Historical Background of The Contract Law

Early cavemen traded food, and tools in the spirit of exchange. This silencer mode was, in fact, a kind of informal trade in practice and is known as the Barter system to the world. Barter is an act of trading goods and services between two or more parties without the use of money. It is the most ancient form of commerce. Barter is a form of agreement binding in honour and mostly instantaneous.

Contract in Roman Law:-

In Roman Law, the rigid cleavage between law of obligation i.e. relations between persons and persons (in personam) and of law of property i.e. relations between person and thing (in rem) is of fundamental nature.

"an obligation is a tie of law, by which we are so constrained that of necessity we must render something according to the laws of our state."

Roman Law recognized a number of distinct contract types

- Contracts consensu
- Reverbis
- Litteris.

Which were binding only if they were 'clothed' in special forms and formulas. This journey came to the terminus of Roman- Dutch law which recognized the common law principle that all serious agreements ought to be enforced (Pacta sunt servanda).

Pacta Sunt Survanda (promises must be kept) is the principle that refers to private contracts, stressing the contained clauses are law between the parties and implies that non fulfillment of respective obligation is a breach of the pact.

Few Ingredients of the Ancient Contract.

- **Contractus:-** The word originated from "contra" here meaning to collect combine or make an agreement and infact, it is to contract liability. In Roman law contractus is a contract in written form.
- **Pacta:-** The counter parts of contracts were delicta and pacta. Pacta is brocord which is a legal principle expressed in Latin. Pacta mainly referred to oral agreements.
- **Conventio:-** The term conventio originates from 'convenire' which means coming together

and in legal context it means a coming together of the minds This is an indispensable element contained in every pact or contract.

- **Consensus:-** Consensus may refer to subjective attitude of the parties to the contract in the sense of voluantas or animus or to the formal or informal declarations by them.

Introduction of english law into india (in relation to contract)

In 1774 the Mayo,s Court at Culcutta was replaced by the Supreme Court. The regulating Act of 1773 and the charter of 1774 were silent as to the law which the Supreme Court was to apply to Indians. Consequently Section 17 of the Act of Settlement 1781 directed that questions of inheritance and succession, and all matters of contract and dealing between the parties should be determined, in the case of Mahomedans and Hindu's by their respective laws, and where only one of the parties should be Mahomedan or Hindu by the laws and usages of the defendant.

Introduction of the indian contract act 1872.

All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some rights and duties on the contacting parties.

The act was passed by British India and is based on the principle of English Common Law. It is applicable to all the States Of India except The State Of Jammu And Kashmir. This act was **enacted in 25 April 1872 .**It shall come **in to force on 1 September 1872.The act as enacted originally had 266 sections, it had wide scope and included-**

- General principle of law of contract- Section 1 to 75
- Contract relating to sale of goods – Section 76 to 123
- Special contracts- Indemnity Guarantee, Bailment -Section 124 to 238
- Contract relating to partnership – Section 239-266.

What is Contract?

A contract is essentially an agreement between two or more parties that is "enforceable by law" and in which one party promises to do or not do something in exchange for the other party promising to do or not do something.

Contract as civil obligation

The law of contract confines itself to the enforcement of voluntarily created civil obligations. It does not cover the whole range of civil obligation. There are many obligations of civil nature, like those imposed by law or created by the acceptance of a trust, whose violation may be actionable under the law of torts or of trusts, whose violation may be actionable under the law of trusts, or under a statute, but they are outside the field of contract.

Indian contract Act, 1872

Section 2(h) of Indian Contract Act, 1872 defines contract as "an Agreement enforceable by law". Thus, for the formation of a contract there must be an agreement, and the agreement should be enforceable by law or valid in the eyes of the law.

[NOTE: All agreements enforceable by law are not contract.

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Offer

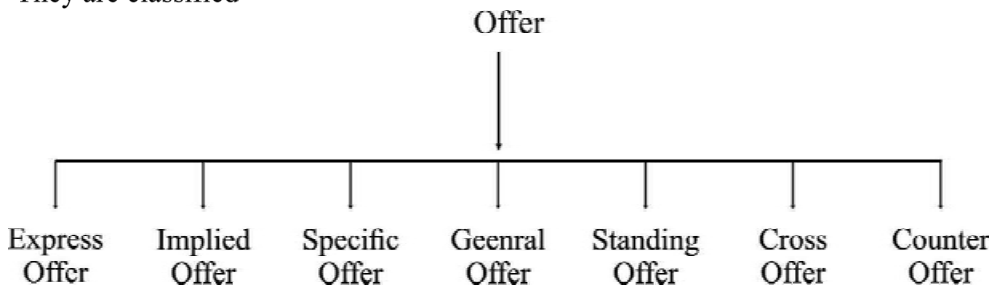
- A proposal and its acceptance is the universally acknowledged process for the making of an agreement. The proposal is the starting point.
- The person who makes the proposal is called the promisor or "offeror". The person to whom it is made is called the promisse or "offeree" and when he accept it, he called a promise".

