

## Contract

Definition of Contract :- According to Salmond, "Contract is agreement creating and defining obligations between parties."

Similarly, Sir Frederick Pollock has defined the word "contract" as follows :-

"Every agreement and promise enforceable at law is a contract."

Anson has defined the word 'contract' in the following words :-

"A contract consists is an actionable promise or promises. Every such promise involves two parties, a promisor and a promisee, and an expression of a common intention and of expectation as to the act or forbearance promised."

A similar definition has been given under the Indian Contract Act, 1872, Section 2(h) of the Act defines contract in these words: "An agreement enforceable by law is a contract".

It is an agreement made between two or more persons which is intended to be and is, enforceable by law. It is constituted by the acceptance by one party of an offer made to him by the other party to do or to abstain from doing an act.

## Essential elements of contract

Under sec 2(h) of the Indian Contract Act, 1872 that there are two main elements of a contract :-

- ① There must be an agreement
- ② Such agreement must be enforceable at law.

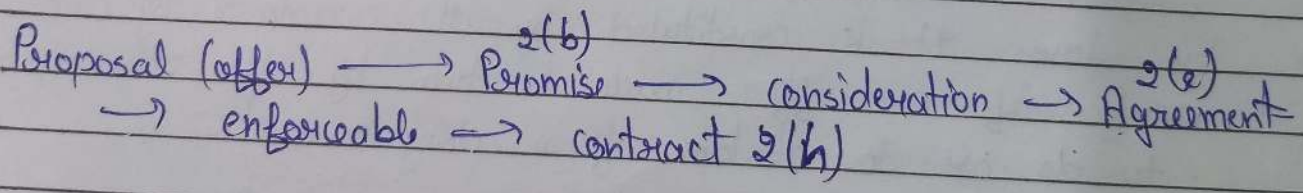
① Agreement: There must be an agreement between the parties. The word "agreement" is defined under section 2(e) of the Indian Contract Act, 1872.   
 <sup>Agreement</sup> Section 2(e) provides - "Every promise and every set of promise forming the consideration for each other, is an agreement."

Section 2(b) of the Indian Contract Act, 1872 defines the word "promise". It provides: "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."

$$\text{Agreement} = \text{Proposal} + \text{Acceptance}$$

②. Agreement must be enforceable by law: Section 10 of Indian Contract Act deals with the conditions of the enforceability of agreement in law. It provides: "All agreements are contracts if they are made by the free consent of parties competent to contract, for a law consideration and with a lawful object."

All contracts are agreement but all agreement need not be contracts.



$$\text{Contract} = \text{Accepted proposal (Agreement)} + \text{Enforceable by law}$$

## Proposal

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Proposal :- The word 'proposal' defined in Section 2(a) of the Indian Contract Act, 1872

Acc. to Sec 2(a) of the Act:

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

The word "Proposal" of the Indian Contract Act is synonymous to the term "Offer" of the English law.

Features or Essentials of an offer / Proposal -

- The person making the offer / Proposal is known as the "promisor" or the "offeror". And the person who may accept such an offer will be the "promisee" or the "acceptor".
- An offer can be positive or negative. It can be a promise to do some act, and can also be a promise to abstain (not do) some act / service. Both are valid offer.
- The offeror will have to express his willingness to do or abstain from doing an act. Only willingness is not enough.

~~Classify~~ Proposal / Offer -

offer means a Proposal by one person to another person, in which he express his willingness to enter into an agreement.

- There must be two parties for proposal.
- It must be express and implied.
- Proposal is done with intention to create legal relationship.

### Types of Offer

There can be many types of offers based on their nature, timing, intention, etc. Let us take a look at the classification of offers.

**General Offer**  
(offer made to the public at large)

→ public accept offer

eg → put out a reward for solving a puzzle → any member in public accept offer

**Specific Offer**  
(made to the specific offer)

eg: A → B

A sell horse to B → 5000Rs  
↓  
B accept

**Cross Offer**  
(two parties can make a cross offer)  
Identical offer at same time.

→ not amount to acceptance

→ A & B → send letter → each other

↓  
offering to sell & buy  
A horse  
Rs 5000

### Acceptance

Section 2(b) lays down the definition of the term "acceptance" as follows: "When ~~one~~ the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

Rules -

- ① It must be absolute. It means that there is no variation as per the offer.
- ② Acceptance must be expressed in oral or written.
- ③ Acceptance may be by conduct.

