

Business Law

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- **Contract:**

“Every promise and every set of promises, forming the consideration for each other is an agreement” An Agreement enforceable by law is a contract”. According to Salmond “ an agreement creating and defining obligations between the parties”. According to Sir William Anson “A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others.”

- **Essential Elements of contract:**

An agreement becomes enforceable by law when it fulfils the following conditions, which may be called the essential elements.

1. Offer & Acceptance
2. Legal relation ship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Legality of the Object
7. Writing

- **Proposal / Offer:**

“ When one person signifies his willingness to do or abstain from doing anything to other, with a view to obtaining the assent, he is said to make proposal.” A proposal is also called an offer. The person making the offer is called the Offeror. The person to whom the offer is made is called the offeree.

- **Rules regarding Offer:**

The Contract Act contains various rules regarding offer are summed up as follows:

1. An offer may be express or implied.
2. An offer may be made to a definite person.
3. Legal relationship.
4. A mere statement of intention is not an offer.
5. An offer must be certain.
6. An offer must be communicated to the Offeree.

- Revocation of an Offer When does an offer lapse?

An offer comes to an end and is no longer open to acceptance under the following under the following circumstances:

1. By notice
2. By Lapse of time
3. After expiry of reasonable time
4. By failure of condition precedent
5. By death or insanity
6. Counter offer
7. By refusal

- Consideration

Consideration is an essential element in a contract. Subject to certain exceptions an agreement is not enforceable unless each party to the agreement gets something. This something is called consideration.

- Rules or essential factors of Consideration

1. Desire of the promisor
2. Consideration must be real
3. Public duty
4. Consideration must not be illegal.
5. Consideration may be present, past or future

- “No consideration no contract”

“A promise without consideration is a gift; one made for a consideration is a bargain” so consideration is essential for a contract. A promise without consideration cannot create a legal obligation.

Exceptions:

There are exceptional cases where a contract is enforceable even though there is no consideration. They are as follows:

1. Natural love and affection
2. Voluntary Compensation
3. Time-barred debt
4. Agency
5. Completed gift

- Can a person who is not party to a contract sue up on it?

One who is stranger cannot file a suit to contract. But a stranger to the consideration can sue to enforce it provided he is a party to the contract. There are certain exceptions to the rule that a stranger to the contract cannot sue upon it. They are as follows:

1. Beneficiaries in the case of trust
2. Provision of Marriage Settlement of Minor
3. Assignee of contract
4. Family settlement
5. Estoppel

- Void Agreement

“An agreement not enforceable by law is said to be void” A void agreement has no legal effect. It confers no rights on any person and creates no obligations. Examples of Void Agreement

1. Agreement in restraint to marriage
2. Agreement in restraint of trade
3. Agreement in restraint of proceedings
4. Agreement having uncertain meanings
5. Wagering agreement
6. Agreement made by minor
7. Agreement without consideration
8. Agreement against public policy

- Voidable Agreement

An agreement, which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other, is a voidable contract. Examples of voidable contracts are:

Contract brought about by;

1. Coercion
2. Undue influence
3. Misrepresentation

- Illegal Agreement

An illegal agreement is one, which is against a law in force. An agreement to commit murder, robbery or cheating.

- Free consent

“Two or more persons are said to consent when they agree upon the same thing in the same sense” An agreement is valid only when it is the result of the “Free Consent”.

- Coercion

“ Coercion is the committing or threatening to commit any act forbidden by the law or unlawful detaining or threatening to detain whatever with the intention of causing any person to enter into an agreement.

- Undue influence

A contract is said to be induced by undue influence where;

1. One of the parties is in a position to dominate the will of other and
2. He uses the position to obtain an unfair advantage over the other.

- Misrepresentation

Misrepresentation arises when the Misrepresentation made is inaccurate but inaccuracy is not due to any desire to defraud the other party. There is no intention to deceive.

- Fraud

The term “fraud” includes all acts committed by a person with a view to deceive another person “To deceive” means to “induce a man to believe that a thing is true which is false”

- Can Silence be Fraudulent?

“ Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself equivalent to speech.” The mere silence is not fraud.

Silence is fraudulent where the circumstances are such that “ silence is in itself equivalent to speech”

- By whom is a contract to be performed?

