

CLATAPULT

LEGAL REASONING

LAW OF CONTRACTS

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Foreword

THE IMPORTANCE OF contracts in a lawyer's life need not be emphasized. It's like how air is for homo sapiens. And well, even for homo sapiens, contracts occur everyday, day in and day out, just like breathing does.

Ah! We digressed, and even got the digression wrong. Time to get serious:

Yes, everyone deals with contracts nearly every day.

Yes, a large part of being a lawyer, involves dealing with contracts.

And yes, a law aspirant too is expected to know the logic behind the contracts.

In this module, we introduce you to contracts and the law behind it slowly and steadily. Mostly, in this module, we avoid questions. We want you to digest it (the contracts, the laws and the logic) as a whole first, and then deal with the questions that occur in the question booklet.

Why have we adopted this method? Because we do NOT want you to read each section with the aim to answer that tough CLAT question, but with the aim to understand the logic behind that aspect of contract law. And each section builds upon the previous one and vice versa. It works like a web, a puzzle, a gestalt.

Each thread of the web has dozens of interconnecting threads. The puzzle pieces fit into something meaningful...

And when you've read the 50 odd pages of this module, any contract law question will be a cincher.

NOTE: Legislations use tough language. So do judges. At times, these people use language that is just bad. At times, they distil the most complex of concepts really well. In case you find the language of some sections tough, breathe. Breathe again. And again. Deeply. Slowly. And again.

Read the sentence once more. Take out a dictionary and work your way through the clutter and into meaning. Through bad and into distilled wisdom.

Tanuj Kalia

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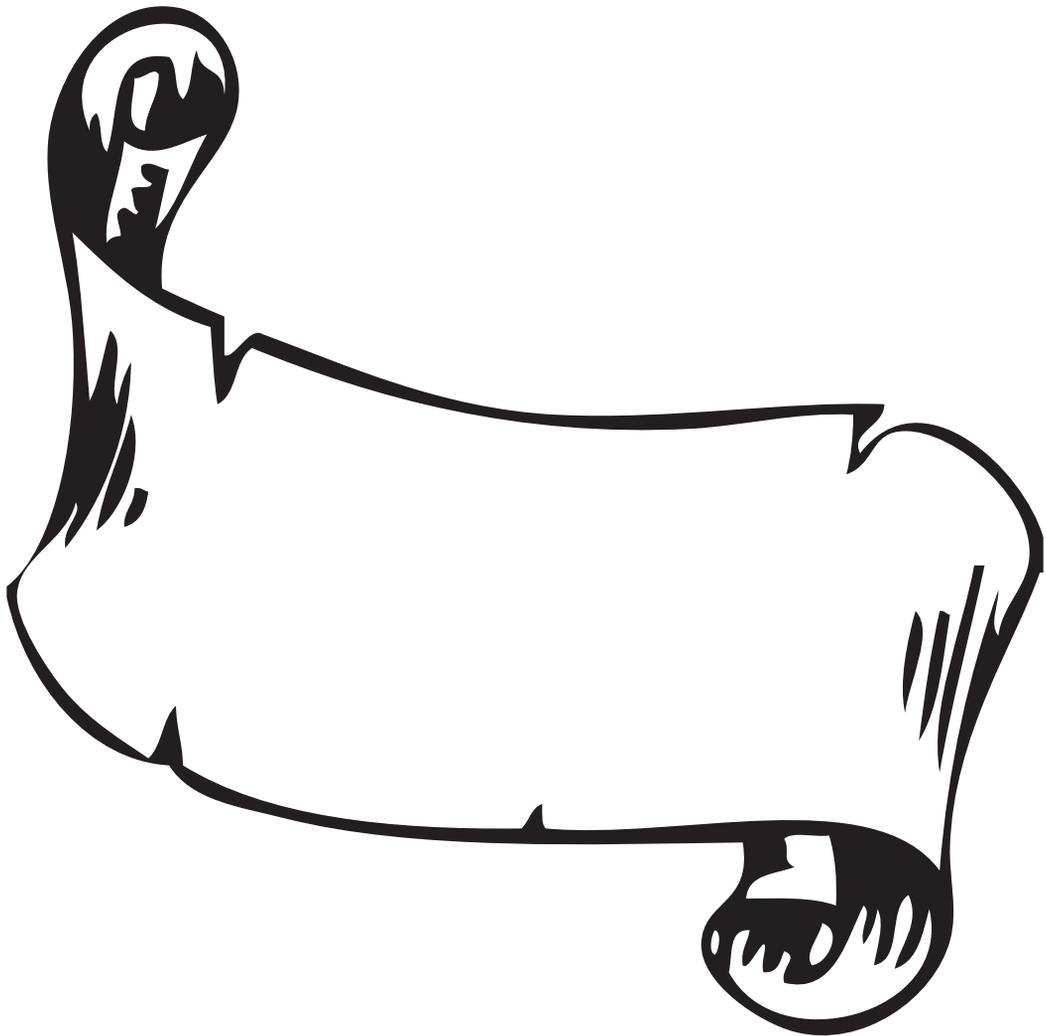
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CHAPTER I

INTRODUCTION TO CONTRACT ACT

Let us know the 'Indian Contract Act' better.

