

Indian Contract Act 1872

Date of enforcement 01/09/1872

Indian Contract act At glance -

Section 1-75 General Provisions -which are divided into following chapters

Chapter I - Of the communication, acceptance and revocation of proposals (S 3-9)

Chapter II - Of contracts, violable contracts and void agreements (s 10 - 30)

Chapter III -Of contingent contracts (S 31 -36)

- Chapter IV-Of the performance of contracts Contracts which must be performed (S 37 - 67)
- Chapter V - Of certain relations resembling those created by contract (S 68-72)
- Chapter VI - Of the consequences of breach of contract (S 73 - 75)
- Chapter VII - Sale of goods (S 76 - 123) **Repealed**
- Chapter VIII - Of indemnity and guarantee (S 124 - 147)
- Chapter IX - Of bailment (S 148 - 181)
- Chapter X - Agency, Appointment and authority of agents (S 182 - 238)
- Chapter XI - Of partnership (S 239 -266) **Repealed**

- WHAT WOULD WE STUDY -

Formation of Contract means How contracts are formed

A) Offer

- i) Essential elements of a valid offer**
- ii) Types of offer**
- iii) Invitation to offer**
- iv) Difference between offer & Invitation to offer**
- v) Communication & revocation of proposal**
- vi) Mode of revocation**

B) Acceptance

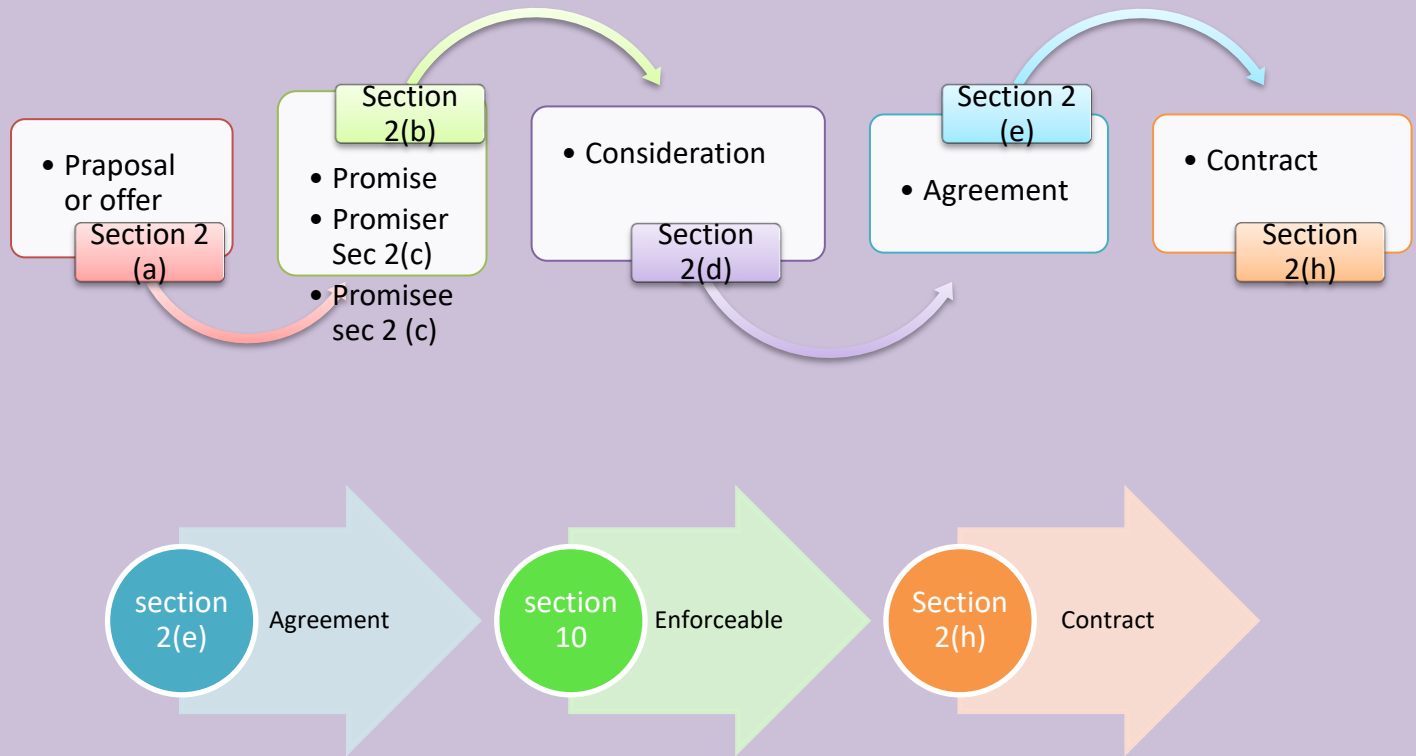
- i) Essentials of valid acceptance**
- ii) Communication of acceptance**
- iii) revocation of Acceptance**
- iv) Mode of communication**

