

## UNIT II

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

### LEGALITY OF OBJECT

#### INTRODUCTION

The term 'object' means purpose for which the agreement is entered into between the parties. In certain cases, consideration for an agreement may be lawful but the purpose for which the agreement is made may be unlawful. In other words, the object of the agreement and the consideration of an agreement must be lawful. An agreement may satisfy all the essential elements stipulated by law, but if the object of the agreement is unlawful, then the entire agreement will be void and cannot be enforced in a court of law. According to Sec. 23 of the act, a lawful object is that which is neither fraudulent, forbidden by law, immoral nor opposed to public policy.

#### DEFINITION

Sec. 23 of the act provides that the object/consideration of an agreement is not lawful under the following cases:

1. If it is forbidden by law.
2. The consideration of such a nature that, if permitted, it would defeat the provisions of any law.
3. If the consideration is fraudulent.
4. If the consideration involves or implies injury to the person or property of another.
5. If the court regards consideration as immoral.
6. In case the court considers it opposed to public policy.

1. If it is forbidden by law

If the consideration or object for a promise is such that it is forbidden by law, the agreement is void. It is legal and cannot become valid even if the parties act according to such agreement. Secs 26, 27, 28, and 30 of the Contract Act deal with cases where the consideration or object of an agreement is considered unlawful. An agreement to sublet a telephone, in contravention of conditions is void because it is forbidden by law.

2. If it is of such a nature that if permitted it would defeat the provisions of any law If the object or consideration of an agreement is of such a nature that if permitted, it would defeat the provisions of any law, the agreement is void.

3. If it is fraudulent

Agreements which are entered into to promote fraud are void Thus, an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the price of the goods so sold, cannot be recovered.

Examples

- (a) A, B, and C enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void as its object is unlawful,
- (b) A the agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of the land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

4. If it involves or implies injury to the person or property of another

The object or consideration of an agreement will be unlawful if it tends to injure the person, or property of another. Eg., An agreement to pull down another's house is unlawful.

5. If the court regards it as immoral.

Where the consideration or object of an agreement is such that the court regards it as immoral, the consideration is void.

## **AGREEMENTS AGAINST PUBLIC POLICY**

The term 'public policy' is not capable of being defined as it is vague, and highly uncertain. It keeps on varying with the habits and fashions of the day with the growth of commerce and usage of trade. An agreement which is against the general public, is said to be an agreement opposed to public policy. As the term 'public policy' is a very wide term and cannot be narrowed down to a limited definition, many jurists and lawyers have criticized the doctrine of public policy. An agreement which tends to be injurious to the public or against the public good is void as being opposed to public. Lord Davey in *Janson Vs. Drieftein Consolidated Mines .Ltd.* (1902) observed that public policy is always unsafe and treacherous ground for legal decisions. An agreement is unlawful if the court regards it as opposed to public policy. A contract which is opposed to public policy cannot be enforced by either of the parties to it. The courts in India have declared the following agreements as opposed to public policy, and hence, unenforceable or void.

- (a) Trading with enemy
- (b) Stifling prosecutions
- (c) Maintenance and champerty
- d) Sale of public offices.
- e) Bargains tending to promote illegal acts
- (f) Debts for obtaining divorce
- (g) Agreement in restraint of marriage

## **FORMATION OF CONTRACTS UNDER THE SALE OF GOODS ACT, 1930**

### **INTRODUCTION**

The Sale of Goods Act came into force on 1st July 1930. Now, all the legal provisions relating to the sale of movable goods are contained in the Sale of Goods Act, 1930.

The transactions relating to immovable properties, for example., the sale, lease, gifts, etc., are governed by a separate act known as Transfer of Property Act, 1882.

## **Contract of sale**

The term 'contract of sale' is defined in Sec. 4(1) of the Sale of Goods Act, which reads as under:

'A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price'.

## **SALE**

The term 'sale' is defined in Sec. 4(3) of Sale of Goods Act, which reads as under:

'Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale'

## **Elements of contract of sale**

The essential elements of a contract of sale are enumerated below:

### **Buyer and seller**

In every contract of sale, there shall be two parties namely the buyer and seller. Both the parties to the contract must be competent to enter into a contract. Further, the object of the contract must be legal. While the term 'buyer' means a person who buys and agrees to buy goods, the term 'seller' means a person who sells / agrees to sell goods.

### **Goods**

Basically, the Sale of Goods Act deals with movable property only. The purchase and sale of immovable properties are contained in the Transfer of Property Act, 1882. In other words, the goods which form the subject-matter of the contract of sale must be movable. Thus, goods include every kind of movable property other than actionable claim or money.

