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LAW OF CONTRACT

For Internal Circulation and Academic Purpose Only

Programme Educational Objectives

- *Our program will create graduates who:*
- *1. Will be recognized as a creative and an enterprising team leader.*
- *2. Will be a flexible, adaptable and an ethical individual.*
- *3. Will have a holistic approach to problem solving in the dynamic business environment.*

Business Legislations Course Outcomes

- CO1 Given the circumstances, the learner will be able to infer legal aspects of doing business & plan business activities.
- CO2 In a given situation, the learner will be able make use of provisions of the Contract Act to evaluate a contract used in commercial practice with 70% accuracy.
- CO3 In a given situation, learner will be able to distinguish between various types of Companies and explain their comparative advantages and disadvantages.

- CO4 The learner will be able to describe the legal process involved in formation of a company and identify the relationships amongst the various stakeholders of the company.
- CO5 When needed, the learner will be able to examine the various provisions of consumer protection act and determine steps to be taken in case of consumer related complaints.
- CO6 In a given situation, student manager will be able to make use of various legal provisions of Information Technology Act.

Contract law- Introduction

- The law of Contract is contained in the **Indian Contract Act 1872.**
- It extends to whole of India, except the state of Jammu & Kashmir.
- The Act is not exhaustive in nature, and does not deal with all the branches of Contract.
- There are several acts which supplement the contracts, like Negotiable instruments, transfer of property, Sale of Goods, Partnerships etc.

Contract law- Introduction

Definitions

- **Sec 2 (h)** : An agreement enforceable by Law is a contract.

Explanation:

An agreement made between two or more parties, with the intention of creating certain legal rights and duties, which is enforceable by law.

A Contract has two elements:

1. An Agreement
2. Legal Obligation

Contract law- Introduction

Definition of Agreement

- **Sec 2 (e)** : Every promise & every set of promises, forming consideration for each other is an agreement.

Definition of Acceptance

- **Sec 2 (b)** : When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted.

Explanation:

A proposal when accepted becomes a promise. So an agreement comes into existence when a person makes an Offer and the other person accepts the offer.

Contract law- Introduction

Expressed Contract and Implied Contract

Express Contract

Terms of the contract expressly agreed upon in writing, orally or combination of both.

Implied Contract

Contract reached through acts or conducts of both parties , not through writing or words.

Contract & Agreement distinguished

- Contract is a combination of agreements and other compulsory requirements of the contract law.
- Not every agreement leads to a legal contract, but a contract must contain a legally enforceable agreement.
- All contracts are agreements but not all agreements are contracts.
- Only those agreements which are legally enforceable are contracts

Essential Elements of a Valid Contract

1. Offer and Acceptance (S. 25)
2. Intention to create legal relations (S. 25)
3. Consideration (S. 23)
4. Capacity of parties (S. 11)
5. Free Consent (S. 13-14)
6. Lawful Object & Consideration (S. 23)
7. Writing & Registration (S. 25)
8. Certainty (S. 29)
9. Possibility of performance (S. 56)
10. Not expressly declared void (S. 24-30)

1. Offer and Acceptance (S. 25)

There must be lawful offer and lawful acceptance of the offer, thus resulting in an agreement.

When one person signifies to another his willingness:

- a. To do, or
- b. To abstain from doing anything

With a view to obtain the acceptance of another, he is said to make a proposal.



The Offeror and The Offeree



OFFEROR

- Shows intent to enter into a contract
- Makes a definite offer
- Communicates the offer to the offeree

"I'll pay you \$50 an hour to edit my book on Mesoamerican sewing techniques."



OFFEREE

- Shows intent to accept the offer
- Communicates intent to accept by proper means
- States acceptance that "mirrors" the terms of the offer

"I'll take the editing job."