C) Consideration

- i) Essentials of Consideration**
- ii) Exception to consideration**

C) Doctrine of privity of contract & its exception

Before we understand agreement and contract we must understand the following terms and their correlation -



OFFER, ESSENTIAL OF VALID OFFER & INVITATION TO OFFER

Before we study contract in detail, we must understand what is offer?

Offer or proposal is defined in **Sec. 2 (a)** of the contract act. "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 (offer). The person who makes the proposal is called a "promisor", the person accepting the proposal is called a promisee.

For example, "A" made an offer to "B" to buy the house. Here "A" is the offeror or promisor or proposer and "B" is the offeree or promisee.

Essentials of a valid offer

1. Offer must be communicated:-Communication of offer is the most primary thing which is to be done for a valid offer. The offeror must communicate offer to the offeree. The communication can be either in oral or written form. The offer can directly communicate to the person specific to whom it is offered or it can be in general in nature.

For example : "A" wants to sell his car and he has published an advertisement in newspaper which is a form to communicate the offer to general public. Hence it is a valid offer.

In Lalman Shukul v/s Guari Dutt

In that case the defendant's nephew having absconded from home, he sent his servant to find out him. Later on, he offered a reward of Rs. 501 to any one who discovered the boy. This offer came to the knowledge of the servant only after he had already discovered the boy. In a suit filed by the servant to claim the reward, it was held that he could successfully claim the reward only on the basis of contract and in this case there was no communication of proposal to him. He came to know of it after he had already discovered the boy which he was already under obligation to do by nature of his calling.

2. Must create legal relationship:-A valid offer creates a legal relationship which means there must be an intention of the offeror to work under legal obligation or to be legally bounded by law not under social obligation.

For example : "X" (Father of Y) says to "Y", if he pass the exam he will get a new video game. "Y" passed the exam asked his father to give him video game as he had promised to Y. Here X is not legally bound as the offer doesn't create any legal obligation against X.

In case of **Balfour v. Balfour** They were married couple. Husband promised to his wife to send £30 per month. But husband failed to do so. Then wife filed the case against him and it was held that there was no intention to create legal relation. Thus the agreement was not valid.

3. Definite, unambiguous and certain in nature: Offer must be certain as specified in [Section 29], it must be unambiguous means that the thing offered must clearly specified.

For example: Mitesh offered to sell his car to Tanmay. Mitesh is owned two cars one is of Ford & other is of BMW and Mitesh offered his Ford car to Tanmay but Tanmay thought Mitesh if offering him his BMW one. As in the offer it was not definite which car Mitesh wants to sell, thus this is not a valid offer.

4. It must distinguished from invitation to offer:- The offer makes a person to enter into a legally binding contract whereas invitation to offer invites the person to enter into contract.

For example: A suit was displayed with a price tag in a shop. This is not a offer it is invitation to offer.

5. It may be general or specific in nature:- The offer can be given to public at large in general by advertisement in newspaper etc. or it can be given specific person too.

