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ESSENTIAL ELEMENT OF CONTRACT

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1. Introduction

In simple terms, a contract means when two parties put into writing an agreement which contains certain obligations (promises) which are to be performed by such parties, and when such written agreement becomes enforceable by law, it becomes a Contract. Enforceable by law means when the agreement has acquired the force of law only for those who are a party to it and a violation of those obligations would attract legal action, including repudiation of the entire contract.

Contract Act defines a Contract as “**An agreement which is enforceable by Law**”^[i]. An Agreement is a settlement between two parties, which contains obligations or promises which both parties need to fulfil. When such an agreement is made binding by Law it becomes a Contract.^[ii]

Therefore an agreement consists of **reciprocal Promises** which are to be performed by parties to the contract. Promises are reciprocal when both parties have to perform something for the other.

2. Definition

Pollock- “Every agreement and promise enforceable by law is a contract”.

Salmond- “A contract is an agreement creating and defining obligation between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of others”.

Anson- “The law of contract is that branch of law which determine the circumstances in which a promise shall be legally binding on the person making it’.

Now after examining the definitions of contract we can say that-

Contract = Agreement + Enforceability

Illustration: A contracted with B for purchase of 10 bags of cement of a certain quality, for Rs 1, 00,000. In this case, B’s promise is to provide A with 10 bags of cement of that quality only for which A has contracted and A’s promise is to duly pay B Rs.1, 00,000. In this case, both have to perform something for the other, thus it is a case of reciprocal promise.

Charity is not a case of reciprocal promise, because a person doing charity, does not expect anything in return.

Contracts in India is primarily governed by *INDIAN CONTRACT ACT, 1872* (“**Contract Act**”). It contains basic elements of a contract and several general rules which apply to contracts. It does not impose any positive duty on the parties rather, it states various formalities regarding contracts.

3. Essential of Valid Contract

Section 10 states conditions which are required for a contract to be valid.

- Offer:** Firstly, there must be an offer from either party, without an Offer a contract cannot arise. However, in some cases, this principle could not be applied. For instance, Mulla talks about a situation in which offer and acceptance could not be traced, for instance, a commercial agreement reached after multiple rounds of negotiations.^[iii]

- **Acceptance of the offer:** Secondly, the Offer must be accepted and accepted by the person to whom it was intended. So an offer by A to B has to be accepted by B only.

Acceptance in ad-idem: Thirdly, though acceptance is important, there must be “*Consensus ad-idem*”.

Consensus ad-idem means meeting of minds. It means that parties to the contract **should accept the terms of the contract in the “same sense”**. Thus parties to the contract must have the same understanding of the terms of the contract.

E.g. A contracted with B to purchase rice. Now A wanted a special type of rice, however, B thought of it to be normal rice. In this case, although there is a valid acceptance but there lacks meeting of minds between the parties; meeting of minds concerning the type or quality of rice.

Similarly, if A contracted with B to buy stocks. What A meant was stocks in a company, whereas B understood it to be his livestock (farm animals). In this case, the understanding was not in a similar sense.

- Parties must be **competent** to contract, under the laws they are subjected to i.e. they must be legally capable to contract
- **Consideration**, for the performance of promises there must be a consideration. something given for performance of promise from both parties to the contract.
the **objective and consideration** of the contract must be lawful.
- Further, **Free consent**, according to section 10 of contract act” *agreements are contracts if they are made by free consent*” It means that contract must be entered into out of parties own volition and without being forced, or deceived into.
- There must be an intention to enter into a legal relationship.
- **Certainty**, Contract must be certain and not ambiguous and vague. (Section 29)
- A contract **must not be expressly declared void**. (Section 10 of Contract Act)

1. Offer and acceptance

Offer and Acceptance form the basis of a contract. There can be no contract unless there is an offer and such an offer must be accepted. An Offer once accepted becomes a Promise. [iv].

Offer and Proposal are used simultaneously. Offer is used in British law, whereas Proposal is used in Indian law.

