India. In the Presidency Towns of **Madras, Bombay and Calcutta** law relating to contract was dealt with the Charter granted in **1726 by King George I to the East India Company**. Thereafter in **1781**, in the Presidency Towns, **Act of Settlement** passed by the British Government came into force. Act of Settlement required the Supreme Court of India that questions of inheritance and succession and all matters of contract and dealing between party and party should be determined in case of Hindu as per Hindu law and in case of Muslim as per Muslim law and when parties to a suit belonged to different persuasions, then the law of the defendant was to apply. In outside Presidency Towns matters with regard to contract was mainly dealt with through English Contract Laws; the principle of justice, equity and good conscience was followed.

# Formation of Contract

According to section 2(h) -

**“An agreement enforceable by law is a contract”**

In other words, the agreements may be of two types-

1. Agreement enforceable by Law;
2. Agreement not enforceable law.

# Formation of Contract

## 1. Agreement enforceable by Law:

This is the agreement which are enforceable by law only those can be the contracts, and never the others which are not enforceable by law.

## 2. Agreement not enforceable law:

An **unenforceable** contract or transaction is one that is valid, but which the court will not enforce. Unenforceable is usually used in contradistinction to **void** (or ***void ab initio***) and **voidable**. If the parties perform the agreement, it will be valid, but the court will not compel them if they do not.



# Formation of Contract

**“All contracts are agreements, but all agreements are not contract”**

**ABDUL GANI SEIKH**

**VS. JAGDISH MRIDHA AND OTHERS**

“ The alleged agreement between the parties is not a contract as all contracts are agreements, but all agreements are not contracts and such agreement can not be enforced as it is an illegal agreement and its enforcement would be tantamount to sub lease defeating the clause 10 of the lease deed.”

# Formation of Contract

The definition of the term “contract” given in section 2(h) is not exhaustive one, because it does not given a clear idea about contract.

## **According to section 2(e)**

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

We get two element from this section-

- Promise
- Consideration

# 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:

# What is promise

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: