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**ANALYSIS OF ESSENTIALS OF A CONTRACT WITH REFERNCE TO
RELEVANT CASE LAWS****Abstract**

An agreement is an arrangement between at least parties that is enforceable at law. It is a legitimately authoritative understanding that commits at least two parties to follow through with specific jobs. It creates rights and obligation to parties of the agreement. A Contract is a promise or set of promises made between at least two parties which permit the courts to make judgment. consent and a mutual assent of two or more persons to be bound. The formation of a contract generally requires an offer, acceptance, consideration, certainty, capacity, free consent to be bound in a contract

Introduction

The Section 2(h) of the Indian Contract Act, 1872, defines contract as, “an agreement enforceable by law.”¹ It is a promise, or a number of promises that the parties involved agree to, and by which they are legally bound to fulfil the said promise. The classical law of contract was formulated keeping in mind the principles of freedom of contract and the sanctity of contract.

Agreements which are legally binding are contracts As Justinian stated, contracts are “*Vinculum iuris*,” that is, legally binding obligations. Moreover, all contracts are agreements, but not all agreements are contracts. As said in the Section 10 of the Act: “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 void².” Here,

¹ Indian contract Act, §2, No. 09, acts of parliament ,1872(India)

² Indian contract Act, §10, No. 09, acts of parliament ,1872(India)

it is clearly stated the important or essential components required for the agreement to be a contract, namely: free consent, competent parties, lawful object, lawful consideration, and the contract shouldn't be one which is void ab initio.

But how does an agreement happen? When an "offer" or a "proposal" made by one party is accepted by another, an Agreement comes into being. If this agreement is enforceable by law, a contract is born.

Offer

Offer is the first step towards formation of a contract. An offer and its acceptance are the universally acknowledged process for making of an agreement. So, without an offer by either party no contract could be formed hence offer is an essential of a contract. Section 2(a) of Indian contract act, 1872 describes offer also called as proposal when

"one person signifies to another his willingness to do or abstain from doing anything with a view of to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."³

The person making an offer is called offeror or proposer. The person accepting the offer is called the promisee or offeree. An offer could be expressed or implied, it could be positive or negative. There are different types of offers such as standing offer, counter offer, cross offer, special offer and general offer. For an offer being valid it must be certain and not vague, it must be capable of creating a legal relationship. An offer must be communicated and it must be conditional. Offer could be understood in the case Carlill vs. Carbolic smoke ball and company as well as in the case of Lalman Shukla v Gauri Dutt.

Acceptance

The second step in formation of a contract is acceptance to the offer extended. Section 2(b) of Indian contract act 1872 talks about acceptance. Acceptance described in Indian contract act 1872 goes like

"When the person to whom the proposal is made signifies his assent thereto the proposal. A proposal when accepted becomes a promise."⁴

So, in simple words acceptance is when a person to whom the offer was made and the person agrees to the contract and communicates it the offeror then the person is said to give acceptance. For instance, Mr A offers Mr B a piece of land for Rs 1 crore. Mr B in due time and in a reasonable mode of communication communicates his acceptance to Mr A where he agrees to buy land for said amount, he is said to give acceptance to Mr A offer. The mode of communication also plays a major role in giving the acceptance if the offeror has prescribed the mode of communication of acceptance, then it is expected from the offeree to stick the

³ Indian contract Act, §2, No. 09, Acts of Parliament, 1872(India)

⁴ Indian contract act, §2, No. 09, Acts of Parliament, 1872(India)

prescribed mode of communication if no mode is prescribed then a reasonable and usual manner of communication is expected which could be mail or through post.

Once the acceptance reaches the other person then the person who gave the acceptance to the offer cannot revoke similarly for offer if the offer is communicated to the offeree the offeror cannot revoke it. For instance, if Mr A gives his acceptance through post on take for example on 26 February, 22 it reaches Mr B on 1 March, 22. In such a situation Mr B cannot revoke his offer on or after 26 February and for Mr A he cannot revoke his acceptance on or after 1 March, 22 however they both can revoke their offer and acceptance before it is communicated to acknowledged by other.

