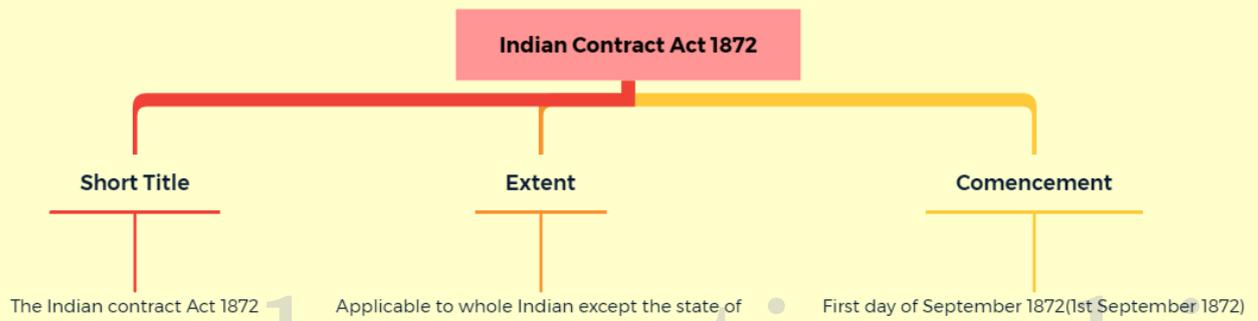


MODULE 5.17

NATURE AND FORMATION OF CONTRACT/E-CONTRACT

TOPIC – I

1. *Indian Contract Act, 1872:*



- Prior to this English law of contract was followed in India.
- It has XI chapters.
- Law of contract creates rights *in personem* and not *in rem*.
- The Indian Contract Act consists of the following two parts:
 - (i) General principles of the Law of Contract.
 - (ii) Special kinds of contracts.
- The general principals of the Law of Contract are contained in **Sections 1 to 75** of the Indian Contract Act. These principles apply to all kinds of contracts irrespective of their nature.
- Special contracts are contained in **Sections 124 to 238** of the Indian Contract Act. These special contracts are Indemnity, Guarantee, Bailment, pledge and Agency.

2. *Definition of a Contract:*

- **Pollock:** Every agreement and promise enforceable at law is a contract.
- **Halsbury:** A Contract is an agreement between two or more persons which is intended to be enforceable at law and is concluded by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act.
- **Salmond:** A contract is an agreement creating and defining obligations between the parties.

3. **Important Definitions:**

******(The following 10 definitions must be memorized by heart – word to word)***

- I. **Offer (i.e. Proposal) S. 2(a):-** 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 person either to such act or abstinence, he is said to make a proposal.
- II. **Acceptance S. 2(b):-** When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.
- III. **Promise S. 2(b):-** A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
- IV. **Promisor and promisee S. 2(c) :-** When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.
- V. **Consideration S. 2(d):-** When at the desire of the promisor, the promisee or any other person *has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing*

something, **such act or abstinence or promise is called a consideration for the promise.**

Price paid by the one party for the promise of the other, technically the word means QUID- PRO-QUO i.e. something in return.

- VI. **Agreement S. 2(e):-** Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.
- VII. **Contract S. 2(h) :-** An agreement enforceable by Law is a contract.
- VIII. **Void agreement S. 2(g):-** An agreement not enforceable by law is void.
- IX. **Voidable contract S. 2(i):-** An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties thereto (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.
- X. **Void contract:-** A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.

4. **Essentials of a Valid Contract:**

Section 10



All agreements are contracts, if they are made

- **by free consent of the parties, competent to contract,**
- **for a lawful consideration and**
- **with a lawful object, and**
- **not hereby expressly declared to be void.**

Formation of a Valid Contract



Offer + acceptance = Promise
+
consideration
=
Agreement
+
enforceability By Law
↓
Contract

I. **Proper offer and proper acceptance with intention to create legal relationship:**

A and B agrees to go to a movie on coming Sunday. A does not turn up resulting in loss of B's time. B cannot claim any damages from A since the agreement to watch a movie is a social/friendly understanding which does not result in a legal/jural relationship.

(i) ***In case of social agreement there is no intention to create legal relationship and therefore there is no contract -***

Balfour v. Balfour: A husband promised to pay his wife a household allowance of 30 pounds every month. Later the parties separated and the husband failed to pay the amount. The wife sued for allowance.

Judgment: Agreements such as this was outside the realm of contract altogether because there is no intention to create legal relationship among the parties.

(ii) In case of ***commercial agreements***, the law presumes that the parties had the intention to create legal relations.