Offer

An offer is the first thing for the formation of a contract. A person making an offer is called an “offeror”/“proposer” and a person to whom the offer is made called an “Offeree” / “proposee”.

Chitty on Contracts, defines an offer as an expression of willingness to contract made with an intention that is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.

According to **section 2 (a)** of the Contract act, an offer/proposal is:

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.”

An offer simply means willingness, to do something (a positive act) or to not do something (a negative act). It must be noted that if an offer is not made, to get the acceptance of the other party, then it cannot be construed as an offer under the Contract Act. An offer must be made with the object of getting a favourable response from the intended acceptor. Thus, there may be ‘**positive**’ or ‘**negative**’ acts which the proposer may be willing to do.

Pointers on Offer

1. Offer must be communicated to the offeree. Mode of communication could be any but should be reasonable. An offer must be clear, specific and capable of being understood.
2. An offer should be lawful and not to do something illegal.

3. Offer can be express or implied^[v]. An express offer is one which is made in words, whereas an implied offer is inferred from the conduct of the offeror. In implied offer what matters is whether the offeror had any intention to make an offer or not.
4. An offer can be revoked at any time before it's acceptance by the intended acceptor.
5. An offer must be made with an intention to get acceptance thereto.

A promise consists of an offer and an acceptance of that offer. Once these two conditions are satisfied there is a promise and when both parties have to perform their respective promises, it becomes a situation of reciprocal promise.

Contract act defines an offeror as “Promisor” and the person who is accepting the offer as “Promisee”^[vi].

Offer and Invitation to offer

There is a difference between an offer and an invitation for others to make an offer. An invitation for others to make an offer is not an offer within the meaning of “Offer” under the Contract Act.

Sometimes a person may not make an offer to sell his goods, but makes a statement or conducts in such a way, to make other persons make an offer to him. This is an invitation to offer.

Such situations generally include advertisements, tenders, goods on display, Expression of Interest (EOIs) and auction. In case of an auction, when the auctioneer starts the bid by quoting a price, it is basically for others to make him an offer with the amount in addition to the minimum price, which the auctioneer had announced.

Similarly, when a company floats tender for construction of a building, it basically is asking others (builders) to make them an offer by quoting the price of construction.

This is because an offer is an offer to buy and there is no offer to sell.

Acceptance

As stated earlier, the second step in the formation of a contract is the acceptance of the offer.

Acceptance means when the person to whom the offer was made, has given his assent to such offer– Section 2(b) of Contract Act.

Once the offer is accepted and such acceptance has been communicated, to the offeror, the parties are bound by their respective promises. Just like an offer, even an acceptance can be revoked before the communication of acceptance reaches the offeror.^[viii]

The most important aspect of acceptance is that performance of an offer, in ignorance of the said offer is not an acceptance. Therefore an act done, amounting to acceptance, but acceptor being unaware of the offer, it is not a valid acceptance.

In the case of **Lalman Shukla v Gauri Dutt (1913)**^[viii], the defendant's boy went missing, accordingly, his servant-Plaintiff was sent to search for the boy, in the meantime a missing poster was released by the defendant, promising to pay a certain sum, to the person who finds the boy. The servant, unaware of such an offer succeeded to find the boy. Once he discovered that such an offer existed he asked for the consideration, but the same was denied. The court ruled in favour of the Defendant, by holding that Plaintiff was ignorant of offer and thus the performance of the promise does not amount to acceptance.

Pointers on acceptance

1. Acceptance should be absolute and unqualified (unconditional), and must be made whilst the offer is subsisting.
2. Acceptance to offer can be expressed or implied i.e. conducting in a manner which implies acceptance. Eg. If a watch is taken by someone to test it, before making the final purchase and the person pledges it, this amounts to an implied acceptance.
3. Acceptance must be communicated in a reasonable manner, or, if any, must be communicated through a reasonable medium, like telephone, mail, WhatsApp message, automatic reply to emails, if there are no exceptions
4. Traditionally acceptance was made through posts or letters. If an acceptance is intended to be made through a post, it will be deemed accepted when the letter of acceptance is posted and it is out of the reach of the acceptor.

