B.COM 1ST YEAR

SUBJECT- BUSINESS LAW

UNIT - I

Meaning of Contract-

- "A contract is a legal agreement. It is an exchange of promises by two persons in which there is an obligation to do or not to do a particular act and such obligation is enforceable by law."
- It means for contract-
- 1-There must be an agreement
- 2-Such agreement must be enforceable by law

DEFINITIONS

CONTRACT- In the words of Pollock, 'every agreement and promises enforceable by law is contract'. **Section 2(h)** of the Indian Contract Act, 1872 states that 'an agreement enforceable by law is contract'. This definition gives us two ingredients—an agreement and 'enforceable by law'.

E.g. - An agreement to buy certain specific goods at an agreed price lets say 100 bags at Rs 1430 per bag is a contract becoz it gives rise to a duty enforceable by law and in case of default on the part of either party an action for breach of contract could be enforced.

AGREEMENT

An agreement means a promise and a reciprocal set of promises forming consideration for each other—**Section 2(e). All contracts are agreements but all agreements are not contracts.**

CONTRACT = Agreement + Enforceable by law

Essential Elements of a Contract

1. **Agreement**: The primary element that creates a contract between parties is an agreement, which is a result of offer and acceptance, that forms consideration for the parties concerned.

2. **Free Consent**: Consent of the parties is another important aspect of a contract, which means the parties entering into the contract, must agree upon the same thing in the same sense. The consent of the parties is said to be free when it is not influenced by coercion, undue influence, fraud, misrepresentation and mistake.

3. **Competency**: Competency refers to the capacity of the parties to enter into the contract, i.e. he/she has reached the age of maturity, he/she must be of sound mind, and he/she is not disqualified from contracting, as per the law like the alien enemy, foreign sovereigns, etc.

4. **Consideration**: It implies the price agreed to be paid for the promisor's obligation by the promisee. It must be adequate and lawful.
5. **Lawful object**: The object for which the contract is created must be lawful, or else it is declared as void.

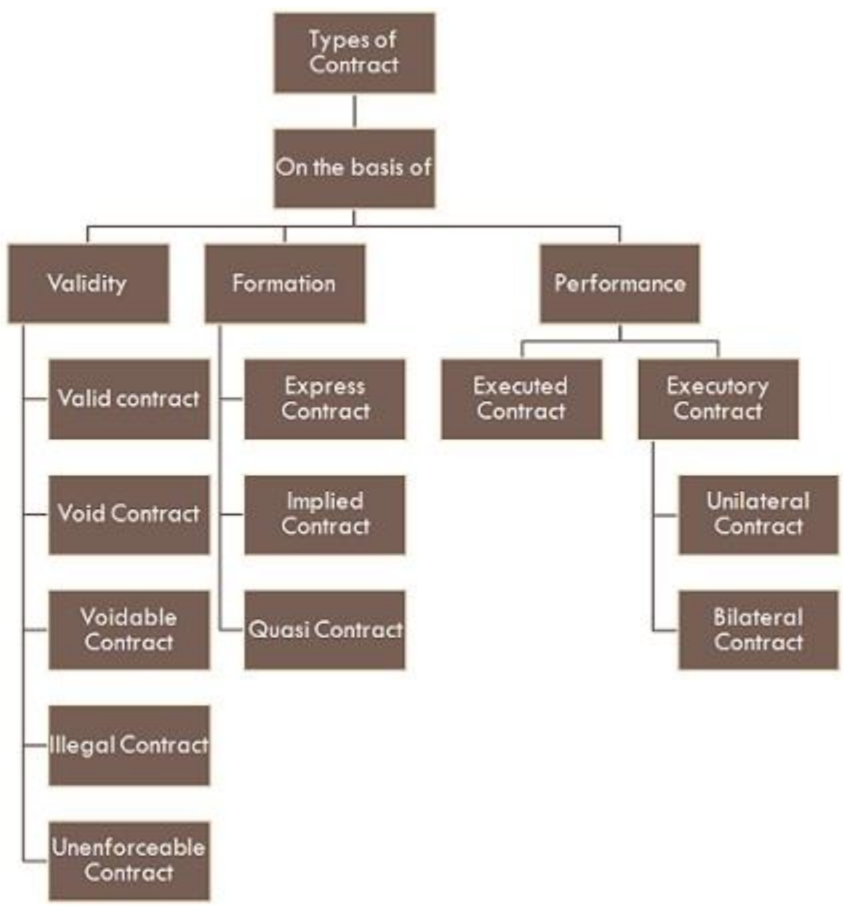
6. **Not expressly declared as void**: The law should not expressly declare the contract as void, such as contract in restraint of marriage, trade or legal proceedings.

