



INTRODUCTION TO BUSINESS LAW

I am a Businessperson. Do I Need to Know
the Law?

I am a Businessperson. Do I Need to Know the Law?

- Ignorance of law is no excuse
- How does law impact business?

Ford pinto case

- Before producing the Pinto, Ford crash-tested various prototypes, in part to learn whether they met a safety standard proposed by the National Highway Traffic Safety Administration (NHTSA) to reduce fires from traffic collisions.
- In 1970 Ford crash-tested the Pinto itself, and the result was the same: ruptured gas tanks and dangerous leaks. Only Pintos to pass the test had been modified in some way—for example, with a rubber bladder in the gas tank or a piece of steel between the tank and the rear bumper.
- *Source: Moral Issues in Business 8th ed. Shaw & Barry*

- What role managers can play in tackling this situation?
- Should managers and business follow ethical perspectives in addition to legal requirements?

- Ford company decided to go ahead without any modification
- Between 1971 and 1978, approximately fifty lawsuits were brought against Ford in connection with rear-end accidents in the Pinto.
- In the *Richard Grimshaw* case, in addition to awarding over \$3 million in compensatory damages to the victims of a Pinto crash, the jury awarded a landmark \$125 million in punitive damages against Ford. The judge reduced punitive damages to 3.5 million.
- Source: *Moral Issues in Business 8th ed. Shaw & Barry*

- *Product liability- in case of defective products leading to injury and death, manufacturers could be held liable*
- Trying to push industry to evolve self-regulatory code of conduct, ethical standards at organisational level
- Law attempts to tackle business practices which may lead to moral issues by evolving stringent legal frameworks

New Consumer Protection Act, 2019

- *“The Act has provisions for product liability action on account of harm caused to consumers due to a defective product or deficiency in services.*
- *Personal injury, death or property damage could lead to product liability claims*
- *False and misleading ads at first instance would attract a two-year jail term and a fine up to ₹10 lakh, which would go up to five years and ₹50 lakh for every subsequent offence.”*

(Source: Business Line)

GM car product liability issue

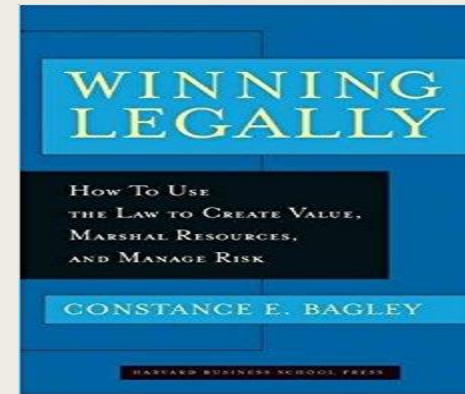
- *“GM cars using gas powered engines require coolant to prevent overheating in the summer and freezing up in the winter.*
- *A lawsuit against General Motors stated the coolant in vehicle engines contained a dangerous chemical.*
- *GM had to pay out around \$20 billion for its 25 million customers. Each person ended up receiving from \$400 to \$800.” (Source: Reuters, March 2008)*

Cont.

- How the change in consumer law impact business practice in India?

- Nestle Maggie issue – this happened before the product liability claim coming into picture
- Social media influencers- *Financial influencers could be fined \$133,000 for dud tips, regulator warns (Australian media)*

Do managers have role in legal compliance?



- *Constance Bagley:*
 - *Managers should identify and anticipate legal changes from business perspective*
 - *Managers should strive to ensure that no compliance failures occur*
- *Do you agree with this point/view?*

Anticipating Legal Changes

- Government is evolving regulations in various emerging business models
 - *E-commerce*
 - *E-pharmacy sector*
 - *App based taxi services*
- Managers would have to play major role in anticipating legal changes

- Draft E-Commerce Policy- Key recommendations deep discounts to be regulated, certain type of flash sale to be regulated
- Recent social media rules and OTT platform rules

Law impact manager's at leadership level

- Example/Situation: Ravi is Director at a reputed software company 'Great Software'
- Ravi convinced the Board of Directors to invest in 'Techsoft', another software company owned by Ravi
- Later, it was found that the 'Techsoft' is in heavy loss and have no good clients

Cont.

