

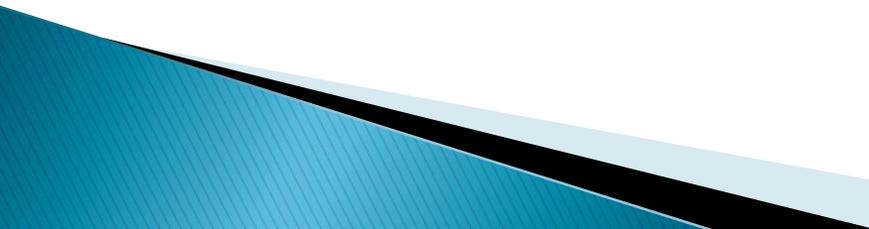
**SOS POLITICAL SCIENCE AND
PUBLIC ADMINISTRATION**

MBA FA 402

**SUBJECT NAME: E-BUSINESS
AND CYBER LAWS**

TOPIC NAME: E-CONTRACT

MEANING OF CONTRACT:

- ▶ A written or spoken agreement, especially one concerning employment, sales, or tenancy, that is intended to be enforceable by law.
 - ▶ A contract is a legally binding agreement that recognizes and governs the rights and duties of the parties to the agreement. A contract is legally enforceable because it meets the requirements and approval of the law. An agreement typically involves the exchange of goods, services, money, or promises of any of those.
 - ▶ The Indian Contract Act, 1872 rules the way in which contracts are made and completed in India. It rules the way in which the requirements in a contract are implemented and codifies the effect of a breach of contractual provisions.
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MEANING OF E-CONTRACT:

- ▶ The Indian Contract Act, 1872 governs the manner in which contracts are made and performed in India. It governs the way in which the requirements in a contract are implemented and codifies the effect of a breach of vowed provisions.
- ▶ Within the outline of the Act, parties are free to contract on any terms they choose. Indian Contract Act comprehends of limiting factors subject to which contract may be entered into, executed and breach enforced. It only provides an outline of rules and regulations which govern creation and performance of contract. The rights and duties of parties and terms of agreement are definite by the contracting parties themselves. The court of law acts to enforce agreement, in case of default.
- ▶ Electronic contracts (contracts that are not paper based but rather in electronic practice) are born out of the need for speed, suitability and efficiency. Imagine a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first pulls up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet someplace and sign the contract.

- ▶ In the electronic age, the whole contract can be completed in seconds, with both parties simply attaching their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a situation. There was initially a hesitation amongst the legislatures to recognize this modern technology, but now many countries have passed laws to recognize electronic contracts.
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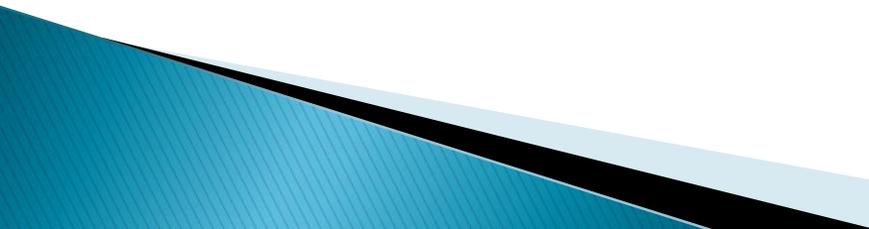
ESSENTIALS OF AN ELECTRONIC CONTRACT:

1. An offer requirements to be made:

- ▶ In many contacts (whether online or conventional) the offer is not made directly one-on-one. The consumer 'browses' the available goods and services showed on the seller's website and then chooses what he would like to purchase. The offer is not made by website showing the items for sale at a particular price. This is essentially an invitation to offer and hence is revocable at any time up to the time of acceptance. The offer is made by the customer on introduction the products in the virtual 'basket' or 'shopping cart' for payment.

2. The offer needs to be acknowledged:

- ▶ As stated earlier, the acceptance is usually assumed by the business after the offer has been made by the consumer in relation with the invitation to offer. An offer is revocable at any time until the acceptance is made.

