

THE INDIAN CONTRACT ACT, 1872

- **Definitions:**

1. Contract

Section 2(h) of The Indian Contract Act, 1872 states that “an agreement enforceable by law is a contract”.

Thus, CONTRACT= AGREEMENT + ENFORCEABLE BY LAW.

2. Agreement

According to Section 2(e), an agreement is defined as “every promise and every set of promises forming the consideration for each other.”

3. Promise

According to Section 2(b), “a proposal when accepted becomes a promise.”

Thus, it can be said that an agreement is an accepted proposal.

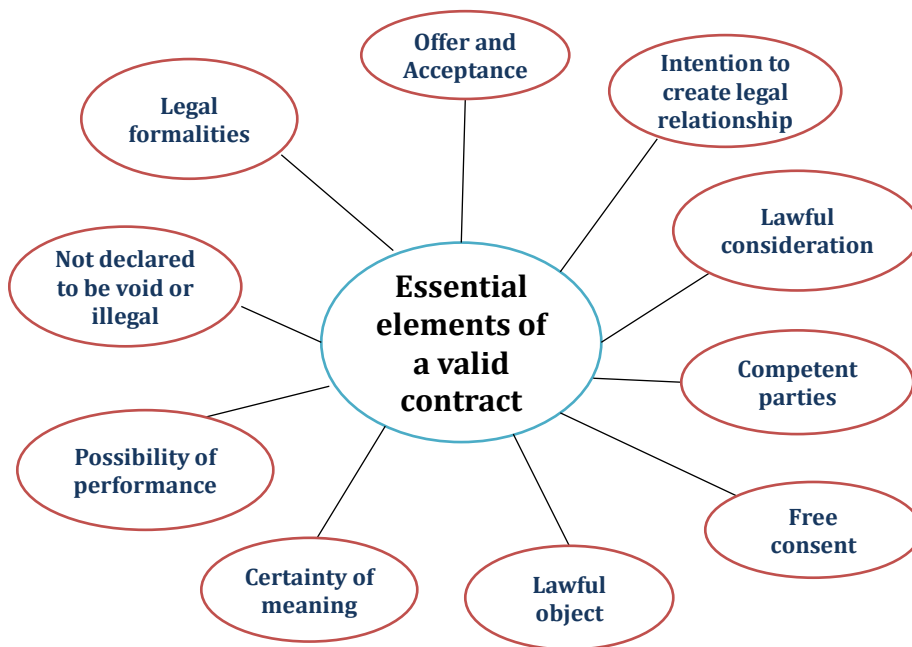
4. Proposal

According to Section 2(a), proposal is defined as “when one person will signify to another person his willingness to do or not to do something (abstain) with a view to obtain the assent of such person to such act or abstinence, he is said to make a proposal or an offer.”

- **Essential elements of a valid contract**

According to **Section 10**, “All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void.” An agreement, to be enforceable by law, must possess the essential elements of a valid contract as contained in **Section 10** of the Indian Contract Act.

1. Offer and Acceptance
2. Intention to create legal relationship
3. Lawful consideration
4. Competent parties
5. Free consent
6. Lawful object
7. Certainty of meaning
8. Possibility of performance
9. Not declared to be void or illegal
10. Legal formalities



1) Offer

In order to create a valid contract, there must be a “lawful offer” by one party and “lawful acceptance” of the same by the other party.

Section 2(a) defines offer (*already given in the previous page)

Section 2(b) states that “when the person to whom the offer is made, signifies his assent thereto, the offer is said to be accepted.”

2) Intention to create legal relations

If there is no intention to create legal relationship on the part of the parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations.

3) Lawful Consideration

As per Section 2(d), when at the desire of the promisor, the 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 consideration for the promise.” Consideration should not be unlawful, immoral and against public policy.

4) Competent Parties

The following persons are not competent to contract-

- a. Minor: A person less than the age of 18 years is a minor.

b. Unsound Mind: Any person who is unable to understand the terms and conditions of contract at the time of its formation is considered to be of unsound mind.

c. Persons disqualified by law: The following persons are disqualified from entering into contract by law-

- Alien Enemy
- Foreign Sovereigns and Diplomats
- Convicts
- Insolvent

5) Free Consent

“Consent” means the parties must have agreed upon the same thing in the same sense.

As per Section 14, Consent is said to be free when it is not caused by:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

6) Lawful Object

Object is the purpose or design of the contract. The object of the contract should be lawful.

The object is said to be unlawful if-

- a) It is forbidden by law;
- b) It is of such nature that if permitted, it would defeat the provision of any law;
- c) It is fraudulent;
- d) It involves an injury to the person or property of any other;
- e) The court regards it as immoral or opposed to public policy.

7) Certainty of Meaning

Agreements, the meaning of which is not certain or capable of being made certain, are void.

For example, A agrees to sell to B 100 tonnes of oil, but the kind of oil intended is not shown, then the agreement is said to be void due to absence of certainty.

8) Possibility of Performance

Condition for a contract should be capable of performance. If the act is impossible in itself, physically or legally, it cannot be enforced at law.

9) Not declared to be void or illegal

Agreements mentioned in Section 24-30 of the Act have been expressly declared to be void.

Such agreements cannot be contracts.

Such agreements are-

- i. Agreements in restraint of marriage (Sec. 26)
- ii. Agreements in restraint of trade (Sec. 27)
- iii. Agreements in restraint of legal proceedings (Sec. 28)
- iv. Agreements the meaning of which is uncertain (Sec. 29)
- v. Agreements by way of wager (Sec. 30)
- vi. Agreements contingent on impossible events (Sec. 36)
- vii. Agreements to do impossible acts (Sec. 56)

10) Legal Formalities

According to Indian Contract Act, 1972, a contract may be oral or in writing. An oral contract is valid, except in those cases where writing, registration etc. is required by some statute. In India, writing is required in case of sale, mortgage, lease and gift of immovable property, negotiable instruments, Memorandum and Articles of Association of a company etc.