



YBN UNIVERSITY

Established by the Act of Government of Jharkhand Act 15, 2017
Gazette Notification No. 505, Dated 17th July 2017
As per Section 2(f) of UGC Act. 1956



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Law of contract

Law of Contracts: Meaning, Nature and Important Definitions

Section 2(h) of the Indian Contract Act, 1872 defines the term contract, as if we see the definition:

“An agreement which is enforceable by law is a contract”.

So by the definition we can easily say that an agreement between two or more parties to do or abstain from doing something.

According to *Anson*, “the law of contract is that branch of law which determines the circumstances in which a promise shall be legally binding on the person making it”. Two Important things for the formation of a contract.

(Contract= Agreement + Enforceability)

Illustration– There is an agreement between X and Y that X will construct a house for Y, and Y will pay Rs. 10 Lakhs to X. The agreement between A and B is a contract because it is enforceable by law.

Agreement under Indian Contract Act

Section 2(e) of the Act, defines the term agreement as “Every promise and every set of promises, forming the consideration for each other, is an agreement”. Two important things for the formation of an agreement. (Agreement= Promise + Consideration) Important Case- *Balfour Vs Balfour* [1919] In this case, Mr. and Mrs. Balfour, who used to live together as a married couple in Sri Lanka, went for a vacation to England. During this time, Mrs. Balfour developed rheumatic arthritis. The doctor advised Mrs. Balfour to stay back in England as, according to him, Sri Lankan climate would worsen her health. Before Mr. Balfour returned to Sri Lanka, he promised to send £30 to her per month. During their stay away, the parties drifted apart and separated. It was held in this case that Mr. Balfour’s promise to pay a monthly sum of £30 did not amount to a contract, as there was no intention to create a legal relationship on part of either of the parties. Classification of agreements

1. **Valid Agreements**– These agreements are enforceable by law.
2. **Voidable Agreements**– It is an agreement which is enforceable by law at the option of one of the parties.
3. **Void Agreements**– This agreement is not enforceable by law at all.
4. **Illegal Agreements**– these agreements are also not enforceable by law because they are against the law.
5. **Unenforceable Agreements**– An unenforceable agreement is one which cannot be enforced in the court of law on account of some technical defects like want of a written form or stamp.

Promise under Indian Contract Act

According to section 2(B) of the act, when the offer is accepted, then it becomes a promise. When a person to whom the offer is made, signifies his assent then we can say that the offer is accepted.

There are mainly four kinds of Promises-

1. **Express Promise** (S.9)– When the promise of any offer or acceptance is made in words, then the promise is said to be express.
2. **Implied Promise** (S.9)– When the promise of any offer or acceptance is made otherwise than in words, then the promise is said to be implied.
3. **Reciprocal Promise** (S.2f)– Promises which form the consideration for each other, are called reciprocal promises.
4. **Alternative Promise** (S.58)– An alternative promise is one which offers the choice of one of two things.

Consideration under Indian Contract Act

Section 2(d) of the Act define the term consideration as follows- When at the desire of the promisor, the promisee or any other person.

When at the desire of the promisor, promisee does something then it is a valid consideration under section 2(d) of the ICA.

*Important Case- **Kedarnath Bhattacharji Vs Gorie Mahomed**(1887) ILR 14 Cal 64*

A Town Hall was planned to build in Howrah. Based on it, all the subscriptions, funds, and interested persons came up for the construction. Municipal Commissioner of Howrah, the Plaintiff entered into an agreement with the contractor and supplied necessary information about the plans. Later on, with an upswing of subscriptions and plans, there was a rise in the cost of construction making it from Rs. 20,000 to Rs. 40,000. The defendant made a subscription to pay Rs. 100 for the construction of Town Hall. However, he refused to pay the amount.

The Plaintiff commenced an action to claim the amount. The Court held that even if the defendant does not benefit from the promise he made for a charitable purpose, he is liable to pay the amount. He was responsible for his promise. A promise once made cannot be taken back after its commencement. It reaffirmed the rule of law by stating that, “*Any act done at the will of the promisor’s wish is taken as the fulfillment of consideration of a contract.”*

Types of contracts

There are various types of contracts that are formed voluntarily via civil obligations. They are as follows:

(I) **Adhesion Contracts** – This type of contracts are those which are formed by the stronger party. It is a sort of, “Opt for it or do not” contract. The stronger party or the one that has the bargaining power leaves the other party with a choice whether to accept or reject the contract.