6. Offer must be made with a view to obtain the assent :-The offeror must obtain consent which should be "free" in nature as define under Section 14 as it define it should not be taken under coercion [section 15], undue influence [Section 16], fraud [Section 17], misrepresentation [Section 18] & Mistake [Section 20, 21 and 22].

Different Types Of Offers

1. General Offer:- When an offer made at large or in public or in general this offer is known as General Offer. It can be accepted by any individual or public at large whoever is interested in the offer offered. When a person accepts the offer given then offeror and offeree enter into contract. The reward will be given to that person who completed the task given or fulfilled the given condition.

CASE : CARLILL v. CARBOLIC SMOKE BALLS CO. (1893) [3]

This is the landmark judgment of general offer. In this case it held by the Court of Appeal that whosoever fulfills the terms and condition of the offer will be eligible for the reward of the offer.

In this case, the defendant advertised that they would pay 100 pounds to anyone who gets influenza, after using their smoke-ball. This smoke-ball is to treat the nostrils with a kind of carbolic acid snuff. This is to be used as per directions of the defendant company. The company had deposited money in a bank to show their sincerity. Carlill got influenza after using it. She claimed the reward. The court held that the company was liable to she was entitled to the reward. Judge Bowen held, the advertisement was not an invitation to offer, but a general offer which was accepted by the lady and hence, it became a binding contract. She had used on the faith of the advertisement. Her acceptance of the smoke-ball needs no communication to defendant. Her performance that is by using as per direction was sufficient acceptance. This case shows that offer, if it is to be capable of acceptance, must have a promise by offeror that he will bind himself, if conditions are followed. Similarly, Railway time-table is an invitation to offer..

2. Specific Offer:- The offer which is made to an individual or to a specific group of individual is said to be Specific offer. It can be accepted by that individuals or that group of individual.

Example: Sandhya offer to buy a car from Sona for Rs. 10 lakh. Thus, a specific offer is made to a specific person, and only Sona can accept the offer.

3. Standing Offer:- When tender is submitted to supply certain goods or any quantity as and when required it will amount to standing offer. In such a case contract does not come into existence merely when tender is accepted, but a contract takes place only after the

order is placed. Each order in such a case is acceptance and as soon as the offer is accepted the contract comes into existence.

In Bengal co. Ltd. v/s Homee Wadia and Company

In this case the defendants entered into an agreement to supply a kind coal from time to time required by the plaintiff for a period of twelve months. The plaintiff, in pursuance of the said agreement, placed certain orders and the defendants supplied the coal. But before the lapse of 12 months they withdrew their offer and refused to supply the coal any more. The plaintiffs thereupon filed the suit against them for the breach of contract.

The court dismissed the suit on the ground that there was no contract. The court held that it was simply a continuing offer and the contract took place only when a certain quantity was ordered.

Invitation to offer:

According to Anson, an offer is different from an "invitation to offer". A catalogue of goods for sale is not an offer but only an invitation to offer. A shopkeeper who keeps his goods in the shop window with a label of price attached, is making an invitation to offer. Similarly, a mere reply to a letter quoting prices will not constitute a proposal to sell.

In Pharmaceutical Society of Great Britain v/s Boots Cash Chemists Ltd.

In this case the court had to decide as to at what time the sale took place in a shop of the defendant adopting 'self-service' system. It was claimed by the plaintiffs that once the customer picked up an article and put it into the basket, the contract of sale was complete: the shop-keeper then could not refuse to sell it. The court rejected this contention and held this was only an invitation to offer.