Other important elements of the Contract

- There must be at least two parties to constitute a contract, i.e. one who proposes and another accepts the same.
- The parties entering into the contract must intend to create a legal obligation for one another.
- It must be in writing.
- There must be certainty of meaning. the terms of the parties must be clear to the parties, i.e. the party should not interpret anything wrong, there must be a consensus ad idem.
- There should be a possibility of performing the contract.

So, these are some paramount elements of a contract, without which it cannot be enforced in the court of law.

Types of Contract



On the basis of validity

- **Valid Contract**: An agreement which is enforceable by law, is a valid contract.
- **Void Contract**: The contract which is no longer enforceable in the court of law is a void one.
- **Voidable Contract**: A contract in which one of the parties to the contract has a choice to avoid performing his/her part, then it is termed as a voidable contract. When the consent of the party is not free, the contract becomes voidable, at the option of the aggrieved party.
- **Illegal Contract**: A contract which is forbidden by law is termed as an illegal contract.
-
    - **Unenforceable Contract**: The contract whose substance is good, but due to some issues, it is not enforceable, is called an unenforceable contract.
- ### On the basis of formation
    - **Express Contract**: When the terms of the contract are expressed orally or in writing, it is known as an express contract.
    - **Implied Contract**: The contract which is constituted by implication of law or action, is an implied one.
    - **Quasi-Contract**: These are not a real contract, but are identical to a contract, which is formed out of some circumstances.
- ### On the basis of Performance
    - **Executed Contract**: When the contract is performed, it is known as an executed contract.
    - **Executory Contract**: When the obligation in a contract, is to be performed in future, it is described as an executory contract.
        - Unilateral Contract
        - Bilateral Contract

To sum up, agreements are termed as a contract, if it comprises all the essential elements that constitute a contract.

Meaning of agreement

Agreement Law and **Legal** Definition. **Agreement** is the meeting of minds or a mutual understanding between two or more persons about their reciprocal rights and duties regarding past or future performances. ... A binding **agreement** makes an enforceable contract.

Definition of agreement

The **Indian Contract Act** 1872, section 2(e), defines an **agreements** as "every promise and every set of promises, forming the consideration for each other is an **agreement**." A promise is essentially an offer or a proposal, made by a person or an entity, towards another. ... Lawful Consideration. Capacity to **Contract**.

Example :

A promises to B to sell his Laptop for Rs. 25,000/- and B accepts to purchase it for the said amount. here 'A' and 'B' entered into an agreement.

For the formation of an agreement there must be two or more persons / parties there must be a proposal from one person / party and acceptance from the other person / party. The person making the proposal is called the “**Promisor**”, and the person accepting the proposal is called “**Promisee**”

In the above example 'A' Promisor and 'B' is Promisee.

Types of Agreement

There are many types of Agreement, on the grounds of enforceability agreement has two types which are as follows

Types of Agreement (The Indian Contract Act, 1872)

According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises forming the consideration for each other is an agreement".

Example :

A promises to B to sell his Laptop for Rs. 25,000/- and B accepts to purchase it for the said amount. here 'A' and 'B' entered into an agreement.

For the formation of an agreement there must be two or more persons / parties there must be a proposal from one person / party and acceptance from the other person / party. The person making the proposal is called the “**Promisor**”, and the person accepting the proposal is called “**Promisee**”

In the above example 'A' Promisor and 'B' is Promisee.