Essentials of a Valid offer

- It is essential to communicate the offer to the other party while entering into a contract. A proposal is complete when it is communicated. (Section 3)
- A valid offer can be made either expressly or impliedly. (Section 9).
- The conduct of the party not only includes their acts but also their omissions.

Different kinds of offer

- A offer can be express or implied, specific or general. There can also be standing offers. They are classified———



Express offer

- An offer is said to be an express offer when it is made by words clearly spoken, heard and understood by the other party in face to face interaction or in a telephonic conversation. An express offer can also be made in written form which is delivered by hand or by post. Then by implication, a dumb person is incapable of making an express offer, at least orally, unless if sign language is used it is communicated through an interpreter and similarly, a hearing handicapped person cannot obviously receive an oral offer effectively.

  Fore Examples: A person, who hires a taxi, undertakes to pay the fare of the taxi, at his destination, even though he makes no express promise to do so.

Implied Offer:-

- As explained in Section 9 above, an offer made otherwise than in words, is said to be an implied offer. for example, a bid at auction is an implied offer. In such a case the conduct may take the place of written or spoken words in the offer and the intention of the party is a matter of inference from his conduct and the inference is more or less easily drawn according to the circumstances of the case.

Specific offer:-

- A specific offer is when an offer is made to a particular person and only that person by himself or his legal representative can accept the offer or reject it.

  For example : When you offer an amount of money to a certain shopkeepers in exchange of his goods, no other shopkeepers can accept you offer.

General offer:-

- A general offer to the world at large is an offer made to the public and can be accepted by any person. A general offer is generally communicated by using mass media. (Print, Broadcast or digital media) since the number of potential target is longer, unknown and indefinite.

Carllil v. Carbolic Smoke Ball Co.

- **Fact:-** The defendant advertised their product."Carbolic Smoke Ball" or preventive remedy against influenza he promised to pay $100 as reward to anyone who contacted influenza, cold or any disease caused by taking cold, after having used the smoke ball three times a day for two weeks. The plaintiff relying on the advertisement purchased the medicine, but still caught influenza she sued for damages.
- **Held:-** It is an offer made to all the world, and why should not an offer be made to all the world which is to ripen into contract with anybody who comes forward and performs the condition.

Standing offer continuing offer :-

- A standing offer is an offer which remains open for acceptance for a long stretch of time. A long stretch of time depend on the circumstances of the case such an offer may be accepted by the offeree until it is withdrawn by the offeror. According to this offer, a vendor allows a buyer predetermined price for a certain period on an as and when requirement basis.

In **Bengal Coal Co. v. Homee Wadia & Co.**

- **Fact:-** The defendants agreed to supply coal to the plaintiff up to a certain quantity at an agreed price for a period of 12 months, as may be required by the plaintiff from time to time.
- Before the expiry of said period of 12 month, the defendants withdraw their offer to supply further coal, and refused to comply with the orders placed thereafter. They were sued for breach of contract.
- **Held:-** It was held that there was no contract between the plaintiff and the defendant and, therefore, there could be no liability for the breach of contract. There was simply a continuing offer to supply coal. There were bound to supply coal only as but were free to revoke their offer for the supply of coal thereafter.

Cross offer

- Cross offers are offers that the parties make to each other, in ignorance of each other's offer. Cross offers are identical in nature crossing their flight path. So there is no spark in this abortive attempt. There is no concluded contract in cross offer.

Tinn v. Hoffmann:-

- **Fact:-** A wrote to B indicating his willingness to sell 800 tons of iron at 69 sh. Per ton. On the same day, B also wrote to A offering to buy 800 tons of iron at the same 69 sh. Per ton. The two B brought an action against A for the supply of iron.
- **Held:-** It was held that there were only two cross offers and the offer of neither of the parties having been accepted by the other, there was no contract which could be enforced.

Counter Offer:-

- Counter offer, on the other hand, is a rejection of the original offer and the original offer is thus part to end. There are two possible routs: first, the original offer can be revives, renewed and repeated for the purpose of acceptance. Second, the counter offer can serve is a new offer that needs acceptance by the original promisor before a contract come into existence.

