

Law of contract

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Discussion points

- Law of contract:
 - Elements of a valid contract,
 - parties of Contract

Relevant Law

- The Contract Act, 1872.

Basis of the Law of Contract [Cont.]

- ❖ In Business Promises are made first-**Performance follows later.**
- ❖ Law of contract lays down legal rules relating to promises, their formation, performance and enforcement.
- ❖ Applicable not only to business community but to **others also.**

Basis of the Law of Contract [Cont.]

- Contracts are **everywhere**. Much more so than crimes.
- Contract Law is the **basis** for more complex areas like property law and corporations law.
- Law of Contract is the **foundation** upon which the **superstructure** of Business is built.

Nature of Law of Contract

- ❑ An Agreement enforceable by law is a contract.
- ❑ An agreement comes into existence whenever one or more persons promise to one or others, to do or not to do something,
 - Every promise and every set of promises, forming the consideration for each other, is an agreement.

Conflict of Laws/Jurisdiction

Conflict of laws may arise:

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- Where the Contract is made in one jurisdiction and is to be performed in another jurisdiction or other countries
 - is sued upon in a jurisdiction where it was not made or to be performed,
 - ✓ It becomes necessary to determine the law of which legal system will govern the contract, or any particular aspect of it.

Conflict of Laws/Jurisdiction [Cont.]

Our act is silent on this issue!

- The existence of Internet and emancipation of international trade substantially creates **paradoxes regarding applicability** of the contract law.
- In the international trade commercial relationships are regulated with **established international norms**.

Discussion

- Create few scenario of contracts that involve two different jurisdictions?

The Essential Elements of Contract

- 1. Offer and acceptance
- 2. Intention to create legal relationship
- 3. Lawful consideration
- 4. Capacity of Parties
- 5. Free consent

The Essential Elements of Contract

- 6. Legality of the object
- 7. Certainty
- 8. Possibility of performance
- 9. Void agreements
- 10. Writing, Registration and Legal formalities

Void agreements:

- ✓ Agreement in restraint to marriage (section 26)
- ✓ Agreement in restraint of trade (Sec 27)
- ✓ Agreement in restraint of legal proceedings (sec 28)
- ✓ Agreement having uncertain meaning (sec 29)
- ✓ Wagering agreement

Formation of Contract

- **Definition of Contract:**

- According to **section 2(h) of Contract Act, 1872 –**

A contract is an **agreement** between two or more parties that is **enforceable by law**.

- Alternatively, it may be defined as a promise or set of promises which the law will enforce.

Formation of Contract

- Agreement

According to **section 2(e) of Contract Act, 1872-**

“Every promise or set of promises forming the **consideration** for each other.”

- Promise

According to **Section 2(b) of Contract Act, 1872**

—

“A proposal, when accepted becomes a promise” .

Formation of Contract

- **Proposal**

According to **section 2(a)** of **Contract Act, 1872**-

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence”

- **Promisor and Promisee**

According to **Section 2(c)** of **Contract Act, 1872** –

“The person making the proposal is called the "promisor" and the person accepting the proposal is called the "promisee"”

Formation of Contract

- **Consideration:**

According to **section 2(d) of Contract Act, 1872-**

“ Promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something..”

Agreement not Contract

According to **Section 2(g) of Contract Act, 1872 –**

“An agreement not enforceable by law is said to be void”

Formation of Contract

At a Glance:

- ❑ Contract = Agreement + Enforceability by law
- ❑ Agreement = Offer/Proposal + Acceptance + Consideration

If Everything is Positive then..



"contract? No contract. We do all our business with nothing more than a handshake."

Digital Contract! Possible?..



Offer

- All contracts are made by the process of a lawful offer by one party and the lawful acceptance of the offer by the other party.
- Example: X says to Y, “will you buy my house for BDT 100000?” This is an offer. If Y says, “yes”. The offer is accepted and a contract is formed.
- An offer involves the making of a “proposal”.

Definition of Proposal

According to **Section 2(a)** of The **Contract Act, 1872**-

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence he is said to make a proposal”.

- **A proposal is also called an offer.**

Definition of Proposal

- (i) Signification of one's willingness;**
- (ii) Willingness is expressed to another person;**
- (iii) The willingness may be affirmative or negative;**
- (iv) It has a definite object with the intention to create a legal relation.**

Offer or Invitation to Treat!

- **The test of Offer:**
- A person may ask for some information or supply some information and invite the other to make an offer or make a definite offer.
- In order to ascertain whether a particular statement amounts to an offer or invitation to offer **the test would be the intention with which such statement is made.**

Offer or Invitation to Treat

- Does the person who makes the statement intend to be bound by it as soon as it is accepted by the other? Or
- Does he intend to do some further act, before he becomes bound by it?
- In former case it amounts to a proposal or offer and in the latter case it amounts to **an invitation to offer.**

Offer or Invitation to Treat

- **Hence:**

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- an invitation to traders to make tenders,
 - an invitation by a company to the public to subscribe for its shares,
 - display of goods for sale in shop windows

Offer or Invitation to Treat

- Advertisement.
- Catalogue.
- time-table of bus or train are not proposals.

