

1 (A) Meaning and Kinds of Contracts

Subject : Commerce

Lesson : Meaning and kind of Contracts

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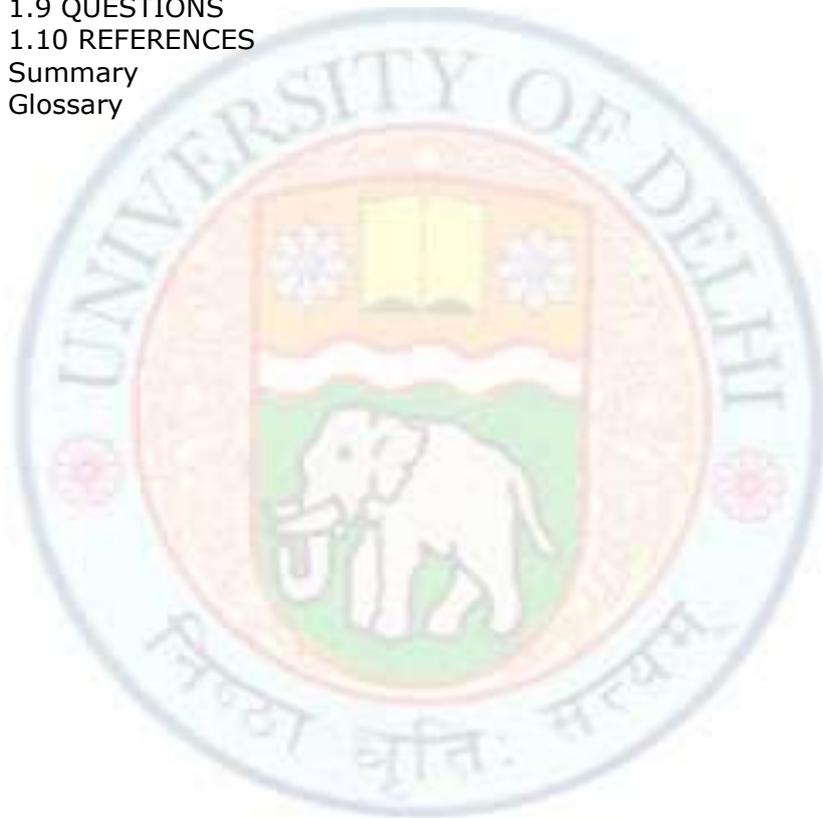
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1 (A) Meaning and Kinds of Contracts

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1 (A) Meaning and Kinds of Contracts

Meaning and Kinds of Contracts

Introduction: Part 1-Indian Contract Act 1872



The Indian Contract Act was passed in the year 1872 and it came into force on the 1st day of September, 1872. The Act extends to the whole of India except the State of Jammu and Kashmir. It consists of 238 sections. It has been divided into 10 chapters. Chapter VII of the Contract Act is wholly repealed by the Indian Sale of Goods Act, 1930 (vide section 65). The Contract Act deals with particular contracts in separate chapters. The

provisions of the Act do not apply to contracts made before the Act came into force. Broadly speaking, The Indian Contract Act deals with all facets of contract, more particularly the stages of formation of a contract, the elements of a contract, the performance of a contract, breach of contract and available remedies when there is a breach of contract.

In case of a contract in which two or more countries are involved in respect of its performance, questions arise as to the law of which country would govern such a contract. In the first instance, the law which would govern such a contract would be the law expressed by the parties themselves in the contract. In the absence of an expressed intention, the rule to apply is to infer an intention from the terms and nature of the contract and the general circumstances of the case. Such circumstances may be (i) the country in which the contract was entered into or (ii) The country where the payment was to be made. In such a contract, if a payment is to be made, it should be of the legal tender governing the country in which payment is to be made.

The scope of the Unit is given below:

- 1.1 Meaning and Definition of Contract
- 1.2 Characteristics / Essential Elements of a Valid Contract
- 1.3 Classification of Contracts
- 1.4 Classification According to Enforceability
- 1.5 Classification According to Mode of Creation
- 1.6 Classification According to Performance

1 (A) Meaning and Kinds of Contracts

1.1 Meaning and Definition of a Contract

The meaning and definition of a contract are discussed below with reference to some eminent jurists.

1.1.1 Meaning

An agreement enforceable by law is a contract. As per Indian Contract Act 1872 "An agreement is an accepted proposal". Thus it can be said that a contract is an agreement; an agreement is a promise and a promise is an accepted proposal. Every agreement in its ultimate analysis, is the result of a proposal from one side and its acceptance by the other. Hence it is a bilateral transaction.



Illustration

If Prem offers to sell Pummy twenty-five pens for Rs. 20 each to be delivered on Saturday and Pummy agrees to the deal, it is a valid contract. If one party fails to offer something of benefit to the other, there is no contract.

Illustration

If Ram promises to fix Meena's car, there is no contract unless Meena promises something in return for Ram's services of fixing the problem of the car.

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1.1.2 E-Contract

The latest mode of making instant contract within and outside a country is to enter into contracts through the internet. This mode is known as E-contract. By exchange of communication of offer and acceptance between the parties through internet, contracts can be created and the legality and enforceability of the E-contracts is in no way affected by the fact that the formation of the contract depended on the electronic record.