Legal rules of a valid Offer

1. The Offer may be **expressed** or **Implied**.
2. An offer must give rise to **legal relations**.
3. The terms of the offer must be **certain**.
4. An **Invitation** to Offer is **not an Offer**
5. An offer may be **specific** or **general**
6. An offer must be **communicated** to the offeree.
7. An offer should not contain a term of which, a **noncompliance** may amount to acceptance.
8. An offer can be made **subject to any terms** and conditions
9. Two identical **Cross offers** do not make a contract.

Legal rules of a valid Acceptance

1. Acceptance must be given by the **person** who has been made the offer.
2. Acceptance must be **absolute and unqualified**.
3. Acceptance must be **usual or as prescribed**
4. Acceptance must be **communicated** by acceptor
5. Acceptance must be given within **reasonable time**
6. Acceptance must made **after receiving the offer**

2. Intention to create legal relations

1. In **commercial agreements** the intention to create legal relations is presumed



2. In **domestic agreements** such intentions are not presumed.



3. But if parties have **expressly declared**, then it is accepted as per the agreement terms.

3. Lawful Consideration

1. When,
2. At the desire of the Promisor,
3. The Promisee or any other person on his behalf-
 - A. Has done or abstained from doing..
 - B. Does or abstains from doing..
 - C. Promises to do or abstain from doing..
4. Something
5. Such act or abstinence is called as **Consideration** for Promise

Legal rules of a valid Consideration

1. Consideration must happen at the **desire of the promisor**
2. The consideration may move **from the promisee or any other person**
3. A consideration may be **past, present or future.**
4. Consideration must **have some value.**

Exceptions to the rule of “No Consideration, No Contract”

1. Agreement made on account of **Natural Love.**
2. Agreement to compensate for **past voluntary service**
3. Agreement to pay a **time-barred debt.**
4. Completed **Gifts.**
5. Contract of **Agency.**
6. Remission by the promisee, of **performance** of the promise.
7. Contribution to **Charity.**

4. Capacity of Parties

A. Minors:

Any person under the age of 18 is a minor.

1. An agreement by a minor is **absolutely void**.

2. **Beneficial agreements** are valid Contracts.

3. **No ratification** on attaining Majority.

4. The rule of **estoppels** does not apply.

5. Minor's liability for **necessaries**.

6. Minor **Partners only for benefits**

7. Minor Agent, **Principal is responsible**.

8. Minors Position as : **Shareholder, Surety & Joint in an agreement**



4. Capacity of Parties (Contd..)

B. Persons of Unsound Mind:

A person is considered to be of 'sound mind', when at the time of making a contract, he is capable of understanding it and of forming a rational judgement as to its effects upon his interest.

1. **Idiots** – God given and permanent
2. **Lunacy or Insanity** – brain disease
3. **Drunkenness** – temporarily intoxicated
4. **Hypnotism** – artificial sleep.
5. **Mental Decay**- due to old age



4. Capacity of Parties (Contd..)

C. Disqualified Persons:

A person who is disqualified by any other law

- 1. Alien enemies** - a foreigner against whose country, there is a war going on.
- 2. Foreign Ambassadors** - They can sue, but cannot be sued without the permission of Central Govt.
- 3. Convicts** - cannot enter into a contract while imprisoned, but only when released from prison
- 4. Married Woman** - Cannot enter into a contract for their husbands' property, except for essential supplies, if the husband has failed to provide it.
- 5. Insolvent** - When not discharged, cannot sell his property with official receiver.
- 6. Joint Stock Companies** are limited by conditions in memorandum of



5. Free Consent (Sec. 14)

A consent is said to be free when it is not caused by-

1. Coercion

2. Undue Influence

3. Misrepresentation

4. Fraud

5. Mistake

5. Free Consent (Contd..)

1.Coercion (S.15) Committing or threatening to commit an-

A.Act forbidden by Law or

B.Unlawful detention or threatening to detain any property,

With an intention of making a person to enter into an agreement.