5. Acceptance or communication of acceptance by a third person or a stranger is not a valid acceptance. If a contract mentions a specific person to whom acceptance is to be communicated, then acceptance shall be deemed to be valid if it is made to that person only.
6. Acceptance can be either in express words or can be implied i.e. by conducting in a reasonable manner which signifies acceptance. Eg. A offered B to sell his watch for Rs.1000 and lends it for his satisfaction. B, in turn, pledges it or further sells it. The act of B is conduct amounting to a valid acceptance.

Eg. In a contract of sale, acceptance is when an act by the purchaser does an act which is inconsistent with the ownership of the seller.

However with the advent of instant communication like telephone, offer is accepted, when the offeror hears the acceptance on his part.



2. Consideration

A Contract is formed when a person, A, makes an offer to another person, B. When such Offer is accepted by the other person, it becomes an agreement.

Consideration means value given for the performance of a promise. It need not necessarily be money, however, it should be something which has been agreed by the parties and has some value.

Usually, a contract without consideration is void, however, exceptions to this rule are specified in Section 25 of the Contract Act.

Consideration need not be adequate, however, it must have some value. Consideration for a promise includes either performance of an act or non-performance (abstinence) of a certain act. Performance of an act also includes the act of paying money.

Pointers on valid Consideration

1. It has to be At the desire of the promisor, which means that it should originate from the promisor out of his own accord and not at the instance of a third party. Accordingly, the performance of a legal duty is thus not a consideration.
2. Consideration could be:
 1. **Past Consideration**, when the promisor has received consideration before the date of the performance of the contract by any party. Eg. Advance money paid.
 2. **Present Consideration**, when consideration is provided immediately when the contract is made or executed. Thus it is also called “**executed consideration**.”
 3. **Future Consideration**, when consideration is paid after making of the contract. In consideration given for ‘construction contracts’-Constructed building is given after the execution of the contract.
3. It must not be illegal or void or impossible to perform.
4. Consideration is not void just because it is inadequate, provided it was at the desire of the promisor.
5. It must be real, not illusory. Consideration can be tangible or intangible-e.g. Performance of service like teaching, labour.

Privity of consideration

In India, consideration for a promise might flow from the promisee or any third person, who is not a party to the contract, as long as it is at the desire of the promisor.

According to **Section 2(d)**, “*when at the desire of the promisor, the promisee or any other person does something or abstains from doing something...*” Thus Indian law does not recognise privity of consideration, unlike under English Law, in **Twiddle v Atkinson**^[ix] it was held that consideration must flow from the promisee, even if it was for the benefit of the Plaintiff. English Law recognises privity of consideration.

3. Free consent

According to section 10 of the contract act, a contract is valid if it was entered into by free consent of the parties.

Section 14 of the contract act defined free consent as consent not given under coercion, undue influence, fraud, misrepresentation and mistake.

The general averment that consent was not free is not maintainable. It must be proved that consent was vitiated by any of the 5 elements mentioned in section 14. If consent manifests any of such elements then the contract is voidable at the option of the party whose consent was obtained.

A. Coercion (Section 15)

This section defines coercion as committing any act forbidden by The Indian Penal Code 1860 or unlawful detaining of property, or threatening to commit these acts. Coercion includes all such acts which are forbidden by the Indian Penal Code. It also includes threatening to commit any act forbidden by the code. Further section 15 says that it also includes unlawfully detaining the property of any person or threatening to detain such property, which will harm the other person. Such an act would amount to coercion only when the act has been committed with the intention to enter into an agreement.

Mere threat of bringing a criminal charge does not amount to coercion, as it is not per se forbidden by the Penal Code. But threat of bringing a false charge with the object of making another do a thing is coercion, because false charge is punishable under IPC.

Section 15 says that acts amounting to coercion must be to the prejudice of the other. It means that the act of coercion must be harmful to the other person, thus some legal injury must flow in order that a person may be said to have been prejudiced.

