

NEW SYLLABUS

# BUSINESS LAW

S. D. GEET



 **NIRALI**  
PRAKASHAN  
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*A Book Of*

# BUSINESS LAW

**For BBA : Semester V  
As Per New Syllabus  
Effective from June 2015**

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M.A. (Eco.), M.Com., LL.B., D.C.L.

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## **Preface ...**

It gives us great pleasure to present this text-book on "**Business Law**" to the students of B.B.A. Semester - V. This book has been prepared as per the syllabus prescribed for B.B.A.

The main object of this book is to state and explain the leading principles of the branch of law known as Business Law and to explain various provisions of the Acts prescribed for the examination so that the students may find it convenient to refer to them. From this point of view, all efforts have been made to explain and discuss various provisions of the Acts prescribed for the examination in simple and concise language. Each chapter contains adequate text and illustrations. Questions are given at the end of each chapter.

I would like to acknowledge Shri. Jignesh Furia, Mrs. Supriya Singh, Mrs. Kumkum Tripathi, Mr. Malik Shaikh and Mr. Prasad Chintakindi and the entire staff of Nirali Prakshan who have taken pains and keen interest in publishing this book.

Inspite of sincere efforts, printing errors might have crept in the book at some places. I hope that we shall be excused for the same.

We shall consider our labour amply rewarded if this book is appreciated by those for whom it is meant.

I extend my good wishes to all students, teachers and readers with a genuine hope that they will receive the text book with great enthusiasm.

**Prof. Sharad D. Geet**



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### **Publisher's Note**

*In spite of the best efforts, care and caution, errors might have crept in for which the students, readers, etc. will please bear with us. The publication is being sold on the condition and understanding that the information given in this book is merely for the guidance and reference. It must not be taken as having authority of, or binding in any way on the author, publisher, sellers etc. who do not owe any responsibility for any damage or loss to any person, who may or may not be a purchaser of this publication on account of any action taken on the basis of this publication. However, if any discrepancies, omissions, errors, etc. are noticed, please kindly bring the same to our notice, so that we can take necessary steps to correct them in the next edition.*

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# Chapter 1 ...

## The Indian Contract Act, 1872

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### ***Learning Objectives ...***

- To understand the definition and concept of contract
- To discuss fully classification of contracts from various points of view
- To explain the terms 'offer' or 'acceptance'
- To define consideration and enumerate the essential elements of a valid or lawful consideration
- To discuss the term 'Capacity of Parties' and the provisions of the Contract Act relating to a minor's agreement
- To understand the meaning of free consent and to discuss flaws in consent:
  - coercion,
  - undue influence,
  - misrepresentation,
  - fraud or mistake
- To discuss in what cases are the object and consideration of an agreement said to be unlawful.
- To distinguish between void agreements and void contracts. To enumerate the agreements which have been expressly declared to be void by the Indian Contract Act, 1872
- To explain the term 'performance of a contract'
- To discuss the discharge of a contract. To state various ways in which a contract may be discharged
- To explain the remedies for breach of contract

## 1.1 Introduction

The law of contracts is one of the most important branches of Law. It determines the circumstances in which promises given by the parties to a contract shall be legally binding on them. It also throws light on the remedies which are available in a court of law against a person who fails to perform his contract. This law affects every person living in a society as every one of us has to enter into contracts virtually every day. When one purchases a commodity either by paying cash or on credit basis or deposits the money into his bank account or keeps his luggage in a State Transport's luggage room, he enters into contracts. Thus, every day, a person, knowingly or unknowingly, enters into many types of contracts and performs them. The law of contracts is of a great importance to people engaged in trade, commerce, business and industry as bulk of their trade or business transactions are based on the contracts. In India, the law relating to contracts is contained in the Indian Contract Act, 1872, and this Contract Act came into force from 1<sup>st</sup> day of September 1872. It extends to the whole of India except the State of Jammu and Kashmir.

## 1.2 Contracts

Today, we find that there are certain changes in the nature of contracts whenever they are entered into. In the 18<sup>th</sup> and 19<sup>th</sup> centuries, during the era of laissez-faire, there were a few restrictions placed on the freedom of contracts. But in modern days, there is a fundamental change in this respect. The Law interferes at various points with the freedom of parties to make whatever contracts they like. The Government has enacted various Acts in order to protect consumers, employees, tenants, etc. Of course, it is very essential to do so to protect the interest of the people. Moreover, standardised forms of contracts are used while entering into contracts. Therefore, several contracts entered into by concerned people are not the result of individual negotiations and many people who want to enter into contracts do not get an opportunity to discuss or negotiate the clauses included in such contracts. They have either to accept all the standard terms or go without them. Thus, absolute freedom of contract has now become to a great extent an illusion or a myth.

### 1.2.1 Definition and Concept of a Contract

The term 'contract' is defined by different authorities in different ways. Let us consider a few definitions.