Last shot Rule:-

- Last shot rule means that the last version of the offer is the one which goes into effect and each new set of terms is counter offer wiping out the initial offer. Fire the last shot means send the last form.

Hyde v. Wrench:-

- It was decided that a counter offer is where an offeree responds to an offer by making an offer on different terms. This has the effect of destroying the original offer so that it is no longer open for the offeree to accept it.

Difference between offer and invitation to offer

- When a man advertises that he has got a stock of books to sell, or houses to let, there is no offer to be bound by any contract. "such advertisement are offers to negotiate offers to receive offers- offer to chaffer". An offer is final willingness by the offeror to be bound by his offer, should the other party chose to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but only invites the other party to make an offer on those terms. This is the perhaps the basis distinction between an "offer" and "invitation to offer".

The Privy Council in *"Harvey v. facey"*

- **Fact:-** The plaintiff telegraphed to the defendants writing "will you sale us bomber Hall pen:? Telegraph replied, also by a telegram lowest price for Bumper Hall Pent $ 900" The plaintiffs immediately sent their last telegram stating "we agree to buy Bumper Hall pen for $ 900 asked for you"
- **Held:-** The defendants, however, refused to sell the plot of land, at that price. The plaintiff contended that by quoting their minimum price in response to the enquiry the defendants had made an offer to sell at that price. Their Lordship pointed out that in their first telegram, the plaintiff had asked two questions defendants answered only the second,

and gave only the lowest price. Thus, they had made no offer. The last telegram of the plaintiff was an offer to buy, but that was never accepted by the defendant.

Catalogue and display of goods:-

In pharmaceutical society of great Britain v. Boot cash Chemist Ltd.

- **Lord Goddord CJ said:-** It would be wrong to say that the shopkeeper is making an offer to sell every article in the shop to any person who might come in and that person can insist on buying any article by saying, I accept your offer". In most book shops customers are invited to go in and pick up books and look at them even if they do not actually buy them, there is no contract by the shopkeeper to sell until the customer has taken the book to the shopkeeper or his assistant and said I want to buy this book and the shopkeeper says yes.
- Therefore, I am of opinion, the mere fact that a customer picks up a bottle of medicine from the shelves in this case does not amount to an acceptance of an offer to sell. It is to buy, and there is no sale affected until the buyers. Offer to buy is accepted by the acceptance of the price.

Communication of Offer

- The communication of proposal is complete when it comes to the knowledge of the person to whom it is made.As a result, the person to whom the offer is made cannot accept it until it has been made known to them.

Case Law

Lalman Shukla v. GauriDutt:

- **Facts:** The defendent's nephew had gone missing, and servants were sent to find him. While the workers had gone to search for him, the litigant declared a prize for whosoever could bring him back his nephew. The nephew was brought back home by the plaintiff, who had no idea about the reward.
- **Held:** Even though he received some money as a reward, he later filed a lawsuit claiming that he deserved it. Because the fundamental requirement of a valid contract is the knowledge and assent of a proposal in order to convert the proposal into an enforceable agreement, the Court determined that the plaintiff and the defendant did not have a contract.

Promise

- 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 promise.
- The person making the proposal is "Promiser" and the person accepting the proposal is "Promisee".

What is acceptance?

"When the person to whom the proposal is made signifies his assent thereto, A proposal, when accepted, becomes a promise, thus "acceptance" is the assent given to a proposal, and it has the effect of converting the proposal into promise. The person making the proposal does not become bound thereby until its acceptance. As soon as his proposal is accepted that is known as promise, whereby both the parties become bound. When the proposal or acceptance is made in worse, the promise is said to be express when the proposal or acceptance is made otherwise than in the words, the promise is said to be implied.

➲ A proposal, when accepted, results in an agreement. It is only after the acceptance of the proposal that a contract between two parties can arise.

Essentials of valid acceptance:-

Following are the essentials of valid acceptance.

1. Acceptance should be communicated by the offeree to the offeror.
2. Acceptance should be absolute and unqualified.
3. Acceptance should be made in some usual and reasonable manner.
4. Acceptance should be made while the offer is still subsisting.

Effect of departure from prescribed manner:-

The section no doubt requires that acceptance should be made in the manner prescribed in the proposal .But a departure from that manner does not of itself invalidate the acceptance. A duty is cost on the offeror to reject such acceptance within reasonable time and if he fails to do so, the contract is clinched on him and he becomes bound by the acceptance.

It has been held in ***Surendra Nath Ray v. Kedar Nath Bose*** that where an offeror requires that the acceptance should be sent to a particular person, it has to be read in a reasonable and in sensible manner and there was no violation of section 7 when the offeree, instead of writing to the particular person, met him personally to communicate his acceptance. The defendant was bound by the acceptance.

