

Chapter 2

Introduction to the Law of Contract

Chapters on Law of Contract

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Introduction to the law of contract

INTRODUCTION TO CONTRACT

Definition of a contract

The law governing contracts between persons is the Contract Act, 1872.

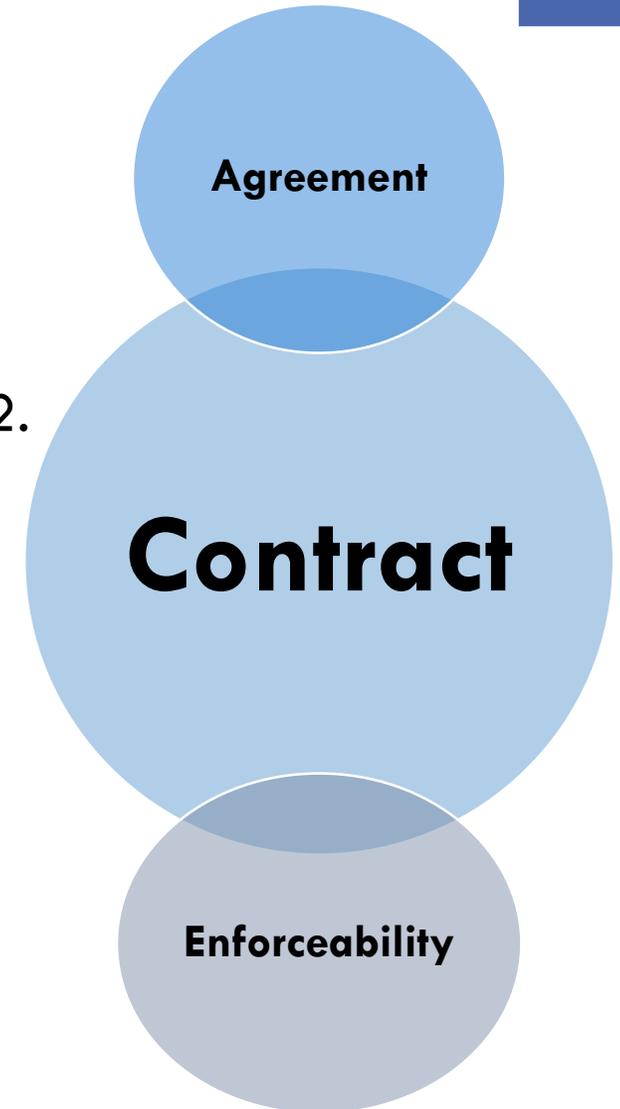
Definition: Contract

An agreement enforceable by law is a contract.

A contract is an agreement which legally binds the parties.

The analysis of the above definition reveals that a contract has following two elements:

- Agreement
- Enforceability



Definition: Agreement

Every promise and every set of promises forming the consideration for each other is an agreement.

The analysis of the above definition reveals that an agreement comes into existence only when one party makes a proposal or offer to the other party and the other party signifies his acceptance thereto. Thus, an agreement can be an accepted proposal.

Definition: Promise

When the person to whom the proposal is made signifies his assent to it, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

The person making the proposal is called the promisor and the person accepting the proposal is called the promisee.

