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COMMERCIAL LAW, FAMILY LAW



COMMERCIAL LAW

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Chapter: 1

Essential Elements of Contract and E- Contract

#Contract

Sec.2 (h), Contract Act defines a contract. According to it, a contract is an agreement enforceable by law. It is thus an agreement between two or more persons, to do or not to do some act. In fact, every promise, forming the consideration for each other, is an agreement. If the agreement is not enforceable, the contract is void. Hence, all contracts are agreements, but not all agreements, contracts.

Essential elements of contract:

1. Offer:

Offer or proposal is defined in Sn.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, to such act or abstinence, he is said to make a proposal (offer). The person who makes the proposal is called a "promisor", the person accepting the proposal is called a promisee. The offer must be definite and give rise to legal consequences.

2. Acceptance:

According to Anson "An acceptance is to offer what a lighted match is to a train of gunpowder. This means when the offer is accepted it becomes a contract. According to Contract Act Sn.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. According to S.N.7, in order to convert a proposal into a promise, the acceptance must be:

- * Absolute and unqualified
- * Be expressed in some usual and reasonable manner.

But if a particular mode is prescribed, it must be accepted in that mode. Otherwise, the proposer may insist on such a mode. If he does not insist, he is said to have accepted.

3. Consideration:

Consideration is defined in Sn. 2(d). When at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does or abstains from doing, or promises to do or abstains from doing, something, such act or abstinence or promise, is called a consideration for the promise. Consideration must be clear, specific and not illusory.

It may be inadequate, if parties agree to the contract. By that itself the contract will not become void. But, the general rule is "no consideration, no contract". An agreement without consideration is void. (Sn. 25 Contract Act).

But there are exceptions:

- * When agreement is made on account of natural love and affection (Example Gift by father to daughter), it should be in writing and to be registered.
- * Compensation, promised for services rendered.
- * Past consideration is good consideration.

4. Capacity:

Sec. 11 of the Contract act, states that the parties to the contract must be competent to contract. There is no capacity, when a party is a minor or insane, an idiot or when he is disqualified according to any special law to which he is subject.

A contract with a minor is void ab initio. [From the beginning] A person below 18 years of age is a minor (21 years for a ward under a guardian). The leading case is *Mohri Bibi V. Dharma das Ghosh*.

5. Lawful object:

According to Sn. 23 of the Contract Act, the consideration or object of the agreement must be lawful otherwise the contract is void.

The consideration or object is not lawful if

- * It is forbidden by law.
- * It is of such a nature that if permitted it would defeat the provision of any law.
- * It is fraudulent.
- * It involves or implies injury to the person or property of another.
- * It is immoral or opposed to public policy.

6. Consent:

It is defined in Sn. 13 Two or more persons are said to give consent, when they agree on the same thing in the same sense Example - consensus ad idem. It is not free, when there is coercion, undue influence, fraud or misrepresentation. In such a case, the contract becomes voidable. But, when there is no consent, the contract becomes void.

#Types of contract:

1. On The Basis Of Creation:

- * Express contract: - A contract made by word spoken or written. According to sec 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be expressed. Example: A says to B 'will you purchase my bike for Rs. 20, 000?' B says to A "Yes".
- * Implied contract: - A contract inferred by the conduct of person or the circumstances of the case. By implies contract means implied by law (Example) the law implied a contract through parties never intended. According to sec 9 in so far as such proposed or acceptance is made otherwise than in words, the promise is said to be implied. Example: A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.
- * Tacit contract: - A contract is said to be tacit when it has to be inferred from the conduct of the parties. Example obtaining cash through automatic teller machine, sale by fall hammer of an auction sale.
- * Quasi Contracts: - are contracts which are created neither by word spoken, nor written, nor by the conduct of the parties. But these are created by the law. Example: If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate for the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.
- * E-Contract: - An e-contract is one, which is entered into between two parties via the internet.

