

# INDIAN CONTRACT ACT 1872

## Unit-1 INTRODUCTION

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# INTRODUCTION

- Law of contract is contained in the Indian contract act 1872 this act is based on English common law .
- It extends to whole of India except the state of Jammu and Kashmir and came into force on the first day of September 1872.
- This act is not exhaustive.

# CONTRACT

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 .

- Two important terms:-

1. Agreements
2. Legal obligation

- Agreement:- section 2(e)
  - “ Every promise and every set of promises, forming the consideration for each other, is an agreement. ”
  - So it is clear that ‘promise’ is an agreement.
  - Characteristics of an agreement become eviden
- a) Plurality of person:- there must be 2 or more person to make an agreement
- b) Consensus-ad-idem:- both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at the same time.

- Legal obligation:- an agreement to become a contract must give rise to a legal obligation i.e. a duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law ,it is not a contract

*It derives that-*

*“All contracts are agreements but all agreements are not contracts”*

# Essential elements of Valid Contract

1. offer and acceptance:- there must be a “ ‘lawful offer’ and ‘lawful acceptance’ of the offer thus resulting in an agreement
2. intention to create legal obligation :- agreements of social and domestic nature do not contemplate legal relations and as such they do not give rise to a contract .

Eg:- For instance, if a father fails to give his daughter the promised pocket money, the daughter cannot sue the father, because it was purely a domestic arrangement. Thus, it is clear that all agreements, which do not result in legal relations, are not contracts.

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3. **Lawful Considerations**:- price paid by one party for the promise of the other. An agreement is legally enforceable only when each of the parties to it gives something and gets something.
4. **Capability of contracting parties** – All Natural persons has full capacity to make binding contracts. But Indian Contract Act, 1872 laid down some exceptions –
  - a) Minor,
  - b) Lunatics and,
  - c) Persons disqualified by law.

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- These persons are not competent to contract. Section 11 of the act provides competency of parties. This section provides that the person who has attained majority, who is of sound mind and is not disqualified by law is competent to enter into any contract. A valid agreement requires that contracting parties should understand the legal implications of their conduct.



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- **Free Consent** – For every contract there must be free consent of the contracting parties. Consent is not free when it is caused by coercion, undue influence, misrepresentation, fraud or mistake (sec 14). If there is no free consent the contract generally become voidable at the option of party whose consent is not free.
- For example – If A at the point of pistol asks B to execute a will in his favor and B to save his life does so he can vitiate this agreement as his consent was not free.

- 6. Lawful Object:- Section 23 provides that consideration or object of an agreement is lawful unless it is
  - a) Forbidden by law,
  - b) It is of such nature that if permitted it would defeat the provisions of law,
  - c) is fraudulent,
  - d) Involves injury to person or property,
  - e) Immoral or opposed to public policy.

Every agreement of which the object or consideration is unlawful is void.

## **7.writing and registration:-**

according to the act a contract may be oral or writing but in certain type of cases it lays down that the agreement to be valid must be in writing and registered .

## 8] 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.

*“An agreement to do an act impossible in itself is void”*

## 9. certainty:-

sec 29 of the indian contract act provides that “Agreements the meaning of which is not certain are void” it must be possible to ascertain the meaning of the agreement, for otherwise, it can not be enforced.

- Illustration:- A, agrees to sell B “a hundred tons of oil” there is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.