

Madhuri accepts the offer. If Madhuri fails to purchase the mobile phones, can Meeta go to court to enforce the contract?

Answer: Meeta can ask for enforceability of the contract. This agreement is a contract because there is an offer by Meeta for some consideration and Madhuri accepts it. Similarly if Meeta was to breach the contract then Madhuri could apply for enforceability of the contract.

Every contract is an agreement but every agreement may not be a contract.

The law of contract in India does not give any guidelines to people entering into a contract or the terms and conditions of the contract but it regulates the contract by providing general principles of contract law.

An agreement becomes a contract according to section 10, if a promise is made between two people who are competent to enter into a contract. It should be a contract with the free consent of the two parties, with a lawful consideration and a lawful object and the agreement should not be void.

Under section 2 (g) an agreement that is not enforceable by law is void.

What is enforceability of agreement?

An agreement can be enforceable by law only if there is some legal obligation.

The law of contracts does not take into consideration any agreement in which there is no legal obligation.

An obligation is to do, or to restrict, a certain act or activity. The Contract Act deals with only those agreements where there is an intention to create a legal obligation.

When there is an agreement that involves some business or commercial contracts it creates a legal obligation because the parties to the contract have the intention to create a legal obligation.

However, parties entering into a contract in domestic, social or religious events that do not have the intention to create any legal obligations cannot be said to have any legal obligation unless proved otherwise.

## Case Law

Some case laws are cited as references to show that the intention in the agreement to create a legal relationship is important in deciding whether it is, or is not, a valid contract :

### Case Law 1

#### Balfour Vs Balfour

Mr. Balfour went for a vacation with his wife to England from Ceylon. He was asked by his employer to return to Ceylon. Since his wife was not well she continued to stay in England. Mr. Balfour promised to send a monthly maintenance amount to her. After a while he had differences with her and stopped sending her the maintenance amount. Mrs. Balfour filed a case against her husband for recovery of maintenance. The court held that it was a domestic matter and it did not create any legal relationship. Hence it was not a valid contract.

### Case Law 2

#### Jones Vs Padavatton

A mother promised to pay for her daughter's education when she studied abroad. This was held as a domestic understanding between mother and daughter and could not be enforced by law as it did not have any intention to create a legal relationship.

The following case is a little different. It is a domestic agreement but the objective and reasonable testing of this case shows that the husband and wife intended to create a legal relationship. Thus the law of contracts may have within its purview domestic cases, social relationships and employer employee matters as well if it can be proved that the intention was to create legality and enter into a contract.

### Case Law 3

#### McGregor Vs McGregor

This was an agreement between husband and wife with the intention of creating a legal relationship.

Mr. McGregor had promised his wife that he would give her an allowance. In return Mrs. McGregor had agreed not to pledge his credit. This was a valid contract and breach of the case was enforceable by law.

In the above paragraph it has been explained that business and commercial dealings normally show that there is an intention to create a legal relationship. However in the following commercial dealing the intention was not to create legal relationship. Hence there is an agreement between the two parties but it is not a valid contract.

#### Case Law 4

Rose & Frank Co. Vs Crompton Bros

Rose Co. was appointed by Crompton Bros as their agent. In their agreement one of the clauses specifically stated that the agreement entered into was not a formal or legal agreement and would not be subject to legal jurisdiction in the law courts.

The court held that this was not a binding agreement and therefore could not be termed as a legal contract as there was no intention to create a legal relationship even though it was a business dealing.

#### Case Law 5

Jones Vs Vernon's Pools Ltd.

There was a business dealing between the two parties but the agreement stated that it would not give rise to any legal relationship and rights and duties would not be enforceable or give right to litigation. The agreement would be binding in honour only.

The court held that this was not a valid contract, as it was not legally binding. There was no legal relationship and the agreement was not legally enforceable.

Free Consent

Meera is a lunatic and gets attacks of lunacy at intervals. Is she competent to contract?  
Meera can enter into a contract in those periods when she is not suffering from lunacy.  
She is competent to contract when she is not under the influence of an attack of lunacy.

### Illustration

Leena is 15 years old. Does she have the capacity to enter into a contract?  
Leena cannot enter into a contract because she is a minor. She will be able to enter into a contract when she attains the age of majority.

### 1.3.4 Status of other Entities

Any company is competent to enter into a contract according to the legislations under which they are governed. The Memorandum of Association and Articles of Association of the company provide further guidelines in addition to provisions of Indian Contract Act. Partners are allowed to enter into contracts under the Partnership Act of 1932. Associations of persons are competent to contract subject to their agreement.

### 1.3.5 Lawful Consideration

According to Section 2(d), 23 and 25 of the Act a valid contract must have a consideration. The person making a promise must receive something in return for it. It may or may not be an adequate return but there has to be some value and it should not be fraudulent, unlawful, immoral or opposed to public policy. The agreement is legally binding and enforceable when both parties to an agreement give something and also get something in return. Consideration may not be in cash only. It can be in kind. It can also be an act or abstinence from doing something. It can be a promise to do or not to do something.

### Illustration

Ali sold 5 fountain pens for Rs. 125 each to Megha with a promise to receive 12 red