Illustration: A husband threatens his wife that he will commit suicide unless she releases a property. This amounts to coercion to the prejudice of the wife. Similarly threatening to divorce or to take care of wife and because of this she is made to sign a contract also amounts to coercion

B. Undue influence

According to **section 16** if consent has been obtained by a person who is in a dominant position compared to the other person, then it is undue influence. Thus one person must be able to

dominate the will of the other person for exercise of undue influence. Eg an employer-employee relationship, Doctor-patient relationship.

16(2) makes it clear that dominant position includes situations where a person holds real authority or apparent authority **i.e.** authority which is not expressly stated but can be easily inferred by a reasonable man eg. A principal has an apparent authority over his agent. Further persons in a fiduciary relationship, are also able to control the will of the other. (eg. doctor-patient relationship, Advocate-client relationship). Fiduciary relationships are those in which one person puts his confidence in the other person (who is in a dominating position).

16(3) says that if a contract is entered into between 2 parties and one of them is in a position to dominate the will of the other, and if he uses it to enter into the contract, then the contract will be unconscionable.

Further it says that the person who has the ability to dominate the will of the other party has to prove that the contract was not entered into under the influence of a dominant position. Thus it talks about on whom the burden of proof shall fall.

First subsection defines undue influence as the use by one party to the contract of his dominant position for obtaining an unfair advantage over the other party. **Sub section 2** describes the various situations in which one party to a contract can be said to dominate the will of another. **Sub-section 3** raises a rebuttable presumption that if such a contract takes place between parties in which one party can dominate the will of the other, then the contract shall be unconscionable.

C. Fraud

It means an act done to deceive the other person whether to get any advantage from the other person or because of ill-will or enmity towards the other party.

According to **section 17**, Fraud can be committed either by one contracting party or by a 3rd person with the connivance of any contracting party or by the agent of any contracting party.

What constitutes fraud has been defined from sub-section 2 to 5.

Section 17(1) states that fraud means any false factual statement and the person making it knows it is false. Thus deliberately making a false statement.

Eg. Making a statement that a product is of good quality, despite knowing that the product is of substandard quality. Similarly, if a person collects money from people on the pretext of investing in them, then it would be fraud if he does not invest in them.

Section 17(2) Fraud also includes concealing any fact by the party who is aware of the existence of such fact. Active concealment is different from mere silence when an effort is made to ensure that the other party is not able to know the truth.

Section 17(3) A promise made without the intention to perform it. Thus making false or empty promises.

Section 17(4) and (5) any other act done to deceive the other party and which the law specifically categorises as fraudulent.

The above acts will fall under the definition of Fraud if they are done intentionally. If the intention is missing, then it would be Misrepresentation.

D. Misrepresentation

When false statements are innocently made without the intention to deceive, then it amounts to misrepresentation. In misrepresentation, the person making the statement is innocent and has no intention to deceive the other party.

Even if there be undue influence or coercion etc., but if it does not appear that it was instrumental in making the promisor to do the act in question, the existence of coercion, etc, would be of no avail. This means that there must be a proximate and immediate connection between coercion etc. and consent which is not free. If a particular effect is said to be caused by a particular factor, then that effect must be a direct outcome of that particular cause.

Where the undue influence or coercion was not instrumental in making the party do the act in question, the existence of such factors was of no avail.^[x]

4. Intention to create legal relationship

Intention to create a legal relationship is one of the most fundamental aspects of the law. It is defined as the intention to enter a legally binding agreement or contract, it implies that the parties acknowledge and accept legal consequence in case of a breach of a contract. Intention to create legal relations consist of readiness of a party to accept the legal consequences of having entered into an agreement.

“Contracts must not be the sports of an idle hour, mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever”^[xi].

Further **Mulla** writes It is essential to the creation of a contract that both parties should agree to the same thing in the same sense. Thus if two persons enter into an apparent contract concerning a particular person or a ship, and it turns out that each of them, misled by a similarity of name, had a different person or ship in his mind, no contract would exist between them.^[xii]

5. Capacity

As per, **section 10** of the contract act, an agreement is a contract if it is made among other essentials, by free consent of parties who are **competent to contract**. People who are of the age of majority (i.e. above 18 years of age) and are of sane mind, and are not disqualified to contract by any law to which such person is subjected to, are competent to contract.^[xiii]

Thus a minor or a person with an unsound mind is not competent to contract or if such person has been barred from contraction by laws to which he is subjected. In such a case the contract is void.