Definition: Proposal

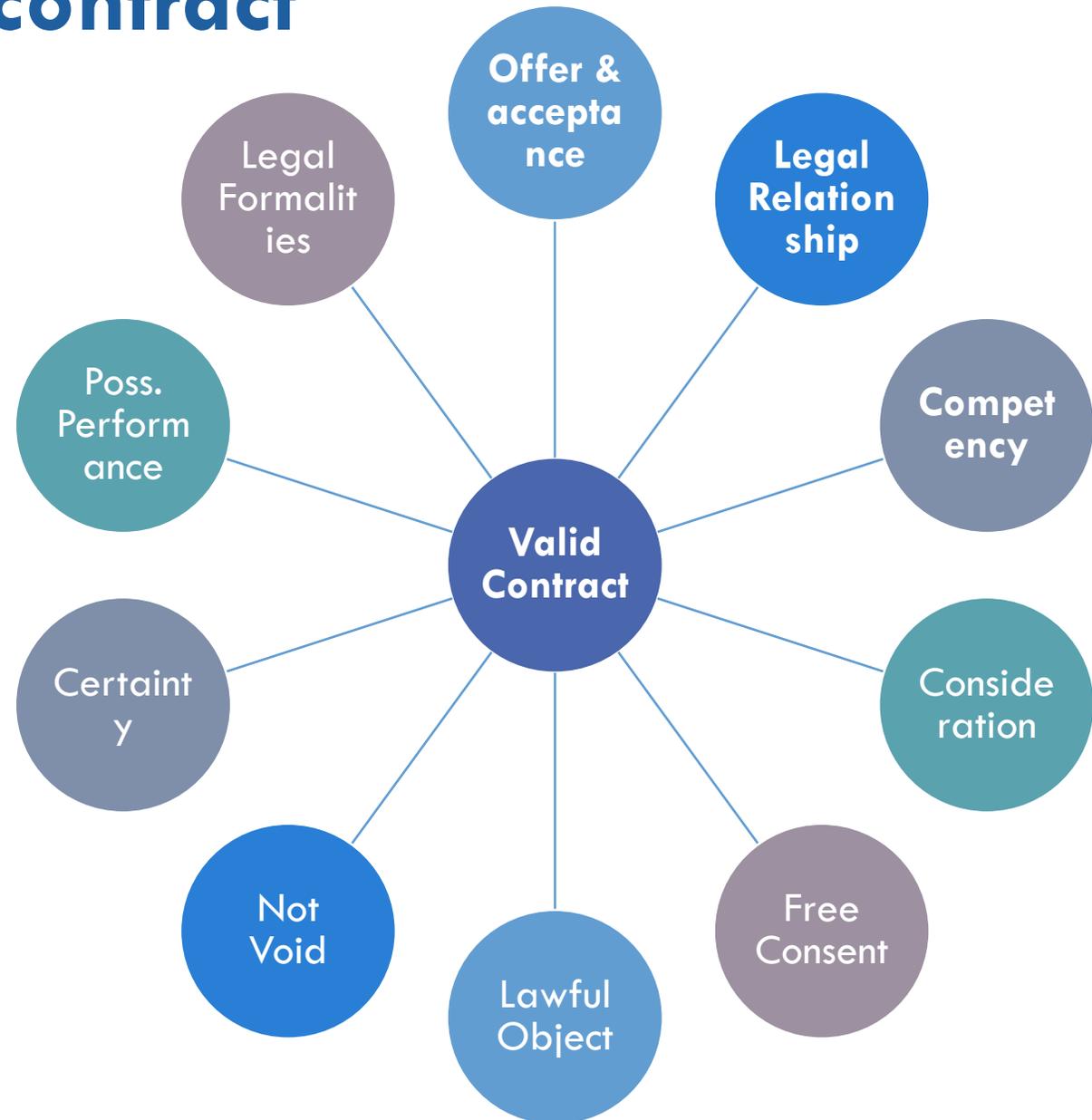
When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Enforceability

Every contract is an agreement, but every agreement is not always a contract. An agreement creating a legal obligation is said to be enforceable by law. The parties to an agreement must be bound to perform their promises and in case of default by either of them, must intend to sue. For an agreement to be enforceable by law there should be legal obligation instead of social, moral or religious obligation.

Essentials of valid contract

1. Offer & Acceptance
2. Legal relationship
3. Competency of parties
4. Consideration
5. Free Consent
6. Lawful object
7. Not declared as void
8. Certainty
9. Possibility of performance
10. Legal formalities



1.2 Essentials of a valid contract

The essentials of a valid contract are shown below:

These essentials are discussed below:

Offer and acceptance

There must be an agreement between parties to create a valid contract. An agreement involves a valid offer and its acceptance.

Legal relationship

A contract to become valid must have a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Competency of parties

The parties to an agreement must be competent to contract. In other words, the person must:

- be of the age of majority
- be of sound mind; and
- not be declared as disqualified from contracting by any law to which he is subject.