- Can Ravi as a director be personally liable?
- In this case, attempt to take undue advantage and misuse of his/her office is evident
- Companies Act 2013- personal liability of Director- Rs. 1 lakh to 5 lakh

- Chanda Kochhar, ICICI Bank conflict of interest issue
- Conflict of interest as Videocon group was provided a favourable loan.
- It is alleged that Venugopal of Videocon group and Chanda Kochhar's husband have joint business interest.

Cont.

Most directors worried about personal liability

Business Standard

- According to Ernst & Young's Eleventh Global Fraud Survey, 92 per cent of directors in India are concerned about their personal liability.

Cont.

- Of them, 64 per cent say they are 'very concerned' and 28 per cent say they are 'fairly concerned'.

Cont.

- Increasing trend of personal liability for managers
- Should the conduct of business leaders and managers in business organisations regulated by law?

- How can an important commercial information be protected by the company?

Can law facilitate business?

- Law provides framework for organizing business
- Company
- Partnership
- Limited Liability Partnership
- Law also provides mechanism to protect IPR

Indian Legal System

- Business is primarily regulated through
 - *Legislation*
 - *Decisions of Court/Interpretation of Court*
 - *Independent Regulatory Agencies (CCI, SEBI)*

Cont.

■ Legislation

- *Indian Contract Act, 1872*
- *Companies Act, 2013*
- *Limited Liability Partnership (LLP) Act 2008*
- *IPR law- Patent, Trademark , Copyright*
- *Consumer Protection Act, 1986*
- *Competition Act, 2002*



LEGAL ASPECTS OF CONTRACT

Understanding LEGAL contract

- Example/Situation: You attend a job interview of a reputed company
- The company selects you, offers a job and provides an employment agreement
- You sign the employment agreement
- *What does employment agreement contain? Is it a contract?*

Cont.

- *Contract- Agreement enforceable by law*
- Employment agreement is a contract



Cont.

- *Example/Situation: Husband promised to take his wife for a vacation to Singapore, but later refused.*
- *Agreement between brothers regarding division of the family business*
- *Are these contracts?*

Cont.

- *Social agreements are not enforceable by contract law*
- *Contract law is primarily dealing with commercial/business agreements*
- Hence 1st example- Not within the realm of contract law
- Hence 2nd example- Within the realm of contract law

Offer and Acceptance

- Agreement = Offer + Acceptance
- Offer, acceptance and consideration are essential for a contract
- Example: Gayatri offers to sell her luxury flat for Rs. 2 crore to Hema. Hema agrees to buy it

Are only written contracts enforceable?

- Ravi calls the toll free number of Jumbo Pizza and asks for 1 Cheese Burst Pizza for Rs.500/-.
- Jumbo Pizza employee confirm 1 Cheese Burst Pizza for Rs. 500/-
- When pizza was delivered Ravi denied to collect and pay for it

Cont.

- Jumbo Pizza mentions that the recorded telephone conversation is a contract. Is it correct?

Cont.

- Contracts formed through spoken offers and acceptances, are as valid as contracts formed through a written offer and acceptance.

Points to Ponder

- Which are the contracts relevant for start-ups?
- Which are the contracts relevant for JV?
- Which are other contracts usually used by corporate organizations?
- *“Comprehensive contracts for CEOs become the new norm” - Times of India*

Can a contract formed through email exchange considered as a valid contract?

- Trimex International v. Vedanata (SC)
 - *Trimex submitted a commercial offer through e-mail for the supply of Bauxite to the Vedanta.*
 - *After several exchanges of e-mails and after agreeing on the material terms of the contract, the respondent conveyed their acceptance of the offer through e-mail*
 - *Information Technology Act also allows contracts to be formed over internet*

E-Commerce Contract

- Ex. Sharukh bought a mobile phone on Flipkart
- Is this contract?
- Who are the parties to the contract?



