

This book contains basic knowledge related to rules and regulation decided by the governing body to implemented laws in the system. The book may be divided into four chapters and each chapter contains basic outline framework related to legal functions. The book gives a legal knowledge about various laws to reader and contains several aspects of various laws framed for smooth functioning the legal framework.



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Business Regulatory Laws



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*This Book Is Dedicated To My Lovely
Son Darp And My Lovely Hubby
Naman*

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UNIT : 1 : INTRODUCTION TO LAW & LEGAL SYSTEM

1. Introduction to law:

Law is essential to any society in that it provides the rules by which people and businesses interact. Law affects almost every function and area of business. The authors of one business law text go so far as to say that “the difference between winning and losing in the business world often depends upon the ability to make good choices from a legal perspective.” This is because almost every business decision has legal repercussions, including deciding whether to incorporate a business, obtaining financing, protecting proprietary knowledge used to develop products/services, entering into contracts to purchase raw materials, ensuring that products meet safety standards, disposing of plant wastes, promoting and pricing products/services, entering into contracts to sell products/services, and providing product warranties and after sales service. At all stages of business, running afoul of the law can hurt a business, while playing within the boundaries of the law can help the business to succeed. For this reason, accountants, who play a key role in almost every aspect of operations, must have a solid working knowledge of the law.

The word ‘Law’ has been derived from the Teutonic word ‘Lag, which means ‘definite’. On this basis Law can be defined as a definite rule of conduct and human relations. It also means a uniform rule of conduct which is applicable equally to all the people of the State. Law prescribes and regulates general conditions of human activity in the state.

2. Meaning of Law:

The mandatory rules of conduct were intended to enforce justice and prescribe duty or obligation, and derived to a large extent from personalized or formal promulgation by a ruler or legislature. These laws entail the power and authority of the promulgator and the sanctions associated with non-compliance or refusal to obey. The law derives its legitimacy, in the last resort, from universally accepted principles, such as the essential rectitude of the rules, or the sovereign power of a parliament to promulgate them.

The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. The law is a system of rules that a society or government develops to face crime, commercial agreements and social relations. You can also use the law to refer to the people who work in this system. In other words, the principles and regulations established in a community

by some authority and applicable to its people, either in the form of legislation or custom and policies recognized and applied by judicial decision.

3. Definitions of Law:

“Law is the command of the sovereign.” “It is the command of the superior to an inferior and force is the sanction behind Law.” —Austin

“A Law is a general rule of external behavior enforced by a sovereign political authority.”
—Holland

4. Objectives & needs law

Object of Law:

- The object of law is the creation and protection of legal rights to maintain the order in the society.
- To keep the peace in the country.
- Shaping up the moral standards.
- To promote social justice and maintain status quo.

1 Establishing Standards: The law is a guidepost for minimally acceptable behavior in society. For instance, are crimes because society has determined that it will not tolerate certain behaviors that injure or damage persons or their property.

2 Maintaining Order: This is an offshoot of establishing standards. Some appearance of order is necessary in a civil society and is therefore reflected in the law. The law when enforces provides order consistent with society’s guidelines.

3 Resolving Disputes: Disputes are unavoidable in a society made of people with different needs, wants, values, and views. The law gives formal means for resolving disputes through court system.

4 Protecting Liberties & Rights: The purpose and function of the law is to protect these various liberties and rights from violations.

Need for Knowledge of Law:

1) In common parlance law means a set of rules and regulations which is accepted by the society and followed by the society over the time. In simple words, it is the omnipresent rules of the society. It is interconnected for the proper functioning of the society, and without such rules and regulations the society cannot survive.

Knowledge of laws or legal awareness are essential for every active individual in society. The law is something that cannot be ignored and is an integral part of a society. Therefore, the reasons for needing knowledge of the laws are,

Act as a guide - the law acts as a guide for society. A guide tells us what to do and what not to do, and the reason for its importance is that if the society or the group of people could do what they wanted, it would end in chaos and conflicts.

Creates a sense of responsibility: another benefit of having a law is that with laws it is easier to make people responsible for their actions, thoughts and behavior. It would create certain obligations in people's minds, thus ensuring that they act responsibly and reasonably.

Create a binding duty - With the help of the laws it is possible to enforce or inculcate the importance of duty towards each individual, which in turn creates an obligation for people not to act in a way that is not acceptable within the country.