### **Consideration**

Price is the consideration for the contract of sale. It must be in terms of money. The term Price is defined in Sec. 2(10) of the Sale of Goods Act, which means the money consideration for the sale of goods. The goods may be purchased partly in cash, and partly in valued up goods.

## Transfer of property

The term property means the general property. In every contract of sale, property in the goods must be transferred to the buyer. The act mainly talks about the transfer of title in the goods. In other words, there must be an absolute transfer of ownership from the seller to the buyer.

## Requirements of a valid contract

Besides the above essentials, a contract of sale must satisfy all the requirements of a valid contract, namely, lawful consideration, free consent, capacity of parties, lawful object, possibility of performance, etc.

## **Contract of sale how made**

1. A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for:

(a) immediate delivery of the goods (b) immediate payment of the price (c) both (d) for the delivery or payment by instalments, (e) that the delivery or payment or both shall be postponed.

2. A contract of sale may be made: (a) in writing (b) by word of mouth (c) partly in writing and partly by word of mouth as may be implied from the conduct of the parties

## Subject-matter of Contract of Sale

1. The goods which form the subject of a contract of sale may be either existing goods, owned, or possessed by the seller, or future goods.

2. There may be a contract for the sale of goods, the acquisition of which, by the seller depends upon a contingency which may or may not happen.

3. Where by a contract of sale, the seller purports to affect a present sale of future goods; the contract operates as an agreement to sell the goods.

## **SALE AND HIRE-PURCHASE AGREEMENT**

A hire-purchase agreement is not a contract of sale, but only a bailment and the property in the goods remains with the owner during the continuance of the bailment. In other words, it is a bailment plus an agreement to sell. Whether an agreement is a hire-purchase agreement, or a contract of sale, the test would be whether or not any option has been given to the hirer to terminate the contract. The hirer has the following two options:

- (a) He may purchase the goods after paying all the agreed instalments.
- (b) He may return the goods at any time and stop further payment of instalments. .

### Essentials of Hire-purchase Agreement

1. The hire-purchase agreement must be in writing and signed by all the concerned parties.
2. The number of instalments, and the amount of each instalment should be specified, and stated in the hire-purchase agreement
3. The hirer may terminate the hire-purchase agreement at any time, before the final payment, when the agreement falls due.
4. The owner may also terminate the hire-purchase agreement under certain circumstances.

## **VOID AGREEMENTS.**

### INTRODUCTION

According to Sec. 2(g) of the Indian Contract Act, 1872, a void agreement is an agreement which is not enforceable by law. The agreements which are not enforceable by law right from the time when they are made are void ab initio.

### Classification of unlawful agreements

1. An agreement is said to be opposed to public policy under civil law when
  - (a) such an agreement gives room for corrupt influence: (b) it has for its object a sale of office.

2. Under judicial matters, an agreement is opposed to public policy, (a) when it ousts or thwarts (thwarts means preventing the court from deciding a case) jurisdiction of civil courts.

b) When it defeats the prosecution (known as stifling prosecution)

3. An agreement is said to be opposed to public policy in respect of personal freedom, when (a) it imposes a restraint on marriage. (b) it imposes a restraint on parentage. (c) it imposes a restraint on trade. (d) it imposes a restraint on personal liberty.

4. They may be illegal (a) when they are opposed to common law (b) when they are opposed to the statute.

5. An agreement is said to be immoral and void under the various sections of the Indian Contract Act (a) when it is formed for the purpose of future illicit cohabitation, (b) when it paves the way for separation between of husband and wife.

The following types of agreements have expressly been declare Void:

Agreements by or with persons incompetent to contract (Sec.10 and 11).

Agreements entered into by a mutual mistake of fact between the parties (Sec. 20).

Agreement, the object or consideration of which are unlawful(Sec. 23).

Agreements, the consideration or object of which are partly unlawful (Sec. 24).

Agreement made without any consideration (Sec. 25).

Agreements in restraint of marriage (Sec. 26).

Agreements in restraint of trade (Sec. 27).

Agreements in restraint of legal proceedings (Sec. 29).

Wagering agreements (Sec. 30).

Impossible agreements (Sec. 56).

An agreement to enter into an agreement in the future.

An agreement is said to be immoral

- (a) when it is formed for the purpose of future illicit cohabitation
- (b) when it paves the way for separation between husband and wife.

## **MODES OF DISCHARGE OF CONTRACTS**

### **INTRODUCTION**

A contract is discharged when the rights and obligations created 'between the parties come to an end. Discharge or termination of contracts mean termination of the contractual relations between the parties to a contract.