Figure: 1.2 : An E-Contract

1.1.3 Definition

Section 2h of the Indian contract Act of 1872 defines "a contract as ***an agreement enforceable by law***".

According to Section 2h of the Act there are two main aspects of a contract -

- (a) An agreement
- (b) Agreement enforceable by law

Some eminent jurists have also made an attempt to define the term contract which are useful for interpretation of the various provisions of the Contract Act. For more Information on Eminent Jurists click below

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Some Eminent Jurists



The graphic features four flashcards on a parchment background. Each flashcard contains a jurist's name and their definition of a contract. The flashcards are arranged in a row. Below the flashcards, there is a text prompt: 'Click the flash cards to know more on what these eminent jurist have to say about the term contract.'

Sir John William Salmond:
"An agreement creating and defining obligations between the parties".

Lord Halsbury:
"An agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do

Sir William Anson:
"A contract is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of the other or others."

Sir Federick Pollock:
"Every agreement and promise enforceable by law is a contract."

Click the flash cards to know more on what these eminent jurist have to say about the term contract.

In law a contract means the following:

- Existence of two parties
- Existence of an agreement between two or more parties
- Existence of a legal obligation between parties who enter into an agreement

Points to be noted:

- All agreements are not contracts; only agreements that give rise to legal obligations are contracts.
- All obligations are also not contracts; only obligations that have legal consequences are contracts.

1.1.4 What is an Agreement?

An agreement is defined in section 2 (e) of the Indian Contract Act of 1872. It states "that **every promise and every set of promises forming the consideration for each other is an agreement**".

1.1.5 What is a Promise?

Section 2 (b) of the Indian Contract Act of 1872 defines a promise as: "**A proposal when accepted becomes a 'promise'**".

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Under section 2 (c) "the person who makes the proposal is called the 'promisor'. The 'promisee' is the person that accepts the proposal".



Figure: 1.3 Offer & Acceptance

Illustration

Rani makes an offer to sell her plot of residential land for Rs. 50 lakhs to Malthi. If Malthi accepts this offer, then after the offer is accepted, the acceptance becomes a promise. The promise between Rani and Malthi is an agreement.

Therefore, an agreement consists of offer and acceptance, or it can be stated as:

Agreement = Offer / Proposal + Acceptance of Offer / Proposal

When the two parties make an agreement, they have to fulfil their promise. If either party defaults in carrying out its obligation there will be breach of contract if the agreement is enforceable by law.

Illustration

Geeta invites Shyam for dinner to her house. Shyam forgets and Geeta is very upset. Does Geeta have a remedy? Can she go to court to get Shyam to pay the expenses of the dinner?

Answer: Geeta cannot go to court for compensation as the invitation to dinner and its acceptance is only an agreement and not a contract.

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Illustration

Meeta makes an agreement to sell five mobile phones for Rs. 6000 each to Madhuri. Madhuri accepts the offer. If Madhuri fails to purchase the mobile phones, can Meeta go to court to enforce the contract?

Answer: Meeta can ask for enforceability of the contract. This agreement is a contract because there is an offer by Meeta for some consideration and Madhuri accepts it. Similarly if Meeta was to breach the contract then Madhuri could apply for enforceability of the contract.

Every contract is an agreement but every agreement may not be a contract.

The law of contract in India does not give any guidelines to people entering into a contract or the terms and conditions of the contract but it regulates the contract by providing general principles of contract law.

An agreement becomes a contract according to section 10, if a promise is made between two people who are competent to enter into a contract. It should be a contract with the free consent of the two parties, with a lawful consideration and a lawful object and the agreement should not be void.

Under section 2 (g) an agreement that is not enforceable by law is void.

What is enforceability of agreement?

An agreement can be enforceable by law only if there is some legal obligation.
The law of contracts does not take into consideration ***any agreement in which there is no legal obligation.***

An obligation is to do, or to restrict, a certain act or activity. The Contract Act deals with only those agreements where there is an intention to create a legal obligation.

When there is an agreement that involves some business or commercial contracts it creates ***a legal obligation*** because the parties to the contract have the ***intention*** to create a legal obligation.



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However, parties entering into a contract in domestic, social or religious events that **do not have the intention to create any legal obligations** cannot be said to have any legal obligation unless proved otherwise.

The Contract Act governs only those legal obligations that are created out of agreements.

Therefore, all contracts create legal obligations but all obligations do not become a contract.

This proves the statement made by Salmond that "the law of contract is not the whole law of agreements, nor is it the whole law of obligations."

Illustration

Mr. Ali gets married on the 15th of April, 2006. His wife gave birth to a baby girl in 2007. It is now his responsibility to take good care of his family. The obligation to maintain his family is not out of any agreement but out of love and affection for his family. This is a social obligation. Only agreements which create legal obligations, are termed as contracts.

Illustration

Mr. Modi agrees to sell his old washing machine for Rs. 8,000/- to Sweetie. This agreement becomes an obligation on Modi to deliver the machine to Sweetie on the stipulated date at an agreed price. Sweetie is under the obligation to pay Modi and take the delivery of the Machine. This agreement is a legal obligation, so it becomes a contract.