2. On the basis of Validity:

- * Valid contract: - An agreement which satisfies all the requirements prescribed by law On the basis of creation.
- * Void contract (2 (j)):- A contract which ceases to be enforceable by law because void when of ceased to be enforceable When both parties to an agreement are: - Under a mistake of facts [20] Consideration or object of an agreement is unlawful [23] Agreement made without consideration [25] Agreement in restraint of marriage [26] Restraint of trade [27] Restrain legal proceeding [28]. Agreement by wage of wager [30].
- * Voidable contract 2(i):- An agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Result of coercion, undue influence, fraud and misrepresentation.
- * Unenforceable contract: - Where a contract is good in substance but because of some technical defect example - absence in writing barred by imitation etc. one or both the parties cannot sue upon but is described as unenforceable contract. Example: Writing registration or stamping. Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.
- * Illegal contract: - It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessarily illegal. Contracts that are immoral or opposed to public policy are illegal in nature. Unlike illegal agreements there is no punishment to the parties to a void agreement. Illegal agreements are void from the very beginning agreements are void from the very beginning but sometimes valid contracts may subsequently become void.

3. On the basis of execution:

- * Executed contract: - A contract in which both the parties have fulfilled their obligations under the contract. Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.
- * Executory contract: - A contract in which both the parties have still to fulfill their obligations. Example: D agrees to buy V's cycle by promising to pay cash on 15th July. V agrees to deliver the cycle on 20th July.

- * **Partly executed and partly executory**: - A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation. Example: A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is an executed contract whereas it is an executory contract on the part of B since the price is yet to be paid.

4. On the basis of liability for performance:-

- * **Bilateral contract**: - A contract in which both the parties commit to perform their respective promises is called a bilateral contract. Example: A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promises.
- * **Unilateral contract**: - A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear. Example: - A wants to get his room painted. He offers Rs. 500 to B for this purpose B says to A "if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to Paint the house. There is only one promise.

#E- Contract:

With the advancements in technology was fair, there has been a change in the style and pattern of contract. Information technology has revolutionized the way contracts are performed.

With the increasing trend of digitalization across the world the new concept has involved the E-contract. Now people sitting far away from each other can make contact using information technology such as email, websites. Digital signature plays a prominent role in the formation of a contract. There are a lot of benefits of the contract however there is also a limitation to it. It can be defined as a contract, modelled, specified, executed and deployed by a software system.

Nature of E-contract:

- * E contract has two main parties which is originator and addressee. According to the IT act of 2008 originator is a person who sends, generates, stores or transmits electronic messages and the act defines an addressee as a person who is intended by the originator to receive the electronic record.

- * The most testing nature of E contracts is that usually parties do not meet physically. For e contracts there is no physical boundary. Their boundaries are mainly decided by the jurisdiction.
- * For E contract parties have to rely on digital signature.
- * There is no specific body or authority for monitoring the contract.
- * The contracts are enforceable by law as electronic documents can be used as evidence in court.

Types of a contract:

1. Shrink wrap agreement: The contract which is made for purchase of software is referred to as shrink wrap agreement. In this type of agreement terms and conditions are basically decided by the manufacturer. Buyer has to give his or her consent for using that software. Such agreement is made with an objective to ensure copyright or intellectual property rights of the manufacturer.
2. Click or Web wrap agreement: While browsing the internet we often see provisions of I accept or ok on the screen. Such types of agreements are known as click wrap agreements. If a consumer does not give consent he/she cannot use or purchase the product.
3. Browser wrap agreement: when an agreement is binding on two or more people, it is known as browsing rap agreement. It is applicable while using the website.

Chapter: 2

Breach of contract, Frustration of Contract, void and voidable agreements.

#Breach of Contract

Breach of contract can be defined as a situation when one or more of the parties of the contract do this on the terms and conditions of a contract by nonperformance or interference with the other party's performance. Breach of contract occurs when any of the three conditions take place

- * Failed to deliver in the appropriate time frame
- * Does not meet the terms of the agreement
- * Fails to perform them

It is considered as civil wrong and one who breaches the contract may face legal action. To claim a breach of contract a proof of the violation is imperative.

Types of breach of contract

1. Minor breach: When a party under the obligation of contract fails to deliver a part of the contract rather than the whole contract then it is referred to as a minor breach. The other term used for minor breach is an impartial breach.
2. Material breach: When a breach is so substantial it destroys the value of the whole contract. The basic purpose of the contract fails completely due to material breach. For this the party can sue others in order to claim damages from the breaching party.
3. Anticipatory breach: it is also referred to as anticipatory reputation. It may take place either by the promise sir during an act which makes the performance of his promises impossible or by the promise sir in some other way showing his intention not to perform it.
4. Actual breach: it refers to a breach that has already occurred. The breaching party has either refused to fulfil their obligations by the due date or they have performed their duties in complete or improperly. Actual breach may take place either at the time of the performance is due or when actually performing the contract.

