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**ELEMENTS OF CONTRACT- AN ANALYSIS****What is a Contract?**

Contract is an essential part of most business, as it eases the functioning of the two parties in it. In more basic terms, a written agreement which has to be performed by two parties consists of certain obligations and promises and is enforceable by law is known as a Contract. Legal actions can be taken up against the party that violates the contract, one of the consequences of the violation of contract may include cancellation of the whole contract.

“Indian Contract Act,1872 was enacted on 25 April,1872. It lays down all the provisions relating to contracts and governs all the disputes related contracts in India. ICA defines contract as **“An agreement which is enforceable by Law”**”¹

Example: X and Y came under a Contract, in which X bought a car from Y for Rs. 5 lakhs of a particular brand under a given period of time. This tells us that Y promised to provide the car of that particular brand in the due time. X promises to pay the amount as mentioned in the contract. Therefore, both parties have to perform the act as per the signed contract.

¹ <https://indiankanoon.org/doc/171398/>

Essential of a valid contract:

The great majority of people believe that once one party makes an offer and the other party accepts, a contract is formed. In any event, there is something else totally to a genuine contract than meets the eye, and it avoids contract conventions. A contract might be formal or unofficial, composed or verbal.

Section 10 of the Indian Contract Act, 1872 talks about the essentials of a valid contract.

1. OFFER:

To begin, either side must make an offer; without such an offer, no contract can be formed. According to **section 2 (A) of the Indian Contract Act,1872** a proposal is made when a person shows his/her readiness to another person to perform or refrain from anything in order to get the consent for an act.²

The party that makes the offer is known as "Offeror" or "Promisor," and the party to whom the offer is made is known as the "Offeree" or "Promisee." It must be remembered that an offer not made for acceptance, is not constituted as an offer under Contract act.

Illustration:

Mr. A offers Rs. 200 to Mr. B to buy a book. In this, A made an offer to B to buy the book and if the offer got accepted it will become a valid contract.

2. ACCEPTANCE:

The Acceptance is the second stage in the establishment of a contract.

² <https://indiankanoon.org/doc/171398/>

“According to **Section 2(b) of Contract Act** the process when an individual approves an offer made to him, is known as acceptance”³

Acceptance should be unequivocal and unconditional, and it must be offered while the offer is still valid. This means, there should be no condition applied along with it.

Eg- if A offers to sell his watch for Rs. 1000, to this B replies that he will give Rs. 800 for it, then this shows that instead of directly accepting the offer B put a condition on it. This condition won't count as Acceptance.

3. **LAWFUL CONSIDERATION:**

In simple terms, consideration means something in exchange for something. Lawful Consideration is required for a legitimate contract to be legally binding. Consideration is defined as a reward given in exchange for the performance of a commitment. It does not have to be a large sum of money; nonetheless, it must be something accepted by both parties and of some importance.

According to Section 2(d) of the Indian Contract Act consideration occurs when, at the request of the offeror, the promisee, or any other party, anything is done or refrained from doing, or pledges to do or refrain from doing, such action, abstention, or promise.⁴

Illustration: X promises to sell his house to B for Rs. 2,00,000 and B agrees to it. In this promise by B to pay Rs. 2,00,000 is the consideration for the sale of the house by X. Similarly, X's promise to sell the house is the consideration for B.

4. **Lawful Object:**

Every contract has an object for the fulfilment of which parties enter into an agreement. When the contract in which parties enter has an unlawful objective, then such contract is not valid. A contract

³ <https://blog.ipleaders.in/offer-acceptance/>

⁴ <https://indiankanoon.org/doc/877630/>

with unlawful objective is void the objective for which the contract is made must be lawful. The object which is targeted to achieve must be within the legal arena an agreement contrary to law is a void agreement.

An agreement was made between parties for the purchase of property, but such agreement resulted in violation of provisions of local laws prohibiting the possession of land in excess limit it was held by the court that such a contract being unlawful object is void and cannot be enforced. Example: A contract to murder someone has an unlawful object. Hence, it's an invalid contract.

5. Competent Parties:

For a contract to take place there must be two parties, both must be competent. Competent parties are explained in Section 11 of the act,- any individual who has attained the age of maturity, is of sound mind and is not barred from entering into a contract by law, is known to be a competent party.