Contracts may be discharged or terminated by any one of the following modes:

- i) By performance
- ii) By consent or agreement
- iii) By impossibility.
- iv) By lapse of time
- v) By operation of law
- vi) By breach of contract
- vii) By material alteration

### **DISCHARGE BY PERFORMANCE**

Every person who is bound by an obligation must be ready to perform it at the time when he had promised to perform it (Sec. 37). No difficulties arise when the contract is fully performed, nor are there any serious difficulties when the contract consists of an absolute promise by A made to B for a consideration already received. Thus, when A contracts to sell his car to B for Rs. 85,000 and as soon as the car is delivered to B and B pays the agreed price for it, the contract comes to an end by performance.



## DISCHARGE BY MUTUAL CONSENT (SEC. 62)

If the parties to a contract agree to substitute a new contract for © jt, or to rescind it or alter it, the original contract is disbarred. A contract may terminate by mutual consent in any of the following ways.

### Novation

Novation means substitution of a new contract for the original one. The new contract may be substituted either between the same parties, or between different parties.

Examples (a) A, who owes B Rs. 20,000 enters into an arrangement with him thereby giving B a mortgage of his estate for Rs. 15,000. This arrangement constitutes a new contract, and terminates the old.(b) A owes money to B under a contract. It is agreed between A, B, and C that B shall henceforth accept C as his debtor, instead of A. The old debt of. A to B is at an end, and a new debt from C to B has been contracted.

### Rescission

Rescission means cancellation of all or some of the terms of the contract. Where parties mutually decide to cancel the terms of the contract, the obligations of the parties there under terminate. .

### Alteration

If the parties mutually agree to change certain terms of the contract, it has the effect of terminating the original contract. There is, however no change in the parties.

### Remission.

Remission is the acceptance of a lesser sum than what was contracted for, or a lesser fulfilment of the promise made (Sec. 63).

-Examples (a) A owes BRs. 5,000. A pays to B who accepts in satisfaction of the whole debt Rs. 2,000/paid at the time and place at which Rs. 5,000 were payable. The whole debt is discharged. {b) A owes B Rs.5,000. C pays to B, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim. .

## Waiver

Waiver means relinquishment or abandonment of a right. When a party waives his rights under the contract, the other party is released of his obligations.

### Example

A promises to paint a picture for B. B, afterwards, forbids him to do so. A is no longer bound to perform the promise.

## Merger

A contract is said to have been discharged by way of merger where an inferior right possessed by a person coincides with a superior right of the same person.

### Example

A man who is holding a certain property under a lease, buys it. His rights as a lessee vanish. They are merged into the rights of an ownership, which he has now acquired, the rights associated with lease being inferior to the rights associated with the ownership.

## DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

The law relating to discharge by impossibility of performance of a contract is laid down in Sec. 56 of the Contract Act. According to the section:

‘An agreement to do an act impossible in itself is void’. A contract to do an act which, becomes impossible after the contract is made, or by reason of some event which the promisor could not prevent, is unlawful, becomes void.

When one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such a promisee for any loss which such a promisee sustains through the non-performance of the promise’.

## DISCHARGE BY LAPSE OF TIME

The Limitation Act, in some circumstances, affords a good defense to suits of breach of contract, and in fact, terminates the contract, by depriving the party of this remedy at law. For example,

where a debtor has failed to repay the loan on the stipulated date, the creditor must file the suit against him within three years of the default' If the three years expire, and he takes no action, he will be barred from this remedy, and the other party is discharged of his liability to perform. The period of limitation for a simple contract is three years in India and six years in England, and in the case of special contracts, it is twelve years.

## DISCHARGE BY OPERATION OF LAW

Discharge under this head may take place as follows:

### By merger

Where the parties embody the inferior contract in a superior contract when, between the same parties, a new contract is entered into, and a security of a higher degree or a higher kind is taken, the previous contract merges in the higher security when securities of the same kind of degree are taken, there is no merger.

### By unauthorized alteration of terms of a written document

Where a party to a contract in writing makes any material alteration without the knowledge and consent of the other, the contract can be avoided by the other party. An alteration even by a stranger will entitle the other party to avoid the contract, but when the alteration is due to a mere accident, or is not a material contract, it cannot be avoided.

### By insolvency

The Insolvency Act provides for discharge of contract under particular circumstances. So, when the insolvency court passes an order discharging the insolvent, the order discharges him from liabilities on all debts incurred, previous to his adjudication.

### By death

Death of the promisor results in termination of the contract in cases involving personal skill or ability.

## **DISCHARGE BY BREACH OF CONTRACT**

A contract terminates by breach of contract. The breach of a contract may be: (i) Actual breach of contract ii) Constructive or anticipatory breach of contract.

