

BUSINESS LAW

UNIT 1: The Indian Contract Act, 1872

TOPIC- LAW OF CONTRACT -INTRODUCTION

LAW OF CONTRACT

The law of contract is the foundation on which the superstructure of modern business is built. Business transactions often involve promises and performances. Promises are made at one point of time and performances follow later. If either of the parties were free to go back on its promise without incurring any liability, there would be endless complications and it will be impossible to carry on trade and commerce. Hence, **law of contract was enacted to lay down legal rules relating to promises- their formation, performances and their enforceability.**

THE INDIAN CONTRACT ACT,1872

- It was passed in the year 1872 .
- It is not exhaustive and does not deal with all the branches of the law of contract. There are separate Acts for dealing with negotiable instruments, transfer of property, sale of goods, partnership, insurance etc.
- Act is divided into two parts
 - I. General principles of law of contract (Sec.1- Sec.75)
 - II. Specific kinds of contracts viz. Contract of Indemnity and Guarantee (Sec.124-147), Contract of Bailment and Pledge (Sec.148-181), Contract of Agency (Sec.182-238)
- Initially the Act also contained provisions relating to sale of goods and partnership. But in 1930, Section 76-123 were repealed from the Indian Contract Act and The Sale of Goods Act was enacted . Similarly ,Sections 239-266 were repealed in 1932 when Indian Partnership Act 1932 was passed.

CONTRACT

- According to Sec.2(h) of Indian Contract Act,1872 “ **Contract is an agreement which is enforceable by law**”. In other words, a contract is a legally binding agreement i.e. an agreement the object of which is to create a legal obligation
Thus Contract= Agreement+ Legal enforceability
- According to Sec.2(e) of Indian Contract Act,1872 “Every promise and every set of promises , forming consideration for each other, is an agreement”. Thus **agreement means promise**.
- According to Sec. 2(b) , “ When the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise”. Thus an agreement (promise) comes into existence when one party makes an offer or proposal to the other party and that other party gives its consent to it. So **promise(agreement) = offer+ acceptance**
- **Legal enforceability means duty enforceable at law i.e.** the parties can take a legal recourse to force the other party to perform as per the contract

As per Salmond, “The law of contracts is not the whole law of agreements , nor is it the whole law of obligations. It is the law of those agreements which create obligations and those obligations, which have their source in agreements”

- All contracts are agreements but all agreements are not contracts. Agreements of moral, religious or social nature are not contracts as here the intention is not that the parties should be attended by legal consequences. CASE- **Balfour vs Balfour** .In business agreements the presumption is usually that the parties intend to create legal relations. But even a business agreement would not amount to a contract if the parties have expressly declared their resolve that agreement is not to create legal obligation.; **Rose & Frank Co. vs Crompton & Brothers Lmt.**
- All obligations are not contracts. Obligations which are not contractual i.e. obligations which do not arise from agreements are not contracts. So obligations to maintain wife and children (status obligation), obligation to observe laws of land, obligations to comply orders of the court of law do not arise out of a contract and hence are outside the purview of the Indian Contract Act.

Essentials of a valid contract(Sec.10, 29 and 56)

- ACCORDING TO SEC 10, ALL AGREEMENTS ARE CONTRACTS IF THEY ARE MADE BY **FREE CONSENT** OF PARTIES **COMPETENT TO CONTRACT**, FOR A **LAWFUL CONSIDERATION** AND WITH A **LAWFUL OBJECT** AND ARE **NOT HEREBY EXPRESSLY DECLARED TO BE VOID** AND ,WHERE NECESSARY, SATISFY THE REQUIREMENTS OF ANY LAW AS TO **WRITING\ATTESTATION\REGISTRATION**
- ACCORDING TO SEC 29, AGREEMENTS, THE MEANING OF WHICH IS NOT CERTAIN OR CAPABLE OF BEING MADE CERTAIN, ARE VOID.
- ACCORDING TO SEC 56, AN AGREEMENT TO DO AN ACT IMPOSSIBLE IN ITSELF IS VOID

Essentials of a valid contract(Sec.10, 29 and 56)

- **Agreement**= Offer + acceptance
- **Legal intention**= intention to take legal recourse incase of breach by any party
- **Lawful consideration** - is the 'something in return' for the promise of another.
 - ✓ It should be something of value but need not be adequate.
 - ✓ It may be past, present or future.
 - ✓ It must be real
 - must not be physically impossible
 - must not be legally impossible
 - must not be uncertain
 - must not be illusory-

Essentials of a valid contract(Sec.10, 29 and 56)

- **Capacity to Contract**

- ✓ Major 18 or above 18 yrs of age.
- ✓ Sound mind - not idiot, or lunatic or not under influence of alcohol or hypnotism or undergone mental decay due to old age or prolonged illness
- ✓ Must not be disqualified from contracting
 - Alien enemies
 - Foreign sovereigns and ambassadors
 - Insolvent
 - Convicts
 - Married woman
 - Company\corporations

- **Free Consent** means not caused by

- ✓ Coercion
- ✓ Undue influence
- ✓ Misrepresentation
- ✓ Fraud
- ✓ Mistake

Essentials of a valid contract(Sec.10, 29 and 56)

- **Lawful object** means
 - ✓ Not forbidden by law
 - ✓ Not fraudulent
 - ✓ Not injurious to person or property of another
 - ✓ Not immoral
 - ✓ Not against public policy
- **Not expressly declared void(Sec. 26 to Sec. 30)**
 - ✓ Agreements in restraint of marriage
 - ✓ Agreements in restraint of trade
 - ✓ Agreements in restraint of legal proceedings
 - ✓ Agreements the meaning of which is uncertain
 - ✓ Agreements by way of wager

Essentials of a valid contract(Sec.10, 29 and 56)

- **Formalities as to writing or registration**

- ✓ contracts can be made orally or in writing.
- ✓ writing essential for contracts like
 - agreement to pay a time barred debt
 - arbitration agreement
- ✓ writing and registration essential for certain contracts like
 - sale\purchase of immovable property
 - agreement made out of natural love and affection

- **Certainty**

- ✓ no ambiguity
- ✓ not vague

- **Possibility of performance**

- ✓ possible legally
- ✓ possible physically

KINDS OF CONTRACTS

- **On the basis of enforceability**

- ✓ Valid contract- enforceable by both parties- when all essential elements are present
- ✓ Voidable contract- enforceable by only one of the parties- when free consent element is missing
- ✓ Void contract- not enforceable by any party- due to supervening impossibility or illegality
- ✓ Unenforceable contract- not enforceable due to some technical defect e.g. writing or registration requirement not present
- ✓ Void agreement- not enforceable at all since inception - when any essential element (except free consent) is not present.e.g. consideration not present\ parties are not competent\ terms are not certain\ not possible to perform\ expressly declared void\
- ✓ Illegal agreement- not enforceable by any party being against law. eg.when object \ consideration is not lawful.

KINDS OF CONTRACTS

- **On the basis of mode of creation**

- ✓ Express contract- oral, written, e contract
- ✓ Implied contract
- ✓ Mixed character
- ✓ Quasi Contract (sec.68 –sec.72)

- **On the basis of degree of obligation**

- ✓ Executed contract- both parties have completely performed their share of obligation under the contract
- ✓ Executory contract\ Bilateral contracts- both parties are yet to perform either wholly or partly their obligations under the contract
- ✓ Unilateral contract- when one party has already performed its obligation **before or at the time of** the formation of the contract and only the other party is yet to perform