

DEPARTMENT OF BUSINESS ADMINISTRATION
GOVERNMENT ARTS COLLEGE (AUTONOMOUS), COIMBATORE-641018

BUSINESS LAW			
Year	Subject Title	Sem.	Sub Code
2018-19 Onwards	BUSINESS LAW	IV	18BBA43A

No. of credits: 4

No. of instructional hours: 6 per week (Total 90 hrs.)
 Max. Marks: 100

Course Outcomes

On completion of the course, the students should be able to

- CO1. To inculcate Knowledge on basic essentials of contract.
- CO2. Determine the circumstance where a contract may be illegal or void and assess the consequences.
- CO3. understand the formation of contract of sale, GST laws including IGST and SGST.
- CO4. Understand the rights of the unpaid seller and the remedies.
- CO5. To know the creation and termination of agency.

Objectives

To enable the students acquire knowledge of basic legal aspects pertaining to contracts, sale of goods, transfer of property and agency which will be useful in governing any business.

UNIT – I

Contract – Classification - Elements – Essentials – Offer and Acceptance – Consideration – Kinds - Legal rules as to consideration – Exceptions for contract without consideration – Capacity to contract – Free Consent.

UNIT II

Legality of object - Agreement opposed to public policy - Formation of contract of sale - Sale and agreement to sell - Hire purchase agreement - Void agreement - Types - Restitution - Discharge of contract - Breach of contract - Remedies.

UNIT III

Formulation of Contract of sale – Elements - Subject matter of contract of sale – Classification of goods - Effect of destruction of goods - Conditions And Warranties - Caveat Emptor - Exceptions - Concept of Goods and Service Tax (GST) - Tax Act, 2017 - IGST- Integrated GST (IGST) - Inter-state transactions and imported goods or services- State GST (SGST)

UNIT – IV

Transfer of Property and Rights of an unpaid Seller: Transfer of title of Non-Owners – General rule as to transfer of title – Exception to the rule – Rules regarding delivery of Goods – Rights of the buyer – Rights of an unpaid seller

UNIT – V

Law of Agency: Contract of Agency – General rules – classification of Agents – Creation of an Agency – Limitation of Principal towards third parties – Revocation – Duties and Rights of Principal – Duties and Rights of Agents – Delegation of Authority to Agent – Termination of Agency.

Text Book: N.D. Kapoor

- Elements of Mercantile Law

Reference Books

- | | |
|---------------------------------|---------------------------------------|
| 1. Shukla M.C | - A manual of Mercantile Law |
| 2. Venkatesan | - Hand book of Mercantile Law |
| 3. V.Balachandran & S.Thothadri | - Business Law, McGraw Hill Education |

UNIT I

Subject Name	Subject Code	Semester	Prepared by
Business Law	18BBA43A	IV	Dr Prabhu R Assistant Professor

INTRODUCTION

The Indian Contract Act, 1872, one of the oldest statutes, has been enacted to enforce valid contracts in a court of law. According to Sir William Anson, the law of contract is intended to ensure that what a man has been led to expect shall come to pass, and that what has been promised to him shall be performed. The Act came into force from 1st Sept. 1872.

The Indian Contract Act, 1872 has laid down certain general rules regarding contracts. It includes formation of contracts, essential elements of valid contract, discharge of contracts, breach of contracts, remedies for breach of contracts, contingent contracts, quasi contracts, and wagering contracts. While Sec. 1 to Sec. 75 deals with General contracts, Sec. 124 to Sec. 238 deals with special kinds of contracts such as Indemnity and Guarantee, Agency, Bailment and Pledge, etc.

KEY DEFINITIONS USED IN THE INDIAN CONTRACT ACT

***Proposal* [Sec. 2(a)]**

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

Promise [Sec. 2(b)]

When the 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. Promisor

Promisee [Sec. 2(c)]

The person making the proposal is called the ‘Promisor’, and the person accepting the proposal is called the ‘Promisee’.