(II) **Aleatory Contracts** – This type of contract involves a mutual agreement that comes into being after an unexpected occurrence, accident, or a natural calamity. In this type of contract both the parties have an element of risk. Fire or Car insurances are this type of contract.

(III) **Bilateral and Unilateral Contracts** – Bilateral contracts involve two parties. Both parties are obliged to one another for performing or abstaining to perform any act. It is also

called a two-sided contract as it involves two-way promises. Meanwhile, unilateral contracts are those in which the promise is made by only one party. They consist of an offeror and offeree. The offeror makes a promise to perform an action and is bound by the law to do so. The offeree is not bound to the contract even if he fails to execute the requested action because he does not promise anything at all. (IV) **Express Contracts** – These contracts are those wherein the terms of the contracts are expressed clearly whether in written documents or orally.

(V) **Implied Contracts** – There is no oral or written terms in this type of contract. The contracts are assumed owing to the facts of the parties. If an individual visits a medical professional, he expects to be diagnosed for a disease or illness and be advised a cure. This is an implied contract and a patient is capable of suing a medical practitioner for malpractice.

(VI) **Void and Voidable Contracts** – Void contracts are illegal from the very beginning and hold no validity under law. They are thereby un-enforceable. Voidable contracts are unlike void contracts in the sense that one party is bound by the contract and the unbound party is capable to terminate the contract as they are unbound to it.

And a quasi-contract is unlike a real contract. Salmond defines quasi contracts as “there are certain obligations which are not in truth contractual in the sense of resting on agreement, but which the

law treats as if they were”. It is important to remember that even though it is imposed by law, it is not created by the operation of the contract.

Proposal under Indian Contract Act

According to Section 2(a) of the Indian Contract Act, 1872 proposal has been defined as “when one person signifies to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

The person making the offer/proposal is known as the “promisor” or the “offeror”. And the person who may accept such an offer will be the “promisee” or the “acceptor”.

-What is a General Offer?

A general offer is any offer which is not made to a definitive person but rather to the public at large or the entire world which includes any individual that may understand the offer and accept it.

Important Case: *Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.* – When the goods are displayed either in a show-window or inside the shop and such goods bear price tags, the question which arises in such case is, whether that amounts to an offer to sell goods at prices mentioned on the price tags. In this case, it was held that display of goods along with price tags merely amounts to invitation to treat and therefore if an intending buyer is willing to purchase the goods at a price mentioned on the tag, he makes an offer to buy the goods. Thus, the shopkeeper has the right to accept or reject the same. The contract would arise only when the offer is accepted.

Can a Offer lead to a Contract?

Case: Carlill Vs Carbolic Smoke Balls Company

In this case, a company carried out advertisements about their product, carbolic smoke balls, that claimed that any person who took the smoke balls in the prescribed manner (i.e., three times daily for two weeks) will not catch influenza. In case someone does, the company promised to pay 100£ to them immediately. To show their sincerity regarding this offer, the company deposited a sum

of 1000£ in a public bank. Now, the plaintiff, Carlill bought the smoke balls and used them as prescribed in the advertisement, but still ended up catching the flu. She filed a suit for the recovery of 100£ as promised in the advertisement. The company denied the payment saying there existed no contract between them and the plaintiff. It was held that a contract came into existence between the plaintiff and the company as soon as the plaintiff bought the smoke balls and used them as prescribed.

Important Case- (1887) ILR 14 Cal 64 When the contract formed between the parties was discovered to be under a mistake as to the matter of fact on part of both the parties, it was held that the earnest money cannot be forfeited as the contract was void ab initio.

Proposal under Indian Contract Act

According to *Section 2(a) of the Indian Contract Act, 1872*, “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 a proposal”.

A proposal must be definite and specific in its terms, and it should be communicated to the other party with the intention of obtaining their acceptance. Once the other party accepts the proposal, it becomes a promise, and the terms of the contract bind the parties. If the proposal is not accepted, it will be considered a mere invitation to offer, and it will not create any legal obligation between the parties.