Terms of USE – Flipkart

- *“The Website is a platform that Users utilize to meet and interact with one another for their transactions. Flipkart is not and cannot be a party to or control in any manner any transaction between the Website's Users.”*

- *“Hence forward: All commercial/contractual terms are offered by and agreed to between Buyers and Sellers alone.*
- *The commercial/contractual terms include without limitation price, shipping costs, payment methods, payment terms, date, period and mode of delivery, warranties related to products and services and after sales services related to products and services.*
- *Flipkart does not have any control or does not determine or advise or in any way involve itself in the offering or acceptance of such commercial/contractual terms between the Buyers and Sellers.”*

Cont.

- E-commerce transactions are also contracts
- Flipkart is just a platform for transactions between buyers and sellers (as per Flipkart terms and conditions)
- Contract is between Sharukh and the seller selling on Flipkart

- Are all e-commerce website platforms?
- Does it mean that Flipkart have no contractual obligation?

E-commerce rules

- *“The rules have also introduced the concept of “fall-back liability”, which says that e-commerce firms will be held liable in case a seller on their platform fails to deliver goods or services due to negligent conduct, which causes loss to the customer.*
- *In several cases, when problems arise with goods purchased from their marketplaces, e-commerce platforms direct the consumers to the respective sellers to solve any grievance. With fall-back liability, consumers will be able to reach out to the platform itself”.*

Standard Form of Contract

- Example: Sachin walks into LIC office and expresses interest in joining an insurance policy
- The officer pulls out a 10 page long policy agreement and asks Sachin to sign on it
- Sachin states that he want to change the policy agreement
- The contract terms are already written by the LIC and officer said it can't be changed-‘Take it or leave it’ contracts

Advantages of Standard Form for Business

- Provides convenience to business organisations
- Reduce burden of negotiating and forming a new contract for each customer
- Prevalent in all form of business/commercial activities

Example/Situation

- BK Ltd. sent important original documents relating to an export consignment to a party in Germany with DHL.
- Only the original documents would have enabled the party in receiving the consignment.
- DHL lost the courier, causing losses to BK Ltd.
- BK Ltd. was demanding the actual losses suffered by them.

Cont.

- DHL made all its customers sign a standard form containing a term that limited the liability of the DHL in the event of loss of courier to Rs.1000
- Are standard form contract and limited liability clause enforceable?
- Are limited liability clauses significant for business?

- Court held: *A person who signed a document containing contract and terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect*
- Standard form contract and limited liability clauses are usually enforceable

Are standard contracts one-sided?

- Standard contracts are criticised for being only advantageous for business organisations- One sided contracts
- What about consumer's interest?

“A typical contract for the purchase of house from a developer is so one-sided as to be a joke, except that the joke is on you, when you are the home-buyer.

Take some typical clauses. If the buyer delays an instalment by fifteen days, he pays a penal interest at the rate of 18% per annum; but when a builder delays on his promise by a year, he rarely pays more than 1% per annum on the buyer payments! And these payments could well amount to a lifetime savings of an average professional.”

(Dealing with one-sided contracts, ET 2008)

- Are standard form contract a business necessity?
- Should consumer interest be incorporated in standard contracts? If yes, how?

- Regarding B2C contract-
- Consumer courts intervene to determine unfairness of contract
- Regulatory bodies also look at unfairness issue in contract

Consumer law

- Unfair contract is defined to include –
- *requiring manifestly excessive security deposit*
- *refusing to accept early repayment of debts on payment of applicable penalty;*
- *imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage*

Recent Development- Regulatory Bodies

- Real Estate Regulatory Authority-
- A default on the possession timeline by JNC Construction prompted the Uttar Pradesh RERA authority to order a refund with 24 percent interest and a compensation of Rs 2.5 lakh for mental distress
- RERA can strike down the one sided clauses

- Insurance Regulatory and Development Authority- Mandatory grace period of 15 days to cancel the insurance contract to be provided by all insurance companies - Free look period
- SEBI and TRAI also take steps to ensure terms and conditions are not unfair for the investor/consumer

Important points to remember

- The terms of a signed contract bind the parties to the contract even if they have not read the terms or are not aware of them.
- Standard Form Contracts are pre-printed forms containing the terms on which a corporation does business with its customers.