- (1) According to **Sir William Anson**, *"a contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to act or forbearance on the part of the other or others"*.
- (2) **Salmond** defines a contract as, *"An agreement creating and defining obligations between the parties"*.
- (3) **Sir Federic Pollock** says. *"Every agreement and promise enforceable at law is a contract"*.

Section 2 (h) of Indian Contract Act defines a contract as “an agreement enforceable by law is a contract”.

From these definitions of the term ‘Contract’, we come to know that every contract is the result of the combination of two important elements, i.e., agreement and obligation. A contract creates rights and obligations between the parties entering into a contract. Refusal by any one party to a contract or to honour a contracted obligation gives right of action to another party.

Following are the essential requirements of a contract:

**(a) Two Parties:** For formation of a contract, there must be two parties, i.e., promisor and promisee. The person who makes the proposal is called the promisor and the person to whom the proposal is made called the promisee [Section 2 (c)]. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise [Section 2 (b)] and 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 order to such act or abstinence, he is said to make a proposal [Section 2 (a)].

As a matter of fact, in a contract, each party is a promisor as well as a promisee i.e., suppose X promises to sell his motor-cycle to Y for ₹ 5000, X is the promisor as he has given the promise to sell his motor-cycle to Y but at the same time, he is the promisee also as there is a promise from Y to pay the price of the motor-cycle to him. This is also applicable to Y.

**(b) An Agreement:** According to Section 2 (e), every promise and every set of promises, forming the consideration for each other, is an agreement. And when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, something, such act or abstinence or promise is called consideration for the promise [Section 2 (e)].

An agreement implies an offer and its acceptance. When an offer is accepted, it becomes an agreement. The word ‘Offer’ implies the willingness of a person either to do something or not to do something and its communication to the other person or party and ‘acceptance’ means giving assent by the person or party to whom the offer has been made. Suppose if Mr. X tells Mr. Y that he is willing to sell his motor-cycle to Mr. Y for ₹ 5000, it is nothing but an offer made by Mr. X to Mr. Y. If Mr. Y agrees to that and gives his assent to the offer made by Mr. X, it is said that Mr. Y has accepted the offer and there is an agreement between Mr. X and Mr. Y.

Of course, agreement is a much wider concept than a contract. It is not necessary that every agreement must give rise to legal obligation. If an agreement does not create any legal obligation, there cannot be any contract. Agreements which are not binding on the parties do not constitute a contract. Thus, all agreements are not contracts. For example, if Mr. X agrees to go to Mr. Y’s house for a lunch at Y’s request, there is an agreement, but this is not a contract as it does not carry any legal obligation.

**(c) Legal Obligation:** As a matter of fact, for the formation of any contract, an agreement should give rise to a legal obligation and the obligation must be enforceable at law. Thus, here an obligation means the legal duty to do or abstain from doing something. The agreements which give rise to religious, social and/or domestic obligations only cannot be termed as contracts. Thus, a legal obligation is distinct from moral, religious or social obligations. For example, if X agrees to sell his motor cycle to Mr. Y for ₹ 5,000 here an obligation is imposed on Mr. X to sell his motor-cycle and on Mr. Y to pay the price of the motor-cycle. But a moral, religious or social obligation has no such monetary value, but promises like taking of a lunch, going for a walk are not contracts as they do not create any duty or obligation enforceable by law. Thus, as all agreements are not contracts, all obligations also do not constitute contracts. **Sir John Salmond** aptly puts it in the following words,

“The law of contract is not the whole law of agreements nor it is the whole law of obligations. It is the law of those agreements which create obligations, and those obligations which have their sources in agreements”.

#### **Distinction between an Agreement and a Contract**

From the above discussion, we come to know that an agreement and a contract are not one and the same thing. Important points making clear the distinction between them are given as follows.

	<b>Agreement</b>		<b>Contract</b>
1.	Every promise and every set of promises, forming the consideration for each other is an agreement. [Section 2 (e)]. For constituting an agreement, an offer by one party and its acceptance by other party are required. In other words ‘an offer and its acceptance together constitute an agreement’. Thus, Agreement = Offer + its acceptance.	1.	An agreement enforceable by law is a contract [Section 2 (h)]. Merely an agreement is not a contract but its enforceability at law together constitutes a contract. Thus, Contract = Agreement + its enforceability at law
2.	For constituting an agreement, a promise or sets of promises forming consideration for each other are required.	2.	An agreement becomes a contract only when such agreement fulfils all the legal conditions of a contract, e.g., formation of legal relationship, free consent, lawful object, etc.
3.	An agreement is a wider concept than that of a contract.	3.	A contract is a specie of an agreement and as such it is a narrower concept. Therefore, it is said that every contract is an agreement but every agreement is not necessarily a contract.
4.	It is not necessary that every agreement must create legal obligation because all agreements do not go to constitute contracts.	4.	Every contract necessarily creates a legal obligation because every contract is basically an agreement.
5.	An agreement cannot be concluded or be a binding contract.	5.	A contract is always concluding and binding on the concerned parties.

