

# Contract - Meaning and Classification

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The legal provisions governing contracts are contained in the Indian Contract Act of 1872. The references to Sections in all the Chapters in Unit I of this book are to the Indian Contract Act, unless otherwise stated.

## Definition of a Contract

According to Section 2 (h), "*a contract is an agreement enforceable by law*". It is clear from this definition that a contract must fulfil two conditions:

- (i) There must be an agreement and
- (ii) Such an agreement must be enforceable in a Court of law.

## What is an Agreement?

Section 2 (e) defines an agreement as "*every promise and every set of promises forming the consideration for each other*".

### Example:

X offers to sell his bicycle to Y for Rs.700. This offer has been accepted by Y. Y's promise to pay Rs.700 forms the consideration for X's promise to sell the bicycle and vice versa. Consideration is the return benefit the parties to the contract get.

The concept of 'Consideration' in a contract has been dealt with in detail in a separate Chapter.

## What is a Promise?

According to Section 2 (b), "*a proposal when accepted becomes a promise*".

### Example:

A offers to sell his motorcycle to B for Rs.25, 000. If A's proposal is accepted by B, it becomes a promise.

An agreement, thus, consists of a proposal or an offer by one person and its acceptance by another, *i.e.*,

Agreement = Offer + Acceptance
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## Obligation

A contract gives rise to a certain obligations that the parties to it are expected to fulfil.

Agreement	Contract
1. Agreement = Offer + Acceptance.	1. Contract = Agreement + its Legal Enforceability.
2. An agreement may create social or legal obligations.	2. A contract creates only legal obligations between the parties.
3. All agreements do not become contracts.	3. All contracts are based on agreements.

### Consensus Ad Idem

'Consensus ad idem' means identity of minds or meeting of minds. The parties to an agreement must agree on the subject matter in the same sense and at the same time. Without consensus ad idem there is no contract.

### Examples:

- (i) X owns two motorcycles - 'Hero Honda' and 'Yamaha'. He wants to sell his Yamaha motorcycle to Y for Rs.25, 000. Y thinks that the offer is for the Hero Honda bike. There is no contract as there is no consensus ad idem.
- (ii) A owns two flats - one in Adayar and the other in Anna Nagar. He wants to sell his Adayar flat to B for Rs.25 lakhs. B thinks that the offer is for the Anna Nagar flat. There is no consensus ad idem.

### CLASSIFICATION OF CONTRACT

Contracts may be classified as shown in the following chart:

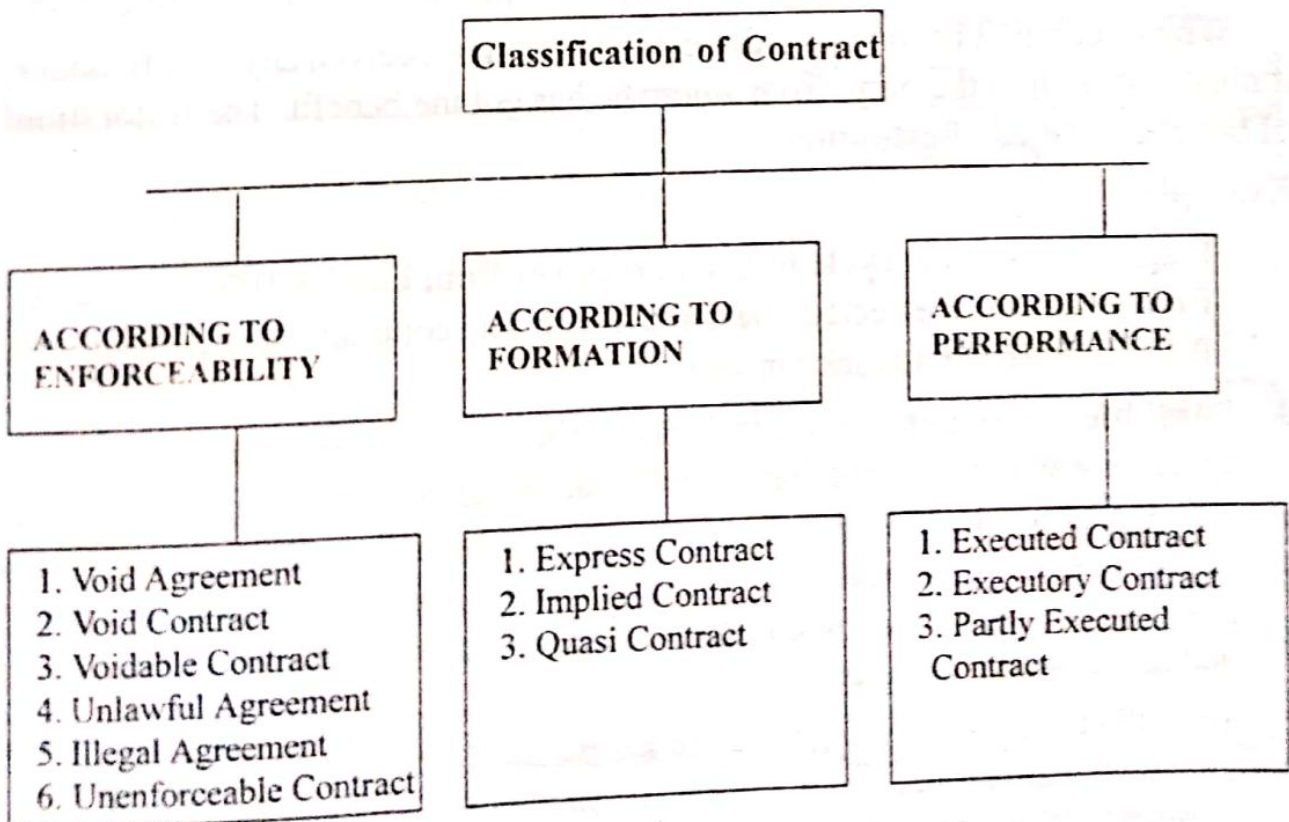


Figure 1.1 – Bases for Classification of Contract

Let us discuss these now.

