

Agreement/Contract (The Indian Contract Act, 1872)

1. Definitions of an Agreement:

- An agreement exists where there is a mutual understanding regarding rights and responsibilities among parties to a business arrangement.
- The Indian Contract Act, 1872 defines the term “Agreement” under its section 2 (e) as “every promise and every set of promises, forming the consideration for each other”.

1.1 Types of Agreements:

- **There are many types of Agreement, on the grounds of enforceability agreement has two types which are as follows:**
 - * **Valid Agreement:** As per section 2(h) of the Indian Contract Act, 1872 valid agreement is said to be valid if it can enforceable in the court of law. “an agreement enforceable by law is a contract”.
 - * **Void Agreement:** As per section 2(g) of the Indian Contract Act, 1872 an agreement is not enforceable by law is said to be void.
- **As per section 24 to 31 and 56 of the Indian Contract Act, 1872 lay down the provisions relating to the agreements which are declared void are as follows:**
 - * If consideration and objects are unlawful in part (Section 24)
 - * Agreement without consideration (Section 25)
 - * Agreement in restraint of marriage (Section 26)
 - * Agreement in restraint of trade (Section 27)
 - * Agreement in restraint of legal proceedings (Section 28)
 - * Uncertain Agreements (Section 29)
 - * Wagering Agreement (Section 30)
 - * Agreement contingent on impossible event (Section 31)
 - * Agreement to do impossible Act (Section 56)
 - * Agreement to minor
 - * When both parties are under mistake of law

2. Definitions of a contract:

- A contract is an agreement between respective parties that creates legally binding obligations.
- The Indian Contract Act, 1872 defines the term “Contract” under its section 2 (h) as “An agreement enforceable by law”.

2.1 Types of Contracts:

- **Valid Contracts:** In valid contract, both parties who involve in the contract are legally bound to fulfil his obligations or promises which are within the contract.
- **Void Contract:** A void contract is a contract that isn't legally enforceable; starting from the time it was created. While both a void and voidable contract are null, a void contract cannot be ratified. In a legal sense, a void contract is treated as if it was never created and becomes unenforceable in court.
- **Voidable Contract:** This type of contract is not void per se, but it depends on the party whose consent has been obtained illegally that whether he wants to go forward with the contract or abstain from fulfilling the obligations of the contract. So these types of contracts can become void if another party chooses to do so.
- **Illegal Contract:** Are those contracts which have either illegal objective or illegal considerations or both. All illegal contracts are void, but all void contracts are not illegal.
- **Unenforceable Contract:** These are the contracts which otherwise have both legal considerations and objectives, but due to the absence of legal technicalities, the contract can't be enforced.
- **Express Contract:** An express contract is a contract whose terms the parties have explicitly set out. This is also termed as special contract. In an express contract, all the elements would be specifically stated. In an express contract, the agreement of the parties is expressed in words, either in oral or written form.
- **Implied Contract:** An implied contract is a legally-binding obligation that derives from actions, conduct, or circumstances of one or more parties in an agreement. It has the same legal force as an express contract, which is a contract that is voluntarily entered into and agreed on verbally or in writing by two or more parties.
- **Quasi Contract:** In this type of contract, the obligation of one party is not imposed on another because of any agreement, but because of obligations imposed by law. There is no offer and acceptance so; actually, there will be no Contractual relations between the partners.
- **Executed Contract:** Are those contracts in which the objective of the contract are already carried out by one or both the parties. It means that whatever the aim of the contract, for which it was drafted, has already been carried out.

- **Executory Contract:** In these types of contracts, the consideration can only be performed sometime in future. It means that immediate consideration can't be given for the fulfilment of the contract by other parties.
- **Unilateral Contract:** Unilateral Contracts or one-sided contracts are a type of contract where offer or makes a promise in exchange for an act or performance by another party.
- **Bilateral Contract:** It's the contract in which both the sides has to perform each side of its bargain. It's the most common kind of contract, which is entered into in daily basis.

2.2 The benefits of using a contract:

- * While agreements are fine among friends for ordinary favors, contracts are standard practice in business. Contracts make clear what each party has agreed to, set deadlines, and outline the options for enforcing the contract if the other party doesn't fulfill their obligations. Insisting on a contract isn't a sign that you distrust the other party. Contracts help establish trust when money changes hands.
- * A contract, on the other hand, is a formal arrangement between two parties that's enforceable either in court or through arbitration. Contracts are valid when both parties accept the terms.
- * An exchange of goods or services for "consideration," which is usually money but can be anything of value, is required for the arrangement to be legally binding. The parties can be sued for failure to meet the obligations of the contract.

2.3 Requirements for a Legally Binding Contract:

- **A contract requires certain elements for enforceability, which include:**
 - * **Essentials Regarding the Agreement:** Every contract must incorporate an offer, acceptance of that offer by the other party, and mutual consent. There must also be something of value to be exchanged between the parties, a legal concept known as "consideration." Note that the exchange of consideration must have a legal purpose, so it is not possible to enforce a contract that runs contrary to law.
 - * **Requirements Regarding the Parties:** Parties must enter into a contract by their own free will and be legally competent to take such action. For example, a person under 18 years old does not

have legal competence to contract. The element of free will refers to situations involving coercion or duress, which would make the contract unenforceable.

2.4 Situations Where a Written Contract is Necessary:

- * An agreement to accept the debt of another person;
- * Contracts for the sale of real estate, whether related to improved or unimproved land;
- * Leases for real estate that exceed one year;
- * Agreements guaranteeing the results of a medical or surgical procedure;
- * Subscriptions for newspaper or periodical service;
- * Satisfaction of a debt for less than the total amount due; and,
- * Other contracts as designated by law.

2.5 Differences between Agreement and Contract:

- * Promises and commitments forming consideration for the parties to the same consent is known as agreement. The agreement, which is legally enforceable, is known as a contract.
- * The agreement is defined in section 2 (e) while a contract is defined in section 2 (h) of India Contract Act, 1872.
- * The major elements of an agreement are the offer and its acceptance by the same person to whom it is made, for adequate consideration. Conversely, the major elements of a contract are agreement and its enforceability by law.
- * Every agreement is not a contract, but every contract is an agreement.
- * An agreement needs not be given in writing, but the contracts are normally written and registered.
- * The agreement does not legally bound any party for the performance. In the contract, the people are legally bound to perform their part.
- * The scope of the agreement is wider than a contract because it covers all types of agreement as well as contract. On the contrary, the scope of contract is relatively narrower than an agreement because it covers only that agreement which have legal enforceability.

3. What agreements are contracts?

As per section 10 of Indian contract Act, 1872 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.

4. Who are competent to contract?

As per section 11 of Indian contract Act, 1872 every person is competent to contract who is the age of majority according to the law to which he subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

5. What is sound mind for the purpose of contracting?

As per section 12 of Indian contract Act, 1872 A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and forming a rational judgment as to its effect upon his interests.

- A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

6. What is breach of contract?

When a contract is intentionally not honored by one party, it is called a breach of contract and is grounds for contract termination. A breach of contract may exist because one party failed to meet his obligations at all or did not meet his obligations fully.

7. What Does It Mean to Terminate a Contract?

Terminating a contract means legally ending the contract before both parties have fulfilled their obligations under the terms of the contract. There are a variety of reasons why a party can terminate a contract. When and how the contract is terminated will determine whether either party has any liability for breach of the contract before it was terminated.

▪ Parties to a contract can legally terminate their agreement for several reasons.

- * Impossibility of Performance.
- * Fraud, Misrepresentation, or Mistake.
- * Illegality.
- * Breach of Contract.
- * Prior Agreement.