**TOPIC**

**CONTRACT I**

**Today’s Topic**

**SECTION 10 OF THE INDIAN CONTRACT ACT, 1872**

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**SECTION 10 of the Indian Contract Act, 1872**

Section 10 states *“What agreements are contracts. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*

Hence the essentials of a valid contract are therefore as under:

1. **An Agreement between the two parties**– There must be a presence of at least two parties such that one party acts as an offeror (the person who makes an offer) and other party acts as an offeree (the one to whom the offer is made).
2. **Agreement should be between the parties competent to contract**.
3. **There should be a Lawful Consideration and a Lawful Object** in respect of that agreement. Consideration means something in return, which has some value in the eyes of the law. It is based on the principal ***Quid Pro Quo***.
4. **There should be free Consent of the parties, when they enter into an agreement.**
5. **The agreement must not be the one, which has been expressly declared to be void.**

**2. INTENTION TO CREATE A LEGAL RELATIONSHIP**

Intention to create legal relations is defined as an intention to enter a legally binding agreement or contract. Intention to create legal relations is one of the necessary elements in formation of a contract. It is because, intention to create legal relations consists of readiness of a party to accept the legal sequences of having entered into an agreement. Intention to create legal relations is a motion of every contracting party must have the necessary intention to enter into a legally binding contract.

When there is no intention to create legal relations, it will make the contract or agreement become less powerful due to whether one or both of the parties does not have a consent mind. So, if the contract lack of binding effect, it will cause the difficulty to the party involved in future.

Domestic and social agreements of intention to create legal relations can be broken down into three groups which are firstly commercial or business relations, secondly social friend’s relations and thirdly family or domestic relations.

**a) Family or domestic relations:**

In term of general rules of family or domestic relations, there is no presumption to be legally binding. Otherwise, in term of exception the presumption is rebuttable.

Case example: ***Balfour v Balfour[[1]](#footnote-1)***

The husband brought wife to England from Sri Lanka. The husband had to return but wife stayed for medical reasons. He promised to pay her £30/month until his return. When he failed to pay, the wife sued the husband. Wife’s action failed because there is no consideration moved from her and there is no intention to create legally binding agreement found. The court stated in husband and wife cases, burden of proof is on plaintiff to prove intention to create legally binding agreement.

Second case can be referred to: ***Jones v. Padavatton***,[[2]](#footnote-2) in which it was held that agreements which depend on the good faith of the promises which are made are not intended to be rigid, binding agreements.

**b) Commercial or business relations:**

In term of general rules of commercial or business relations, there is a presumption or intention to be legally binding.

Case example: [***Kleinwort Benson Ltd V Malaysia Mining Corporation Bhd***](https://www.lawteacher.net/cases/kleinwort-benson-v-malaysia-mining-corp.php) in year 1989

The case shows the letters of comfort. In this case, the plaintiff (bank) agreed loan to MMC Metals, subsidiary of MMC. The bank asked MMC to guarantee loan. MMC said not policy to guarantee loans to subsides offered letter of comfort stating: “It is our policy to ensure that the business of MMC (Metals) is at all times in a position to meet its liabilities under the arrangements”. The bank accepted but charged higher rate of interest and the market collapsed and MMC went into liquidation. The plaintiffs tried to claim balance from MMC. First instance the court found in favour of plaintiff, relying heavily on Skyways (1964) ruling overturned on appeal and the judge said Skyways case not was about promise supported by consideration so not applicable here. Hence, ruled no intention to create legally binding agreement statement was not meant to act as guarantee, stating on current position, not future intention.

b) Social friend’s relations:

In term of general rules of social friend’s relations, there is no presumption to be legally binding.

Case example: [***Simpkins V Pays***](https://www.lawteacher.net/cases/simpkins-v-pays.php) in year 1955

The case shows mutuality. In this case, the defendant, her granddaughter and the plaintiff (paying lodger) regularly took part in newspaper competition. All contributed but entered in defendant’s name. There is no set of arrangement that state payment of postage etc. When entry of the competition is successful, defendant refused to share with plaintiff. The plaintiff sued for his share. Court ruled legally binding relationship as sufficient mutuality in the arrangements between parties.

**CONSENSUS AD IDEM**

The parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless there is consensus ad idem, there can be no contract. Basically, the principle of consent is governed by the legal maxim, ‘consensus-ad-idem’ which means, the parties to the contract must mean the same thing in the same sense in regard to the subject matter of the contract and this view is represented under Section 13 of Indian Contract Act, 1872, which states- ‘Two or more person are said to consent when they agree upon the same thing in the same sense.’

Keeping the statutory provisions in mind, the Hon’ble Supreme Court in ***Steel Authority of India Ltd. v. Salem Stainless Steel Suppliers[[3]](#footnote-3)***, held, in order to constitute a contract, both the parties must consent to the agreement. The consent should be free and voluntary.

**Enforceable by law**

An agreement, to become a contract, must give rise to a legal obligation or duty.

An agreement may be social agreement or legal agreement.

But only those agreements which are enforceable in a court of law are contracts.

**Offers and Acceptance**:

It is one of the essentials of valid contract. There must an offer and acceptance of the same.

**Legal Relationship**:

The parties to an agreement must create legal relationship. Agreements of a social or domestic nature do not create legal relations and as such cannot give rise to a contract

**Example**: X invited Y to a dinner Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement.

**Lawful Consideration and Lawful Object:**

Consideration is “something in return.” Consideration has been defined as the price paid by one party for the promise of the other.

It is also necessary that agreement should be made for a lawful object. Every agreement of which the object or consideration is unlawful is illegal and therefore void.

**Example:** X agrees to sell his motor bike to Y for Rs. 1,00,000. Here Y’s promise to pay Rs. 1, 00,000 is the consideration for X’s promise to sell the motor bike and X’s promise to sell the motor bike is the consideration for Y’s promise to pay 1, 00,000.

**4. Capacity of Parties**:

It means that the parities to an agreement must be competent to contract. A contract by a person of unsound mind is void ab-initio. Thus, a contract entered into by a minor or by a lunatic is void.

Example: X a minor borrowed Rs 8,000 from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract.

**Free Consent For a valid contract**:

It is necessary that the consent of parties to the contact must be free. The elements of Free Consent are given under Section 14 of the Indian Contract Act, 1872. The section clearly said that the consent will be said to be free when it is not caused by—

* **Coercion**
* **Undue influence**
* **Fraud**
* **Misrepresentation**
* **Mistake**

Free consent of the parties is absolutely necessary to make an agreement with a valid contract. For this purpose, the consent should be free and voluntarily made, which means void of any pressure, influence, mistake, or misrepresentation. If the consent is taken by any of these contracts is voidable at the option of the aggrieved party and would render the contract null and void. All the facts to the contract should be known to the consenting parties or persons.

Wallis, C.J, and Seshhagiri Ayyar J. observed and held, that, the threat to commit suicide also amounts to coercion within section 15 of the Indian Contract Act, 1872 (***Chikam Amiraju v. Chickam Seshamma,[[4]](#footnote-4)***.

**Not Expressly Declared Void**:

An agreement must not be one of those, which have been expressly declared to be void by the Act.

1. (1919) 2 KB 571. [↑](#footnote-ref-1)
2. (1969) 2 All Er 616. [↑](#footnote-ref-2)
3. AIR 1994 SC 1415. [↑](#footnote-ref-3)
4. (1912) 16 IC 344.) [↑](#footnote-ref-4)