When no manner prescribed-reasonable and usual manner:-

Where no mode of acceptance is prescribed, acceptance must "be expressed in some usual and reasonable manners". Mail is, of course, a very reasonable manner in such cases. In England the rule is that where an offer is reserved through post, acceptance may also be communicated by post. But in India, in view of section 7, post may be used as a mode of communication in all cases where it is reasonable, except when the offer requires a particular form of communication.

When contract is concluded in postal communication:-

When the parties are at a distance and are contracting through post or by messengers, the question arises when is the contract concluded? Does the contract arises when the acceptance is posted or when it is received.

The question first arise in England in Adams v. *Lind sell.*

➲ **Fact:-**On Sep. 2, 1817, the defendant sent a letter offering to sell quantity of wool to the plaintiffs. The letter added "receiving year answer in course of post". The letter reached the plaintiff on September 5. On that evening the plaintiff wrote an answer agreeing to accept the wool. This was received by the defendant on September 9. The defendants

waited for the acceptance upto September 8 and not having received it, sale the wool to other parties on that date. They were sued for breach of contract. It was contended on their behalf that till the plaintiff, answer was actually received there could be no binding contract and, therefore, they were free to sell the wool in 8th But the court said-

"If that were so, n o contract could ever be completed by post. for it the defendants were not bound by their offer when accepted by the plaintiffs. Till the answer was received, then the plaintiff ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go on ad infinitum (endlessly)"

The result of the decision is that a complete contract arises on the date when the letter of acceptance is posted in due course. The Indian Contract Act, in Section 4 adopts a rather peculiar modification of the rule. According to the section, when a letter of acceptance is posted and is out of the power of the acceptor, the proposal becomes bound. But the acceptor will become bound only when the letter is received by the proposer. The section runs as follows:-

Section 4 :- Communication when complete.

The communication of an acceptance is complete, as against the proposer, when it is put in course of transmission to him, so as to be out of the power of the acceptor, as against the acceptor, when it comes to the knowledge of the proposer.

Revocation of offer and acceptance.

Acceptance should be made before the offer lapses. An offer lapses in the circumstances provided in section 6-

Section 6:- Revocation how made.

1. By the communication of notice of revocation by the proposer to the other party.
2. By the lapses of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.
3. By the failure of the acceptor to fulfill a condition precedent to acceptance.
4. By the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

This was laid down in Henthorn v. Fraser the secretary of a building society handed to the plaintiff in the office of the society an offer to sell a property at $ 750 giving him the right to accept within fourteen days. The plaintiff resided in a different town and took away with him the offer to that town.

The next day at about 3:50 pm. He sent by post his letter of acceptance. This letter was received at the society's office at 8:30 pm. But before that at about 1:00 pm the society had posted a letter revoking its offer. The revocation and the acceptance crossed in the course of post. The plaintiff received the letter of revocation at 5:30 pm. The revocation was held to be in effective.

Explaining the principle, Lord Herschel observed-

If the acceptance by the plaintiff of the defendant's offer is to be treated as complete at the time the letter containing it was posted, I can entertain no doubt that the societies. Attempted revocation of the offer was wholly ineffectual.

1. **Lapse of time:-** An offer lapse on the expiry of the time, if any, fixed for acceptance. Where an offer says that it shall remain open for acceptance up to a certain date, it has to be accepted within that date. It has been suggested by the Calcutta High court that in such a case it is enough if the acceptor has "posted the acceptance before the stipulated time: even if it reaches the offeror after the stipulated date. The court said, "that an effective date on which the option of acceptance is exercised by a party is to be ascertained from the date when the acceptance is put in transmission and the letter is posted."
2. **By failure to accepted condition precedent:-** where the offer is subject to a condition precedent, it lapses if it is accepted without fulfilling the condition. Where a salt lake was offered by way of lease on deposit of a sum of money within a specified period, and the intended lesser did not deposit the amount for three years, it was held that this entailed cancellation of the allotment.
3. **By death or insanity of offer:-** An offer lapses on the death or insanity of the offeror, provided that the fact comes to the knowledge of the offeree before he makes his acceptance. In England it was felt at one time that an offer terminated at once on the death of the offeror, whether or not the fact has come to the notice of the offeree.
   ***In* Bhagwandas v. Girdhari Lal & Co.**

➲ **Fact:-**The plaintiff made an offer on phone from Ahmadabad for the purchase of cotton seed cake from the defendants. The defendants accepted this offer on phone at Khamgaon. The defendants having failed to supply the cake, were sued by the plaintiff to pay compensation amounting to Rs. 31,150 for the breach of contract. The suit was filed at Ahmadabad. The defendant's contended that the Ahmadabad Court had no jurisdiction because the contract was struck on khamgaon,when the acceptance was communicated to him at Ahmadabad and, therefore, the suit was within the jurisdiction of the Ahmadabad Court.