Information: another requirement for knowledge of the laws is that it provides information both to society and to people. Although it is not so important for an individual to know everything about the laws, but the basic things can help him live without worries.

Acts as a language - knowledge of the law also acts as a language within the country. Although we are all separated through spoken language and culture, laws are common in most countries, especially laws related to fundamental rights, therefore, can help a person trapped in a difficult situation to find the way.

Reduce crimes in society: if society, the business house or people know the effect and the results of the crime they commit, they can think twice before committing it. Patients will also be aware of the crime that has affected them and they will know the measures and how to overcome them.

Guarantees a secure environment; Last but not least, knowledge of the laws guarantees a safe and healthy environment for the citizens of the country. If the set of rules and regulations, that is, the laws are followed strictly and correctly, then the country will

become one of the safest places for all people, it would create a certain sense of security in the minds of people and that It can only be achieved if it is legal, conscience is present

5. Various sources of Law.

Sources of Law:

1. English mercantile law

English law is the most important source of Indian business law. Many rules of English law have been incorporated into Indian law through statutes and judicial decisions. The sources of English law are:

a) Common Law

This law is known as a judge made law. It is based on customs and practices handed down from generation to generation. It is the oldest unwritten law. The English courts developed these for centuries.

b) Equity

Equity is also an unwritten law. It is based on concepts of justice developed by judges whose decisions become precedents. It grew as a system of law complementary to the common law and covered the deficiencies of the common law. Its rules were applied in cases where the rules of the common law were considered harsh and oppressive.

c) Statute Law

The law of the Statute is one, which is established in the laws of Parliament. Therefore, it acts as the most superior and powerful source of law. Override any rule of common law or Equity.

d) Jurisprudence

This is also an important source of English mercantile law. It is based on the decisions of the judges. It is based on the principle that what has been decided in the previous case is binding in a similar future case as well, unless there is a change in the circumstances of the case.

2. Statute Law

A bill passed by parliament and signed by the President becomes a "Statute" or a Law. Most Indian laws are incorporated into the various laws passed by central and state

legislators. The Law of contracts with India, 1872, the Law of sale of goods, 1930, the Law of companies, 1956, are some of the examples of the law.

3. Judicial decisions

Court decisions are also called case laws. They refer to them as precedents and are binding for all courts with jurisdiction lower than that of the court that issued the judgment. Courts in deciding cases involving similar points in the law also follow them.

4. Customs and use

Customs and use play an important role in the regulation of commercial transactions. A well-recognized custom or use may even nullify statutory law. Most of the customs and commercial uses have already been codified and have been granted legal sanctions in India. Some of them have been ratified by the decisions of the competent courts.

6. Preamble

Meaning of Preamble:

The term 'Preamble' means the introduction to a statute. It is the introductory part of the constitution. You can also use a preamble to enter a particular section or a group of sections.

According to Chambers Twentieth Century Dictionary, a preamble means preface, introduction, especially that of an act of Parliament, giving its reasons and purpose

Black's Law Dictionary declares that the preamble means a clause at the beginning or an explanatory statute of the reasons for its promulgation and the objectives that are sought to achieve. Generally, a Preamble is a statement made by the legislature of the reasons for the approval of the statute and is useful in the interpretation of any ambiguity within the statute to which it is prefixed.

Significance of Preamble:

The Preamble can be divided into many important phrases. All these phrases are very important to understand the purpose of the Constitution.

Establish justice: The reasons why there was a revolution against England were still important for American citizens, so they wanted to make sure they would have justice according to the Constitution.

Ensure domestic tranquility: one of the main reasons why the Constitutional Convention was carried out was the Shays Rebellion. This was an uprising of farmers in Massachusetts against the state for having to pay war debts. Citizens were concerned about keeping the peace within the borders of the country.

Provide for common defense: There was still a change from being attacked by other countries. No individual state had the power to defend against attacks. Because of this, the Framers knew that it was important for states to defend the nation together.

Promote the general welfare: this phrase meant that the welfare of citizens would be served as best as possible by the federal government.

Secure the blessings of freedom for us and our posterity: The purpose of this phrase in the Preamble and the constitution as a whole was to help protect the hard-won rights of the country for freedom, unjust laws and the freedom of a tyrannical government .

Terms Used in Preamble/Nature of Indian State:

1. Sovereign: -

This word implies that India is neither a dependency nor a domain of any other nation, but an independent state. There is no authority over him, and he is free to carry out his own affairs (both internal and external). Being a sovereign state, India can acquire a foreign territory or cede a part of its territory in favor of a foreign state.

2. Socialist: -

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Governing Principles of State Policy.

Notably, the Indian brand of socialism is a "democratic socialism" and not a "communist socialism" (also known as "state socialism") that implies the nationalization of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, has faith in a "mixed economy" where the public and private sectors coexist side by side. "As the Supreme Court says," democratic socialism aims to end poverty, ignorance, the disease and the inequality of opportunities. Indian socialism is a mixture of Marxism and Gandhism, which leans strongly towards Gandhian socialism. "

3. Secular: -

The term "secular" was also added by the 42nd Constitutional Amendment of 1976. However, as the Supreme Court said in 1974, although the words "secular state" are not

mentioned in the Constitution, there can be no doubt that the creators of the Constitution they wanted to establish such a state and, consequently, articles 25 to 28 (which guarantee the fundamental rights to freedom of religion) have been included in the constitution.

The Indian Constitution incorporates the positive concept of secularism, that is, all religions in our country (regardless of their strength) have the same status and support of the state.

4. Democratic: -

A democratic policy, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, the possession of supreme power by the people.

The Constitution of India establishes a representative parliamentary democracy under which the executive is accountable to the legislature for all its policies and actions. The universal adult franchise, periodic elections, the rule of law, the independence of the judiciary and the absence of discrimination for certain reasons are the manifestations of the democratic character of Indian politics.

The term "democratic" is used in the Preamble in a broader sense that encompasses not only political democracy, but also social and economic democracy.

5. Republic: -

A democratic policy can be classified into two categories: monarchy and republic. In a monarchy, the head of state (usually king or queen) enjoys a hereditary position, that is, enters the position by succession, for example, Great Britain. In a republic, on the other hand, the head of state is always directly or indirectly elected for a fixed period, for example, EE. UU

Therefore, the term "republic" in our Preamble indicates that India has an elected head called president. It is chosen indirectly for a fixed period of five years.

6. Justice: -

The term "justice" in the Preamble encompasses three distinct social, economic and political forms, guaranteed by various provisions of Fundamental Rights and the Guiding Principles. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, color, race, religion, sex, etc. It means the absence of privileges that extend to any particular section of society, and the improvement in the conditions of backward classes (SC, ST and OBC) and women.

7. Freedom: -

The term "freedom" means the absence of restrictions on the activities of individuals and, at the same time, provides opportunities for the development of individual personalities.

The Preamble guarantees to all the citizens of India the freedom of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable before the courts, in case of violation.

Freedom as detailed in the Preamble is very essential for the successful functioning of the Indian democratic system. However, freedom does not mean 'license' to do what one wants, and it must be enjoyed within the limitations mentioned in the Constitution itself. In short, the freedom conceived by the Preamble or fundamental rights is not absolute but qualifies.

8. Equality: -

The term "equality" means the absence of special privileges for any section of society and the provision of adequate opportunities for all persons without any discrimination.

The Preamble guarantees all citizens of India equal status and opportunity. This provision covers three dimensions of equality: civic, political and economic.

9. Fraternity: -

Fraternity means a sense of brotherhood. The constitution promotes this cutting of fraternity by the system of unique citizenship. In addition, the fundamental duties (articles 51-A) say that it is the duty of every citizen of India to promote the harmony and spirit of brotherhood common among all the peoples of India that transcend religious, linguistic, regional or sectional diversities.

7. Fundamental rights and duties.

Introduction:

The inclusion of fundamental rights in the constitution of India is in accordance with the trend of modern democratic thought, with the idea of preserving what is an indispensable condition of a free society. The objective of having a declaration of fundamental rights is that certain elementary rights, such as the right to life, liberty, freedom of expression, freedom of religion, etc., should be considered inviolable under any condition and that the changing majority in The country's legislature should not be free to interfere with these fundamental rights.

