

# Business law

## Unit -1

### 1. Brief explain about History of Indian Contract Act 1872?

#### The Indian Contract Act 1872:

The law relating to contracts in India is contained in the Indian contract act 1872. The act came into force with effect from September 1st 1872. It is applicable to the whole of India except the state of Jammu & Kashmir. The act as enacted originally had 266 sec dividend.

### 2. What is the term contract? What are the essential of a valid contract?

#### Contract defined:-

An agreement between two or more persons which is intendeds to be enforceable at laws and is constituted by the acceptance by one party of an offer made to him by the other party to do or to abstain from doing some act.

#### Essential elements of valid contract:-

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

They are

Valid contract

1. Offer & acceptance
2. Intention to create legal relationship
3. Lawful consideration
4. Capacity of parties
5. Free consent
6. Lawful object
7. Certainty of meaning
8. Possibility of preference
9. Not declared to be void

## 10. Legal formalities.

### 1. Offer & acceptance :

In order to create a valid contract, there must be a lawful offer by one party and lawful acceptance of the same by the same by the other party. The adjective lawful means offer and its acceptance must conform to the rules laid down in the Indian contract act regarding valid offer and acceptance and its communication.

### 2. Intention to create legal relationship :

In case, there is no such intention on the part of parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations.

The leading case on this point is *Balfour vs. Balfour* (1919).

### 3. Lawful consideration :

Consideration has been defined in various ways. Consideration is the price for which the promise of another is brought. Consideration is known as *quid pro-que* or something in return. Consideration is an essential element in a contract.

### 4. Capacity of parties:

The parties to an agreement must be competent to contract. If either of the parties does not have the capacity to contract, the contract is not valid.

Accordingly, the following persons are incompetents to contract.

- a. Minors
- b. Persons of unsound mind, and
- c. Persons disqualified by law to which they are subject.

### 5. Free consent:

Consent means the parties must have agreed upon the same thing in the same sense.

Accordingly to sec 13 two or more person are said to consent when they agree upon the same thing in the same sense. This is called consensus ad idem in English law.

Accordingly to sec 14 consent is said to be free when it is not caused by

- a. Coercion
- b. Undue influence
- c. Fraud
- d. Mis-representation
- e. Mistake

#### **6. Lawful object :**

The object of an agreement must be lawful. Object has nothing to do with consideration. It means the purpose or design of the contract.

The object is said to be unlawful if-

- a. It is forbidden by law
- b. It is of such nature that permitted it would defeat the provisions of any law
- c. It is fraudulent
- d. It involves an injury to the person or property of any other
- e. The court regards it as immoral or opposed to public policy.

#### **7. Certainty of meaning :**

According to sec 29 "agreements the meaning of which is not certain or capable of being made certain are void.

The terms of the contract must be precise and uncertain. It cannot be left vague.

#### **8. Possibility of performance :**

If the act is impossible in itself. Physically or legally, it cannot be enforced at law.

### **9. Not declared to be void or illegal :**

The agreement through satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country.

### **10. Legal formalities :**

An oral contract is a perfectly valid contract is a perfectly valid contract, except in those cases where registration etc. is required by some status.

### **3. Explain the classification of contracts?**

#### **Classification of contracts:**

Contracts may be classified on the basis of their

- A. validity or enforceability
- B. formation
- C. performance

#### **1. Valid contract:**

An agreement enforceable at law is a valid contract. An agreement becomes a contract when all the essential of a valid contract as laid down in sec 10 are fulfilled.

#### **2. Void contract:**

An agreement which was legally enforceable when is not enforceable by law by either of the parties is void.

#### **4. voidable contract:**

According to sec (2). An agreement which is enforceable by the law at the option of one or more of the parties but not at the option of the other or others is a voidable contract.

#### **3. Unenforceable contract:**

It is contract which is otherwise valid. But cannot be enforced because of some technical defect of a written form or absence of a proper stamp. Such contracts must be sued upon by one or both of the parties.

#### **5. Illegal agreement :**

A contract which is either prohibited by law or otherwise against the policy of law is an illegal contract every

#### **4. What are the modes of revocation of offer?**

##### **Modes of revocation of offer:**

1. By notices of revocation
2. By lapse of time
3. By non-fulfillment of condition precedent
4. By death or insanity
5. By counter offer
6. By the non-acceptance of the offer according to the prescribed or usual mode
7. By subsequent illegality

##### **1. By notices of revocation:**

Offer may be revoked by a communication of notices of revocation by the offeror to the other party before acceptance is complete against the offeror himself.

##### **2. By lapse of time:**

A proposal will come to an end by the lapse of time prescribed in such proposal for its acceptance or, if no time is so prescribed by the lapse of reasonable time. What is a reasonable time is a question of fact depending upon the circumstance of each case. Where the subject matter of the contract is an article, the gold, the price of which fluctuate daily in the market, very short period will be regarded as reasonable.

##### **3. By non-fulfillment of condition precedent**

A proposal is revoked when the acceptor fails to fulfill a conditions precedent to the acceptance of the proposal which was conditional offer.

#### **4. By death or insanity:**

A proposal is revoked by the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

#### **5. By counter offer:**

An offer comes to an end when the offeree makes a counter offer or rejects the offer.

