

Subject-Paper: Law of Contract-I

UNIT- I, & II (Supplementary Material)

For BA.LLB/LLB/LL.B(Academic) Students (2019-20)

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UNIT- I & II (Supplementary Material)

DEFINITION, MEANING AND ESSENTIALS OF A CONTRACT

1. Introduction to Law of Contract & Indian Contract Act,1872

Before the year 1872, there was no uniform Law of Contract applicable to the whole of British India. The Supreme Court of India established by the Royal Charter adopted the Law of England with some modifications while the judges in Mufussil Courts were to a great extent without the guidance of any law. They were guided by the principle that their decisions should be in accordance with **justice, equity and good conscience**.

The Indian Contract Act came into force on the first day of September, 1872 Prior to this enactment, the law relating to contracts as applied in India was wanting in uniformity and certainty. It was a mixed bag. It was partly English law, partly Hindu law and partly Muslim law. What principle of which law would be applied by the court to the point in dispute was extremely difficult to predict before hand till the judicial pronouncement was made. Law was never certain because the courts also changed their views from time to time.

The Indian Contract Act,1872 did greatly shorten, simplify and ascertain one of the most important branches of law. It endeavored to codify, that is to say arrange clearly and systematically, the chief rules relating to the formation, ratification, and discharge of all agreements enforceable by law, made between two or more persons by which rights are acquired by one or more than one to act or forbearances on the part of others.

The Contract Act of 1872 dealt, **interalia**, with the Sale of Goods, Indemnity and Guarantee, law of Bailment, Agency and Partnership. However, many leading jurists and lawyers criticized this Act for many reasons. In 1925 the Civil Justice Committee observed “ The Indian Contract Act was in some respects a foresighted statute, but it was never among the best of our codes and today it needs amendment.” Attempts have been made to improve the Contract Act, in 1930 a separate Act on Sale of Goods was passed. In consequence of the passage of these Acts, the corresponding Chapters of the Contract Act have been repealed. Apart from this, the Contract Act has not been much modified from the date of its enactment The Law Commission of India has made recommendations for the amendment of the Law of Contracts in some respects, but these recommendations have not been fully implemented so far.

2. DEFINITIONS: INTERPRETATION CLAUSE:

Section 10 has to be read along with section 2(Interpretation clause). Section 2 provides:

In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context:

- a) **“Proposal”**: When one person signifies to another his willingness to do or to 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**.
- b) **“Acceptance”** and **“Promise”**: 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**;
- c) **“Promisor and Promisee”**: The person making the proposal is called the **‘promisor’**, and the person accepting the proposal is called the **‘promisee’**;
- d) **“Consideration”**: When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or promises to do or to abstain from doing something, such Act or abstinence or promise is called **‘consideration’** for the promise;
- e) **“Agreement”**: Every promise and every set of promises forming the consideration for each other is an **agreement**;
- f) **“Reciprocal Promises”**: Promises, which form the consideration or part of the consideration for each other are called **‘reciprocal promises’**;
- g) **”Void Agreement”**: An agreement not enforceable by law is said to be **void**;
- h) **“Contract”**: An agreement enforceable by law is a **contract**.
- i) **“Voidable Contract”**: An agreement which is enforceable by law at the option of one or more parties thereto but not at the option of the other or others, is a **voidable contract**;
- j) **“Void contracts”**: A contract which ceases to be enforceable by law becomes void.
From the point of view of the legality and the essentials of a contract laid down under Section 10, there is difference between an agreement and a contract.

3. CONTRACT & AGREEMENT: MEANING, DEFINITION, DIFFERENCE

The object of Law of Contract is to ensure that what a man has been led to expect shall come to pass, i.e., what has been promised to him shall be performed. A Contract to a layman, means a piece of paper, on which are certain conditions the parties have agreed to. There are, however, only a few Contracts, which have to be expressed in writing, and in our everyday lives, all of us assume contractual obligations without writing, and sometimes without words.

A contract has been variously defined because like an elephant, it is easier to describe than to define a contract. An early attempt to define contract was made by Sir Frederick Pollock, according to him “A contract is a promise... that law will enforce.” Anson, defined a contract as “a legally binding agreement made between two or more persons.”