- ▶ Processes available for forming electronic contracts include:
 - I. E-mail: Offers and acceptances can be exchanged entirely by e-mail, or can be collective with paper documents, faxes, telephonic discussions etc.
 - II. Web Site Forms: The seller can offer goods or services (e.g. air tickets, software etc.) through his website. The customer places an order by completing and communicating the order form provided on the website. The goods may be actually delivered later (e.g. in case of clothes, music CDs etc.) or be directly delivered electronically (e.g. e-tickets, software, mp3 etc.).
 - III. Online Agreements: Users may need to take an online agreement in order to be able to avail of the services e.g. clicking on “I accept” while connecting software or clicking on “I agree” while signing up for an email account.
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3. There has to be legal consideration:

- ▶ Any contract to be enforceable by law must have legal consideration, i.e., when both parties give and receive something in return. Therefore, if an auction site enforces a contract between two parties where one provides a pornographic movie as consideration for purchasing an mp3 player, then such a contract is void.

4. There has to be an intention to create lawful relations:

- ▶ If there is no intention on the part of the parties to create lawful relationships, then no contract is possible between them. Usually, agreements of a domestic or social nature are not contracts and therefore are not enforceable, e.g., a website providing general health related data and instructions.

5. The parties must be able to contract:

- ▶ Contracts by minors, lunatics etc. are void. All the parties to the contract must be lawfully competent to enter into the contract.

6. There must be free and unaffected consent:

- ▶ Consent is said to be free when there is absence of coercion, misrepresentation, undue influence or fraud. In other words, there must not be any agitation of the will of any party to the contract to enter such contract. Usually, in online contracts, especially when there is no active real-time communication between the contracting parties, e.g., between a website and the customer who buys through such a site, the click through process ensures free and genuine consent.

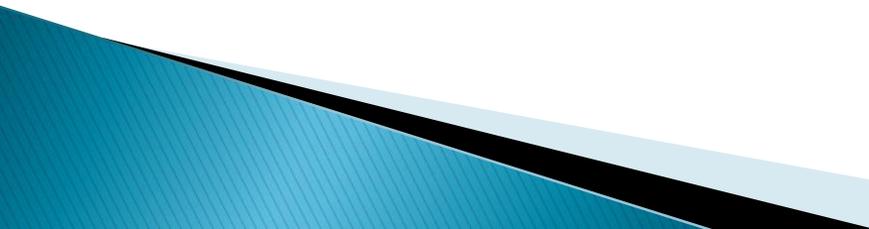
7. The object of the contract need to be lawful:

- ▶ A valid contract presumes a lawful object. Thus a contract for selling narcotic drugs or pornography online is void.

8. There must be conviction and possibility of performance:

- ▶ A contract, to be enforceable, must not be ambiguous or unclear and there must be possibility of performance. A contract, which is impossible to perform, cannot be enforced, e.g., where a website promises to sell land on the moon.

TYPES OF ELECTRONIC CONTRACTS:

- ▶ Employment Contracts
 - ▶ Consultant Agreements
 - ▶ Contractor Agreements
 - ▶ Sales, Re-Seller and Distributor Agreements
 - ▶ Non-Disclosure Agreements
 - ▶ Software Development and Licensing Agreements
 - ▶ Shrink Wrap Contracts
 - ▶ Source Code Escrow Agreements
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LEGAL FRAMEWORK RELATING TO E-CONTRACT:

With the growing importance and value of e-contract in India and across the world, the different stakeholders are continuously identifying and evaluating the nuances of legal outline relating to it. The participation of different service providers in the transaction of e-contract, which includes a payment gateway, the main website, the bank or card verification website, the security authorization website and the final service provider which can also comprise the shipping agent has made the E-contract business more complex. Therefore, the need for amendable it has augmented. In India, till date there are no definite legislations or guidelines protecting the buyers and sellers of goods and services over the electronic medium. However, several laws acting in unification are trying to regulate the business transactions of E-contract. They are as follows:

- ▶ Indian Contract Act,1872
- ▶ Consumer Protection Act,1986
- ▶ Information Technology Act,2000
- ▶ Indian Copyright Act,1957