

Law of Contracts

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Objectives of Contracts

- Human beings are social animals
- Every person enters into contract virtually every day
- **Freedom of contract** recognized by every society
- **Objectives of Contracts**: certainty, security, enforceability in mercantile law & business transactions
- To deal with the *rights in personam*

Laws relating to Contracts in India

- The Indian Contract Act, 1872 – General Principles applicable to contracts
 - The Transfer of Property Act, 1882- relating to immovable contracts
 - The Sale of Goods Act - relating to movable contracts
 - The Negotiable Instruments Act -relating to Cheques, Promissory Notes and Bills of Exchange
 - The information Technology Act, 2000 relating to e-commerce
 - Related enactments -The Consumer Protection Act, 1986 & The Competition Act, 2002 etc
- * The list is only illustrative & not exhaustive

General Principles of Contract

- **Contract** - agreement enforceable at law
 - creates rights and obligations between the parties
- **All agreements are not contracts** (E.g.. social agreements & domestic arrangements - *Balfour v. Balfour* 1919,KB)
- **Agreement** - An offer when accepted becomes agreement

Essential elements of Valid Contracts

- Agreement
- Competent Parties
- Free Consent
- Consideration
- Legal object
- Not Expressly Declared void
- Compliance with legal formalities (e.g. registration, writing)

Classification of Contracts

- **Based on enforceability** –valid, void, voidable
- **Based on mode of creation** – Express & Implied
- **Based on extent of execution** - executed and executory- unilateral and bilateral

Competence of contracting parties

- Sec.11 of ICA,1872
- “Every person is competent to contract, who is of the **age of majority**, of sound mind & not disqualified from contracting by any law
- Persons incapable of contracting - **Minors**, persons of unsound mind & those **disqualified by other laws** [e.g.alien enemy, convicts and insolvents etc]

Consent-nature & requisites

- **Consent**-two persons agreeing upon the same thing in the same sense (*consensus ad idem*)
- **Free Consent** – when consent is not caused by any of the following coercion, undue influence, fraud, misrepresentation & mistake

Consideration

- Price for which a promise is bought
- Quid pro quo
- Something accepted or agreed upon as a return, or equivalent for the promise made
- May be promise to do something or abstinence from doing something
- May be past, present or future
- Must be real, having value in the eyes of law
- Need not be adequate
- Agreements without consideration - void
[exceptions: promise made on account of natural love and affection, to compensate for voluntary services, to pay a time barred debt, contracts of agency & gifts]

Legality of object and consideration

- **Object and consideration are unlawful** -if forbidden by law, defeat provisions of law, fraudulent, immoral or opposed to public policy
- **Agreements against public policy**
 - Trading with enemy, for stifling competition, for improper promotion of litigation, marriage brokerage contracts and traffic in public offices

Void agreements

- **Agreements-**
- made by incompetent parties,
- made under mutual mistake of fact,
- for unlawful object/consideration,
- without consideration,
- in restraint of marriage, restraint of trade, & in restraint of legal proceedings,
- meaning of which is uncertain,
- by way of wager,
- to do impossible acts

Performance of contracts

- **Performance**- fulfillment of terms of contract by respective parties
- **Kinds**-actual and attempted
- **Attempted performance** -offer to perform [tender]

Discharge of contracts

- Discharge-when obligations created by contract come to an end
- Modes of discharge- by agreement, performance of contract, lapse of time, operation of law, material alteration, subsequent impossibility of performance & breach

Quasi-contracts

- Contracts constituted by law
- ICA describes them as ‘certain relations resembling to those of contracts’
- **Include** – claim for necessaries supplied to a person incapable of contracting [s.68], obligations of person enjoying benefit of non-gratuitous act [s.70] & responsibility of finder of goods[s.71]

Remedies for breach of contract

- Rescission- setting aside the contract
- Damages -ordinary, special, exemplary &nominal- liquidated damages & penalty based on principle of Quantum meruit- as much as merited/earned
- Specific performance
- Injunctions
- Restitution

Special contracts

- **Indemnity**- compensation for loss
- S.124- 'a contract by which one party promises to save the other party from the loss caused to him by the conduct of the promissor himself or by the conduct of a third party'-**parties**-indemnifier and indemnified
- **Guarantee**-a contract to perform the promise of discharge of the liability of a third person in case of his default-**parties**-surety, principal debtor and creditor[s.126]
- **Bailment** [sec.148]
- **Pledge** [sec.172]
- **Lien**
- **Agency** [sec.182]

Law relevant to Government Contracts

- **Indian Constitution , Article-298:** Power of the Union to carry on trade or business, and to the acquisition, holding and disposal of property and **the making of contracts for any purpose**
- **Art.299:** All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize

Conclusion

- Thank you for your attention