

## **INTRODUCTION**

This chapter deals with some important aspects of laws of interest. The idea is not to present the laws from a legal or lawyers' point of view but to understand some of the features of these laws. Law of contracts is a law coming from the British era (in 1872). As times changed, two sections of this law have been removed from this and made into separate laws. Law of Torts is an uncodified law and depends on case laws and judgments for hearing and deciding the cases. Another important aspect of interest is consumer protection. The Consumer Protection Act 1986 has been specially enacted to protect the interests of the consumers of both Goods and Services. This Act has now been replaced by the Consumer Protection Act 2019 with some modification in the earlier act considering the new ways of buying goods and marketing like E-commerce, teleshopping and multi-level marketing

## INDIAN CONTRACT LAW 1872

The Indian Contract Law 1872 is a British Law made applicable to the Indian State in 1872. The law as made applicable at that time had 266 sections. Over a period of time, in addition to amendments as required by demand of situations, some sections were removed from the Act. The sections originally included are:

1 to 75 — General provisions

76 to 123 — Sales of Goods

124 to 147 — Indemnity/Guarantee

148 to 181 — Bailment and Pledge

182 to 238 — Agency

239 to 266 — Partnerships

Two of these categories, 76 to 123 (Sale of goods) and 239 to 266 (Partnerships) were removed from the Contract Law and have been made into separate laws.

**Agreement and Contract:** All contracts are agreements but all agreements are not contracts. An agreement enforceable by law is a contract. Enforceable by law means legal remedy is available in case of any breach of contract to the aggrieved party.

# **FORMATION OF CONTRACTS**

Sections 2 to 6 of the act deal with this aspect:

a) Making a proposal: to do or not to do something. Person to whom the proposal is made signifies his assent, the proposal is accepted; Person making the proposal is the 'promisor' and person accepting it is the 'promisee'. When the promisee acts according to the desire of the promisor, it is 'consideration for the promise'. Every promise in consideration of each other is an agreement. Agreements not enforceable by law is said to be void. Legally enforceable agreements are contracts.

b) Formation of contract involves communicating the proposal and acceptance of the proposal.

c) A proposal can be revoked by communication to the other party or if the acceptance is not made in time as specified or by nonfulfillment of conditions by any of the parties.

# **ESSENTIALS OF CONTRACTS**

Sections 10 to 23 deal with this aspect of contracts.

- a) All agreements are contracts if they are made with the free consent of the parties competent to contract, object of contract is lawful, for a lawful consideration and are not declared void. All legal requirements like contract in writing, registration of documents and signature of witnesses need to be complied with.
- b) Competent to contract means the person(s) of legal maturity, of sound mind and is not disqualified by any law.
- c) Sound mind means the person capable of understanding the contract and is able to form rational judgments about its effect on his interests.
- d) Consent by two or more persons means that they agree upon some thing with the same understanding on all its aspects.

- e) Free consent happens when it is free of any coercion, undue influence, fraud, misrepresentation or mistake.
- f) Coercion is committing any unlawful act forbidden by Indian penal laws.
- g) Undue influence (in entering into a contract) happens when one of the parties hold such powers as to dominate the decision of the other by apparent authority or the other party is of weak disposition.
- h) Fraud means making a suggestion that something is true when it is not, concealing facts, making promises with no intention of doing it or by doing anything fraudulent.
- i) Misrepresentation means positively asserting something as true when it is not, breach of duty to gain some advantage and causing someone to make a mistake.
- j) An agreement arrived at by coercion is voidable; same is the case for fraud and misrepresentation.
- k) The agreement is also voidable if both the parties make mistake in understanding substance of the agreement.
- l) Lawful object of any agreement means that the object is not specifically forbidden in law. (Example: agreement to supply prohibited drugs or make forbidden weapons)

**PRODUCT AND PRODUCT LIABILITY:** "Product" means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;(as defined in the Act).

