

ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to section 10 “ All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.” The analysis of the provisions of section 10 shows that a valid contract must have certain essential elements. These elements are as given below:

1. Proper offer and acceptance: There must be at least two parties – one making the offer and the other accepting it. Such offer and acceptance must be valid. An offer to be valid must fulfill certain conditions such as it must intend to create legal relations, its terms must be certain and unambiguous, it must be communicated to the person to whom it is made, etc. An acceptance to be valid must fulfill certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner, it must be communicated by an authorized person before the offer lapses.

2. Intention to create legal relationship: There must be an intention among the parties to create a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship, but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon. E.g. X invited Y to a dinner. Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement. Similarly, if Y fails to attend the dinner, X cannot go to the court of law for enforcing the agreement.

1. Essential elements of a valid contract: According to section 10 all agreements are contracts 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 expressly declared to be void.

a) Proper offer and acceptance: There must be at least two parties one making the offer and other accepting it. Such offer and acceptance must be valid and offered to the valid must fulfill certain conditions. Such as it must intend to create legal relationship, in

terms and must be certain and unambiguous, it must be communicated to the person to whom it is made etc and acceptance to be valid must fulfill certain conditions. Such as it must be absolute. It must be made in the prescribed manner; it must be unauthorized person before the offer lapses.

b) Intention to create legal relationship: There must be an intention among the parties to create a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial in business agreement, the usual presumption is that parties intend to create legal relationship unless otherwise agreed upon.

c) Free consent: there must be a free consent of the parties to the contract. According to section 14, consent is said to be free when it is not caused by
i) Order influence ii) Fraud iii) mistake iv) misinterpretation
If the consent of the party is not free then not valid contract comes into existence.

d) Capacity of parties: The parties to an agreement must be competent to contract. According to section 11 of ICA 1872 a person is competent to contract who is of the age of majority according to the law to which he is subject and who is of a sound mind and is not disqualified from contract by any law to which he is subject.

e) Lawful consideration: Lawful consideration is that in which both have mutual consideration.

f) Lawful object: When contract include some fraud or some illegal factor then both parties cannot file a suit against each other.

g) Agreement not expressly declared void

h) Certainty of meaning: When terms and conditions are not clearly defined. Both the parties should have clarity of contract.

i) Possibility of performance: Case which is not really possible a contract cannot take place contract cannot come into existence unless until activities are not possible.

j) Legal formalities: Hand written documents, stamps or signatures etc are must for a contract. If legal formalities are not fulfill it will not be considered as a valid contract.

www.websukat.com