### CLASSIFICATION ACCORDING TO ENFORCEABILITY

Based on enforceability, contracts are classified as follows:

1. **Void Agreement :** According to Section 2 (g), "An agreement not enforceable by law is said to be void". A void agreement is void "ab initio" (A Latin phrase the meaning of which is "From the Beginning"). At no stage can such an agreement be enforced.

#### Examples:

- (i) An agreement with a minor (a person whose age is below 18 years)
  - (ii) An agreement with a person of unsound mind
  - (iii) An agreement without consideration (return benefit) - subject to certain exceptions.
2. **Void Contract :** "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable" - Section 2 (j). A contract may be valid at the time when it is entered into. But due to certain subsequent happenings it may become void.

#### Examples:

- (i) P agrees to marry Q's daughter. But before marriage P dies. A valid contract, thus, has become void.
- (ii) M enters into a contract with N, who is in a foreign country, to import certain goods. This is a valid contract. Such a contract becomes void when a war breaks out between the country of import and the country of export.

-When a contract becomes void, the party who has received any benefit under it must restore it to the party from whom he has got the benefit. The restoration of benefit is called "Restitution".

#### Example:

P agrees to sell his cycle to Q and receives from him Rs.100 as advance. Before the sale is effected, the cycle is lost. The contract becomes void and P shall return the advance money.

3. **Voidable Contract :** Section 2 (i) defines a voidable contract as "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". A contract is a voidable contract when the consent or willingness of one party has been obtained by the other by such unfair means as coercion (act of threatening), undue influence, fraud etc.

The affected party (the aggrieved or the plaintiff) may avoid such a contract within a reasonable time. He, however, has the burden of proof (onus of proof) to establish that his consent has been obtained forcibly. Until avoided (rescinded or repudiated) by the affected party, a voidable contract remains valid.

void and right to void.

### Distinction between a Void Contract and a Voidable Contract

Void Contract	Voidable Contract
1. A void contract was valid when it was made. Due to subsequent happenings, it has become void, <i>i.e.</i> , unenforceable.	1. A voidable contract is valid until it is avoided or rescinded by the affected party. Such a party, however, has to avoid it within a reasonable time.
2. Something beyond the control of the party makes a valid contract void, e.g., change of law, destruction of the subject matter etc.	2. A contract is a voidable contract when the element of free consent is missing.
3. A void contract cannot be enforced by either party.	3. A voidable contract is valid until it is avoided by the affected party.
4. The question of a third party acquiring rights does not arise.	4. There is scope for a third party to acquire rights over what has been obtained under a voidable contract.
5. There is no question of payment of damages (Compensation) to anyone under a void contract.	5. The affected party can claim damages.

**Distinction between an Unlawful Agreement and an Illegal Agreement:**

Unlawful Agreement	Illegal Agreement
1. Unlawful acts (e.g., restricting a person's right to choose his job or life partner) are simply not approved by law. They do not result in the commission of a crime.	1. Illegal acts (e.g., bribing) result in the commission of a crime.
2. What is unlawful need not be illegal.	2. What is illegal is always unlawful.
3. As no crime is committed, the party to the agreement is not awarded punishment.	3. As an illegal act results in the commission of a crime, punishment is awarded.

6. **Unenforceable Contract :** Sometimes a contract may become unenforceable owing to certain technical defects in it.

**Examples:**

- (i) Where a party to a written contract has not given his/her signature.
- (ii) Absence of certification by a Notary Public or some other authority where such certification is necessary.
- (iii) Deficit in stamp duty etc.

**CLASSIFICATION ACCORDING TO FORMATION**

Based on the mode of formation, contracts may be classified as follows:

1. **Express Contract :** An express contract is one that is entered into by the parties by words - spoken or written. Usually it will be in a written form.

**Example:**

X offers to sell his house to Y for Rs. 15Lakhs. Y accepts X's offer and they both sign the sale agreement prepared on a Stamp paper of the appropriate value and is duly signed by the witnesses. This results in a contract between X and Y.

2. **Implied Contract :** An implied contract does not arise out of express promise by the parties but is inferred from their acts or from the circumstances of a particular case.

**Examples:**

- (i) The offer by a cinema theatre (to screen a film) and its acceptance by a movie-goer (by buying the ticket) is always the result of an implied contract.
  - (ii) There is always an implied offer by a bus transport company to carry a passenger to a particular place and an implied acceptance by the passenger by buying the ticket.
- 3 Quasi-Contract :** A quasi-contract is not actually entered into by the parties but is something imposed on a party by law. It is based on the principle that a person shall not be allowed to enjoy certain benefits unreasonably at the cost of another.