Fundamental rights meet some basic and essential conditions of a good life for human progress. These are fundamental in the sense that, in the absence of these rights, citizens can not develop their personality and their own self. These rights are not the same as the ordinary rights of citizens. Fundamental rights are enshrined in the Constitution. These are constitutionally protected and guaranteed to citizens while ordinary rights are

protected by the ordinary law of the country. Fundamental rights are inviolable in normal situations.

Meaning of Fundamental Rights:

Need for Fundamental Rights:

- 1. Rule of law:** these rights protect citizens against the government, and they are necessary to have the rule of law and not a government, or a person. Given that the Constitution explicitly grants the people, the authority cannot transgress these rights. The government is fully responsible before the courts and is required to defend these rights completely.
- 2. First fruits of the struggle for freedom:** after living in subjugation for so long, people had forgotten what freedom means. These rights give people hope and the belief that they cannot stop their growth. They are free from the whims of the rulers. In that sense, they are the first fruits of the long struggle for freedom and provide a sense of satisfaction and fulfillment.
- 3. Quantification of freedom:** even citizens of the Gulf countries or communist countries are free. So, how is our freedom different from yours? The list of fundamental rights is a clear measure of how free we really are. As an example, every Indian citizen at liberty to practice a religion of his choice, but that is not the case in the Gulf countries. Our right to speak and express ourselves allows us to freely criticize the government, but this is not the case in China.

Fundamental Rights:

Fundamental rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply regardless of race, place of birth, religion, caste, creed or sex.

Fundamental rights can be called the heart of our Constitution. These are the basic rights that are universally recognized as fundamental for human existence and indispensable for human development. It guarantees civil liberties so that all Indians can lead their lives in peace and harmony as citizens of India. They include the individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion and the right to constitutional remedies for the protection of civil rights.

1. Right to equality

The right to equality is the first fundamental right that puts an end to untouchability. This right represents the principle of equality before the law, as well as social equality and supports the non-discrimination of people on any basis. This right also establishes that every Indian citizen is equal before the law and prohibits discrimination based solely on religion, race, caste, sex, place of birth or any other reason.

For Example: contains in its preamble the following statement: 'We hold these truths to be self-evident, that all men are created equal...' This statement suggests that, in the eyes of those who wrote the document, every citizen of the newly formed United States was to be treated the same as every other citizen around them. This means that, theoretically, they all should have had equal access to employment, equal opportunities to purchase and own land, equal treatment in society, and so on.

2. Right to freedom

The right to freedom includes articles on freedom of expression, expression and assembly, and is one of the most important fundamental rights. There are six frames under which freedom is made available to Indian citizens under this right. In addition to the three main rights of expression, expression and assembly, this fundamental right also provides freedom of association, profession, movement throughout the territory of our country and freedom to reside and settle in any part of India.

For Example: Mr. A can speak any language while talking to Mr. B.

A person can go to any state of India without taking prior permission of any one.

3. Right against exploitation

These rights help prevent the exploitation of the weakest section in different sectors by the state, organizations and individuals. Forced labor, work without work, trafficking in persons, child labor and other illegal and ethically unjust acts are prohibited by this fundamental right. The Law of the bonded labor system (abolition) of 1976 was enacted by the Indian parliament in support of this basic right.

For Example: As per labour law more than 8 hours of work is illegal. If the employer asks to work for more than 8 hours and the employee voluntarily works then the latter is eligible for overtime wages.

4. Right to freedom of religion

India is a secular country and the right to freedom of religion for all its citizens guarantees that all States treat all religions in a neutral manner. Every Indian citizen has religious freedom and can follow any religion of their choice. The right to freedom of religion also

promotes the right to preach, practice and propagate any religion of their choice and guarantees freedom of conscience to all Indian citizens.

For Example: Indian government never forces any citizen to follow any particular religion or he/she should not follow a particular religion.

5. Cultural and educational rights

Cultural and educational rights include the right to education and help preserve various minority assets and protect them from discrimination. This fundamental right safeguards minorities and prohibits discrimination against any citizen for admission to educational institutions based on religion, caste or language, subject to reservations in the state. This fundamental right also allows minorities to establish and administer educational institutions to preserve their heritage.

6. Right to constitutional remedies

The right to constitutional remedies allows Indian citizens to approach the Supreme Court of India to protect their fundamental rights. The SC has the right to protect the fundamental rights of citizens, even against private entities, and can also grant compensation to the affected people. The Supreme Court of India is seen as a designated protector of these rights by the Constitution.