Consideration [Sec. 2(d)]

When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or abstain from doing something, such act, or abstinence, or promise, is called a consideration for the promise.

Agreement [Sec. 2(e)]

Every promise and every set of promises forming consideration for each other is an agreement.

Reciprocal promises [Sec. 2(f)] Promises which form the consideration or part of the consideration for each other are called reciprocal promises.

Void agreement [Sec. 2(g)]

An agreement not enforceable by law is said to be void.

Contract [Sec. 2(h)]

An agreement enforceable by law is a contract.

Voidable agreement [Sec. 2(i)]

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 or others ii is a voidable contract.

***Void contract* [Sec. 2(j)]**

A contract, which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Nature of Contract

According to Sec. 2(h) of the Contract Act, a contract is an agreement enforceable by law. In most of the commercial transactions, each party is both a promisor and a promisee, as the contract is formed by mutual promises. 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/forbearances on the part of other or others’. The agreement will be enforceable if it creates some obligation. An obligation is the legal duty which imposes upon a particular person, the necessity of doing/abstaining from doing an act/acts.

It is clear that the law of contract is not the whole law of contracts, nor is it the whole law of obligations. It applies to only those agreements which are enforceable by law. It does not affect the customs/usage of trade which is not illegal. Besides, it does not apply to social and religious obligations.

Thus, Contract = Agreement + Enforceability

Agreement = Offer + Acceptance

The conditions of enforceability are laid down in Sec. 10 of the Act which reads as follows:

“All agreements are contracts, if they are made with the free consent of the parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void.”

To sum up the position

- (1) There must be a proposal [Sec. 2(a)]
- (2) Proposal + Acceptance = Promise [Sec. 2(b)]
- (3) Promise + Consideration = Agreement [Sec. 2(e)] (4) Agreement + Enforceability = Contract [Sec. 2(h)]

ELEMENTS OF CONTRACTS

Essential Elements of a Valid Contract are

1. Offer and Acceptance
2. Legal Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Legality of the Object
7. Legal Formalities
8. Certainty
9. Possibility of Performance
10. Agreement not Declared Void

1. *Offer and acceptance*

Lawful offer by one party and a lawful acceptance of the offer by the other party or parties is a must for forming a contract.

2. Legal relationship

There must be an intention among the parties to create legal relations. An agreement to dine at a friend's residence is not an agreement intended to create legal relations, and hence, is not a contract. But an agreement to buy and sell goods or an agreement to entrust a machine to a mechanic for repairs, are agreements intended to create a legal relationship, and are therefore contracts, provided the other essential elements are also satisfied.

3. Lawful consideration

An agreement, subject to certain exceptions, is legally enforceable only when each of the parties gives something and gets something. An agreement to do something for nothing is not enforceable by law. The something given or taken is, technically, called a consideration. A consideration is the necessary evidence required by law of the intentions of the parties to create a legal relationship. The consideration may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something. A consideration may be past (something already done). It may also be present or future. But only those considerations are valid which are ‘awful’.

4. Capacity of the parties

The parties to an agreement must be legally capable of entering into an agreement; otherwise it cannot be enforced by a court of law. Incapacity may arise from minority, lunacy, idiocy, drunkenness, and similar other factors. If any of the parties to the agreement suffers from any such disability, the agreement is not enforceable by law except in some special cases.

5. Free consent

In order to be enforceable, an agreement must be based on the free and genuine consent of all the parties. The parties must be of the same mind upon the same subject. There is absence of free and genuine consent if the agreement is induced by coercion, undue influence, mistake, misrepresentation, or fraud.

6. Legality of the object

The object for which the agreement has been entered into, must not be illegal, or immoral, or opposed to public policy. For example, where a person is in insolvent circumstances transferred his property to one of his creditors with the object of defrauding his other creditors, it was held that the agreement was void.

