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All Contracts are Agreement but All Agreements are Not Contract

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ABSTRACT

Contracts is defined in S2(h) of Indian contract Act, 1874 .Contracts and Agreements are mostly considered synonymous terms, but they are different in many aspects, and they have a totally different definition. An agreement is the basic structure and when the agreement is legally bounding it becomes a contract, but if it does not include the essentials to form a contract then it can become a void, voidable, domestic agreement. Therefore, not every agreement turns into a contract, but it can be considered as an essential step forward to form a contract. This paper aims to differentiate between these two terms and elaborate the essentials to turn an agreement into a contract.

Keywords: *Contracts, Indian Contract Act,1874, Agreement, Essentials of a contract, Void agreements, Voidable Agreements, Domestic Agreements.*

I. INTRODUCTION

Contracts have long been a crucial component of our daily lives. Hundreds of times a year, whether deliberately or unknowingly, we enter into contracts. Even when we purchase candy, we are making a deal with the store owner. We sign a contract each time we go to a restaurant or order a cab. The jurisprudence of contract remains the same even when the law of contracts is evolving throughout time. We are aware of what a contract entails, yet new circumstances pop up every day, raising the question of whether or not this particular agreement qualifies as a contract.

Understanding the distinction between a contract and an agreement is one of the main misunderstandings among people. They are frequently used in place of one another. It is unclear if a document is an agreement or a contract, for instance, when the landlord brings over a rent agreement and requests that you sign the contract.

In movies, we see "contract killers" who take payment to kill individuals. Have you ever wondered whether a contract to kill someone in exchange for money was legally binding? or "Can the man who made the contract sue the contract killer in court, claiming that the other party breached the contract by failing to perform the work despite payment of money?"

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II. WHAT IS A CONTRACT?

Section 2 Interpretation clause² of The Indian Contract Act, 1872 defines proposal as when a person signifies his/her willingness to do or abstain from doing something, with a view to obtaining the assent, he is said to make a proposal. When the proposal is accepted it becomes a promise as stated in S 2(b). Every promise or set of promises, forming the consideration for each other, is an agreement as expressed in S 2(e). Agreements are of three types – Valid, void, and voidable

- Valid agreements are those agreements which are enforceable by law and therefore becomes a valid contract.
- Void agreements are those agreements which are not enforceable by law (S 2(g)).
- Voidable agreements are those which are enforceable by law at an option or more of the parties thereto, but not at the option of other or others is a voidable contract (S 2(i))

III. ESSENTIALS OF CONTRACT

Section 10³ of Indian Contract Act states that all agreements are contract if they are made by free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressed as void. Therefore, it states that to form a contract there should be –

- Free Consent
- Competent parties
- Lawful consideration
- Lawful object
- Not declared as void
- Intention to form a contract
- Intention is not mentioned in section 10 but is derived from the cases as one of the prerequisites to form a contract

1. Competent Parties:

Section 11 of the Indian Contract Act, 1872 states that every person is competent to contract

² a clause inserted in a statute or contract declaring the interpretation that is to be put upon certain words

³ 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.

who is of the age of majority⁴ according to the law to which he is subject and who is of sound mind⁵ and is not disqualified from contracting by any law to which he is subject. Therefore, competent parties include people who have attained the majority and are of sound mind i.e., able to understand the consequences to enter the contract.

One of the most famous cases *Mohoribibee Vs Dharmodas Ghose*⁶ which was presented before Privy Council⁷ in 1903 stated that an agreement with a minor is void

Facts of the case:

- Dharmodas Ghose went to Brahmodutt to take some loan
- In return of the loan, he promised to mortgage his property to Brahmodutt
- Dharmodas Ghose misrepresented his age and told Brahmodutt that he was a major. However, Kedarnath, who was the agent of Brahmodutt knew about the minority of Dharmodas Ghose
- Brahmodutt believing Dharmodas Ghose had lend some amount of money to him and kept the property as mortgage
- Mother of Dharmodas Ghose claiming that the agreement between Dharmodas Ghose and Brahmodutt is void
- She also claimed back the papers of the property. However, Brahmodutt claimed that the contract is valid and Dharmodas Ghose is legally bound by it.