Differences between offer and invitation to offer

Meaning	<p>Offer is the first step/ starting point for formation of any contract. It is also called 'proposal'.</p> <p>The person who makes the offer is called as 'offeror' and to whom the offer is made is called as 'offeree'</p>	<p>When a person expresses something to another person, to invite him to make an offer it is known as invitation to offer.</p>
Definition :	<p>Section 2 (a) of Indian Contract Act, 1872 defines offer as “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”</p> <p>The term 'proposal' used in the Indian Contract Act, 1872 is synonymous with the term 'offer' used in English law.</p>	<p>Invitation to offer is not defined in the Indian Contract Act, 1872.</p> <p>It can be defined as “when one party / persons are invited to one or more offer is called as invitation to offer”.</p> <p>It is not required for them to get into contract.</p>
Intention	Offer is made to get accepted	Invitation to offer is made to get offer.
Object	Object of offer is to enter into contract	Object of invitation to offer is to receive offers from people thereafter contract will be created.
Conversion	Offer becomes an agreement when it is accepted	An invitation to offer becomes an offer.
Nature	Offer gives rise to legal consequences	Invitation to offer does not give rise to legal consequences

Communication of Proposal (Sec.4)

Communication when complete – The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Illustrations :-A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter."

Revocation of proposal (Sec.5)

According to section 5 a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards.

Ex: A proposes, by a letter sent by post, to sell his house to B. B accepts the proposals by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

Mode of Revocation Sec.6

1. By the communication of notice of revocation by the proposer to other party.
2. By the lapse of the time prescribed in such proposal for its acceptance or if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.
3. By the failure of the acceptor to fulfill condition precedent (prior condition) to acceptance.
4. By the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

ACCEPTANCE

According to section 2 (b) 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.

So we can say - **Promise=Praposal+Acceptance**

Section 2(c) in The Indian Contract Act, 1872

The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”;

Essential of Valid acceptance

1. Acceptance must be communicated
2. Communication of acceptance must be by a person who has authority to accept
3. Acceptance must also be inferred from the conduct of parties
4. Acceptance must be absolute and unqualified and must correspond to terms of the offer.

Hyde V. Wrench : W offered to sell his farm to H for £ 1000. H said he would buy for £ 950. W did not agree, later H agreed for £ 1000. Question was there was acceptance.

Held : there was no acceptance, as it was qualified, i.e., to buy for £ 950.

Mode of communication

1. Where no mode prescribed

Section 7 (2) of the Act provides where no manner is prescribed the acceptance may be expressed in some usual and reasonable manner.

2. Where mode is prescribed

Where the offerer prescribes the mode or manner in which the offer is to be accepted, the acceptance must be made in the manner prescribed. The acceptance will not be valid if there is any departure or variance from the mode prescribed.

Communication of acceptance (Sec-4)

The communication of an acceptance is complete, —

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

B accepts A's proposal by a letter sent by post. (The communication of the acceptance is complete, The communication of the acceptance is complete,"

as against A when the letter is posted; (A is a Proposer here)

as against B, when the letter is received by A. (B is a acceptor)

Revocation of acceptance (Sec.5)

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but no afterwards.

Illustration:-A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

CONSIDERATION

Section 2(d) of The Indian Contract Act, 1872 defines it as follows: "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, -such act or abstinence or promise is called a consideration for the promise."

Analyzing the above definition, Consideration can be:

An act of doing something - In this case, the consideration is in affirmative or positive form. *Example:* A promises to B to guarantee payment of the price of goods which B sells on credit to C. here selling of goods by B to C is Consideration for A's promise.

Other Example

- a. transfer ownership in property, such as intellectual property, a car or house
- b. create an art work
- c. develop software
- d. grant a licence to intellectual property rights
- e. pay money

An Abstinence means abstaining or refraining from doing something - a promise to refrain from doing something

In this case, the consideration is in negative form. *Example:* A promises to B not to file a suit against him if he pays him Rs.500. the abstinence of A is the consideration for B's payment.

Other Example

- a. not work with another employer of a particular description for a period of time after employment ceases.
- b. not to build property over a specified height
- c. not take ownership of shares in another business

A return promise - *Example:* A agrees to sell his horse to B for Rs.10000. here B's promise to pay the sum of Rs.10, 000 is the consideration for A's promise to sell the horse, and A's promise

to sell the horse is the consideration for B's promise to pay the sum of Rs.10, 000.