7. Legal formalities

An oral contract is a perfectly good contract, except in those cases where formalities of writing, and/or registration, etc., are to be legally observed. In India, writing is required in cases of lease, gift, sale, and mortgage of immovable property, negotiable instruments, memorandum and articles of association of a company, etc.

8. Certainty

Sec. 29 of the Contract Act provides that ‘agreements, the meaning of which is not certain, or capable of being made certain, are void’. In order to give rise to a valid contract, the terms of the agreement must not be vague or uncertain. It must be possible to ascertain the meaning of the agreement; otherwise, it cannot be enforced. Thus, an agreement to engage a servant some time next year, at a salary to be mutually agreed upon is a void agreement for want of certainty.

9. Possibility of performance

Yet, another feature of a valid contract is that it must be capable of performance. Sec. 56 lays down that, ‘an agreement to do an act impossible in itself, is void’. If the act is impossible in itself, physically or legally, the agreement cannot be enforced at law. For example, a promise by X to bring gold from the sun for Rs. 5,000 for Y is not enforceable, for it is not possible to perform the act

10. Agreements not expressly declared void

The agreement must not have been expressly declared to be void under the act. Sec. 24 to 30 specify certain types of agreements which have been expressly declared to be void. For example, an agreement in restraint of a marriage, an agreement in restraint of trade, an agreement in restraint of legal proceedings, and an agreement by way of wager, have been | expressly declared void. ° .

CLASSIFICATION OF CONTRACTS

Contracts may be classified according to their

1. Validity
2. Formation and
3. Performance

On the Basis of Validity/Enforceability

Valid contract

A valid contract is an agreement which is binding and enforceable. It contains all the essential elements of a valid contract.

Void contract

A contract becomes void when it ceases to be enforceable by law. A valid contract becomes void on account of subsequent impossibility, subsequent illegality, or on repudiation of a voidable contract.

Voidable contract

A voidable contract is one which is enforceable by law at the option of one of the parties. For instance, a contract in which the consent of one of the parties is obtained by coercion, undue influence, misrepresentation, or fraud is voidable at the option of the aggrieved party, whose consent was so caused. Such a contract shall be a valid contract, until the aggrieved party exercises his option to rescind the contract.

Unenforceable contract

A contract which is not capable of being enforced because of some technical defect is an unenforceable contract. For instance, a bill of exchange/pronote becomes unenforceable after three years being time barred under the Law of Limitation Act.

On the Basis of Formation/Creation

In the light of formation, the contract may be classified as :

Express contract

A contract wherein both the offer and acceptance are made by words spoken/written is an express contract. An express promise results in an express contract.

Implied contract

An implied contract is one in which evidence of the agreement is not expressed by words, written or spoken, but by the acts and the conduct of the parties. An implied promise results in an implied contract. There is an implied contract when (i) a person gets into a public bv (ii) onc takes a cup of coffee in a hotel. .

Quasi contract

A quasi contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. According to Prof. Wirefier, a quasi contract is a liability, not exclusive by being referable to any other head of law, imposed upon a particular person to pay money to another particular person on the grounds of unjust benefit. The Indian Contract Act has used the term as certain relations resembling those of contracts for the term ‘Quasi contracts’. Quasi contracts are created by law. Under certain conditions, the law created and enforced legal rights and obligations where no real contract exists. For example, a finder of lost goods is under a legal obligation to return them to their true owner.

On the Basis of Performance/Execution

Executed contract

An executed contract is one in which both the parties have performed their respective legal obligations. Example M agrees to purchase medicines for N for Rs. 300. When both the parties have performed their obligations, the contract is said to be executed.

Executory contract

It is a contract in which both the parties are yet to perform their respective obligations. Example The contract is executory. if M has not yet purchased the medicines and N has not paid the amount.

A contract may, sometimes, be partly executed and partly executory.

Unilateral contract

It is a contract in which only one party has yet to perform his obligation. Such contracts are also termed as contracts with executed consideration.