(iii) An agreement of a ***purely domestic or social nature*** is not a contract.

II. **Lawful consideration:**- consideration must *not* be *unlawful, immoral or opposed to the public policy.*

III. **Capacity:**- The parties to a contract must have the capacity (legal ability) to make valid contract. **Section 11** of the Indian contract Act specifies that every

person is competent to contract provided:-

- (i) He/She is of the age of majority according to the Law to which he is subject, and
 - (ii) Who is of sound mind and
 - (iii) Is not disqualified from contracting by any law to which he is subject.
- Person of unsound mind can enter into a contract during his lucid interval.
 - Insolvents and convicts are not competent to contract.

IV. **Free consent:-**

Consent of the parties must be genuine consent means agreeing upon *same thing in the same sense* **i.e.** there should be *consensus – ad – idem*. Consent is said to be free when it is not caused by **coercion, undue influence, fraud, misrepresentation or mistake.**

V. **Lawful object:**

- The object of agreement should be lawful and legal.
- Two persons cannot enter into an agreement to do a criminal act.
- Consideration or object of an agreement is unlawful if it
 - (a) is forbidden by law; or
 - (b) is of such nature that, if permitted, would defeat the provisions of any law; or
 - (c) is fraudulent; or
 - (d) Involves or implies, injury to person or property of another; or
 - (e) Court regards it as immoral, or opposed to public policy.

VI. **Possibility of performance:**

- The terms of the agreement should be capable of performance.
- An agreement to do an act impossible in itself cannot be enforced.

Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

VII. **The terms of the agreements are certain or are capable of being made certain.**

A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term “ultra – modern” is not certain.

VIII. **Not declared Void:**

- The agreement should be such that it should be capable or being enforced by law.
- Certain agreements have been expressly declared illegal or void by the law.

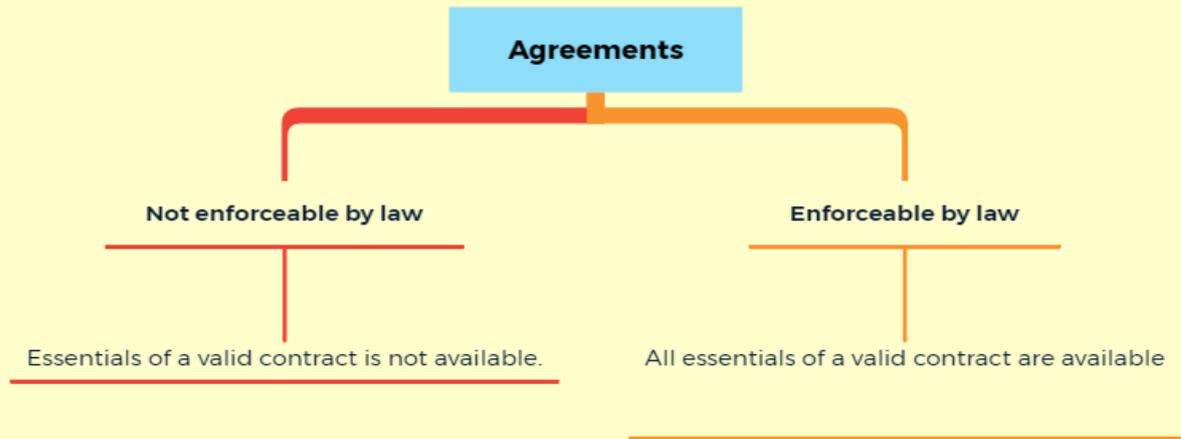
IX. **Necessary legal formalities:**

- A contract *may be oral or in writing.*
- Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.
- If legal formalities are not carried out then the contract is not enforceable by law.

Example : A promise to pay a time Barred debt must be in writing.

5. ***Agreement and Contract:***

- Agreement is a wider term than contract. Whereas all contracts are agreements. All agreements are not contracts.
- The various agreements may be classified into two categories:



