SYNOPSIS

Preliminary

1. Short title, extent and Commencement

2. Interpretation clause

1. Short title, extent and Commencement

Every contract made in India shall be governed by the Indian Contract Act, 1872 from 1 September 1872, but existing unrepealed laws, trade usages and customs, and incidents of contracts shall continue to apply so far as they are consistent with the Act.

> This Act may be called the Indian Contract Act, 1872.
>
> Extent, Commencement--
>
> It extends to the whole of India; and it shall come into force on the first day of September, 1872.
>
> Saving--
>
> Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act

Section 1 does three things. First, it gives the Act its name, the Indian Contract Act, 1872. Second, it fixes the Act's reach and start date. The Act applies throughout India and came into force on 1 September 1872, so contracts made before that date are not governed by it. As originally enacted, the Act excluded the State of Jammu and Kashmir. That exclusion was removed by the Jammu and Kashmir Reorganisation Act, 2019, and the Act now applies there as well. Third, the saving clause makes clear that the Act is not a complete code of contract law. It does not override any other statute, Act or regulation that it has not expressly repealed. It does not displace a usage or custom of trade, or an incident of a contract (a right or duty that attaches to a particular kind of contract by law or custom), unless that usage or incident conflicts with the Act. The Privy Council confirmed this in *Irrawaddy Flotilla Co. v. Bugwandas* (1891) 18 IA 121 (PC), holding that the Act does not profess to be a complete code of the law of contract. For example, suppose that in a grain market in Patna, the long-standing

practice is that a broker who arranges a sale can claim commission from both buyer and seller. If a dispute arises, the court may enforce that custom, because the Act says nothing to the contrary and the saving clause preserves it. By contrast, suppose a trade custom said that a bare promise without consideration is binding. That custom would not be saved, because it conflicts with Section 25, which makes such an agreement void (subject to its exceptions). In the same way, special statutes on particular contracts, such as the Sale of Goods Act, 1930 and the Negotiable Instruments Act, 1881, continue to govern their own subjects alongside the general provisions of the Contract Act.

2. Interpretation clause

Opening words — Words and expressions in this Act shall carry the meanings given in this section, unless the context shows a contrary intention.

> In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

Section 2 of the Indian Contract Act, 1872 is the interpretation clause, and it defines the basic terms on which the whole law of contract rests: “proposal” (cl. a), “acceptance” and “promise” (cl. b), “promisor” and “promisee” (cl. c), “consideration” (cl. d), “agreement” (cl. e), “reciprocal promises” (cl. f), a void agreement (cl. g), “contract” (cl. h), “voidable contract” (cl. i) and a contract that becomes void (cl. j). The opening words of the section require these terms to carry their defined meanings wherever they appear in the Act. This gives the Act a consistent vocabulary and sets out the stages by which a contract is formed: an accepted proposal becomes a promise, promises that form consideration for each other make an agreement, and an agreement enforceable by law is a contract. The definitions are not rigid, however. The words “unless a contrary intention appears from the context” allow a court to read a term in its ordinary sense, or in a different sense, where the provision in which it appears clearly requires that. The defined meaning is the default, and a court departs from it only when the context of a particular section calls for it. For example, A offers to sell his car to B for ₹3 lakh, and B accepts. A’s offer is a proposal and B’s acceptance turns it into a promise. A is the promisor and B the promisee. The price and the car are consideration for each other’s promises, so together they form an

agreement, and because the agreement is enforceable by law, it is a contract. Had B's consent been obtained by A's fraud, the contract would be voidable at B's option. Wherever these words appear later in the Act, such as "contract" in s. 10 or "consideration" in s. 25, they bear these meanings unless the context of that section clearly shows otherwise.

2.a Proposal — A person who signifies to another his willingness to do or abstain from doing anything, with a view to obtaining that other's assent, shall be deemed to make a proposal.

> (a) 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 other to such act or abstinence, he is said to make a proposal;

Section 2(a) of the Indian Contract Act, 1872 defines a proposal, also called an offer, which is the first step in forming a contract. A proposal has three essential elements. First, the proposer must signify, that is, communicate, his willingness to the other person, either expressly by words spoken or written, or impliedly by conduct (s. 9); a willingness kept to oneself is not a proposal. Second, the willingness may relate either to doing something, such as selling goods or performing a service, or to abstaining from doing something, such as not competing or not suing. Third, it must be made with a view to obtaining the other person's assent, so that an acceptance by him would create a binding obligation. The person making the proposal is called the promisor and the person to whom it is made the promisee (s. 2(c)), and once the proposal is accepted it becomes a promise (s. 2(b)). This third element separates a proposal from a mere statement of information or an invitation to offer, such as goods displayed in a shop, a price list, a catalogue or an advertisement inviting tenders, where the person is only inviting others to make offers. A proposal may be made to a specific person or to the public at large, as with offers of reward recognised in *Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256 and *Lalman Shukla v. Gauri Dutt* (1913) 11 ALJ 489. For example, if A writes to B, "I am willing to sell you my scooter for ₹40,000; let me know if you agree", A has made a proposal, and B's acceptance would turn it into a promise. Similarly, if C tells D, "If you pay me ₹10,000, I will not open a competing tea stall on your street for one year", C makes a proposal to abstain from doing something. But if A merely asks B, "Would you be interested in buying my scooter, and what

