

WELCOME TO THE  
COMMERCIAL LAW CLASS

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LAW OF CONTRACT

# INTRODUCTION

- The law of contracts forms the oldest branch of the law relating to business transactions.
- It affects every person in one way or the other, as all of us enter into some kind of contract every day.
- The law of contracts is applicable not only to the business community but also to others.

# Introduction: continues....

- ◉ Every one of us enters into a number of contracts almost every day.
- ◉ When a person takes a seat in a bus or deposits his luggage in a railway cloak room or entrusts his car to the mechanic for repairs etc., he enters into a contract though he may not be aware of this fact.
- ◉ Such contracts create legal rights and obligations.

# Introduction: continues....

- The law relating to contracts in india is contained in the Indian Contract Act 1872.
- The Act came into force on the first day of September 1872.
- It is not an exhaustive code containing the entire law of contracts.
- The Indian Contract Act may be divided into two parts : Section 1 to 75 deals with the general principles of the Law of Contract. Section 124 to 238 deals with special types of contracts such as,

- a) Contract of Indemnity and guarantee (Sec. 124 to 147)
- b) Contract of Bailment and Pledge (Sec. 148 to 181)
- c) Contract of Agency (Sec. 182 to 238)

# DEFINITION OF CONTRACT

- An agreement which creates legal obligations is a contract. The obligation is an undertaking to do or abstain from doing some definite act or acts.
- Section 2(h) of the Indian Contract Act 1872 defines a contract as follows :  
"An agreement enforceable by law is a contract."
- In other words, an agreement which can be enforced in a court of law is known as a contract.

Thus a contract consists of the two elements :

- (1) An agreement and
- (2) The agreement must be enforceable by law.

The term agreement is defined in Section 2(e) of the Indian Contract Act which reads as under :

"Every promise and every set of promises, forming consideration for each other, is an agreement."

# PROMISE

- ◉ Sec. 2(b) defines promise as "A proposal when accepted, becomes a promise".
- ◉ Thus an agreement is an accepted proposal.
- ◉ We can easily conclude from the above mentioned provisions that an agreement consists of an offer or proposal from one party and its acceptance by the other.



In other words :

Agreement = Offer + Acceptance

So, agreement means a promise. It is created when a person makes an offer to another person and that other person signifies his assent or accepts it.

# OBLIGATION

- Obligation is a legal tie which imposes upon determinate person or persons the necessity of doing or abstaining from doing a definite act or acts.
- Obligations are also said to be varied; such as social obligations, obligations arising out of torts, obligations arising out of compromise decree, obligations arising out of quasi-contracts etc.

# CONSENSUS AD ADEM

- ◉ Consensus ad idem means identity of mind. Two or more persons are said to consent with each other when they agree upon the same thing in the same sense.

However, there are some agreements which are not enforceable in a law court. Such agreements do not give rise to contractual obligations and are not contracts. An agreement of purely social or domestic nature is not a contract.

- **Example : Balfour V Balfour (1919)**
- **A husband and wife were residents in Ceylon, where husband was employed. They went to England on nine months leave. At the end of the time the husband had to return alone as the wife was advised to remain in England because of illness. The husband promised to send her a maintenance allowance of £ 30 a month until she returned to Ceylon. The husband failed to pay the amount. The wife sued for the allowance.**
- **It was held that there was no binding contract. She could not recover as it was a social agreement and parties did not intend to create any legal relations.**

# ELEMENTS OF A VALID CONTRACT:

- According to Section 10 of the Act lay down the essentials of a valid contract. According to the section:
- "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

Contracts are agreements, but all agreements need not be contracts. The term 'agreements' is, thus, much wider than the term 'contract'. An agreement become enforceable by law when it fulfils certain conditions. These conditions, which may be called the essential elements of a contract, are :

1. Offer and Acceptance
2. Intention to create legal relations
3. Lawful Consideration
4. Capacity of parties
5. Free and genuine consent
6. Lawful object
7. Agreement not declared void
8. Certainty and possibility of performance
9. Legal formalities.