CONSIDERATION

Another essential of a contract is consideration. Without consideration a contract is void. Consideration is *quid pro quo*. Section 2(d) of Indian Contract Act 1872 describes consideration as

“When at the desire of the promisor, 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 promise⁵.”

In simpler words consideration is price for which the promise is bought. According to Justice Lush consideration may be right, interest, profit or benefit to one party or forbearance, detriment, loss or responsibility suffered by other party.

There are some legal rules attached to consideration such as consideration must move at the desire of promisor. For instance, in the case of *Durga Prasad v. Baldeo*⁶ where the plaintiff mentioned the local authority to develop a few outlets in his city. Those outlets got for lease to the litigant for carrying on with work. The lease was jointly held. Afterward, the litigant had guaranteed to the other party that he will offer a 5% commission to him on generally items that he will go to sell through that shop in light of the development of the structure by the other party by payment of money. Notwithstanding, the litigant didn't pay the commission. Subsequently, Durga Prasad recorded a suit against the retailers who neglected to offer the commission. Consideration must be executed or executory consideration. Consideration must be real and not illusory. Consideration must not be unlawful.

Free Consent

Section 13 of Indian Contract Act 1872 talks about consent

“two or more persons are said to consent when they agree upon the same thing in the same sense. It is based on the maxim “consensus ad idem” which means meeting of minds.”⁷

A person is said to give free consent when it is not caused by the following

⁵ Indian Contract Act, §2, No. 09, Acts of Parliament, 1872 (India)

⁶ *Durga Prasad v. Baldeo and others*, (1881) ILR 3 ALL 221

⁷ Indian Contract Act, §13, No. 09, Acts of Parliament, 1872

- Misrepresentation
- Fraud
- Coercion
- Undue influence

Coercion

Coercion includes all such acts which are forbidden by Indian penal code. It also includes threatening to commit any act forbidden by the code. Further Coercion is discussed in section 15 of Indian contract act ,1872

“Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement ”⁸

In simple words it is use of force to obtain compliance. Such a demonstration would add up to coercion just when the demonstration has been submitted with the expectation to go into an arrangement. Simple danger of bringing a lawbreaker accusation doesn't add up to intimidation, as it isn't essentially illegal by the Penal Code. However, danger of carrying a misleading allegation with the object of making another do a thing is compulsion, on the grounds that fraudulent allegation is culpable under IPC.

Undue Influence

According to section 16 of Indian contract act is

“When a party is in a position to dominate the will of other and uses that position to obtain an unfair advantage. So, if consent has been obtained by being in a dominant position ”⁹

Now a person is in a place to dominate other when

- Where he/she holds a real authority
- he/she stands in a fiduciary relationship.
- Where he/she enters into a contract with a person whose mental health or capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily disorder distress.

So, a person is said to use undue influence if he or she uses his or her position to obtain unfair advantage. Lloyd bank v Bundy ¹⁰is a case to refer for undue influence. So, in this case Herbert James Bundy claimed a house. His son worked a business that didn't do quite well, and he requested that his dad give him guarantee for taking out advances from Lloyds. The dad marked the first security for a more modest measure of cash in the wake of considering it short-term and conversing with his attorney. Later on, the

⁸ Indian contract Act, §15, No. 09, Acts of Parliament, 1872

⁹ Indian contract Act, §16, No. 09, Acts of Parliament, 1872

¹⁰ Lloyds Bank Ltd v Bundy [1975] QB 326

child required more security, and the main way that Bundy could give it was by involving the house as insurance. At the point when the legal advisors from the bank came over with his child, they clarified that this was the main thing that he could do to help his child, and Bundy marked the record. After five months the bank dispossessed the child's resources, and as he was bankrupt, they held onto the house. Bundy would not take off from the house, and the bank sued to have him ousted.

the stronger party is guilty of fraud to gain the advantage of the weaker; or the stronger has taken advantage of their relationship of the weaker to gain an advantage for himself.

