

Formation Of A Contract

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An agreement that meets the essentials of a valid contract is enforceable by law. The formation of a contract depends upon the offer, **acceptance**, consideration, object of the contract and free consent of both parties. It comes under the basics of a contract. Both the parties of the contract must have the capacity to contract which is also known as the meeting of minds.

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Formation Of A Contract

For the formation of a contract, the proposal or offer from one party to another and acceptance of the proposal is important. Normally, for the formation of a contract, the parties to the contract use the process of negotiation to make the offer and acceptance to make the contract.

Almost all types of contracts in business law are decided with the help of negotiation between parties. During the process of negotiation, both parties give their opinions to set the terms and conditions of the contract like what will be considered as a breach of contract and remedies for breach of contract. Both the parties can make offers and counteroffers for the contract. The parties are free to deny the offer of another party. If the party agrees to the terms and conditions of the second party, it is considered as the offer is accepted. These two (offer and acceptance) are the basic requirements for the formation of a contract. After the acceptance of the contract, the parties write these terms and conditions on paper to make it a written contract.

Important Requirements For The Formation Of A Contract

The formation of a contract that should be enforceable by law needs some requirements which are:

Offer

What is an offer? An offer is a promise to enter into an agreement on certain conditions. Making an offer to another party is the first and basic step for the formation of a contract. The offer is also known as the promise in a contract.

Requirements of offer:

- The offer must be specific and complete
- The offer can be expressed or implied depending upon the nature of the contract
- It should be capable of acceptance, an offer which is cannot be accepted is a void offer.
- It should be intended to bind the party in a legal relationship.

The person who makes the offer is known as the offeror and the person of accepts such offer is known as the offeree.

The person (offeror) making an offer to the person or group of persons can terminate the offer before the acceptance of the offer by another party (offeree).

Acceptance

What is acceptance of an offer? When a person to whom the offer was made accepts the offer, it is known as acceptance. An offer that is not accepted by the party cannot bind the party in a legal relationship to fulfil the terms of the offer.

The acceptance can be done by:

- Orally,
- Written, or
- By the conduct of the offeree

The term “**by the conduct**” can be understood by the **example** that a person named Tonny makes a general offer that if anybody finds his dog and get back to his house, he will pay him \$300 from his bank account. Johny finds the dog and returns the dog. Now, Tonny has to pay him.

Here, Johny neither accept his proposal in the oral way nor a written way. He just accepts the offer by his conduct by finding the dog for Tonny.

But it should be noted that the **offeree must have full knowledge about the offer** before accepting it. In the above example of Johny, if he found the dog, which does not belong to Tonny, He cannot claim the money from Tonny because he did not have the full knowledge about the offer.

The party can accept the offer in a given specific time period. The person can communicate his acceptance instantly or by email or fax. The contract will come into force at the time the offeror received the acceptance email.

Consideration

This is the most important part of the formation of a contract because no one is going to do the contract for free. There must be a consideration in the contract which is paid by the buyer to the seller.

Note- The consideration of the contract must be lawful. Any illegal consideration will make the contract void.

The Object Of The Contract

The offer for a contract contains the objective of the contract. Object means the purpose of the contract. The object of the contract must be lawful and must not violate public policies.

Other Requirements For The Formation Of A Contract

There are other requirements for the formation of a contract that should also be there to make the contract valid and enforceable by law.

Free Consent

There should be the free consent of parties to the contract. Any contract in which the Consent of one party is taken under coercion or by forcing the party is not free consent. Such contracts are voidable contracts that can be cancelled anytime by the aggrieved party. The contract in which the consent is not free is a voidable contract. If a person took the consent of a party fraudulently, the marriage is Voidable marriage. It means, if the girl wants, she can break the contract of marriage because her consent was not free.

Capacity To Contract

The capacity to contract is considered as the important element to make the agreement enforceable by law. Capacity to contract shows the actual capacity of a party that is going to make contact with another party. If the party is not competent as per the definition given under the contract law, the contract cannot be enforceable by law.

For instance, a contract done by a minor is a void contract.

What Is A Counter-Offer?

The counter-offer can be considered as the rejection of the previous offer to enter into the contract and make the new offer which is offering new terms and conditions for the formation of a contract. The counter-offer is used during the process of negotiation when one party is not accepting the offer and in reverse, they offer their terms and condition for the formation of that contract. The changes in the offer can be anything.

For instance, A offer B to sell his car for \$6000. But, B rejects the offer and make a counter-offer to A that he will sell his car for \$7000. Here, he changes the consideration.

Both the parties are totally free to accept or reject the offer and counteroffer.

Conclusion

The formation of a contract is the basic step of the contract. A contract needs many essential to bind the parties in a legal contract to fulfil the conditions given under the contract. The person can take the help of lawyers to make the contract after accepting the offer from the offeree.