Consideration is classified as one of two types:

- executed: when the promise has been performed within the meaning of the contract, or
- executory: when the promise has not been performed yet to be performed

Essential elements of consideration

1. at the desire of the promisor

An act or abstinence must be done at the desire of the promisor. An act done at the desire of a third person will not constitute a good consideration

2. Promisee or any other person

The consideration may be given by the promisee or any other person.

3. Has done or abstained from doing something (Past)

A consideration may be **executed**, When contracting parties are already contracted with one another, a promise to do something that they have already contracted to do . It's consideration which has been provided in the past, and not at the time of formation of the contract.

For example, a buyer of goods who paid Rs. 10000 in the past. It is not good consideration for supply of new goods, so as to form a new contract.

4. Or does or abstains from doing something (Present)

When, at the desire of the promisor or any other person does or abstain from doing something, it will constitute a good consideration within the meaning of section 2 (d) of the contract Act.. Where the consideration is a present performance and not a promise... the determent may consists either in actually parting with something of value or in understanding a legal responsibility or in foregoing the exercise of a legal right.

5. Or promise to do or to abstain doing something(future)

If the promisee or any other person, at the desire of the promisor, promises to do or to abstain from doing something it will constitute a good consideration. It is called an **executory** consideration.

6. Such act or abstinence or promise is called a consideration for the promise

A. Consideration need not be adequate

It may be inadequate, if parties agree to the contract. By that itself contract will not become void. But, the general rule is "no consideration, no contract".

Ex: P agrees to sell his land worth Rs. 10,000/- for Rs. 1,000/- consent to the agreement is freely given. Later on P denies selling the land to Q for Rs. 1,000/- on the ground that the consideration is inadequate.

B. Consideration must be clear, specific and not illusory

The consideration must be of some value in the eye of law, the consideration must be valuable in the eye of law and not that must be real and not illusory.

C. Act, abstinence or promise to be good consideration, must be something more than what the promisor is already bound to do.

1. by law:

According to English law, performance of a legal duty is to consideration for a promise. But when a person has done something more than what he was bound by law, to do, then that would be a good consideration.

In Glassbrook Brothers Ltd. v/s Glamorgan country council

In this case due to strike in the colliery, a colliery manager requested for police protection for his colliery. For proper and efficient protection he wanted quartering a police force in the premises of the colliery. The police superintendent required the colliery manager to pay for this. The police protection was provided only when the colliery manager agreed to pay for the same. The court had to decide whether the agreement was legal or not for the colliery manager contended that the police was already bound to protect the life and property of the persons.

Finally the court held that the agreement in question was neither illegal nor void for want of consideration. Although the police was bound to protect the life and property of the people but if a person wanted any special type of protection which was usually not provided by the police, the person concerned must pay for it.

2. by contract

A person may also be already bound to do something under a pre-existing contract. This pre-existing contract may either be with a third party or with the promisor himself.

Exceptions to consideration

1. Natural love and affection

Section 25 (1) provides that an agreement without consideration is void. Unless it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, the agreement will not be void for want of consideration. But it should be in writing and to be registered.

Ex: A, for natural love and affection promises to give his son B Rs. 1,000/- A puts his promise to B into writing and registers it. This will not be void for want of consideration and will be a valid contract.

2. Compensation, promised for services rendered.

2. Promise to compensate for something done voluntarily

Section 25 (2) provides an agreement without consideration is void. Unless it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do will not be void for want of consideration.

Ex: A finds B's purse and gives it to him. B promises to pay A Rs. 50. This promise can be enforced. Similarly, if A has supported B's son and subsequently B promises to pay A's expenses in so doing A is entitled to sue and get the said promise enforced.

3. Promise to pay a time-barred debt

Section 25 (3) provides that agreement without consideration is void. Unless it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specifically authorized in that behalf, to pay wholly or in part a debt which the creditor might have enforced payment but for the law for the limitation of suits.