➲ **Held:-** It was held that the contract was made at Ahambaded where the acceptance was communicated and the part of cause of action for an action for the breach of contract.

What is agreement?:-

Every promise and every set of promises forming the consideration for each other is an agreement. In an agreement there is a promise from both sides for example, A promises to deliver his watch to B and in return B promises to pay a sum of Rs. 2000 to A. there is said to be an agreement between A and B.

When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when a accepted, becomes a promise; hence, it is often said that: all contracts are agreements, but all agreements are not contract" Mathematically,

Proposal + Acceptance = Agreement.

The agreement required at two sides or two parties

Agreement + Enforceability = Contract.

An agreement enforceable by law is a contract; agreement enforceable by law' this section stipulates meeting twin requirements: there has to be "an agreement in legal sense and this agreement has all the trapping of enforceability contract is an agreement between two entities, oral contract an enforceable obligation to do, or to retrain from doing, a particular thing.

Essentials of valid contract:

1. An agreement between two parties, An agreement is the result of a proposal or an offer by one party followed by its acceptance by other.
2. Agreement should be between the parties who are competent to contract.
3. There should be a lawful consideration and lawful object in respect of that agreement
4. There should be free consent of the parties, when they enter into the agreement.
5. The agreement must not be one which has been expressly declared to be void.

In ***B.P Rafinary (Westernpart) Pvt. Ltd. v. Shire of Hastings*** The Privy Council has laid down few conditions which are to be satisfied for an implied terms of contract.

These are-

1. It must be reasonable and equitable.
2. It must be necessary to give business efficacy to the contract
3. It must be so obvious that "it goes without saying:
4. It must be capable of clear expression.
5. It must not contradict any express term of the contract. So basically every contract involves four elements.

Is the intention required as essential Ingredient of contract.?

There is no provision in the Indian Contract Act requiring that an offer or its acceptance should be made with the intention of creating a legal relationship. But the English Law it is a settled principle that "to create a contract there must be a common intention of the parties to enter into legal obligation" It was pointed out in an early case that "contracts must not be the sports of an idle hour, mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever:"

The case of *Balfour v. Balfour* has become well known as an illustration of this principle:

- **Fact:-** The defendant and his wife were enjoying leave in England. When the defendant was due to return to Ceylon, where he was employed his wife was advised, by reason of her health, to remain in England. The defendant agreed to send her an amount of $ 30 a month for the probable amount for some time, but afterwards difference arose which resulted in their separation and the allowance fell into arrears. The wife's action to recover the arrears was dismissed.
- **Held**:-

Lord Atkins explained the principle thus:-

"There are agreements between parties which do not result in contract within the meaning of that term in our law. The ordinary example is where two parties agree to take a walk together, or where there is an offer and acceptance of hospitality. Nobody would suggest in ordinary circumstances that these arrangement result in what we know as contract, and one of the most usual forms of agreement which does not constitute a contract appears to be the arrangement which are made between husband and wife. These arrangements do not result in contracts at all, even though there may be what would constitute consideration for the agreement. They are not contracts because parties did not intend that they shall be attended by legal consequence"

Agreement relating to love and affection are not contracts:-

The intention of the parties is naturally to be ascertained from the terms of the agreement and

the surrounding circumstances. It is for the court in which case to find out whether the parties must have intended to enter into legal obligations. "In the arrangement regulating social relations it follows almost as a matter of course that the parties do not intend legal consequence to follow.

Mcgregor v. Mcgregor is an early illustration of a binding engagement between a husband and wife. Here a husband and wife withdraw their complaints under an agreement by which the husband promised to pay her an allowance and she was to refrain from pleading his credit, the agreement was held to be a binding contract.

The test of contractual intention is objective:-

The test of contractual intention is objective, not subjective, what matters is not what the parties had in mind, but what a reasonable person would think, in the circumstances, their intention to be.

In ***Simpkins v. Pays (1955)*** where there ladies, two of them being mother and daughter and the third a paying guest, together made entries into a crossword puzzle in the name of the mother, the expenses being met by one or other, without any rules. The entry was successful and the mother refused to share the prize.

➲ **Held**:- The court held that she was bound to do so, for any reasonable man looking at their conduct would at once conclude that they must have intended to share the prize.

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