

ESSENTIAL ELEMENTS OF A VALID CONTRACT

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According to sec 2(h) of Indian Contract Act 1872 the Contract is an agreement enforceable at law.

❖ AGREEMENT = OFFER + ACCEPTANCE

❖ CONTRACT = AGREEMENT + ENFORCEABILITY AT LAW.

- ❖ An agreement, to be enforceable at law, must possess the essential elements of a valid contract as contained in section 10 of the Indian Contract Act 1872.
- ❖ Only those agreements which are enforceable by law are contracts.
- ❖ All Contracts are agreements but all agreements are not contracts.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. OFFER AND ACCEPTANCE.

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) of the Contract Act defines Offer as – ‘when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make an offer’. Section 2 (b) of the Contract Act states that, ‘when the person to whom the offer is made signifies his assent there to, the offer is said to be accepted.

2 INTENTION TO CREATE LEGAL RELATIONSHIP.

In case, there is no such intention on the part of parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations. **Case :- Balfour vs. Balfour(1919)** Mr. Balfour and his wife went to England for a vacation, and his wife became ill and needed medical attention. They made an agreement that Mrs. Balfour was to remain behind in England when the husband returned to Ceylon (Sri Lanka) and that Mr. Balfour would pay her £30 a month until she returned. This understanding was made while their relationship was fine; however the relationship later soured. The lower court found that there was sufficient consideration in the consent of Mrs. Balfour and thus found the contract binding, which Mr. Balfour appealed. Arrangements made between husbands and wives are not generally contracts as the parties do not intend to be legally bound by the agreements.

3.LAWFUL CONSIDERATION.

At the desire of promisor, promisee or any other person has done or abstain from doing or does abstain from doing such act or promises is known as consideration. According to Blackstone "Consideration is recompense given by the party contracting to another." In other words of Pollock, "Consideration is the price for which the promise of the another is brought." Consideration is known as "quid pro-quo" or something in return. It may be cash, kind, act or abstinence and may be in past, present or future. It should not be unlawful, immoral and against the public policy.

4. COMPETENCY OF THE PARTIES./CAPACITY TO CONTRACT.

The parties to an agreement must be competent. If either of the parties does not have the ability to contract, the contract is not valid. The following persons are incompetent to contract. (a) Minor: A person less than age of 18 is minor. **Case-Mohri Bibi vs Damodar Ghosh 1903** (b) Unsound mind person: Any person who is unable to understand the term and condition of contract at the time of its formation is unsound mind. (c) persons disqualified by law to which they are subject.

5. FREE CONSENT.

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

According to Section 14, Consent is said to be free when it is not caused by- (1) Coercion

(Case- Rangnaykamma vs Alwar Setti 1889.)

(2) Undue Influence (3) Fraud (4) Misrepresentation (5) Mistake. An agreement should be made by the free consent of the parties.

6. LAWFUL OBJECT.

The object of an agreement must be valid. Object has nothing to do with consideration. It means the purpose or design of the contract. Thus, when one hires a house for use as a gambling house, the object of the contract is to run a gambling house. 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. Or any agreement to distribute the money earned by robbery.

7. CERTAINTY OF MEANING.

According to Section 29, "Agreement the meaning of which is not Certain or capable of being made certain are void." For e.g. : A agree to sell to B a 100 tones of oil, there is nothing to show what kind of oil intended, the agreement is void due to the absence of certainty. But if A is dealer of coconut oil only agree to sell B,100 tones of oil, the nature of A's trade is sufficient to show the kind of oil, and this will be a valid contract.

8. POSSIBILITY OF PERFORMANCE.

Condition for a contract should be capable for performance .If the act is impossible in itself, physically or legally, if cannot be enforced at law. For example: If A and B makes an agreement that if B encloses a space with the help of two straight lines then A will pay him Rs. 1000 otherwise B will be liable for paying Rs. 500 to A. RESULT: This is an impossible work. Two straight lines can not enclose a space , hence contract is not valid.

9. NOT DECLARED TO BE VOID OR ILLEGAL.

The agreement though satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country. Agreements mentioned in Section 24 to 30 of the Act have been expressly declared to be void. For example agreements in restraint of trade, marriage, legal proceedings etc. That is : If A is not willing to marry with B, law can not enforce him/her.

10. LEGAL FORMALITIES.

An oral Contract is a perfectly valid contract, except in those cases where writing, registration etc. is required by some statute. In India writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instruments; memorandum and articles of association of a company, etc. Registration is required in cases of documents coming within the scope of section 17 of the Registration Act 1908. All the elements mentioned above must be in order to make a valid contract. If any one of them is absent the agreement does not become a contract.