#### **6. By the non-acceptance of the offer according to the prescribed or usual mode:**

The offer will also stand revoked if it has not been accepted according to the mode prescribed.

#### **7. By subsequent illegality:**

An offer lapses if it becomes illegal after it is made and before it is accepted.

### **Q. What are the various remedies available to a party in case of breach of contract?**

#### **A. Discharge of contract:**

1. Discharge by agreement (sec 62,63)
2. Discharge by operation of law
3. Discharge by breach (sec 39)
4. Discharge by performance (sec 37,38)
5. Discharge by impossibility (sec 56)
6. Discharge by lapse of time

#### **Remedies of breach of contract:**

1. Cancellation or rescission
2. Restitution
3. Specific performance
4. Injunction
5. Quantum meruit

## 6. Damages

1.

2.

### 3. Specific Performance:

- In this case, the Court directs the party committing the breach of Contract to perform the promise according to the terms of Contract. Specific Performance of the Contract can be granted under Specific Relief Act 1877
- Specific Performance can be granted only when damages are an inadequate remedy or when the Court can supervise the execution of Contract, or when the Contract is Certain, Fair and Just.
- Specific Performance cannot be enforced of the Contracts of Personal Service
- Specific Performance can be granted only when damages are an inadequate remedy or when the Court can supervise the execution of Contract, or when the Contract is Certain, Fair and Just.
- Specific Performance cannot be enforced of the Contracts of Personal Service
- For E.g.
  - A agrees to buy and B agrees to Sell a picture and two China Vases
  - A may Compel B specifically to perform the Contract for there is no Standard for ascertaining the actual damage which would be caused by its nonperformance.

### 4. Injunction:

- An injunction is an order of the Court directing a person to do or to refrain from doing some act, which is subject matter; Court can on a suit restrain a party by an order of injunction from committing the breach. The power of Court is discretionary and can be granted for a temporary or an indefinite period.
- A singer contracts with B the Manager of a theatre to sing at his theatre for one year and to abstain from Singing at other theatres during the theatre.

- She absents herself, B cannot compel A to sing at his theatre, but he may sue her for an injunction restraining her from Singing at other theatres.

#### **6. Damages:**

In case of a breach of Contract, injured party can claim damages for the loss caused by the breach of Contract

Damages are given by the way of restitution and as a monetary compensation to the injured party.

The aggrieved party can recover the actual loss caused to him by the breach of Contract. And not any unusual damages.

For E.g.

1. A contracts to repair B's house in a certain manner and receives payments in advance. A repairs the house but not according to the Contract. B is entitled to recover from A, the Cost of making the repairs conforming to the Contract

#### **4. Quantum Meruit:**

Quantum Meruit means as much as he has earned

Where one person has expressly or impliedly requested another to render him a service without specifying any remuneration but the circumstances of the request imply that the Service is to be paid for there is implied promise to pay quantum Meruit that is so much as the party doing the service deserves



## **Types of Damages**

There are 4 kinds

1. Compensatory Damages
2. Nominal damages
3. Vindictive or exemplary damages
4. Special damages

### 1. Compensatory Damages:

These damages are calculated to actually compensate or make up the loss suffered by the party

For e.g.

A who owes money to B a money lender ,undertakes to repay him by delivering him 10 mounds of grain on a certain date , and stipulates that in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 pounds. This is a stipulation by way of penalty, and B is only entitled to reasonable Compensation in case of Breach.

### 2. Nominal Damages:

Damages which naturally arise in the usual course of things from the breach are called nominal damages.

It is in the discretion of the Court whether to allow or refuse damages. Damages should however be actually suffered.

### 3. Exemplary Damages

Losses which arise due to remote or indirect consequences are not allowed. Exemplary damages are granted for injured feelings, mental pain, suffering etc.

For e.g.

Breach of Contract of Marriage, Banker reg\refusing to honor the Cheque of his Client having sufficient funds etc.

### 4. Special Damages

These arise on account of unusual circumstances. Special damages can be recovered only if stipulated in the Contract. Parties to the Contract must know of the damages likely to result from the Breach. Special damages are granted when the parties know at the time of making the Contract that the Special loss or damage would result or is likely to result from the Breach of Contract

## **Q. Explains about discharge of contract?**

Discharge of contract:

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it come to an end.

A contract may be discharged

1. by performance.
2. by agreement or consent
3. by impossibility or performance
4. by lapse of time
5. by operation of law
6. by breach of contract

### **1. Discharge by Performance:**

Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end. But if only one party performs the promise, he alone is discharged. Such a party gets a right of action against the other party who is guilty of breach.

## **DISCHARGE OF CONTRACT:**

Performance of a contract is the most usual mode of its discharge. It may be by

- (1) actual performance,
- or
- (2) attempted performance

### **1. Actual performance:**

When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance in this manner.

### **2. Attempted performance or tender :**

Tender is not actual performance but is only an offer to perform the obligation under the contract. Where the promisor offers to perform his obligation, but the promisee refuses to accept the performance, tender is equivalent to actual performance. The effect of a valid tender is that the contract is deemed to have been performed by the tenderer. The tenderer is discharged from the responsibility for non-performance of the contract without in any way prejudicing his rights which accrue to him against the promisee.

### **3.**