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Subject :- Law of Contract...

Supreme Court upholds West Bengal's suit accusing Union of using CBI without State consent

In suit, State accused the Union of constitutional overreach and violation of federalism by unilaterally employing the Central Bureau of Investigation (CBI) without the State's prior consent.

► The suit was filed under Article 131 of the Indian Constitution.

⊖ Article 131 deals with the Supreme Court's original jurisdiction in a dispute between the Centre and one or more states.

CBI needs to obtain the consent of state governments before it can investigate a crime in a particular state.

► The power of consent is governed as per the Delhi Special Police Establishment (DSPE) Act of 1946.

The consent of the state can be either general or case-specific.

► In General consent, the CBI is not required to seek fresh permission every time it enters that state in connection with investigation or for every case.

⊖ West Bengal had withdrawn its general consent in 2018. And, many other states such as Punjab, etc. have also withdrawn their general consent.

⊖ Exception to general consent

◆ Supreme Court and High Courts can order CBI to investigate a crime anywhere in the country without the consent of the state.

◆ Consent does not apply in cases where someone has been caught red-handed taking a bribe.

► In case Specific consent, CBI would have to apply to the state government in every case.



Also in News



Section 125

Supreme Court upholds divorced Muslim women's right to maintenance under Section 125 Code of Criminal Procedure (CrPC), 1973, against her former husband.

► It affirms that a parallel remedy under a secular law cannot be foreclosed by existing personal laws.

► Currently, the maintenance claim is governed under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

About Section 125 CrPC

► It is the law that governs maintenance for destitute wives, children, and parents.

► Under it, magistrate may order a person has to pay monthly allowance for the maintenance of his wife in case of divorce.

Note: CrPC has been replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS)

IMP cases.

→ Shaha Bano

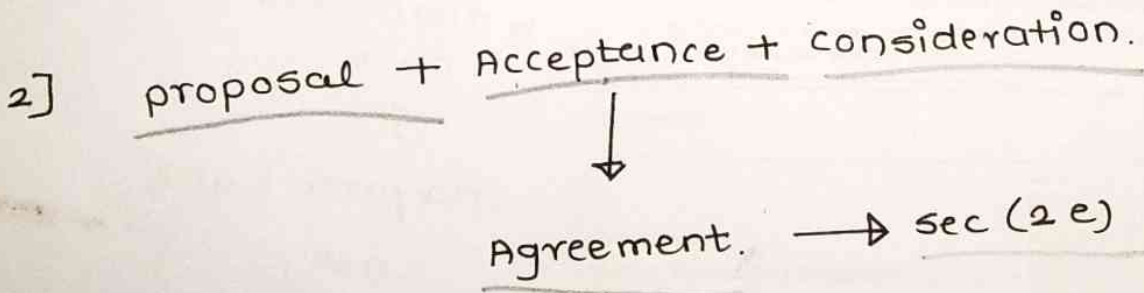
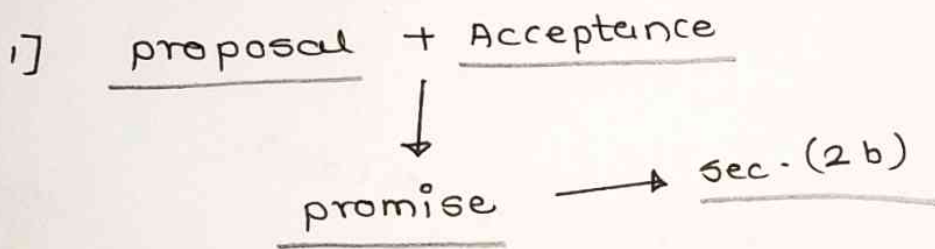
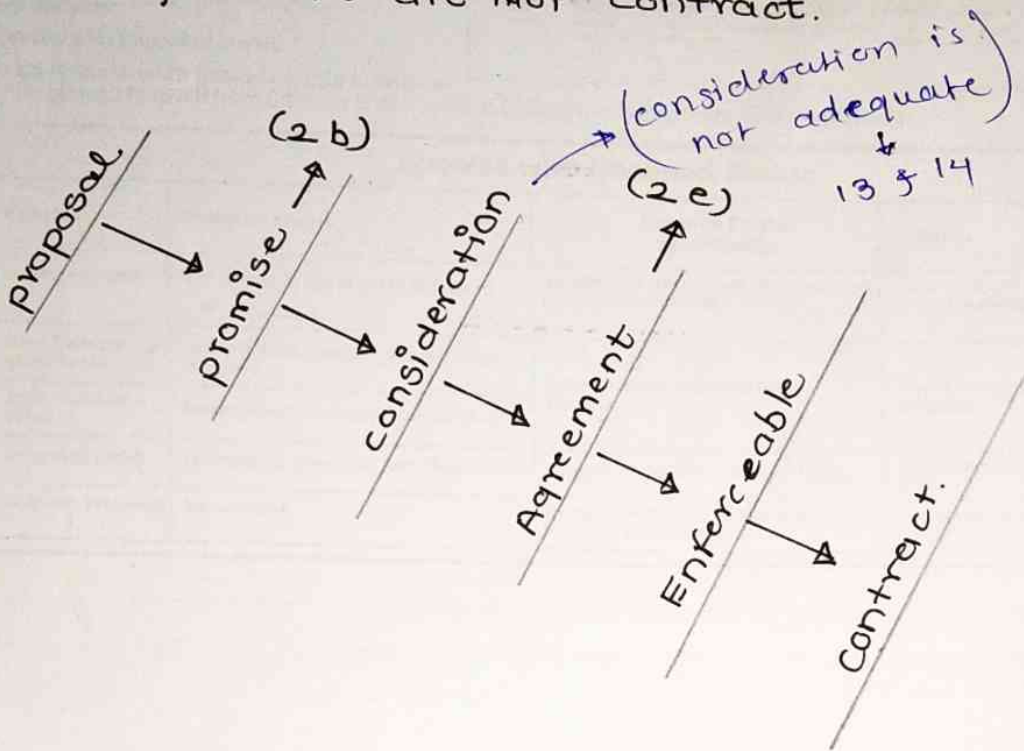
case