For ex. — A expressed → person to 50,000 → Find a lost dog  
→ B find dog → The offer accepted by conduct.

Essentials —

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- ① Communication — Acceptance must be communicated by the person to whom the proposal is made or by a person authorised by him.
- ② To a person having sight — Communication of acceptance must be made only to proposer or to the person having sight to receive the acceptance.
- ③ Acceptance to be absolute :- Acceptance must be absolute and unconditional.
- ④ Acceptance having knowledge of proposal — Acceptance must have knowledge of proposal.
- ⑤ Acceptance before lapse of proposal — Acceptance must be made before lapse of proposal.

Void Agreement — Sec 2(j) of the Indian Contract Act, 1872 defines the term "void agreement". It provides:

"An agreement not enforceable by law is said to be void."

Thus, in case of a void agreement, there does not arise any legal right or obligation.

A makes an agreement with B to purchase smuggled opium. The consideration and object of this agreement is unlawful and therefore, it is void ab initio and cannot be enforced.

Free Consent

Consent - Section 13 of the Contract Act defines the term "Consent". It provides:

"Two or more persons are said to ~~be~~ consent when they agree to the same thing in the same sense."

Where the parties must agree to the same thing in the same sense, only then the parties are said to consent. Where the parties have different things in mind or understand the same things in different ways, there is no real consent.

For example, two parties may enter into an apparent contract regarding a particular person or ship misled by the similarity of names. In such case, there is no contract. On the other hand, if the parties agree to the same thing in the same sense, a mere verbal error will not vitiate or affect a contract.

According to the Section 14 of the Contract Act, "Consent is said to be 'free' when it is not caused by".

1. Coercion
2. undue Influence
3. Fraud
4. Misrepresentation
5. Mistake

1. Coercion: coercion means -

a) committing or threatening to commit any act which is forbidden by the Indian Penal Code.

b) Threatening to detain any property

c) Forcing Person to enter an agreement.

For example - If A threaten to kills B to sell his house to A for Rs. 50,000

This contract is voidable.

9. Undue Influence : When one party to a contract and able to dominate the will of other party and take unfair advantages then this contract is called to be induced by undue.  
Eg: Relation between — Parents & children  
lawyer & client  
Patient & Doctor

### UNDUE INFLUENCE

↓

USED TO OBTAIN UNFAIR ADVANTAGE  
IF NO UNFAIR ADVANTAGE = NO UNDUE INFLUENCE

For example :- If a Person met with an accident and went to hospital. The doctor said he will treat only if the Patient sell his house for Rs 500000. The doctor is in a position to dominate the will.

3. Fraud : If intention is to cheat someone it is known as Fraud.

- concealment of facts.
- making a statement that is not true and person knows that statement is not true
- made promise with some without intention to perform.
- sometimes silence is known as fraud.

When the consent of the agreement is caused by fraud, the contract is voidable at the option of the Party to whom fraud made.

## 4. Misrepresentation :

- It includes not intention to deceive.
- person has not intention to make advantages from the statement, indirectly he is making advantages.
- making mistake innocently.

## Example 1:

A make a positive statement that he is selling car to B and car is of 2018 model. Even A don't know the model of car.

② Doctor → Patient (operation is safe that doctor told to Patient.

In reality → 99% operation safe → 1% mistake.  
it is duty → doctor → tell → 1% is at risk → intention not fraud.

## 5. Mistake : Mistake means misunderstanding between the Parties.

Two types.

- ① Mistake of law
- ② Mistake of fact

Mistake of law: It means Parties are not aware of the law. But as per the Indian Contract Act, 1872 a contract cannot be said to be voidable due to mistake is understanding of law.

Forex :- A man was caught by a ticket conductor for travelling on a train without a ticket. The man cannot claim that he was not aware that ticket is required while travelling.

9. Mistake of fact: Mistake of fact means error in understanding, ignorance etc.
- when both Parties of a contract are under a mistake of fact it is called bilateral mistake
  - when only one parties of a contract are under a mistake of fact it is called unilateral mistake.

### Coercion

Meaning of Coercion :- 1. It means committing or threatening to commit.