**Examples:**

- (i) A pays B's electricity bill when the latter is not in station to avoid disconnection. B is under a quasi-contractual obligation to return the money to A.
- (ii) Certain goods meant for A have been delivered by mistake by a trader to B. B consumes the goods. He is under a quasi-contractual obligation to pay the price to the trader.

**CLASSIFICATION ACCORDING TO PERFORMANCE**

Based on the extent of performance, contracts may be classified as:

- 1. Executed Contract :** A contract is said to be executed when both the parties to it fulfil their respective obligations.

**Example:**

X, a carpenter, agrees to make a table for Y for a sum of Rs. 2, 000. The contract becomes executed the moment X makes the table and Y pays the agreed sum.

- 2. Executory Contract :** An executory contract is one in which both the parties are yet to fulfil their respective obligations.

**Example:**

L agrees to sell his wristwatch to M for Rs. 500. The contract is an executory contract until L handsover the watch to M and M pays the agreed amount.

- 3. Partly Executed Contract :** It is a contract in which one party has already fulfilled his obligation and the other is yet to fulfil his obligation.

**Example:**

A departmental store supplies goods to a customer who pays by credit card. Thus, although the departmental store has fulfilled its obligation, the customer's obligation is fulfilled only upon the realisation of his payment.

## ESSENTIALS OF A VALID CONTRACT

Section 10 mentions the essentials of a valid contract. According to it, "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".

Let us now discuss these various essential elements.

1. **A Valid Offer and Acceptance** : A contract is a valid contract only when there exists a valid offer and its valid acceptance. The terms of the offer must be precise and clear. The offer must be communicated to the person to whom it is made. The acceptance of the offer must be absolute and unconditional. The acceptance must also be given in accordance with the prescribed mode and before the offer lapses.
2. **Intention to Create Legal Relationship** : The intention of the parties to a valid contract must be to create legal relationship between them. In a social or domestic agreement, the intention of the parties is not to make it legally binding on them (*Balfour vs. Balfour*).

### Example:

A agrees to attend B's birthday party but is unable to attend due to personal work. B cannot sue A, as the obligation is not a legal one.

On the other hand, in a business or commercial agreement, the presumption is that the parties intend to make it a legally binding agreement.

But even a business agreement may not be enforceable in a Court of law where the parties specifically agree that the agreement is not legally binding on them.

### Case: *Rose & Frank Co. vs. Crompton Bros.*

In this case, Crompton Bros. Appointed Rose & Frank co. as their agent by an agreement that specifically stated that it is not a formal and legal agreement and shall not be subject to legal jurisdiction in the law courts. The agreement was held unenforceable on the ground that the parties did not intend to make it legally binding on them.

3. **Lawful Consideration** : For a contract to be valid, the agreement between the parties must be backed by consideration. Consideration means 'Something in Return'. Both the parties to the agreement must give and get something in return.

### Example:

P agrees to sell his bike to Q for Rs. 25, 000. Q's promise to pay is the consideration for P's promise to sell the bike and P's promise to sell is the consideration for Q's promise to pay.

Consideration must be real and lawful. It need not be adequate. It need not necessarily be in cash or kind. It may be a promise to do or not to do something.

4. **Capacity of Parties :** The parties must be competent to contract, i.e., capable of entering into a valid contract. A person is capable of entering into a valid contract if he has attained the age of majority, is of sound mind and is not disqualified from contracting by any law to which he is subject.

**Example:**

A lends Rs.1, 000 to B, a minor. A cannot take legal action against B for repayment, as an agreement with a minor is void.

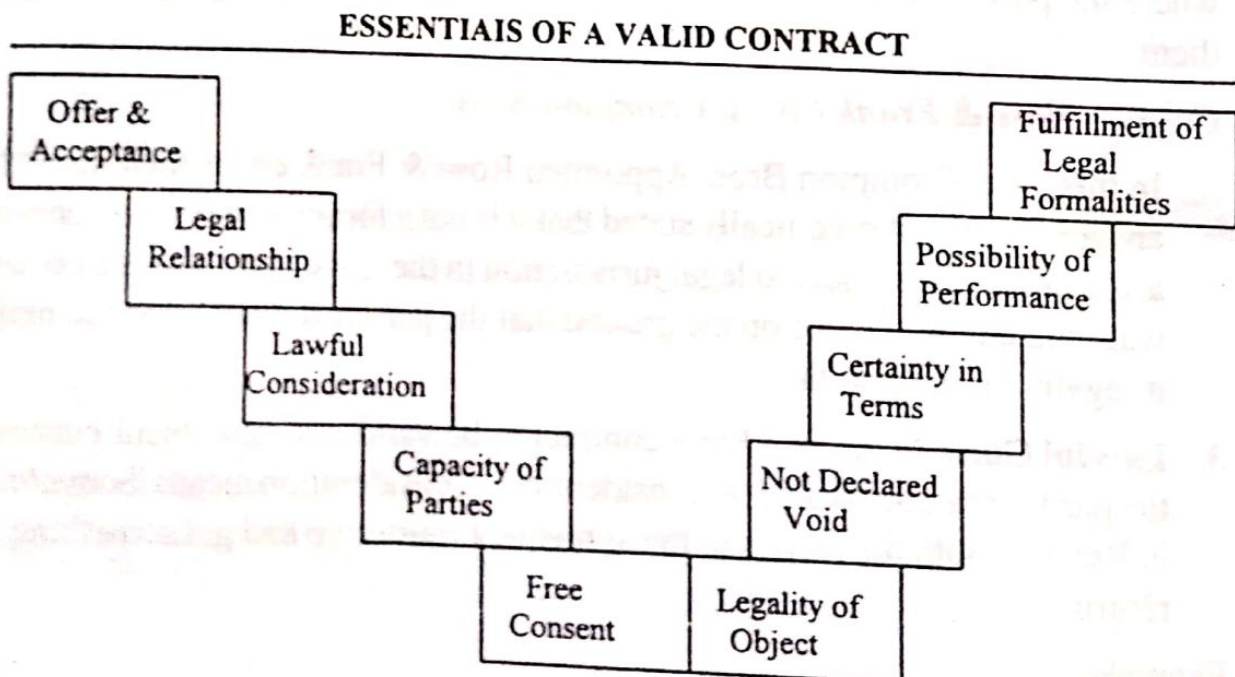
Flaw in capacity to contract, thus, arises due to minority, lunacy (insanity or mental unsoundness) etc.