Example

Lal agreed to purchase a DVD for Rs. 5,000 and paid the amount, The dealer is yet to deliver the DVD.

Bilateral contract

Bilateral contracts are two-sided contracts. in which there are two outstanding obligations to be fulfilled at the time of its formation. They are executory contracts or contracts with executory consideration.

Example

X promises to paint a picture in 10 days in return for which B promises to pay Rs. 1,000. The contract is bilateral, as obligations of both the parties are outstanding at the time of formation of the contract.

1. OFFER AND ACCEPTANCE

OFFER

INTRODUCTION

There must be atleast two parties to constitute an agreement. Every agreement implies offer and acceptance. The offer when accepted becomes an agreement. An offer must be certain and capable of performance. It must reveal an intention to create legal relations, and must be capable of creating a legal relationship. It must be made with a view to obtain the consent of the other party.

An offer involves the making of a ‘proposal’.

PROPOSAL

According to Sec. 2(a) of the Contract Act, 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 person to such an act or abstinence, he is said to have made a proposal. ,

Under Sec: 2(b), when the 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.

A proposal is called an offer; the word ‘proposal’ used in Sec. 2(a) of the act is synonymous with the word ‘offer’ used in English Law. The person making the proposal is called the ‘Promisor’, and the person accepting the proposal is called the ‘Promisee’. The promisor (the person making the offer or proposal) is called the ‘offeror’; The promisee (the person to whom the offer is made).is called the ‘offeree’.

An offer can be made by (a) any act or (b) omission of the party proposing how he intends to communicate such a proposal and which has the effect of communicating it to the other. An offer can be made by an act in the following manner:

1. By words (whether written or oral)

While the written offer can be made by letters, telegrams, etc., the oral offer can be made either in person or over telephone.

2. By conduct

Offer may be made by positive acts or signing so that the person acting or making signs means to say or convey.

3. By omission

This includes such conduct or forbearance on one's part that the other person takes it as one's willingness or assent.

Express Offer and Implied Offer

An offer is said to be an 'express offer', when it is made by words spoken or written. An offer implied from the conduct of the parties, or from the circumstances of the case, is known as 'implied offer'.

Examples

- (a) X proposes by letter, to sell a house to Y at a certain price. This is an express offer.
- (b) A transport company runs buses on a particular route. The offer is accepted when a passenger boards the bus with the intention of becoming a passenger. This is an implied offer.

Specific or General Offer

A specific offer refers to an offer made to a definite person or to a definite class of persons. A general offer is an offer to the world at large. This may be accepted by any one, by complying with the terms of the offer.

Essential Requirements of a Valid Offer

The essential requirements of a valid offer are :

The offer must be communicated to the other party.

The offer must be made with a view to obtain the consent of the offeree.

The terms of the offer must be definite and certain.

The offer must be capable of creating a legal relationship.

An offer must be express or implied from the circumstances.

An offer may be conditional. A tender is an offer as it is in response to an invitation to offer.

A mere statement of intention is not an offer.

Offer vis-a-vis invitation to offer An offer must be distinguished from an invitation to offer. A prospectus issued by a college for admission to various courses is not an offer. It is only an invitation to offer. A prospective student by filling up an application form attached to the prospectus, is making the offer. An auctioneer, at the time of auction, invites offers from the would-be-bidders. He is not making a proposal. A display of goods with a price on them in a shop window is construed an invitation to offer, and not an offer to sell.

An offer may be conditional. An offer can be made subject to a condition. In that case, it can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted. Thus, a conditional offer to pay a certain amount made by the management of an industry for the trade union, lapses when the condition is not accepted.
(Pipraich Sugar Mills Ltd. Vs. P.S. Mills Mazdoor Union

Revocation of Offer

An offer may be revoked by the offeror at any time, as long as it has not been accepted by the offeree. A person who makes an offer can withdraw it at any time before acceptance.