# 1. Offer and Acceptance

- An agreement comes into existence by acceptance of an offer. In an agreement there must be at least two parties, one of them making the offer and the other accepting it. Acceptance must be in accordance with the terms and conditions of the proposal.
- An acceptance to be valid must be absolute and unqualified and in accordance with the exact terms of the offer. A proposal, when accepted becomes a promise.

The person making the offer is known as 'offerer', 'proposer' or 'promisor'. The person to whom the offer is made is known as 'offeree' or 'proposee' or 'promisee'.

● Example :

A proposes to sell his car to B for Rs. 50,000 and B conveys his acceptance. The agreement comes into existence.



## 2. *Intention to Create Legal Relations*

- ◉ There must be an intention (among the parties) that the agreement shall result in or create legal relations. An obligation is the legal duty to do or abstain from doing a definite act or acts. If the parties do not intend to create legal obligations, there is no contract between them. An agreement which gives rise to a moral or social obligation is not contract.

# Example :

- I invited you for a dinner. You accepted the invitation. It is a social agreement. If I fail to serve you, you cannot go to Courts of Law for enforcing the agreement. Similarly, if you fail to attend the dinner, I cannot go to Court of Law for enforcing the agreement.

## 3. *Lawful Consideration*

- The agreement must be supported by lawful consideration on both sides. Each party to the agreement must give or promise something and receive something or a promise in return. Consideration is the price for which the promise of the other is sought.

## EXAMPLE:

- If A offers to sell his scooter to B for Rs. 10'000 and B accepts the offer, then for A Rs.10 000 is the consideration and for B the scooter is the consideration.

## 4. Capacity of Parties

- ◉ The parties to an agreement must be competent to a contract, otherwise it cannot be enforceable by a Court of Law.
- ◉ Minors, Lunatics, Drunkards, Idiots, Alien enemy, Convicts etc. **are incompetent** to contract.
- ◉ Under section 11 of the act, "Every person is competent to contract who is the age of majority according to the law to which he is subject, and who is of sound mind, *and not disqualified from contracting by any law to which he is subject*"

## 5. Free and Genuine Consent

- The consent of the parties to the agreement must be free and genuine. The consent of parties should not be obtained by **misrepresentation, fraud, undue influence, coercion or mistake**; If the consent is obtained by any of these flaws, then the contract is not valid.

## 6. *Lawful Object*

- ◉ The object for which the agreement has been entered must not be illegal or immoral or opposed to public policy. That is, the object of the agreement must be lawful and not one of which law disapproves.

## 7. Agreement not Declared Void

- The agreements must not have been expressly declared to be void by any law in force in the country.
- Under Indian Contract Act, there are five categories of agreements which are expressly declared to be void. They are:-



1. Agreement in restraint to marriage (Sec. 26)
2. Agreement in restraint of trade (Sec. 27)
3. Agreement in restraint of proceedings (Sec. 28)
4. Agreements having uncertain meaning (Sec. 29)
5. Wagering agreement (Sec. 30).

## 8. *Certainty and Possibility of Performance*

- Agreements to form valid contracts must be certain. If it is vague and it is not possible to ascertain its meaning, it cannot be enforced. The performance of an agreement must be possible. An agreement to do an impossible act is not valid.

# 9. Legal Formalities

- A contract may be oral or in writing. If, however, a particular type of contract is required by law to be in writing, it must comply with the necessary formalities as to **writing, registration and attestation**, if necessary. If these legal formalities are not carried out, then the contract is not enforceable at law.
- The Indian Contract Act contains rules regarding each of the elements mentioned above. These rules are to be discussed in the subsequent chapters.

# Summing up: Essentials of a Valid Contract

1. There must be an offer and valid acceptance
2. The consent of the parties must *be free and genuine*.
3. The parties must intend to *create legal relationship*,
4. The parties must be *competent to contract*.
5. There must be *lawful consideration* on both sides.
6. There must be *lawful object*.
7. The agreement *not declared void or illegal*
8. The terms of a contract should be *clear*.
9. 9. The performance must *not be impossible*,
10. 10. *Legal formalities, if any.*

# QUESTIONS:

1. Define the term 'Contract'
2. What are the essentials of a valid contract?
3. "All contracts are agreements, but all agreements are not contracts." Discuss.