Illustration

Mr. Bedi carried out the provisions of the court order by providing maintenance to Mrs. Bedi during their separation period. This is not a contract but an obligation carried out in acceptance of a court order.

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In brief contract means: the following: -

- It must have at least two parties.
- There has to be an agreement between two or more parties to constitute a contract.
- The agreement between the parties should have a legal obligation.

1.2 Characteristics of a Contract

The meaning and definition of a contract are discussed below with reference to some eminent jurists.

1.2.1 Meaning

An agreement enforceable by law is a contract. An agreement is an accepted proposal. Thus it can be said that a contract is an agreement; an agreement is a promise and a promise is an accepted proposal. Every agreement in its ultimate analysis, is the result of a proposal from one side and its acceptance by the other. Hence it is a bilateral transaction.

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Thus in law a contract means the following:

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Section 2 (b) of the Indian Contract Act of 1872 defines a promise as: A proposal when accepted becomes a 'promise'.

Under section 2 (c) the person who makes the proposal is called the 'promisor'.

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Illustration: Rani makes an offer to sell her plot of residential land for Rs. 50 lakhs to Malthi. If Malthi accepts this offer, then after the offer is accepted, the acceptance

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Only agreements that can be enforced by law are contracts.

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Every contract is an agreement but every agreement may not be a contract. The law of contract in India does not give any guidelines to people entering into a contract or the terms and conditions of the contract but it regulates the contract by providing general principles of contract law.

An agreement becomes a contract according to section 10, if a promise is made between two people who are competent to enter into a contract. It should be a contract with the free consent of the two parties, with a lawful consideration and a lawful object and the agreement should not be void.

Under section 2 (g) an agreement that is not enforceable by law is void. What is enforceability of agreement?

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An agreement can be enforceable by law only if there is some legal obligation. The law of contracts does not take into consideration any agreement in which there is no legal obligation.

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However, parties entering into a contract in domestic, social or religious events that do not have the intention to create any legal obligations cannot be said to have any legal obligation unless proved otherwise.

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1.3 CHARACTERISTICS OF A CONTRACT

Section 10 of the Indian Contract Act, 1872 enumerates certain essential elements of a valid contract. These are given below:

1.3.1 Agreement

An agreement constitutes a contract. It consists of two elements. These are: An offer, or proposal, by a person and acceptance of the offer, by another. Thus a contract must have two parties. One, who proposes or makes an offer, and another that accepts the offer.

The Contract Act defines an offer or proposal in the following words: "When a person signifies to another his willingness to do or to abstain from doing something with a view to obtaining his assent thereto, he is said to have made a proposal."

Acceptance has been defined in section 2(b) of the Act as "When the person to whom the proposal is made signifies his assent thereto, he is said to have accepted the proposal."

1.3.2 Legal Relationship

The intention of the two parties should be to create a legal relationship. While deciding whether a contract is valid or not, attention should be given to the objective rather than subjective aspect of the intention to create a legal relationship. It is also necessary to take into consideration what would be a reasonable intention of the person who enters into the contract. A domestic, religious or a social agreement where there is no intention to create a legal relationship cannot be called a valid contract. It is presumed that business dealings and commercial agreements are made with the intention to create a legal relationship. However social agreements can be enforceable if legality of relationship is intended and established. On the other hand business dealings may not establish a legal relationship in an agreement and would therefore not enforceable.

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Case Law

Some case laws are cited as references to show that the intention in the agreement to create a legal relationship is important in deciding whether it is, or is not, a valid contract :

Case Law 1 Balfour Vs Balfour

Mr. Balfour went for a vacation with his wife to England from Ceylon. He was asked by his employer to return to Ceylon. Since his wife was not well she continued to stay in England. Mr. Balfour promised to send a monthly maintenance amount to her. After a while he had differences with her and stopped sending her the maintenance amount. Mrs. Balfour filed a case against her husband for recovery of maintenance. The court held that it was a domestic matter and it did not create any legal relationship. Hence it was not a valid contract.

Case Law 2 Jones Vs Padavatton

A mother promised to pay for her daughter's education when she studied abroad. This was held as a domestic understanding between mother and daughter and could not be enforced by law as it did not have any intention to create a legal relationship.

The following case is a little different. It is a domestic agreement but the objective and reasonable testing of this case shows that the husband and wife intended to create a legal relationship. Thus the law of contracts may have within its purview domestic cases, social relationships and employer employee matters as well if it can be proved that the intention was to create legality and enter into a contract.

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Case Law 3 McGregor Vs McGregor

This was an agreement between husband and wife with the intention of creating a legal relationship.

Mr. McGregor had promised his wife that he would give her an allowance. In return Mrs. McGregor had agreed not to pledge his credit. This was a valid contract and breach of the case was enforceable by law.

In the above paragraph it has been explained that business and commercial dealings normally show that there is an intention to create a legal relationship. However in the following commercial dealing the intention was not to create legal relationship. Hence there is an agreement between the two parties but it is not a valid contract.

Case Law 4 Rose & Frank Co. Vs Crompton Bros

Rose Co. was appointed by Crompton Bros as their agents. In their agreement one of the clauses specifically stated that the agreement entered into was not a formal or legal agreement and would not be subject to legal jurisdiction in the law courts. The courts held that this was not a binding agreement and therefore could not be termed as a legal contract as there was no intention to create a legal relationship even though it was a business dealing.