Decision of the court:

- The trial court⁸ held that the agreement between Dharmodas Ghose and Brahmodutt is void agreement because any agreement made between the parties where in one or both the parties are minor shall be considered void agreement
- The high court agreed with the decision of the trial court
- Thereafter an appeal was filled in the privy council

Privy Council:

⁴ Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

⁵ A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

⁶ *Mohori Bibee v Dharmodas Ghose*, [1903] UKPC 12, is a major Indian contract law case decided by the Judicial Committee of the Privy Council. The case held that a contract entered into by a minor is totally void

⁷ The Privy Council was nothing but the judicial body, which heard appeals from various courts of the British colonies including India. The origin of Privy Council can be traced back to the Norman Period of English

⁸ A trial court or court of first instance is a court having original jurisdiction, in which trials take place.

- During the pendency of the case Brahmodutt died leaving behind a representative called mohoribibee
- Mohoribibee carried on the case in Privy Council she made 4 claims
- She claimed specific performance⁹ of contract
- she claimed restitution under sec 64¹⁰ and 65¹¹ of the Indian Contract Act
- demand to apply estoppel¹²
- Restitution¹³ under S 33 of the specific relief act 1963¹⁴

Decision of Privy Council:

- The privy council stated since the agreement between Dharmodas Ghose and Brahmodutt was void due to minority that is parties not being competent. This agreement does not qualify itself as a contract and therefore it cannot be specifically performed. Therefore, first claim of mohoribibee was rejected.
- With regard to the second claim made by mohoribibee the privy council held the following things
- Restitution under S (64) of the Indian contract applies only on voidable contracts therefore restitution under this cannot be given under this section as the present agreement was void ab initio¹⁵ and not a voidable contract
- The privy council rejected the claim of mohoribibee and said S (65) of the Indian Contract Act does not apply in the present case because that the present agreement is void ab initio and S (65) applies only to the cases where in the agreement either becomes void or is discovered to be void
- The third claim of Mohoribibee i.e., estoppel, privy council held two things –

⁹ The specific performance is also an equitable relief. The plaintiff seeking this remedy must first satisfy the court that the normal remedy of damages is inadequate, the presumption being that in cases of contracts for transfer of immovable property, damages will not be adequate

¹⁰ When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.

¹¹ When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

¹² Estoppel is that rule which prohibits a person from contradicting what was earlier said by him in a court of law

¹³ The law of restitution is the law of gains-based recovery, in which a court orders the defendant to give up their gains to the claimant.

¹⁴ The Specific Relief Act, 1963 is an Act of the Parliament of India which provides remedies for persons whose civil or contractual rights have been violated. It replaced an earlier Act of 1877

¹⁵ Having no legal effect from inception. A law, agreement, sale, or other action that is void has no legal effect. A void action cannot be ratified or validated. An action that is void ab initio never had any legal effect. Ab initio is usually italicized because it is a Latin term that means from the beginning.

- Rule of estoppel does not apply against law. (It is the law that states that a minor cannot enter into a contract)
- In this given case agent of Brahmodutt i.e., Kedarnath always knew about the age of Dharmodas Ghose. Therefore, as per the principle of constructive knowledge¹⁶ what the agent knows the principal also knows and thus it is implied that Brahmodutt know about the age of Dharmodas Ghose
- The fourth claim of Mohoribibee was to claim restitution under S 41, Specific Relief Act, 1877 (Now S 33, Specific Relief Act, 1963). The privy council rejected and held the following things-
- S (33) puts a discretion on the court to grant the relief
- S (33) can be claimed in two circumstance-
- Where the agreement is either void or voidable and the parties' vows to court to cancel it. Here the court may grant restitution even in the cases where the parties are minor
- After 1963, S (33) can be invoked in cases where in the plaintiff is a minor and he has got certain benefits in the agreement
- S (33) can also be used where in the defendant is a minor, the court may order him to restore the benefits he has derived from the void agreement
- However S (33) does not apply in the cases wherein the party knew about the age of the other party

In our present case the privy council refused to grant restitution under Specific Relief act because Brahmodutt knew about minority of Dharmodas Ghose

2. Free Consent:

- In order to be for a contract to be valid is free consent. S (13) defines consent as understanding the terms of the agreement in the same ways by both the parties to the agreement. It means to agree on something in same sense. This is known as consensus-ad-idem.¹⁷
- S (14) defines consent as a consent which is not caused by coercion¹⁸, undue influence, fraud, misrepresentation, mistake.
- In case the consent is obtained either by coercion, undue influence, fraud, and

¹⁶ Constructive Knowledge is where a Person is Legally Presumed to Know Something, Because he Should have Known it.