The actual breach may take place:

- (a) At the time when performance is due, or
- (b) When actually performing the contract ' The constructive or anticipatory breach of contract is a breach before the time for the performance has arrived, or may also take' place in two ways, viz.
  - (a) By the promisor doing an act which makes the performance of his promise impossible or
  - (b) By the promisor in some other way showing his intention not to perform his promise.

### **Actual Breach of Contract**

Breach at the time when performance is due when a person fails to perform a contract when the performance is due, the other party can hold him liable for breach. But, if a party who has failed to perform the contract at the appointed time, subsequently expresses willingness to perform, the question whether he can do so or not, would depend upon whether time was the essence of the contract or not.

In Indian Law, where in a contract, time is not the essence and the party expresses willingness to perform it after the appointed time, the law permits him to do so, subject to payment of compensation for failure of due performance. The party accepting performance after the due date is required to give notice while accepting that he intends to claim compensation; otherwise, he is deemed to have waived the right to compensation (Sec. 55).

Example : A seller offers to execute a deed of sale only on payment by the buyer of a sum higher than what is payable. Under the contract for sale, the vendor shall be liable for the breach of contract.

Breach during the performance of the contract

When a party apparently performs the promise but the other party says that it is not a proper performance, according to the contract, the question arises whether there is a breach of the contract exonerating the other party from the performance of his part of the bargain.

But, if the breach is only of a collateral term (non-essential condition) this will not exonerate the party from the performance of his part of the bargain, but only entitle him to claim damages.

Example

A contracted with a railway company to supply it a certain \_ quantity of railway-chairs at a certain price. The delivery was to be made in instalments. After a few instalments had been supplied, the railway company asked A to stop delivering. A could sue for breach of contract. (Cort Vs. Ambergate, etc. Rly. Co.)

## **REMEDIES FOR BREACH OF CONTRACT**

### **INTRODUCTION**

Parties to a lawful contract are bound to perform their respective obligations. But, when one of the parties repudiates the contract, by refusing to perform his obligations, he is said to have committed a breach of the contract. In case of the breach, the aggrieved party, is relieved from performing his obligation and gets a right to proceed against the party at fault. In case of breach of contract, the law provides the following remedies to a injured party:

- i) Cancellation or rescission
- ii) Restitution
- iii) Specific performance
- iv) Injunction
- v) Damages
- vi) Quantum meruit.

## CANCELLATION OR RESCISSION

Where one of the parties to a contract commits a breach, the other party may treat the contract as rescinded. He is freed from all the obligations under the contract. Under Sec. 64, the party rescinding a voidable contract, shall, if he has received any benefit there under from another party to such contract, restore such benefit to the person from whom it was received. Further, under Sec. 75, a person who rightfully rescinds a contract is entitled to compensation for any damage, which he has sustained through the non-fulfillment of the contract.

## RESTITUTION

It means return of the benefit received by one party to the contract from the other under a void contract. Sec. 65 provides that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

### Example

A pays B Rs. 1,000 in consideration of B's promising to marry. A's daughter C, is dead at the time of promise. The agreement is void but B must repay A Rs. 1,000/in consideration of B's.

## SPECIFIC PERFORMANCE

Under certain circumstances, a person aggrieved by breach of contract can file a suit for specific performance, i.e. for an order by the court upon the party guilty of breach of contract directing him to perform what he promised to do. Specific performance is a discretionary remedy which is allowed only in a limited number of cases. Rules regarding the granting of this relief are contained in the Specific Relief Act of 1877.

Specific performance is not allowed in cases where monetary compensation is an adequate relief. It is also not allowed in contract of a personal nature. Example: a contract to marry or a contract

to paint a picture. Where it is not possible for the court to supervise the performance of the contract. Example: a building contract.

Specific performance of a contract may be enforceable as furnished below:

(i) Where monetary consideration is not an adequate remedy for the breach of a contract. (ii) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act. (iii) When it is probable that compensation in money on nonperformance of the contract cannot be obtained.

## QUANTUM MERUIT

The doctrine of quantum meruit in English Law is based on the implied condition that the party deriving benefit from a service agrees to pay for it. Instances of quantum meruit action are quasi contractual, but most quantum meruit actions are genuinely contractual. When there is a breach of contract, the aggrieved party shall be entitled to claim reasonable compensation for what he has already done under the contract.

### Example

P contracted to write a book to be published in instalments in a magazine owned by C. After a few instalments were published, the magazine was given up. It was held in *Planch Vs. Collburn* that P was entitled to get damages for a breach of contract and payment by the rule of quantum meruit for the work already done.

### Contract not Enforceable

When a contract is discovered to be unenforceable for some technical reason, any person who has done something under the contract, is entitled to a reasonable compensation.

### Example

C was employed as a managing director of a company by the board of directors of the company under a written contract. The contract was found to be void.

