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UNIT - IX

#Indian Contract Act 1872

The Indian Contract Act is one of the oldest mercantile laws of our country. It came into effect on the 1st of September 1872 and is applicable to the whole of India with the exception of Jammu & Kashmir. Containing a total of 266 sections it is the principal law regulating contracts in India.

Contract Act

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

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.

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".

Now that we know how the Act defines the term "agreement", there may be some ambiguity in the definition of the term promise.

Promise

The Act in its section 2(b) defines the term "promise" here as: "when the person to whom the proposal is made signifies his assent thereto, the proposal becomes an accepted proposal. A proposal when accepted, becomes a promise".

In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition says that in order to establish or draft a contract, we need to initiate some steps:

The definition requires a person to whom a certain proposal is made.

The person (parties) in step one has to be in a position to fully understand all the aspects of a proposal.

"Signifies his assent thereto" – means that the person in point one accepts or agrees with the proposal after having fully understood it.

Once the "person" accepts the proposal, the status of the "proposal" changes to "accepted proposal".

"Accepted proposal" becomes a promise. Note that the proposal is not a promise. For the proposal to become a promise, it has to be an accepted proposal.

To sum up, we can represent the above information below:

Agreement = Offer + Acceptance.

Enforceable By Law

Now let us try to understand this aspect of the definition as is present in the Act. Suppose you agree to sell a bike for 30,000 bucks with a friend. Can you have a contract for this?

Well if you follow the steps in the previous section, you will argue that once you and your friend agree on the promise, it becomes an agreement. But in order to be a contract as per the definition of the Act, the agreement has to be legally enforceable.

Thus we can say that for an agreement to change into a Contract as per the Act, it must give rise to or lead to legal obligations. In other words, must be within the scope of the law. Thus we can summarize it as Contract = Accepted Proposal (Agreement) + Enforceable by law (defined within the law)

Essentials of a Valid Contract

A contract that is not a valid contract will have many problems for the parties involved. For this reason, we must be fully aware of the various elements of a valid contract. In other words, here we shall ponder on all the ramifications of the definition of the contract as provided by The Indian Contract Act, 1872.

The Indian Contract Act, 1872 itself defines and lists the Essentials of a Contract either directly or through interpretation through various judgments of the Indian judiciary. Section 10 of the contract enumerates certain points that are essential for valid contracts like Free consent, Competency Of the parties, Lawful consideration, etc.

Other than these there are some we can interpret from the context of the contract which is also essential Let us see.

Essentials of a Valid Contract

1. **Two Parties**: So you decide to sell your car to yourself! Let us say to avoid tax or some other sinister purpose. Will that be possible? Can you have a contract with yourself? The answer is no, unfortunately. You can't get into a contract with yourself.

A Valid Contract must involve at least two parties identified by the contract. One of these parties will make the proposal and the other is the party that shall eventually accept it. Both the parties must have either what is known as a legal existence e.g. companies, schools, organizations, etc. or must be natural persons.

For Example: In the case State of Gujarat vs Ramanlal S & Co. – A business partnership was dissolved and assets were distributed among the partners as per the settlement. However, all transactions that fall under a contract are liable for taxation by the office of the State Sales Tax Officer. However, the court held that this transaction was not a sale because the parties involved were business partners and thus joint owners. For a sale, we need a buyer (party one) and a seller (party two) which must be different people.

2. **Intent of Legal Obligations**: The parties that are subject to a contract must have clear intentions of creating a legal relationship between them. What this means is those agreements that are not enforceable by the law e.g. social or domestic agreements between relatives or neighbors are not enforceable in a court of law and thus any such agreement can't become a valid contract.
3. **Case Specific Contracts**: Some contracts have special conditions that if not observed would render them invalid or void. For example, the Contract of Insurance is not a valid contract unless it is in the written form.

Similarly, in the case of contracts like contracts for immovable properties, registration of contract is necessary under the law for these to be valid.

4. **Certainty of Meaning**: Consider this statement "I agree to pay Mr. X a desirable amount for his house at so and so location". Is this a valid contract even if all the parties agree to this term? Of course, it can't be as "desirable amount" is not well defined and has no certainty of meaning. Thus we say that a valid contract must have certainty of Meaning.

5. Possibility of Performance of an Agreement: Suppose two people decide to get into an agreement where a person A agrees to bring back the person B's dead relative back to life. Even when all the parties agree and all other conditions of a contract are satisfied, this is not valid because bringing someone back from the dead is an impossible task. Thus the agreement is not possible to be enforced and the contract is not valid.
6. Free Consent: Consent is crucial for an agreement and thus for a valid contract. If two people reach a similar agreement in the same sense, they are said to consent to the promise. However, for a valid contract, we must have free consent which means that the two parties must have reached consent without either of them being influenced, coerced, misrepresented or tricked into it. In other words, we say that if the consent of either of the parties is vitiated knowingly or by mistake, the contract between the parties is no longer valid.
7. Competency Of the Parties: Section 11 of the Indian Contract Act, 1872 is:

"Who are competent to contract — Every person is competent to contract who is (1) of the age of majority according to the law to which he is subject, and who is (2) of sound mind and is (3) not disqualified from contracting by any law to which he is subject."

Let us see these qualifications in detail: refers to the fact that the person must be at least 18 years old or more. Means that the party or the person should be able to fully understand the terms or promises of the contract at the time of the formulation of the contract. States that the party should not be disqualified by any other legal ramifications. For example, if the person is a convict, a foreign sovereign, or an alien enemy, etc., they may not enter into a contract.

8. Consideration: Quid Pro Quo means 'something in return' which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable "consideration".

For example, if you decide to sell your watch for Rs. 500 to your friend, then your promise to give the rights to the watch to your friend is a consideration for your friend. Also, your friend's promise to pay Rs. 500 is a consideration for you.

9. **Lawful Consideration:** In Section 23 of the Act, the unlawful considerations are defined as all those which:
- * It is forbidden by law.
 - * Is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent.
 - * involves or implies, injury to the person or property of another
 - * the Court regards it as immoral or opposed to public policy
 - * These conditions will render the agreement illegal.

Discharge of a contract

Discharge of a contract implies termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of contractual obligations were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete.

A Contract is deemed to be discharged, that is, concluded and no longer binding, in the following circumstances:

- * Discharge by performance.
- * Discharge of Contract by Substituted Agreement.
- * Discharge by lapse of time.
- * Discharge by operation of law.
- * Discharge by Impossibility of Performance.
- * Discharge by Accord and Satisfaction.
- * Discharge by breach.

Discharge by performance

Where both the parties have either carried out or tendered (attempted) to carry out their obligations under the contract, is referred to as discharge of the contract by performance. Because performance by one party constitutes the occurrence of a constructive condition, the other party's duty to perform is also triggered, and the person who has performed has the right to receive the other party's performance. The overwhelming majority of contracts are discharged in this way.