FRAUD

According to section 17 of Indian contract act, 1872

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive

The above will fall under fraud if done intentionally. If the intention is missing it will result in misrepresentation.

Misrepresentation

Misrepresentation is discussed in section 18 of Indian contract act, 1872

When false statements are innocently made without the intention to deceive, then it amounts to misrepresentation. In misrepresentation, the person making the statement is innocent and has no intention to deceive the other party.

Capacity to Contract

Capacity to contract is made among other essential to valid contract. Party must enter into a contract with a person or party who competent to contract. People who are not minor that means people of age eighteen or above, who are of sane mind and are not disqualified by law are considered competent to contract.

Minor

A contract entered with a minor is void ab intio. Mohiribi v dharmodas Ghosh ¹¹is case where Dharmodas Ghose, was the respondent for this situation. He was a minor (for example has not finished the 18 years old) and he was the sole proprietor of his unflinching property. The mother of Dharmodas Ghose was approved as his lawful overseer by Calcutta High Court. When he

¹¹ Mohori Bibbee V/S Dharmodas Ghose, [(1903) 30 Cal 539 (Pc)]

went for the home loan of his own enduring property which was done in the blessing of litigant for example Brahma Dutta, he was a minor and he got this contract deed for Rs. 20,000 at 12% loan fee each year. It was decided in this case contract deed or agreement that was initiated between the offended party and the respondent was void as it was achieved by the individual who was an infant at the hour of execution of home loan.

Unsound mind

A person who is not capable of understanding the consequences of a contract can't be a party of contract.

Disqualified by law

A person not permitted by law to enter into a contract. If a person disqualified by law enters into a contract it will be held void.

Void Agreements

Agreements in restraint of marriage

According to Section 26 of Indian contract act 1872

*"All agreements in restraint of marriage except in case of minors are void ."*¹²

Lowe vs Peers is a case where the defendant contended that if he marries any other person except the plaintiff, he would give her 1000 pounds within three months of his marriage. It was held that such an agreement is void.¹³

Agreements in restraint of trade

According to section 27 of Indian contract act

*"that every agreement by which a person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void."*¹⁴

It should be noticed that the agreement will be void just to such degree by which an individual is limited. In this way the whole agreement won't be announced void.

Agreements in restraint of proceedings

¹² Indian contract Act, §26, No. 09, Acts of Parliament, 1872

¹⁴ Indian contract Act, §27, No. 09, Acts of Parliament, 1872

- According section 28 by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.]¹⁵

Agreements of wager are void

According to Section 30 of Indian contract act, 1872

*“Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the results of any game or other uncertain event on which any wager is made”*¹⁶

Lawful object

Accordingly, Section 23 defines unlawful consideration. *Unlawful consideration and object are one which is either,*

1. *forbidden by law;*
2. *or is of such a nature, that if permitted, then it would defeat the provisions of law;*
3. *or the purpose of the contract is fraudulent;*
4. *or involves or implies giving injury or damage to someone or to someone's property;*
or
5. *or the court considers it as immoral or against public policy.*

If a contract shows any of these elements, then it is unlawful and void. If the consideration or object of the contract is to commit fraud, the contract is void. Thus, if the object of agreement is to deceive another person, the same is void. Even if a part of a single consideration is unlawful, the agreement is void

¹⁵ Indian contract Act, §28, No. 09, Acts of Parliament, 1872

¹⁶ Indian contract Act, §30, No. 09, Acts of Parliament, 1872

Conclusion

So, it can be concluded that offer, acceptance, consideration, capacity, free consent and certainty are essential components to a valid contract. However, there may be other conditions which may be laid down by a special law, or for specific types of contracts. A valid contract to be formed a person must be of majority age, sane mind and must not be disqualified by law. A contract must be entered with mutual consent or free consent of both the parties. A contract is said to be entered with free consent when it is not caused by coercion, undue influence, misrepresentation and fraud



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