Ex: A owes B Rs. 1,000/- but the debt is barred by the limitation Act. A signs written promises to pay B Rs. 500 on account of the debt. This will be a valid contract and shall not be void for want of consideration.

DOCTRINE OF PRIVACY OF CONTRACT

Stranger to a contract :

A stranger is not a party to the contract and hence cannot sue. Consideration is defined in Sn. 2(d). When at the desire of the promisor, the promisee or any other person had done something ...such actis consideration for the promise.

Hence, consideration may flow from the promisee or any other person. Hence, the question is whether a stranger can sue ?

Tweddle V. Atkinson :

Here H & W were husband and wife. H's father and W's father agreed to pay money to H and that H could sue. When both parties to agreement died, H sued W's father's executors for the money. Held that H was stranger and hence, cannot sue.

Hence, it is a settled law that a stranger cannot sue.

Doctrine of Privity of Contract

The Indian Contract Act. 1872, allows the 'Consideration' for an agreement to proceed from a third-party. However, a stranger (third-party) to consideration is different from a stranger to a contract. The law does not allow a stranger to file a suit on the contract. This right is available only to a person who is a party to the contract and is called Doctrine of Privity of Contract.

Let's understand this with the help of an example:

- Peter has borrowed some money from John.
- Peter owns a property and decides to sell it to Arjun.
- Arjun promises to pay John on behalf of Peter.

However, if Arjun fails to pay, then John cannot sue since Arjun is a stranger to the contract. It is important to note that the Doctrine of Privity has exceptions which allow a stranger to enforce a claim as given below.

Exceptions to the Doctrine of Privity of Contract

A stranger or a person who is not a party to a contract can sue on a contract in the following cases:

1. Trust
2. Family Settlement
3. Assignment of a Contract
4. Acknowledgement or Estoppel
5. A covenant running with the [land](#)
6. Contract through an [agent](#)

Let's look at each of them in details:

1.Trust

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract.

Arjun's father had an illegitimate son, Ravi. Before he died, he put Arjun in [possession](#) of his estate with a [condition](#) that Arjun would pay Ravi an amount of Rs 500,000 and transfer half of the estate in Ravi's name, once he becomes 21 years old.

After attaining that age when Ravi didn't receive the money and asked Arjun about it, he denied giving him his share. Ravi filed a suit for recovery. The Court held that a trust was formed with Ravi as the beneficiary for a certain amount and share of the estate. Hence, Ravi had the right to sue upon the contract between Arjun and his [father](#), even though he was not a party to it.

2.Family Settlement

If a contract is made under a family arrangement to benefit a stranger (person not a party to the contract), then the stranger can sue in his own right as a beneficiary of the contract.

Peter promised Nancy's father that he would marry Nancy else would pay Rs 50,000 as damages. Eventually, he married someone else, thereby breaching the contract. Nancy filed a case against Peter which was held by the Court since the contract was a family arrangement with Nancy as the beneficiary.

Ritika was living in a Hindu Undivided Family (HUF). The family had made a provision for her marriage. Eventually, the family went through a partition and Ritika filed a suit to claim her marriage expenses. The Court held the case because Ritika was the beneficiary of the provision despite being a stranger to the contract.

3. Assignment of a Contract

If a contract is made for the benefit of a person, then he can sue upon the contract even though he is not a party to the agreement. It is important to note here that nominees of a life [insurance](#) policy do not have this right.

Chinnaya V. Rammaya (1882)

Facts: A lady granted/ gifted a property consisting of some land to her daughter (defendant) by a gift deed. The deed was registered to the proper authorities. One of the terms of the deed was that the daughter had to pay a sum of Rs.653 annually. Later the old lady died, and the defendant refused to pay the money the sister whom she had promised to pay so. And hence the plaintiff sued the defendant for the recovery of the same.

Issue: Whether the plaintiff can bring an action against the defendant for the amount promised in a contract where the consideration for such promise has been furnished by the mother of the defendant (plaintiff's sister)?