5. **Free Consent :** Consent means willingness. The consent of the parties to a valid contract must come freely. It must not be obtained by force or by suppressing facts. Consent is said to be not free when it is obtained by coercion, undue influence, fraud etc.

A contract, in which the consent of a party is not free, becomes a voidable contract *i.e.*, it can be avoided by him (as he is the affected party) within a reasonable time.

**Example:**

X deliberately sells certain indigenously made dress materials as imported ones to Y. Y has no means to discover the truth. The consent of Y, thus, is obtained by fraud. The sale is voidable at the option of Y.



**Figure 1.2 - Essentials of a valid contract**



**6. Legality of Object :** The object of the agreement must not be illegal, immoral or opposed to public policy.

**Examples:**

- (i) A enters into an agreement with B to supply certain prohibited goods. Such an agreement is void, as its object is illegal.
- (ii) M lets out his house knowingly to a prostitute who has promised a big amount as monthly rent. Such an agreement is illegal as its object is against the morals of the society.

**7. Agreement not Declared Void :** The agreement between the parties must not have been declared void expressly by any law in force in the country. For example, under the Indian Contract Act, an agreement in restraint of marriage or an agreement in restraint of trade is void (explained already).

**8. Terms of the Agreement must be Certain :** The terms of the agreement must be clear, precise and certain. If the terms are vague or ambiguous, the agreement cannot be enforced.

**Example:**

There is an agreement between R, a supplier of milk products, and S, a trader, by which the former would supply to the latter milk products worth Rs.200 daily. What is not clear in this agreement is the type of milk products to be supplied by R, *i.e.*, milk, buttermilk, curd, butter etc. and the quantity in respect of each. The agreement, therefore, is not enforceable.

**9. Possibility of Performance -** What is undertaken by the parties to an agreement must be such that it can be performed. An agreement to do an impossible act cannot be enforced.

**Examples:**

- (i) A agrees to prove that two parallel lines can meet if B pays him Rs. 10, 000. Such an agreement is incapable of being carried out and is, therefore, void.
- (ii) G agrees to turn iron into gold if H pays him Rs. 1 lakh. An agreement such as this cannot be enforced in a Court of law.

**10. Legal Formalities :** For a contract to be enforceable in a Court of law, it must comply with the necessary legal formalities as to writing, stamp duty, registration, certification, witness etc.

A contract will be a valid contract only when all the essential elements mentioned above are present in it.

# Offer and Acceptance

We have understood the following two equations from the discussions we have had in the previous Chapter:

$$\begin{aligned} \text{Contract} &= \text{Agreement} + \text{its enforceability} \\ \text{Agreement} &= \text{Offer} + \text{Acceptance} \end{aligned}$$

This Chapter focuses attention on Offer and Acceptance.

## OFFER

An 'offer' is also known as a 'proposal'. According to Section 2(a), "*when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal*".

The following points emerge out of the above definition of offer:

1. There is an offer only when a person conveys his willingness to another and not to himself.
2. The willingness may be to do or not to do (abstain from doing) a thing.

### Examples:

- (i) E wants to sell his scooter to F for Rs. 20, 000. The willingness of E to sell becomes an offer.
- (ii) M owes N Rs. 10, 000 which amount he has not paid on or before the due date. N tells M, "I will not take legal action against you for the amount due provided you pay Rs. 5, 000 now and the balance within a month". Here the promise by N not to sue M constitutes an offer.
3. The person conveying his willingness must aim at getting the consent (assent) of the other to the proposal.

### Example:

A, who is frustrated about the performance of his car, tells B, "*I am even prepared to sell it for Re.1*". The statement of A does not constitute an offer as it is not made with a view to getting the consent of B.

The person making the offer or proposal is called the '*Offeror*', '*Promisor*' or '*Proposer*'. The person to whom the offer is made is called the '*Offeree*' or '*Proposee*'.

When the offer is accepted, the offeree will be called the '*Promisee*' or the '*Acceptor*'.

