

Essentials of a Contract

The enthusiasm and the support on the first part of “The Influencer Series” has left us overwhelmed, hence here’s part 2 to the same series, this time let’s discuss what makes for a valid contract. As mentioned in the previous blog a contract in a nutshell is nothing but an agreement between two parties creating promises to be performed by such parties becomes enforceable by law. The law governing contracts in India is Indian Contract Act, 1872. Sec. 2(h) of the Act defines contract as ‘an agreement enforceable by law’ along with that sec. 2(e) lays down the definition of an agreement, it states that ‘every promise and every set of promise forming consideration’ is considered to be an agreement.

In order to formulate an agreement, one of the party has to make a proposal and whereas the other party/parties has/have to accept it. Which essentially means that there must be a minimum of two parties to enter into an agreement. The acceptance of such offer/ proposal made is a promise and then that promise shall result in an agreement between the parties.

Contracts may be in any form either oral or written but if under any law, a certain contract must be in writing, then this legal formality must be necessarily fulfilled. It is very important for individuals and brands to note that all the contracts are agreement but not all the agreements are contract hence proving that the term “agreement” has a wider meaning under law. An agreement shall become a contract only when the essentials laid down under Section 10 of the Indian Contract Act 1872 are fulfilled.

ESSENTIALS OF CONTRACT:

The previous blog did definitely enumerate the said essentials but let’s discuss them each in a little detail:

- **Offer and Acceptance:**

Offer and Acceptance play an integral role in the process of formulating a contract. In order to create a legally binding contract one party must make the offer and the other party must give their approval to the offer so made, thereby accepting it. Acceptance of offer results in promises that form agreement. The acceptance may be communicated either in an express or implied form. The offer so made must express the party’s

willingness to do or to restrain from doing something in order to obtain other's approval/acceptance. The offer may be express or implied but the intention to form a contract has to exist and also it is important to note that such offer must be communicated.

- **Intention to create legal obligation:**

Under the statute there is no express provision that makes having an intention to create a legal obligation an essential although as the jurisprudence of contract law evolved in the form of judgements it has been settled that the intention to create a legal obligation is an essential.

- **Consideration:**

S.25 of the Indian Contract Act lays down that when an agreement is not supported by consideration, then the agreement becomes void. Consideration does not necessarily be monetary it could either be real or illusory. Although there are certain exceptions that are available wherein no consideration is required one example of such agreement is when an agreement made on account of love and affection between parties.

- **Parties are competent to Contract:**

Any person who has attained the age of 18 years, is of sane mind and is not disqualified by any law is said to be Competent to form a contract. A contract entered by a minor is void ab initio which means void from the beginning and therefore no obligation arises from it.

- **Free Consent:**

When 2 or more people agree on the same thing in the same sense that is deemed to be consent under law, although mere consent is not enough it has to be free consent. When we talk about free consent we mean that the consent that is not obtained by coercion, undue influence, fraud, misrepresentation and mistake.

- **Lawful Object:**

When we talk about unlawful object and/or consideration what we mean is that it is either forbidden by law or has the capacity to defeat the provisions of law. It also could mean either inflicting injury to a person's body or property or the court finds the object

of the contract as hostile to the public policy or the purpose of the contract in itself is fraudulent. For a valid contract, the object of the contract must be lawful and must not fall into any of these.

- **Must not be expressly void:**

The Indian Contract Act, 1872 has laid down a certain set of contracts to be void so if a contract has to be valid it must not be expressly declared void either by the Indian Contracts Act or any other law. An example of expressly declared void contract would be wagering contracts.

- **Contract must not be vague or uncertain:**

If the terms of the contract are understood in the way they were supposed to be understood and are not vague or ambiguous then it is a valid contract. This is essential so as to avoid future disputes in the parties.

So if all these essentials are simultaneously fulfilled then it shall construe a valid contract.



Warm regards,

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