

Patrician College of Arts and Science

Department of Commerce

Business Laws

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Indian contract act :

The **Indian Contract Act, 1872** prescribes the **law** relating to contracts in **India** and is the key **act** regulating **Indian contract law**. The **Act** is based on the principles of English Common **Law**. ... Under Section 2(h), the **Indian Contract Act** defines a **contract** as an **agreement** which is enforceable by **law**.

Nature and Elements of contract

The **elements** of a **contract** are : 1) an agreement , 2) between competent parties , 3) based upon the genuine assent of the parties, 4) supported by consideration , 5) made for lawful objective, and 6) in the form required by law, if any. ... A **contract** may also call for a combination of these things.

Essential Elements of a Valid Contract

- Offer and Acceptance
- Intention to Create Legal Relationship
- Capacity to Contract
- Genuine and Free Consent
- Lawful Object
- Lawful Consideration
- Certainty and Possibility of Performance
- Legal Formalities

Classification of contract:

According to the mode of formation of **contracts**, **contracts** may be **classified** into three namely, Express **Contract**, Implied **Contract**, and. Quasi – **Contract**.



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DIFFERENCE BETWEEN AGREEMENT AND CONTRACT



Contract Vs Agreement

BASIS FOR COMPARISON	SALE	AGREEMENT TO SELL
Definition	An arrangement (usually informal) between two or more parties that is not enforceable by law.	A formal arrangement between two or more party that, by its terms and elements, is enforceable by law.
Validity based on	Mutual acceptance by both (or all) parties involved.	Mutual acceptance by both (or all) parties involved
Does it need to be in writing?	No	No, except for some specific kinds of contracts, such as those involving land or which cannot be completed within one year.
Consideration required	No	Yes
Legal effect	An agreement that lacks any of the required elements of a contract has no legal <u>effect</u> .	A contract is legally binding and its terms may be enforceable in a court of law.

Offer, Acceptance and consideration

Offer :

According to Section 2(a) of the Contract Act- “An individual is said to have made the **offer** when he implies to another his readiness to do or to avoid doing anything with a perspective to getting the consent of that other to such act or restraint.” Parties.

Elements of offer

Essential Elements of a valid offer

1. The offer must be capable of creating legal relations
2. The offer must be certain, definite and not vague
3. The offer may be express or implied
4. Offer may be positive or negative
5. Offer may be specific or general

Forms of offer

- **Express Offer** : When an offer is made by words spoken or written it is called an express offer.
- **Implied Offer** : When an offer is implied by conduct of parties or circumstances of the case it is called an implied offer.
- **General Offer** : When an offer is made to the public at large it is called general offer. This offer may be accepted by anyone. For example, an offer to give reward to anybody who finds the lost horse is a general offer.
- **Specific Offer** : Specific offer is an offer, which is made to a specific or an ascertained person. In this case, the person to whom the offer is made is only liable to accept the offer.
- **Counter Offer** : Counter offer by the offeree terminates the original offer. When in place of accepting the terms of an offer as they are, the offeree accepts the same subject to certain condition or qualification, then a counter offer is said to be made.

Forms of offer

- **Cross Offer** : Where two parties make identical offer to each other, in ignorance of each others offer, this offer is termed as cross offer. In this case, there is no contract because out of the two parties no one can be called for acceptance.
- **Standing Offer** : When an offer is allowed to remain open for acceptance over a period of time, it is called standing, open or continuing offer. Tenders are the example of standing offer.

Acceptance

Assent to the terms of an offer. Acceptance must be judged objectively, but can either be expressly stated or implied by the offeree's conduct. To form a binding contract, acceptance should be relayed in a manner authorized, requested, or at least reasonably expected by the offeror. business law.

Legal Rules for a Valid Acceptance

1. The acceptance must be communicated and such communication must be made by a person who has the authority to accept.
2. The acceptance must be communicated to the offeror or to the person authorized by the offeror.
3. The acceptance must be absolute and unqualified. It means the acceptance must be for all the terms stipulated in the offer and without any condition by the person accepts the offer.
4. The acceptance must be according to the mode or manner prescribed or usual and reasonable mode or manner, if no mode or manner is prescribed.
5. The acceptance must be given within a prescribed time or within a reasonable time, if no time is prescribed.
6. The acceptance cannot be presumed from silence.
7. The acceptance must show an intention that the acceptor is willing to fulfil the terms and conditions of the offer.
8. The acceptance must be given before the offer lapses or before the offer is withdrawn.

Consideration

Consideration. n. 1) payment or money. 2) a vital element in the law of contracts, consideration is a benefit which must be bargained for between the parties, and is the essential reason for a party entering into a contract.

Consideration is one of the essential elements to support a contract

Types and essentials

1 Must move at the desire of the promisor : X's house catches fire and Y helps in extinguishing it without being requested to do so by X. Y cannot demand any payment for his voluntary service

2 It must move from promisee or any other person:

For making a valid contract consideration must be there, it is immaterial who furnishes it.