Fundamental Duties:

Simply the responsibility to do a job is known as duty. Duty is the positive or negative work that a man or a woman has to do voluntarily or involuntarily. The fundamental duties are those duties that are very essential for each citizen for their own progress, for the progress of society and for the welfare of the nation.

The fundamental duties are intended to serve as a constant reminder to all citizens that, although the constitution conferred upon it certain fundamental rights, citizens must also observe certain basic rules of democratic behavior and democratic conducts

- 1. To abide by constitution:** The very first duty of every citizens of the country is to comply with the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- 2. To Cherish and follow the noble ideals:** Another fundament duty of every citizens of the nation is treasure and follows the noble ideals that inspired our national struggle for freedom.
- 3. To uphold and protect sovereignty:** The very next fundamental duty of the citizens is to defend and protect the sovereignty, unity and integrity of the country.

4. **To defend the country:** Defend the country and provide national service when requested is the fundamental duty of the citizens of the country.
5. **To promote harmony and the spirit of brotherhood:** Promote the harmony and spirit of common fraternity among all the peoples of India that transcend religious, linguistic and regional diversity or of caste; renounce derogatory practices against the dignity of women;
6. **To safeguard public property and to abjure violence:** Safeguard public property and abjure violence
7. **To strive towards excellence in all spheres of individual:** Strive for excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of commitment and achievement is another basic duty of the citizens of the country.
8. **To protect and improve the natural environment:** To protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
9. **Parent or guardian should provide opportunity for education to his children:** Whoever is a parent or guardian, they has to provide the education opportunities to their children or guardianship, as the case may be, between the ages of six and fourteen.

8. Hierarchy of Indian Court

Hierarchy of Courts in India- A Flowchart

The following flowchart will help readers understand the hierarchy of courts in India.



The judiciary is one of the three wings of government. Administer justice through the judicial system. But how can ordinary people get justice if they do not know where to present their case? That is why we have a hierarchy of courts to guide people to present their claim in the correct court. It is essential to present a case in the correct court. Only then will the case be processed further. The hierarchy of the court in India begins with the Supreme Court, followed by the Superior Courts, District Courts and other judicial bodies.

Supreme Court of India

In India, the first-order court is the Supreme Court. He is in New Delhi and is part of the President of the Supreme Court and thirty other judges. It has very broad powers in the form of original, appellate and advisory jurisdiction. Citizens can present their case directly before the Supreme Court for violation of their fundamental rights. This is part of the original jurisdiction of the Supreme Courts.

As part of the appellate jurisdiction, the Supreme Court receives appeals from the Superior Courts and other courts and tribunals. The entertaining cases are both civil and criminal.

The President of India can also refer certain problems to the Supreme Court for advice. This forms the jurisdiction of advice. In addition, the law declared by the Supreme Court is binding on all courts located in India.

High courts

Followed by the Supreme Court, each Indian State has its own High Court. The Superior Courts are usually located in the capital of the State. But some states such as West Bengal, Karnataka, Tamil Nadu, Uttar Pradesh and others have higher court benches.

If a State has a bench in the High Court, it means that there is a branch of that High Court in one or more places. For example, in the state of Tamil Nadu, the High Court of Madras is located in Chennai and a bank of the High Court of Madras is located in Madurai. It is not called Supreme Court of Madurai, but Supreme Court of Madras - Banco Madurai.

In the same way, all the territories of the Union have only banks of the Superior Court of the nearby state. For example, the High Court of Bombay has a bank in Panaji for the territory of the Union of Goa. The only exception is the National Capital Territory of Delhi. Delhi has its own High Court.

The High Courts are the main civil courts with original jurisdiction in the State and the Territory of the respective Union. However, a High Court exercises this power only when the subordinate courts do not have the authority to judge the cases due to lack of pecuniary jurisdiction (based on the value of the claim) and territorial jurisdiction.

The High Courts of Calcutta, Bombay and Madras have original civil jurisdiction due to their history as Peoples of the Presidency before Independence. The Superior Courts have jurisdiction of appeal with respect to civil and criminal cases of the Subordinate Courts.