Provisions related to breach of contract:

The chapter 6 of the Indian contract act 1872 provides for the consequences of breach of contract.

According to section 73 of the act when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the party is new, when they made the contract, to be likely to result from the breach of it.

According to section 74 when a contract has been broken, if the sum named in the contract as the amount to be paid in case of such breach or if the consent contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case maybe the penalty stipulated for.

According to section 75 a person who has rightfully resigned a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Remedies for breach:

When a contract is broken the injured party has several courses of action open to him. The appropriate remedy in any case will depend upon the subject matter of the contract and the nature of the breach.

Remedies against breach of contract

When a contract is broken, the injured party has several courses of action open to him which are as follows:

- * The injured party May rescind the contract and refuse for the performance of the contract.
- * The injured party may sue for damages.
- * The injured party may sue for specific performance.

As per section 65 of the act when a party treats the contract as rescinded, he makes himself liable to restore any benefits he has received under the contract to the party from whom such benefits were received.

Damages for breach of contract

As per section 73 of the act when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him.

Specific performance

When a party fails to perform the contract the court may at its discretion, order the defendant to carry out his undertaking according to the terms of the contract. A decree for specific performance may be granted in addition to or instead of damages.

Injunction

An injunction is an order of the Court restraining a person from doing a particular act. It restrains continuance of a wrongful commission.

Frustration of Contract

According to section 56 when the performance of the contract becomes impossible, the purpose which the parties have in mind is frustrated. If the performance becomes impossible, because of a supervening event, the promisor is excused from the performance of the contract. This is known as the doctrine of frustration.

Alluri Narayana Murthy Raju v. District Collector, Visakhapatnam

The petitioners under a contract were granted leasehold rights for lifting the sand in a river. The villagers prevented them from doing so on the grounds that it would lead to depletion of the groundwater. The villagers were undeterred even after the registration of criminal cases against them. Since the performance of the contract was beyond the control of the contracting parties, therefore the doctrine of frustration was made applicable.

Doctrine of frustration is applicable where:

1. Frustration due to death or incapacity of a party
2. Frustration due to change of circumstances

1. Frustration due to death or incapacity of a party:

When the nature of contract requires personal performance of the contract by a particular person, the contract is deemed to be conditional upon the continued life or good health of the person. Ex. A promise to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced.

2. Frustration due to change of circumstances:

If because of the change in circumstances the contract cannot be performed, it is frustration of contract due to change of circumstances.

Markapur Municipality V. Dodda Ramireddi (Pig dung case)

In this case, a municipal authority auctioned the right to collect pig dung in the municipal area. The defendant won the bid and paid some advance but did not pay balance.

Municipal authority filed suit to recover balance of Rs. 5,504, the defendant contended that the pig dung was collected by the pig owners and nothing was left for the defendants. It was found that the pig owners had the right to collect the dung, and this was not the property of the municipality. Since the dung did not belong to the municipality, they had no right to auction. The contract was frustrated.

Sushila Devi's case

A agreed to give her lands to B on lease for a period of 3 years. The lands were situated in Gujranwala. On the partition of the country, Tehsil Gujranwala went to Pakistan and both A and B migrated to India. B could not take possession of land. B had deposited Rs. 34,000 with an advance of rent. B sued A on the grounds that the agreement has been frustrated, to recover back the advanced rent plus Rs. 2,000 as damages. The plaintiff's contention was upheld.

No frustration of executed contracts. Frustration of contracts (sec. 56) is applicable in case of executory contracts only and does not apply to execute contracts.

Dhruv Dev v. Harmohinder Singh

A obtained from B the lease of some land for Kharif season 1947 and Rabi season 1948. After taking the possession of land from B, A carried on agricultural operation for Kharif cultivation and partly enjoyed benefits therefrom. In August 1947, due to the partition, the said lands went to Pakistan and A migrated to India.

