

## LEGAL INTENTIONS: ENSURING CLEAR AND ENFORCEABLE AGREEMENTS

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### ABSTRACT

In the centuries, when the barter system was prevalent, humans used to trade in exchange for goods or services. The same has been going on till date, in our day to day lives, we enter into different kinds of contracts or agreements like buying or selling property, buying vegetables from the green-grocer or fruit-vendor, signing a term-based agreement in a company and many more. But there are such agreements or we can call them a contract when we do not fulfil the essential requirement while entering into a contract to make it valid one. A contract doesn't hold any value if certain requirements are not fulfilled and hence arises a situation where there are high risks of fraud or other such mishap that might occur. So, it is always necessary to make sure that while making a settlement, the essentials are to be checked to make a valid contract and to avoid any risks of getting played by anyone. Here in this article, we shall discuss the essentials of a valid contract, its importance and its enforceability.

**Keywords:** Contract, Agreement, Enforceability.

### WHY ARE CONTRACTS IMPORTANT?

Contracts are important because they standardize agreements between the parties, and instantly give effect and significance to the said settlement by putting terms and conditions and the obligation between the two and to adhere to the responsibilities. They play an important part in outlining the payment conditions and imposing timelines. Moreover, contracts serve as a legal relationship between the parties that require nothing more but transparency, communication and collaboration.

- **Contracts act as an obligation for both parties.**

Whenever we enter into a contract and transform it into a valid one, there are certain terms and conditions which have to be fulfilled in furtherance, so that it remains in effect. The rules and regulations are subject to obligation to both the parties, the moment when they sign the agreement, they are legally bound to fulfil every responsibility mentioned in the contract. In

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simple words, a contract is nothing but a relationship between two parties where each other is obligatory to each other.

- **Agreements help to avert disagreements and lessen the risk chance.**

When multiple individuals come to an agreement, each one of them has the right to put forward their opinion and profits are discussed and equally distributed amongst each. Simply agreements act as a negotiable instrument and middle-line pathway to get the best possible as well as profitable deal. When every party gets their equal part and satisfaction, they form a team and as it is always said “unity is strength”, as a team there are fewer chances to fall in the situation of failure or can say risk.

- **Contracts promote teamwork and communication.**

As said above, contracts are relationships and collaboration between two parties to make a deal successful. Teams are supposed to work together and support in times of need by making effective communication and maintaining transparency. In every business relationship, this is how things work, after the creation of a contract and assurance of building an impactful team with mutual collaboration, the contract comes into force with the help of solid communication and collaboration.

## **ESSENTIALS OF A VALID CONTRACT**

A valid contract is enforceable by law and to make a contract valid there are certain conditions that need to be fulfilled and if the contract is not valid then it may lead to difficulty and unlawful acts. A contract that is not valid will face complications for the parties involved. For convenience, the Indian Contract Act 1872 itself defines and enlists the essentials of a contract directly or through interpretation through various pronouncements by the Indian Judiciary.

Section 10 enumerates: **What agreements are contracts?**

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.<sup>1</sup>

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<sup>1</sup> India Code, Section 10 ‘by the ministries/department of the government of India  
<[https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00035\\_187209\\_1523268996428&orderno=10](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00035_187209_1523268996428&orderno=10)> accessed 27 June 2024

The Indian Contract Act, 1872 itself defines and enlists the essentials of a valid contract in Section 10 of the contract, which enumerates certain points that are essential for a valid contract like Free consent, competency of parties, lawful consideration, etc.

**The essentials of a valid contract are:**

1. Offer and acceptance
2. Consensus ad idem
3. Legal relationship
4. Possibility of performance
5. Competency of parties
6. Free consent
7. Lawful Consideration

**We shall discuss each one of these in the following context:**

**Offer and acceptance:** In order to enter into a contract, there must be the presence of at least two parties, one of them making the offer and the other accepting it. One cannot make a deal with oneself to trade a thing or two for their own, right? Unless you're challenging yourself to do a certain task, entering into a valid contract with oneself is practically incorrect. So, in order to make a valid contract, there must be the presence of two parties or more. Both parties must have legal recognition e.g. companies, organisations or natural persons.

**Consensus ad idem:** 'Consensus ad idem' is a 'Latin' term that means, meeting of minds. i.e. the parties entering the contract must agree on the same thing with mutual consent in a sense. This is the first and foremost step of a contract to make it enforceable because to agree upon the same terms, the parties must be on the same platform and share a common intention.

**Section 2(a) of the Indian Contracts Act, 1872 (ICA)** provides that 'when one person signifies to another his **willingness to do or abstain from doing anything**, to obtain the **assent of that other to the act** or abstinence, he is said to propose. Hence, an offer is a promise made by a party to do or refrain from doing something in exchange for specific performances from the other party.<sup>2</sup>

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<sup>2</sup> Ibid

The moment when the party accepts the offer, an agreement is formed and in order to transform it into a valid contract, the doctrine of consensus ad idem serves as the basis that leverages the existence of a contract.

