

BUSINESS LAW

INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872 prescribes the law relating to contracts in India. The Act was passed by British India and is based on the principles of English Common Law. It is applicable to all the states of India except the state of Jammu and Kashmir. It determines the circumstances in which promises made by the parties to a contract shall be legally binding and the enforcement of these rights and duties. The law of contract is that branch of law which determines the circumstances in which a promise or an agreement shall be legally binding on the person making it. The law relating to contracts in India is confined to the Indian Contract Act, 1872. The Act came into force on the first day of September 1872. Originally this Act was included with general principles of law of contract, contracts relating to sale of goods, special kinds of contracts like indemnity, guarantee and so on. Later the Indian Contract Act has been divided into two, Part I as general principles of Law of Contract and Sale of goods Act, where as in Part II it is Partnership Act and so on. Unlike other branches of law, law of contract does not apply, but it determines the circumstance in which a Promise has been made. The parties to an agreement may lay down their own terms and conditions. The Indian Contract Act does not declare to be a complete and exhaustive code, it deals with the general principles of the law of contract and with special contracts only. The law of contract differs from other branches of law. The Act does not lay down a number of rights and duties which the law will enforce. In this Act the party themselves creates rights and duties which will be supported with a limited principles. Meaning and Definitions of Contract Sir John Salmond defines a contract as, "An agreement creating and defining obligations between two parties." According to Sir William Anson, "A contract as a legally binding agreement made between two or more persons, by which rights are acquired by one or more to acts or forbearance on the part of the other or others." According to Halsburey, "A contract is an agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act." Sir Fredirck Pollock defines, "Every agreement and promise enforceable at law is a Contract." According to the Indian Contract Act, Section 2 (h) "An agreement enforceable by law is a Contract."

Characteristics of Contract 1.

There must be offer and acceptance: The offerer is the party that makes the offer and the offeree is the person that the offer is being made to. There must a clear offer and clear acceptance for a contract to be binding. 2. Consideration: Consideration is the price paid by one party for the promise of the other. Thus if one party promises to provide goods or services, something of value must be given in exchange. This may be in the form of money, goods, services or it may be an act of forbearance. 3. The capacity to contract: Parties to the contract must be over 18 years, of sound mind, not under the influence of drugs or incarcerated. 4. There must be no force, misrepresentation or fraud: Persons should not be forced to sign a contract e.g. blackmail. They should not be laid to e.g. giving the wrong year of a car. Fraud may involve forging someone's signature. 5. There must be an obvious intention to create legal relations: This is based on the actions of the parties e.g. offer, acceptance and consideration. 6. A contract must be legal: A contract must be legal thus, agreements made between parties concerning illegal drugs and any other illegal activity is not a contract. Kinds of Contract The types of contract can be grouped on the basis of the classification. This can be classified differently connected to Indian Contract Act and English Law.

1. Minor Who is a minor?

A minor is a person who has not attained the age of majority. For the purpose of entering into a contract, the age of majority is eighteen years. The Indian Majority Act, 1875, provides the meaning for majority under Sec. 3 as, "A minor is a person who has not completed eighteen years of age". However for some reasons the person continued to be a minor upto his age of 21 years. The following are the two reasons, for the age of majority at 21 years: (i) In case of a minor of whose person or property or both, a guardian is appointed by the court (ii) The property of the minor is under the superintendence of a court of wards. From above two exceptional cases the minor attains majority only at the age of 21 years. In England, a person becomes major on the completion of 18 years for all the purposes. Law relating to a Minor The law is protecting a minor in all respect. Why should minor be protected? This is a general question. It is presumed as a minor has an immature mind and cannot think what is good or bad to him. Minor is considered as infant and infancy is said to have disability. Hence in practice the protection is granted by the court of law. As minors are often exploited, the law is protecting them from any exploitation. The courts of law giving them by justifying their act by observing this as, "The law protects their (infants) persons, preserves the right and estates, excuse their laches, and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian". Thus it is understood as in case of a minor, judges are counsellors, Jury is his servant and the law is his guardian, who take care of his needs and security

Minor under the Indian Law

The Indian Contract Act gives special privileges and special position to a minor. Contracts made with minors are either void or voidable. Minor binds others, but he is never bound by others. i.e. a minor is allowed to take the advantages but not the obligations. There is no personal liabilities for any of this wrongs. No legal action can be taken against a minor, even for this misbehavior and false promises. The parents of minors are also not responsible for the contract, unless they act as an agent

The following are rules protecting the minor under the Indian Contract Act:

1. An agreement with a minor is void-ab-initio Entering a contract with a minor is void-ab-initio i.e void right from the beginning. Section 10 of the Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not competent. But both Sec. 10 and 11 of the Act is not giving a clean picture that entering into a contract with a minor is either void nor voidable. This was made clear under the leading case, "Mohori Bibi Vs Dharmo Das Ghose" in the year 1903. According to this case, a minor mortgaged his house in favour of a money lender to secure a loan of ` 20,000 out of which the mortgagee (the money lender) paid the minor a sum of ` 8,000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage. It was held that the mortgage was void, and therefore, it was cancelled. Further the money lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgagee was also not accepted. However if the minor has carried out his obligation by other party, then he can bring in a suit against such party for enforcement of the such party's obligation. Example: A, a minor under a contract of sale delivered goods to the purchase. It was held that he was entitled to maintain a suit for the recovery of the price. A minor enters into agreement and attains majority during the course of contract. He cannot enforce even to protect his obligation.