The Indian Contract Act, 1872 received the assent of the Governor General on **25th April, 1872¹** and came into force on the first day of September, 1872. It is applicable to the whole of India except the State of Jammu Kashmir².

The brief structure of the act is as follows:

The **first** part of the Act (**Sections 1 to 75**) deals with the general principles of the law of contract. The provisions of these sections apply to all contracts irrespective of their nature.

The **second** part of the Act (**Sections 124-238**) deal with the specific Contracts, i.e. **indemnity, guarantee, bailment, pledge, agency, etc.**

It is to be noted that before 1930, law relating to the contracts for sale of good and partnerships was also included in this Act. But, subsequently, it was repealed and a new act, called the **Sale of Goods Act, 1930** was enacted.

Similarly, the provisions of **Sections 239-266** of the Indian Contract Act dealing with partnership have been repealed by the **Indian Partnership Act, 1932.**³



¹Important for your legal knowledge section

²Why is that so? Do your research and find out!

³Kailash Rai Contract I, at p. 2-3.

Interestingly, the provisions of Indian Contract Act continue to apply to contracts relating to the sale of goods and partnership agreements unless they are inconsistent with the express provisions of those acts.

Agreements and Contracts

We enter into numerous contracts on an everyday basis. A ticket purchased to board a bus or train, a receipt from purchasing something from a store, or ‘terms and conditions’ before downloading a software from a website are all examples of contracts.

Before, discussing the different types of contracts we must understand the essential elements of a ‘valid’⁴ contract.

A contract, simply put, is “**a legally binding agreement**”. The natural question after hearing this definition would be what is an agreement then and what is the difference between an agreement and a contract? Though, a layperson may use the words interchangeably, a legal definition makes a subtle distinction between the two.

What is an agreement? Two parties may enter into an agreement to do (or not to do something) by the person initiating the agreement making an ‘offer’ to the other party, and the latter ‘accepting’ the same. Therefore, every time you agree to do something for someone, try to identify the offer made by you to another or by another to you. For example, you may agree (or enter into an agreement) to do your friend’s homework in exchange for something he owns that maybe of



⁴Having legal efficacy or force; especially: executed with the proper legal authority and formalities, Merriam Webster dictionary.

interest to you. Here, your friend makes you an offer to do his homework for him, if he lent his play-station to you for 2 hours, and you accept the same. This is an agreement.

What is a contract? Moving forward, all agreements that are enforceable by law are contracts. That is to say, if the law does not bar the agreement entered by you for being illegal or against the law, then it becomes a contract. To understand this better, let's look at the **essential elements** that convert a mere agreement into a legally enforceable or a valid contract:

1. As discussed above, an agreement is the result of an **offer (or a proposal)** by one party followed by its **acceptance** by the other.
2. The agreement should be between the parties who are **competent to contract**. Parties such as minors (people under 18 years of age) or persons of unsound mind are said to not be competent to contract. So if you are under 18 years of age, though you make enter into an agreement with another, but your agreement will not be binding in the eyes of law.
3. The agreement must be made in exchange for a **lawful consideration**. Simply put, consideration is anything offered in exchange for doing something in the agreement. In the play-station example where you entered into an agreement with your friend, your consideration for agreeing to do his homework is getting to play for two hours, whereas his consideration for giving you his play-station is getting his homework done by you. Therefore, both parties have a reason for entering into the contract. Moving further, the consideration offered must be 'legal'.
4. The agreement must have a **lawful object**. That is the object that the agreement seeks to fulfill must not be illegal, immoral or opposed to public policy. For example, smuggling of arms into India is an illegal activity, and an agreement to do the same though may have all essentials for an agreement, it will not be a contract.
5. The parties must enter the agreement with **free consent**.

6. The agreement must **not** be one, which had been **expressly declared to be void**. The law lays down certain express scenarios in which the agreement is declared to be 'not valid' or void.

An agreement that fulfills the following conditions is said to be a valid contract. The following chapters will deal with each of these conditions in detail.

Exercise: *Think about what are the benefits for entering into a legally valid contract....*