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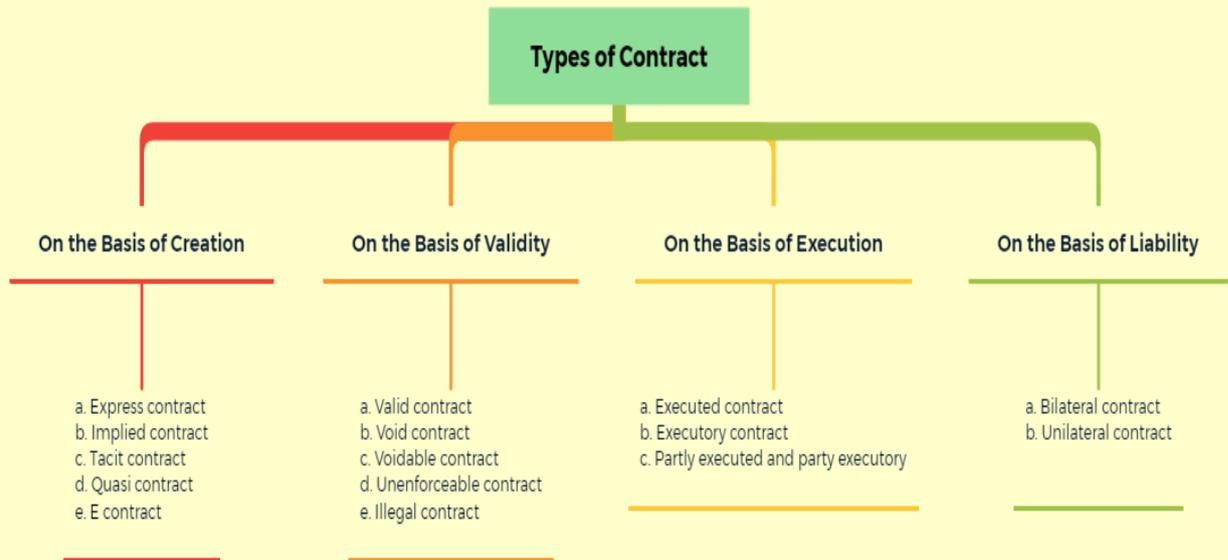
- Thus an agreement may be or may not be enforceable by law, and so all agreement are not contract. Only those agreements are contracts, which are enforceable by law, In short.

Contracts = Agreement + Enforceability by Law

- **Distinction between Contract & Agreement:**

Basis	Contract	Agreement
1. Section :	Sec. 2(h)	Sec. 2(e)
2. Definition :	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreement.
3. Enforceability :	Every contract is enforceable	Every promise is not enforceable.
4. Interrelationship	A contract includes an agreement.	An agreement does not include a contract.
5. Scope :	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.
6. Validity :	Only legal agreements are called contracts.	An agreement may be both legal and illegal.
7. Legal Obligation	Every contract contains a legal obligation.	It is not necessary for every agreement to have legal obligation.

6. Types of Contract:-



(1) On the Basis of Creation:

- (a) **Express contract:**- A contract made by words, spoken or written. According to sec 9 insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express.

Example: A says to B ‘will you purchase my bike for Rs.20,000?’ B says to A “Yes”.

- (b) **Implied contract:**- A contract inferred by
- The conduct of person or
 - The circumstances of the case.

Implied contract means implied by law i.e. the law implies a contract though the parties never intended. According to sec 9 insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Example: A stops a taxi by waving his hand and takes his seat. There is an implied contract to pay the fare.

- (c) **Tacit contract:** - A contract is said to be tacit when it has to be inferred from the conduct of the parties.

Example: obtaining cash through automatic teller machine, sale by fall hammer of an auction sale.

- (d) **Quasi Contracts are contracts which are created -**

- Neither by word spoken
- Nor written
- Nor by the conduct of the parties.
- But these are created by the law.

Example:

If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

- (e) **e - Contract:** An e - contract is one, which is entered into between two parties via the internet.

(2) On the basis of Validity:

- (a) **Valid contract:-** An agreement which satisfies all the requirements prescribed by law.

- (b) **Void contract S. 2(j):-** A contract ceases to be enforceable by law and thereby becomes void and ceases to be enforceable:-

- When both parties to an agreement are under a mistake of facts [S. 20]
- Consideration or object of an agreement is unlawful [S. 23]
- Agreement made without consideration [S. 25]
- Agreement in restraint of marriage [S. 26],

- in restraint of trade [S. 27],
- in Restraint of legal proceeding [S. 28],
- Agreement by way of wager [S. 30].

(c) **Voidable contract 2(i):-** An agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Examples: Agreements affected by coercion, undue influence, fraud and misrepresentation.

(d) **Unenforceable contract:** - where a contract is good in substance but because of some *technical defect* i.e. unregistered, barred by limitation etc., one or both the parties cannot sue upon it, is described as unenforceable contract.

Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.

(e) **Illegal contract:-** It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessary illegal. Contract that is immoral or opposed to public policy are illegal in nature.

- Unlike illegal agreements there is no punishment to the parties to a void agreement.
- Illegal agreements are void from the very beginning.

(3) **On the basis of Execution:**

(a) **Executed contract :-** A contract in which both the parties have fulfilled their obligations under the contract. Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.