5. Free Consent (Contd..)

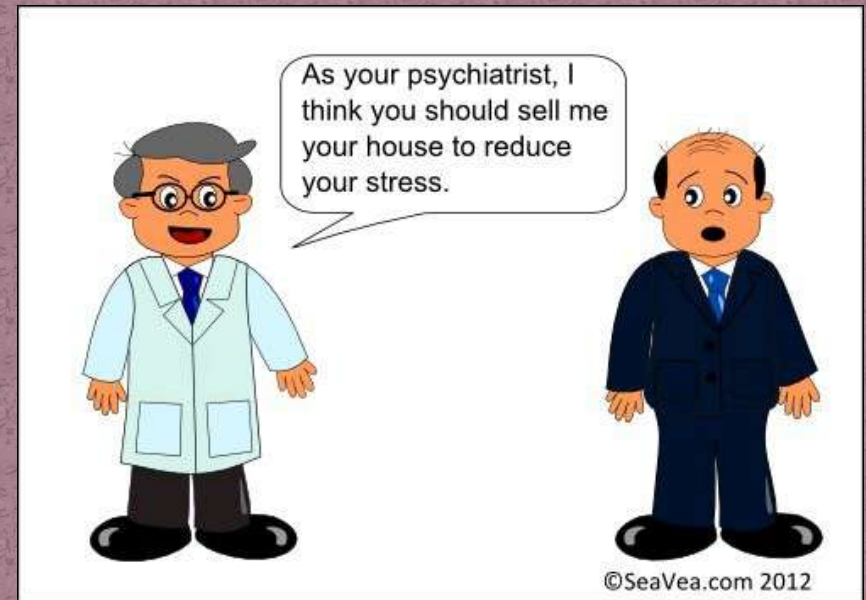
2.Undue Influence (S.19) A contract is said to be under undue influence when:

A.The relation between parties is such that one will dominate the other and

B.He uses the position to obtain an unfair advantage over the other.

Examples:

- .Patient & Doctor
- .Father & Son
- .Advocate & Client
- .Trustee & beneficiary
- .Guru & Disciple



5. Free Consent (Contd..)

3. Misrepresentation(S.18) A misrepresentation is

A. Stating untrue facts without sufficient knowledge

B. Not doing one's duty, causing disadvantage to another

C. Innocently causing a mistake



5. Free Consent (Contd..)

4.Fraud (S.17) A Fraud includes all actions of a person with an intention to deceive another by -

A.Intentionally making a false statement,

B.Concealing the facts (exception, *Caveat emptor*)

C.Making a promise, without an intention of performing it.

D.Any other action with an objective of deceiving someone

E.Any other things declared as fraudulent by any other law

5. Free Consent (Contd..)

5.Mistake (S.21) An erroneous belief concerning something. The Mistake may be of two kinds:

1. Mistake of Law-

“Ignorance of Law is not an excuse” - So a Contract is not voidable because it was caused by a mistake of Law.

2. Mistake of fact-

For any agreement to be void the following three conditions must be fulfilled-

- a.Both parties must be under a mistake**
- b.Mistake must be of some fact**
- c.The fact must be part of the agreement**

6. Lawful Objects & Consideration

Unlawful Object & Consideration (S.10)

An Agreement of which object and Consideration is unlawful is void

- 1.If forbidden by law
- 2.If permitted will defeat provision of any law
- 3.If it is fraudulent
- 4.If the courts calls it 'Immoral'
- 5.If it involves injury to any person or



Void, Illegal, Avoidable , Unenforceable

Void contract: No legal rights and duties, Void contract is of civil nature.

Illegal contract: No legal rights and duties as it is against a Law and then treated as being void. Illegal contract is of criminal nature such as an agreement between friends for robbing a bank

Avoidable contract: remains valid until repudiated by a party

Unenforceable contract

valid on its face but no legal action can be brought on it. Ex. A Contract needs to be evidenced in writing, but no evidence could be presented.

7. Void Agreements

Expressly declared Void Agreements:

1. Agreements in restraint of Marriage.

Example - If A agrees with B, that she will not marry C. It is a void agreement.

2. Agreement in restraint of trade.

Example - If A after selling his business and Goodwill promises not to carry similar business “anywhere in the world” This is a void agreement.