2. Minor can be a promisee or beneficiary Incapacity or incapability of a minor to enter into contract is incapacity to bind himself to a contract. Where as, if a contract is beneficial to a minor it can be enforced by him. Minor can be a beneficiary or a promisee and there is no restriction being a promisee or payee or a beneficiary. Example: A, a minor aged 17 years, agreed to purchase a second-hand scooter for ` 10,000 from B. Minor paid ` 1,000 as advance and agreed to pay the balance the next day and collect the scooter. When he came with the money on the next day, B told him that he had changed his mind and offered to return the advance. Here B cannot avoid the contract.

3. No ratification and minor's agreement cannot be ratified by him on attaining the age majority Ratification refers to something related to before. Here when an agreement is made by a minor it is void. But the agreement for consideration, one cannot enforce the same with the minor after he attains majority i.e a minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. Case *Arumugam vs Duxri Singhia* (1914). Example: A minor borrowed a sum of money executing a simple bond for it, and after attaining majority executed a second bond in respect of the original loan and interest. It was held that suit upon the second bond was not maintainable. Where as, if on becoming major, a new promise for fresh consideration, then this new promise will be binding.

4. No restitution Restitution refers resorting of a thing to its proper owner. Here a minor need not be made compensated for a benefit obtained under a void agreement. Under Section 64 and 65 of the Contract Act, the obligation of persons who has received advantage should compensate such advantage when once the contract become void. This is applicable only in respect of competent parties to the contracts and not the minors. So a minor not liable to pay any money or compensate for any benefit that he might have received under a void agreement.

Example: A a minor sold a shop to B, the consideration was paid to A, but the sale deed could not be registered as A was a minor. B filled a case against the minor A, to recover the consideration paid by him. It was held that the agreement is void and A need to pay back the consideration received to B.

5. A minor can always plead minority or No Estoppel against a minor Where a minor by mis-representing his age has induced the other party to enter into a contract with him, he cannot be made liable on the contract and he can always plead for his minority. In other words there is no estoppel against a minor. Estoppel refers to an impediment (hindrance or obstruction) that prevents from assertion or act. Here a minor is not estopped or obstructed from pleading his infancy in order to avoid contract. A minor has got his right to protect himself but he has no liberty to cheat anybody. Example: A, a minor, borrowed ` 1,000 on a fraudulent representation, saying that he was a major. Here the creditor cannot sue to get his money back.

6. Minor's liability for Necessaries Minor is liable for necessities supplied or 'necessary services' rendered to him or his minor dependents. In other words, if a person supplies necessities to a person who is incapable of entering into a contract or to anyone when such incapable person is legally bound to support, then he can claim re-imbursement from the property of such incapable person. In case, he cannot be held liable personally for such contracts, and all that his property or estate alone will be liable.

7. Minor need not hold any specific performance except in certain cases Since an agreement by a minor is absolutely void, the court will never direct 'specific performance' of any contractual agreement by a minor. A guardian of minor cannot bind the minor by an agreement for the

purchase of immovable property. Here even minor cannot ask for the specific performance of the contract where the guardian had no power to enter into. But a guardian can enforce the contract only when it is beneficial to the minor.

8. Minor cannot be a partner Basic principle of partnership is agreement. A minor being incompetent to enter into a contract, cannot enter into a partnership agreement. However he can enter into an agreement only for the benefit of the firm. According to the Indian Partnership Act 1932, under Sec. 30(1), observes as, "A person who is a minor, according to the law to which he is subject may not be a partner of a firm, but with the consent of all the partners for the time being he may be admitted to the benefits of partnership."

9. Minor cannot be an insolvent A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable. In other words, even for necessities supplied to him, he is not personally liable, only his property is liable.

10. Minor cannot be a surety As minor is considered as incapable person for contracting transaction, he cannot act as a surety and he is not liable to pay or compensate anything under a contract.

11. Joint contract by minor and adult In this case of joint contract, the adult will be liable for the contract and not a minor. In case, "Sain Das Vs Ramchand," where there was a joint purchase by two purchasers, one of them was a minor. It was held that the vendor could enforce the contract against the major purchaser and not a minor.

12. Minor as a share holder A minor cannot be a member or share holder of any company. When he is holding partly paid-up shares, the partly paid up shares are subject to various number of calls. However he can be a share holder in respect of fully paid-up shares of a company. Since membership of a company arises on the basis of contract, a minor cannot be a member of a company. A company can also refuse to register transfer or transmission of shares in favour of a minor unless the shares are fully paid.

13. Minor cannot stand as a surety A minor cannot be a surety as he is not liable to pay or compensate anything under a contract.

Contract Law

Why do we need a law of contract?

The majority of people generally honour most of their promises as a matter of principle. However, situations do arise where conflicting interests lead to dispute, and then an established system of some sort is needed to resolve the problems and to attempt to prevent injustice. 2 Contract law It is easy enough to imagine a situation where an intention to trade dishonestly leads to a contract dispute, but problems may also arise when two or more people have honest, but differing, views of a situation. For example, those involved may have used similar language while understanding completely different things in an agreement. Equally, an arrangement may have begun amicably, a subsequent difference of opinion colouring a person's view of the situation. In theory, at least, it would be ideal if problems with contracts could be sorted out by referring to the intentions of those involved. However, most contracts are not written, and it is obvious that no court can look into a person's mind, so English law looks for an objective test of

agreement. It attempts to look at the conduct and communications between the parties involved, as if through the eyes of an ordinary reasonable person, to see if the outward signs of a contract exist. A good illustration of this is found in the following case.