### Essential Elements of Valid Contracts

Section 10 states that 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. Thus, an agreement must possess certain elements in order to constitute a contract. The essential elements of a valid contract are as follows:

- (a) There must be an agreement,
- (b) Parties to a contract must be competent,
- (c) There should be an intention to create a legal relationship,
- (d) There must be free consent of parties to the agreement,
- (e) Lawful consideration,
- (f) Legal or lawful object,
- (g) Agreement not expressly declared void by law,
- (h) Compliance with legal formalities.
- (i) Certainty and possibility of performance.

Now, let us discuss the above mentioned points in detail.

**(a) There must be an Agreement:** An agreement is a very essential condition of a contract. Every promise and every set of promises, forming, the consideration for each other, is an agreement. At least, there must be two parties to an agreement. One party makes a proposal or an offer and the other party accepts or rejects the same. If he rejects, no question rises of entering into a contract. A proposal from the side of the party making it do or abstain from doing a particular act and its acceptance by the other party are the two very essential conditions of an agreement. The proposal as well as acceptance should be definite. The acceptance of the proposal must also be in the mode prescribed and it must be communicated to the offerer. Moreover, the intention of making an agreement should be to create a legal relationship with clear and certain terms. An agreement not enforceable by law is said to be void [Section 2 (g)] whereas an agreement enforceable by law is a contract [Section 2 (h)]. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract [Section 2 (i)].

**(b) Parties to a Contract must be Competent:** As already mentioned, there must be at least two parties for every valid contract and parties to a valid contract must be competent. Every person is competent to contract (i) who is of the age of majority according to law to which he is subject, and (ii) who is of sound mind; and (iii) who is not disqualified from contracting by any law to which he is subject [Section 11].

**(c) There should be an Intention to Create a Legal Relationship:** This is a very important condition of a valid contract. If there is no intention to create any legal relationship that contract is not valid. Agreements of social, moral, religious nature do not contemplate legal relations.

Creation of legal relationship implies the desire of the parties to the contract to seek for the help from law court in the case of breach of a contract. Thus, if Mr. Nilesh Keniya agrees to Mr. Munde's offer to dine with him tonight, there is no intention of Mr. Munde to enforce

this agreement in the court of law if Mr. Nilesh Keniya fails to dine. This agreement is not entered into to create any legal relationship and hence, it is not a contract in the eyes of the law. But any agreement to buy or sell goods or purchase and sell a building is an agreement intended to create legal relationship and is therefore, a contract, provided the other essential elements are present.

In *Rose and Frank Company vs. Crompton Brothers Ltd.* case [(1925) A.C. 445], R.F. Company entered into an agreement with C.B. Ltd. In the agreement, a clause was as follows:

"This agreement is not entered into as a formal or a legal agreement and shall not be subject to legal jurisdiction in the law courts". It was held in the case that there never was any intention to create any legal relationship and therefore, there was no contract between the parties. In another case, a company agreed with a person that on expiration of the existing contract with that person, the company would favourably consider the renewal of his contract. It was held in the case that there was no legal obligation to renew the existing contract of the company.

**(d) There should be Free Consent of Parties to the Agreement:** For the purpose of creating a valid contract, the consent of the parties to the agreement must be free. The term 'consent' is defined in Section 13 which states that two or more persons are said to have consent when they agree upon the same thing in the same sense. Thus, the parties to an agreement must be of the same mind upon the same subject.

The consent is said to be free when it is not caused by:

- (i) Coercion [Section 15];
- (ii) Undue influence [Section 16];
- (iii) Fraud [Section 17];
- (iv) Misrepresentation [Section 18];
- (v) Mistake [Sections 20, 21 and 22].

**(e) Lawful Consideration:** Consideration is an act done or to be done at the request of the promisor by the promisee or by any other person. For a valid contract, such consideration must be lawful. Consideration is really an essence of a bargain. The agreement is enforceable legally only when both the parties to it give something and receive something in return. Consideration need not be necessarily in cash or kind, but it can be an act or even abstinence or refraining from doing something or a promise to do or not to do something.

**(f) Legal or Lawful Object:** The object of the agreement must essentially be legal. The agreement to be entered into, must relate to a thing which must not be contrary to the provisions of any law in existence.

**(g) Agreement not Expressly Declared Void by Law:** The agreement to be entered into must not have been expressly declared void by any law in force in the country.

Under the Indian Contract Act, there are certain categories of agreements, which are expressly declared to be void. E.g., agreements in restraint of marriage (Section 26), agreements in restraint of trade (Section 27) and of proceedings (Section 28), agreements having uncertain meaning (Section 29), wagering agreements (Section 30), etc.

# Business Law



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