Example/Situation

- Y entered into an agreement with X for betting on a cricket match
- X entered into an agreement with Y for influencing and in case needed bribing for business needs
- Are these agreements valid contract?

Contract should be for legal purpose

- Sports betting is not legal in India
- Bribing is illegal

Capacity to contract

- Agreement entered into by a minor (below 18)is not a valid contract
 - *What happens if a minor attempts to buy a product online?*
 - *How can e-commerce companies deal with this issue?*

Cont.

- Flipkart Membership Eligibility:
- *“Use of the Website is available only to persons who can form legally binding contracts under Indian Contract Act, 1872. Persons who are "incompetent to contract" within the meaning of the Indian Contract Act, 1872 including minors, un-discharged insolvents etc. are not eligible to use the Website.*

Cont.

- *“If you are a minor i.e. under the age of 18 years, you shall not register as a User of the Flipkart website and shall not transact on or use the website. As a minor if you wish to use or transact on website, such use or transaction may be made by your legal guardian or parents on the Website”*

Cont.

- *“Flipkart reserves the right to terminate your membership and / or refuse to provide you with access to the Website if it is brought to Flipkart's notice or if it is discovered that you are under the age of 18 years.”*

Fraudulent conduct will affect validity of an agreement

- Example: Mahajan took a policy with the LIC. Despite his treatment by a doctor for serious ailments just a year back, he made a false statement in the policy to the effect that he had not been treated by any doctor
- Insurance agreement affected by fraud

- What are the important clauses in a standard business contract document?

Structure of a Contract

- Preamble
- Interpretation & definitions
- Scope & specifications
- Price
- Timelines for performance
- Terms of payment
- Price variation
- Taxes & duties
- Force majeure

Structure of a Contract

- Defaults & liquidated damages
- Inspection & acceptance
- Warranty
- Patents, copyrights (IPR clauses)
- Indemnities
- Spares
- Termination
- Resolution of disputes

Structure of a Contract

- Confidentiality
- Survival
- Amendments
- Applicable Laws
- Effective Date
- Notices
- Contract Signatures

Damages

- Example/ Situation
- Tata-Docomo Dispute: Tata expressed inability to buy back DoCoMo's 26 per cent share in the joint venture (JV) as per the JV Agreement
- Failure of Tata to perform the term in the JV Agreement led to dispute
- \$ 1.18 billion damage to be paid to Docomo

Cont.

- In case of breach of contract terms parties can claim for Damages
- Damages- The suffering party's right to compensation

Liquidated Damages

- Example/Situation: Mega Builders Ltd entered into a contract with Great Steel Ltd to procure steel required for construction
- Great Steel Ltd is to provide steel by 15th December, 2020
- As per the contract, if Great Steel Ltd fails to do so, they have to pay damages of Rs. 5 lakh per day

Cont.

- Pre-determined amount for damages to be paid is mentioned in the contract
- What is the benefit of pre-determining the damages to be paid?

Cont.

- Avoid dispute and court proceedings
- Clarity on the amount to be paid
- Caps the maximum damage to be paid in case of default

BARC Contract Template-LD Clause

- “In the event of the CONTRACTOR’s failure to submit the Bonds, Guarantees and Documents, supply the stores/services and conduct trials, installation of equipment, training, etc as specified in this contract, the BARC may, at his discretion, withhold any payment until the completion of the contract.
- The BARC may also deduct from the CONTRACTOR as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 5% of the value of delayed stores/services.”

Force Majeure

- Example/Situation: Great Steel Ltd was supposed to provide 10,000 kg of steel to Best Infrastructure Ltd by 1st October, 2020
- Due to heavy flooding and cyclone the Great Steel is not in a position to honour the contractual obligation
- Great Steel Ltd informed Best Infrastructure that flooding and cyclone are events beyond their control

Cont.

- Force Majeure- Impossibility of performance of contract due to situation beyond the control of the parties
- Releases both the parties from contractual obligation
- Also referred to 'Act of God'
- Is riot, act of terrorism a force majeure event?