- 2. any act forbidden by Indian Penal Code or
- 3. Unlawful detaining or threatening to detain any property.

4. with an intention to cause the other person to enter into an agreement.

Ex: A threaten to shoot B, if he does not let out his house to A, B under fear agrees to let out his house to A. This agreement is brought under by coercion. B's consent was not free. B can avoid the contract, even after agreeing.

The effect of coercion is that it makes the contract voidable.

Acc. to sec 15 of the Indian Contract Act, 1872 defines the term "coercion".

The consent of a party will be deemed to have been caused by coercion if it is obtained under any one or more of the following circumstances.

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① Commission of an offence :- If the other party commits an offence forbidden by the Indian Penal Code with intention of obtaining such consent.

② Threatening to commit an offence :- If the party threatens to commit an offence forbidden by the Indian Penal Code, with the intention obtaining such consent.

③ Unlawfully detaining any property :- If the other party unlawfully detains any property to the prejudice of any person whatever, with the intention of obtaining such consent.

## Quasi Contract

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Quasi contract deals with certain relation resembling those created by law which are known as quasi-contract under English law.

There are certain situation in which there is no contract in between parties but they are legally bound to discharge his contractual obligations is known as quasi-contract.

In other words, we can say that contract imposed by law or implied contract.

For ex - Finder of Goods.

The term quasi-contract is derived from the Roman word "law" 'obligation Quasi Ex contractu' Quasi-contract is not a real contract entered by parties intentionally but imposed by law.

Meaning -

- ① It is not a real contract but resembles contractual relation.
- ② It is fictional contract created by law & recognized by court.
- ③ The obligation of party under quasi contract are created by fiction of law.
- ④ Thus, it is also called as "Resembling contract".

Sec 68 :- Claim for necessities supplied to person incapable of contracting

- If a person is incapable of entering into contract, like minor or lunatic.
- And if some person supplied necessities suited to his life.
- Then he can get reimbursement from the property of that incapable person.

Sec 69 :- Payment by Interested person

- If a person pays the money on someone's behalf which the other person is bound to pay by law.
- Then he is entitled to reimbursement by the other person.

Sec 70 :- Liability to pay for Non-Gratuitous Act

- When a person lawfully does anything for another person or delivers anything to him. (for consideration)
- With an intention of doing so non-gratuitously.
- Then the other person is liable to pay compensation for the act done or goods delivered.

Breach of Contract

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation, such as the failure to deliver a promised asset.

Key points —

- ① A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.
- ② A breach of contract can happen in both a written contract and a oral contract.
- ③ The parties involved in a breach of contract may resolve the issue among themselves or in a court of law.
- ④ There are different types of contract breaches, including a minor or material breach and an actual or anticipatory breach.
- ⑤ A breach of contract is not considered a crime or even tort and rarely results in extra monetary compensation.

Remedies on Breach of Contract — In case of breach of contract, the following three remedies are available to party:

- ① Damage
- ② Specific performance of the Contract
- ③ Injunction

① Damages: The word "damages" means compensation in money as a substitute for the promised performance.

## Kinds of Damages -

a) General Damages are Ordinary Damages. The damages that come naturally through a breach. The aggrieved party must prove the damages and also the amount of the damages in the suit.

b) Liquidated Damages and Penalty: Some contract addresses the issue of breaching its consequences and also its penalty. If such a contract breaks then the party causing the breach should pay the stipulated amount mentioned in the contract to the other party. The amount is reasonable compensation, and it should not exceed the amount given in the contract. The parties should not have obstacles to make provisions of the liquidated damages.

c) Special Damages: The aggrieved party must prove the special losses to claim special damages.

d) Nominal Damages: A remedy is provided for the breach, which was not there in actual, it gives a small remedy, and it is more technical than the actual.

## 2. Specific performance of the Contract

It means the actual carrying out of the contract by party. In some cases, the court may order one party, at the suit of another, to carry out the agreement. This is called the remedy of specific performance.

3. Injunction :- It is negative remedy. It is an order of the court restraining or prohibiting a person from doing any particular act. In some cases of breach of contract from committing the intending breach of contract.

## The Specific Relief Act, 1963

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Meaning - The law of Specific Relief seeks to implement the ideas of Bentham who said, "The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objections to them".