Consideration

An agreement must be supported by lawful consideration.
Gratuitous (without consideration) promises are not enforceable at law.
Consideration requires not only presence of consideration but also
lawfulness of consideration.

Free Consent

An agreement must be made between parties by free consent. In other words, the consent must not be obtained from following:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

Lawful Object

The object of an agreement must be lawful. An object is said to be unlawful when:

- It is forbidden by law
- Is of such a nature that if permitted would defeat the provisions of any law
- It is fraudulent
- It involves an injury to the person or property of another
- The court regards it as immoral, or opposed to public policy

Not expressly declared as void

An agreement which is not enforceable by law is called void agreement. There are certain agreements which have been expressly declared as void such as:

- Agreement, the consideration or object of which is partly unlawful
- Agreement made without consideration
- Agreement in restraint of marriage
- Agreement in restraint of legal proceedings
- Agreement in restraint of trade
- Uncertain agreements
- Wagering agreement

Certainty

An agreement may be void on the grounds of uncertainty. The meaning of the agreement must be certain or capable of being certain.

Possibility of performance

The terms of the agreement must be capable of being performed. An agreement to do an act impossible in itself is void.

Legal formalities

An oral contract is a perfectly valid contract, except in certain cases where a contract must comply with the necessary formalities as to writing, registration etc.

1.3 Classifications of contract

The different classifications of contract are shown below:

Valid contract An agreement which is enforceable by law.

Void agreement An agreement which is not enforceable by law [Section 2(g)].

Void contract A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Section 2(i)].

Voidable contract An agreement which is enforceable by law at the option of the aggrieved party [Section 2(i)].

Illegal agreements An agreement the object of which is illegal.

Unenforceable agreement An agreement which is otherwise valid but due to some technical lacking, such as writing etc. remains unenforceable.

Executed contract

A contract where both the parties have performed their respective promises.

Executory contract

A contract in which something remains to be done. It may be unilateral or bilateral.

Unilateral contract

A contract is which a promise on one side is exchanged for an act on the other side. In such contract one party to a contract has performed his part and performance is outstanding against the other party.

Bilateral contract

A contract in which a promise on one side is exchanged for a promise on the other.

2 OFFER

2.1 Definition and essentials of proposal / offer

Definition: Proposal / offer

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.

Thus, an offer is a proposal by one person to another for entering into a legally binding agreement with him.

Two persons

For a valid offer there needs to be two persons. A person cannot make an offer to himself. The person making the proposal is called offer or and the person to whom offer is made is called offeree.

Certain and definite

A valid offer is one which is certain and definite. Thus, no contract can come into existence if offer is uncertain.

Contractual intention

An offer must be made with an intention to create a contract.

Communication

The offer must be communicated to the offeree. The communication is complete when it comes to the knowledge of the person to whom it is made. In case an offer is made by post, its communication will complete when the letter reaches the offeree. An offer can be made by words spoken or written or through conduct of the person.

Objective of consent

An offer must be made with a view to obtain the consent of the other person to proposed act or abstinence.

Conditional

An offer may be subject to some condition. It is on the sole discretion of the person to whom such offer is made to either accept or reject it. A conditional offer lapses when condition is not accepted.

Negative confirmation

An offer cannot be in the form of negative confirmation i.e. if it is not accepted within a specific time then it will be presumed to have been accepted.

Invitation of an offer

An offer is different from an invitation of an offer.

The intention in invitation of an offer is to circulate information of his readiness to do the transaction.

Such intentions are not offers and do not tantamount to promise on acceptance.

In other words, an invitation of an offer means an intention of a person to invite others with a view to enter into an agreement.

Communication of special conditions

When there are special terms and conditions in an offer these must be specifically communicated to the other party.

2.2 Types of offer

Following are the different types of offer:

Specific Offer

If an offer is made to definite or a particular person or specific group of persons it is said to be specific offer. Such offer can be accepted only by that definite person or that specific group of persons.

General offer

If an offer is made to the world or public then it is said to be general offer. Such offer can be accepted by any person. The contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

Cross offers

If two parties ignorant of each other's offer made similar offers to each other they are called cross offers. Cross offers are not equal to acceptance.