Examples

1. A company (A) offers to sell its products to another company (B) for a certain price. The offer is made in writing and sent via email to company B. This offer is a proposal, and if company B accepts the offer, it becomes a binding contract.
2. A person (A) offers to sell their car to another person (B) for a certain amount. The offer is made orally during a conversation between the two parties. This offer is also a proposal, and if person B accepts the offer, it becomes a binding contract.
3. A construction company (A) submits a proposal to a government agency (B) for building a new bridge. The proposal includes the details of the project, such as the cost, timeline, and specifications. This proposal is an offer to enter into a contract with the government agency (B), and if the agency accepts the proposal, it becomes a binding contract.

What is an invitation to offer?

An invitation to offer is a preliminary communication that invites or encourages someone to make an offer or proposal, rather than being an actual offer itself. It is an invitation to negotiate or make an offer, which may or may not result in the formation of a contract.

In simple terms, an invitation to offer is an invitation to commence negotiations or discussions, and it does not create a legal obligation to accept any resulting offer.

Examples of an invitation to offer include advertisements, price lists, catalogues, and displays of goods in a shop window or online store. These do not constitute a binding offer, but rather an invitation to customers to make an offer to purchase.

Landmark cases dealing with invitations to treat/offer

Pharmaceutical Products of India Ltd. v. Gwalior Chemical Works Ltd. (1960)

In this case, the court held that a price list is an invitation to treat and not an offer or proposal. The court held that a contract is only formed when an offer is made by one party and accepted by the other.

Fisher v. Bell (1961)

This case established the principle that a display of goods in a shop window or on a shelf is generally an invitation to treat and not an offer. The customer's offer to purchase the goods at a certain price would constitute a proposal, and the shop owner's acceptance of the proposal would form a binding contract.

Harvela Investments Ltd. v. Royal Trust Co. of Canada (1986)

This case established the principle of the "invitation to tender," which is a process by which a party invites potential contractors to submit bids for a project. The court held that an invitation to tender is not an offer, but rather an invitation to submit offers.

Intention to create a legal relationship

The intention to create a legal relationship is a key element in the formation of a contract. It refers to the intention of the parties to create a legally binding agreement, i.e. an agreement that can be enforced by law.

In general, the law assumes that parties intend to create a legal relationship when they enter into a contract. However, in certain situations, the parties may not intend to create a legally binding

agreement, such as in social or domestic arrangements. For example, if friends agree to meet at a café, there may not be an intention to create a legally binding agreement.

In order for a contract to be enforceable, the intention to create a legal relationship must be present at the time of entering into the agreement. This means that both parties must have a common intention to create legal relations.

The intention to create a legal relationship can be expressed or implied. It may be expressed through the language used in the contract, such as when the parties state explicitly that they intend to create a legally binding agreement. Alternatively, the intention may be implied from the circumstances surrounding the agreement. For example, if a person provides a service and is paid for it, there may be an implied intention to create a legal relationship.

Balfour v Balfour

Balfour v Balfour is a landmark case in the law of contract that deals with the issue of intention to create a legal relationship. The case was decided by the English Court of Appeal in 1919. In this case, Mr. Balfour was a British civil servant who was posted to Ceylon (now Sri Lanka) in 1915. At that time, his wife, Mrs. Balfour, remained in England due to health reasons. Before leaving, Mr. Balfour promised to pay his wife a monthly allowance of £30 until she joined him in Ceylon. However, the couple later separated and Mrs. Balfour sued her husband for breach of contract, claiming the unpaid allowance.

The court held that there was no contract between the parties. The court found that the promise made by Mr. Balfour was a mere social arrangement between husband and wife, and not intended to create a legal relationship. The court noted that not all agreements between family members or spouses are legally binding and that the intention to create a legal relationship must be present in order for a contract to be enforceable.

The court explained that in the absence of an intention to create a legal relationship, there is no consideration, which is an essential element of a contract. Consideration refers to the exchange of something of value, such as money or services, between the parties. In this case, Mrs. Balfour had not given any consideration in exchange for the promise made by her husband.