The definition of Contract in Section 2(h) of the Indian Contract Act, is built upon successive definitions of the essentials of a contract as **“an agreement enforceable by law.”**

Agreement: Sec.2(e) defines an agreement as “**Every promise, and every set of promise forming the consideration for each other**”. Agreement implies two or more persons who agree upon the same thing in the same sense. It may create legal obligations.

An agreement can come into existence only when the parties **communicate** with each other (**offer and its acceptance**) with a view to create contractual rights and obligations/duties between the contracting parties. An agreement between the two parties is the result of a proposal or offer by one party followed by its acceptance by the other. [see sections 2(a) and 2(b)].

Every agreement in its ultimate analysis, is made of a **proposal/offer** from one side, and its **acceptance** by the other. **Only those agreements are contracts, which are enforceable by law.**

Contract(sec. 2(h) :“**An agreement enforceable by law is called a contract**’ . . In other words an agreement that the law will enforce is a contract. **If an agreement is not enforceable by law, it is not a contract but it is only an agreement.** Thus to make a contract, there must be:

- A. **An agreement:** and
- B. **The agreement should be enforceable by law.**

4. **ESSENTIALS OF CONTRACT: (Sec.10)**

An agreement is regarded as a contract when it is enforceable by law. The conditions of enforceability are laid down in Section 10. Section 10 provides:

“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 are not hereby expressly declared to be void.”(section-10)

Therefore, an agreement to be legally binding, enforceable and to result in a valid contract: must satisfy the following requirements:

- I. The agreement must be made with the **free consent** of the parties ;
- II. The parties must be **competent to contract**;
- III. There must be **consideration**;
- IV. The **consideration and object** must be lawful; and
- V. The agreement must not be expressly declared to be **void**;

The agreement must comply with the provision of any law requiring it to be in **writing**, or **attested** or **registered**. Although written form of agreements is not obligatory under Indian Contract Act,1872, but it will be the better if agreement is in writing.

Section 10 sets out the various elements or essentials, which may affect the validity of a contract and thus prevent it from being legally binding or enforceable. Therefore, “every contract is an agreement but every agreement is not a contract.

It has been noted above that in order that an agreement becomes a contract, it has to satisfy all the essentials of a valid contract as mentioned in section 10. A contract is an

agreement creating an obligation, that is, a duty enforceable by law. Such an agreement is binding on both the parties. The two essential elements of a contract are: (1) agreement, and (2) agreement must be enforceable by law. Thus if there is an agreement between A and B, that A will paint a picture for B, and B will pay Rs.1000 to A, the agreement is a contract. Because on account of the agreement B is entitled to an act that is, painting of a picture, to be performed by A. Therefore, if an agreement creates a legal relationship between the parties and enables a man to compel another to do or not to do something or enables both to perform their respective promises, it is a contract.

All agreements are not contracts but all contracts are agreements: For example, if A agrees to go to picture with B or if A agrees to dine with B on a particular date but fails to turn up on the appointed date, does not create legal obligation between the parties but creates only social obligation. The parties cannot bring a suit against each other, as the agreement does not create legal obligations, which can be enforced. If an agreement creates legal obligations/contractual obligations, which can be enforced through a court of law, the agreement is called a contract. Thus all the agreements are not contracts, however, all contracts are agreements. The conditions for enforceability of an agreement to become a contract are laid down under section 10.

Question: How can you distinguish 'Contract' from an 'Agreement',-----

I. Free Consent:

Thirdly, the agreement must be made by the **free consent** of the parties. “**Consent**” means “to agree upon the same thing in the same sense” (S:13). According to Section 14, defines and explains ‘**free consent**’ . ‘Consent’ is said to be free when it is not caused by:

- a) **Coercion** (S:15)
- b) **Undue influence** (S:16)
- c) **Fraud** (S:17)
- d) **Misrepresentation** (S:18 and 19), and
- e) **Mistake** (S: 20, 21 and 22)

Where consent to an agreement is caused by coercion, undue influence, fraud and mis-representation, the agreement is a contract voidable at the option of the party whose consent was so caused. An agreement, which is enforceable by law at the option of one or more, parties thereto, but not at the option of the other or others is a **voidable contract** [S: 2(i)]. For example, “A” **threatens** to shoot B if he does not let out his house to him (A), and B agrees. The agreement has been brought about by coercion and is voidable at the option of B.

Where consent is caused by **mistake of both the parties** the agreement is void. Mistake must be of fact and not of law. A void agreement is not enforceable at the option of any party.