A common mistake about the hierarchy of courts is the Court. The courts are not courts. They are administrative in nature. The courts are parallel to the judicial system, but are not part of it. They do not form above or below the high cuts in the hierarchical **structure.**

District courts

District courts administer justice at the district level. These courts are under the administrative and judicial control of the Superior Court of the State to which the district in question belongs. Each District Court is chaired by a District Judge. There are many subordinate courts within the complex of the district court. This structure varies for metropolitan cities and other cities. In addition, there are separate Labor Courts and Family Courts in each district. There are special courts for specific purposes as well. For example, special courts under the Law on Essential Substances and Narcotic Drugs and Psychotropic Substances (Law EC & NDPS).

Village courts

They are also called Lok Adalats or Nyaya Panchayats. Its objective is to resolve small disputes informally in rural areas.

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UNIT: 2: CONTRACT LAW-I

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UNIT : 2 : CONTRACT LAW-I

1. INTRODUCTION:

The Indian contract act, 1872 is an act which specifies and deals with the principles of the Law of Contract. This act was enacted **on 25th April, 1872 and subsequently came into force on the first day of September, 1872.**

The Indian Contract Act consists of the following two parts:

- (a) General Principles of the Law of Contract.
- (b) Special kinds of contracts.

The general principals of the Law of Contract are contained in Sections 1 to 75 of the Indian Contract Act. These principles apply to all kinds of contracts irrespective of their nature. Special contracts are contained in Sections 124 to 238 of the Indian Contract Act.

2. MEANING:

A contract is an agreement made between two (or) more parties which the law will enforce.

3. DEFINITION

According to Section 2(h) of the Indian contract act, 1872.

- ✚ **“An agreement enforceable by law is a contract.”**
- ✚ Promise = Proposal + Acceptance
- ✚ Agreement = Promise + Lawful Consideration
- ✚ Contract= Agreement+ all related legal binding

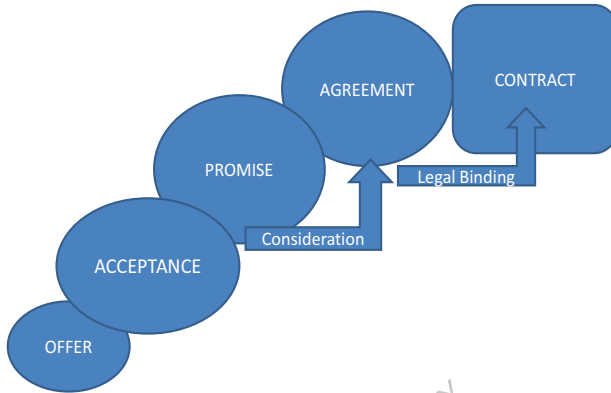
According to SALMOND, a contract is **“An agreement creating and defining obligations between the parties”**

According to Pollock defines it is **“every agreement and promises enforceable at law is a contract.”**

According to Sir William Samson, **“A legally binding agreement between two or more person by which rights are acquired by one or more to act or forbearance on the part of others.”**

According to American Law,” **A contract is a promise or set of promises for the breach of which the law gives remedy or the performance of which the law in some way recognize as a duty.”**

MAKING OF A CONTRACT



- 1. Offer/Proposal:** According to section 2(A), “when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining assent of that other person either to such act or absent. He is said to make a proposal.”
- 2. Acceptance:** According to section 2(B), “When the person to whom the proposal is made, signifies his assent to the proposal is said to be accepting.”
- 3. Promise:** According to section 2(B), “A proposal when accepted becomes a promise in a simple words an offer is accepted it becomes promise.”
- 4. Consideration:** According to section 2(D), “When at the desire of the promisor , the promisee or any other person has done or abstained from doing something, such act or promise is called consideration.”
- 5. Promisor or Promisee:** According to section 2(C), “When the proposal is accepted, the person making proposal is called as promisor and person accepting the proposal is called promisee.”
- 6. Agreement:** According to section 2(E), “Every promise and set of promises forming the consideration for each other. In short,
Agreement = Offer + Acceptance
- 7. Contract:** According to section 2(H), “An agreement enforceable by law is contract.”

4. Object of the law of contract.



1. **Legal bind:**

One of the primary purpose or objective of law contract is to bind people by the law when they get into any transactions. It determines the circumstances in which promises made by the parties to a contract shall be legally binding on them.