Therefore, the case established the principle that a social or domestic agreement, made without any intention to create a legal relationship, does not give rise to a binding contract.

Types of Offer/Proposals

Cross Offers

A cross offer occurs when two parties make identical offers to each other without knowing that the other has made an offer. In such a situation, neither party can accept the other's offer, as there is no clear indication of an intention to create a legally binding agreement. Here are a few landmark cases related to cross offers:

Tinn v. Hoffman (1873)

In this case, the plaintiff and the defendant were negotiating the sale of a quantity of tin. The plaintiff sent a letter offering to sell the tin at a certain price, and the defendant sent a letter in response, also offering to buy the tin at the same price. However, neither party had received the other's letter at the time they made their offer. The court held that there was no contract between the parties, as neither party had accepted the other's offer.

Counter Offer

A counter-offer is a response to an initial offer that varies the terms of the original offer. It is essentially a rejection of the original offer, and it terminates the initial offer. Here are a few landmark cases related to counter-offers:

Hyde v. Wrench (1840)

In this case, the defendant offered to sell his estate to the plaintiff for a certain price. The plaintiff made a counteroffer for a lower price, which the defendant rejected. The plaintiff then attempted to accept the defendant's original offer, but the defendant refused to sell. The court held that there was no contract between the parties, as the plaintiff's counteroffer amounted to a rejection of the defendant's offer.

Specific and general offers

In contract law, an offer is a proposal made by one party (the offeror) to another party (the offeree) with the intention of creating a legally binding agreement. Offers can be categorized into two main types: specific offers and general offers. specific offer is an offer made to a specific person or group of people. For example, if a person offers to sell their car to a particular individual for a certain price, this is a specific offer. Specific offers can only be accepted by the person or group of people to whom they are addressed. If the offer is not accepted within the specified time period or on the specific terms outlined in the offer, it lapses and cannot be accepted later. A general offer, on the other hand, is an offer made to the public at large or a group of people who may accept it. For example, an advertisement offering a reward for the return of a lost item is a general offer. Anyone who finds the lost item and meets the conditions of the offer can claim the reward. The

key difference between a specific offer and a general offer is that a general offer can be accepted by anyone who meets the conditions of the offer. It is important to note that specific and general offers have different legal implications. For instance, in the case of a specific offer, the offeror is obligated to sell the item to the offeree if the offeree accepts the offer within the specified time period and on the specific terms outlined in the offer. In the case of a general offer, the offeror is only obligated to fulfil the offer if someone meets the conditions of the offer and accepts it. Overall, the distinction between specific and general offers is an important one in contract law, as it determines the legal implications of an offer and the conditions under which it can be accepted.

Who are Competent to Contract-?

Agreement with a Minor **Who is a minor?**

According to Section 3 of the Indian Majority Act, 1875, a person below 18 years of age is a minor. However, a person to whom a guardian has been appointed by the court for their person or property remains a minor until the age of 21 years.

Nature of agreement with minor

Neither Section 10 nor 11 makes it clear whether the agreement entered by the minor is voidable at his option or altogether void. This led to a controversy about the nature of the minor's agreement, which was resolved in the Privy Council decision in [*Mohiri Bibi v. Dharmodas Ghosh*](#). The Privy

Council decision in *Mohiri Bibi v. Dharmodas Ghosh* held that a minor's agreement is totally null and void from the beginning, and the minor is not considered competent to contract or give any consideration.

Summary of Mohiri Bibi v. Dharmodas Ghosh

The court's decision, in this case, can be summarized as follows:

The effect of a minor's agreement a) No estoppel against a minor

The law of estoppel does not apply against a minor. The minor can plead minority as a defence to avoid liability under the agreement, even if they falsely stated that they had attained the age of majority at the time of making the agreement. **The principle that a minor's agreement is void ab initio overrides the procedural principle of estoppel.**

Furthermore, there can be no estoppel where both parties know the truth of the matter. Therefore, a false representation made to a person who knows it to be false is not fraud that takes away the privilege of infancy.

b) No liability in contract or tort arising out of contract

In general, a contract cannot be converted into a tort to enable a party to sue a minor. If the tort is directly connected with the contract and is a means of affecting it and is a parcel of the same transaction, the minor is not liable in tort. However, where the tort is independent of the contract, the mere fact that a contract is also involved will not absolve the minor from liability.