(b) **Executory contract:-** A contract in which both the parties are yet to

fulfill their obligations. Example : D agrees to buy V's cycle by promising to pay cash on 15th July. V agrees to deliver the cycle on 20th July.

- (c) **Partly executed and partly executory:**- A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation. Example : A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is executed contract whereas it is executory contract on the part of B since the price is yet to be paid.

(4) **On the basis of liability for performance:-**

- (a) **Bilateral contract:**- A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000. On acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car. There are two promises.

- (b) **Unilateral contract:**- A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation to do or forbear.

Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose. B says to A "if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B if B is able to spare time to paint A's room. However there is no promise by B to Paint the house. There is only one promise.

Difference Between Void and Voidable Contract

Matter	Void contract	Voidable contract
Definition	It means contract which ceases to be enforceable.	It means an agreement enforceable in law by one or more parties.

Nature	Valid when made subsequently becomes unenforceable.	It remains voidable until cancelled by party.
Rights or remedy	No legal remedy.	Aggrieved party has remedy to cancel the contract.
Performance of contract	Party can't demand performance of contract	If aggrieved party does not cancel it within reasonable time, performance can be demanded.
Reason	Due to change in law or circumstances	If consent is not obtained freely.
Damages	Not available	Can demand in certain cases.

Difference between Void and illegal Agreement

Matter	Void agreement	Illegal agreement
What	Void agreement is not prohibited by law.	It is prohibited by law.
Effect on collateral transaction	Enforced	Not enforced.
Punishment	No	Yes
Void ab initio	May not be void ab initio	Always void ab initio

7. **Offer:**

- **Offer (i.e. Proposal) [S. 2(a)] :-** 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 person either to such act or abstinence, he is said to make a proposal.
- **Section 3 : Communication, acceptance and revocation of proposals.—**
The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.
- To form an agreement, there must be at least two elements – one offer and the

other acceptance. Thus offer is the foundation of any agreement.

- 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.
- The person who makes an offer is called “Offeror” or “Promisor” and the person to whom the offer is made is called the *Offeree*” or “*Promisee*”.

Example

Mr. A says to Mr. B, “Will you purchase my car for Rs.1,00,000?” In this case, Mr. A is making an offer to Mr. B. Here A is the offeror and B is the offeree.

- Essentials elements of an offer:-
 - (1) There must be two parties.
 - (2) The offer must be communicated to the offeree.
 - (3) The offer must show the willingness of the offeror. Mere telling the plan is not offer.
 - (4) The offer must be made with a view to obtaining the assent of the offeree.
 - (5) A statement made jokingly does not amount to an offer.
 - (6) An offer may involve a positive act or abstinence by the offeree.
 - (7) Mere expression of willingness does not constitute an offer.

A tells B’ that he desires to marry by the end of 2008, if does not constitute an offer of marriage by A to B. A further adds will you marry me. Then it becomes offer.

- **Legal Rules as to valid offer:-**

1. ***Offer must be communicated to the offeree:*** The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. *Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.*

Example:

Lalman Shukla v. Gauri Datt : A’s nephew had absconded from his home. He sent his servant to trace his missing nephew. When the servant had left,

A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when he discovered the missing boy.

2. *The offer must be certain, definite and not vague, ambiguous and uncertain.*

Example:

A offered to sell to B. 'a hundred tons of oil'. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. *The offer must be capable of creating legal relation. A social invitation does not create legal relation.*

Example:

A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. *Offer may be express and implied*

An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct is called an implied offer [Section 9].

5. *Communication of complete offer:*

Section 4: Communication when complete.—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

- ***as against the proposer, when it is put in a course of transmission to***

him, so as to be out of the power of the acceptor;

- *as against the acceptor, when it comes to the knowledge of the proposer.*

The communication of a revocation is complete,—

- *as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;*
- *as against the person to whom it is made, when it comes to his knowledge.*

Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted; as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950". On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was no contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

6. **Counter offer – A counter offer amounts to rejection of the original offer**

7. ***Cross offer does not conclude a contract.***

8. ***An offer must not thrust the burden of acceptance on the offeree.***

Example:

A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship.

- Acceptance cannot be presumed from silence.
- Acceptance is valid only if it is communicated to the offeror.

9. ***Offer must be distinguished from invitation to offer.***

Example:

Menu card of restaurant is an invitation to put an offer.

Example ;

Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, the interested buyer cannot compel him to sell. If he wants to buy it, he must make a proposal.

Example:

Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example:

An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

Pharmaceutical society of Great Britain Vs Boots Cash Chemists

Goods were sold in a shop under the ‘self service’ system. Customers select goods in the shop and take them to the cashier for payment of price.