Types of Agreement

There are many types of Agreement, on the grounds of enforceability agreement has two types which are as follows :

A) Valid Agreement

B) Void Agreement

A) Valid Agreement :

Valid agreement is said to be valid if it can be enforceable in the Court of Law. Section 2(h) of the

Indian Contract Act, 1872 says that, "an agreement enforceable by law is a contract"

B) Void Agreement :

According to Section 2(g) of the Indian Contract Act, 1872 an agreement is not enforceable by law is said to be void.

Section 24 to 31and 56 of the Indian Contract Act, 1872 lay down the provisions relating to the agreements which are declared void are as follows :

(i) If consideration and objects are unlawful in part. (Section 24)

(ii) Agreement without consideration(Section 25)

(iii) Agreement in restraint of marriage (Section 26)

(iv) Agreement in restraint of trade (Section 27)

(v) Agreement in restraint of legal proceedings (Section 28)

(vi) Uncertain Agreements (Section 29)

(vii) Wagering Agreement (Section 30)

(viii) Agreement contingent on impossible event (Section 31)

(ix) Agreement to do impossible acts (Section 56)

(x) Agreement to minor

(xi) When both parties are under mistake of law.

All agreements are not enforceable by law and therefore, all agreements are not contracts.

Essentials of valid Contract under Indian Contract Act 1872

All agreements are not Contract. The Law of Contract is the Law of those agreements which create legal obligations and not simply moral or social ones. An agreement; which creates legal obligations in order to be valid and binding must possess certain basic essentials. These essentials are the essential elements of the Contract.

Following are these essentials:-

There are 7 elements of a valid contract under Indian Contract Act 1872 :-

Proposal and acceptance -There must be minimum two parties for the purpose of creating a Contract. Moreover there must be an offer by one party and acceptance by the other patty. Such an offer and acceptance must be legal which means that they should conform to the rules laid down in the Contract Act regarding the valid offer and valid acceptance.

Legal Relationship – The parties to the agreement must intend to create legal relations between them. Mere social or domestic agreements are not Contract because they are not intended to be binding viz., an agreement to have a cup of tea at a friend's house is simply a social agreement.

Lawful consideration -This is one of the important **"essentials of a valid contract"**. The agreement to be enforceable by Law must be supported by consideration. An Agreement to do something for others, for nothing, is usually not enforceable. A bare promise without intention to affect legal relations between the parties is of no legal consequence ***ex nudo pacto non obitr actio***. Consideration is taken to be the necessary evidence required by law of the intention of the parties to affect their legal position. Consideration means "something in return". Thus the agreement is legally enforceable when one gets "something in return" thus the agreement is legally enforceable when one gets something in return of something .

Capacity of parties -The parties must be competent to Contract i.e.,

- is of the age of majority
- is of sound mind
- is not disqualified from contracting by any Law to which he is subject, want of capacity may thus arise from minority, lunacy, idiocy, drunkenness etc. If any of the party to a Contract suffers from such a disability the agreement is not enforceable excepting perhaps in some special cases.
-

Free consent –Two or more parties are said to consent when they agree upon the same sense. In addition an agreement in ' order to be enforceable must be based on the free consent of all the parties. Consent is said to be free when it is not caused b

.Coercion

. Undue influence

.Frau

- misrepresentation
- Mistake

Lawful object -The object of the agreement must be lawful. In other words. It must not be

- illegal
- immoral
- against policy. 'Every agreement of which the object is unlawful is void

Certainty of terms -The terms of the Agreement must be definite and certain and must not be vague. Hence the Court will not enforce a Contract, the terms of which are uncertain, . More over, there can never be an agreement to agree in future since there cannot be a Contract to make a contract.

A term in a Contract which destroys the Contract itself is void.

Possibility of performance -The agreement must capable of being performed. An agreement to do an act impossible in itself is void, i.e., if A promises to give Rs. 1000 to B, if B can prove that two parallel lines can meet each other such an agreement is void.

Void Agreements – The agreement must not have been expressly declared to be void. Following agreements are expressly declared to be void under the Indian Contract Act:

- Agreement in restraint to maniage (Section 26).
- Agreement in restraint of trade (Section 27).
- Agreement in restraint of legal proceedings (Section 28). 4) Agreement having uncertain meaning (Section 29).
- Wagering Agreement (Section 30).