Shayara Bano

case.

Contract

- 1] All Contract are Agreement.
- 2] All Agreement are Not contract.



Section - 1

Commencement and Applicability.

Short Title	Extent	Commencement.
The Indian Contract Act 1872	Applicable to Whole Indian except the state of Jammu & Kashmir.	1st September 1872.

→ Law of Contract creates jus in personam and not in jus in rem.

Section - 2 → Definitions

1) Offer (i.e. Proposal) [Sec-2a]

When one person signifies to another his willingness to do 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.

→ proposal → It is the only Invites a proposal

Executive Engineer

vs

Mohan P Sahu ←
(1990)

↓
No contract said to have been concluded betⁿ the parties.

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2] → (Section 2b)

→ Acceptance :- When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

offer (i.e. proposal) + Acceptance.

3] promise 2(b) : A proposal when accepted become a promise.

→ proposal + Acceptance.

↓
promise.

→ When an offer is Accepted it becomes promise.

→ Republic Medico Service

vs

Union of India

1980.

4] promisor & promise 2(c)

When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal are known as promisee.

① Making proposal
or offeral → promisor.

② Accepting the
proposal → promisee.

→ promisor
or offeral → Acceptance ⇒ promisee

5] Consideration 2 (d)

6] Agreement 2 (e)

Every promise and set of promises forming the consideration to each other.

→ In Short = Agreement = offer + acceptance

→ proposal + Acceptance + consideration



Agreement.

What is contract ?



Section 2(h) of Indian Contract Act 1872

say " An **Agreement** **enforceable by law** is known as contract.



"All Agreement are not contract"

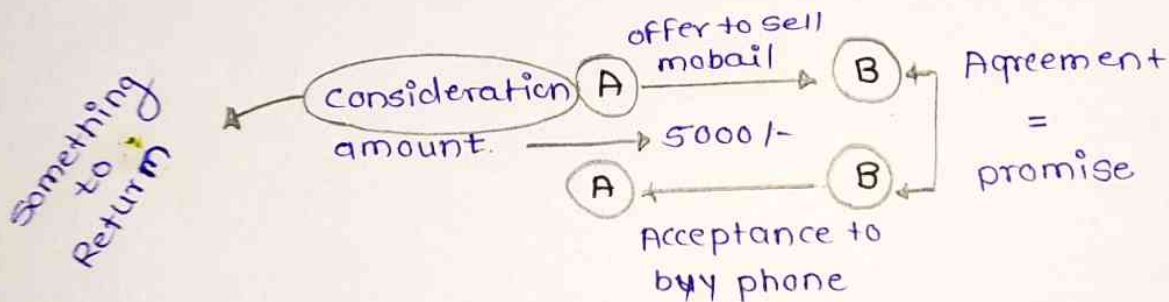
What is Agreement ?