¹⁷ Meeting of the minds is a phrase in contract law used to describe the intentions of the parties forming the contract

¹⁸ the practice of persuading someone to do something by using force or threats.

misrepresentation the agreement shall be voidable

- Mistake is not defined in Indian Contract Act and therefore a consent obtained by mistake is delt under S (20), (21), (22) which might not make the agreement void.
- S (15) defines coercion as an act forbidden by IPC and thereby causing the agreement to be voidable.
- Undue Influence is a component where in the agreement will be voidable and the consent obtained by undue influence shall not be considered free. It is stated under S (16).
- Requirements of Undue influence are as follows-
 - i) Relation between the parties in such wherein one party is in a dominating position
 - ii) Such party abuses the dominating position
 - iii) For getting an unfair advantage
- If there is no unfair advantage it is not undue influence

The agreement made with a consent obtained by undue influence shall be considered voidable under S (19A)

Under S (19A) any person whose consent was obtained by undue influence has an option to either perform the agreement or to avoid it.

Fraud is a component of dissent where in intention is of utmost importance. Thus, if any act to deceive someone done with a bad intention is considered as fraud. However, in misrepresentation intention is not important. Fraud is defined under S (17), misrepresentation under S (18).

3. Lawful consideration and Lawful object

The consideration and object of the contract should not be unlawful and does not violate any provision of the land

As per section 23, the consideration of an agreement is lawful, unless.

- i. It is fraudulent
- ii. It is forbidden by law
- iii. It is of such nature that if permitted, it would defeat the provision of any law
- iv. It is immoral or opposed to public policy

- v. It implies or involves injury to the person or property of another

4. Not Expressly declared to be Void

If an agreement is expressly declared null and void by the law. Such agreement is unenforceable and void

- i. Agreement is restraint of marriage S (26)
- ii. Agreements in restraint of trade S (27)
- iii. Agreements in restraint of proceedings S (28)
- iv. Uncertain agreements are void S (29)
- v. Agreements for a wager are void S (30)

5. Intention

One of the key requirements for a contract between two or more parties is that the parties intend to establish a legal relationship between one another. If there is no desire to establish a contractual connection between the parties, an agreement will never go to the stage of a contract. This essential is borrowed from the judgements of the court. The two-landmark judgement on this point are *Balfour VS Balfour*¹⁹ and *Meritt Vs Meritt*²⁰

In *Balfour Vs Balfour* there was a husband and wife who went to England where the wife fell ill, and the Dr. advised her not to travel but Mr. Balfour had to return home. Mr. Balfour promised his wife that he would pay her 30 pounds every month for her daily expenses. This understanding was made at the time when the relationship was fine. However, when the relationship became sour Mr. Balfour stopped sending her money so Mrs. Balfour filed a case against Mr. Balfour

So the court held that it was a mere understanding between the couple and Mr. Balfour had no intention to be legally bound by it. An agreement which is not backed by intention is not a contract rather this was just a domestic agreement.

In *Meritt Vs Meritt* the couple was living in a matrimonial house which was owned by both of them jointly. The said house was subject to certain loans. Mr. Meritt left the matrimonial house and started to live with another woman. He also agreed to pay a certain sum to Mrs. Meritt as maintenance. Mrs. Meritt said that she would repay the whole loan if Mr. Meritt agrees to give

¹⁹ *Balfour v Balfour* [1919] 2 KB 571 is a leading English contract law case. It held that there is a rebuttable presumption against an intention to create a legally enforceable agreement when the agreement is domestic in nature.

²⁰ *Merritt v Merritt* [1970] EWCA Civ 6 is an English contract law case, on the matter of creating legal relations.

her the sole ownership of the house. This transaction was documented in written form. But after the repayment of the loan Mr. Meritt denied to give Mrs. Meritt the sole ownership and defined it as a domestic arrangement but the court held that if the parties are in a process of separation or relationship is at a stage where it might lead to separation then the court will always presume that there was an intention to create legal relations and would not be treated as domestic arrangement even if it happens between a husband and wife

IV. CONCLUSION

It is unquestionably true that "All contracts are agreements, but not all agreements are contracts." It would be obvious from what has been mentioned so far that an agreement has a far wider scope than a contract. A contract means that a certain condition has been met. Agreement does not indicate that the terms set forth are legally binding and in compliance with the law. The genus of which the species is the contract can be thought of as an agreement.

In a nutshell every agreement starts with an offer and ends on consideration of its enforceability. Due to this an agreement doesn't give a legal remedy to the aggrieved party whereas a contract does. This concludes that there can be agreements which are not contract but every contract was once an agreement.