For example, in *Burnard v. Haggis*, the minor was held liable when they borrowed a mare for riding, but their friend jumped and killed her. Similarly, in *Ballet v. Mingay*, a minor was held liable for the tort of detenu for failing to return hired instruments to a friend. However, in *Jennings v. Rundall*, the minor was not held liable when they hired a horse for a short journey but took it on a longer journey, which resulted in injury to the horse. The reason was that the action was founded in a contract, and the plaintiff could not turn what was essentially a claim in the contract into a claim in tort. Doctrine of Restitution

The Specific Relief Act, 1877 was amended to include Section 33, which contains the principle of compensation. The rule has been finally settled as follows:

- a) If a minor brings a suit to cancel an instrument, the Court may, at its discretion, ask the minor to compensate for the benefits accrued to him.
- b) If the minor is a defendant and resists

enforcement of the suit based on their minority, the Court may, at its discretion, ask the minor to restore the benefits they have received under the instrument to the other party.

Section 33 – Power to require benefit to be restored or compensation to be made when an instrument is cancelled or successfully resisted as being void or voidable:

- (1) If a court cancels an instrument, it may require the party receiving relief to restore any benefit received from the other party and make any compensation that justice requires.
- (2) If a defendant successfully resists a suit:
 - (a) because the instrument is voidable, and the defendant has received a benefit from the other party under the instrument, the court may require the defendant to restore the benefit to that party or compensate for it;
 - (b) because the agreement is void due to the defendant's incompetence to contract under Section 11 of the Indian Contract Act, 1872, and
 - (c) the defendant has received a benefit under the agreement from the other party, the court may require the defendant to restore the benefit to that party to the extent to which the defendant or their estate has benefited.

Contracts that are Beneficial to the Minor

When a minor provides consideration to the other party, they are fully capable of enforcing the contract and receiving its benefits. However, if consideration is yet to be provided, the contract is not actionable.

1. Contract of Service and Apprenticeship

In England, an infant is bound by any contract for service or apprenticeship as these contracts are beneficial to them in terms of earning a livelihood. In India, only a contract for apprenticeship is binding under the Indian Apprenticeship Act, 1960, while a contract for service is not binding on a minor.

For instance, in the case of *Raj Pani v. Prem Adib*, a film producer had allotted the role of an actress in a particular film to a minor plaintiff through an agreement made with her father. However, the defendant later allotted the role to another artist and terminated the contract with the plaintiff's father. The Bombay High Court held that neither the plaintiff nor her father could have sued on the promise.

If the contract was with the plaintiff, it was null and void as she was a minor. If the contract was with her father, it was void as there was no consideration. The promise of a minor girl to serve cannot furnish any consideration for the defendant's promise to pay her a salary, as it is not enforceable against her.

2. Contract of Marriage

A minor can enforce a contract of marriage against the other contracting party, but the contract cannot be enforced against the minor. This is because the contract of marriage is considered beneficial to the minor.

3. Minor and Partnership

According to Section 4 of the Indian Partnership Act, 1932, all parties to a partnership agreement must have the capacity to contract. As a minor does not have the capacity to contract, they cannot become a party to a partnership agreement.

A minor cannot ratify a contract made during their minority after they attain majority. This is because ratification relates back to the date on which the contract was made, and a contract that

was void at that time cannot be validated by subsequent ratification unless a fresh consideration is provided.

However, if a [consideration](#) was given for the contract during the minority, and a fresh or the rest of the consideration is furnished after attaining the majority, a promise to pay both can become binding upon the minor upon attaining the majority, as held in the case of *Kundan Bibi v. Shri Narayan*.

In the case of *Suraj Narayan v. Sukhu Ahir, ILR (1928) 51 All 164*, a minor borrowed a sum of money and executed a simple bond for it. After attaining the majority, the minor executed a second bond for the original loan amount plus interest. It was held by a majority of two against one that the suit upon the second bond was not maintainable as the second bond was without consideration and did not come under Section 25(2) of the Indian Contract Act.