## TYPES OF OFFER

Offer may be of the following types:

1. Express Offer
2. Implied Offer
3. Specific Offer
4. General Offer
5. Cross Offer
6. Counter - Offer
7. Standing Offer

Each of these has been explained below.

### Express Offer

An offer made by express words - spoken or written is known as express offer.

#### Examples:

- (i) P tells Q "Will you buy my cycle for Rs.700?"
- (ii) R writes to S "I want to sell my car for Rs.2lakhs".

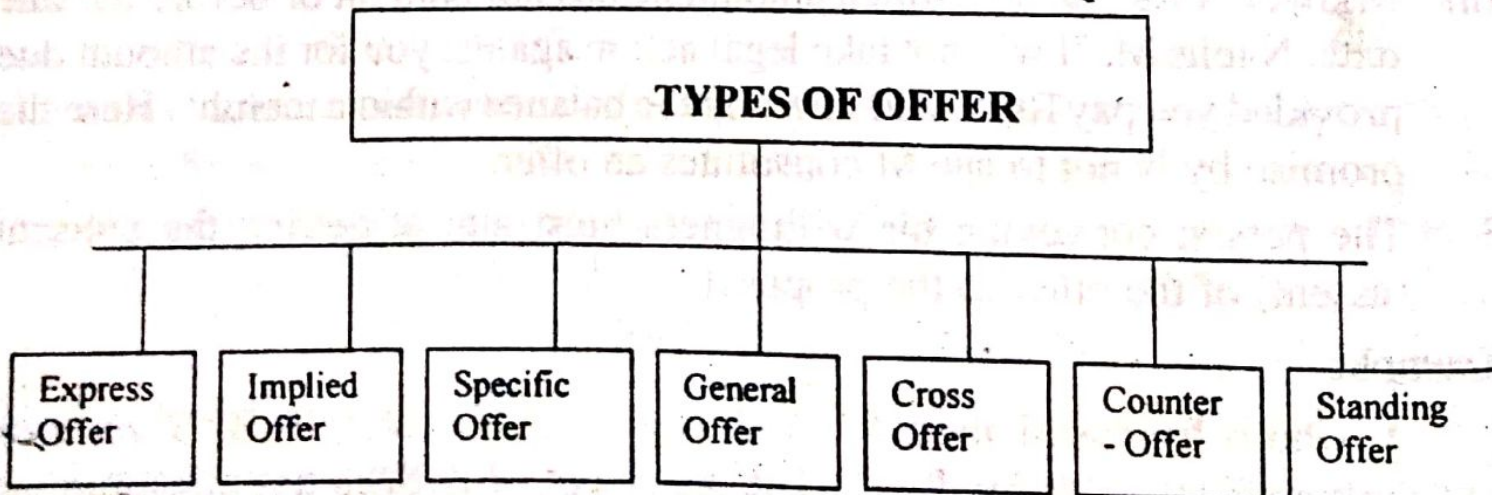
### Implied Offer

An offer that is to be inferred or understood from the conduct of the parties or the circumstances of each particular case is known as implied offer.

#### Examples:

- (i) The offer by a cinema theatre to screen films is always an implied offer.
- (ii) The offer by a bus transport company to carry passengers is also an implied offer.

## TYPES OF OFFER



## TENDER

A tender involves inviting quotations from different parties. A building contractor may, for example, invite quotations from the suppliers of steel either for a particular project or for a certain number of projects to be undertaken in the near future (as a standing offer). The quotation of the applicant that is found most favourable is finally accepted. )

### *Case: Great Northern Rail vs. Witham*

In this case, The Great Northern Rail invited quotations for the supply of specific quantities of iron ore at regular intervals for over a year. W's quotation was finally accepted. After supplying the goods for a certain time, W refused to make future supplies saying that payment for earlier supplies was not made. The Court, on a suit filed by the Railway Company, directed W to supply the goods on the ground that his obligation to supply was a continuing one as per the terms of the tender and payment for the earlier supplies was an altogether different issue.

## LEGAL RULES RELATING TO OFFER

The important rules relating to a valid offer are given below:

1. *An offer, when accepted, must create legal relationship between the parties:* The obligation arising out of it must not be a personal or a social obligation (Balfour vs. Balfour).

### **Example:**

An offer by a father to give pocket money to his son or an offer to join a friend for dinner at a hotel on a particular day, even when accepted, cannot be legally binding. Such offers have no legal significance.

2. *The terms of the offer must be clear and certain:* The offer cannot be valid if the terms are vague or ambiguous.

claim only 10 pounds.

### ACCEPTANCE

An offer is said to be accepted when the person to whom it is made gives his consent to it. According to Section 2(b), *"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise"*.

Carbonic Smoke Ball Co.).

## LEGAL RULES REGARDING ACCEPTANCE

The rules relating to a valid acceptance are as follows:

1. *Acceptance must be absolute and unqualified:* It means that the terms of offer must be fully acceptable to the offeree. If the offeree, while responding to the offer, wants the terms of offer varied or modified or imposes certain conditions, there is no valid acceptance.

### Example:

P offers to sell his bike to Q for Rs.25, 000. Q is prepared to pay Rs.20, 000. There is no valid acceptance by Q and it only amounts to a 'counter - offer'.

### Case: *Neale vs. Merret*

In this case there was an offer by M to sell his land to N for 280 pounds. N sent an initial amount of 80 pounds and wanted to pay the balance by monthly instalments. The Court held that there was no contract between M and N, as N's acceptance was not absolute and unqualified.