1. Personal performance
2. Performance by representatives
3. Performance by joint promises

- Time and place of performance

The time and place of performance of a contract are matters to be determined by agreement between the parties to the contract. There are certain general rules have been laid down regarding the time and place of performance as follows:

1. Time of performance without application
2. Time and place, where time is specified
3. To appoint a reasonable place for the performance
4. Manner and time prescribed or sanctioned by promise

- Methods of termination

A contract may be discharged or terminated in any of the following ways:

1. By performance
2. By mutual consent
3. By subsequent impossibility of performance
4. By operation of law
5. By lapse of time
6. By material alteration

- Subsequent or Supervening Impossibility or Doctrine of frustration

A contract, which at the time it was entered into, was capable of being performed may subsequently become impossible to perform or unlawful. In such a case the contract becomes void. this is known as the doctrine of Supervening impossibility. It is also known as the doctrine of Frustration. Supervening impossibilities may occur in many ways. Some of which are explained below:

1. Destruction of an object
2. Change of Law
3. Failure of pre-condition
4. Death or incapacity
5. Outbreak of War

Exceptions:

- Difficulty of performance
 - Commercial impossibility
 - Strikes, Lock-outs, civil disturbances and riots
 - Failure of one of the objects
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- Quasi Contracts

When one person obtains a benefit at the expense of another and the circumstances are such that he ought to pay for it, the law will compel payment, even though there is no contract. Such cases are called quasi-contracts. Example: Contract on behalf of Minor and Lunatic.

- Indemnity

Contract of indemnity is contract by which one party promise to save other party from loss. Who indemnify is called indemnifier and who is indemnified is called Indemnity holder.

4

- Guarantee

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. There are three parties a) Debtor, b) Creditor and Guarantor or Surety

- Difference between Indemnity and Guarantee

Particulars	Indemnity	Guarantee
Party	Two Parties	Three Parties
Number of contract	One contract	Three contracts
Liability	Liability of indemnifier is primary	Liability of surety is secondary
Duty	Liability arises after of happening contingencies	There is an existing debt.
Remedies	Indemnifier can sue only the indemnity holder for loss.	The surety can proceed against principal debtor

- Bailment

“ A bailment is the delivery of goods by one person to another for some purpose, upon a contract according to the directions of the persons delivering them. The person delivering the goods it is called the Bailor. The person to whom they are delivered is called the Bailee. The transaction is called Bailment.

- Duties of the Bailee

1. Duty of reasonable care
2. Liability for negligence
3. Unauthorized use of goods
4. Mixture of Bailor's goods with the Bailee's
5. Returing the goods.

- Duties of the Bailor

1. Duty to disclose faults in goods bailed
2. Payment of expenses
3. Responsibility for breach of warranty.

- Sale

Where under a contract, the ownership of any property is transferred from the seller to buyer the contract is called a sale.

- Agreement to sell

When the transfer of ownership is to take place at a future time or subject to some condition to be fulfilled later, the contract is called an agreement to sell.

- Difference between sale and agreement to sell

Particulars	Sale	Agreement to sell
Transfer of ownership	Property passes to buyer	Property remains with the seller
Transfer of risk	Buyer bear the loss	Seller bear the loss
Remedial measures	No remedy	sellers for breach of contract.
Nature of contract	Executed contract	Executory contract

- Condition

A condition is a stipulation essential to the main purpose of contract, breach of which gives rise to a right to treat the contract repudiated.

- Warranty

A warranty is a stipulation collateral to the main purpose of the contract; breach of which gives rise to a claim for damages but not a right to repudiate the contract.

- Implied Conditions

1. Condition as to title
2. Sale by description
3. Sale by sample
4. Sale by sample as well as by description
5. Condition as to fitness or quality

- The doctrine of caveat emptor

The doctrine of caveat emptor means that, ordinarily a buyer must buy goods after satisfying himself of their quality and fitness.

Exceptions

There shall be no implied condition as to quality or fitness for particular purpose except under the circumstances mentioned:

1. Where the buyer relies upon the skill and judgment of seller.
2. Where there is a sale of goods by description.
3. Where the seller is guilty of fraud.

- **Unpaid seller**

The seller of goods is deemed to be an unpaid seller (a) when the whole of the price has not been paid. (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

- **Unpaid seller's rights**

1. Sellers lien
2. Stoppage in transit
3. Resale
4. Suit for the price
5. Suit for Damages
6. Claim for Interest and Special damages.

- **Consequences of non registration of a firm**

An unregistered firm and the partners thereof suffer from certain disabilities

1. A partner of unregistered firm cannot file a suit for the purpose of enforcing a right arising from contract.
2. No suit can be filed on behalf of an unregistered firm against any third party.
3. An unregistered firm cannot claim a set off in a suit.