Appellants argument: The consideration for getting the property was a promise to pay the amount annually to the plaintiff.

Respondents argument: The plaintiff was not a party to contract, hence was had no right to compel respondent for paying the promised amount.

Judgement: The Madras High Court held that in this agreement between the defendant and plaintiff the consideration has been furnished on behalf of the plaintiff (sister) by her own sister (respondents mother). Although the plaintiff was stranger to the consideration but since he was a party to the contract he could enforce the promise to the promisor, since under law, Consideration may be given by the promise or anyone on her behalf - vide section 2(D) of Indian Contract Act, 1872.

Thus, consideration furnished by the old lady constitutes sufficient consideration for the plaintiff to sue the defendant on her promise.

Held, The sister was entitled to a decree for payment of the annual sum of money.

4. Acknowledgment or Estoppel

If a contract requires that a party pays a certain amount to a third-party and he/she acknowledges it, then it becomes a binding obligation for the party to pay the third-party. The acknowledgment can also be implied.

Peter gives Rs 1,000 to John to pay Arjun. John acknowledges the receipt of funds to be paid to Arjun. However, he fails to pay him. Arjun can sue John for recovery of the amount.

Rita sold her house to Seema. A real estate broker, Pankaj, facilitated the deal. Out of the sale price, Pankaj was to be paid Rs 25,000 as his professional charges. Seema promised to pay Pankaj the amount before taking possession of the property. She made three payments of Rs 5,000 each and then stopped paying him. Pankaj filed a suit against Seema which was held by the Court because Seema had acknowledged her liability by conduct.

5. A Covenant Running with the Land

When a person purchases a piece of land with the notice that the owner of the land will be bound by all duties and liabilities affecting the land, then he can sue upon a contract between the previous land-owner and a settler even if he was not a party to the contract.

Peter owned a piece of land which he sold to John under a covenant that a certain part of the land will be maintained as a public park. John abided by the covenant and eventually sold the land to Arjun. Though Arjun was aware of the covenant, he built a house in the specific plot. When Peter came to know of it, he filed a suit against Arjun. Although Arjun denied liability since he was not a party to the contract, this should hold him responsible for violating the covenant.

7. Contract through an Agent

If a person enters into a contract through an agent, where the agent acts within the scope of his authority and in the name of the person (principal).

8. Law relating to Negotiable Instruments

It is also an exception to the doctrine of privity of contract.

Ex: A has an account in central bank. A draws a cheque of Rs. 1,000/- in favour of B. B goes to bank to encash the cheque. Although there is no contract between the bank and B, yet the bank will be liable to pay Rs. 1,000/- to B.

Solved Example for You

Q1. Vidya purchases a property from Krishna. Rajiv is already living in the property on a three-year lease. As a part of the purchase agreement, Vidya takes over the lease. There are some leakages in the house that Krishna promises to fix, as a part of the contract. A few months go by and the leakages are still not fixed. Rajiv calls Vidya, the new owner, and she says that it is Krishna's responsibility. Can Rajiv file a suit for repairs against Krishna?

Ans.

Since there is no contract between Rajiv and Krishna about repairing the leakage, if he files a suit, it will probably be dismissed by the Court. Krishna had agreed to carry out the repairs in his purchase contract with Vidya. Hence, she can file a suit against Krishna to get the work done.

Rajiv, on the other hand, can sue Vidya for not performing her obligations according to the lease contract.

Agreement & Contract

Q.1. All contracts are agreements, but all agreements are not contracts, explain.

Or

Q.1 What do you understand by contract and what are the valid essential of contract?

Definition and Essentials: Contract

Sn.2(h), Contract Act defines a contract. According to it, a contract is an **agreement** enforceable by law.

Analysis:-It is thus an agreement between two or more persons, to do or not to do some act. This definition has two major elements in it viz - "agreement" and "enforceable by law". So in order to understand a contract in the light of The Indian Contract Act, 1872 we need to define and explain these two pivots in the definition of a contract.