2. **Provides Legal Remedies:**

The law of contract provides legal remedies as and when needed by the parties to get into contracts. Every commercial transaction by its very nature is legal contract and is legally binding onto the parties to it. In case of any breach or violation of the promises made by either of the parties the law can intervene and provide legal solution to the parties if sought so by any of the parties to the contract through the court.

3. **Universal application:**

The law of contract is one of the most important branches of business law and it affects all of us in one way or other through it is of particular importance to people engaged in trade, commerce, and industry. When any person gets into any transaction with another person they are by default involving this branch of law in it. When one buys a packet of biscuits from a provision store or when a person boards a bus or when one buys or sells property. This branch of law is involved.

4. **Difiniteness:**

The law of contract does not define how a contract should be done but it lists down a few dos and don'ts about every transaction which brings about a Difiniteness in transaction whether related to business or otherwise.

5. Social and economic justice:

In our society law serves as a medium of change and as a harbinger of social justice. A great part of law is designed principally to bring about all and the citizens individually and collectively. The law of contract tries to bring about uniformity in the transaction and the dealings of the people within the society.

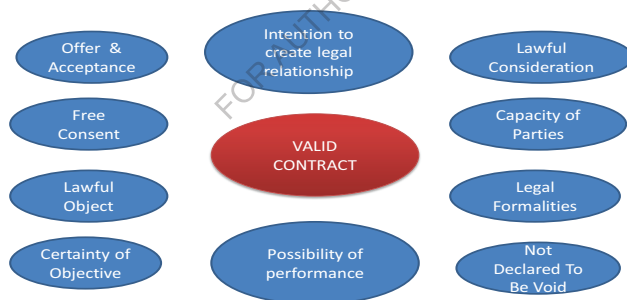
5. Nature and the object of contract

Essential elements of a valid contract:

According to section 10, “All agreements 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 not here by expressly declared to be void”

In order to become a contract an agreement must have the following essential elements, they are follows:

ESSENTIALS OF A VALID CONTRACT



1) Offer and acceptance:

- To constitute a contract there must be an offer and an acceptance of that offer.
- The offer and acceptance should relate to same thing in the same sense.
- There must be two (or) more persons to an agreement because one person cannot enter into an agreement with himself.

2) Intention to create legal relationship:

- The parties must have intention to create legal relationship among them.
- Generally, the agreements of social, domestic and political nature are not a contract.
- If there is no such intention to create a legal relationship among the parties, there is no contract between them.

3) Free and Genuine consent:

- The consent of the parties to the agreement must be free and genuine.
- Free consent is said to be absent, if the agreement is induced by a) coercion, b) undue influence, c) fraud, d) Mis-representation, e) mistake.

4) Lawful Object:

- The object of the agreement must be lawful. In other words, it means the object must not be illegal, (b) immoral, (c) opposed to public policy.
- If an agreement suffers from any legal flaw, it would not be enforceable by law.

5) Lawful Consideration:

- An agreement to be enforceable by law must be supported by consideration.
- Consideration means “an advantage or benefit” moving from one party to other. In other words “something in return”.
- The agreement is enforceable only when both the parties give something and get something in return.
- The consideration must be real and lawful.

6) Capacity of parties: (Competency)

- The parties to a contract should be capable of entering into a valid contract.
- Every person is competent to contract if
 - (a). He is the age of majority.
 - (b). He is of sound mind and
 - (c). He is not dis-qualified from contracting by any law.
- The flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, etc.,

7) Agreement not to be declared void:

- The agreements must not have been expressly declared to be void u/s 24 to 30 of the act.

Example: Agreements in restraint of trade, marriages, legal proceedings, etc.,

8) Certainty:

- The meaning of the agreement must be certain and not be vague (or) indefinite.
- If it is vague (or) indefinite it is not possible to ascertain its meaning.

Example:

‘A’ agrees to sell to ‘B’ a hundred tones of oil. There is nothing whatever to show what kind of a oil intended. The agreement is void for uncertainty.

9) Possibility of performance:

- The terms of an agreement should be capable of performance.
- The agreement to do an act impossible in itself is void and cannot be enforceable.