Judgment: The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price.

10. Offeror should have an intention to obtain the consent of the offeree.

11. An answer to a question is not an offer.

HARVEY Vs FACEY: Three telegrams were exchanged between Harvey and Facey.

- (a) “Will you sell us your Bumper hall pen? Telegram lowest cash price-answer paid”. [Harvey to Facey].
- (b) “Lowest price for bumper hall pen L 900 (pounds)”. [Facey to Harvey]
- (c) “We agree to buy Bumper hall pen for the sum of L 900 (pounds) asked by you”. [Facey to Harvey]

Judgment: There was no concluded contract between Harvey and Facey. Because, a mere statement of price is not considered as an offer to sell.

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Offer	Invitation to offer
<ul style="list-style-type: none"> ➤ Showing his readiness to enter into a contract is called as an offer ➤ Purpose of entering contract ➤ Results in a contract <p>Example Application filled in by a prospective student seeking admission in educational Institution.</p>	<ul style="list-style-type: none"> ➤ Person invites offer to make an offer to him. ➤ Purpose of enter offer ➤ Results in offer. <p>Example Issue of prospectus by a Company, an education Institution.</p>

7.1 Kinds of Offer:

- I. **Express offer** - When the offeror expressly communicate the offer it is said to be an express offer. The express communication of the offer may be made

by Spoken or written words.

II. **Implied offer** – when the offer is not communicate expressly. An offer may be implied from the conduct of the parties or the circumstances of the case.

III. **Specific:-** It means an offer made by:

- (a) a particular person or
- (b) a group of person: It can be accepted only by that person to whom it is made. Communication of acceptance is necessary in case of specific offer.

IV. **General offer:** - It means on offer which is made to the public in general.

- General offer can be accepted by anyone.
- If the offeree fulfills the terms and conditions which is given in the offer then offer is accepted.
- Communication of acceptance is not necessary is case of general offer

Example:

Carlill v Carbolic Smoke Ball Co.: Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions.

One lady, Mrs, Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza. She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such was entitled to recover the reward from the company.

V. **Cross offer:-** When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offer.

- *Two cross offer does not conclude a contract. Two offers are said to be cross offer if*

1. *They are made by the same parties to one another.*
2. *Each offer made in ignorance of the offer made by the other.*
3. *The terms and conditions contained in both the offers are same.*

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

VI Counter offer:- when the offeree gives qualified acceptance of the offer subject to modifications and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer results in a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

VII Standing, open and continuous offer:- An offer if allowed to *remain open for acceptance over a period of time* is known as standing, open or continuous offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily, in such

case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

7.2 *Lapse of an Offer (Section 6):-*

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in **Section 6** of the Indian Contract Act:

1. **By communication of notice of revocation:** An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes bound by it (**Section 5**). Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.

Harris Vs. Nikerson: An auctioneer in a newspaper published that a sale of office furniture would be held. A broker came from a distant place to attend that auction, but all the furniture was withdrawn. The broker there upon sued auctioneer for his loss of time and expenses.

Judgment: A declaration of intention to do a thing did not create a binding contract with those who acted upon it. So the broker could not recover.

2. **By lapse of time:** Where time is fixed for acceptance of the offer, and it is not accepted within the fixed time, the offer comes to an end automatically on the expiry of such fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

Ramsgate Victoria Hotel Company Vs. Monteflore: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. he refused to take the shares.

Judgment: 'M' was entitled to refuse as his offer lapsed upon expiry of a reasonable period.

3. **By failure to accept condition precedent:** Where, the offer requires that some condition must be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. **By the death or insanity of the offeror:** Where, the offeror dies or becomes insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. Upon the death of the offeree, before acceptance, the offer also comes to an end by operation of law.

5. **By counter – offer by the offeree:** Where a counter – offer is made by the offeree then the original offer automatically comes to an end, as the counter – offer amounts to rejection of the original offer.

Hyde Vs. Wrench: W' offered to sell a farm to 'H' for L 1000 (pounds). 'H' offered 950 (pounds) 'W' refused the offer. Subsequently, 'H' offered to purchase the farm for L 1000 (pounds).

Judgment: There was no contract as 'H' by offering L 950 (ponds) had rejected the original offer. Because the counter offer to a proposal amounts to its rejection.

6. **By not accepting the offer, according to the prescribed or usual mode:** Where some manner of acceptance is prescribed in the offer, the offeror can

revoke the offer if it is not accepted according to the prescribed manner.

