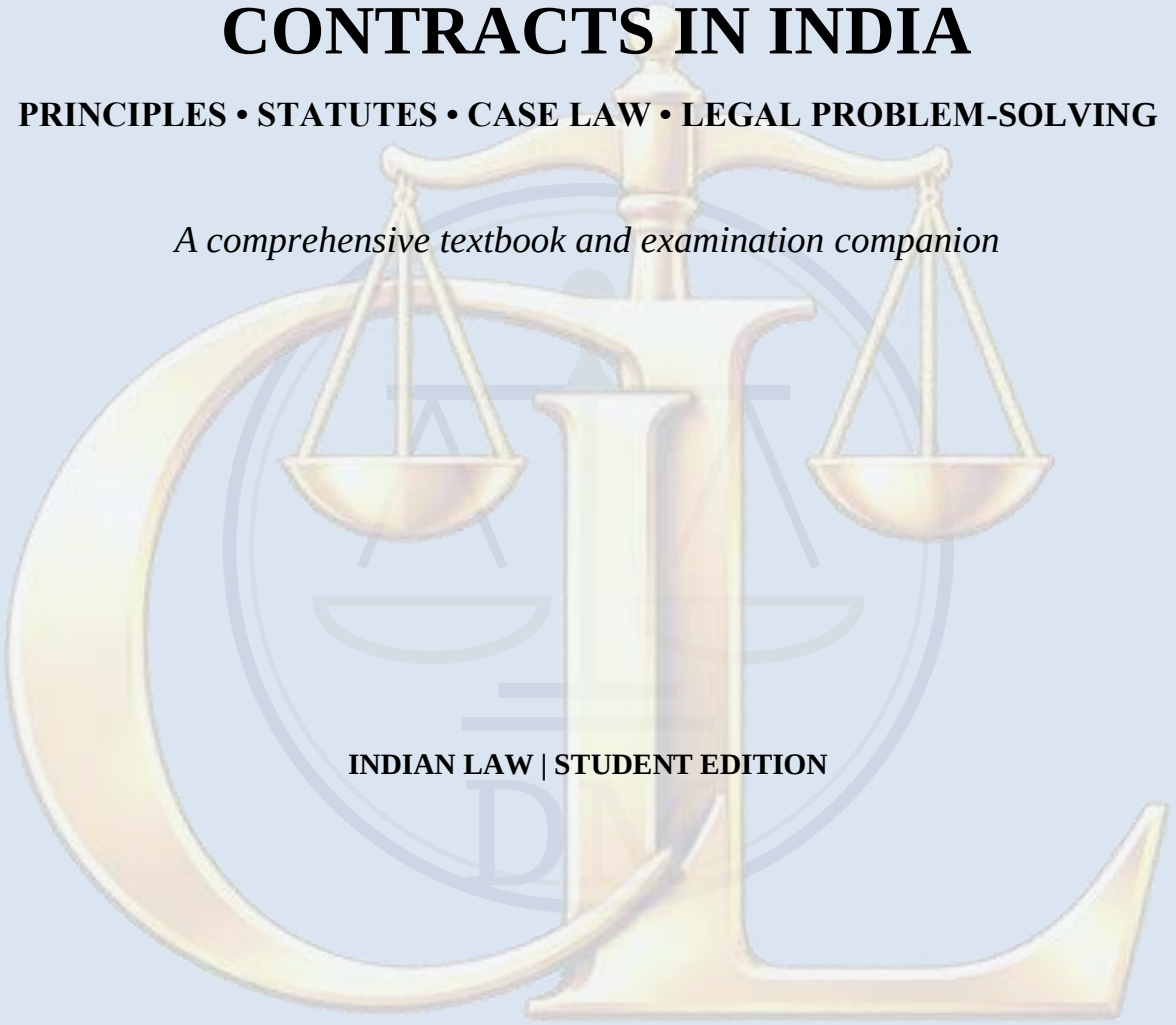
THE LAW OF CONTRACTS IN INDIA

PRINCIPLES • STATUTES • CASE LAW • LEGAL PROBLEM-SOLVING

A comprehensive textbook and examination companion



INDIAN LAW | STUDENT EDITION

D Ray | Crime Law *and* More

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Preface

This book is designed to teach the general law of contract in India as a system of statutory rules, judicial principles and practical reasoning. It is intended for law students who need more than condensed notes: they must understand the legal rule, identify the controlling provision, read cases accurately, distinguish binding Indian authority from persuasive comparative authority, and apply the law to unfamiliar facts.

