

# Indian Contract Act, 1872

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# Introduction

- 1) INDIAN CONTRACT ACT, 1872 governs law relating to contracts in India.
- 2) The Act was passed by British India and is based on the principles of English Common Law.
- 3) This Act is applicable to whole of India including Jammu and Kashmir.
- 4) The Act came into effect from 1st September, 1872 and applies to all contracts in India.

# Important Definitions under the Act

- 1) Proposal** – Sec 2(a) 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.
- 2) Acceptance** – 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. Person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”.
- 3) Agreement** – Sec 2(e) Every promise and every set of promises, forming the consideration for each other, is an agreement. In simple words, Agreement = Offer + Acceptance

4) **Void Agreement** – Sec 2(g) An agreement not enforceable by law is said to be void.

5) **Contract** – Sec 2(h) An agreement enforceable by law is called as contract. In simple words,  
Contract = Agreement + Enforceability

6) **Voidable Contract** – An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others.

# Difference Between Agreement and Contract

| BASIS FOR COMPARISON | AGREEMENT   | CONTRACT  |
|----------------------|---|---|
| Meaning              | When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement. | When an agreement is enforceable by law, it becomes a contract. |
| Elements             | Offer and Acceptance  | Agreement and Enforceability                                    |
| Defined in           | Section 2 (e)   | Section 2 (h)   |
| In writing           | Not necessarily   | Normally written and registered                                 |
| Legal obligation     | Does not creates legal obligation   | Creates legal obligation  |
| One in other         | Every agreement need not be a contract.   | All contracts are agreement                                     |
| Scope                | Wide  | Narrow  |

# Essential elements of a valid contract

- 1) **Two parties** – There should be at least 2 parties for a contract.
- 2) **Offer** – There shall be an offer or proposal by one party
- 3) **Acceptance** – Offer made should be accepted by the other party
- 4) **Lawful consideration** – The agreement shall be supported by lawful consideration
- 5) **Lawful object** – The object and consideration of the contract shall be legal

6) **Competent (capacity) to contract** – Section 11 a) The parties to the contract shall be competent to contract  
b) For a person to become competent to contract – -  
Such person should be major (18+) - Such person should be of sound mind (Section 12) - Such person should not be disqualified by law

7) **Free consent** – a) There shall be free consent between the parties to the contract b) Consent is said to be free when the following elements are absent (Section 14) -  
Coercion (Section 15) - Undue influence (Section 16) -  
Fraud (Section 17) - Misrepresentation (Section 18) -  
Mistake (Section 20, 21, 22)

8) **Intention to create legal relationships** – The intention of the parties to a contract must be to create a legal relationship between them. Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

9) **Possibility of performance** – The agreement should be capable of being performed Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced

10) **Legal formalities** – Legal formalities if any required for particular agreement such as registration, writing, they must be followed

# OFFER

- A) **Definition** – Section 2(a) 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) **Types of offer** – 1) General Offer - It is an offer to the whole world. 2) Specific offer - It is an offer made to a particular person or group of persons. 3) Express offer - It is an offer which is made by words either oral or in writing. 4) Implied offer - It is an offer which is made by conduct or gesture of the parties. 5) Counter offer - When a person to whom the offer is made does not accept the offer [as it is] he counters the condition. This is called counter offer. 6) Cross offer - When two offers of same terms and conditions cross each other at same time, it is called cross offer. 7) Standing offer - An offer is a standing offer if it is intended to remain open for a specified period

- **C) Essentials of valid offer –**
- 1) Offer may be expressed or implied – An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.
- 2) Offer may be specific or general – a) A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. b) A general offer is an offer made to the public at large.
- 3) Offer must create Legal Relations – An offer to be valid must create legal relationship between the parties. Say for example a dinner invitation extended by A to B is not a valid offer.

- 4) Offer must be Clear, not Vague – The terms of an offer should not be vague (not clear / confusing) For e.g. - A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.
- 5) Offer must be Communicated to the Offeree – No offeree can accept the proposal without knowledge of the offer (Lalman Shukla v. Gauri Dutt.)
- 6) A statement of price is not an offer
- 7) Offer cannot contain a Negative Condition – The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.
- 8) A mere statement of intention is not an offer. Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled

THANKS