Case Law 5 Jones Vs Vernon's Pools Ltd.

There was a business dealing between the two parties but the agreement stated that it would not give rise to any legal relationship and rights and duties would not be enforceable or give right to litigation. The agreement would be binding in honour only. The court held that this was not a valid contract, as it was not legally binding. There was no legal relationship and the agreement was not legally enforceable.

Free Consent

Section 14 of the Indian Contract Act states there should be free consent between the parties making an agreement. The consent is considered to be free when there is no coercion, undue influence, mistake, fraud, or misrepresentation in the agreement

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prepared by the parties. If the consent is not free, the contract is not valid.

Illustration

Amit gets his parents to sell the house to his friend forcibly. This is not a valid contract, as the agreement was not made with free consent.

When a contract is made both parties must understand and agree on all the things in the contract in the same sense and in the same way. This is called consensus ad idem, when there is a meeting of minds of both the parties. They should have agreed on all the terms and conditions without any undue influence or mistake in understanding of the product.

Illustration

Mr. Rajhans is selling his blue sports model car to his secretary. However his secretary Rita thinks that she is buying the new red sports model car. There is no meeting of minds and hence there is no valid contract.

1.3.3 Capacity of Parties

The parties entering into a contract should be competent to make an agreement. According to section 11 of the Act they should have (i) attained the age of majority, (ii) They should be of sound mind, (iii) They should not have been disqualified to enter into a contract.

Illustration

Meera is a lunatic and gets attacks of lunacy at intervals. Is she competent to contract?

Meera can enter into a contract in those periods when she is not suffering from lunacy. She is competent to contract when she is not under the influence of an attack of lunacy.

Illustration

Leena is 15 years old. Does she have the capacity to enter into a contract? Leena cannot enter into a contract because she is a minor. She will be able to enter into a contract when she attains the age of majority.

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1.3.4 Status of other Entities

Any company is competent to enter into a contract according to the legislations under which they are governed. The Memorandum of Association and Articles of Association of the company provide further guidelines in addition to provisions of Indian Contract Act. Partners are allowed to enter into contracts under the Partnership Act of 1932. Associations of persons are competent to contract subject to their agreement.

1.3.5 Lawful Consideration

According to Section 2(d), 23 and 25 of the Act a valid contract must have a consideration. The person making a promise must receive something in return for it. It may or may not be an adequate return but there has to be some value and it should not be fraudulent, unlawful, immoral or opposed to public policy. The agreement is legally binding and enforceable when both parties to an agreement give something and also get something in return. Consideration may not be in cash only. It can be in kind. It can also be an act or abstinence from doing something. It can be a promise to do or not to do something.

Illustration

Ali sold 5 fountain pens for Rs. 125 each to Megha with a promise to receive 12 red roses in return instead of the money in cash. Is this a lawful consideration? This is a lawful consideration as Megha gives roses instead of cash. Some consideration is being given to Ali. The consideration may not be of equal value.

Illustration

X has entered into a contract with Y to sell one camera, two cello phones and 3 televisions for Rs. 55,000. All the things were taken by theft. Is this a valid contract? This agreement has a promise and a consideration but it does not have lawful consideration since X got the things unlawfully through theft. Unlawful consideration makes an agreement void and it is not legally enforceable.

1.3.6 Object of an Agreement

According to section 23 of the Indian Contract Act 1872 the object of an agreement should be within the purview of law. It should not be fraudulent or be forbidden by law. The object should be legal, moral and according to public policy. It should not have any legal flaws otherwise it will not be enforceable by law (Section 23). Legal object implies the following:

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- Agreements should be lawful.
- Agreements should not be fraudulent.
- Agreements should be such that they do not cause injury or harm to any person or property.
- Agreements should be moral.
- Agreements should be within public policy.
- Agreements should be within the provisions of law. Since agreements are being made according to the Indian Contract Act, they should be within the Indian law.

1.3.7 Formalities of an Agreement

Agreements under the Indian Contract Act may be oral or in writing. Whenever an agreement is a valid contract and is made in writing it should be complete with all legal formalities. If the legal formalities are not complete, law cannot enforce it. The contract will become void. Some contracts have to be made in writing otherwise they will not be valid. In the following cases contracts have to be in writing:

- Cheques, bills of exchange, promissory notes and other negotiable instruments.
- Insurance contracts providing name of the insurer and the person insured and the period of insurance with all clauses have to be in writing.
- An agreement with a promise to pay a time barred debt.
- All lease agreements that are for a period exceeding 3 years.
- Important documents of a corporate organization especially the Memorandum of Association and Articles of Association.
- All valid contracts that relate to the transfer of immovable properties must be in written form.
- Arbitration agreements must be in writing to be enforceable by law.

Certain documents have to be in writing and also registered in order to be enforceable the following documents must specially be taken care of under section 17 of The Registration Act of 1908.

- The Transfer of Property Act, 1882, specifically states that all immovable properties must be registered.
- The companies Act of 1956 states that Memorandum of Association, Articles of Association, Mortgages, Debentures and other documents that are compulsory under The Registration Act should be registered.
- When a promise is made with natural love and affection and without consideration the agreement should be registered.
- The Indian Trusts Act 1882, requires that the trust made should be in the form of a written agreement and be duly registered.