Minor: A contract, entered into with or by a minor is void-ab-initio, i.e. no obligation shall arise since its inception.^[xiv]

A contract during the minority age of a party cannot be subsequently ratified after attaining the age of majority, this is because every contract needs separate consideration. However, if a contract is made for the benefit of a minor, then it is a valid contract.

Further, a minor can plead his minority as a defence in a suit, thus the rule of promissory estoppel is not applicable.

Doctrine of Estoppel: Estoppel is principle in law, which prevents a person from taking a different stance, from what he had when he had entered into a contract. Thus Promissory estoppel means when a party (A) made a promise to B that he will purchase tomatoes grown on his farm and B accordingly grows tomatoes on the belief that A will purchase them. Now promissory estoppel prevents A from denying that he did not promise any such thing, or in other words it prevents him from going back on his promise and not purchasing the tomatoes.

In the real world it applies to cases where the promisor attempts to evade any promise made by him. For instance in the above example, if A afterward came to B and said that he would not be able to purchase tomatoes because he got a better deal, then doctrine of promissory estoppel will stop him from taking this stance, because B has acted on A promise.

Elements of promissory estoppel, in Indian jurisprudence can be understood from apex court's ruling in **MP Sugar Mills Co. Ltd. V. State of Uttar Pradesh**. It said that where one party (promisor) in clear and unequivocal words or conduct, promised something which is either intended to create legal relations or may create legal relations in future and on that promise the other party has acted upon then the promise would be binding on the party making it and he would not be entitled to go back upon it..... and his would be so irrespective whether there is any pre-existing relationship between the parties or not.

So in case of a minor he cannot be forced to fulfil the promise, which he made when he was in minority and estoppel which usually prevents a promisor from going back on a promise will not apply. This is because a minor being incompetent to contract is incapable of incurring any liability.

Unsound Mind: According to **section 12** *a person is said to be of sound mind if at the time of the making of the contract he is capable of understanding it (understanding its terms) and is capable of forming a rational opinion about the effects thereof upon his interests(i.e. capable of understanding its consequences).*

A person need not be lunatic, he should be simply incapable of understanding the consequences of the contract. Thus a person who does not understand a particular trade or business, and despite that enters into a contract relating to the business, in such cases the court will hold the person to be of unsound mind.^[xv]

Disqualified to contract means a person not permitted to enter into a contract. Eg alien enemy, convicts of a crime, an insolvent person

All these conditions must be fulfilled concurrently.

6. Lawful object

According to section 10, consideration and object of the contract should be lawful and is an essential element of a contract.

Accordingly, Section 23 defines unlawful consideration. *Unlawful consideration and object is one which is either,*

1. *forbidden by law;*
2. *or is of such a nature, that if permitted, then it would defeat the provisions of law;*
3. *or the purpose of the contract is fraudulent;*
4. *or involves or implies giving injury or damage to someone or to someone's property;*
or
5. *or the court considers it as immoral or against public policy.*

If a contract shows any of these elements then it is unlawful and void u/s 23.

A contract is forbidden by law if it is either against any law, both substantive and procedural. E.g. An agreement to sell liquor without a licence, despite the law mandating to have a licence. In a particular case^[xvi], the Plaintiff owner of a bar and having the licence to sell liquor transferred the management of the bar and liquor sale to the defendant who had no such licence. The court held that transferring business and sale of liquor to a person without the license, was prohibited by law and thus cannot be enforced.

If a contract circumvents a provision of any law or defeats the purpose of the law (i.e it makes the provision irrelevant), it shall be deemed to defeat the provision of that law.