3. Agreement in restraint of Legal Proceedings.

Example - If A agrees with B, that he will not initiate any legal proceedings against B even if he fails to fulfill his promises made in the contract. It is a void agreement.

7. Void Agreements

Expressly declared Void Agreements:

4. Agreements which are uncertain in meaning

Example - If A agrees to sell B, 'Hundred Liters Oil' - this agreement is void as it does not mention what kind of oil

5. Agreement by way of Wager (bets)

Example - If during a Cricket match A promises to pay B, Rs. 500 if England wins and pay Rs. 500 if it loses - this amounts to betting and is thus a void agreement

6. Agreement contingent on impossible events

Example - If A agrees to pay B, Rs. 5 lacs, if he marries C, C is already dead, this is a void agreement

7. Agreement to do impossible things

Example - If A agrees with B to discover a Treasure by magic- The agreement is void.

7. Other types of Contracts

Voidable Contract:

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

A contract is voidable when one of the parties to the contract has not exercised his free consent. One of the essential elements of a formation of a contract for example, free consent, is absent.

The person whose consent is not freely given may avoid a contract.

It therefore continues to be valid till the party whose consent is caused by coercion, undue influence, fraud or misrepresentation choose to avoid the contract within a reasonable time. Contract then is not binding on the other party.

7. Other types of Contracts

Quasi-Contract:

Certain relations resemble those created by a contract. Certain obligations which are not contracts in fact, but are so in the contemplation of law. These are called Quasi-Contracts.

Illustration:

'A' supplies necessities to 'B' who is not capable of contracting and reimbursing to 'A'. A is entitled to be reimbursed from B's property.

Quasi contracts raise out of obligation enjoyed by one person from the voluntary acts of the other which are not intended to be performed gratuitously

7. Other types of Contracts

Contingent Contract:

A contingent Contract is one, in which a promise is conditional and the contract shall be performed only on the happening of some future uncertain event.

Illustration:

'A' contracts to pay B Rs 10,000, if B's house is burnt. This is a contingent contract.

7. Other types of Contracts

Contract of Record:

A contract of record is one which is taken to the records of a Court, for example judgment of a court. Such judgments create a binding effect through the authority of the Court.

Specialty Contract:

A specialty contract is a contract which is in writing signed, sealed and delivered by the parties. It is also called a contract under seal. Consideration is not necessary in a specialty contract.

7. Other types of Contracts

Statutory Contract:

A contract for which a statute prescribes certain terms is known as a statutory contract.

Statutes usually, govern the contracts made by public entities. However, some contracts by private persons are also governed by statutes. statute may define and set minimum standards for terms in Building Contracts of Public Works Department contracts.

Part -II Performance of Contracts

**Performance of Contracts means -
Fulfillment of their respective promises
by the promisor and the promisee.**

**When the two parties perform their
respective contracts - then the contract
comes to an end.**

**This 'coming to an end' of the contract is
called as Discharge or termination of the
contract.**

**Who can demand the Performance-
Only Promisee can demand performance
Any third party cannot demand the
performance of a contract**

Part -II Performance of Contracts

Who can Perform the Contract-

- 1. By the Promisor himself.**
- 2. By Promisor through his agent.**
- 3. By the Legal representative of the Promisor.**
- 4. By any third party, if accepted by promisee.**

Part-III Remedies to breach of Contracts

What is a Breach of Contract

Violation of any binding terms and conditions of the contract by any party is breach of Contract.

What are the types of Breach of Contract

A. Anticipatory Breach - A breach of contract that occurs before the time fixed for performance.

Ex. 'A' promises to Sell his house to 'B' on 30 Aug, but sells it to 'C' on 20 August.

B. Actual Breach - A breach of contract that occurs upon the fixed time of performance.

Ex. A Seller not delivering the Goods to buyer on the agreed date and time.