would you pay?", A has only invited an offer. In the same way, in *Harvey v. Facey* [1893] AC 552, the Privy Council held that quoting the lowest acceptable price in reply to an inquiry was not an offer.

2.b Promise — A proposal shall become a promise when the person to whom it is made signifies his assent to it.

> (b) 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) of the Indian Contract Act, 1872 explains how an offer turns into a binding commitment. A proposal is made when one person signifies to another his willingness to do or not to do something, with a view to obtaining that other's assent (s. 2(a)). Acceptance happens only when the person to whom the proposal is made (the offeree) signifies his assent to it. Merely agreeing in one's mind is not enough. The assent must be communicated by words or conduct, and the communication must be complete (s. 4). The acceptance must also be absolute and unqualified and made in the prescribed or a reasonable manner (s. 7). An acceptance that changes the terms is not an acceptance but a counter-proposal. Only the person to whom the proposal is made can accept it, although a general offer to the public can be accepted by anyone who performs its conditions (*Lalman Shukla v. Gauri Dutt* (1913) 11 ALJ 489; *Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256). Once the proposal is accepted it becomes a promise, and the person making the proposal is called the "promisor" and the person accepting it the "promisee" (s. 2(c)). A promise is the basis of an agreement (s. 2(e)), and it becomes a contract if it is enforceable by law (s. 2(h)). For example, A offers in writing to sell his scooter to B for ₹30,000, and B replies, "I accept your offer." B has signified his assent, so A's proposal has become a promise. A is the promisor and B the promisee. If B had instead replied, "I will buy it for ₹25,000," there would be no acceptance and no promise, only a fresh proposal from B, which A is free to accept or reject.

2.c Promisor and Promisee — The person who makes a proposal shall be called the promisor, and the person who accepts it shall be called the promisee.

> (c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

Section 2(c) of the Indian Contract Act, 1872 names the two parties to a promise. A proposal (offer) is made when one person tells another that he is willing to do or not do something, with a view to getting that person's assent (s. 2(a)). When the other person accepts it, the proposal becomes a promise (s. 2(b)). The person who made the proposal is then the promisor, because he is bound to perform what he offered. The person who accepted it is the promisee, because he is entitled to receive that performance. In most contracts each party promises something to the other, so each is a promisor for his own promise and a promisee for the other's. For example, A offers to sell his bicycle to B for ₹5,000 and B accepts. For the promise to deliver the bicycle, A is the promisor and B is the promisee. B's acceptance also binds him to pay ₹5,000, and for that promise B is the promisor and A is the promisee. The labels matter because the Act uses them to set out duties: for instance, under s. 37 the parties must perform their respective promises, and under s. 38 a promisor who has offered to perform is not responsible for non-performance if the promisee refuses to accept the offer.

2.d Consideration — An act, abstinence or promise done at the promisor's desire, by the promisee or any other person, shall constitute consideration for the promise.

> (d) When, at the desire of the promisor, the 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 act or abstinence or promise is called a consideration for the promise;

Section 2(d) of the Indian Contract Act, 1872 defines consideration as the price the promisor asks for in return for the promise, and it has three main elements. First, the act, abstinence or promise must be made at the desire of the promisor. Something done voluntarily, or at the request of a third party, is not consideration even if it benefits the promisor. In *Durga Prasad v. Baldeo* (1880) ILR 3 All 221, shops built at the Collector's request did not support the defendant's later promise to pay commission on them. Second, consideration may move from the promisee or any other person. Indian law therefore permits consideration to come from a stranger, unlike the stricter English rule. In *Chinnaya v. Ramayya* (1882) ILR 4 Mad 137, a promise to

pay an annuity was enforced even though the consideration had been given by the promisor's mother and not by the promisee. Third, consideration may be past ("has done"), present ("does") or future ("promises to do"), and it may be positive, by doing something, or negative, by abstaining from something, so that giving up a legal right, such as agreeing not to sue, is valid consideration. Under s. 25 an agreement without consideration is void, subject to the exceptions listed there, and under s. 23 the consideration must be lawful. For example, if A promises to pay B ₹10,000 to paint A's house and B paints it, B's act, done at A's desire, is consideration for A's promise, and B can enforce payment. If B had painted the house without being asked and A later promised to pay him, B's act would not be consideration under s. 2(d), because it was not done at A's desire. That promise could still be enforceable under the separate exception in s. 25(2), which covers compensating a person who has voluntarily done something for the promisor.