1.3.8 Valid but not enforceable agreement

In many cases even a valid contracts may not be enforceable by law. If a country declares an agreement void it cannot be enforced. Hence it is important to know the law of the country in which the agreement is made otherwise the legal rights cannot be exercised (Sections 24 to 30 and 56). The following agreements have been declared by the Indian Contract Act to be void:-

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- Agreements made for restraint in marriage (Section 26).
- Agreements for restraint in trade (Section 27).
- Agreements for restraint of legal proceedings (Section 28).
- Agreements that are ambiguous and where meaning is not clear (Section 29).
- Agreements by way of wager (Section 30).
- Agreements that are contingent on the happening of some events (Section 36).
- Agreements to do acts that are difficult or impossible (Section 56).

These agreements are lawful but they are not enforceable because they impose certain restraints to the freedom of a person. Thus law denies enforceability to them. To summarize, the essential elements of a valid contract are as follows:-

- A valid contract must have an agreement.
- It should have the intention to create legal relations.
- The contract will be valid if there is free consent.
- The people entering the contract should be competent and have the capacity to enter into a contract.
- There should be some lawful consideration for both parties to make the contract enforceable.
- The object of the contract should be legal.
- The legal formalities of the contract should be complete. Some contracts have to be in writing and registered.
- Certain agreements are lawful but they cannot be enforced due to the laws of certain countries or some restraints not acceptable within the country.

1.4 CLASSIFICATION OF CONTRACTS

The Indian Contract Act classifies contracts into different categories. Contracts can be categorized from the point of view of (i) Enforceability/Legal validity (ii) Formation (iii) Performance and (iv) Obligation.

(A) Enforceable/legal validity contracts can be classified into the following:

- Valid Contract.
- Voidable Contract.
- Void Contract.
- Void Agreement.
- Illegal Agreement.
- Unenforceable Contract.

(B) Contracts according to their mode of creation/formation are the following:

- Express Contract
- Implied Contract
- Quasi Contract.

(C) Contracts classified according to performance:

- Executed Contract
- Executory Contract

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- Unilateral Contract
- Bilateral Contract.

Unlike the Indian law of contract, in England contract has been broadly classified under two heads:-

- (a) Formal Contracts
- (b) Simple Contracts

1.5 (A) CLASSIFICATION: ACCORDING TO ENFORCEABILITY

A contract that is enforceable can be classified under different categories. Such contracts may be valid contracts, voidable contracts, void agreements, void contracts, agreements discovered to be void, unlawful or illegal agreements and unenforceable contracts.

1. Valid Contract: A valid contract is one, which satisfies the essential elements described in section 10 of the Indian Contract Act. It must be an agreement in which an offer is made and accepted. It should have the intention to create legal relations. There should be lawful consideration and the object should be legal. It should have clear terms with free consent of both the parties. When all the essential elements are complete in all respects it is a valid contract and it is enforceable by law.

2. Voidable Contract: If one party to the contract has the option of enforcing a contract by law, but not at the option of the other or others, it is a voidable contract. In those cases when the consent is not given freely but coercion has been used the party has the option to continue with the contract or rescind it. Another example of a voidable contract is when a person has promised to deliver certain goods on a certain date and he does not deliver it, it is the option of the buyer to continue or to rescind the contract (section 55).

Illustration

Ruhi wanted to buy a gold chain for her mother's birthday. The goldsmith promised to deliver it on the 20th of May. On the due date the chain was not ready. Ruhi rescinded the contract and decided to buy something else. The goldsmith wanted compensation. Is he right?
The goldsmith is not correct. If he did not deliver the goods on time Ruhi has the right to rescind the contract.

Thus in a voidable contract the aggrieved party can take benefit of the situation. He/she may decide to go ahead with the contract as well. Thus in a voidable contract a flaw can create a benefit for a party. However if the party decides to continue with the contract, the terms and agreements will continue to be valid and the contract will also be a valid one.

Illustration

: X sells to Y a Casio brand camera. The camera turned out to be a cheap one with a fake branding. What can Y do?
Y can reject the camera on the grounds of misrepresentation of the goods to be sold. The contract is voidable due to misrepresentation. Y can also decide to continue with the contract and if Y decides to continue with the deal it will be a valid contract.

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3. Void Contract: These contracts are enforceable when the agreement is made but due to certain lapses they become unenforceable at a later date.

The agreement becomes unenforceable for the following reasons:

- According to section 56 if a contract is illegal or impossible to conduct it becomes void.
- Contracts that are made with British Shipping
- Contracts entered into by Corporations.

(ii) Contracts of record are those that adhere to judgements. The obligations of the parties under the agreement arise out of court judgements and not out of contract.

2. Simple Contract: Contracts that are not formal are termed as simple contracts. They are also called parol contracts.

Simple contracts can be entered into either by word of mouth i.e. orally, or by written word. They can also be implied by conduct.

- The contract becomes void if it is voidable in nature and the party who could exercise the option of avoiding it decides to do so.
- Any contract which becomes impossible to perform either on the happening or not happening of a particular event is a void contract. This is explained in (section 32).