(Section 2(e)) ↓

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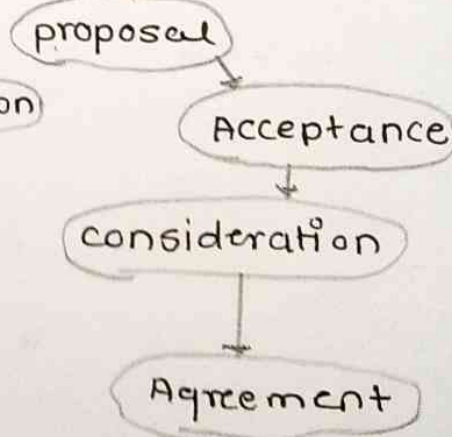
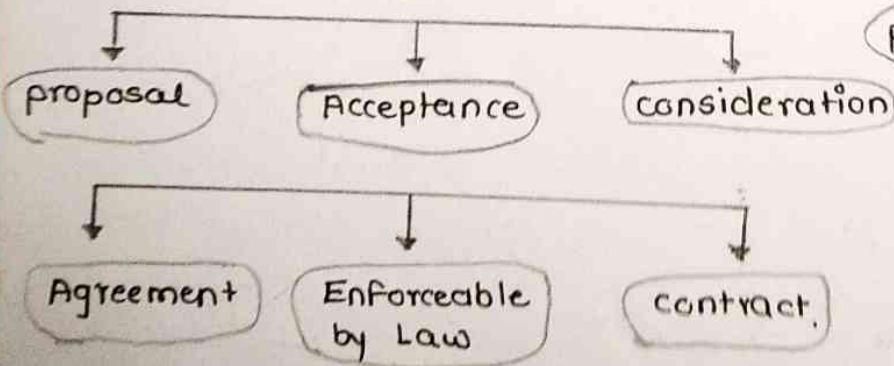
Forming the consideration for **each other**,

is an **agreement**.



What is Contract

What is Agreement



Essentials of a Valid Contract -

- * All Agreements are contracts, if they are made -
 - By free consent of the parties, competent of contract
 - For a lawful consideration and
 - With a lawful object and
 - Not hereby expressly declared to be void
-(sec-10)

Essential of Valid Contract -

Offer + Acceptance = Promise
+
consideration
=
Agreement
+
Enforceability by Law
↓
Contract.

1] proper offer & proper acceptance with intention to create legal relationship -

→ In case of social agreement there is no intention to create legal relationship and there is no contract (Balfour Vs Balfour)

→ An Agreement of a purely domestic or social nature is not a Contract.

→ In case of commercial Agreements, the law presume that the parties had the intention to create legal relations.

Cases, -

A & B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.

2] Lawful Consideration :-

consideration must not be unlawful, immoral or apposed to the public policy.

3] Capacity :-

The parties to a contract must have capacity (legal ability) to make valid contract.

(section - 11)

Section 11 of the Indian contract specify that every person is competent to contract provided.

(i) Is of the age of the majority according to the law which he is subject, and

ii] Who is of sound mind and,

iii] Is not disqualified from contracting by

any law to which he is subject.

- person of unsound mind can enter into a contract during his lucid interval.
- An alien enemy, foreign sovereign & accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4] Free Consent :-

consent of the parties must be genuine consent means agreed upon something in the same sense i.e there should be consensus - ad - idem.

A consent is said to be free when it is not caused by coercion, undue influence, fraud misrepresentation or mistake.

5] Lawful Object :-

- The object of Agreement should be lawful and legal.
- Two person cannot enter into an agreement to do a criminal act.
- Consideration or object of an agreement is unlawful if it
 - (a) Is forbidden by law, or
 - (b) Is of such nature that, if permitted, would defeat the provision of any law, or
 - (c) is fraudulent; or
 - (d) Involves or implies, injury to person or property of another, or
 - (e) court regards it as immoral, or apposed to public policy.

6] possibility of performance &

- The term of the agreement should be capable of performance
- An Agreement to do act, impossible in itself cannot be enforced.

* "All contract are Agreement but
All Agreement are not contract."

The various agreement may be classified into two categories.

Agreement Not Enforceable by Law



Any essential of a valid contract is not available

Agreement Enforceable by Law.



