

## GENERAL PRINCIPLES OF CONTRACT LAW

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### INTRODUCTION

One myth that we have about contracts is that anything upon which two people agree is a contract. This is a mistaken view, and the existence, validity, and enforceability of contracts are based on the satisfaction of certain legal requirements. Mere agreement of parties is not sufficient. There are several important aspects in an agreement that make it a legal document to avoid battles in the Court in case of a breach. There can be verbal or written Agreements. However, most business understandings are always in the black-and-white form of agreement.

### WHAT IS A CONTRACT?

In our daily life, we enter into multiple contracts like a matter of habit that we are not even aware of. From the simple metro ticket we buy on the way to our office to complex business negotiations that we make, all are contracts. This is how we enter into numerous contracts in one single day. A legally enforceable agreement between two or more parties is known as a Contract in which both parties have a mutual understanding of the terms and conditions of the agreement and abide by such terms for some consideration (monetary or otherwise). In India, the laws relating to Contracts are governed by the Indian Contract Act, 1872. There are other laws also like the Companies Act, SEBI Act, Copyright Act, etc which also affect certain contracts like Shareholder's Agreement, Trademark Agreement, etc.

The Law of Contract tells us how a promise or an agreement can be enforced in a Court of law. However, Courts may not enforce all the agreements. Courts generally look for certain ingredients that must be present in an agreement to enforce a contract.

### PROCEDURAL REQUIREMENTS FOR VALIDITY OF CONTRACTS

A Contract can be either oral or written or by conduct. A written contract is not always necessary but mostly the contracts of business are written either on stamp paper or on emails/letters to bring down the risk of disputes in the business.

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## **OTHER PROCEDURAL REQUIREMENT**

It may be necessary for some contracts to be in written form or attestation may also be a necessary part for some contracts (a third person acting as a witness that he has seen that the parties put their signature to it) to be legally valid.

## **ENFORCEABILITY OF CONTRACTS**

There is a difference in the enforceability of contracts and the validity of contracts. For example, many legally valid contracts may require to comply with additional procedural requirements (stamping or registration) to be legally enforceable. A Contract that is not enforceable due to procedural requirements may become enforceable after completing the requirement. However, if the contract is not legally valid itself, a new contract will have to be entered into. Some illustrations where contracts must comply with special requirements either to be valid or to be enforceable:

- 1) It is mandatory for an arbitration agreement to be in writing.
- 2) Partnership deed must be registered with the Registrar of Partnerships.

## **INGREDIENTS OF VALID CONTRACT**

- 1) Parties must have the intention to create a legal relationship

When two persons are coming into a contract it is mandatory for them to mean it while coming into it. For example, X threatens that he would commit suicide if a sports car will not be given to him, and to prevent him his mother promise to buy a Porsche. Here, in this example, her mother does not create a legal obligation. The promise was made to calm him down.

## **HOW THE INTENTION IS DETERMINED?**

If a person is anticipating any real assistance and makes assurance on such assistance, it is an official mark that he has the intention to be bound legally.

### **2) OFFER**

The process of formation of a contract starts when one party making an offer to another party. Offer is an utterance of willingness to do or not to do something with an intention of obtaining the consent of the other party on such proposal. The intention behind such an offer is that if the

offer is accepted by the other party it will have a legally binding effect on both parties. If consent is not obtained, the proposal lapses.

## **CLASSIFICATION OF OFFERS**

### **Standing offer**

Any offer that we can accept at any time but once it is accepted, can't be accepted again because it does not exist after its acceptance and become binding.

For example, I can let my Ferrari on hire for INR 50,000 per day on any day within the next three months. This offer is valid for the next three months as a standing offer.

### **Continuing Offer**

This offer is complete of a different type than the standing offer. we can accept it even after accepting it previously and as a result, multiple contracts can also be formed.

### **Offer and invitation to offer**

Usually, we think that offer and invitation to offer have similar meanings but from a legal perspective, these terms are different and have distinct meanings. An invitation to offer is something short of an offer.

Illustrations: A price catalogue, Invitation to Auction

The offeree is free to accept or reject the offer.

### **Acceptance of Offer**

- 1) Firstly, there should be a valid offer and then the acceptance of an offer is a must by an offeree for the formation of any contract.
- 2) If the offer is not accepted, a contract cannot be formed.

## **MIRROR IMAGE TEST**

It is mandatory for an offeree to accept all the terms of the offer without any modification. If any modification is made, the offer will become a counteroffer in the eyes of Law not considered an acceptance.

## CONVEYANCE OF OFFER AND ACCEPTANCE

### Conveyance Of Offer

There are various methods for the conveyance of an offer like writing a letter, email, by phone, face to face, etc.

Is it viable to convey in an implied manner

Of course, an offer can be conveyed in an implied manner. If a reasonable man has an apprehension of a clear offer by the conduct of a person, it does not matter what the person who so conducted actually meant.