Illustration

Anil made an agreement with Suman to sell house no P-21 in Sushant Lok in Gurgaon. The terms and conditions were finalized. Before the due date for the transaction to take place there was an earthquake and the house fell down. Anil could not keep his promise because the house did not exist any more.

This contract is void because the agreement was made on the basis of the house in possession. Since Anil did not have the house after the natural calamity it was a near impossibility to deliver the goods to Suman.

Illustration

Madhuri entered into a contract with Salma. She promised to deliver silver jewellery to her from her newly designed pieces. On the due date, the specialist making the ornaments died and she could not deliver the jewels. The contract is void. It was valid and enforceable by law when it was made but due to this circumstance it became a near impossibility to carry it out.

1 (A) Meaning and Kinds of Contracts

Illustration

Meena has been under the influence of her parents to sell her car valued at Rs 3,00,000 for Rs 2,00,000. On persuasion by her parents she sells the car to Rohit. As this agreement did not have Meena's free consent therefore the contract is voidable at Meena's option.

4. Void agreement: Section 2(g) describes void agreements as those that are unenforceable from the inception of the agreement. In other words these agreements are void. A mistake between the two parties to an agreement of a material fact makes the agreement void. Therefore a void agreement does not create any legal rights between the parties to the contract. It also does not create any obligations. There is a flaw in the agreement itself.

The most common example is that of a minor who does not have the legal rights to enter into an agreement. If he/she does, the agreement is null and void. The Indian Contract Act expressly declares agreements that have restraints in marriage or trade or uncertainty as void.

Illustration:

Neena agrees to deliver anklets for a consideration of Rs. 2,00,000 to Meenu by cutting a part of the foot to remove the anklets. Since this is an impossible agreement, it is void.

The reasons that change a valid contract into a void one are thus the following:

- When the performance is due to supervening impossibility after the contract has been formed.
- When the contract has after its formation, subsequently become illegal.
- When the person who has entered into the contract without free consent has repudiated the voidable contract.
- When a contingent contract cannot be carried out due to the fact that the event becomes impossible to achieve.

1.5.1 Distinction between Void Agreement and Void Contract

A void agreement is void ab initio i.e. from the beginning of the contract. A void contract is valid when it is made but due to certain lapses it becomes unenforceable by law subsequently.

A void agreement will have the following effects:

- It will be unenforceable by law
- If both parties know that the agreement is void money will not be recoverable if already paid.
- Collateral transaction will be legal unless the agreement itself is illegal.
- All legal promises are enforceable if the agreement can be proved to be severable.

1.5.2 Void Agreement and Voidable Contract: Distinction

1 (A) Meaning and Kinds of Contracts

The difference between void agreement and void contract can be discussed on the basis of (i) enforceability (ii) compensation and restitution and (iii) the effect on collateral agreement.

Enforceable: Void agreements are not enforceable from the time of their formation. They are said to be void ab initio.

Void contracts are enforceable when they are formed but they become unenforceable if the party which has the option to rescind the contract does so. It is a valid contract if it is not repudiated.

A void agreement is not enforceable at all but a void contract can be enforced if the parties agree to complete the contract and exercise the option accordingly.

Compensation and restitution: In a void agreement there is no compensation because the agreement is not enforceable by law.

In a voidable contract the person who exercises the option of rescinding the contract can get compensation if he has rightly taken the option of not going ahead with the contract. It follows therefore that restitution is allowed in a voidable contract unless the parties knew of the illegality of the agreement at the time of formation.

Collateral agreement: An agreement that is void due to illegality has an effect on collateral agreements as well. Such agreements will be correspondingly void because of illegality in consideration or object in the agreement.

A voidable contract however has no effect on collateral contracts.

5. Illegal Agreements/Contracts: The word illegal agreement is used in place of illegal contract because if the agreement is illegal it is unenforceable by law. Illegal agreements cannot become contracts because they are unenforceable. "All illegal agreements are void but all void agreements are not illegal." A minor entering into an agreement is void but not illegal. A wagering contract is also void but not illegal.

An illegal agreement is void ab initio. It is unenforceable by law from the very beginning. If a person has borrowed money illegally he cannot be asked to return the money. If an agreement is illegal even the collateral agreements will have the effect of being illegal.

Illustration

A pays to B a sum of Rs 1,00,000 who again gives the amount to Z for black marketing of onions which are in short supply. Since the illegality was there in the contract right from the beginning and the parties knew of the illegal purpose of giving money, the agreement between B and Z is illegal and the collateral agreement between A and B is also illegal.

1 (A) Meaning and Kinds of Contracts

In the case of a contract it may be enforceable by law when it was formed and become void due to attaining subsequent illegality. For Example X transfers property to Y legally but due to some illegality, which occurred later, it became unenforceable. Money can be recovered in this transaction because it was not illegal at the time of entering into a contract. A void contract does not have any effect on collateral contracts made between the parties.

1.5.3 Distinction between void & illegal agreements

- Illegal agreements are void but valid contracts can become void due to certain subsequent developments.
- Illegal agreements are punishable but void agreements do not entail punishment to the parties entering into the contract.
- All illegal agreements are void but all void agreements are not illegal.
- Collateral agreements in an illegal agreement are void but collateral agreements are not affected in void agreements.