A filed suit to recover the rent paid by him on the plea that the contract had been frustrated. It was held that he had already enjoyed the benefit of the agreement.

No frustration by mere likely delay in performance. The doctrine of frustration does not apply where there is merely a likely delay in performance of the contract.

Satyabrata Ghose v. Mugneeram

In this case the defendant company was the owner of a land on where they intended to build residential plots. They got advances from the parties at the time of agreement and the rest of the money was to be paid on possession.

The plaintiff agreed to purchase a plot and gave Rs. 101 as advance. Before the defendant could make the provisions of plotting, the said land was requisitioned by the government during the Second World War for military purposes. The defendant wanted to cancel the contract on the ground that the contract has been frustrated. It was held that the requisition is not permanent but temp.

Restoring benefit received under an agreement discovered to be frustrated:

It is just possible that before the contract becomes void, one of the parties may have already gained some advantage under the contract. As per the provisions the benefit so taken is to be restored.

If the performance is impossible, the contract is void. There are 2 kinds of impossibilities of performance:

1. Initial Impossibility:

Impossibility here means physical impossibility as well as legal impossibility. If there is no possibility of the performance of the contract because it would be unlawful to do that, the agreement is void. Such cases also fall under section 23 which declares that every agreement is void of which object or consideration is unlawful. Example A, a Hindu, contracts to marry B, being already married to C.

When the impossibility or unlawfulness of the contract is within the knowledge of the promisor only, but the promisee does not know about the same, in such case the promisor must compensate the promisee for the loss sustained by the promisee resulting from the nonperformance of the contract. Example if a married man knowing that he cannot marry again promises to do so, he is bound to compensate the other party for the breach of promise.

2. Subsequent Impossibility:

The performance of the contract may be possible when the contract is entered into but because of some event, the performance may subsequently become impossible or unlawful. A and B contract to marry each other. Before the time is fixed for marriage, A goes mad. The contract becomes void.

Punj Sons Pvt. Ltd v. Union of India

Punj Sons Pvt. Ltd (Promisor) entered into a contract with the Union of India for the supply of 8,420 milk containers of 20 liters each, duly coated with "hot dip coating". The parties will know that such coating has to be made with tin ingots, which was a canalized time, not available in the market without a release order from the Director General of Supplies and Disposals. In spite of reasonable efforts on the part of the promisors to obtain the release order, the same was not done.

It was held that the performance of the contract became impossible due to the non-availability of the tin ingots and the contract had become void due to impossibility of the performance of contract and hence the promisors could not be made liable to pay damages for the breach of contract.

Void agreements

Void agreements are defined under Sec 2(g) as an agreement not enforceable by law. The agreements which have been specifically or expressly declared as void by the Indian Contract act are:

Agreements of which the consideration or object is unlawful (sec. 23 & 24)

Agreements without consideration (sec. 25)

Agreements in restraint of marriage (sec. 26)

Agreements in restraint of trade (sec. 27)

Agreements in restraint of legal proceedings (sec. 28)

Agreements which are uncertain and ambiguous (sec. 29) 7

Agreements by way of wager/ wagering agreements (sec. 30)

Agreements to do impossible acts/frustration of contract (sec. 56)

Agreements of which the consideration or object is unlawful (Sec. 23 & 24):

The object and consideration of a contract are unlawful, when:

It is forbidden by law

It defeats the provision of any law

It is for fraudulent purpose

It is injurious to the person or property

It is immoral

It is opposed to public policy

Agreements without consideration (sec. 25):

Agreement without consideration is void, unless it is in writing and registered, or it is a promise to compensate for something done, or is a promise to pay a debt barred by limitation.

Agreements in restraint of marriage (sec. 26):

Every agreement in restraint of the marriage of any person, other than a minor is void. Where a party is restrained from marrying at all, or for marrying for a fixed period or from marrying a particular person, or class of persons, the agreement is void.

If the agreement is not in the form of a promise to marry a particular lady, but it stipulates that the promisor will not marry any other lady than the promise, the agreement is void.

The agreement can be for marrying a particular person but cannot be for not marrying a particular person.

