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**JANUARY 2022**

**PREPARED BY:**

**MUKESH SINGH NEGI**

**LLB- Ist SEM**

Roll No:

*Submitted To*

**Dr. Manoj Sir**

*Topic*

**LAW OF CONSENT**

**LAW ASSIGNEMENT**

**A STUDENT PERSPECTIVE**

**HEERALAL YADAV LAW COLLEGE**

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Contract plays a significant role in our daily life. A contract is an agreement between two or more parties, which have obligation and rights according to the content of the agreement. A contract is legally enforceable. In India, contracts are governed by the Indian Contract Act, 1872.

# Contract

A set of promises may be oral or written in nature, which is legally enforceable is known as contract. It is a binding agreement between two or more parties. A contract includes variety of subjects such as exchange of goods, services, capital or promises of any of those. Contracts are part and parcel of our life. Contracts can be of various types depending on the terms and conditions. A contract creates mutual obligation on the contracting parties.

# Definitions of Contract

According to Pollock, every agreement and promise enforceable by law is a contract.

According to Salmond, A contract is an agreement creating and defining obligation between two or more persons by which rights are acquired by one or more to act or forbearance on the part of others.

According to 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.

According to Section 2(h) of the Indian Contract Act, 1872, An agreement enforceable by law is a contract.

From this definition, we find that a contract essentially consists of two elements i.e. an agreement and legal obligation i.e. a duty enforceable by law.

According to Cambridge Dictionary, Contract is a legal document that states and explains a formal agreement between two different people or groups, or the agreement itself.

# Law of Contract in India

In India, contracts are being governed by the British enacted legislation i.e. the Indian Contract Act, 1872. This act is based on the principle of English Common Law'. It deals efficiently with all the aspects of contract such as formation, enforcement etc. There are 11 Chapters and 266 sections however Sections 76 to 123 and 239 to 266 have been repealed.

Important Definitions in the Indian Contract Act, 1872

As per Section 13, Consent is defined as two or more persons are said to be consent when they agree upon the same thing in the same sense.

As per Section 14, Free consent is defined as consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

As per Section 15, Coercion is defined as the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 to 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

As per Section 16, Undue influence is defined as a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

As per Section 17, Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract.

As per Section 18, Misrepresentation means and includes:

The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; [Section 18(1)]

Any breach of duty which, without intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; [Section 18(2)]

Causing however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement; [Section 18(3)]

As per Section 31, Contingent contract is defined as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

As per Section 148, Bailment, Bailor and Bailee are defined as a bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the directions of the person delivering them. The person delivering the goods is called the bailor'. The person to whom they are delivered is called the bailee'.

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As per Section 182, Agent and Principal are defined as an agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

# Essential Elements of Contract

As per Section 10 of Indian Contract Act, 1872, All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

The essential elements of a valid contract are as follows

## Offer

An offer is also termed as proposal. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance.

As per Section 2 (a) of the Indian Contract Act, when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer.

The person making the proposal/offer is called the proposer or offeror and the person to whom the proposal is made, is called the offeree.

## Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2 (b) of the Contract Act, When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted.

## Mutual Agreement

A situation is referred to as meeting of mind, when both the parties have recognized the contract and both give consent for entering into its obligations.

## Lawful Consideration

The term consideration' simply means something in return (quid pro quo). Any contract to be enforceable by law must have legal consideration.

According to Section 2(d), consideration is defined When at the desire of the promisor, the promise or other person has done or abstained from doing, or does, abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise.

## Capacity of Parties to Contract

For a contract to be valid, the parties of a contract must have capacity, i.e. competence to enter into a contract. Every person is presumed to have capacity to contract but there is certain person whose age, condition of mental status renders them incapable of binding themselves by a contract. This incapacity must be proved by the party claiming the benefit of it.

As per Section 11 of the Act, it deals with the competency of parties and provides that:

every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Therefore, the following persons are incompetent t contract:

Minor, Person of unsound mind and person disqualified by any law to which they are subject. Thus, any contract entered into by the persons mentioned above, are void.

## Legality of Contract

Legality of contract is the basis for its future and performance of obligation by the parties. A contract can be made only for the legal product or services; legality of contract, vary from one jurisdiction to another. For instance, an arm smuggler's contract with its buyers cannot be entertained into court of law.

## Free Consent

For a contract to be valid, the consent of the parties must be genuine i.e. free. The principle of consensus-ad-idem is followed which means that the parties entering into contract, must mean the same thing in the same sense. The parties to the contract must have the same understanding regards to subject matter of the contract.

As per the Act, free consent is consent, i.e. free from coercion, undue influence, fraud, misrepresentation or mistake. When the given consent is affected by these elements, it calls into question whether the consent given was free and voluntary.

The Law of Contract Act 1872 is a law following in India from British rule. It divided into two parts, they are general principle of Contract from sec 1 to 75 and special kinds of contract from sec 124 to 238.

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As per Section 10 of Indian Contract Act, 1872, All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

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A situation is referred to as meeting of mind, when both the parties have recognized the contract and both give consent for entering into its obligations.

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The term consideration' simply means something in return (quid pro quo). Any contract to be enforceable by law must have legal consideration.

