

# Meaning of Contract, Nature and Scope of Contract

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## What is the meaning of contract?

**Meaning of contract:** A contract means an agreement, which is enforceable by law. An agreement consists of reciprocal (mutual) promises between the two parties. In the case of contract each party is legally bound by the promise made by them.

**A contract or an obligation to promise may arise in the following ways:-**

- By Agreement and Contract
- By Standard Form Contract; and
- By Promissory Estoppel.

## What is an Agreement?

According to section 2(e) of the Act, every promise and every set of promises forming the consideration for each other is an agreement. In an agreement, there are promises from both the sides.

**For example:** – ‘A’ promises to deliver his watch to ‘B’, and in return ‘B’ promises to pay a sum of Rs. 2,000 to ‘A’. There is said to be an agreement between ‘A’ and ‘B’.

## What is the definition of contract?

Contract is an agreement or set of promises giving rise to obligations that can be enforced or recognized by law.

According to [section 2\(h\) of the Indian Contract Act, 1872](#), contract is an agreement enforceable by law.

An agreement becomes a contract when it satisfies all the essentials of a valid contract mentioned in Section 10.

## How a Contract is formed?

[Offer](#) + [acceptance](#) = Promise

Promise + consideration = Agreement

Agreement + enforceable by law = Contract

## What is the nature of contract?

**Essentials of a valid contract:**

1. **Two Parties:** – A valid contract must include at least two parties identified by the contract. One of these parties will propose and the other party will eventually accept it. Both parties should have legal existence, e.g. must be companies, schools, organizations, etc. or natural persons.
2. **Agreement:** – A contract is initially an agreement when the person to whom the offer is made indicates his acceptance to it. There is an agreement that is the foundation of a contract.
3. **Free Consent:** – The parties must agree on the same thing in the same sense and at the same time. An agreement without consent is not legally binding. The parties are called to consent when they agree on the same thing in the same sense; moreover, the parties to the contract must have free and genuine consent to constitute a valid contract i.e., not to be obtained by misrepresentation, fraud, undue influence or mistake. If the agreement is not free, the contract is void.

4. **Intention to create a legal relationship**: – There should be an intention by both parties to form a legal relationship and to bind themselves legally as a result of such agreement. Thus, agreements of a social or domestic nature are not contracts, as the parties do not intend to have a legal relationship. **For Example**: – where two parties agree to move together, a legal contract will not amount.
5. **Contractual capacity**: – The parties to the agreement must be able to enter into a valid contract. According to the Act, every person is capable of entering into a agreement, if he or she: –
  - is of the age of majority;
  - is of sound mind; and
  - is not disqualified from contracting by any law.
6. **Consideration**: – An agreement by an incompetent person is not valid. A valid contract should be supported by consideration. The idea means “something in return”. It can be cash, kind or an act. It can be past, present or future. The idea must be genuine and valid.
7. **No Unlawful Considerations**: – According to the Act, the consideration of an agreement is called unlawful if: –
  - it is prohibited by law,
  - it is of such a nature that, if allowed, it will defeat the provisions of any law,
  - it is fraudulent,
  - it includes or means injury to the property of the person/other, and
  - the court considers it immoral.
8. **Lawful Consideration**: – Something in return is a consideration. In each contract, the agreement must be supported by consideration. It must be valid and genuine.
9. **Lawful Object**: – Section 23 of the Indian Contract Act, 1872, The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

## **Scope of Contract**

The scope of the contract defines all aspects of the document. Contracts have different forms, and the amount involved ranges from small to large amounts. Some contracts last for years while others have shorter deadlines. The materials found in contracts also vary depending on their purpose.

There are many aspects of commercial law, and sometimes it is difficult to define all areas. Typically, commercial law practice involves human research as it relates to, but is not limited to, contracts, sale of goods, taxation, insurance, and rental.

**There is also expertise in contracts, such as**: –

- Membership for a club or
- Domestic or marriage contract
- Unformed contract
- Fully executed contract

## **What is a Void Agreement?**

According to **Section 2(g), of the Indian Contract Act, 1872**, an agreement which is not enforceable by law is known as void agreement.

**For example**: – An agreement by a minor is considered as void agreement.

Agreements without consideration are also void. An agreement which impose any restrictions on marriage and an agreement that impose any restrictions on trade.

## **What is a Voidable Contract?**

**According to section 2(i), of the Indian Contract Act, 1872**, an agreement which is not enforceable by law at the option of one party and not at the option of other then that agreement is voidable.

If the agreement is made without the free consent of one party then that person can avoid the contract. If such a party does not avoid the contract, then the contract remains valid, but if party prefers to avoid the contract, then the contract will become void.

For example: – If the consent is obtained by following ways the contract will be considered as voidable at the party whose consent is obtained so by Coercion, Fraud, Undue influence or Misrepresentation

## **What is Void Contract?**

**Section 2 (j) of the Indian Contract Act, 1872** defines Void Contract as a contract that no longer remains a valid contract and cannot be enforced in the court of law. Such contracts do not have any legal effect and cannot be enforced by either party.

Void contracts are valid, when they are entered into, as they conform to all the conditions of enforceability, laid down under section 10 of the act and are binding on the parties, but later on becomes void because of impossibility to perform. Such contracts becomes unenforceable in the eyes of law due to:

- Supervening impossibility
- Change of law
- Subsequent Illegality
- Repudiation of voidable contract
- Contingent contract etc.

## **What are Void and Voidable Contracts?**

The main difference between the two contracts is that a void contract is cannot be performed under the law but a voidable contract can still be performed, until it is avoided by one party.

Voidable contract is valid until it has been avoided, but becomes void only if and when it is avoided.

## **Key Differences Between Void Agreement and Void Contract**

The following points are the difference between void agreement and void contract is concerned:

1. A void agreement is one, which according to law is neither enforceable nor it creates any legal consequences. The void contract, on the other hand, is a contract which is valid at the time of formation but becomes unenforceable, due to impossibility or illegality.
2. A void agreement is void since it has been created. As against this, a void contract is valid at the time of creation but later on becomes void.

3. A void agreement is never valid, whereas a void contract is a valid contract, till it does not lack enforceability.
4. A void agreement is void due to the absence of one or more necessary elements that result in a contract. On the contrary, a void contract is one that becomes void due to the impossibility of performance.
5. The void agreement does not satisfy the prerequisites of a valid contract, and because of this, it is considered as void. Conversely, the void contract is one that fulfils all the requirements of a valid contract, but cannot be enforced due to unexpected circumstances, thus becomes void.
6. Restitution or restoration is not granted in the case of void agreement, although in certain circumstances, restitution is permitted on equitable grounds. On the contrary, restitution is granted to the concerned party when the valid contract, eventually becomes void.

## **What are Illegal agreements?**

There are certain agreements which are illegal in the sense that law prohibits the very act, doing of which is considered as illegal.

For example:

- an agreement to commit a crime or a tort.
- an agreement to defraud public income.

Such an agreement are opposed to public policy. And the law prohibits the making of such agreements. An illegal agreement may be distinguished from a mere “void” agreement which may not be opposed to public policy.

For example: An agreement to do an impossible act is void which is not opposed to public policy. An illegal agreement is one which is not permissible by law. An illegal agreement is void since very beginning.

## **Case laws**

### **1. B.P. Refinery (Westernport) Pvt. Ltd. v. Shire of Hastings**

In this case court laid down five conditions which are to be satisfied for an implied terms of contract. These are:

- Competency of the parties
- Consensus
- Lawful Consideration
- Lawful object, and
- Certainty