Types of Consideration

1. A promise

i Includes promisee and promise

ii you can promise to incur a detriment- referring to the act of doing that which the promisee was under no prior legal obligation to do or the referring from doing that which he was previously under no legal obligation to refrain from doing

2 An act other than a promise

3 Forbearance (Not to do something)

4 A change in legal relation of the parties

5 Money

6 Other property

Other elements of Valid Contract

- The competency of parties is one of the essential elements of the valid contract. The capacity of parties to the contract means the legal ability of the parties to enter into a contract.
- Capacity of parties refers to each party who is entering a contract being required by law to have the mental and intellectual capacity to understand the terms of the contract and to make the decision to enter it.

Person competent to contract

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.

Free Consent

Free Consent. According to Section 13, "two or more persons are said to be in consent when they agree upon the same thing in the same sense (Consensus-ad-idem). According to Section 14, Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Coercion

It is the use of or threat to use prejudice, property, or any other act to force a party to enter into an agreement. Those wondering what is coercion in business law should know that, in short, it is the use of or threat to use prejudice, property, or any other act to force a party to enter into an agreement.

Undue influence

In jurisprudence, undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will.

Fraud :

Fraud Law and Legal Definition. Fraud is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage.

Mistake and Misrepresentation

Misrepresentation occurs when a person makes an untrue assertion of fact (or in some cases an omission of fact). ... Mistake is where someone believes that a fact was true when in fact it was not. It is based on someone's belief.

Void agreement

A void contract cannot be enforced by law. ... An agreement to carry out an illegal act is an example of a void agreement. For example, a contract between drug dealers and buyers is a void contract simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract.

Performance of Contract

Performance, in law, act of doing that which is required by a contract. The effect of successful performance is to discharge the person bound to do the act from any future contractual liability. Each party to the contract is bound to perform promises according to the stipulated terms.

Quasi Contract

A quasi contract is a contract that is created by a court order, not by an agreement made by the parties to the contract. For example, quasi contracts are created by the court when no official agreement exists between the parties, in disputes over payments for goods or services. The goal in the court's creation of these contracts is to prevent unjust enrichment to any party.

Breach of contract

Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honoured by one or more of the parties to the contract by non-performance or interference with the other party's performance

Remedies for breach of contract :

- 1 Rescission of Contract. When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.
- 2 Sue for Damages.
- 3 Sue for Specific Performance.
- 4 Injunction.
- 5 Quantum Meruit.

Sale of goods Act

The Sale of Goods Act performs several functions. ... To purely define Sales of Goods Act, it is a contracts in which goods are sold and bought, it means whereby the seller transfer the property in the goods to the Buyer for a consideration called price.

Contract of sale

A contract of sale is an agreement between a seller and a buyer. The seller agrees to deliver or sell something to a buyer for a set price that the buyer has agreed to pay. ... According to Article 2 of the Uniform Commercial Code, contracts for the sale of goods over \$500 have to be in written form to be enforced.

Sale Vs Agreement to sell

BASIS FOR COMPARISON	SALE	AGREEMENT TO SELL
Meaning	When in a contract of sale, the exchange of goods for money consideration takes place immediately, it is known as Sale	When in a contract of sale the parties to contract agree to exchange the goods for a price at a future specified date is known as an Agreement to Sell.
Nature	Absolute	Conditional
Type of Contract	Executed Contract	Executory Contract
Transfer of risk	Yes	No
Title	In sale, the title of goods transfers to the buyer with the transfer of goods.	In an agreement to sell, the title of goods remains with the seller as there is no transfer of goods.

Sale Vs Agreement to sell

Right to sell	Buyer	Seller
Consequences of subsequent loss or damage to the goods	Responsibility of buyer	Responsibility of seller
Tax	VAT is charged at the time of sale.	No tax is levied.
Suit for breach of contract by the seller	The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold.	Here the buyer has the right to claim damages only.
Right of unpaid seller	Right to sue for the price.	Right to sue for damages.

Conditions and Warranty

In a contract of sale, parties may make certain statements about the stipulation or the course of trade. These stipulations in the contract of sale are made with reference to the subject matter of the sale. These stipulations may either be a condition or in the form of a warranty.

Difference Between Condition and Warranty

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	A requirement or event that should be performed before the completion of another action, is known as Condition.	A warranty is an assurance given by the seller to the buyer about the state of the product, that the prescribed facts are genuine.
Defined in	Section 12 (2) of Indian Sale of Goods Act, 1930.	Section 12 (3) of Indian Sale of Goods Act, 1930.
What is it?	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.

Caveat Emptor

Caveat emptor is a neo-Latin phrase meaning "let the buyer beware." It is a principle of contract law in many jurisdictions that places the onus on the buyer to perform due diligence before making a purchase. The term is commonly used in real property transactions but applies to other goods, as well as some services.

Exceptions to the Doctrine of Caveat Emptor

Implied Condition: If the seller knows about the purpose for which the purchaser intends to use the item, and the purchaser is relying on the judgment of the seller, there exists an implied condition that the item will serve the requirement for which it is purchased.

Unpaid Seller and Rights of Unpaid seller

- **Unpaid seller** :The Sale of Goods Act, 1930 (hereinafter referred to as the "Act") defines an unpaid seller as a seller that has not been paid the full price of the goods that have been sold or that has received a bill of exchange or other negotiable instrument as conditional payment, and the condition on which it was received has not been fulfilled
- **Rights of Unpaid Seller** Against Buyer. When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. ... Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.



Thank you

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