2. *Mere mental acceptance is not enough:* Acceptance, to be valid, must be properly communicated to the offeror.

### Case: *Brogden vs. Metropolitan Railway Co.*

There was an offer to supply coal to a Railway Company. The manager of the Railway Company accepted the offer by writing "approved" in the draft agreement, kept it in his table and forgot about it. The Court observed that there was no contract, as the acceptance was not properly communicated to the offeror.

3. *Acceptance must be given according to the prescribed mode:* Where the offeror has not specified the manner in which acceptance must be given, it must be given according to some usual or reasonable mode.

### Example:

telegram if he is accepting the offer. B accepts A's offer but conveys his acceptance by a letter. The acceptance will be valid unless A informs B that the acceptance is not in accordance with the prescribed mode.

4. *Acceptance must be given within the time specified in the offer.* If no time limit is specified, acceptance must be given within a reasonable time.

**Case: Ramsgate Victoria Hotel Co. vs. Montefiore**

M had offered to buy shares in R Company in June. But the Company had sent the letter of acceptance in November. The Court held that M could reject the Company's acceptance, as it was not given within a reasonable time.

**Legal Rules regarding Acceptance**

<ul style="list-style-type: none"> <li>1 It must be absolute and unqualified.</li> <li>1 It must not be a mere mental acceptance.</li> <li>1 It must be given according to the prescribed mode.</li> <li>1 It must be given within the specified time.</li> <li>1 It must be given only by the person to whom the offer is made.</li> </ul>	<ul style="list-style-type: none"> <li>1 It must be conveyed to the offeror.</li> <li>1 It cannot, normally, be implied from silence.</li> <li>1 It cannot be made on the presumption of an offer.</li> <li>1 It must be given before the offer lapses.</li> </ul>
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5. *Acceptance must be given only by the person to whom the offer is made or by an authorised person and that too officially:* The offeror cannot act on the basis of unofficial information.

**Case: Powell vs. Lee**

The managing committee of a School considered P's application for the post of the headmaster and decided to appoint him. The appointment was not officially conveyed to P. P came to know of his selection unofficially. Later, the managing committee cancelled P's selection and appointed another person. On a suit filed by P, the Court held that as P's selection was not officially conveyed to him by the competent authority, he had no right of action.

# Consideration

'*Quid Pro Quo*' is a Latin phrase the meaning of which is 'something in return'. A party to an agreement who promises to do something must gain something in return.

This something in return is what is called CONSIDERATION.

## Example:

S offers his wristwatch to B for Rs.500. The wristwatch is the consideration for B and the price is the consideration for S.

## Definition of Consideration:

In the famous English case CURRIE vs. MISA, consideration was defined as follows:

*"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other"*.

Thus, according to this view, consideration need not always result in a benefit to both the parties. It is possible that one party may receive some benefit and the other party may suffer a loss or a detriment (harm or damage).

## Example:

A borrows B's book and promises to return it after a month. Here, A is benefited (as he is able to use the book) and B suffers a detriment (as he parts with his book).

According to 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 a consideration for the promise"*.

This definition brings out the following important rules regarding consideration:

## LEGAL RULES REGARDING CONSIDERATION

1. *Consideration must always be provided at the desire of the Promisor:* In case it is given without the desire of the promisor, it will not be a valid consideration.



During a fire accident A saves certain belongings of B voluntarily. He cannot claim payment for such a voluntary service. If A does it at the request of B, then he can claim payment.

2. *It may be provided by the Promisee or any other person:* According to Section 2 (d), consideration may be provided, at the desire of the promisor, by the promisee or any other person. If any person other than the promisee provides consideration, such a person becomes a stranger to consideration. A stranger to consideration can sue if he is a party to the contract.

#### Example:

C lends Rs.10, 000 to P on the condition that S guarantees repayment by P. S is known as the Surety. The actual beneficiary here is only P and not S. S is a stranger to consideration. S's liability to pay C will arise only when P fails to repay C. After paying C, S (who is a party to the contract of guarantee involving P, C and S) can sue to recover from P.

#### Case: Chinnaya vs. Ramayya

In this case, an old lady, by a deed of gift, transferred a certain property to her daughter with the direction that the daughter should pay her aunt (sister of the old lady) a certain amount annually. On the same day the daughter entered into an agreement with her aunt to pay the agreed amount. Later, the daughter refused to pay on the ground of absence of consideration from her aunt. The Court held that the aunt was entitled to the amount as the old lady had already provided consideration.

3. *It may be an act or abstinence. Abstinence means avoidance:* What is provided by way of consideration may be either to do or not to do something.

#### Examples:

- (i) A agrees to sell his bicycle to B for Rs.500 and B agrees to pay immediately on delivery. Here A's promise to sell the bicycle forms the consideration for B's promise to pay Rs.500 and B's promise to pay forms the consideration for A's promise to sell.
- (ii) A owes B Rs.10, 000. B, on learning that A is not in a position to return the amount on the due date, agrees not to take legal action against A for the next 6 months if he (A) pays Rs.500 more for the extension of time given. A accepts B's proposal. Here A's promise to pay Rs.500 more forms the consideration for B's promise to avoid legal action and vice versa.
4. *It may be past, present or future:* The usage in Section 2 (d), "has done or abstained from doing, or does or abstains from doing, or promise to do or to abstain from doing something" indicates that consideration may be past, present or future.