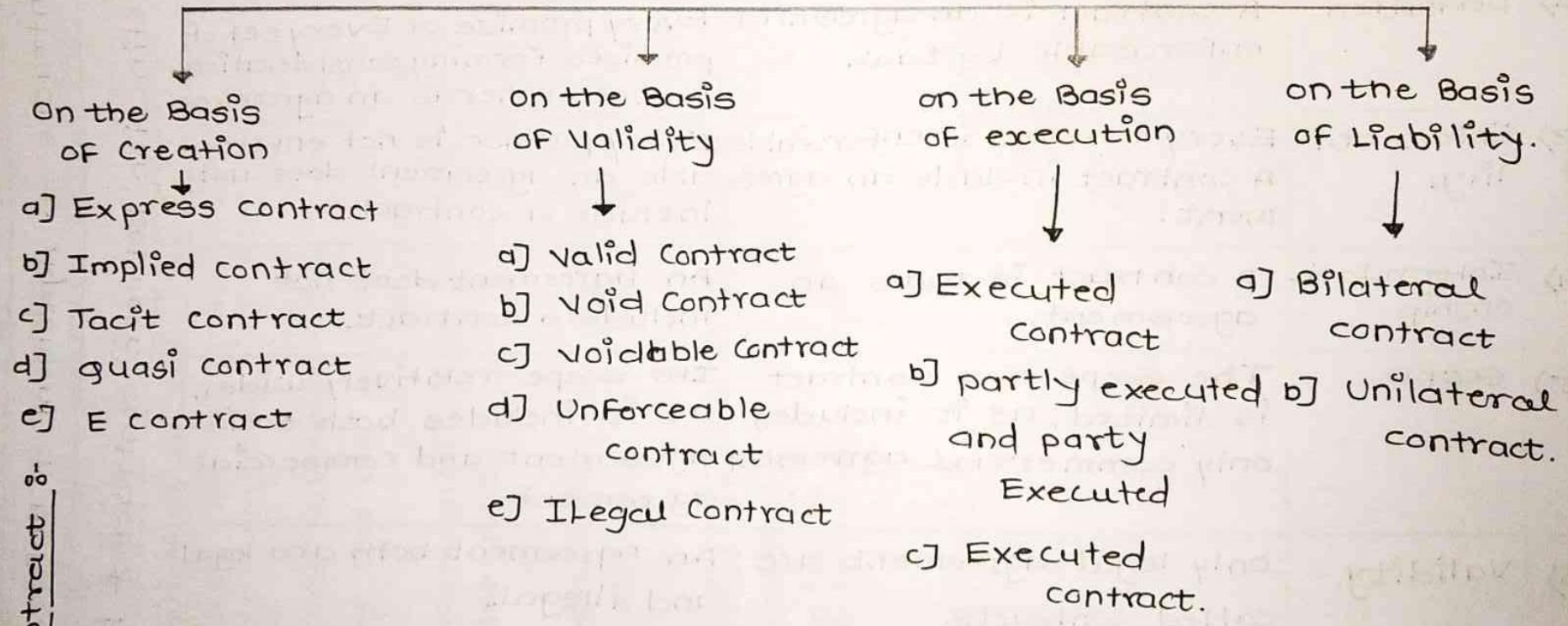
All essential of a valid contract are available.

Sl No	Basis	Contract	Agreement.
1)	Section	Section. 2 (h)	Section. 2 (e)
2)	Definition	A contract is an agreement enforceable by Law.	Every promise or Every set of promises forming consideration for each other is an agreement
3)	Enforceability.	Every contract is enforceable A contract include an agreement.	Every promise is not enforceable an agreement does not include a contract.
4)	Interrelationship	A contract includes an agreement.	An Agreement does not include a contract.
5)	scope	The scope of a contract is limited, as it includes only commercial agreement	Its scope relatively wider, as it includes both social agreement and commercial agreement.
6)	Validity	only legal agreement are called contracts.	An Agreement both are legal and illegal.
7)	Legal obligation	Every contract contains a legal obligation.	It is not necessary for Every agreement to have legal obligation.

* Distinction between contract & Agreement.

Contracts + Agreement + Enforceability by Law.

Types of contract.



Types of contract :-

I] On the Basis of Creation :-

(a) Express contract :-

A contract made by word spoken or written. According to section 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.

Example :- A says to B 'Will you purchase my Bike for Rs. 20,00? B says yes''

(b) Implied contract :- A contract inferred by.

- The product of person or
- The circumstances of the cases.

By Implies contract means Implied by law (i.e) the law Implied a contract through parties never intended. According to (Sec-9) in so far as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

Example :- A stop a taxi by waving his hand & takes his seat. there is an implied contract that A will pay the prescribed fare.

(c) Tacit Contract :- A contract is said to be tacit when it has to be interred from the conduct of the parties.

Example :- Obtaining cash through automatic teller machine, Sell by fall hammer of an auction sale.

d) Quasi Contract are contract which are created :-

- Neither by word spoken
- Nor written
- Nor by the conduct of the parties.
- But these are created by law.

(e) E-Contract :- An E-Contract is one, which is entered into between two parties via the internet.

II) on the Basis of Validity.

a) Valid Contract :- An Agreement which satisfies all these requirement prescribed by law on the basis of creation.

b) Void Contract :- A contract which ceases to be enforceable by law because void when of ceased to be enforceable.

- When both parties to an agreement are :
- Under a mistakes of facts. (20)
- consideration or object of an agreement is unlawful (23)
- Agreement made without consideration. (25)
- Agreement in restraint of Marriage (26)
- Restrain of trade (27)
- Restrain Legal proceeding (28)
- Agreement by wage of wager (30).