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***Acknowledgement***

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Contract plays a significant role in our daily life. A contract is an agreement between two or more parties, which have obligation and rights according to the content of the agreement. A contract is legally enforceable. In India, contracts are governed by the Indian Contract Act, 1872.

# Contract

A set of promises may be oral or written in nature, which is legally enforceable is known as contract. It is a binding agreement between two or more parties. A contract includes variety of subjects such as exchange of goods, services, capital or promises of any of those. Contracts are part and parcel of our life. Contracts can be of various types depending on the terms and conditions. A contract creates mutual obligation on the contracting parties.

# Definitions of Contract

According to Pollock, every agreement and promise enforceable by law is a contract.

According to Salmond, A contract is an agreement creating and defining obligation between two or more persons by which rights are acquired by one or more to act or forbearance on the part of others.

According to 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.

According to Section 2(h) of the Indian Contract Act, 1872, An agreement enforceable by law is a contract.

From this definition, we find that a contract essentially consists of two elements i.e. an agreement and legal obligation i.e. a duty enforceable by law.

According to Cambridge Dictionary, Contract is a legal document that states and explains a formal agreement between two different people or groups, or the agreement itself.

# Law of Contract in India

In India, contracts are being governed by the British enacted legislation i.e. the Indian Contract Act, 1872. This act is based on the principle of English Common Law'. It deals efficiently with all the aspects of contract such as formation, enforcement etc. There are 11 Chapters and 266 sections however Sections 76 to 123 and 239 to 266 have been repealed.

Important Definitions in the Indian Contract Act, 1872

As per Section 13, Consent is defined as two or more persons are said to be consent when they agree upon the same thing in the same sense.

As per Section 14, Free consent is defined as consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

As per Section 15, Coercion is defined as the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 to 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

As per Section 16, Undue influence is defined as a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

As per Section 17, Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract.

As per Section 18, Misrepresentation means and includes:

The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; [Section 18(1)]

Any breach of duty which, without intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; [Section 18(2)]

Causing however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement; [Section 18(3)]

As per Section 31, Contingent contract is defined as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

As per Section 148, Bailment, Bailor and Bailee are defined as a bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the directions of the person delivering them. The person delivering the goods is called the bailor'. The person to whom they are delivered is called the bailee'.

As per Section 172, Pledge, Pawnor and Pawnee are defined as the bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailor is in this case called the pawnor. The bailee is called the pawnee.

As per Section 182, Agent and Principal are defined as an agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

# Essential Elements of Contract

As per Section 10 of Indian Contract Act, 1872, All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

The essential elements of a valid contract are as follows

## Offer

An offer is also termed as proposal. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance.

As per Section 2 (a) of the Indian Contract Act, when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer.

The person making the proposal/offer is called the proposer or offeror and the person to whom the proposal is made, is called the offeree.

## Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2 (b) of the Contract Act, When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted.

## Mutual Agreement

A situation is referred to as meeting of mind, when both the parties have recognized the contract and both give consent for entering into its obligations.

## Lawful Consideration

The term consideration' simply means something in return (quid pro quo). Any contract to be enforceable by law must have legal consideration.

According to Section 2(d), consideration is defined When at the desire of the promisor, the promise or other person has done or abstained from doing, or does, abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise.

## Capacity of Parties to Contract

For a contract to be valid, the parties of a contract must have capacity, i.e. competence to enter into a contract. Every person is presumed to have capacity to contract but there is certain person whose age, condition of mental status renders them incapable of binding themselves by a contract. This incapacity must be proved by the party claiming the benefit of it.

As per Section 11 of the Act, it deals with the competency of parties and provides that:

every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Therefore, the following persons are incompetent t contract:

Minor, Person of unsound mind and person disqualified by any law to which they are subject. Thus, any contract entered into by the persons mentioned above, are void.

## Legality of Contract

Legality of contract is the basis for its future and performance of obligation by the parties. A contract can be made only for the legal product or services; legality of contract, vary from one jurisdiction to another. For instance, an arm smuggler's contract with its buyers cannot be entertained into court of law.

## Free Consent

For a contract to be valid, the consent of the parties must be genuine i.e. free. The principle of consensus-ad-idem is followed which means that the parties entering into contract, must mean the same thing in the same sense. The parties to the contract must have the same understanding regards to subject matter of the contract.

As per the Act, free consent is consent, i.e. free from coercion, undue influence, fraud, misrepresentation or mistake. When the given consent is affected by these elements, it calls into question whether the consent given was free and voluntary.

The Law of Contract Act 1872 is a law following in India from British rule. It divided into two parts, they are general principle of Contract from sec 1 to 75 and special kinds of contract from sec 124 to 238.

As by this Law of Contract all agreements are contracts if they are made by:

* free consent of parties,
* competent to contract,
* lawful consideration,
* with lawful object, and
* Thereby not expressly declared void.

As by above free consent is essential element for valid contract. Here as by section 13 consent means, when two or more persons are agree upon the same thing within the same sense.

As per section 14 free consent is a consent which is not caused by:

* Coercion defined in sec 15 or
* Undue influence sec16 or
* Fraud under sec- 17 or
* Misrepresentation sec 18 or
* Mistake under sec 20, 21 and 22.

# Bibliography

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