For example: If I am selling different types of flowers and a note "PICK ANY ONE Rs 10 ONLY" is written on my basket and if any person is holding one of these flowers without saying a word, it is a clear offer because it is obvious to understand that it is a reasonable offer.

This rule is also applicable to the conveyance of acceptance.

In cases where the acceptance is given through mail?

When the letter is posted by the offeree, it can not be received back and it is considered as final acceptance.

4) There should be a consensus of mind.

Parties must have agreed upon things if they arrived at a contract. Illustration: During a business transaction

1) deal planning (this is done by the business team)

2) proposal stage (also undertaken by the business team)

3) contract drafting stage, contract or project implementation stage

In the contract or project implementation stage, managers are continuously involved in communication, training, and standard setting for the performance of various responsibilities --these are the stages where consensus in the mind of parties is created and shaped. Absence of consensus results in a failed deal or a dispute situation arising from a contract.

5) There must be a consideration

Normally (even without an understanding of the law) it is understood that a contract or a business must have promises from both parties. In law, this is known as consideration.

Illustration: Recently my aunt was admitted to the hospital because she was suffering from Hernia and the surgeon asked for an operation after signing on contract. The contract was based on both interests i.e. for performing a surgery doctor will be paid some consideration in return i.e. money and we have to make timely payment for the operation. Thus, in a contract, both parties receive remuneration for carrying out their obligations known as Quid Pro Quo.

#### **A Valid Consideration ensures these vital elements:**

- 1) At Promisor's desire, consideration is given.
- 2) Promisee gives consideration.
- 3) The Consideration may be past, present, or Future.
- 4) For constituting the consideration there should be any act, abstinence, or promise.
- 5) There must be legal considerations.
- 6) It should not be opposed to the law.

#### **UNLAWFUL CONSIDERATION**

The consideration can be unlawful if consisting any of the following contingencies :

- 1) Prohibited by Law
- 2) If it is permitted would conquer the statutory provisions
- 3) Deceitful purpose
- 4) If it gives injury to the person or property of another
- 5) Immoral or opposed to public policy

#### **What is Public Policy?**

It is a lawful policy. It is made for the interest of society. For example, it would be against public policy if we carry out trade with our enemy country.

## **EXEMPTION OF CONSIDERATION**

As we all know that exceptions are always there. Hence there are some cases where a contract is valid even without consideration:

- 1) contract made in infatuation
- 2) Past voluntary service
- 3) Assurance to pay Statute barred debt
- 4) gift really made

## **DISQUALIFICATIONS FOR ENTERING INTO A CONTRACT**

### **Ineptitude**

Ineptitude means the inability to enter into a contract. The two situations where a person can not enter into a contract are:

- 1) Minority
- 2) Unsoundness of mind

These two people are unable to give their free assent which is the basic necessity for any contract that's why both these people are exempted from coming into any agreement.

### **Legal Disqualification**

- 1) Alien enemies
- 2) Insolvent person
- 3) Foreign sovereigns

They can make contracts after obtaining permission from the Central Government.

### **ACCORD BY A MINOR**

According to Law any person whose age is below 18 years is a minor. Accord by a minor cannot be carried out in a court of law. If responsibilities are imposed on a minor, the agreement will be considered void.

### **Estoppel: Prevention Against a Minor**

When a person by his communication or action convinces another person to think it to be true and then the person takes action on it then, a person is not allowed to deny the veracity. But because of age, a minor is not responsible here.

### **Accountability Of Minor**

If a Legally Authorised guardian is acting on behalf of the minor and entering into any contract for the sake of the minor then, the contract is a valid contract whereas if they are entering into any contract in hostile to the minor, the contract becomes voidable means it depends upon the discretion of a minor.

### **Insanity**

It is commensurate with the minority. But the only difference is that a person of an unsound mind can become sane or can become insane at any time. In all of these cases, only that contract is a valid contract only which is made when a person is sane.

Illustration: X is a good person. His friends lend him money on debt whenever he was in need. one day he became insane but he has to pay the due money against his friends. All the accountability he had due to the borrowing he did while he was sane would remain valid means he has to pay the debt.

### **E-COMMERCE WEBSITES AND MINOR CONTRACTS**

The Internet provides anonymity that's why it is quite difficult for e-commerce companies to identify minors who are creating accounts and purchasing items on e-commerce websites. It is mandatory for the websites that they must mention in their terms of service that the assistance is accessible only for 18 years or above person like Websites such as YouTube always require confirmation that the users are above 18 before giving service to certain types of data. In the US, according to the Children's Online Privacy Protection Act, online websites must comply with guidelines laid down in the Act for the collection of Information, privacy policy, etc. However, there are no equivalent laws in India.

### **STANDARD FORMS OF CONTRACT**

The standard form of contract is one that is drafted by one party and the other party does not have the option to modify the terms of such an agreement. In today's world, most commercial

contracts (where the product or service is provided in bulk) are in form of a Standard Contract. These contracts usually adopt a “take it or leave it” policy means no option is left for the other party to negotiate.