2.e Agreement — Every promise or set of promises that forms the consideration for each other shall constitute an agreement.

> (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

Section 2(e) of the Indian Contract Act, 1872 defines an agreement as a promise, or a set of promises, given in exchange for one another. An agreement grows out of a promise: when one person signifies willingness to do or abstain from doing something (a proposal, s. 2(a)) and the other person accepts it, the accepted proposal becomes a promise (s. 2(b)). That promise becomes an agreement only when it is supported by consideration, meaning something done, abstained from, or promised in return at the desire of the promisor (s. 2(d)). The words "forming the consideration for each other" express this reciprocity: each party's promise is the price of the other's. Where both parties exchange promises, as in most commercial deals, it is a "set of promises". Where one side gives a promise in exchange for an act, it is a single "promise". An agreement is not yet a contract. It becomes a contract only when it is enforceable by law (s. 2(h)), which requires free consent, competent parties, a lawful object and lawful consideration, and the agreement must not be expressly declared void (s. 10). Every contract is therefore an agreement, but not every agreement is a

contract. A purely social arrangement or an agreement with an unlawful object remains an agreement that the law will not enforce. For example, A offers to sell his bicycle to B for ₹5,000 and B accepts. A's promise to deliver the bicycle is the consideration for B's promise to pay, and B's promise is the consideration for A's, so these mutual promises form an agreement under s. 2(e). Because the parties are competent, consent is free and the object is lawful, the agreement is also a contract. By contrast, if A promises to take B to dinner and B promises to come, there is an exchange of promises, but no legal obligation is intended, so the agreement is not enforceable as a contract.

2.f Reciprocal Promises — Promises that form the consideration, or part of the consideration, for each other shall be treated as reciprocal promises.

> (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

Section 2(f) of the Indian Contract Act, 1872 defines reciprocal promises as promises that support each other: each party's promise is given in return for the other's. Consideration means something done, or promised to be done, at the desire of the promisor (s. 2(d)), and a promise can itself serve as consideration. So when two parties exchange promises, each promise is the price paid for the other, and the agreement is binding even though neither side has performed yet. The promise need not be the whole consideration; it is enough if it forms part of it. The Act lays down rules for performing reciprocal promises in ss. 51 to 58. Where the promises are to be performed at the same time, neither party has to perform unless the other is ready and willing to perform (s. 51). The order of performance follows the contract, or failing that, the nature of the transaction (s. 52). Where one party prevents the other from performing, the contract becomes voidable at the option of the party prevented (s. 53). Where one promise cannot be performed until the other is performed, the party who fails to perform first cannot claim performance from the other and must compensate them (s. 54). For example, A promises to deliver 100 bags of rice to B next Monday, and B promises to pay ₹2 lakh for them on delivery. A's promise to deliver is the consideration for B's promise to pay, and B's promise to pay is the consideration for A's promise to deliver, so these are reciprocal promises

and a valid contract exists as soon as the promises are exchanged. Because delivery and payment are to happen at the same time, A need not hand over the rice unless B is ready and willing to pay, and B need not pay unless A is ready and willing to deliver (s. 51).

2.g Void Agreement — An agreement that the law will not enforce shall be void.

(g) An agreement not enforceable by law is said to be void;

Section 2(g) of the Indian Contract Act, 1872 defines a void agreement as one that the courts will not enforce. It has no legal effect from the start: it creates no rights or obligations, and neither party can sue the other to perform it or claim damages for its breach. This differs from a contract, which s. 2(h) defines as an agreement enforceable by law. It also differs from a voidable contract (s. 2(i)), which is valid until the party entitled to do so sets it aside. A void agreement is never valid and cannot be made valid by later consent. An agreement may be void for several reasons set out in the Act. Examples include an agreement made by a minor (*Mohori Bibee v. Dharmodas Ghose* (1903) ILR 30 Cal 539 (PC)), an agreement whose object or consideration is unlawful (s. 23), an agreement without consideration that falls outside the exceptions in s. 25, a mutual mistake as to a fact essential to the agreement (s. 20), an agreement in restraint of marriage, trade or legal proceedings (ss. 26–28), an agreement whose meaning is uncertain (s. 29), a wagering agreement (s. 30), and an agreement to do an impossible act (s. 56). An agreement can also start out valid and become void later, for example where performance becomes impossible or unlawful after it is made (s. 56). In that case, under s. 65, any person who received an advantage under it must restore it or pay compensation. For example, X agrees to pay Y ₹50,000 if Y beats up X's rival. The object is unlawful, so the agreement is void under ss. 2(g) and 23. If Y does nothing, X cannot sue him, and if Y carries out the act, he cannot sue X for the money. Similarly, if A and B agree that A will pay B ₹10,000 if India wins a cricket match and B will pay A the same amount if it loses, the agreement is a wager and void under s. 30, so the winner cannot recover the amount through the courts.