Specific Relief is a relief in specie - It is a remedy by which a party to a contract is compelled to do or omit the very acts which he has undertaken to do or omit.

This Act may be called the Specific Relief Act, 1963. It extends to the whole of India except the State of Jammu and Kashmir.

The specific relief Act, 1963 is an Act of the Parliament of India which provides remedies for persons whose civil or contractual rights have been violated. It replaced an earlier Act of 1877. The following Modes of Specific Relief Act, 1963: -

- ① Recovering possession of property - By taking possession of certain property and deliver, it to claimant i.e., recovery of possession of property (Section 5, 6, 7 and 8)
- ② Specific performance - By ordering a party to do the very act which he is under an obligation to do, i.e., specific performance of contracts (section 9 to 25)

3. Rectification of instruments (section 26)
4. Rescission of contracts (sections 27 to 30)
5. Cancellation of instruments (section 31 to 33)
6. Declaratory decree - By determining and declaring the rights of parties otherwise than by an award of compensation, i.e. declaratory decree (sec 34 and 35)
7. Preventive relief - (i) General injunction & (ii) Perpetual Injunctions. By preventing a party from doing that which he is under an obligation not to do. This is called preventive relief i.e. injunction (sec 36 to 42)

### Specific Relief Act, 1963

#### Specific Relief Act, 1963

- deals with relief / recovery of damages of injured person.
- when a person has withdrawn himself from the performance of particular promise / a contract with respect to another person.

deals with —

i) obligations — duties imposed on a person by law / legal body

- ii) Settlement - delivery of Movable / Immovable Property to their successive interests when it is agreed to dispose of
- iii) Trust - A obligation <sup>added</sup> annexed to the ownership of property.
- iv) Trustee - Person holding trust in the Property etc.

The Specific Relief act, 1963

Specific relief	Specific Performance of contracts	Enforcement of Awards	Rectification of Investments	Rescission of contracts	Cancellation of contracts
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① Specific Relief → Recovery of Possession - [Immovable Property / Movable Property]  
→ for infringed civil rights of individual  
→ not for enforcing penal laws  
→ main objective → focus on the Rights

② Specific Performance of Contracts  
→ Damages/loss incurred due to non-performance → cannot be  
→ Money as compensation → Not adequate relief due to ascertained  
non-performance of contract.  
→ Contracts that cannot be specially enforced  
→ Persons against whom the contracts can be specifically enforced.

③ Enforcement of Awards  
→ to Assigned Person  
→ suit filed for Specific Performance  
→ court - not grant specific Performance  
→ court thinks specific Performance

④ Rectification of Instruments

- Requirements - must be in writing  
no Relief - if not mentioned
- Either Party / Representative in interest may file suit for
- The Plaintiff may plead
- The Defendant claim in his defence.

⑤ Rescission of Contracts

- ↓  
Cancellation brings to state various ways
- Contracts terminated is unlawful

Cases

- Plaintiff
- 3rd Party
- Rights

⑥ Cancellation of the Contracts

① Instrument → [Void against a person  
may cause damage to it

② Contract → Partially cancelled

③ Powers to Assuage Party after Cancellation → receive all benefits restored + compensation to ensure justice.

④ Orders to Defendant after Cancellation

### [Unit 3]

Time is the essence of contract

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The parties may fix the time within which a contract is to be performed. If the contract is not performed within the stipulated time, the other party may claim compensation. In other words, the time is the essence of contract.

[Section 55] makes it clear that either or both of the parties to the contract can agree that a contract is to be performed at or before a specified time. Where such agreement, regarding the time of performance of contract, has been entered into, it can be said that the time is the essence of contract.

Under English Common Law, the rule was that time was always the essence of the contract.

Effect of breach as to time [Sec 55] - Sec 55 deals with the effect of failure to perform at fixed time in a contract in which time is the essence of contract.

When time is essence of the contract? - If the intention of the parties is that time is the essence of the agreement, failure of one party to perform his promise within the time specified will render the contract voidable at the option of other party.

When time is not essence of the contract? - If the intention of the parties that time is not to be the essence of the contract, the contract

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does not become voidable by the failure of the party to perform the contract at or before the time specified.

Thus, the parties may time the essence of their contract by express terms otherwise it, will depend on their implied intention or on general circumstances of the case, whether or not the court will regard time of performance as essential.