



MEANING & ESSENTIALS OF A VALID CONTRACT

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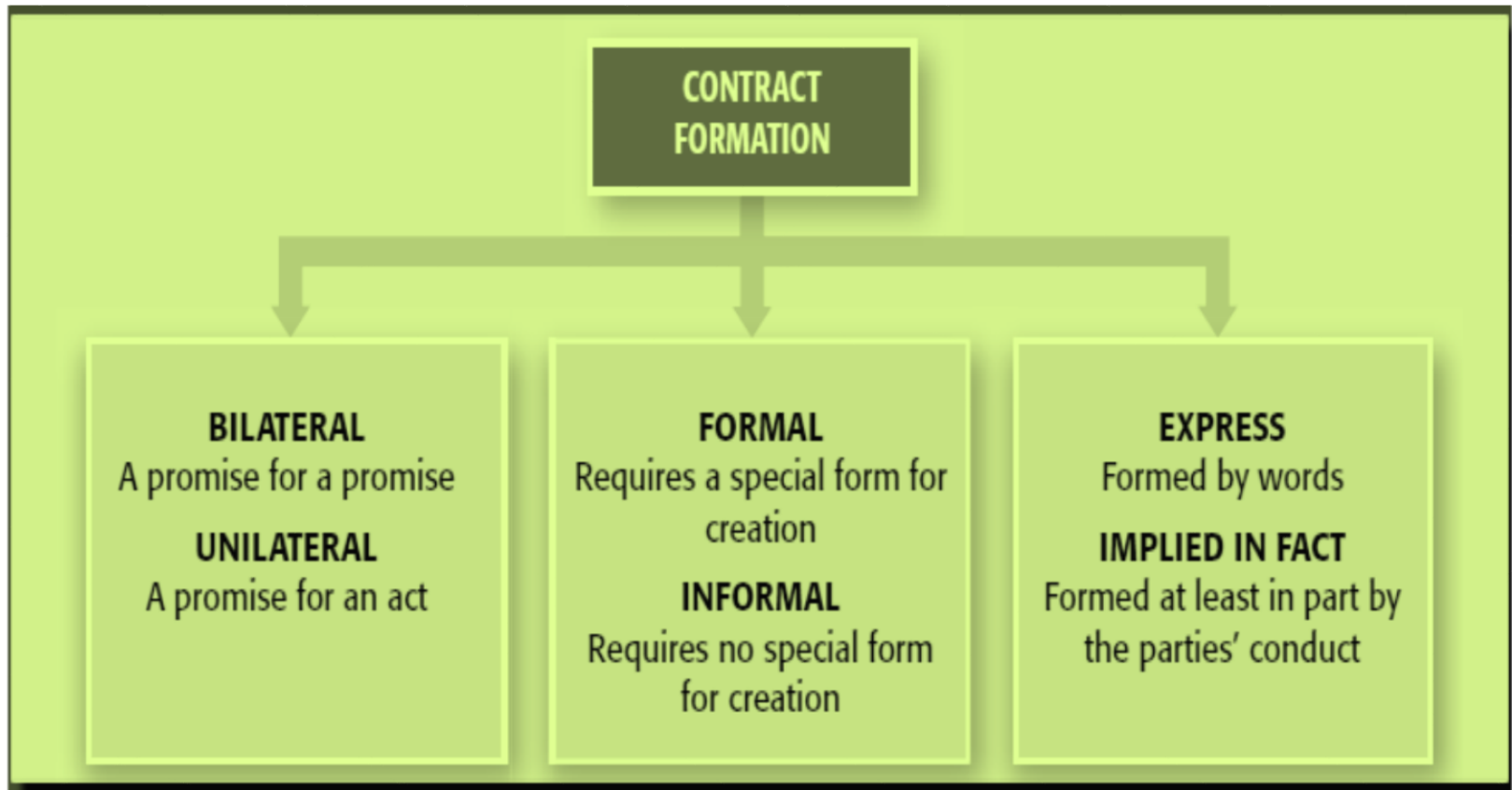
CONTRACT : AN OVERVIEW

- **Function of Contracts:**
 - **Fundamental to business,**
 - **Creates rights and duties between parties,**
 - **Provides stability and predictability.**
- **Parties are Promisor (makes the promise) and Promisee (accepts the promise).**
- **Good faith in commercial agreements.**

CONTRACT : DEFINITION

- **Agreement that can be enforced in a court of law,**
- **Formed by two or more parties,**
- **Failure to perform results in breach and damages,**

CONTRACT : CLASSIFICATION



CONTRACT : CLASSIFICATION



VALID CONTRACT : ESSENTIALS

- **Offer and Acceptance,**
- **Contractual capacity,**
- **Free Consent,**
- **Consideration,**
- **Legal Purpose,**
- **Agreement in Written.**

OFFER AND ACCEPTANCE

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- **First essential of a valid contract is agreement,**



OFFER

ACCEPTANCE

OFFER : AN OVERVIEW

- When a person makes an offer/proposal, he signifies to another his willingness to do or to abstain from doing something,
- Offer must be given with an intention to create a legal relationship,
- There is a clear cut difference between offer and invitation to make an offer,

OFFER : AN OVERVIEW

- **Expression of Opinion, Preliminary Negotiations etc are not offers,**
- **Offer must be definite,**
- **Offer must be communicated,**
- **Mere statement of price of a piece is not an offer,**

ACCEPTANCE : AN OVERVIEW

- When a person made a proposal to another and the proposal is assented there to, it is called acceptance,
- Voluntary act by the Offeree that shows assent to terms of original offer,
- Mirror Image Rule:
 - Offeree must unequivocally accept offer,

