

LAW OF CONTRACTS

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WHY DO WE NEED CONTRACTS?

- ◉ Man is a social animal
- ◉ Discharges many activities every day
- ◉ Many of them -regulated by contracts
- ◉ Contracts-foundation for personal relations to modern super structures
- ◉ Laissez faire system to welfare state-the transformation
- ◉ Dilution of theory of absolute freedom of contract
- ◉ State regulation of contracts in limited sense

LAW OF CONTRACTS IN INDIA

- ◉ The Indian Contract Act 1872-passed by British India & based on the principles of English Common Law
- ◉ Originally contained 266 Sections, including General Principles of Law of Contract(S. 1 - 75), Contract relating to Sale of Goods (S.76 -129) & Special kinds of Contracts including indemnity, guarantee, bailment &pledge(S.125 - 238) and Contracts relating to Partnership(S.239-266)
- ◉ At present the Indian Contract Act may be divided into two parts

Part 1:General Principles of Law of Contract(S. 1 to 75)

Part 2:Special kinds of Contracts such as

- (1)Contract of Indemnity and Guarantee
- (2)Contract of Bailment and Pledge
- (3)Contract of Agency

* The **Sale of Goods Act 1930** and the **Indian Partnership Act 1932** were enacted as separate laws.

GENERAL PRINCIPLES OF CONTRACT

- ◉ **Contract** - agreement enforceable by law
- ◉ **Agreement** - every promise/set of promises forming the consideration for each other
- ◉ **Offer/Proposal**: when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer".
- ◉ **Acceptance of Offer/Promise** : "when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a **promise**."

All contracts are agreements but all agreements are not contracts

ESSENTIAL ELEMENTS OF A VALID CONTRACT

- ◉ "All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void." (S.10)
- ◉ Parties competent to contract or capacity (S.11)
- ◉ Proper offer and proper acceptance(S.3-9)
- ◉ Lawful consideration[something in return=quid pro quo). It can be cash, kind, an act or abstinence. It can be past, present or future-should be real and lawful]
- ◉ Free Consent [should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake]

- ◉ Lawful Object and Agreement
- ◉ Agreement not declared void or illegal
- ◉ Intention to create Legal Relationships
- ◉ Certainty, possibility of Performance; and
- ◉ Legal Formalities (like registration)

CLASSIFICATION OF CONTRACTS

- ◉ **Based on validity:** Valid, voidable, and void (agreements)
- ◉ **Based on formation:** Express, implied ,quasi-contracts
- ◉ **Based on performance :**Executed, Executory, unilateral and bilateral
- ◉ **Contingent Contracts**
- ◉ **E-contracts**

DISCHARGE OF CONTRACTS

- ◉ **Discharge:** Termination of contractual relationship between the parties-putting an end to their rights and obligations
- ◉ **Modes:-**By performance [Actual or Attempted (tender etc)], agreement/consent (accord/satisfaction etc), impossibility of performance(frustration), lapse of time ,by operation of law, breach of contracts

BREACH OF CONTRACTS

- ◉ A breach of contract occurs where a party to a contract fails to perform, precisely and exactly, his obligations under the contract. This can take various forms for example, the failure to supply goods or perform a service as agreed.
- ◉ **Remedies:** penalty, damages {liquidated and unliquidated), specific performance, injunctions, encashing bank guarantee , and rescission

NEW DEVELOPMENTS IN CONTRACTS

- ◉ E-commerce (click wrap and shrink wrap contracts etc)
- ◉ Compulsory arbitration agreements
- ◉ Infrastructural contracts
- ◉ Service contracts
- ◉ Government contracts etc

CONCLUSION

- ◉ Thank you