**Let us understand with the help of an illustration:**

A agrees to sell his horse to B. A owns three cars and wants to sell his white horse. B thinks he is buying his grey horse. Here both A and B have not agreed upon the same thing in the same sense. Hence, there is no consent and subsequently no contract.

**Legal Relationship:** The intention to create a legal relationship is a fundamental step in the formation of a contract. If there is no intention to create a legal relationship, then there is no contract between parties. From the very beginning, the parties need to decide if they would be able to fulfil part of their responsibilities, if not then such a contract will be liable for the failure.

Agreements with social domestic involvement are not treated as contracts like mother-father relations or brother-sister duos. Only agreements that have legal significance are liable to be contemplated as a valid contract which gives rise to a legal relationship. It ensures that the parties are aware of the legal consequences of entering into agreements and punishment if not adhere to the same.

**Possibility of Performance:** The said agreement should be in the condition to be fulfilled. One cannot make delusionary hopes which is practically incorrect and impossible.

E.g. one cannot promise another to bring someone back to life in return for something. Even if all the requirements are fulfilled still this contract cannot be treated as a valid one because bringing someone back to life from the dead is an impossible thing. Thus this kind of agreement is not valid.

**Competency of Parties:** Section 11 of the Indian Contract Act, 1872 is:

“Who are competent to contract — Every person is competent to contract who is (1) of the age of majority according to the law to which he is subject, and who is (2) of sound mind and is (3) not disqualified from contracting by any law to which he is subject.”<sup>3</sup>

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<sup>3</sup> Arya Senapati, Section 11 (*iPleaders*, 25 February 2024) <<https://blog.iPLEaders.in/section-11-of-indian-contract-act-1872/>> accessed 27 June 2024

**Let's discuss the above statement in brief:**

- **Age of Majority:** A minor who is below the age of 18 years cannot enter into a contract.
- **Sound Mind:** It means that the person who is entering into the contract should be fully aware of what he/she is doing and have knowledge of the consequences and promises of the contract.
- **Not Disqualified:** It means that the party is not to be disqualified by any other legal consequence. In simple words, a foreign sovereign, jail convict or an alien enemy etc, cannot enter into a contract.

In simple understanding, every person is able to make a contract or enter into one who has the legal capacity to do so, attained the age of majority according to law, has a sane and sound mind and is not disqualified from contracting by any law which he is subject to. This ensures that the contract is not voidable or unenforceable due to the incapacity of one or more parties involved.

**Free Consent:** In the Indian law system, consent has always played a crucial part in the judgements. Therefore, in order to make an agreement consent plays a very crucial role in making of a valid contract. If two people arise at a final settlement where both parties want to enter into a contract and enforce it, it means the two parties must have reached the state of consensual agreement without either of them being influenced, coerced, misrepresented or tricked into it.

But if the consent of either of the parties is corrupted knowingly or by mistake, the said contract between the parties is no longer valid.

**Example:** 'A' agrees to sell his car to 'B'. 'A' owns three cars and wants to sell his Maruti car. 'B' thinks he is buying his Ford. Here 'A' and 'B' have not agreed upon the same thing in the same sense. Therefore, there is no consent and no contract afterwards.

**Lawful Consideration**

**In Section 23 of the Act, the unlawful considerations are defined as all those which:**

- It is forbidden by law.
- Is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent.
- involves or implies, injury to the person or property of another

- the Court regards it as immoral or opposed to public policy

These conditions will render the agreement illegal.

## **CONCLUSION**

A contract is a legally binding agreement or a relationship that exists between two or more parties or persons to do or to avoid doing an act, which is enforceable. For a contract to be formed, there must be an offer and acceptance followed by consideration. Both parties must be willing to create some kind of legal relationship with each other. If one of the parties fails to fulfil the conditions of the contract will be punished under law. Domestic or social contracts between families or siblings are not enforceable agreements and therefore cannot be considered as a valid contract.

An agreement is merely an informal or formal deal between different parties which may be oral or written. All contracts are agreements but not all agreements are contracts. The main aspect remains the mutual understanding between the parties for a contract to be formed. The parties are binding to the terms and conditions under the contract. In the cases where an invitation to an offer a contract is made only when the offer is accepted by the other party and the party is aware of its acceptance, therefore all the terms of the offer are accepted. One of the most essential parts of a valid contract is a lawful agreement. Every contract in order to be enforceable, should carry a valid status that means lawful in the eyes of the law. Each party signing the contract should have and take relationship. The following agreement must have a consideration from each side. Consideration is the price for the promise of the other is sought. However, it is not necessary that this price has to be in terms of money.