The *Indian Contract Act, 1872*[1] is the principal statutory foundation. The *Specific Relief Act, 1963*[2] supplies important remedies concerning possession, specific performance and injunctions. These enactments must be read with applicable procedural, limitation, property, consumer, commercial and other special legislation. The book therefore explains general principles while identifying where a special statute or jurisdiction-specific rule may alter the analysis.

The text is educational. It is not legal advice for a particular dispute. Statutory amendments, commencement notifications, rules and subsequent judgments should always be checked for the relevant date and jurisdiction. Report citations are supplied to help readers locate authorities; the judgment itself, rather than a summary alone, should be consulted for propositions of law.

How to use this book

Read the doctrinal explanation before memorising case names. For each case, focus on the material facts, issue, decision and ratio. In problem questions, identify the legal relationship, select the statutory provision, state the rule, apply each element to the facts, consider exceptions and conclude with the precise legal consequence. A strong answer does not merely list cases; it explains why the authority governs the problem.

A method for solving contract-law problems

Step	Question to ask
1. Characterise	What transaction or promise is in dispute? Who are the parties and what obligations were undertaken?
2. Locate the statute	Which section of the Contract Act or Specific Relief Act governs the issue? Is a special statute relevant?
3. State the test	What elements, burden of proof, exceptions and legal consequences does the provision require?
4. Use authority	Which binding Indian judgment interprets the provision? Is an English case merely persuasive or historically explanatory?

[1] *Indian Contract Act, 1872*, Act 9 of 1872.

[2] *Specific Relief Act, 1963*, Act 47 of 1963.

5. Apply	Match each element of the legal test to a specific fact. Address adverse facts and counterarguments.
6. Conclude precisely	Is the agreement valid, void, voidable, discharged, unenforceable, or enforceable only through a particular remedy?



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CHAPTER 1

Foundations of Contract Law in India

Scope: Historical development; statutory vocabulary; essentials; agreements which are not contracts; void and voidable agreements; standard-form contracts.

1.1 The place of contract law in the Indian legal system

Contract law supplies the legal framework through which private persons and organisations arrange exchanges, allocate risks and undertake enforceable obligations. A contract may concern the sale of goods, supply of services, employment, construction, finance, insurance, carriage, licensing or an ordinary domestic transaction. The law does not enforce every promise. It distinguishes a promise which the parties intended, expressly or by implication, to carry legal consequences from a merely social, moral or gratuitous assurance.

The Indian law of contract is principally codified in the *Indian Contract Act, 1872*[3] (Act 9 of 1872). The Act received assent on April 25, 1872 and came into force on September 1, 1872. It was enacted to define and amend certain parts of the law relating to contracts. Its provisions draw upon English common-law concepts but form a statutory Indian scheme. Consequently, English decisions may illuminate the origin or meaning of a concept, but the controlling question in an Indian dispute is the meaning and application of the Indian statute, together with binding Indian precedent.

The Act originally dealt with a wider range of commercial relationships. The law relating to sale of goods and partnership was subsequently placed in separate enactments: the *Sale of Goods Act, 1930*[4] and the *Indian Partnership Act, 1932*[5]. The Contract Act nevertheless remains foundational. It governs general principles and continues to apply where a special statute has not displaced or modified the relevant rule.

The Act is not a complete code of every contract-related issue. Questions of specific performance and injunctions are governed principally by the *Specific Relief Act, 1963*[6]; consumer transactions may attract consumer-protection legislation; employment, insurance, banking, electronic transactions and other specialised fields may be regulated by additional statutes. The general law must therefore be read with the applicable special legislation.

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[3] *Indian Contract Act, 1872,* Act 9 of 1872.

[4] *Sale of Goods Act, 1930,* Act 3 of 1930.

[5] *Indian Partnership Act, 1932,* Act 9 of 1932.

[6] *Specific Relief Act, 1963,* Act 47 of 1963.

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1.2 Statutory vocabulary: Sections 2(a)–(j)

Section 2 contains the Act's foundational definitions. They are not merely vocabulary. They establish the sequence by which a proposal becomes an accepted promise, how the parties are identified, and how promises are organised into an agreement and, if legally enforceable, a contract.

Proposal, Section 2(a). A person makes a proposal when that person signifies to another a willingness to do or abstain from doing something, with a view to obtaining the other person's assent to that act or abstinence. The proposal must therefore communicate a sufficiently definite willingness to be bound upon acceptance. A statement of present intention, an invitation to negotiate or a mere supply of information is not necessarily an offer.