Legal formalities – The agreement may either be oral or in writing. But there are certain agreements which are required to be in writing e.g., Lease, Gift, Sale, Mortgage of immovable property, negotiable instruments, certain matters under the Companies Act, 1965. Such agreements must be in writing attested and registered, if so required by Law. Registration of Agreements or deeds is thus compulsory in case of documents falling within the scope of Section 17 of the Indian Registration Act, 1908. If the agreement does not comply with these legal formalities it cannot be enforc

Capacity to Contract

One of the most essential elements of a valid contract is the competence of the parties to make a contract. Section 11 of the Indian Contract Act, 1872, defines the capacity to contract of a person to be dependent on three aspects; attaining the age of majority, being of sound mind, and not disqualified from entering into a contract by any law that he is subject to. In this article, we will look at all aspects in a detailed manner.

Capacity to Contract

According to Section 11, "*Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.*"

So, we have three main aspects:

1. Attaining the age of majority
2. Being of sound mind
3. Not disqualified from entering into a contract by any law that he is subject to

] Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in India is defined as 18 years. For the purpose of entering into a contract, even a day less than this age disqualifies the person from being a party to the contract. Any person, domiciled in India, who has not attained the age of 18 years is termed as a minor.

Let's look at certain laws governing a minor's agreement:

A Contract made with a Minor is Void

Since any person less than 18 years of age does not have the capacity to contract, any agreement made with a minor is void ab-initio (from the beginning).

Example, Peter is 17 years and 6 months old. He needs some money to go

on vacation with his friends. He approached a moneylender and borrows Rs 25,000. As security, he signs some papers mortgaging his laptop and motorcycle. Six months later, when he attains the age of *majority, he files a suit declaring that the mortgage executed by him when he was a minor is void and should be cancelled. The Court agrees and relieves Peter of all liability to repay the loan.*

Also, if a minor enters into a contract, then he cannot ratify it even after he attains majority since the contract is void ab-initio. And, a void agreement cannot be ratified.

A Minor can be a Beneficiary of a Contract

While a minor cannot enter a contract, he can be the beneficiary of one. Section 30 of the Indian Partnership Act, 1932, also specifies that while a minor cannot become a partner in the partnership firm, the benefits of the firm can be extended to him.

Example, Peter lends some money to his neighbour, John and asks him to mortgage his house as security. John agrees and the mortgage deed is made favouring Peter's 10-year-old son – Oliver. John fails to repay the loan and Peter, as the natural guardian of Oliver, files a suit against John to recover his money. The Court holds the case since a minor can be a beneficiary of a contract.

A Minor is always given the Benefit of being a Minor

Even if a minor falsely represents himself as a major and takes a loan or enters into a contract, he can plead minority. The rule of estoppel cannot be applied against a minor. He can plea his minority in defence.

Contract by Guardian

Under certain circumstances, a guardian of a minor can enter into a valid contract on behalf of the minor. Such a contract, which the guardian enters into, for the benefit of the minor, can also be enforced by the minor.

However, guardians cannot bind a minor by a contract for buying immovable

But, a contract entered into by a certified guardian of a minor, appointed by the Court, with approval from the Court for the sale of a minor's property can be enforced.

Insolvency

A minor cannot be declared insolvent as he cannot avail debts. Also, if some dues are pending from the properties of the minor and he is not personally liable for the same.

Joint contract by a Minor and an Adult

In case of a joint contract between an adult and a minor, executed by the guardian on behalf of the minor, the liability of the contract falls on the adult.

2] Person of Sound Mind

entering into a contract, a person is said to be of sound mind if he is capable of understanding the contract and being able to assess its effects upon his interests.

It is important to note that a person who is usually of an unsound mind, but occasionally of a sound mind, can enter a contract when he is of sound mind. No person can enter a contract when he is of unsound mind, even if he is so temporarily. A contract made by a person of an unsound mind is void.

3] Disqualified Persons

Apart from minors and people with unsound minds, there are other people who cannot enter into a contract. i.e. do not have the capacity to contract. The reasons for disqualification can include, political status, legal status, etc. Some such persons are foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.