6. Unenforceable contracts: Certain contracts are not enforceable by law because they suffer from some technical faults. For Example, if certain documents have to be registered and they have not been registered then such documents become unacceptable by the court. Likewise if agreements have to be written on stamp paper and the stamp paper has not been used, then such agreements are not enforceable in the Court. Hence formalities should be complete to make a contract enforceable by law.

1.6 (B) CONTRACTS: ACCORDING TO MODE OF CREATION

Contracts on the basis of mode of creation refer to Express Contracts, Implied Contracts and Quasi Contracts.

1. Express Contract: When an offer is made in words or in writing and another person accepts it, an express contract is formed. Promise is considered to be express when it is made in words written or spoken.

Illustration
Priya writes to Prem offering to sell her car for a price of Rs.1,00,000. Prem accepts the offer by responding through an email. This is an express contract

Illustration
Pummy makes a phone call to Raj and offers to sell her Laptop for Rs 20,000. Raj accepts the offer. It is a promise made by verbal contact and the offer is accepted. It is an express contract.

2. Implied Contract: A contract is said to be implied when it has to be inferred from the action, gestures or conduct of the parties. It is not a verbal or a written contract. It

1 (A) Meaning and Kinds of Contracts

has to be implied from circumstances of the case. In the agreement some terms may be implied or the complete agreement is implied.

Illustration

Janaki attended an informal meeting of a company. The company was glad to receive her suggestions and accepted her presence and took some of her suggestions. There is an implied contract that Janaki should be paid for her services because the company allowed her to attend the meeting and also used her suggestions for the benefit of the company.

Illustration

The hotel porter cleaned Mr. Madan's car though he was not asked to do so. Mr. Madan accepted the services. The porter was expecting to be paid for services that he had not been asked to do. This is an implied contract as the porter expects payment for his services and Mr. Madan accepted his services and allowed him to clean his car

The contracts can be of a mixed type as well. They can be express and implied contracts both. Some parts of the combination may be express and some parts of it may be implied.

Illustration: Ram offers to buy an I Pod from Tilak for Rs 10,000. Tilak accepts the offer by sending the I Pod to Ram. Ram's offer is expressed in words and Tilak's acceptance is implied by his conduct. This is a mixed type of contract. It combines the characteristics of both express and implied modes of creation.

3. Quasi Contract: When contracts are not in actual fact either express or implied but there is circumstantial evidence to show that they are actually contracts, they are called Quasi Contracts or semi contracts. There is actually no contract between the parties as there is no agreement between the parties but the obligations cited in sections 68 to 72 of the Indian Contract Act provide legality to them. These are known as "certain relations resembling those created by contracts".

Illustration

Arti leaves her computer in Monica's house. Monica treats it as her own and begins to use it for her official purposes. Arti has no agreement with Monica. She should pay for the use of the computer, which was kept with her for safe-keeping.

1.7 CONTRACTS ACCORDING TO PERFORMANCE

1 (A) Meaning and Kinds of Contracts

Contracts can be classified according to performance measures. Such contracts are called executed contracts, executory contracts, unilateral contracts and bilateral contracts.

1. Executed contract: An executed contract is one where both the parties have performed and completed their obligations. The contract is completed and executed. No responsibilities remain from either side of the contract.

Illustration

Rajesh goes to a Westside store and buys a shirt for himself. He pays Rs 1450 and the shirt is packed and delivered to him. He leaves the store as the contract is executed. The obligations of both the parties are complete.

2. Executory Contract: In a contract sometimes one party may carry out his/her obligation but the other has still to conduct his/her obligation. This obligation will be performed in the future. This type of a contract, which is not yet complete, is called an executory contract. In some executory contracts both parties decide to complete their contract in the future because of certain important reasons.

Illustration

Minna sells her computer to Zara. Immediately Zara sends the payment for it. Minna has to still deliver the computer. This is partly an executed and partly an executory contract.

Illustration

Khem promises to install a kitchen grill for Tina. He expects a consideration of Rs 3,500 for it which Tina accepts. This is an executory contract. It is still not complete.

3. Unilateral Contract: In some contracts one party has already completed his/her obligation but now the other party is left to complete his/her part of the contract. When the other party executes his/her part of the contract that, is still outstanding, it is called a unilateral contract. These contracts are also called contracts with executory consideration. When the contract is formed, there is an obligation of only one party to perform.

Illustration

Murli's dog was lost while he was taking a morning walk. He offered a reward of Rs 1,00,000 for bringing back his dog safely. Sashi found the dog and returned it to the owner. The owner now has a unilateral contract to perform of paying the reward money as the dog has been found.

1 (A) Meaning and Kinds of Contracts

1.8 POINTS TO REMEMBER

Introduction

- The Indian Contract Act was passed in 1872.
- It extends to the whole of India except Jammu & Kashmir.
- When two countries are involved in a legal matter, the principle of Lexloci or law of the land will apply.

Meaning and Definition

- An Agreement enforceable by law is a contract.
- Every promise or every set of promises with consideration is an agreement.
- An E-contract is made through internet.
- Some eminent jurists who have defined contract are Sir John William Salmond, Lord Halsbury, Sir William Anson and Sir Federick Pollock.

