

INDIAN CONTRACT ACT 1872

CONTRACT:

Definition, essential elements nature and object.

A contract is an agreement made between two (or) more parties which the law will enforce.”

Definition: According to section 2(h) of the Indian contract act, 1872. “An agreement enforceable by law is a contract.

According to **SALMOND**, a contract is “An agreement creating and defining obligations between the parties”

Essential elements of a valid contract:

According to section 10, “All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and not here by expressly declared to be void”

In order to become a contract an agreement must have the following essential elements, they are follows:-

1) Offer and acceptance:

- To constitute a contract there must be an offer and an acceptance of that offer.
- The offer and acceptance should relate to same thing in the same sense.
- There must be two (or) more persons to an agreement because one person cannot enter into an agreement with himself.

2) Intention to create legal relationship:

- The parties must have intention to create legal relationship among them.
- Generally, the agreements of social, domestic and political nature are not a contract.
- If there is no such intention to create a legal relationship among the parties, there is no contract between them.

Example: BALFOUR (vs) BALFOUR (1919)

Facts: A husband promised to pay his wife a household allowance of L 30 (pounds) every month. Later the parties separated and the husband failed to pay the amount. The wife sued for allowance.

Judgment: Agreements such as there were outside the realm of contract altogether. Because there is no intention to create legal relationship among the parties.

3) Free and Genuine consent:

- The consent of the parties to the agreement must be free and genuine.
- Free consent is said to be absent, if the agreement is induced by a) coercion, b) undue influence, c) fraud, d) Mis-representation, e) mistake.

4) Lawful Object:

- The object of the agreement must be lawful. In other words, it means the object must not be (a) Illegal, (b) immoral, (c) opposed to public policy.
- If an agreement suffers from any legal flaw, it would not be enforceable by law.

5) Lawful Consideration:

- An agreement to be enforceable by law must be supported by consideration.
- Consideration means “an advantage or benefit” moving from one party to other. In other words “something in return”.
- The agreement is enforceable only when both the parties give something and get something in return.
- The consideration must be real and lawful.

6) Capacity of parties: (Competency)

- The parties to a contract should be capable of entering into a valid contract.
- Every person is competent to contract if
 - a) He is the age of majority.
 - b) He is of sound mind and
 - c) He is not disqualified from contracting by any law.
- The flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, etc.,

7) Agreement not to be declared void:

- The agreements must not have been expressly declared to be void u/s 24 to 30 of the act.

Example: Agreements in restraint of trade, marriages, legal proceedings, etc.,

8) Certainty:

- The meaning of the agreement must be certain and not be vague (or) indefinite.
- If it is vague (or) indefinite it is not possible to ascertain its meaning.

Example: 'A' agrees to sell to 'B' a hundred tones of oil. There is nothing whatever to show what kind of a oil intended. The agreement is void for uncertainty.

9) Possibility of performance:

- The terms of an agreement should be capable of performance.
- The agreement to do an act impossible in itself is void and cannot be enforceable.

Example: 'A' agrees with 'B', to put life into B's dead wife, the agreement is void it is impossible of performance.

10) Necessary legal formalities:

- According to Indian contract Act, oral (or) written are perfectly valid.
- There is no provision for contracting being written, registered and stamped.
- But if is required by law, that it should comply with legal formalities and then it should be complied with all legal (or) necessary formalities for its enforceability.