Under Sec. 6 of the Indian Contract Act, 1872, an offer is revoked under the following

circumstances.

By giving notice of revocation. The offer comes to an end when the offeror gives notice of revocation to the other party. However, the notice of revocation would take effect only when it comes to the knowledge of the offeree.

By lapse of time. Where a prescribed time is stipulated within which the proposal must be accepted, the proposal lapses on account of expiry of time. One cannot say while making the offer that, if the offer is not accepted before a certain date, it will be presumed « to have been accepted.

After lapse of reasonable time. The proposal lapses after the expiry of a reasonable time, where there is no time prescribed. Again, what is reasonable time will depend on the circumstances of each case. |

Example (a) By death or insanity

An offer lapses by the death or insanity of the proposer if the fact of death or insanity comes to the knowledge of the acceptor, then the acceptance lapses.

Be refusal

A proposal once refused, is dead and cannot be revived by its subsequent acceptance.

Example

A writes to B, “I offer to sell my house for Rs. 40,000. If I do not receive a reply by next Monday, I shall assume that you have -accepted the offer”. There will be no contract, if B does not reply.

Cross Offers

Where two parties make identical offers to each other, in ignorance of each other's offer, the offers are known as cross offers, and neither of the two can be called an acceptance of the other, and therefore, there is no contract.

Case law

H wrote to T offering to sell him 800 tons of iron at Rs. 60 per 'ton. On the same day, T wrote to H offering to buy 800 tons at Rs. 69. Their letters crossed in the post. T contended that there was a good contract.

Counter Offer

A counter offer is a rejection of the original offer and the making of a new offer. The new offer is a counter offer. A person who makes a counter offer and subsequently changes his mind and wishes to accept the original offer, cannot do so as the first offer lapses and he cannot treat it as still open.

Tenders

A tender (in response to an invitation to offer) is an offer and may be either:

- i) a definite offer to supply specified goods or services or
- ii) a standing offer.

Tender as a definite offer, When tenders are invited for the supply of specified goods or services, each tender submitted is an offer. The party inviting tenders may accept any

tender he chooses, and thus bring about a binding contract.

Example

A invites tenders for the supply of 1,00,000 bricks. X, Y, and Z submit the tenders. A accepts X's tender. There is a binding contract between A and X.

Tenders as a standing offer Where goods or services are required over a certain period, a tender may invite tenders as a standing offer, which is a continuing offer. The acceptance of a standing offer has the effect that as and when the goods or services are required, an order is placed with the person who submitted the tender, and each time a distinct contract is made.

ACCEPTANCE

Acceptance is one of the essential elements of a valid contract. An offer may be accepted only by the person to whom it is made. If anyone else attempts to accept it, there will not be any contract. When the person to whom the proposal is made signifies his assent, it is an acceptance of the proposal. An accepted proposal is called a promise. An acceptance must be communicated to the offeror in order to complete the acceptance. The acceptor should do something to signify his intention to accept.

Example

A offers to sell his house to B for Rs. 50,000. B accepts the offer to purchase the house for Rs. 50,000. This is an acceptance.

Acceptance may be expressed or implied. It is expressed, when it is communicated by words, spoken, or written, or by doing some required act.

It is implied when it is to be gathered from the surrounding circumstances, or the conduct of parties. When an offer is made to a particular person, it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance.

Where an offer is made to the world at large, any person or persons with the notice of the offer, may come forward and accept the offer. (Carlill Vs. Carbolic Smoke Ball Co.)

Where a reward has been offered for giving a specific piece of information, e.g., conviction of the thief of a certain property, or finding a specific thing, acceptance can be made only by the first person who gives the information, and no further acceptance of the offer is possible. (Zancaster Vs. Walsh)

Essentials of a Valid Acceptance

Acceptance must be absolute and unconditional

In order that an acceptance of a proposal is valid, it must be unconditional and unqualified. If there is a variation in the terms of the acceptance, it is not an acceptance but a counter offer.

