

**DEFINITION OF CONTRACT****Definition**

A contract is an agreement made between two or more parties which the law will enforce. According to Sec. 2 (h) contract is an agreement enforceable by law. An agreement comes into existence by the process of offer by one party and unqualified acceptance by the other party.

The parties who enter into agreement must agree upon the subject-matter in the same sense and at the same time i.e., there must be *consensus ad idem*.

***Consensus ad idem***

Consensus ad idem literally means meeting of minds. This means that the parties to the agreement must have agreed about the subject-matter of the agreement in the same sense and at the same time.

There is said to be consensus ad idem when two parties to an agreement (contract) both have the same understanding of the terms of the agreement.

**Example:**

A, who owns two horses named Rajhans and Hansraj, is selling horse Rajhans to B. B thinks he is purchasing horse Hansraj. There is no Consensus ad Idem and consequently no contract.

An agreement may be a social agreement or a legal agreement. A social agreement is that which does not give rise to legal consequences. In case of its breach the parties cannot go to the law Court to enforce a right. A legal agreement is which gives rise to legal consequences and remedies in the Court of law in case of its breach.

**Essentials of contract:**

According to section 10, all agreements are contracts if they are made by free consent of parties competent to contract, lawful consideration and with a lawful object and are not expressly declared to be void. The following are therefore essential conditions for contract;

**(1) Agreement:**

There must be an agreement. This involves two parties, one party making the offer and the other party accepting it.

**(2) Legal Intentions:**

The parties must intend to create legal relationship.

Ex: A husband promised to pay his wife a household allowance of Rs. 3000 every month. Later the parties separated and the husband failed to pay the promised

amount. Held agreement is not enforceable as there was no legal intention to bind the contract.

**(3) Competency:**

The parties must be capable entering into an agreement as regards age and understanding. According to section 11 and 12, every person is competent to contract if he (a) is of age of majority, (b) is of unsound mind, and (c) is not disqualified from contracting by any law to which he is subject.

**(4) Lawful Consideration:**

The agreement must be supported by consideration both sides. A consideration means 'something in return'. A consideration may be an act or abstinence (abstaining from doing something) or not to do something. It may be past, present or future. A consideration should however be real and lawful.

**(5) Free consent:**

The consent of the parties must be free and genuine. The consent of the parties is said to be free and genuine when they understand the subject matter of agreement in same sense at same time. The consent however will not be considered as free if it is affected by coercion, undue influence, fraud, misrepresentation etc.

**(6) Lawful Object:**

The object of the agreement must be lawful. It means that the purpose or object of the agreement must not be illegal, immoral or opposed to public policy.

**(7) Not declared as void:**

The agreement must not have been expressly declared as void. Section 24 to 30 and section 56 of the Contract Act provided for the void agreements. Further any agreement specifically declared as void by any law of country will be void.

**(8) Certainty of Performance:**

Terms of the agreement must be certain and capable of performance. According to section 29 the term of agreement must be certain; an agreement with vague or indefinite terms is not enforceable. Further section 56(1) states that an agreement to do and impossible act cannot be enforced.

**(9) Legal Formalities:**

The contract may be made by words spoken or written, the legal effects for both contracts would be same under contract law. However section 10 para 2 provides that if any law in force in India specifies that a contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents, then such legal formalities must be complied for the contract to be enforceable.