Therefore, ‘consent’ is said to be free when it is not caused by Coercion, Undue influence, Fraud and Misrepresentation and the agreement is a contract voidable at the option of the party whose consent was so caused.

II. Capacity to Contract:

Who is competent to contract? **Capacity to contract or competent to contract** is also one of the essentials of a valid contract. Section 10 requires that the parties must be **competent to contract**. Competence of the parties to a contract is defined in Section 11, which provides:

“Every person is **competent** to contract:

- a) Who is of the **age of majority** according to the law to which he is subject;
- b) Who is of **sound mind**, and
- c) Who is **not disqualified** from contracting by any law to which he is subject.

In other words, section 11 declares the following persons to be **incompetent** to contract:

- a) **Minors**;
- b) Persons of **unsound mind**, and
- c) **Persons disqualified** by law to which they are subject.

III. **Consideration { Secs: 2(d) & 25 }**

Consideration: Consideration is another essential of a valid contract. Keeping in view the essentials of a contract laid down under section 10, the law enforces only those promises/agreements, which have been made for consideration (section 2(d)). “**Consideration**” may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other in respect of the promise (*Currie v. Musa 1875 L. R. 10 Ex. 153, 162*). The Calcutta High Court in the case of *Fazulluddin v. Panchudass A. I. R Cal. 92*. observed: “*Consideration is the price of a promise, a return or **quid pro quo** something of value received by the promisor as inducement of the promise.*”

A “**nudum pactum**” (without consideration) promise is not enforceable. According to section 25, “an agreement without consideration is void”. In other words, Every agreement of which the object or consideration is unlawful is void. However, there are some cases laid down in section 25 in which contracts without consideration are enforceable but apart from these cases the plea of **nudum pactum** (without consideration) is always available. Subject to few exceptions the general rule is that an agreement without consideration is void (S: 25).

But it should be clearly understood that in India the consideration can proceed from the promisee or any other person. What is essential is that there must be some consideration. For example, A agrees to sell his house to B for 10, 000 Rs. Here B’s promise to pay the sum of 10,000 Rs is the consideration for A’s promise to sell he house and A’s promise to sell the house is the consideration for B’s promise to pay Rs. 10, 000. These are lawful considerations.

Question: Define consideration. Give examples.-----

IV. **Lawful Object and Consideration**

Legality of Object and Consideration: Legality of object and consideration is yet another important element of a valid contract (see S:10). Section 23 mentions the circumstances where the **consideration or object** of an agreement is declared **unlawful**. Section 23 provides:

The consideration or object of an agreement is lawful, unless:

- a) It is **forbidden** by law; or
- b) It is of such nature if permitted, would **defeat the provisions** of any law; or

- c) It is **fraudulent**; or
- d) It involves or **implies injury** to the person or property of another; or

The court regards it as **immoral** or **opposed to public policy**.

In each of these cases, the consideration or object of an agreement is said to be unlawful. "Every agreement of which the object or consideration is unlawful is **void**".

For example:

1. "A" promises to obtain for B an employment in the public services and B promises to pay Rs. 10,000 to A, the agreement is void, as the consideration for it is unlawful.
2. A, B and C entered into an agreement for the division (among them) of gains acquired or to be acquired by them by fraudulent means. The agreement is void as its object is unlawful.

V. Agreement Not Expressly Declared Void under I.C. Act

Not Expressly Declared Void: Lastly, the agreement must not be such as is **expressly declared to be void** by the Contract Act itself, e.g., an agreement by way of wager is void (S:30). [For further examples of void agreements see sections, 23, 26 to 29 of the Act.]

In the words of Sir Charles Odgers: "The law of Contract is concerned with those kinds of agreements which the law recognises and of which it will insist on performance or in the alternative will oblige the offending party to pay compensation to the other"

Question: Explain briefly various essentials of a contract as discussed under Section 10.

Answer:-----

5. FORMS OF CONTRACT: EXPRESS, IMPLIED, STANDARD:

It is well settled that while the Contract Act merely provides certain elementary conditions under which the Contract becomes binding on parties, it does not provide any particular form of a contract. A contract may be either express or implied. An express contract is one, the terms of which are declared orally or in writing. An implied contract is one which the law assumes from the conduct of the parties. It is, therefore, clear that the parties to a contract may agree to a particular form or condition or of mode in which the contract is to be executed. For example, where the Government enters into a contract with a person or vice versa, the particular form in which the contract is to be executed has been provided in the Constitution. Similarly, Section 72 of the Railways Act also provides for a particular mode or a standard form in which the contract has to be entered into. This does not mean that the provisions of the Contract Act stand suspended either by the Constitution or the Railways Act.