Standing / Open / Continuing offer / Tender

If an offer is of on-going nature it is said to be a standing offer. A contract is entered only when the person signifies his acceptance on the basis of the tender.

2.3 Lapse of an offer

An offer is lapsed in the following ways:

Revocation

An offer may be revoked before its acceptance by the offeree.

Non-acceptance / Rejection

An offer comes to an end if it is not accepted by the offeree. An offer is said to be rejected if the offeree expressly rejects.

Counter offer

An offer comes to an end if the counter offer is made.

Lapse of time

An offer will come to an end if it is not accepted within the time specified or within a reasonable time where no time is specified. “What is the reasonable time?” is a question of fact depending upon the subject matter and circumstances.

Death or insanity

An offer comes to an end by the death or insanity of the offeror if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Non-fulfilment of condition precedent

An offer comes to an end when the acceptor fails to fulfil the conditions precedent to the offer.

Non-acceptance according to requirement

An offer comes to an end if it is not accepted according to the requirement (if any) of the offeror.

Subsequent illegality or destruction

An offer comes to an end if it becomes illegal or the subject matter is destroyed before its acceptance.

3 ACCEPTANCE AND RULES OF REVOCATION

3.1 Meaning and essentials of acceptance

When the person to whom the proposal is made signifies his assent to it, the proposal is said to be accepted.

Thus, an acceptance means assenting to an offer made. An offer when accepted becomes a promise.

The essentials of acceptance are shown below:

These essentials are discussed below:

Absolute and unconditional

An offer should be accepted without any condition. If any condition is imposed on an offer then it turns out to be counter offer instead of acceptance.

Communication

The acceptance may be complete when it is communicated to the offeror. An offer can be accepted by words spoken or written or through conduct of the person. Further, a valid acceptance is communicated either by the offeree himself or any person authorized by him to communicate to the offeror.

Postal rule

The communication of acceptance by post is complete as against the proposer when it is put in a course of transmission. In case of acceptance made by post, the proposer becomes bound as soon as the letter of acceptance is posted even if such letter is lost or delay.

The communication is complete as against the acceptor when it comes to the knowledge of the proposer. In case of acceptance by post, the acceptor becomes bound when the letter of acceptance is actually received, before that acceptor may revoke his acceptance.

Contracts over telephone / telex / fax

A contract by telephone / telex / fax is treated on the same principle as an oral agreement made between two parties when they are face to face with each other. In such cases, the contract will complete only when the acceptance is received by the proposer and not when it is transmitted by the acceptor.

The offeree must make sure that his acceptance is received, heard and understood by the offeror; otherwise there is no contract.

Reasonable time

A valid acceptance is when it is accepted within the time specified or within a reasonable time where no time is specified.

Reasonable mode

Acceptance should be made in the manner specified or in a usual manner where no mode is specified.

If the proposal prescribes a manner in which offer is to be accepted and the acceptance is not made in that manner. The offeror shall, in this case, when the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise. If the offeror fails to insist within a reasonable time it is deemed that he has accepted the performance.

Awareness of proposal

The acceptor must be aware of the proposal at the time of acceptance of the proposal.

Before lapse of an offer

The acceptance must be given before the offer lapses or is withdrawn.

Negative confirmation

A proposal is not considered accepted if the offeree remains silent. It cannot be in the form of

negative confirmation i.e. if it is not accepted within a specific time then it will be presumed to have

been accepted.

3.2 Timing of revocation

Timing of revocation of an offer

A proposal may be revoked at any time before acceptance or the communication of its acceptance is complete as against the proposer, but not afterwards.

Timing of revocation of an acceptance

An acceptance can be revoked at any time before the communication of the acceptance is complete as against the acceptor i.e. when acceptance comes to the knowledge of the offeror, but not afterwards.

3.3 Communication of revocation

The rules regarding the communication of revocation are as under:

As against the person who makes it

When it is put in a course of transmission so as to be out of the power of the sender of the revocation.

As against the person to whom it is made

When it comes to the knowledge of the receiver of revocation.

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