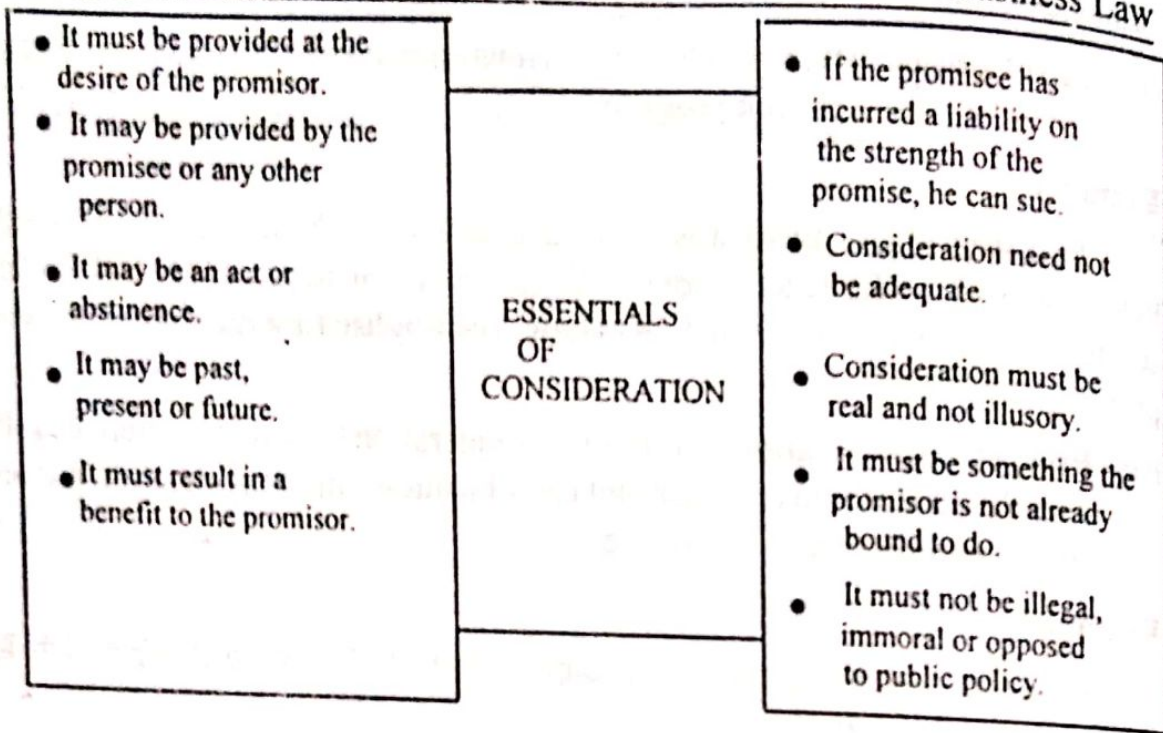


Figure 3. 1– Essentials of Consideration

6. *Where the promisee has incurred a liability on the strength of the promise made by the promisor, he can sue:*

**Case: Kedar Nath vs. Gauri Mohamed**

In this case too there was a promise to contribute money for undertaking some construction activity. The promisee started the construction work by incurring a liability on the strength of the promise made by the promisor. The Court held that the promisee was entitled to claim in view of the liability incurred by him on the strength of the promise.

7. *Consideration need not be adequate:* But it must be of some value in the eyes of law. What is received need not be equal to what is given.

**Example:**

X, who needs urgent cash, sells his gold ring worth Rs.7, 000 for Rs.700 to Y. Y gets a valid title, i.e., ownership right.

However, the Court may look into the inadequacy of consideration in certain cases to determine whether the promisor has given his consent freely.

8. *Consideration must be real and lawful and not illusory:* Illusory means imaginary, myth or unreal. Consideration is illusory when it is wrongly believed to exist.

**Case: Stilk vs. Myrick**

Two of the crewmembers of a ship deserted it half way during a voyage. The captain of the ship agreed to divide the salary of the two among the remaining crewmembers if they helped him to bring the ship to the port of destination. When they claimed the amount by approaching the Court, it was held that they

### Essential Elements of Misrepresentation

The essential elements of Misrepresentation are as follows:

1. There must be a representation or assertion by a party to a contract.
2. It must relate to a fact.
3. The person making it must honestly believe it to be true.
4. His intention is not to deceive the other party.
5. It must have induced the other party to act upon it.
6. The party acting upon it must have suffered some loss.

#### What can the affected party do in case of Misrepresentation?

The aggrieved or the affected party, in case of misrepresentation by the other party to the contract, can -

1. rescind or avoid the contract, or
2. insist on the performance of the contract upon the condition that he is put in the position in which he would have been had the representation been true.

#### When does the affected party lose his right of rescission?

The affected party loses his right of rescission for misrepresentation under the following circumstances:

1. If he had the means of discovering the truth by ordinary diligence.
2. If he gave his consent in ignorance of the misrepresentation.
3. If, after becoming aware of the misrepresentation, he has taken a benefit under the contract.
4. If before the contract is avoided, a third party acquires interest in the subject matter of the contract.
5. If the parties cannot be restored to their original position.