Express Contract and Implied Contract:

An **express contract** is one, the terms of which are declared orally or in writing. If the facts of a particular case show that execution of a written contract was a condition precedent for coming into force of the contract between the parties, then it cannot be said that any concluded contract in absence of any written contract being executed has come into force between the parties (*J.K. Industries Ltd. V. Mohan Investments & Properties Pvt. Ltd, AIR*

1992 Delhi 305). Where the proposal and acceptance is made in words, it is an express contract.

An **implied contract** is one which the law assumes from the conduct of the parties that they intend to make a contract enforceable by law e.g., where a person having an over draft account with a bank, operates on the account after notice from the bank that the rate of interest with regard to such account has been enhanced. (*Union of India v. S. S. H. syndicate, Poona, AIR 1976 S. C. 879*).

ITQ: Discuss various kinds of agreements/contracts. Answer:

6. SUMMARY

The Indian Contract Act did greatly shorten, simplify and ascertain one of the most important branches of law. It endeavored to codify, that is to say arrange clearly and systematically, the chief rules relating to the formation, ratification, and discharge of all agreements enforceable by law, made between two or more persons by which rights are acquired by one or more than one to Act or forbearances on the part of others.

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It has been noted above that in order that an agreement becomes a contract, it has to satisfy all the essentials of a valid contract as mentioned in section 10. A contract is an agreement creating an obligation, that is, a duty enforceable by law. Such an agreement is binding on both the parties. The two essential elements of a contract are: (1) agreement, and (2) agreement must be enforceable by law. Thus if there is an agreement between A and B, that A will paint a picture for B, and B will pay Rs.1000 to A, the agreement is a contract. Because on account of the agreement B is entitled to an Act that is, painting of a picture, to be performed by A. Therefore, if an agreement creates a legal relationship between the parties and enables a man to compel another to do or not to do something or enables both to perform their respective promises, it is a contract.

The law of contract is the foundation upon which the superstructure of modern business is built. Besides, the law of contract furnishes the basis for other branches of mercantile law. The enactments related to sale of goods, negotiable instruments, insurance, partnership, banking and consumers of goods and services are all founded upon the general principles of law of contract. Keeping in view the essentials of a contract as laid down in Section 10, the Act restricts the use of the word contract to only those agreements which give rise to legal obligations between the parties i.e., obligations which are not contractual in nature are outside the purview of the law of contract. We shall now examine these essentials in detail in the following chapters.

HOME ASSIGNMENTS

- 1. State 4 points difference between a contract and an agreement**
- 2. Explain briefly essentials of a contract.**

3. All contracts are agreements but all agreements are not contracts. Explain?

7. SUGGESTED READINGS

1. Bangia.R.K.2018. "Law of Contracts-General principles."
2. Jain & Jain.2015. "Indian Contract Act."
3. Avtar .Singh, 2018. "Contract & Specific Relief"
4. Kapoor.S.K.2010. "Contract-I &II,"
5. Cheshire and Fifot,2005 12th Edn. "Law of Contracts"
6. Yearly Supreme Court Digests
7. Sing ,A.2017 .Business Law
8. Annual Survey of Indian Laws, III, New Delhi
9. Supreme Court Cases, All India Reporters etc

10. USEFUL LINKS:

1. <file:///E:/INDIAN%20CONTRACT%20ACT%201872-09.pdf>
2. <https://www.livelaw.in/>
3. <http://legislative.gov.in/actsofparliamentfromtheyear/indian-contract-act-1872>
4. <https://indiankanoon.org/browse/supremecourt/2019/>
5. <https://www.google.com/search?q=INDIAN+CONTRACT&oq=INDIAN+CONTRACT+&aqs=chrome..69i59l3j69i57j69i59l3j69i60.13374j0j7&sourceid=chrome&ie=UTF-8>
6. indian contract act, 1872 summary notes pdf
7. [Indian-Contract-Act-Notes - CA Study Web](#)