Part-III Remedies to breach of Contracts

What are the Remedies for Breach of Contract

1. Suit for Rescission (Cancellation) of the Contract -

When there is a breach, the other party may not perform his part of the contract and file a Suit for Rescission of Contract.

2. Suit for Damages -

‘Damages’ is the monetary compensation for any loss to any party in a contract.

A suit for damages is aimed at giving compensation to the ‘injured’ party and not giving punishment to the ‘defaulting’ party

Part-III Remedies to breach of Contracts

What are the Remedies for Breach of Contract

3. Suit upon *Quantum Meruit* -

The phrase Quantum Meruit means 'as much as is earned'

An 'Injured' party may file a suit for Quantum Meruit against the 'Guilty' party, to demand compensation to the extent of the losses suffered.

4. Suit for Specific Performance -

'Specific Performance' means the actual carrying out of the Contract as agreed.

A suit for Specific Performance is aimed to obtain a 'decree' from the court to compel the other party to perform the promise he has made.

Part-III Remedies to breach of Contracts

What are the Remedies for Breach of Contract

5. Suit for an Injunction-

'Injunction' is an order of the court to restrict any person from doing a particular act.

In case of a breach of Contract, a Court may grant injunction (i.e. Prevent the guilty from doing any act) for providing relief to the 'Injured' Party.

Contracts of Indemnity

**What are the Remedies for Breach of Contract
A Contract by which:**

- a. One party promises to save the other**
- b. From loss caused to him**
- c. By conduct of the promisor himself or by the conduct of any other person**

Is called as the Contract of Indemnity (Sec 124)

It is the part of Contingent Contracts

It aims to protect the promisee against anticipated loss.

The contingency is actually the 'causing of Loss'

Example of the Indemnity Contracts -

Indemnity Bonds

Rights of Indemnity Holder (Sec 125)

- 1. Entitled to recover all damages , which he may have to pay.**
- 2. Entitled to recover all reasonable costs for bringing or defending a suit.**
- 3. Entitled to recover all sums of money which he may have paid under any compromise.**

Provided that he may have acted prudently, or with the authority of the indemnifier.

Contracts of Guarantee (Sec 126)

A contract of guarantee is a contract

A. To perform the promise

B. Or Discharge the liability of third person

In case of his default.

- **Principal Debtor - The person whose guarantee is taken**
- **Creditor - The person to whom Guarantee is given**
- **Surety - The person who gives the guarantee.**

It may be noticed that here are three contract in case of a guarantee

- 1. Between Principal Debtor & Surety**
- 2. Between Surety & Creditor**
- 3. Between Creditor & Principal Debtor.**

Contracts of Guarantee (Sec 126)

Classification

Contracts of guarantee may be of three types :

- (1) for payment to the Creditor to the Principal Debtor by the Guarantor ;**
- (2) payment of price for goods sold, and**
- (3) fidelity guarantee**

A contract of guarantee may be for

- (1) a future debt or obligation or for**
- (2) an existing debt.**

A guarantee can also be

- (1) a Simple Guarantee or**
- (2) a Continuing Guarantee**

Essential of valid Guarantee (Sec 126)

1. A contract of guarantee must satisfy all the essential elements of a contract. But the following points are to be noted.
2. A contract of guarantee may be either oral or written. Sec 126.
3. In a contract of guarantee there are three parties i.e., the creditor, the principal debtor and the surety. All the parties must join the contract.
4. In a contract of guarantee, the primary liability is that of principal debtor. The liability of surety arises only when there is a default of the principal debtor. Therefore, the liability of the surety is secondary.
5. In a contract of guarantee the principal debtor may be a minor. In this case the surety is liable to pay even though the minor may not be. The contract will be enforced as between the surety and the creditor.

Discharge of Surety from Liability

1. Notice of revocation by Surety
2. Death of surety
3. Variation of contract
4. Release or discharge of principal debtor
5. Arrangement with principal debtor by Creditor
6. Creditor's forbearance to sue does not discharge surety
7. Release of one co-surety
8. Act or omission impairing surety's eventual remedy.
9. Loss of security