If the consideration or object of the contract is to commit fraud, the contract is void. Thus if the object of agreement is to deceive another person, the same is void.^[xvii]

Even if a part of a single consideration is unlawful, the agreement is void.^[xviii]

6. Not expressly declared void

Apart from conditions u/s 10, contract act specifically declared a few classes of contract as void. Section 26 to 30 deals with such contracts. There are those contracts which have been expressly declared void by the Contract Act.

a. Agreements restricting a marriage (section 26)

Section 26^[xix] expressly declare that an agreement which in effect prevents, either party to marry, then it is void. Section 26 does not differentiate between partial or absolute restraint, thus any agreement enabling the two is void.

In **Abhas Khan v. Nur Khan**, the bride married the groom, without the consent of the nearest male relative, in such cases under customary Muhammadan Law, the groom has to pay a certain amount to such relatives, called “**rogha**”. The Lahore high court held that enforcing such a custom is tantamount to saying that full age women cannot marry unless the groom pays a sum, which could be impossible to do so. It would be a custom in restraint of marriage.

There is only one exception to section 26 i.e. an agreement in restraint of marriage of a minor. This is because marriage with a minor is outrightly against Public policy and against section 10 of the Contract Act.

b. Agreements restricting trade (section 27)

Section 27 says that every agreement by which a person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

It must be noted that the contract will be void only to such extent by which a person is restrained. Thus the entire contract will not be declared void.

Eg. If a contract contains a “non-compete clause”, which restricts a person from carrying out a trade, then only the non-compete clause will be void and not the entire contract.

Just like the **doctrine of severability** in constitutional law, **Blue pencil doctrine** is used in contract law, to sever the void part from the rest of the agreement.

Further, it is immaterial if the restraint is reasonable or not, under Indian law a contract in restraint of trade or business will be lawful only if the restraint falls within a statutory or judicially created exception. This is in contrast to English law in which a reasonable restraint may be held valid. In the case of **Superintendence Company of India v. Krishan Murgai**^[xxi] apex court held that neither the test of reasonableness nor the principle that the restraint is partial or reasonable applies to a case governed by section 27 of the act unless it falls within the exception appended to the said section

c. Agreements in restraint of proceedings (section 28)

According to **Section 28(a)** an agreement by which any party to the contract is completely or absolutely restricted in enforcing their rights (i.e. their right to move courts), by usual legal proceedings in the ordinary tribunals, or which limits their time within which he may enforce his legal rights, is void.

Thus if a clause in a contract prevents a party to initiate a suit against the other party, then that agreement is void. However, an agreement which provides for arbitration when a dispute arises, then that clause is not void^[xxii]. Arbitration is a method of dispute resolution recognised by courts all over the world and helps in reducing the burden on courts. It is always advisable to have a comprehensive clause on arbitration, to resolve the dispute as it would be favourable to both parties.

An agreement which provides that a suit should be brought for the breach of any terms of the agreement within a time which is shorter than the period prescribed by the Limitation Act is void to that extent. Limitation act provides for 3 years to initiate a proceeding in case of a breach.

Section 28(b) talks about those contractual terms which although does not limit the period of limitation but extinguishes a person to claim a right or discharges any party from any liability if he does not do so within the time period mentioned in the contract. Such contracts are also void. This is because such a contract restricts a party from enforcing his right.

Eg. If a contract says that in case of a breach the party can ask for compensation only within 3 months from the date of the breach, and if such compensation is not asked within 3 months then the breaching party will not be liable to compensate. In this case, the contract discharges the breaching party from liability.

Such common clauses found in insurance policies provide that the insurer should not be liable for loss or damage after expiration of twelve months from the happening of loss or damage.

d. Agreements void due to uncertainty (section 29)

According to Section 29, a contract is said to be certain if its terms are capable of being understood, in the sense, in which it has been intended to be understood, by the promisor, and are not ambiguous and vague^[xxii]. It should be capable of being reasonably interpreted by the courts. Certainty is achieved, when intentions of the parties, safeguards, expectations, performances, are clear or can be objectively ascertained.

Illustration A: A agreeing to sell B a 100 tons of oil, but without being satisfied about the quality and kind of oil. Such an agreement is uncertain and void.

