# GOVERNMENT ARTS AND SCIENCE COLLEGE (WOMENS)

**SATHANKULAM**
**III 'B.Com'**
**BUSINESS LAW**
**Study Material**

**Prepared By**
**Dr. R. MERCY PAVUN MALAR**
**Assistant Professor**
**Department of Commerce**

## CONTRACT – INTRODUCTION

***Meaning of Law :***

Law means a 'set of rules'. Broadly speaking, it may be defined as the rules of conduct recognized and enforced by the State to control and regulate the conduct of people,

"Law is the body of principles recognized and applied by the State in the administration of justice" – Solmond.

***Contract :***

The word "Contract" is derived from the Latin word "Contractum" which means "drawn together". It is a legally binding agreement.

A contract is an agreement between two or more persons, creating legal rights and legal obligations. Solmond defines it as "an agreement creating and defining obligations between the parties"

Sec. 2(h) 'contract as an agreement enforceable by law'.

A contract must have the following two elements:

i) An agreement and

ii) Enforceability of an agreement.

That is, Contract = An agreement + Enforceability

An agreement is otherwise called as promise. An agreement comes into existence when an offer is accepted by the offeree.

***Essentials of a valid contract:***

Following are the important essentials of a valid contract:

1. Minimum two parties.
2. Legal Relationships
3. Lawful consideration.
4. Competence of parties.
5. Free consent.
6. Lawful objects.
7. Possibility of Performance.
8. Agreement not declared void.
9. Certainty.
10. Legal Formalities.
11. Terms of agreement must be clear
12. There must be offer and acceptance.

***1. Minimum two parties :***

There must be two parties to make a valid contract. One party making the offer and is called an offeror, the other party accepting the offer and is called an offeree or acceptor.

***2. Legal Relationship :***

When two parties enter into an agreement their intention must be to create legal relationship between them. If there is no intention to create legal relationship, there can be no contract between the parties.

***3. Lawful consideration :***

Every agreement must be supported by lawful consideration. Consideration means “something in return”. Consideration is the price paid by one for the promise of the other. Both the parties must get something in return for the promise. According to Section 23 of the Indian Contract Act 1872, “the consideration is considered lawful unless it is forbidden by law or fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy”.

***4. Competence of Parties (or) Capacity to contract :***

Capacity means competence of the parties to enter into a valid agreement. According to Section 10 of the Act, an agreement becomes a contract if it is entered between the parties who are competent to contract.

The parties to an agreement must have legal capacity to enter into an agreement, otherwise the contract is invalid. According to Sec. 11 of the Contract Act, every person is competent to contract who is

i) a major

ii) of sound mind and

iii) not disqualified by law to enter into a contract.

Flaw is capacity may arise to contract may arise from minority, lunacy, idiocy, drunkenness etc and status. If the party is incompetent, the agreement is void. Minors, lunatics, idiots, drunkards, foreign sovereigns, alien enemies, convicts and insolvents are incompetent to contract. Persons disqualified by any law cannot be sued.

***5. Free consent :***

The next essential element of a valid contract is free consent. Free consent means consent given by the free exercise of one’s will after studying the terms and conditions of the agreement.

i) Coercion

ii) Fraud

iii) Misrepresentation.

iv) Undue influence

v) Mistake

***6. Lawful object:***

The object of the agreement must be lawful. It must not be

i) Illegal

ii) Immoral

iii) Fraudulent

iv) Opposed to public policy.

If an agreement suffers from any legal flaw, it will not be enforceable by law. If the object is unlawful then the agreement is void and cannot be enforceable by law.

***7. Certainty and Possibility of Performance :***

Section 29 specifies that the agreements. in which the meaning is not certain or is not capable of being made certain. are void. The agreement must be capable of being performed.

***8. Agreement not declared void :***

Certain agreements have been declared to be void by the law of the county as these agreements are considered not to be in the interest, of the public.

***9. Certainty :***

The terms of the agreement must be certain. If they are not certain, there is really no agreement in law.

**Case Law : Scammel Vs Quston**

***10. Legal formalities :***

Some agreements must fulfill some other legal formalities in addition to the essential characteristics of a contract. The legal formalities may differ from contract to contract.

i) A contract must be in writing.

ii) A contract of mortgage is to be registered.

iii) In some other kinds of contracts, contract must be attested by minimum two witnesses.

iv) A promise to pay a time barred debt is to be in writing.

v) Contract for the sale of immovable property must be attested by two witnesses.

Registration is required in case of documents fall within the scope of Sec. 17 of Registration Act.

***11. Terms of agreement must be clear :***

The terms of agreement must be clear by themselves or must be capable of being made clear.

**I. On the basis of modes of creation or formation :**

On the basis of mode of creation, contracts may be classified into three kinds:

1. Express contract
2. Implied contract
3. Quasi contract
4. E commerce contract
5. Tacit contract

***1. Express contract :***

A contract is said to be express when it is entered into between two parties by words written or spoken. A promise is said to be an express promise, when the offer or acceptance of any promise is made in words.

***2. Implied contract :***

Implied contracts are not made in words. Such contracts came into existence only by the act or conduct of the parties or course of dealings between them.

***3. Quasi contracts :***

Quasi contracts are not contracts at all as there is no intention of the parties to enter into a contract. They are created by law. Quasi contracts are implied by law.

***4. E Commerce Contract :***

E Commerce contract is one which is entered into between two parties via Internet. E commerce contract parties via Internet. Ecommerce contract expands the area of operation.

***5. Tacit Contract :***

Tacit Contract is a contract which is inferred from the conduct of the parties.

