

# INDIAN CONTRACT ACT, 1872

## Definition of Contract and Essential elements of a contract

The definition of a contract is an agreement between two or more people to do something. An example of contract is a loan agreement between buyers and sellers of a car. An example of contract is an agreement between two people to be married. Contract between two persons to rob a Bank is not a valid Contract, because the object of the contract is to carry out illegal activity.

The difference between **an agreement and a contract**. ... **An agreement is simply an understanding or arrangement between two or more parties. A contract is a specific agreement with terms and conditions that are enforceable court.**

**Section 10 of the Act deals with the conditions of the enforceability of an agreement. It provides: “All agreements are contracts if they are they 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”.**

Sec. 11 of Indian Contract Act, states about who are competent to contract. It states that every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and **who is of sound mind and is not disqualified from contracting** by any law to which he is subject.

For e.g. A person who has been declared as Bankrupt by Court of law cannot enter into any valid contract.

Sec. 23.of Indian Contract Act, the consideration or object of an agreement is lawful, unless -

- It is forbidden by law; or
- is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or
- involves or implies, injury to the person or property of another; or
- the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is **void**.

## Valid, void and voidable contracts

Chapter 2 of the Indian Contract Act, 1872 discusses the voidable contracts and void agreements. On the basis of validity or enforceability, we have five different types of contracts as given below.

## **Valid Contracts**

The Valid Contract is an agreement that is legally binding and enforceable. It must qualify all the essentials of a contract.

## **Void Contract or Agreement**

The section 2(j) of the Act defines a void contract as “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. This makes all those contracts that are not enforceable by a court of law as void.

Example: A agrees to pay B a sum of Rs 10,000 after 5 years against a loan of Rs. 8,000. A dies of natural causes in 4 years. The contract is no longer valid and becomes void due to the non-enforceability of the agreed terms.

## **Voidable Contract**

These types of Contracts are defined in section 2(i) of the Act: “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.” This may seem difficult to wrap your head around but consider the following example:

Suppose a person A agrees to pay a sum of Rs. 10,0000 to a person B for an antique chair. This contract would be valid, the only problem is that person B is a minor and can't legally enter a contract.

So this contract is a valid contract from the point of view of A and a “voidable” contract from the point of view of B. As and when B becomes a major, he may or may not agree to the terms. Thus this is a voidable contract.

A voidable contract is a Valid Contract. In a voidable contract, at least one of the parties has to be bound to the terms of the contract. For example, person A in the above example. The other party is not bound and may choose to repudiate or accept the terms of the contract. If they so choose to repudiate the contract, the contract becomes void. Otherwise, a voidable contract is a valid contract.

## **Illegal Contract**

An agreement that leads to one or all the parties breaking a law or not conforming to the norms of the society is deemed to be illegal by the court. A contract opposed to public policy is also illegal.

Several examples may be cited to illustrate an illegal contract. For example, A agrees to sell narcotics to B. Although this contract has all the essential elements of a valid contract, it is still illegal.

The illegal contracts are deemed as void and not enforceable by law. As section 2(g) of the Act **states**: “An agreement not enforceable by law is said to be void.”

Thus we can say that all illegal contracts are void but the reverse is not true. Both the void contracts and illegal contracts can't be enforceable by law. Illegal contracts are actually void ab initio (from the start or the beginning).

Also because of the criminal aspects of the illegal contracts, they are punishable under law. All the parties that are found to have agreed on an illegal promise are prosecuted in a court of law.

## **Unenforceable Contracts**

Unenforceable contracts are rendered unenforceable by law due to some technical. The contract can't be enforced against any of the two parties.

For example, A agrees to sell to B 100kgs of rice for 10,000/-. But there was a huge flood in the states and all the rice crops were destroyed. Now, this contract is unenforceable and cannot be enforced against either party.

In conclusion it can be said that a voidable contract **is a contract which may appear to be valid and has all of the necessary elements to be enforceable under the act, but has some flaws which could cause one or both of the parties to void the contract. The contract is legally binding but could become void.**

**What Are the Differences Between a Void Contract and a Voidable Contract? ... The main difference between the two is that a void contract cannot be performed under the law, while a voidable contract can still be performed, although the unbound party to the contract can choose to void it before the other party performs.**

## **Free Consent and Consideration**

**Free Consent.** According to Section 13, "two or more persons are said to be in **consent** when they agree upon the same thing in the same sense (Consensus-ad-idem). According to Section 14, **Consent** is said to be **free** when it is **not** caused by coercion or undue influence or fraud or misrepresentation or mistake.

In order to constitute a valid contract both parties to a contract must willingly consent to the terms and conditions of the contract in order to make the contract valid and legally binding.

Consent has been defined under the Indian Contract Act as two or more persons are said to consent when they agree upon the same thing in the same sense.

Consent is said to be free when it is not caused by-

- Coercion (Sec 15)
- Undue influence (Sec 16)
- Fraud (Sec 17)
- Misrepresentation (Sec 18)

## ➤ Mistake

Any agreement that does not have free consent as defined aforesaid will be invalid and unenforceable.

**Coercion** would mean the committing or threatening to commit any illegal act or the unlawful detaining or threatening or threatening to detain any property to the prejudice of the person who is entering into the agreement.