ACCEPTANCE : AN OVERVIEW

- **Additional terms may be considered a counteroffer,**
- **Acceptance must be given as per the mode prescribed by the offerer,**
- **Acceptance must be given before the lapse of time or within reasonable time,**
- **Acceptance may be given by any person in case of general offer.**

ACCEPTANCE : AN OVERVIEW

- **Acceptance must be communicated,**
- **Mental acceptance is no acceptance or acceptance must not be derived from silence,**
- **Acceptance must not be precedent to offer.**

CONTRACTUAL CAPACITY

CONTRACTUAL CAPACITY : AN OVERVIEW

- **The condition for a person to enter into contract :**
 - **He/She must be major,**
 - **He/She must be of sound mind,**
 - **He/She must not be disqualified by any other law.**

FREE CONSENT

FREE CONSENT : AN OVERVIEW

- **Two or more persons are in consent when they agree upon the same thing in the same sense,**
- **Consent is free when it is not caused by:**
 - **Coercion,**
 - **Undue influence,**
 - **Fraud,**
 - **Misrepresentation,**
 - **Mistake.**

FREE CONSENT : AN OVERVIEW

- **A has two cars, one blue and other red. He wants to sell his blue car. B who knows of only A's red car, offer to purchase A's car for 20000 Dollars. A accept the offer thinking that it is for his blue car. This is no consent because both the parties are not understanding the same things in the same sense.**
- **If B goes to A and on the point of pistol asks A to sell his red car for sum of 20000 Dollors to him, there is consent because both are understanding that red car is the subject matter of the consent, but the consent is not free because it has been obtained by Coercion.**

NO FREE CONSENT : COERCION

- **Committing or threaten to commit any act forbidden by law of the land or unlawful detaining or threatening to detaining any other persons property with a view to enter into an agreement,**
- **The threat amounting to coercion need not necessarily be from a party to contract , it may also proceed from a stranger to the contract.**

NO FREE CONSENT : UNDUE INFLUENCE

- **A contract is said to be induced by undue influence where:**
 - **The relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and,**
 - **uses that position to obtain an unfair advantage over the other.**

NO FREE CONSENT : UNDUE INFLUENCE

- **The person deemed to be in position to dominate the will of the other:**
 - **Where he holds a real or apparent authority over the other like master and Servant, child and parents, etc,**

NO FREE CONSENT : UNDUE INFLUENCE

- Where he stand in a fiduciary relationship (Mutual trust and confidence) like religious guru and follower, lawyer and clients, etc,
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or body distress.

NO FREE CONSENT : FRAUD

- **It means and includes any of those acts committed by a party to contract,**
- **or with his connivance.**
- **or by his agent,**
- **With an intent to deceive or induce a person to enter a contract:**
 - **The suggestion that a fact is true when it is not true and the person making it does not believe in it to be true,**

NO FREE CONSENT : FRAUD

- **The active concealment of a fact by a person having knowledge or belief of the fact,**
- **A promise made without any intention of performing it,**
- **Any other act fitted to deceive,**
- **Any such act or omission as the law specially declares to be fraudulent.**

FRAUD : ESSENTIALS

- **There must be a representation or assertion and it must be false,**
- **The representation must relate to a fact,**
- **The representation must have been made with the intention of inducing the other party to act upon it,**
- **The representation must have been made with a knowledge of its falsity,**
- **The other party must have subsequently suffered some loss.**

NO FREE CONSENT : MISREPRESENTATION

- **There is misrepresentation:**
 - **When a person positively asserts a fact is true when his information does not warrant it to be so, though he believes it to be true,**
 - **When a party causes however innocently the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.**

DIFFERENCE IN FRAUD & MISREPRESENTATION

Nature	Fraud	Misrepresentation
Intention to Deceive	Exists	Doesn't Exist
Consequence	Damage can be available to the affected party for the loss suffered	No such damage are available
Defense	The guilty party does not have any defense in its favor	The guilty party have defense in its favor

DIFFERENCE IN FRAUD & MISREPRESENTATION

M was a marriage broker who gave Y the photograph of a man and told him that the man was young and rich. Y conveyed the same to his daughter who agreed for the proposal. But on the day of marriage it was discovered that the man was of the age of 60.

There is fraud between M and Y, whereas there is misrepresentation between Y and his daughter.

NO FREE CONSENT : MISTAKE

- It means an error in understanding the fact relevant for formation of a contract,
- Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void,
- Ex: A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

CONSIDERATION

CONSIDERATION : OVERVIEW

- When at the desire of the promisor,
- promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something,
- such an act or abstinence or promise is called a consideration for the promise,
- Consideration is value given in return for a promise,

CONSIDERATION : OVERVIEW

- That is bargained-for-exchange between the parties,
- Consideration need not be adequate /sufficient,
- Consideration must be real and not illusory,
- It must not be illegal, immoral or opposed to public policy.

LEGAL PURPOSE

LEGAL PURPOSE : OVERVIEW

- **If the object of an agreement is the performance of an unlawful act, the agreement is unenforceable.**
- **A contract would be valid only if the object and the consideration are legal.**

UNLAWFUL AGREEMENTS

- **An agreement forbidden by law,**
- **An agreement defecting any provisions of law,**
- **An agreement opposed to public policy,**
- **An immoral agreement,**
- **A fraudulent agreement,**
- **An agreement creating damage to person or property,**

OPEN HOUSE...

DOUBTS/QUESTIONS/COMMENTS