Contact = Agreement+ Enforceability of law

Agreement

In section 2 (e), the Act defines the term agreement as "every promise and every set of promises, forming the consideration for each other, is an agreement.

Agreement= Offer+Acceptance +Consideration

If the agreement is not enforceable, the contract is void. Hence, **all contracts are agreements, but not all agreements, contracts.**

Essentials of a valid contract (Enforceability of Law)

Sn.10. What agreements are contract- 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

The essentials of a valid contract are:

- i) Consent of the parties
- ii) Legal capacity or competence of the parties
- iii) Consideration and
- iv) Lawful object and lawful consideration
- v) Not expressly declared to be void

i) Consent:

It is defined in Sn. 13 : Two or more persons are said to give consent, when they agree on the same thing in the same sense i.e., consensus ad idem. It is not free, when there is coercion, undue influence, fraud or misrepresentation. In such a case, the contract becomes voidable. But, when there is no consent, the contract becomes void.

ii) Legal capacity:

Sec. 11 of the Contract act, states that the parties to the contract must be competent to contract. There is no capacity, when a party is a minor or insane, an idiot or when he is disqualified according to any special law to which he is subject. A contract with a minor is void ab initio.[from the beginning] A person below 18 years of age is a minor (21 years for a ward under a guardian). The leading case is **Mohori Bibi V. Dharmadas Ghosh.**

iii) Consideration :

An agreement without consideration is void. (Sn. 25 Contract Act). Consideration is defined in Sn.2(d). When at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does or abstains from doing, or promises to do or abstains from doing, something, such act or abstinence or promise, is called a consideration for the promise.

1. The rule is "**ex nudo pacto, non oritur actio**" [On naked pact (contract),no action arises]i.e. without consideration, no action arises. Consideration must be clear, specific and not illusory. It may be inadequate, if parties agree to the contract. By that itself contract will not become void. But, the general rule is "no consideration, no contract".

iv) Lawful object :

According to Sn.23 of the Contract Act, the consideration or object of the agreement must be lawful otherwise the contract is void. The consideration or object is not lawful:

If i) it is forbidden by law

ii) It is of such a nature that if permitted it would defeat the provision of any law

Ex: A promise B to drop a prosecution which he has instituted against B for robbery and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful, for it defeats the provisions of criminal law. A person who is guilty of the crime of robbery must be dealt with according to law.

iii) it is fraudulent

iv) it involves or implies injury to the person or property of another

v) it is immoral or opposed to public policy.

e.g. (1) A, B & C agree to divide their earnings got by fraud. (2) lease agreement of a house for immoral purposes.

Classification of Contract on the basis of Validity

a) Valid contract: It is an agreement which has all the requisites of a contract.

i) Free consent ii) Consideration iii) Lawful object iv) Legal capacity of the parties. Hence, such a contract is valid and is enforceable in a court of law

b) Void contract : As per Sec. 2(g)

It is an agreement without any legal effect. It is a nullity. It is not enforceable in a court of law. An agreement not enforceable by law is void.

Eg. 1) Contract with a minor Sn.11.

2) Contract without consideration Sn. 25.

3) Contract with object unlawful Sn. 23

4) Wagering contract Sn. 30.

5) Contract in restraint of trade Sn. 27. or in restraint of marriage. Sn. 26.

c) Voidable contract: As per sec 2 (i) This is an agreement which is enforceable by law at the option of one of the parties thereto but not at the option of the other.

Voidable contract is a valid contract until it is set aside by the court. The person who has the right to rescind must do so within a reasonable time, i.e., 3 years.

Any agreement made under undue influence, coercion, fraud, misrepresentation is voidable. Hence, when the court sets aside the contract the contract becomes void.

d) Unenforceable contract:

It is a contract which is otherwise valid in all respects but cannot be enforced on account of some technical defects like insufficient stamps, not written in a particular form, etc.