Case law

N offered to buy J's horse if warranted quiet in harness. J agreed to the price, and warranted the horse quiet in double harness. It was held that there was no acceptance. (Jordon Vs. Norton)

Acceptance must be communicated to the offeror

If the offeree remains silent and does nothing to show that he has accepted the offer, no contract is formed. The acceptor should do something to signify his intention to accept. Thus, when a person accepts an offer, but fails to post the letter of acceptance, there is No acceptance.

Case law

The manager of a railway company received an offer through a letter relating to the supply of coal; he wrote on the letter 'accepted', and kept it in his drawer and forgot all about it. It was held that there was no contract, as the acceptance had not been communicated. (Brogden Vs. Metropolitan Rly. Co.)

Acceptance must be made within a reasonable time

For an acceptance to be valid, it must be made within the time allowed by the offeror and if no time is specified, it must be made within a reasonable time.

Example

A person applied for shares in a company in June. He cannot be bound by an allotment made, later, in November.

Acceptance may be expressed or implied Acceptance is expressed when it is communicated by words spoken, or written. It is implied when it is to be gathered from the circumstances, or the conduct of the parties.

- a) It must show an intention on the part of the acceptor to fulfil the terms of the promise. If no such intention is present, the acceptance is not valid.
- b) Acceptance must be given by the party or parties to whom the offer is made. .
- c) Communication of acceptance must be made by an authorised person. .
- d) It must be given before the offer lapses, or before the offer is withdrawn.

Effect of Silence on Acceptance

The acceptance of an offer cannot be implied from the silence of the offeree, or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts.

CONSIDERATION

INTRODUCTION

Consideration is a legal evidence of the intention of the parties to effect a legal relation. Consideration means that when a party to an agreement promises to do something, he must get something in return. According to Pollock, consideration is the price for which

the promise of the other is bought and promise, thus, given for value is enforceable. An agreement without consideration is void. It must proceed at the desire of the promisor. The consideration can support only one promise. It must not be illusory, illegal, uncertain, or ambiguous.

A contract results only when one promise is made in exchange for something in return. Consideration is an aid in deciding that promises are worthy of enforcement. In the English case Currie Vs. Misa (1875), consideration was defined as; ‘some right, interest, profit or benefit accruing to one party or some forbearance, detriment or loss or responsibility given, suffered, or undertaken by the other’.

DEFINITION

Sec. 2(d) of the Contract Act defines consideration as follows: ‘When at the desire of the promisor, the 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, such act or abstinence or promise is called a consideration for the promise’. Consideration is the price or a return for a promise-a quid pro quo-or something given or taken as equivalent to another. Consideration can be construed as follows:

- i) An undertaking by a party to refrain from filing a suit (i.e., forbearance to sue)
- ii) A compromise, accepting to receive a lesser sum from the debtor (i.e., remission)
- iii) Any compromise of a disputed claim.

Types of Consideration: Consideration may be classified to three types, as follows:

- (i) Executory or future consideration means that it takes the form of a promise to be performed in the future. It is the price promised by one party in return for the other party's promise, e.g., A promise to deliver goods.
- (ii) Executed or present consideration implies consideration which takes place simultaneously with the promise, e.g., A purchases a shirt from a shop and pays the price immediately.

(iii) Past consideration is when the consideration of one party was given before the date of promise. A does some work for B during January (without expecting any payment). In February, B promises to pay him some money. This is past consideration. Under English Law, past consideration is no consideration, and a contract based on past consideration is void.

Essentials of Consideration

A contract without consideration is a void contract.

In the words of Salmond, ‘a promise without consideration is a gift; one made for a consideration is a bargain’.

Consideration must move at the desire of the promisor

The promisor must desire the act or forbearance. An act done without any request is a voluntary act. The act performed at the desire of third party cannot be considered.