The age of the parties to contract must be above 18 years. If the age is below 18 than that party will be minor and thus the contract will be "void ab initio. Such a contract where the party is a minor is said to be a void contract and it is not enforceable by law. It was held in a leading judgement power of attorney was executed by a person less than 18 years in age Executant was not competent to enter into a contract and it was held that no binding contract came into existence.

The second thing that makes the parties competent is a sound mind. If the party to a contract is of unsound mind that such contract shall be regarded as void. When a lunatic or an unsound person enters into a contract law declines the contract on the basis that such people don't understand the clauses of the contract and are not eligible to enter in a contract.

6. Free Consent

A contract is legitimate if it was entered into with the parties' free consent, according to Section 10 of the Contract Act.

According to Section 14 of the Contract Act, free consent is assent that is not obtained via coercion, undue influence, fraud, or misrepresentation.

The broad claim that assent was not genuine is untenable. It must be demonstrated that consent was tainted by any of the five conditions listed in section 14. If these components are included in consent, the contract is invalid at the choice of the person that acquired the permission.

- **Coercion (Section 15)**

If a person is threatening any other person to do some harm, or take control of his property etc., just to get that person to agree to get into a contract, is accounted as Coercion.

Illustration: A is a school bully, and he threatens B to give him his new watch, or else he'd hurt. Due to this, B gets scared and gives him his watch. This shows via unlawful means A tried to get B (against his will) to do a task for him.

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- **Undue influence**

According to **section 16** it is an impartial doctrine that helps a person's (on lower position) decision not to be influenced by any entity on a higher rank, so that the consent given by that person is free.

e.g. – a relationship of a senior employee and a junior, the senior employee will always have an upper hand in the field of making decisions.

16(2) clearly indicates that a dominating position encompasses instances in which every individual has actual or perceived power, i.e. power that is not clearly declared but may be easily deduced by a rational person, for example. A principle appears to have influence over his student. Individual in a fiduciary relationship can also exert influence over the will of the other.

16(3) indicates that if a contract is made between two parties and one of them has the ability to control the decision of someone or utilizes it to engage into the contract, the deal is unreasonable.

It also states that the party with the power to influence wishes of the other party must demonstrate that the contract was not signed into under the pressure of a dominating position. As a result, it discusses who has the obligation of evidence

- **Fraud**

It is an act undertaken to deceive an individual, either for financial gain or out of animosity or enmity against the other party.

According to **section 17**, Fraud can be perpetrated by one of the contractual parties or by a third party with the knowledge of one of the contractual parties or by the agent of one of the contracting parties.

Illustrations A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A. As simple silence to facts likely to influence a person's willingness to engage into an agreement is not fraud, unless the situations are such that it is the person keeping quiet's duty to say in connection to them, or until his silence is, in fact, equivalent to speech.

Section 17(1) “states that fraud means any false factual statement and the person making it knows it is false. Thus deliberately making a false statement.”

Eg. saying that the watch is brand new, when in reality it's second hand.

“Section 17(2): Fraud also involves hiding a fact by a person who is conscious of its presence "Active concealment" differs from "passive concealment." "Passive concealment is just quiet about important information. Active concealing of a substantial fact constitutes fraud; silence, with the exception of the few situations described below, does not constitute fraud.”

- **Misrepresentation:**

A contract in which consent is obtained by deception is voidable at the decision of the misled party. Misrepresentation is defined as a false declaration of a fact relevant to the contract.

Section 18. defines misrepresentation as following:

(1) the affirmative claim, in a way not justified by the individual saying it, of something that is not genuine, despite the fact that he thinks it to be true; (2) any omission that, without purpose to mislead, benefits the individual doing it or anybody alleging under him by deceiving another to his or anybody alleging under there's detriment, or to the detriment of anyone claiming under there's detriment.; (3) leading a party into a contract, even unintentionally, to make an error about the content of the object that is the topic of the contract.

Even if there be undue influence or coercion etc., however not appearing to be pivotal in making the promisor to do the act at issue, the existence of coercion, etc., would be futile. This signifies that a direct and immediate connection must be there between the coercion etc. and consent which is not free.

CONCLUSION:

In the end I would conclude by say the above-mentioned points are the most fundamental and simple elements of a contract that must be followed; nevertheless, further criteria could be imposed by a particular legislation or for specialized sorts of contracts.



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