2.h Contract — An agreement shall be a contract only if it is enforceable by law.

(h) An agreement enforceable by law is a contract;

Section 2(h) of the Indian Contract Act, 1872 defines a contract as an agreement that the law will enforce. Every contract is therefore an agreement, but not every agreement is a contract. An agreement is defined in s. 2(e) as every promise and every set of promises forming the consideration for each other. It arises when one person makes a proposal, the other accepts it (s. 2(b)), and each gives something in return. That agreement becomes a contract only when it is enforceable, meaning a court will compel performance or award damages if one party fails to perform. Section 10 sets out the conditions for enforceability. The agreement must be made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and it must not be expressly declared void by the Act. Agreements that lack these elements, or that create only social or domestic obligations with no intention to create legal relations, remain mere agreements and cannot be enforced in court. In short, contract = agreement + enforceability. For example, A agrees to sell his bicycle to B for ₹5,000, and B agrees to buy it. Both are adults of sound mind, they consent freely, and the object and consideration are lawful, so this is a contract. If A refuses to deliver, B can sue him. By contrast, if A invites B to dinner and B accepts but A later cancels, there is an agreement but no contract, because the parties never intended legal consequences, so B cannot sue. Similarly, an agreement to pay someone to commit an assault is not a contract, because its object is unlawful (s. 23), and so it is void.

2.i Voidable Contract — An agreement enforceable at the option of one or more parties, but not at the option of the other or others, shall be a voidable contract.

(i) 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) of the Indian Contract Act, 1872 defines a voidable contract. It is a valid contract that binds both parties until it is avoided, but one party (the aggrieved party) can choose either to enforce it or to set it aside. The other party has no such choice and must perform if the aggrieved party decides to continue with the contract. This option usually arises because the aggrieved party's consent was not free. Under s. 19, a contract is voidable at

the option of the party whose consent was caused by coercion, fraud or misrepresentation. Under s. 19A, it is voidable where consent was caused by undue influence. A voidable contract is different from a void agreement, which has no legal effect from the start. A voidable contract remains valid until the aggrieved party rescinds it. If the aggrieved party affirms it, expressly or by conduct, it becomes fully binding. On rescission, the party who received a benefit under the contract must restore it to the person from whom it was received (s. 64), and the party who rightfully rescinds may also claim compensation for any loss caused by non-performance (s. 75). For example, A threatens to harm B unless B agrees to sell his car to A for ₹50,000. B's consent is caused by coercion (s. 15), so the contract is voidable at B's option. B may refuse to deliver the car and set the contract aside, and if A has paid any money, B must return it. Alternatively, if B later decides that ₹50,000 is a fair price and wants to go ahead, he may affirm the contract and A is bound to complete the purchase. A cannot avoid the contract by pointing to his own coercion.

2.j Void Contract — A contract shall become void at the moment it ceases to be enforceable by law.

> (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Section 2(j) of the Indian Contract Act, 1872 covers a contract that was valid and enforceable when it was made but later loses that enforceability. It differs from an agreement void ab initio under s. 2(g), such as one with an unlawful object, which never has any legal effect. A contract under s. 2(j) is valid until it becomes unenforceable and is void only from that point on. This usually happens because of events after the contract is made. Performance may become impossible or unlawful through no fault of the promisor (s. 56, para 2). In a contingent contract, the event on which it depends may become impossible (s. 32). Or a party entitled to avoid a voidable contract, for example one induced by coercion or fraud, may choose to rescind it (ss. 19, 19A and 64). A party's failure to perform does not make the contract void; it is a breach, which gives the other party a right to damages. Once the contract becomes void, neither party can compel further performance, and under s. 65 anyone who received an advantage under it must restore it or pay compensation for it. For example, A contracts

to carry cargo for B to a port in a foreign country, and B pays the freight in advance. Before the voyage, the Indian Government declares war on that country, so carrying goods there becomes unlawful. The contract was valid when it was made, but it becomes void when war is declared (Illustration (d) to s. 56). A cannot be sued for not carrying the cargo, B cannot insist on performance, and under s. 65 A must refund the advance freight to B.