#### Distinction between Misrepresentation and Fraud

The following are the points of distinction between misrepresentation and fraud:

Misrepresentation	Fraud
1. The party making the false statement believes it to be true.	1. The party making the false statement does not believe it to be true.
2. There is no active concealment of truth.	2. There is active concealment of truth.
3. The false representation made is without any intention to deceive the other party to the contract.	3. The false representation made is with the intention of deceiving the other party.
4. The party making the representation is innocent.	4. The party making the representation is not innocent.
5. The affected party cannot claim damages.	5. The affected party can claim damages.

## Agreements with Unlawful Object

For an agreement to become a valid contract, it is important that its object is lawful. According to Section 23,

*"The consideration or object of an agreement is lawful, unless -*

*It is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions 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.

What is given in Section 23 is explained below with examples.

1. *If the object of the agreement is forbidden by law : i.e., punishable under the criminal law or prohibited by a special legislation.*

### **Examples:**

- (a) X promises to get Y a Government job in consideration of Y paying a sum of Rs.5Lakhs. The consideration or the object of the agreement is illegal and, therefore, an offence punishable under the criminal law.
  - (b) M and N work together to produce and sell pirated CDs of latest movies. The agreement is illegal and an offence punishable under the criminal law.
2. *If it defeats the provisions of any law (although not directly forbidden by law).*

3. *If it is fraudulent***Example:**

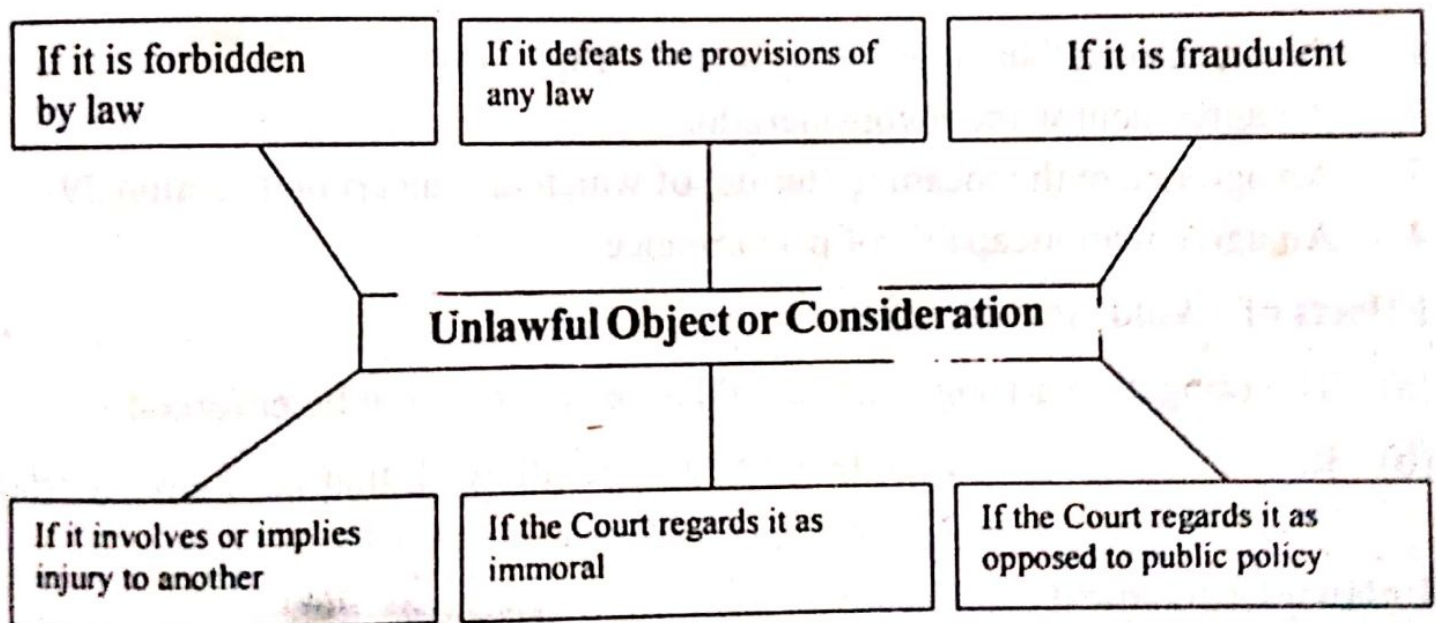
There is an agreement between P, Q and R to start finance business, induce the public to deposit by offering a very high rate of interest and later abscond with the depositors' money. The agreement is fraudulent in nature.

4. *If it involves or implies injury (harm) to the person or property of another***Example:**

The editor of a local newspaper receives a big amount from X and promises to publish a defamatory article against Y. The agreement is unlawful.

**Case: Ramsaroop vs. Bansi Mandar**

A person who borrowed Rs.100 agreed to work for the lender for 2 years without any remuneration and pay a very high rate of interest and the principal amount all at once. The agreement was held void on the ground that the terms were quite unreasonable and detrimental to the interests of the borrower.

**Figure 6. 1**5. *If the Court regards it as immoral***Cases: Baivijli vs. Nansa Nagar**

In this case, money was lent to a married woman to obtain divorce from her husband and marry the lender. It was held that the agreement was immoral and the lender could not recover the amount.