7. **By rejection of offer by the offeree:** Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.
8. **By change in law:** Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

8. **Acceptance:-**

Acceptance 2(b):- **When the person to whom the proposal is made, signifies his assent thereto , the proposal is said to be accepted.**

8.1 **Legal Rules of Acceptance:**

1. **Acceptance must be absolute and unqualified**

Example: A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not acceptance as it is in variation to the terms of the offer.

2. **Acceptance must be communicated:**

Mere mental acceptance is no acceptance. However, there is no requirement of communication of acceptance of general offer.

Example:

The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words "Approved" and put the same in the drawer of his table and forgot about it. Held, there was no contract between the parties as the acceptance was not communicated. It may

however, be pointed out that the Court construed conduct of the party as an act of acceptance as the railway company was accepting the supplies of coal from time to time.

3. ***Manner of acceptance***

General rule says that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he is deemed to have accepted the offer.

Example: A offers B and indicates that the acceptance be given by telegram. B sends his acceptance by ordinary post. It is a valid acceptance unless A insists for acceptance in the prescribed manner.

5. ***Acceptance of offer must be made by offeror.***

Example : A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected A's action and held that there was no notice of acceptance. "Information by unauthorized person is as insufficient as overhearing from behind the door".

6. ***Acceptance must be communicated to offeror***

An offer can be accepted only by the person (or) persons to whom it is made. It cannot be accepted by another person without the consent of the offeror.

Boulton Vs. Jones: Boulton bought a hose-pipe business from Brocklehurst. Jones, to whom Brocklehurst owed a debt, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not addressed to him. Jones refused to pay Boulton for the goods

because he, by entering into a contract with Brocklehurst, intended to set off his debt against Brocklehurst.

Judgment: The offer was made to Brocklehurst and it was not in the power of Boulton to step in and accept. Therefore there was no contract.

7. ***Time limit for acceptance***

- If the offer prescribes the time limit, it must be accepted within specified time.
- If the offer does not prescribe the time limit, it must be accepted within reasonable time.

Example : A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the reasonable time for acceptance had elapsed.

Ramsgate Victoria Hotel Company Vs. Monteflore: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. he refused to take shares.

Judgment: 'M' was entitled to refuse his offer, the same having lapsed after expiry of a reasonable period within which it could be accepted.

8. **Acceptance of offer may be express (by words spoken or written); or implied (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer).**

Carlill Vs. Carbolic Smoke Company: A company advertised in several newspapers is that a reward of 100 pounds would be given to any person who contracted influenza after using the smoke ball according to the printed directions. Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.

Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

9. ***Mere silence is not acceptance of the offer***

Example: A offers to B to buy his house for Rs.5 lakhs and writes “If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. B does not respond. Here, no contract is concluded between A and B.

10. ***However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.***

- Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.
- When there is custom or usage of trade which specified that silence shall amount to acceptance.

11. ***Acceptance subject to the contract is no acceptance***

If the acceptance has been given ‘subject to the contract’ or subject to approval by certain persons, it has no effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

8.1 Legal Rules of Acceptance:

1. ***In case of acceptance by post***

Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.

2. ***Delayed or no delivery of letter***

Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.

3. **Acceptance by telephone, telex, e-mail or fax**

If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it is complete when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives or hears the acceptance.

4. **The place of Contract**

In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received.

5. **The time of Contract**

In case of acceptance by post, the time of posting the letter of acceptance is the time of contract. But in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.

6. **Communication of acceptance in case of an agent.**

Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a case, if the agent fails to convey the acceptance received from offeree, still the principal is bound by the acceptance.

7. **Acceptance on loudspeakers**

Acceptance given on loudspeaker is not a valid acceptance.

Particulars	Offer	Acceptance
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<p>When Communication is complete [Sec.4]</p>	<ul style="list-style-type: none"> • Communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. • Example : A proposes by letter, to sell his Tonga to B at Rs.10,000. Communication of the proposal is complete when B receives the letter. 	<ul style="list-style-type: none"> • As against the offerer/ Proposer: When it is put in a course of transmission to him so as to be out of the power of the Acceptor. • As against the Offeree/Acceptor: When it comes to the knowledge of the Proposer. (See separate question above)
<p>When Revocation can be made [Sec.5]</p>	<ul style="list-style-type: none"> • Offer/proposal may be revoked at any time before the communication of its acceptance is complete, as against the proposer, but not afterwards. • Example: U sends a letter to Y proposing to sell his land. Y sends his acceptance by post. U can revoke the offer at any time before or at the moment when Y posts his letter of acceptance, but not afterwards. 	<ul style="list-style-type: none"> • Acceptance may be revoked at any time before the communication of acceptor, but not afterwards. • Example: T sends to S by post, an offer to sell his cycle. S sends his acceptance via post, S could revoke his acceptance, upto any time before or at the moment when he posts his letter of acceptance, but not afterwards.