- Acceptance

Acceptance Defined

- Sec 2(b) of the Contract Act, 1872-

“When a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.”

- Manifestation by the offeree of his assent to the terms of the offer.

Rules regarding Acceptance

According to **Section 7** of the Contract Act 1872-

In order to convert a proposal into a promise, the acceptance must –

- (1) be absolute and unqualified;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted.

Communication of offer and acceptance

- How is an offer to be communicated?
- How is an acceptance to be communicated?

Revocation of an offer: When does an offer lapse?

- 1. By Notice
- 2. By lapse of time
- 3. After expiry of reasonable time
- 4. By failure of a condition precedent
- 5. By death or insanity
- 6. Counter offer
- 7. By refusal

Revocation of acceptance

- Section 5 of the contract Act provides that an acceptance can be revoked any time before the acceptance comes to the knowledge of the proposer but not afterwards.

Parties To A Contract

- *Parties to a contract enter into an agreement with one another that is legally binding.*
- *Each party must be competent for the contract to be valid.*
- *Agreement to the contract terms means that the parties understand them and accepts the specified obligations.*

Defining the Term “Parties”

- Many contracts include language stating that only the parties that sign the contract may enforce its terms.
- No other person besides the parties have any rights or remedies.
- Despite this statement, a court might rule that the term “parties” may include individuals besides the ones who signed.
- Therefore, contracts should specifically name the involved parties, or at least define the term as meaning only the ones who signed the document.

Parties to a Contract:

- Promisor
- Promisee &
- Beneficiary

How to Identify the Parties

- Individuals are not the only kind of parties to a contract.
- Businesses can also be signatories, although a representative for the business must sign the document. All parties must be clearly identified.

Capacity of Parties to a Contract

Necessity of Competency

According to section 10 of the Contract act 1872:

All agreements are contracts if they are made by the **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.

 For a valid contract the parties to a contract must have capacity that is competence to enter into a contract.

Who are competent to contract

According to section 11 of the contract act 1872:

“Every person is competent to contract who is of **the age of majority** according to the law to which he is subject , and who is of **sound mind** and is **not disqualified from contracting** by any law to which he is subject ”

It follows that the following persons are incompetent to contract:

1.Minor

2. Person of unsound mind and

3. Persons disqualified by any law to which they are subject .

Contracts enter into by persons mentioned above are void.

Minor

According to majority act ,1875

A minor is one who has not completed his or her **18th year of age** .

WHY SHOULD MINORS BE PROTECTED ?

- ❖ A minor has a immature mind and cannot think what is good or bad for him .
- ❖ Minors are often exploited. So he must be protected by law from any exploitation.
- ❖ But at the same time, the law must not cause **unnecessary hardship** to the persons who deal with minors.

Position of a person of Unsound Mind

What is unsoundness of mind?

According to **section 12** of the contract act 1872:

“A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is **capable of understanding it and of forming a rational judgement** as to its **effect upon his interests.**”

Position of a person of Unsound Mind

Unsoundness of mind may arise from :

1. Idiocy :

An idiot is a person with no intervals of saneness. His mental powers of understanding even **ordinary matters are absent** because of lack of development of brain. The agreement with an idiot is void.

A property worth about BDT. 25000 was agreed to be sold by a person for BDT. 7000 only. his mother proved that he was a congenital idiot, incapable of understanding the transaction. the sale was held to be void.

Position of a person of Unsound Mind

Unsoundness of mind may arise from :

2. Lunacy or insanity :

It is a disease of the brain. A lunatic loses the use of his reason due to some **mental strain or disease**. He may have **lucid intervals of sanity**. He can enter into contract during that period when he is of sound mind .

Position of a person of Unsound Mind

Unsoundness of mind may arise from :

3.Drunkenness: it produces temporary incapacity till the man is under the effect of intoxication creating impotence of mind. he stands on the same footing as a lunatic .

4.Hypnotism: it also produces temporary incapacity till the person is under the impact of artificially induced sleep.

5.Mental decay : it is on account of old age etc.

PERSONS DISQUALIFIED BY ANY OTHER LAW

• Alien enemies :

An alien is competent to contract with citizens of Bangladesh living in Bangladesh. he can maintain an action on a contract entered into by him **during peace time**. but if a **war is declared** , an **alien enemy** cannot enter into any contract with an Bangladeshi citizen .

PERSONS DISQUALIFIED BY ANY OTHER LAW

2. Foreign sovereigns

3. Insolvents: An insolvent cannot enter into a contract as his property vests in the official receiver or official assignee. This disqualification of an insolvent is removed after he is discharged.

4. Convict: A convict while undergoing imprisonment is incapable of entering into a contract . But this disability comes to an end on the expiry of the sentence .

Thank You

Any Question?