Characteristics of a Valid Contract

- Agreement
- Legal Relationship
- Free consent
- Capacity of parties
- Lawful consideration

Classification of Contracts

- Contracts by enforceability
- Contracts by mode of creation
- Contracts according to performance

Classification According to Enforceability

- Valid contract
- Voidable contract
- Void contract
- Void agreement
- Unenforceable contract

Classification According to Mode of Creation

- Express contract
- Implied contract
- Quasi contract

Classification According to Performance

- Executed contract
- Executory contract
- Unilateral contract
- Bilateral contract

1 (A) Meaning and Kinds of Contracts

1.9 QUESTIONS

True or False:

State whether the following are True or False

1. All contracts are agreements.
2. All agreements are contracts.
3. Past judicial decisions on contract law are not important.
4. The Indian Contract Act of 1872 is not applicable to Jammu and Kashmir.
5. A void contract is unenforceable from the time it is formed. It is void ab initio.
6. A valid contract is one, which satisfies the essential elements described in section 10 of the Indian Contract Act.
7. Agreements made for restraint in marriage are void under the Indian Contract Act.
8. If one party to a contract has the option of enforcing the contract by law, but not at the option of the other or others, it is a voidable contract.
9. All illegal agreements are void.
10. An executory contract is one in which both parties have fulfilled their respective obligations.

Answers: 1.T; 2.F; 3.F; 4.T; 5.F, 6.F, 7.T, 8.T & 9. T. 10.F.

Long answer questions:

1. "All contracts are agreements but all agreements are not contracts". Discuss this statement.
2. What is a contract? Discuss the essential elements of a contract?
3. "The law of contracts is not the whole law of agreements, nor is it the whole law of obligations". Discuss.
4. What are void contracts? How do you distinguish them from voidable contracts? What are the rights and obligations of the parties of such contracts?
5. Write notes on the following:
(a) Valid contract (b) Void agreement (c) Void contract (d) Unenforceable contract. (e) Implied contract (f) Quasi contract (g) Illegal contract.
6. Distinguish between (a) Void contracts and void agreements. (b) Valid contract and voidable contract. (c) Void agreements and voidable contracts. (d) Void and illegal agreements.
7. All illegal agreements are void but all void agreements are not illegal. Explain.
8. What is an Express Contract? How is it different from an Implied contract?
9. Distinguish between (1) Void agreement and voidable contract. (2) Void and illegal agreements. (3) Illegal and unenforceable agreement.

Practical Problems:

1. Rani agrees to sell "My red car for Rs 50,000 or Rs 1,00,000". Is this agreement valid?

Answer: The agreement is not valid because there is no certainty in the terms of agreement. There are two prices quoted. Which is the one acceptable for sale? The agreement is void of certainty (Section 29).

2. Jasmine purchased three kilos of sugar and one kilo of rice from a grocery store for her personal consumption. She is a minor. She does not want to pay. Can the shopkeeper recover the amount?

1 (A) Meaning and Kinds of Contracts

Answer: The minor has purchased products of need as they are required for food. She is liable to pay to the shopkeeper.

3. Shashi invited two of her friends for dinner. At the last moment, they decided to come but not have dinner with her. She had made elaborate arrangements of decorations, lighting and food. She was very angry. Can Shashi sue her friends for the loss she has suffered?

Answer: Shashi cannot sue her friends because it is a social agreement and lacks the intention to create legal relations.

4. Mohan entered into an agreement with Subhash to write 500 pages in 3 days for a sum of Rs 1,00,000 as consideration. The manuscript was required urgently for publication. Subhash could not deliver the manuscript. Can Mohan sue Subhash for the loss?

Answer: Mohan cannot sue Subhash because the contract is not valid. According to section 56 an agreement to do an impossible act is void.

5. Meeta made an agreement with Shanti to design her teeth and make her look beautiful. On the day of the appointment, there was an earthquake and Meeta's clinic was completely destroyed. Can Shanti sue Meeta?

Answer: Meeta is unable to keep her promise because of supervening impossibility and not because of any lapse on her part. She is unable to perform her part of the agreement because a natural calamity has completely ruined her clinic. Hence she cannot be made liable.

6. Mona agrees to sell her car to her friend Anu for Rs 3,00,000 and deliver it on the 15th of June. On the 12th of June she sells and delivers the car to Amit because he is giving her Rs 3,20,000 for the car. If Anu sues Mona will she succeed?

Answer: Anu has the right to get the car delivered to her because the agreement was made with her first. This is an anticipatory breach of contract on the part of Mona.

7. Roja inserts a coin to get a trolley at an airport. Is this a legally enforceable contract?

Answer: It is legally enforceable as it is classified as an implied contract.

8. Mani promises to give her daughter pocket money of Rs 1000 every week. She gives her the money for 3 weeks and then decides that the amount is very high and so she stops paying her the amount. Can her daughter sue her?

Answer: This is not a legally binding contract as it is a social agreement between a parent and her daughter. The intention was not to create a legal relationship. It was a family matter. Hence it is not enforceable.

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1 (A) Meaning and Kinds of Contracts

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