<p>When communication of revocation is complete [Sec.4]</p>	<ul style="list-style-type: none"> • As against the offeror: When it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it. • Example : S proposes to H by letter. H sends his acceptance by letter. Suddenly, S sends a telegram revoking his offer. Revocation is complete as against S when the telegram is dispatched; H's revocation of acceptance is complete when S receives such telegram. 	<ul style="list-style-type: none"> • As against the Offeree: When it comes to his knowledge. • Example: Communication of revocation is complete only when H receives the telegram. • When H revokes his acceptance, it is complete when he dispatches the telegram.
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- *Accepted is lighted match, while offer is a train of gun powder.*

- *Sir willian Anson.*

MODULE 5.17

NATURE AND FORMATION OF CONTRACT/E-CONTRACT

TOPIC – I

REVISION NOTES

1. **Indian Contract Act, 1872:**

- Prior to this English law of contract was followed in India.
- It has XI chapters.
- Law of contract creates rights *in personem* and not *in rem*.
- The Indian Contract Act consists of the following two parts:
 - (i) General principles of the Law of Contract.
 - (ii) Special kinds of contracts.
- The general principals of the Law of Contract are contained in **Sections 1 to 75** of the Indian Contract Act. These principles apply to all kinds of contracts irrespective of their nature.
- Special contracts are contained in **Sections 124 to 238** of the Indian Contract Act. These special contracts are Indemnity, Guarantee, Bailment, pledge and Agency.

2. **Definition of a Contract:**

- **Pollock:** Every agreement and promise enforceable at law is a contract.
- **Halsbury:** A Contract is an agreement between two or more persons which is

intended to be enforceable at law and is concluded by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act.

- **Salmond:** A contract is an agreement creating and defining obligations between the parties.

3. **Important Definitions:**

- Offer (i.e. Proposal) S. 2(a)
- Acceptance S. 2(b)
- Promise S. 2(b)
- Promisor and promisee S. 2(c)
- Consideration S. 2(d)
- Agreement S. 2(e)
- Contract S. 2(h)rfG
- Void agreement S. 2(g)
- Voidable contract S. 2(i)
- Void contract

4. **Essentials of a Valid Contract:**

Section 10



All agreements are contracts, if they are made

- **by free consent of the parties, competent to contract,**
- **for a lawful consideration and**
- **with a lawful object, and**
- **not hereby expressly declared to be void.**

Formation of a Valid Contract



Offer + acceptance = Promise

+



- Proper offer and proper acceptance with intention to create legal relationship:

(i) In case of social agreement there is no intention to create legal relationship and therefore there is no contract -

Balfour v. Balfour

(ii) In case of **commercial agreements**, the law presumes that the parties had the intention to create legal relations.

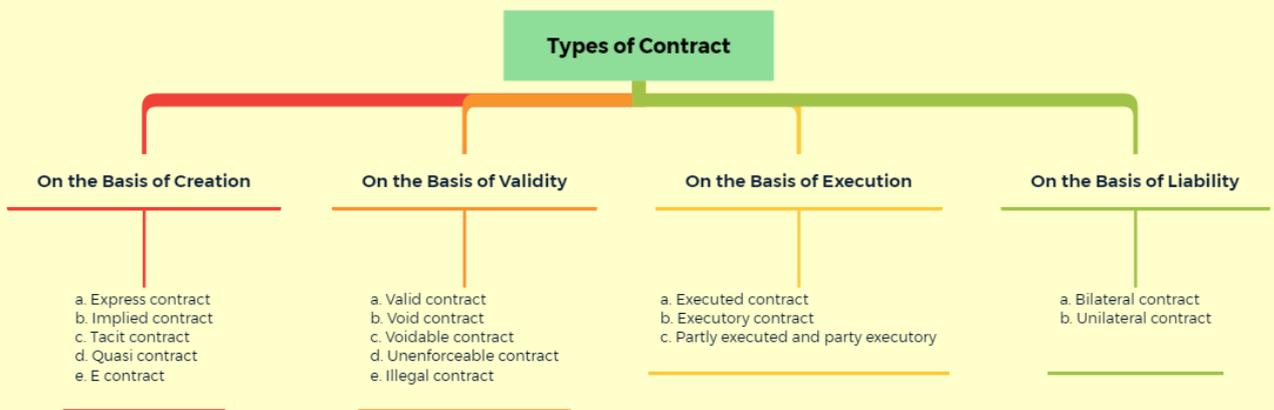
(iii) An agreement of a **purely domestic or social nature** is not a contract.