Case law

The collector of a district asked D to spend some money on the improvement of a market and he did so. D cannot demand payment from the shopkeepers using the market, for having improved the market. (Durgaprasad Vs. Baldeo)

Consideration must be real Consideration must have some value in the eye of law. It must be competent, real and not illusory, impossible, uncertain, vague, or ambiguous.

Example

P promises to supply Q one ton of gold brought from the sun. As the consideration is illusory, there is no contract.

Consideration must be lawful. If the consideration is unlawful, the contract is void and unenforceable.

Consideration may be an act to do something, or abstinence, or a return promise .

Case law

In the case [Radha Rani Vs. Ram Dass (1941)], the wife was ready to sue the husband for maintenance allowance. When her husband agreed to pay the maintenance allowance, she forbears to sue him. The court held that the wife's forbearance to sue, amounts to consideration for her husband's agreement for the payment of maintenance allowance.

Consideration may be past, present or future

Past consideration

The consideration which has already moved before the formation of an agreement. However, the English Law does not recognize past consideration.

Example

X performed some services to Ys at his desire. After a week, Y promised to compensate X for the work done by him. It is a clear case of past consideration.

Present consideration

The consideration which moves simultaneously with the promise is called a present consideration.

EXCEPTIONS FOR CONTRACT WITHOUT CONSIDERATION

There are certain exceptions to the rule that a stranger to the contract cannot sue upon it. .

Charge in favour of person

When a charge in favour of a person has been created on a specific immovable property, such charge is enforceable at the instance of the person beneficially interested, though he is not a party to the contract.

Creation of trust

An agreement to create a trust can be enforced by the beneficiary. D agrees to transfer certain properties to T, to be held by T, in trust for the benefit of C. C can enforce the agreement though he was not a party to the agreement.

Provision of marriage settlement

In Khwaja Muhammed Khan Vs. Husaini Begum, the father of the bridegroom had contracted with the father of the bride to make the daughter an allowance

CAPACITY OF PARTIES TO CONTRACT

Introduction

The term ‘capacity’ refers to the competence of the parties to enter into a valid contract. Competency of the parties is an important requisite for a valid contract. According to Sec. 10 of the Indian Contract Act, an agreement is valid and enforceable only if the parties to it are capable of entering into the contract. Secs. 10, 11, and 68 of the Indian Contract Act deal with the matter of capacity of the contracting parties. Certain persons are incapable of binding themselves wholly or partially to a promise or enforcing an agreement made to them. Incapacity to contract may arise out of (i) mental deficiency and (ii) status. Infants or minors, lunatics, idiots, and drunken persons fall under (i) and foreign ambassadors or sovereigns, etc., alien enemies. In other words, for the enforcement of a valid contract, parties must be a major in age, of sound mind, and not disqualified by any other law in force.

Definition

Sec. 11 of the Contract Act states that ‘every person is competent to contract, who is of the age of majority according to the law to which he is subject of sound mind, and not disqualified, from contracting by any law to which he is subject’.

From Sec. 11 it follows that a person is incapable of entering into contracts under the following circumstances:

- i. If he has not attained the age of majority according to the law to which he is subject

- ii) If he is, not of sound mind, i.e., if he is a lunatic or an idiot, or suffering from a similar disability and
- iii) If he is disqualified from contracting by any law to which he is subject.

Minors

According to the Indian Majority Act, 1875 a minor is one who has not completed his or her 18th year of age, so a person becomes a major after the completion of the 18th year of life. But, there are two exceptions:

1. When a guardian of the minor's person or property is appointed by a court of law and
2. When a minor's property is taken over by the court of wards for management.

Persons of unsound mind

The party to a contract should have a sound mind while entering into contracts.

According to Sec. 12 of the Indian Contract Act, a Person is said to be of sound mind for the purpose of making a Contract if at the time when he makes it, be capable of understanding it, and of forming a rational judgment as to its effect upon his interests,

A person who is usually of unsound mind, but occasionally of sound mind, may not make a contract when he is of unsound mind. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

Idiocy

Idiocy is a congenital defect caused by a lack of development of brain. An idiot is a person who has lost his mental ability completely. An agreement with an idiot is void from the very beginning.