Acceptance and promise, Section 2(b). When the person to whom the proposal is made signifies assent, the proposal is accepted; a proposal, when accepted, becomes a promise. Acceptance must correspond with the proposal. A purported acceptance that introduces a material variation is ordinarily a counter-offer, not an acceptance.

Promisor and promisee, Section 2(c). The person making the proposal is called the promisor and the person accepting it is called the promisee. The Act uses these terms in a functional way. In a bilateral contract, each party may be promisor in relation to one undertaking and promisee in relation to the other.

Consideration, Section 2(d). Where, at the desire of the promisor, the promisee or any other person has done or abstained from doing, does or abstains from doing, or promises to do or abstain from doing something, that act, abstinence or promise is consideration for the promise. The wording is deliberately wider than the traditional English formulation because consideration may move from the promisee or any other person.

Section 2(e) defines every promise and every set of promises forming the consideration for each other as an agreement. Section 2(f) addresses reciprocal promises: promises which form the consideration or part of the consideration for each other. Section 2(g) describes an agreement not enforceable by law as void. Section 2(h) defines a contract as an agreement enforceable by law. Section 2(i) defines a voidable contract as an agreement enforceable at the option of one or more parties, but not at the option of the other or others. Section 2(j) provides that a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The central statutory proposition is therefore simple but decisive: every contract is an agreement, but every agreement is not a contract. The additional element is legal enforceability. A promise may be intelligible, sincerely made and supported by reciprocal expectations yet remain outside the law of enforceable contracts.

1.3 Historical development of contract law in India

Before codification, contractual disputes in the territories administered by the East India Company and later British India were dealt with through a mixture of local law, usage, principles of justice, equity and good conscience, and the reception of English legal principles where appropriate. The

diversity of regional practices and the expansion of commercial activity created a need for a more uniform legal framework.

The *Indian Contract Act, 1872*[7] was a major codifying measure. It adopted familiar common-law ideas, proposal, acceptance, consideration, capacity, consent, legality and remedies, but expressed them through statutory provisions. Codification matters because a court is not free simply to reproduce an English rule where the Indian text provides a different formulation. For example, Section 2(d) expressly recognises consideration furnished by the promisee or any other person. That is a significant statutory distinction from the traditional English rule.

The Act also reflects the legislative choice to state certain matters expressly. Sections 3 to 9 deal with communication, acceptance, revocation and express or implied promises; Sections 10 to 30 deal with the formation and validity of agreements; Sections 31 to 36 address contingent contracts; Sections 37 onwards deal with performance; Sections 56 and following address impossibility and related consequences; and Sections 73 to 75 concern compensation for breach and related relief.

The modern law is consequently neither a wholesale application of English contract law nor a closed statutory island. The Indian statute is primary. Indian Supreme Court and High Court decisions interpret it. English authorities remain useful where the statutory language is comparable and the reasoning is persuasive, but they must be used with care.

1.4 Essentials of a valid contract: Section 10

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 expressly declared void by the Act. It also preserves laws which require a contract to be in writing, in the presence of witnesses or registered. The section must be read with the other provisions of the Act. It is not an isolated checklist.

The principal requirements can be analysed as follows.

Agreement: proposal and acceptance

There must first be an agreement, ordinarily formed through a proposal and its acceptance. The parties must have reached consensus on the terms which are essential to the transaction. A court does not create a bargain for parties who have not agreed. The terms must be sufficiently certain to permit the court to identify the obligations and determine whether they have been performed or breached.

Intention to create legal relations

The expression ‘intention to create legal relations’ does not appear as a separate phrase in Section 10. It is nevertheless a useful common-law analytical principle when deciding whether the parties intended their arrangement to have legal consequences. Commercial arrangements ordinarily carry a strong inference of legal intention, though the inference may be displaced by the wording and

[7] *Indian Contract Act, 1872*, Act 9 of 1872.

circumstances. Domestic and social arrangements are assessed contextually; they are not automatically unenforceable merely because the parties are related.

Balfour v Balfour[8] is the familiar English illustration of a domestic arrangement in which a husband's promise to make periodic payments to his wife while they were living apart temporarily was treated, on the facts, as lacking contractual intention. The decision should not be converted into a rule that agreements between spouses can never be contracts.

Merritt v Merritt[9] shows the other side of the distinction. The parties were separated, and their written arrangement concerning the matrimonial home was intended to have legal effect. The context rebutted any assumption that the arrangement was merely domestic.

Competency of parties

Section 11 requires a person to have attained the age of majority under the law applicable to that person, to be of sound mind, and not to be disqualified from contracting by any law to which that person is subject. Capacity is a distinct requirement. A transaction may contain offer, acceptance and consideration but still fail because a party lacks contractual capacity. The detailed rules concerning minors, persons of unsound mind and other disqualified persons are examined in Chapter 2.