- Lawful consideration
- Capacity: Section 11
- Free consent: Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.
- Lawful object
- Possibility of performance
- The terms of the agreements are certain or are capable of being made certain
- Not declared Void
- Necessary legal formalities

5. Agreement and Contract:

Basis	Contract	Agreement
8. Section : 9. Definition :	Sec. 2(h) A contract is an agreement enforceable by law.	Sec. 2(e) Every promise or every set of promises forming consideration for each other is an agreement.
10. Enforceability :	Every contract is enforceable	Every promise is not enforceable.
11. Interrelationship	A contract includes an agreement.	An agreement does not include a contract.
12. Scope :	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.
13. Validity :	Only legal agreements are called contracts.	An agreement may be both legal and illegal.
14. Legal Obligation	Every contract contains a legal obligation.	It is not necessary for every agreement to have legal obligation.

6. Types of Contract:



upsclawoptional.in

Difference Between Void and Voidable Contract

Matter	Void contract	Voidable contract
Definition	It means contract which ceases to be enforceable.	It means an agreement enforceable in law by one or more parties.
Nature	Valid when made subsequently becomes unenforceable.	It remains voidable until cancelled by party.
Rights or remedy	No legal remedy.	Aggrieved party has remedy to cancel the contract.
Performance of contract	Party can't demand performance of contract	If aggrieved party does not cancel it within reasonable time, performance can be demanded.
Reason	Due to change in law or circumstances	If consent is not obtained freely.
Damages	Not available	Can demand in certain cases.

Difference between Void and illegal Agreement

Matter	Void agreement	Illegal agreement
What	Void agreement is not prohibited by law.	It is prohibited by law.
Effect on collateral transaction	Enforced	Not enforced.
Punishment	No	Yes
Void ab initio	May not be void ab initio	Always void ab initio

7. **Offer:**

- Offer (i.e. Proposal) [S. 2(a)]
 - Section 3.
-
- **Legal Rules as to valid offer:-**

1. Offer must be communicated to the offeree:

Lalman Shukla v. Gauri Datt

2. The offer must be certain, definite and not vague, ambiguous and uncertain.
3. The offer must be capable of creating legal relation. A social invitation does not create legal relation.
4. Offer may be express and implied (Section 9)
5. Communication of complete offer (Section 4)
6. Counter offer – A counter offer amounts to rejection of the original offer
7. Cross offer does not conclude a contract.
8. An offer must not thrust the burden of acceptance on the offeree.
9. Offer must be distinguished from invitation to offer.

Pharmaceutical society of Great Britain Vs Boots Cash Chemists

10. Offeror should have an intention to obtain the consent of the offeree.
11. An answer to a question is not an offer.

HARVEY Vs FACEY

7.1 Kinds of Offer:

- I. Express offer
- II. Implied offer
- III. Specific
- IV. General offer

Carlill v Carbolic Smoke Ball Co

- V. Cross offer

- VI Counter offer
- VII Standing, open and continuous offer

7.2 Lapse of an Offer (Section 6):-

1. By communication of notice of revocation

Harris Vs. Nikerson

2. By lapse of time

Ramsgate Victoria Hotel Company Vs. Monteflore

3. By failure to accept condition precedent

4. By the death or insanity of the offeror

5. By counter – offer by the offeree

Hyde Vs. Wrench

6. By not accepting the offer, according to the prescribed or usual mode

7. By rejection of offer by the offeree

8. By change in law

8. Acceptance:-

Section 2(b)

8.1 Legal Rules of Acceptance:

1. Acceptance must be absolute and unqualified
2. Acceptance must be communicated
3. Manner of acceptance
4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within

reasonable time.

5. Acceptance of offer must be made by offeror.
6. Acceptance must be communicated to offeror:

Boulton Vs. Jones

7. Time limit for acceptance

Ramsgate Victoria Hotel Company Vs. Monteflore

8. Acceptance of offer may be express (by words spoken or written); or implied (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)

Carlill Vs. Carbolic Smoke Company

9. Mere silence is not acceptance of the offer
10. However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.
11. Acceptance subject to the contract is no acceptance

8.1 Legal Rules of Acceptance:

1. In case of acceptance by post
2. Delayed or no delivery of letter
3. Acceptance by telephone, telex, e-mail or fax
4. The place of Contract
5. The time of Contract
6. Communication of acceptance in case of an agent.
7. Acceptance on loudspeakers