

Unit → I

GENERAL PRINCIPLES OF LAW OF CONTRACT

- (1) Contract → sec. 2(h) of Indian contract Act, 1872
- (2) Agreement → sec. 2(e) of IC. Act, 1872
- (3) Promise → sec. 2(b) of IC. Act, 1872
- (4) Acceptance → sec. 2(b) of IC. Act, 1872
- (5) Proposal → sec. 2(a) of IC. Act, 1872

1) Contract ⇒

The word contract has been defined differently by various jurists. Some of the important definitions are as follows ⇒

- (a) According to Salmond, "A contract is an agreement, creating and defining the obligations between the parties"
- (b) According to Sir Frederick Pollock, "Every agreement ^{or} ~~and~~ promise enforceable by law is a contract"

© According to Sir William Anson, "A contract is an agreement enforceable by law made **between** two or more persons by which rights are acquired by one or more to act or forbearance on the part of others".

The definition of contract as given in the contract Act is based on Pollock's definition, and is given under Sec. 2(h) of the Indian contract Act, 1872, as follows:

"An agreement enforceable by law is a contract".

Thus a contract essentially consists of two elements:

- (1) An agreement, &
- (2) Its enforceability by law.

e.g; An agreement to sell a watch may be a contract, An agreement to

(3)

(2)

(2) Agreement ⇒

"An 'Agreement' is defined in

Sec. 2(e) of the Indian Contract Act, 1892.

According to this section, "Every promise and every set of promises forming the consideration for each other is an agreement".

In this context a promise refers to a proposal or offer which has been accepted, in other words, an agreement consists of an offer by one party and its acceptance by the other.

Therefore Agreement = offer + Acceptance

i.e., for an agreement there must be at least two parties, one making an offer and the other accepting it. A person cannot enter into agreement with himself.

Another aspect relating to an agreement is that the parties to an agreement must have an identity of minds in respect of the subject matter. i.e. the proposer and acceptor must agree on the same thing in the same sense. This is

e.g. Suppose 'A' has three motor bikes, 1998 model, 1999 model and 2000 model. 'A' offers to sell his motor bike 1998 model while 'B' is under impression that he is buying 1999 model motor bike. In his case, there is no identity of minds. The subject matters are different hence there is no agreement.

example of agreement

'A' promises to deliver his Radio to 'B' and in return 'B' promises to pay a sum of Rs. 500 to 'A', there is said to be an agreement between 'A' and 'B'.

3) Promise

Section 2(b) of the Indian Contract Act, 1872 defines Promise.

According to this Section,

"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."

Therefore we can say that a promise

Example of Promise (5) (3)

when 'A' makes a proposal to sell his watch to 'B' for Rs 500 and 'B' accepts this proposal, there results a promise between 'A' & 'B'.

(4) Acceptance (Sec. 2(b))

According to Sec. 2(b), "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

A proposal when accepted becomes a promise. The person who accepts the proposal or offer is known as offeree or acceptor.

(5) Proposal or offer Sec. 2(a)

The term proposal is defined in Sec. 2(a) of the Indian Contract Act, 1872.

According to Sec. 2(a),

"when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtain the assent of that another to such an act or abstinence, he is said to make a proposal."

The term 'proposal' used in the Indian contract Act is synonymous with the term 'offer' used in English law.

The willingness to do or abstain from doing something i.e; the proposal or offer must be made with a view to obtaining the assent of the other party thereto.

e-g; A's willingness to sell his Radio to 'B' for Rs. 500 if 'B' accepts to purchase the same, amounts to proposal by 'A' for the sale of the Radio. But if a statement is made without any intention to obtain the assent of the other party thereto that cannot be termed as proposal.

(5) Reciprocal promises :- sec. 2(b)

"Promises which form the consideration or part of the consideration for each other are called reciprocal promises."

Q → Distinction between an agreement and a contract? (7) (4)

Agreement

1. An offer and its acceptance constitute an agreement

2. Every agreement may not be a contract

3. An agreement may not create a legal obligation

4. Agreement is not concluded or a binding contract in all cases.

5. An agreement may not be enforceable

Contract

01. An agreement and its enforceability constitute a contract.

02. All contracts are agreements.

03. A contract necessarily creates a legal obligation.

04. Contract is concluded and binding on the concerned parties.

05. Contracts are enforceable.

(8)

Q → Basic Elements of contract?

OR

Essentials of a valid contract

OR

“ All contracts are Agreements, but all agreements are not contracts, discuss? ”

All contracts are agreement, but all agreements are not contracts. An agreement which is enforceable by law is a contract as per section 2(h) of the Indian Contract Act, 1872. All agreements are not enforceable by law and, therefore all agreements are not contracts. Some agreement may be enforceable by law and others not. Thus, all agreements are not contracts. However, all contracts are agreements.

All such agreements which satisfy the conditions mentioned in section 10 of the I.C. Act, 1872 are contracts.