Free consent

Under Sections 13 and 14, consent involves agreeing upon the same thing in the same sense, and consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake in the circumstances specified by the Act. Consent and free consent are not interchangeable. Where consent is caused by specified vitiating factors, the agreement may be voidable under Section 19 or Section 19A, subject to the statutory rules.

Lawful consideration and lawful object

The consideration and object must satisfy Section 23. They are unlawful if forbidden by law, if they would defeat the provisions of any law, if fraudulent, if they involve or imply injury to the person or property of another, or if the court regards them as immoral or opposed to public policy. The statutory categories must be applied carefully; public policy is not a licence to invalidate a bargain merely because a court considers it unwise.

Agreement not expressly declared void

Even where the parties are competent and consent freely, an agreement may be expressly declared void by the Act. Examples include agreements in restraint of marriage (Section 26), restraint of trade (Section 27, subject to statutory exceptions), restraint of legal proceedings (Section 28), uncertainty (Section 29) and wagering agreements (Section 30). A court must identify the precise statutory provision rather than merely describe an agreement as 'against the law'.

[8] *Balfour v Balfour* [1919] 2 KB 571.

[9] *Merritt v Merritt* [1970] 1 WLR 1211.

Certainty and possibility

The terms must be sufficiently certain or capable of being made certain under Section 29. An agreement to sell 'a reasonable quantity' may be workable if the context supplies an objective standard; an agreement to sell 'some goods at a suitable price' may be too indefinite if no workable standard exists. Section 56 separately addresses agreements to do impossible acts and subsequent impossibility or unlawfulness.

Formalities where required by law

Section 10 does not abolish statutory formalities. Where another law requires writing, attestation, stamping or registration, compliance must be considered under that law. The fact that an oral agreement may generally be valid under the Contract Act does not mean that every transaction can be enforced without the formalities imposed by property, company, registration, stamp or other legislation.

1.5 Agreements which are not contracts

An agreement fails to become a contract when one or more requirements of enforceability are absent. The expression 'agreement which is not a contract' is broader than 'void agreement'. It includes arrangements which lack contractual intention, agreements without consideration where no exception applies, agreements made by persons lacking capacity, agreements affected by a vitiating factor, and agreements expressly declared void.

A social promise to meet for dinner, a gratuitous assurance to give a friend a birthday present in the future, or a family understanding about ordinary domestic arrangements will usually lack the elements necessary for contractual enforcement. The result depends on the facts and objective intention, not on a rigid label. A promise made within a family may be legally binding where it is part of a formal arrangement intended to regulate property or financial rights.

An agreement may also fail because the parties have not agreed on the same terms. If A offers to sell a particular car for ₹5 lakh and B replies that B will buy it for ₹4 lakh, B has not accepted A's offer. B has made a counter-proposal. No contract arises unless A accepts the counter-proposal or the parties otherwise reach agreement.

An agreement may be void from the beginning, or a valid contract may later become void because of a supervening event recognised by law. This distinction is important in litigation. A void agreement is not enforceable as a contract from its inception; a contract which later becomes void was initially enforceable but subsequently ceased to be so.

1.6 Void agreements, void contracts and voidable contracts

The statutory categories must be kept distinct. Under Section 2(g), an agreement not enforceable by law is void. Under Section 2(j), a contract which ceases to be enforceable becomes void when enforceability ends. Under Section 2(i), a voidable contract remains enforceable at the option of the party entitled to avoid it, while the other party cannot insist on that option being exercised.

A void agreement produces no enforceable contractual obligation. A voidable contract, by contrast, is legally operative unless and until the party entitled to avoid it elects to rescind it, subject to the Act. For example, where consent is caused by coercion or fraud, the affected party may have the statutory right to avoid the contract. The party cannot ordinarily treat the contract as automatically nonexistent without considering the statutory provisions governing voidability, rescission and restoration of benefits.

A contract becoming void is illustrated by supervening impossibility under Section 56. If a contract was validly made but a subsequent event renders performance impossible or unlawful in the statutory sense, the contract becomes void when the event occurs. The legal consequences, including restitution under Section 65 where applicable, must then be considered.

A useful examination method is to state: (i) whether there was an agreement; (ii) whether it was enforceable at formation; (iii) whether it was void from the beginning or became void later; and (iv) whether it is merely voidable at the election of a particular party. These classifications should not be used interchangeably.