Cont.

- Force Majeure- Impossibility of performance of contract due to situation beyond the control of the parties/unforeseen event
- Releases both the parties from contractual obligation
- Also referred to 'Act of God'
- What events should a Force Majeure clause include?

Is act of terrorism a force majeure event?



REUTERS

Force majeure and terrorism

- *The unfortunate new reality post 9/11 and 26/11 is that terrorism is a very real threat and may unfortunately no longer be considered as an unforeseen possibility, thereby making it more difficult for parties to claim Force Majeure. This needs to be considered by parties entering into agreements.*
- *Thus, contracting parties may now consider amending standard force majeure provisions by including “acts of terrorism” as an enumerated Force Majeure event*

Cont.

- Force majeure events should be defined in the contract
- In case force majeure events are not defined, it could lead to legal dispute

Reliance Force Majeure example (Source: Reuters)

- *“India’s Reliance Industries has declared force majeure on gasoline exports from its Jamnagar site*
- *The force majeure follows an unspecified issue at a gasoline-producing plant*
- *Force majeure is typically declared when matters deemed beyond a refinery’s control disrupt supplies, allowing it to void some of its contractual obligations to customers.”*

Principal- Agency Contract

- Agent- is any person entrusted to do certain action on behalf of the principal
- Example: Agent of an insurance company
- Principal could be held contractually liable for acts of agent in case of principal-agent relationship

Cont.

- Example/Situation: 'Baby Care' is a business organisation in the field of day care for infants and toddlers
- Baby Care followed a franchisee model of business
- Kozhikode franchisee of Baby Care refused to return Rs.1 lakh caution deposit received from the parents
- *Parents are claiming 'Baby Care' to be responsible*
- *Baby Care states it is franchisee's fault*

Cont.

- Does principal agent relationship exist between Baby care and their Kozhikode franchisee?
- If the franchisee is given the authority to enter into contracts with third parties on behalf of the franchisor, the relationship could be a principal-agent contract

Cont.

- Example/Situation: A life insurance company agent collected premium from the customer
- He failed to pay the amount to life insurance company
- Customer is claiming that life insurance company is responsible for agents action
- Life insurance company have a clause in their agent contract stating that agents are not supposed to collect premium payment on behalf of the company

Cont.

- If authority to act is exceeding the principal-agent contract the principal cannot be held liable
- Can the life insurance company be held liable?

Do you agree with this?

- Recent Tata Motors v Antonio Paulo (SC 2021)
- A car which was used a test drive vehicle sold to the customer by the dealer

Whether based on principal-agent concept Tata Motors would be responsible?

SC verdict: Since in this specific situation Tata Motors and dealer was acting as principal-principal basis no liability ensues

TM did not authorize the dealer to represent them. They had a normal contract to supply cars. Dealer was solely responsible.

Indemnity Contract

- Indemnity contract – A contract to cover the losses suffered by another
- Example: Insurance contract
- Can indemnity clauses be used in standard form contracts?

Cont.

- Example: Indemnity clause mentioned in MyJio App Terms and Conditions :
- *“Indemnity: You agree to indemnify us and other persons involved in the creation of this Application for all damages, losses and costs (including legal costs) which arise out of or relate to your use of this Application. This indemnification includes, without limitation, liability relating to copyright infringement, defamation, invasion of privacy, trade mark infringement and breaches of this Application Terms”.*

Tata Motor's using indemnity clause for mitigating risk

- Tata motor's had insisted on indemnity clause in the lease agreement while taking Singur land on lease from West Bengal government
- The indemnity clause binds the state to compensate Tata Motors in case of any loss or harm arising out of the contract

- The indemnity clause includes loss suffered due to relocation, overall loss and capital expenditure of the company

(Source: <http://indianexpress.com/article/kolkata/state-should-honour-singur-indemnity-clause-tatas-in-hc/>)

Cont.

Does indemnity clause have relevance in the following contracts?

- Franchisee Contract,
- Principal- Agent Contract
- Joint Venture Contract,
- Government contract