**II. On the basis of validity :**

According to their enforceable or legal validity, contract may be classified into five groups :

1. Valid contracts
2. Void contracts

3. Voidable contracts
4. Illegal contracts
5. Unenforceable contracts

***1. Valid contracts :***

A contract is based on agreement. An agreement, which is enforceable by law is said to be a valid contract. An agreement which satisfies all the essential elements of a contract and which is enforceable through court is called valid contracts.

***2. Void contracts :***

An agreement which is not enforceable by law is a void contract. It has no legal effect. As per sec 2(j) a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

***3. Voidable contract :***

As per sec 2(i) of the Indian Contract Act, 1872 an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other there is a voidable contract. Contracts brought about by coercion, undue influence, fraud and misrepresentation are voidable contracts.

***4. Illegal contracts :***

Contracts which are opposed to statutory laws or public morals are called illegal contracts. They are not enforceable by law.

***5. Unenforceable contract :***

Unenforceable contracts are those contracts which cannot be enforced in a Court of law on account of some technical defects.

**Example :** 1. A time barred debt.

2. An insufficiently stamped promissory note.

3. Absence of written form

**III. On the basis of Execution or performance :**

On the basis of execution, contracts are classified into five groups.

1. Executed contract
2. Executory contract
3. Unilateral contract
4. Bilateral contract
5. Unenforceable contract

***1. Executed contract :***

Executed means that which is done. It is a contract in which both the parties have performed their respective obligations in full. For example, in case of cash sale, the contract is executed at once.

***2. Executory contract :***

Executory means that which remains to be carried into effect. Where one or both the parties of the contract have still to perform certain things in future or something remains to be done under the terms of the contract, the contract may be termed as Executory contract.

***3. Unilateral contracts :***

A contract is said to be unilateral when one of the parties has performed his promise either at the time of or before the contract comes into existence. It is also known as **one sided contract.**

***4. Bilateral contracts :***

In a bilateral contract, obligations of both the parties remain to be executed at the time of formation of the contract. They are also known as executory contracts.

**Quasi Contract :**

The term Quasi means as ‘if’. The term Quasi contract has been defined as a situation in which law imposes upon one person, on grounds of natural justice, an obligation similar to that which arises from a true contract, although no contract, express or implied has infact has been entered into by them.

A Quasi contract is not a contract at all because one or the other esentilas for the formation of a contract are absent.

**Offer – Meaning :**

An offer is the starting point in making of an agreement. An offer is a proposal by one person to enter into a contract with another. An offer is a proposal made by one party to another to enter into a legelly binding agreement with him.

**Definition :**

Sec. 2(a) defines the term proposal as ‘when one person signifies to another his willingness to do or to abstain from doing any thing with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal’.

Kinds of offers :

Offer may be classified into four kinds.

1. Express offer

2. Implied offer
3. Specific offer
4. General offer

***1. Express offer :***

When the terms of an offer are expressed either orally or in writing the offer is called express offer. If it is in spoken words, it is called as oral offer. If it is in writing, it is called as written offer.

***2. Implied offer :***

When the offer is derived from the conduct of the parties and there is no usage of words. It is called as implied offer. That is, it is an offer which is made otherwise, than in words.

***3. Specific offer :***

An offer is specific if it is made to some specific individual or individuals. It is also known as particular offer. It is to be accepted only by that individual or group of individuals to whom it has been made.

***4. General offer :***

If an offer is made to no one in particular, but to the world at large, it is called general offer. A general offer may be accepted by any person. It is also called as offers at large.

**Case Law : Carlill Vs. Carbolic Smoke Ball Company.**

**Legal rules as to a valid offer :**

An offer, which fulfills the following conditions is considered as a valid offer. Following are the legal rules as to a valid offer:

1) Intention to create legal relationship.

2) The terms of offer should be definite and certain.
3) Offer may be specific or General.
4) Offer may be express or implied.
5) Offer must be communicated.
6) Offer may be positive or Nagative.
7) Offer must be made with a view to obtain the assent.
8) An invitation to offer is not an offer.
9) Continuing in nature – Standing offer
10) Tender

***1. Intention to create legal relationship:***

The intention of person making an offer must be to create relationship. If the offer is not intended to give rise to legal obligations, it is not an offer in the eyes of law.

***2. The terms of the offer must be definite and certain :***

The terms of an offer must be definite and certain. It must have certain meaning. The offeror is free to put any condition in his offer but they should be certain and legal.

***3. Offer may be specific or General :***

If an offer is made to no one in particular, but to the world at large, it is called general offer. A general offer may be accepted by any person. It is also called as offers at large.

***4. Offer may be express or implied :***

When the terms of an offer are expressed either orally or in writing the offer is called express offer. If it is in spoken words, it is called as oral offer. If it is in writing, it is called as written offer.

When the offer is derived from the conduct of the parties and there is no usage of words. It is called as implied offer.

***5. Offer must be communicated :***

An offer is valid if it is communicated to the offeree. Therefore, an offer must be communicated to the offeree. As per Sec. 4 communication of an offer is complete only when it reaches the offeree. It may by communicated either orally or in writing.

***6. Offer may be positive or Negative :***

An offer may be positive, if it is for doing something. An offer may be negative if it is for abstaining from doing something. Example : If A offers to sell a car for Rs.1,00,000, it is a positive offer.

***7. Offer must be made with a view to obtain the assent of the other party :***

An offer should be made with a view to obtain the consent of the offeree. If such intention is absent, it is not a valid offer. As soon as the offer is accepted, it becomes binding on the proposer.

An offer is a legal offer only if it is made an intention to get the consent of the offeree.

i) A mere statement of intention is not an offer.
ii) Quotation of prices or catalogues or prices marked on goods are not offers.

***8. An invitation in not an offer :***

The invitation to make an offer is not an offer. It is an open invitation to a particular person or to the general public to send their offer.