1.7 Standard-form contracts

A standard-form contract is prepared in advance by one party for repeated use, with little or no opportunity for the other party to negotiate its terms. Insurance policies, transport tickets, online terms of service, banking documents, employment conditions and utility-service agreements commonly contain standard terms. Standardisation reduces transaction costs and promotes consistency, but it can also create a marked imbalance between the drafting party and the person who must accept the terms to obtain the service.

The first question is incorporation: did the term become part of the contract? A term may be incorporated by signature, reasonable notice before or at the time of contracting, or a sufficiently established course of dealing. A party who signs a contractual document is generally bound by its terms, subject to recognised exceptions such as misrepresentation, fraud, non est factum in its proper field, statutory controls and rules governing particularly onerous or unusual clauses. A term introduced only after the contract has been concluded is not ordinarily incorporated merely because it appears on a later document.

The second question is construction. Exclusion and limitation clauses are construed according to their language and contractual context. A court should not extend an exclusion clause beyond what its wording reasonably covers. Ambiguity may be resolved against the party relying on the clause, particularly where that party drafted it, though the applicable interpretive approach depends on the governing law and context.

The third question is substantive validity. In India, Section 23 may invalidate a term where its consideration or object is unlawful, including where the bargain is opposed to public policy. Sections 16 and 19A may be relevant where undue influence is established. Consumer-protection legislation and sector-specific regulation may also control unfair terms. Unequal bargaining power is relevant, but inequality by itself does not automatically invalidate every standard-form contract.

Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly[10] is a leading Indian authority on unconscionable contractual terms and public policy. The Supreme Court considered a service rule enabling the government company to terminate certain employees by giving notice or pay in lieu. The Court examined the corporation's status as 'State' under Article 12 and the validity of an unconscionable term in the employment relationship. It held the impugned rule invalid in the circumstances, relying on constitutional principles and Section 23. The decision does not establish that every unequal bargain or every harsh term is void. Its reasoning concerns the particular public character of the employer, the nature of the clause, unequal bargaining power and public policy.

In an examination answer, analyse a standard-form clause in sequence: incorporation, interpretation, statutory or regulatory control, and the facts demonstrating unfairness or unconscionability. Avoid the unsupported conclusion that a party is never bound by a standard term because it was not individually negotiated.

The essential distinction: agreement and contract

The statutory sequence is important. A proposal accepted becomes a promise; promises forming consideration for each other constitute an agreement; an agreement enforceable by law is a contract. The last step is not automatic. Sections 10 and 11, the rules on free consent and lawful consideration and object, and the provisions declaring specified agreements void must all be considered.

Standard-form contracts: a method of analysis

Standard-form terms are drafted in advance for repeated use and are commonly presented on a take-it-or-leave-it basis. Their use is commercially efficient, but the court must still decide whether the terms were incorporated, what they mean, whether statutory controls apply and whether the bargain is unconscionable or contrary to public policy. The fact that a term is printed in standard conditions does not by itself make it invalid; nor does signature automatically answer every question about notice, construction or statutory fairness.

Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly[11]

Material facts: The case concerned service rules containing a termination provision which permitted termination of permanent employees by notice. The employees challenged the clause in the context of a public-sector corporation and unequal bargaining power.

Issue: Whether the impugned clause was unconscionable and opposed to public policy under Section 23, and whether constitutional principles were relevant to the public corporation.

Decision and ratio: The Supreme Court treated the clause as unconscionable in the circumstances and invalid under Section 23. Its reasoning addresses unequal bargaining power and the public-policy control of oppressive terms; it does not establish that every unequal contract or every standard-form term is void.

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[10] *Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* (1986) 3 SCC 156.

[11] *Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* (1986) 3 SCC 156.

Significance: The case is central to Indian analysis of unconscionable standard terms. The reader must examine the parties, bargaining circumstances, nature of the term and statutory setting rather than apply a blanket rule.

Chapter synthesis

A contract is not simply a promise accompanied by a signature. It is an agreement satisfying the statutory conditions of enforceability. The classification of the agreement determines whether it is enforceable, void, voidable or subject to a separate statutory remedy. In standard-form transactions, incorporation, interpretation and substantive statutory control must be kept analytically distinct.

Review questions

- Explain why every contract is an agreement but every agreement is not a contract.
- Is intention to create legal relations an express phrase in Section 10? Explain its analytical role.
- Distinguish a void agreement, a void contract and a voidable contract.
- How should a court examine an allegedly unconscionable standard-form term?
- Why is *Central Inland* not authority for the proposition that all unequal bargains are void?