- **Grounds of dissolution**

A firm may be dissolved on any of the following grounds

1. By agreement

2. **Compulsory dissolution**

A firm is dissolved-

- a) By the adjudication of all the partners or of all the partners but one as insolvent or
- b) By the happening of any event which makes the business of the firm unlawful.

3. On the happening of certain Contingencies

Subject to contract between the partners a firm is dissolved-

- a) If constituted for a fixed term
- b) by the death of a partner and
- c) by the adjudication of a partner as an insolvent.

4. By Notice

5. Dissolution by the Court

At the suit of a partner, the court may dissolve a firm on any of the following grounds:

- a) Insanity
- b) Permanent Incapacity
- c) Guilty Conduct
- d) Persistent breach of Agreement
- e) Transfer of whole interest
- f) Loss
- g) Just and Equitable clause.

- Promissory Note

“ A promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money”. The person who makes the promise to pay is called the **Maker**. The person who will get the money is called **Payee**.

- Bill of Exchange

“ A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money”. The **Maker** of a bill of Exchange is called the **Drawer**. The person who directed to pay is called the **Drawee**. The person who will receive the money is called **Payee**.

- Difference between a Promissory Note and a bill of exchange

Particulars	Promissory Note	Bill of Exchange
Number of parties	02 (Two) parties	03 (Three) Parties
Status	Promise	Order
Acceptance	No Acceptance	Require to be accepted
Liability	Maker	Drawer
Relationship	Maker and Payee	Drawee and Acceptor

- Rights of a holder in due Course

The holder in due course is in a privileged position. Under the law he has the following rights:

1. Defects of instrument are eliminated
2. Unauthorized acts of an agent may be valid.
3. Holder can file a suit.
4. Unlawful instrument
5. Estoppel

- Lost negotiable Instrument

The following rules are applicable in the case of lost negotiable instruments.

1. Holder's right to duplicate of lost bill
2. Indemnity in case of loss
3. Title of the finder
4. Rights of the holder in due course
5. Effect of forgery
6. Information and notice

- When Banker may refuse to pay a cheque

A Banker may refuse to pay a customer's cheque under the following circumstances:

1. Insufficient fund
2. Cheque is not properly drawn
3. Cheque is not presented at the branch where the customer has an account.
4. Bank has a claim for set off or Lien.

- When Banker may refuse to pay a cheque

Under the following circumstances a Banker must refuse to pay a customer's cheque:

1. If the customer countermands payment.
2. If after issue the cheque the customer dies.
3. The Bank receives the notice of the insolvency.
4. If after issue the cheque the company winding up.
5. If the customer is attached in execution of a decree of a Court.
6. If the Drawer informs that the cheque is lost.
7. If the Banker has reason to believe that the title of the person presenting cheque is defective.

- Insolvency

An insolvent is one who is unable to pay his debts. No man can be called “Insolvent” unless a competent court declares him an insolvent. Two conditions must be satisfied before a person can be adjudicated insolvent. a) He must be a debtor and his assets must be insufficient to meet the all the claim. b) The debtor has committed an “ act of insolvency”.

- Act of Insolvency

An “act of insolvency” is some act of the debtor, which shows that he is financially embarrassed.

1. If the debtor makes a transfer of all or substantially all his property to a third party.
2. He makes transfer of his property with the intent to defraud or delay his creditors.
3. If, with intent to defeat or delay his creditors
 - a) he departs from country
 - b) he departs from dwelling house or usual place of business.
 - c) he secludes himself.
4. If he petitions to be adjudged an insolvent.
5. If he is imprisoned in execution of the decree of any court.

- Effects of the order of discharge

Subject to certain exceptions, an absolute order of discharge a) releases the insolvent from all debts b) removes the personal disqualifications from which an undercharged insolvent suffers.

The order of discharges does not release the insolvent from the following debts:

1. A debt due to the Government.
2. A debt incurred by means of fraud.
3. Any order for maintenance in favor of wife.

- Award

The “ Award” means the decision of the arbitrator. Essentials of the award:

1. Writing
2. Date & signature
3. Notice
4. Fees & Charges
5. Legality.

- “ The award is an instrument of offence and defense”

Any of the parties to the arbitration proceedings can have the award, executed as a decree of the court. The award can therefore be called an instrument of offence. A suit cannot reopen any matter decided by the award of arbitrators. The award therefore is an instrument of defense.