Example -

- (1) Where A promise B, that he would not marry any other person other than B, and further promise to pay Rs. 10,000 if A married any other person. The agreement is void as it was not in the form of a promise to marry a particular lady but a restrictive arrangement containing a promise not to marry anybody else.
- (2) A promise B (employer) that A will not marry for 3 years. It's void. 3) An agreement containing a condition in a waqf that a widow would lose her right of maintenance on re-marriage is not an agreement in restraint of marriage. 4) Agreement between 2 windows that anyone of them would lose her right to the deceased husband's estate on re-marriage, is not a restraint on the right of remarriage as the other person can remarry but she has to leave the claim of property.

Agreements in restraint of trade (sec. 27):

Every agreement, by which one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Restraining a person from carrying on a trade generally aims at avoiding competition and has a monopolistic tendency and this is both against an individual's interest as well as the interest of the society. Restraint whether total restraint or partial

restraint, it is invalid, unless the restraint is reasonable in reference to the interest of parties concerned and also to the Public interests.

Like A shall not carry on a trade anywhere in India during his lifetime or it imposes only a partial restraint requiring a not to trade within a certain area or for a certain duration, the agreement is void.

Example -

(a) A and B carried on the same kind of business agreed to pay some amount to A, if A closed his business in that locality. A closed the business and then brought an action against B for the recovery of the promised amount.

It was held that though the restraint is partial example restraint from doing business in a certain locality, it was void as even partial restraint is invalid.

(b) An agreement not to carry on some business for 3 years is void.

Agreements in restraint of legal proceedings (sec. 28):

An agreement absolutely restraining a party from enforcing his rights through a court of law, or an agreement which places a limit as to the time within which a right can be enforced, is void.

An agreement to oust the jurisdiction of the courts is opposed to public policy and thus void. The agreement is void if the restraint is absolute one, partial restraint is valid. Example - if two competent courts can possibly deal with the subject matter of litigation, it is open to the parties to the contract to agree that a dispute should be adjudicated upon one of the courts only, like Delhi court or Mumbai court.

Another kind of agreement rendered void is where an attempt is made by the parties to restrict the time within which an action may be brought so as to make it shorter than that prescribed by the law of Limitation.

Agreements which are uncertain and ambiguous (sec. 29):

Agreements, the meaning of which is not certain or capable of being made certain, are void.

Example -

(a) A agrees to sell to B, "a hundred tons of oil". There is nothing whatsoever to show what kind of oil was intended. The agreement is void for certainty. But if A who is a dealer in coconut oil only, agrees to sell 100 tons of oil to B, then there is no uncertainty and the contract is valid.

(b) A horse was bought for a certain price coupled with a promise to give ₹5 more if the horse proved lucky. The agreement was held to be void for certainty.

Agreements by way of wager/Wagering agreements (sec. 30):

An agreement by way of wager is void, but it's not immoral. The word 'wager' means a 'bet'. One should win and another lose.

In a wagering agreement, two parties have opposite views regarding an uncertain event, and they stipulate that upon the determination of the event in a certain way the parties shall win or lose from each other a certain sum of money, and the parties have no other interest in the event except winning or losing a bet.

Example – A and B may enter into a contract that if it rains today, B will pay A Rs. 1,000 and if it does not rain today, A will pay B Rs. 1,000. It is a wagering agreement.

The essential characteristics of a wagering agreement are:

- * Uncertain event
- * Mutual chances of gain or loss. Only one party should win or lose at a time.
- * Neither party has control over the event. A wager is a game of chance.
- * No other interest in the event. Neither party has any interest in the contract other than the sum or stake he will win or lose nor there is no real consideration for the making of such contract.

Carlill v. Carbolic Smoke Ball Co.

100 pounds were promised to pay if a person contracted influenza after using the smoke ball manufactured by it for a certain period and as prescribed. Person took and contracted influenza. It was not held to be a wagering agreement because the plaintiff was not to lose anything if she did not contract influenza and the defendant company was not to gain anything from the plaintiff if the ball had the desired effect.

Babasaheb v. Rajaram

Two wrestlers A and B entered into an agreement to wrestle on a particular day. They agreed that if a party failed to appear on that day, he would forfeit Rs. 500 to the other party. They further agreed that the winner will receive the sum of Rs. 1125 out of the gate money. B failed to appear and A sued B to recover the amount. B contended that it was a wagering agreement and hence A cannot recover