**Undue influence** would be whether relations between the parties as such that one of the parties is in a position to dominate or prevail over the other and uses that position to take unfair advantage of the other.

**Fraud** means and includes a suggestion by one party to the other of the fact which the first party knows is not true or the active concealment of a fact by one person in order to use it for his advantage. It can also be a promise that has been made without the intention of performing it or with the intention to deceive the other party.

**Misrepresentation** means that a positive assertion of a material fact in a manner by the person making it though he knows is not true in order to take advantage. It could also mean causing the other party to make a mistake as to the substance of the subject of the agreement.

A party to a contract whose consent was caused by misrepresentation, may if he thinks fit, insist that the contract shall be performed and that he shall be placed in a position which he would have been placed had the representations be true.

## Performance and Discharge of Contract

What is **Performance of Contract**? The term '**Performance of contract**' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the **contract** placed upon them. For instance, A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price.

**Performance of a contract** is the fulfillment of the **contractual** obligations by the parties. It is one of the methods to discharge a **contract**. The parties have no further rights and liabilities once the **contract** is discharged. Performance of a contract is one of the methods of discharge of a contract. The performance may be of two types: (a) actual performance and (b) attempted performance. An actual performance of a contract means performing all the promises and fulfilling all the liabilities by all the parties. The actual performance discharges the contract and also discharges.

## Time and Place of Performance of Contract

**When no application to be made and no time specified (Section 46)**

Imagine a contract where the promisor has to perform his promise without any application by the promisee and there is no time specified for the performance of the same. In such a scenario, the promisor should perform the contract at a reasonable time.

While the term 'reasonable' can have different interpretations, the section specifies that it the circumstances of every case will determine the definition of reasonable for the parties involved.

### **No Application to be made but Time is Specified (Section 47)**

If there is a contract where the promisee is not required to make an application but the promisor needs to perform the contract only on a Sunday, then the promisor should perform the promise during regular business hours, unless the time is specified in the contract too.

**Example:** Peter promises to deliver certain goods to John on payment of an advance of Rs 5,000. John makes the payment and asks Peter to deliver the goods on a Sunday. Since the time is not specified, Peter should deliver it between 9 am and 6 pm, assuming those are the regular business hours in the place they live.

If Peter attempts delivery after the business hours, then John has the right to not accept the goods and ask Peter to deliver again during business hours.

### **Application by the Promisee required (Section 48)**

Let's say that there is a contract where the promisee necessarily needs to make an application for the performance of a contract, then the promisee needs to ensure that the application is made at a proper place and time. In this case, the phrase 'proper place and time' can have different meanings in different cases.

**Example:** Peter and John enter a contract where Peter promises to fix John's car whenever he asks him to. Peter also takes an advance payment for the same. When John asks Peter to fix his car, he must ensure that he doesn't ask Peter to go a lot out of his way. Also, he must preferably ask for repairs during business hours.

### **No Application to be made but the Place of Performance is not Specified (Section 49)**

Imagine a contract where the promisee is not required to make an application for the performance of contract. Also, the place of performance is unspecified. In such a scenario, it is the responsibility of the promisor to apply to the promisee asking him to appoint a reasonable place for the performance of the promise.

**Example:** Peter promises to deliver 5 television sets to John on a fixed day and time. However, the contract does not mention an address. It is Peter's responsibility to apply

to John and ask him to appoint a reasonable place where he can safely accept the delivery of the goods.

### **Performance as prescribed by the Promisee (Section 50)**

There can also be a contract where the promisor agrees to perform the promise in a manner and at a place and time prescribed or sanctioned by the promisee.

**Example:** John's son is in the hospital. He needs money for his son's operation. Peter owes money to John and agrees to repay him in cash/cheque at any place or time decided by John. In this case, John has the liberty to ask for the performance of the promise in any manner and at any place or time suited to him.

**Discharge** of a **contract** relates to the circumstances in which the **contract** is brought to an end. Where a **contract** is **discharged**, each party is freed from their continuing obligations under the **contract**.

#### **1] Discharge by Performance**

When the parties to a contract fulfill the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

**Example:** Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

Since both the parties to the contract fulfill their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

- Actual performance
- Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance or tender.

#### **2] Discharge by Mutual Agreement**

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

**Example:** Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

### 3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- An unforeseen change in the law
- Destruction of the subject-matter essential to the performance
- The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract
- A declaration of war

**Example:** Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

### 4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

**Example:** Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his **money**. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

### 5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

### 6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

- An actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

## **7] Discharge of a Contract by Remission**

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John's act of remission discharges the contract.

## **8] Discharge by Non-Provisioning of Facilities**

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

**Example:** Peter agrees to fix John's garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.

## **9] Discharge of a Contract due to the Merger of Rights**

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

**Example:** Peter rents John's apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. They enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

## **Breach of contract and remedies for breach of contract**

When a promise or agreement is broken by any of the parties we call it a **breach of contract**. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract.

There are a few remedies for breach of contract available to the wronged party. Let us take a look.

### **1] Rescission of Contract**

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the



party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

## **2] Sue for Damages**

Section 73 clearly states that the party, who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- **Liquidated Damages**: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- **Unliquidated Damages**: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

## **3] Sue for Specific Performance**

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

**Reference:**

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