

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Essential Elements for Forming a Valid Contract under the Indian Contract Act 1872

MAGAONKAR REVATI UMASHANKAR¹

ABSTRACT

The Indian Contract Act, 1872 is the administrative law for the contracts. It includes various provisions relating to definition, formation of contract its procedure, essential elements, termination and various other provisions are included in it. Under the Act the meaning of the contract is given as, "Contract is an agreement which is enforceable by law". So, first of all to form a contract there must be an agreement and for agreement there must be promise or a set of promise, acceptance, lawful consideration, competency and a legal intent. Therefore, these all are the essential elements of the contract, these elements play a most important role in the formation of a contract under the Act. An offer shall be made by either of a party and when that offer is accepted by the other party with a promise to something by taking a valid consideration then only it will become a valid agreement. When all these essential elements are fulfilled in an agreement it can become a contract, which is enforceable by law. All contracts are agreement but all agreements are not contract.

I. INTRODUCTION

Indian Contract Act, 1872 is the administrative law for the contract. The section 2(h) 9f the Act defines contract as those agreements which can be enforceable by law. Section 2(e) of the Act explains agreement as every promise or set of promises, forming the consideration for each other. The proposal is said to be accepted when the person to whom such proposal is made gives his consent, then the proposal is said to be accepted and becomes a promise.

An agreement can be called as the accepted promise and the contract is an agreement which can be enforceable by law. There are two parties involved in the contract promiser(a person who promises to do something in return of consideration) and promisee(a person who pays the consideration). Section 10 of the act says that if parties have given the consent which is free from the coercion or any undue influence with the lawful consideration and lawful object, then all agreements are considered to be contract and such contracts cannot be declared void. All contracts are agreement but all agreements are not contracts.

¹ Author is a student at Dayanand College of Law, India.

Agreement is defined under section 2 (e) of the Act, Every promise and every set of promise forming consideration for each other is an agreement'.

II. ELEMENTS OF A VALID CONTRACT

1. Offer and acceptance

To form a contract there must be an offer from either side of the party, without the offer a contract cannot be formed. There must be an offer from one party and acceptance from the other party. The offer and acceptance must be 'lawful' mean it must meet the requirement if the Contract. The word offer is defined under section 2(b) of the Act, it defines that when an offer is accepted it becomes a promise. Indian Contract act defines an offeror as 'Promisor' and the person who is accepting the offer as 'Promisee'.

When the acceptance of the offer is made and such offer is conveyed to the offeror, the parties are restricted to their appropriate promises. The offer even the acknowledgement can be relinquished before the correspondence of the acknowledgement comes to the offerer. The important part of the acknowledgement is performance of an offer, neglecting of such offer is not the acceptance. Acceptance can be either expressed or implied but it has to be in a specific manner, when acceptance is made by a third party or a stranger who is not party to the contract such type of acceptance is void one.

In the case of *Lalman Shukla v. Gouri Datt* in this case it was held that mere understanding of the contract is not acceptance, it must be communicated.

For example. _ X office by 10 pens each of rupees 5, for forming of the contract the why must accept the offer by X then only it will become the valid contract and when the why accept the the offer made by the X with legal intentions to create a lawful contract, then only it will become a valid contract.

2. Lawful Consideration

Meaning of the consideration in the language of a common man is that something for something in return shall be given. For making a lawful contract enforceable by law there must be the valid consideration. Consideration can be said as the benefits granted for the the fulfillment of promise. it's not mandatory that the consideration should be in the form of money but it can be something which is acknowledged by the parties and has some significance. According to Section 25 of the at the contract without consideration is void. There are three types of consideration:

1. Past consideration

It means the consideration which is given before the performance of the date of contract by any party.

2. Present Consideration

it means when the consideration is given during the performance of the contract and it is also called the 'executed consideration' .

3. Future Consideration

It means when the consideration is given after the contract is made.

In the case of *Currie v. Misa*, in this case the definition of Consideration is defined as 'A valuable Consideration in the perception of law may comprise either in certain Rights, Interest, Profit or Benefit accumulating to one gathering or some avoidance disservice, misfortune or duty given, suffered or attempted by other' .

For example. X and y came into a contract in which X will supply the 10 balls per rupees 5, in this giving of rupees 5 per one ball after the supply, it is lawful consideration. Here the parties must be capable or competent for the contract.

3. Parties must be capable or sufficient to contract

Parties must be capable enough to enter into a Contract i.e., competent to contract. Every party is competent to contract if he fulfils the requirement given under section 14 of the Act. When the party fulfills the requirement to be competent to the contract as given under section 14 of the Act, that are as follows:

- a. The person should attend the age of majority as of 18 years. When the contract is made with the minor it would be the void contract which is also
- b. He/she is not qualified from any law which he is subject, want of capacity may thus arise from minority, lunacy, idiocy, drunkenness etc. If any of the party to a Contract suffers from such disability, the agreement is not enforceable excepting perhaps in some special cases.
- c. Party should be of sound mind.

4. Free consent from parties

According to this parties that are stepping into a Contract should do with their will without the external factors or forces. Section 14 of the Act defines contract entered with free consent is a valid contract and if affected by some other factors then, would believe a contract invalid. These factors are defined by the Indian Contract, 1872:

a. Coercion

It is defined under the Section 15 of the act, which means Committing any act which is forbidden by law defined under the Indian Penal Code or unlawful to confine of property, or frightening to commit such acts. The act should be harmful to the other party and some legal action may arise out of it.

b. Undue influence

It is defined under section 16 of the act, which means one party uses its dominant position over the party and tries to obtain advantage out of it by influencing. Such examples are the relationship of employer-employee, principle-agent relationship.

c. Fraud

It is defined under section 17 of the Act, it means when the terms which are presented by one party in front of the other party is to cause damage, with the ill- will and to gain advantage out of it. Presenting the false statement, hiding any fact, fake promises made without the intention to perform such act, act done to deceive the other party- such acts will constitute fraud if done with the intention to doing it so. E.g.: – A is selling his refrigerator to B presenting the fake facts that its freezer is working well and have sufficient gas but which was all wrong. So this Contract here is void because of A is getting benefit by fraud.

d. Misrepresentation

It is defined under section 18 of the Act, it means presenting the False representation of facts without the wrong intentions or to deceive the other party. In misrepresentation, the party is innocent and has done the act without knowing it.

e. Mistake

Mistake of fact or mistake of law is defined under section 20 and 21 of the Act, if any mistake of fact or law is made one or both parties the parties will enter to a invalid Contract.

f. Lawful Object

The object must be lawful in other words we can say that it should not be illegal, immoral, or against the policy of the law. Every agreement which contains unlawful object results into the formation of the void contract.

g. The certainty of terms

The terms and conditions of the contract must be certain and should not be vague or illusory. There can never be a contract to contract in the future.

h. Possibility of Performance

The agreement must have the capability to be performed. An agreement to do an act impossible in itself is void, i.e., if A promises to give Rs. 1000 to B, if B can prove that two parallel lines can meet each other such an agreement is void.

i. Void Agreements

The agreement must not contain certain elements that result in making the contract void. Certain agreements are declared void under the Indian Contract Act, 1872 which are given below: –

- Agreement in restraint to marriage (Section 26).
- Agreement in restraint of trade (Section 27).
- Agreement in restraint of legal proceedings (Section 28).
- Agreement having uncertain meaning (Section 29).
- Wagering Agreement (Section 30)

III. CONCLUSION

However, as above we have seen these are the most important elements of the valid contract. Without these the contract cannot be formed and if formed it will be void which is not enforceable by law.