Lunacy

Lunacy can sometimes be cured, but idiocy is incurable. A lunatic is one whose mental powers are deranged so that he cannot form a rational judgement on any subject. However, he can make a valid contract during the lucid intervals.

Drunken persons

A contract by a drunken person is void. Drunken persons are liable for necessaries supplied. Drunkenness produces temporary incapacity. Illustration (6) to Sec.12 of the act reads as follows: ‘A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effects on his interest cannot contract while such delirium or drunkenness lasts’.

FREE CONSENT

INTRODUCTION

Free consent is an essential requirement of a valid contract. The term ‘consent’ means agreement between the parties upon the same thing in the same sense, i.e. *consensus ad idem*. In the absence of free consent, there will not be any valid contract between the parties. The consent of parties is said to be free when they are of same mind on all the material terms of the contract. If the parties enter into an agreement concerning particular persons or things, but each has different persons or thing in his mind, there is no agreement and no contract comes into existence between them. Absence of consent may arise from number of causes, viz.,

1. By reason of an error as to the nature of the contract itself.
2. By reason of an error as to the identity of the party with whom the contract is entered into.
3. By reason of an error as to the subject-matter of the agreement. . In all the cases, there

is no contract at all because in the law of contract, consensus of ideas is a condition essential to the formation of a contract.

Free consent is the consent which has been obtained by the free will of the parties out of their own accord. According to Sec. 14, consent is said to be free when it is not caused by:

- (i) Coercion as defined under Sec. 15
- (ii) Undue influence as defined under Sec. 16
- (iii) Fraud as defined under Sec. 17
- (iv) Misrepresentation as defined under Sec. 18
- (v) Mistake as defined under Secs. 20, 21 and 22.

COERCION

Sec. 15 of the Indian Contract Act defines coercion 'as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or an unlawful detaining or threatening to detain, any property to the prejudice of any person to enter into an agreement.

UNDUE INFLUENCE

"Sec. 16 of the Indian Contract Act provides that a contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

FRAUD

Fraud is the willful representation made by a party to contract with the intention to deceive the other party, or induce such a party to enter into a contract. It means a false statement made knowingly, without belief in its truth, or recklessly without caring whether it is true or false. Fraud denotes an absence of honest

belief and a wicked mind. According to Sec. 17, fraud means and includes any of the following acts done with the intention to deceive or to induce a person to enter into a contract.

- (i) A false suggestion known to be false or not believed to be true
- (ii) The active concealment of a fact with the know belief of the fact.
- (iii) A promise made without any intention of performing it,
- (iv) Doing any other act fitted to deceive.
- (v) Doing any such act or making any such omission which the law specially declares to be fraudulent.

MISREPRESENTATION

Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any intention to defraud the other party. Section 18 of the Contract Act classifies cases of misrepresentation into three groups as detailed below.

- (i) The positive assertion, in a manner, not warranted by the information of the person making it, which is not true, though he believes it to be true.
- ii) When there is any breach of duty by a person which brings an advantage to the person committing it by misleading another to his prejudice.

MISTAKE of Law

Mistake on a point of Indian Law does not affect the Contract Mistake of law of a foreign country is treated as mistake of fact and the agreement in such cases are void. A mistake of law is no excuse, and the contract cannot be avoided.

Mistake of Fact

Mistake of fact may be:

- 1. Bilateral mistake
- 2. Unilateral mistake

Bilateral mistake When both the parties to an agreement are mistaken about the facts

essential to the agreement, there a bilateral mistake. An agreement, induced by a mistake of fact,-is void subject the following conditions:

- (a) Both the parties to the agreement are mistaken or
- (b) The mistake is regarding a fact essential to the agreement