**Defect and Deficiency:**

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

"Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes:

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer;

## **Product Liability:**

"Product liability" means the responsibility of a manufacturer or seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto; "Product liability action" means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him;

A product manufacturer shall be liable in a product liability action, if

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

**A product service provider shall be liable in a product liability action, if**

- (a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
- (b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- (c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
- (d) the service did not conform to express warranty or the terms and conditions of the contract.

**A product seller who is not a product manufacturer shall be liable in a product liability action, if**

- (a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- (b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or



(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or

(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

# LAW OF TORTS

In the Oxford dictionary, you find the meaning of tort as “something wrong that somebody does to somebody else that is not criminal but that can lead to action in a civil court”, Law of torts apply in cases where a ‘civil wrong’ has been committed by one person against another. Defamation is a typical example of tort. The word ‘tort’ is derived from a Latin word ‘tortum’, meaning twisted or crooked. Law of torts is not a codified law like the criminal procedure code. Law of torts essentially comes from case laws or judgments given in different cases. There are no sections in Tort law as in the penal code. There are also no pre-defined punishment or damages in tort law. The main purpose tort law is to enforce the duties and rights of citizens.

This also leads to damages claimed by the person whose right is violated. The rights can in general be considered as:

- Right of reputation
- Right to bodily safety and freedom
- Right of property

Tort law is applicable where a civil wrong is committed. Civil wrong is different from a criminal wrong: A civil wrong under tort is a violation somebody's right by another person and is a private wrong, there is no codified rules for dealing with torts, monetary compensation is the most common claim for the injury (right violation) caused and compensation is not pre-determined and is decided by the court in each case. A criminal wrong on the other hand is a public wrong, case is generally given by the state and is dealt with procedures detailed in the code and punishment is generally laid out in the code for different types of criminal wrongs.

Every wrong act may not come under the law of torts. Three conditions need to be fulfilled for dealing with it under the law of torts:

- Existence of wrongful act causing injury (violation of right)
- Legal damages (Existence of actual damages or legally received damages)
- Legal remedy ('ubi jus ibi remedium' For every wrong, law provides a remedy.)

All the three conditions must be fulfilled for considering the incident under the law of torts.

Generally classify torts into three types:

- Intentional torts like defamation
- Negligence, not taking proper care to avoid wrong to others
- Strict liability, hazardous activities with potential for damage

Two important tort principles are:

*Injuria sine Damnum* (injury without damage) is a case where right violation happens but without damage. An exemplary case for this is a case of voting rights (*Ashby Vs White*). A person was prevented from voting by the returning officer of a voting station. The candidate to whom this person wanted to vote did win the election despite this person not voting. The person, who was not allowed to vote went to the court for damages for violation of the right to vote. The returning officer's case was that the candidate for whom the person wanted to vote has won the election in any case. There was no damage done and hence they are not liable to compensate the person. The court took the view that there was violation of right to vote and the entitlement to compensation remained irrespective of there being no damage.

Damnum Sine injury (Damage without injury) is the second principle governing the violation of right and damage. An example quoted to illustrate this principle is that of a school teacher who left the school he was working with and started a school nearby. This act led to the loss of students for the old school and in order to be competitive the school had to reduce fees as well. They suffered a loss because of this act of the old teacher. In this case, while there is damage and loss to the school, they are not entitled to any compensation as there was no violation of any of their rights. The teacher who left the school was well within his right to start a school and this act was not a violation of any right of the school. The school was not this entitled to any claim of compensation.

Some exceptions to the Tort law can come from:

- Personal fault of the injured party
- Act of God (vis major)
- Consent of plaintiff (volenti non fit injuria)
- Inevitability
- Necessity

Act done by a statutory authority (like police or IT personnel coming into your property as a part of investigation; it is not trespassing) Vicarious liability comes as a part of third party liability, as in the case of the liability of an employer for a wrongful act by the employee.

Absolute liability comes because of dangerous activity which has a potential to cause damage even if the actual damage is caused by not an individual fault. (Bhopal gas leak case) Law of Torts is not a codified law but is based on previous cases and pronounced judgments. Remedy in Tort cases is mainly monetary compensation and is decided by the court in each case based upon the extent of injury and other factors.