Illustration B: A entered into a contract with B for construction of the building and it was agreed that A would pay B the consideration within a month after the construction was completed. In this case, the deadline for payment is uncertain. It does not specify whether he has to pay before the last date of the month or on the last date of the month. Further, it is also uncertain, when will the said month start- will it start after the construction is complete or when the possession is transferred to A.

How is certainty ensured?

Certainty is ensured when the terms are not vague, ambiguous (capable of two meanings), incomplete and when there is consensus ad-idem along with an intention to create a legal relationship.

To create a binding contract the parties must express their agreement in sufficiently certain terms. What is needed is not absolute certainty but a “reasonable degree” of certainty. [Scammel v Ouston]

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This largely depends upon how the contract was drafted and the language used within the clauses of the contract. One way to ensure certainty is not to make a clause open-ended which could lead to different interpretations by different people.

The parties must make their own contract. The courts will not construct a contract for the parties when the terms are indefinite or unsettled. The court must first be satisfied that the parties have in fact concluded a contract, before seeking to make certain its terms.

It is not enough to show that the meaning of the contract is uncertain, it should further be shown that it is **incapable of being made certain**. Mere vagueness or uncertainty which can be removed by proper interpretation, cannot make a contract void^[xxiv].

An agreement which provides for the future fixation of price either by the parties themselves or by a third party is capable of being made certain and is not invalid under s 29. Such a contract is not void for uncertainty.^[xxv]

e. Agreement of wager are void(section 30)

According to **Section 30**, Wagering agreements are void and no suit shall be brought to recover anything that has been won by a wager. Further, no suit can be brought to make a person abide by the result of any game or any other uncertain event if such an event was the subject of a bet.

Meaning

According to Sir William Anson, a wager is “*a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event.*”

Thus a wagering agreement is one whose outcome is based on a future uncertain event and upon the happening of that uncertain event one party will gain and the other party will lose and the

loser shall pay the winner a sum of money or any other stake. Such parties shall not have any other interest other than winning or losing the bet.

It must be noted that an insurance contract is not a wagering contract, an insurance contract falls under contingent contracts.

7. Conclusion

These are the most basic and elementary principles of a contract, which are to be fulfilled, however there may be other conditions which may be laid down by a special law, or for specific types of contract. Eg. a contract dealing with IPR has to abide by rules laid down by the laws dealing with IPR.

References

^[i] Section 2(h) Indian Contract Act, 1872

^[ii] *“Every promise and every set of promise forming consideration for each other is an agreement”*- Section 2(e) of Contract Act

^[iii] Mulla, Indian Contract Act, 1872 Pg. no. 26

^[iv] Section 2(b), Indian Contract Act, 1872.

^[v] Section 9, Indian Contract Act, 1872

^[vi] Section 2(c), Indian Contract Act, 1872

^[vii] Section 5, Indian Contract Act, 1872

^[viii] (1913) 11 ALJ 489

^[ix] (1861) 1 B&S 393

[x] Mulla, Indian Contract Act, 1872 pg. 265

[xi] Darlymple v Darlymple (1811) 161 ER 665

[xii] Mulla, Indian Contract Act, 1872 pg. 253

[xiii] Section 11, Indian Contract Act, 1872

[xiv] Mohori Bibee v. Dharmodas Ghose (1903) 30 I.A. 114 (P.C)

[xv] Indar Singh v. Parmeshwardhari Singh A.I.R 1957 Pat. 498

[xvi] S.L. Fernandes v. V.M. Fernandes (1981)

[xvii] Section 17, India Contract Act, 1872

[xviii] Section 24, Indian Contract Act, 1872

[xix] Section 26: Agreements in restraint of marriage, void.

[xx] AIR 1980 SC 1717

[xxi] Explanation to Section 28

[xxii] Section 29, Indian Contract Act, 1872

[xxiii] Scammel v.Ouston (1941) AC 251

[xxiv] Mulla, Indian Contract Act 1872, pg 560

[xxv] A.I.R 2003 Del 15