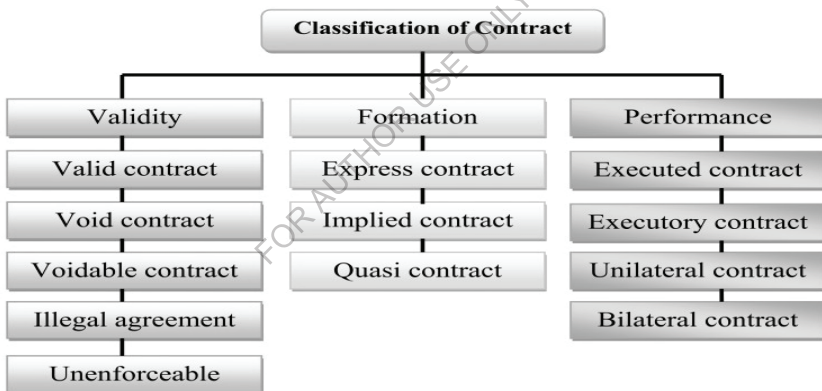
Example:

‘A’ agrees with ‘B’, to put life into B’s dead wife, the agreement is void it is impossible of performance.

10) Necessary legal formalities:

- According to Indian contract Act, oral (or) written are perfectly valid.
- There is no provision for contracting being written, registered and stamped.
- But if is required by law, that it should comply with legal formalities and then it should be complied with all legal (or) necessary formalities for its enforceability.

6. Classification of Contract/Types of contract.



1. On the basis of the Mode of Formation

- **Express Contracts** : A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.
- **Implied Contract**: An implied contract is a contract which is made otherwise than by the words spoken or written. It came into existence on account of an act or conduct of the parties.
- **Quasi contract**: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi

contracts as they create same obligations as in the case of regular contract. Quasi contracts are based on principles of equity, justice and good conscience.

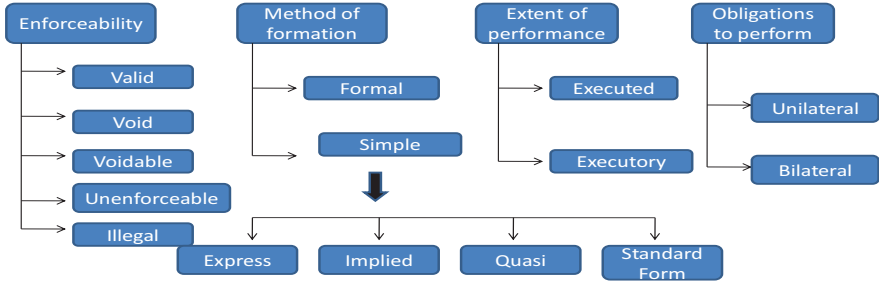
2. On the basis of performance

- **Executed contract:** The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.
- **Executory contract:** In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.
- **Partly executed and partly executory:** In a partly executed and partly executory contract, one party has already performed his promise and the other party has yet to execute his promise.
- **Unilateral contract:** Unilateral contract is a one sided contract in which only one party has to perform his duty or obligation.
- **Bilateral contract:** A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

3. On the basis of Validity or Enforceability

- **Valid contract:** If the contract entered into by the parties and satisfies all the elements of a valid contract as per the act, it is said to be a valid contract.
- **Void contract:** A contract which ceases to be enforceable by law is known as a void contract. A void contract is not enforceable by the court. Generally, a valid contract ceases to be enforceable on the change in circumstances or on the change of provisions of an act.
- **Voidable contract:** When the contract is entered into without the free consent of party, it is considered as a voidable contract. The definition of the act states that a voidable contract is enforceable by law at the option of one or more parties but not at option of the other parties.
- **Illegal Agreement:** An illegal agreement is one which is forbidden by law. It cannot be enforced by any court. Not only that any associated or collateral transaction to an illegal agreement is also void. No action is allowed on an illegal agreement. No action can be taken for the recovery of the money paid under illegal agreement or for the breach of the illegal agreement.
- **Unenforceable contract:** A contract which satisfies all the requirements of the contract but has technical defects is called an unenforceable contract. A contract is said to have a technical defect when it does not fulfil the legal formalities required by some other act. When such legal formalities are complied with later on, the act becomes enforceable.

CLASSIFICATION OF CONTRACT



“All Illegal Contract are void but all void contract are not an illegal”

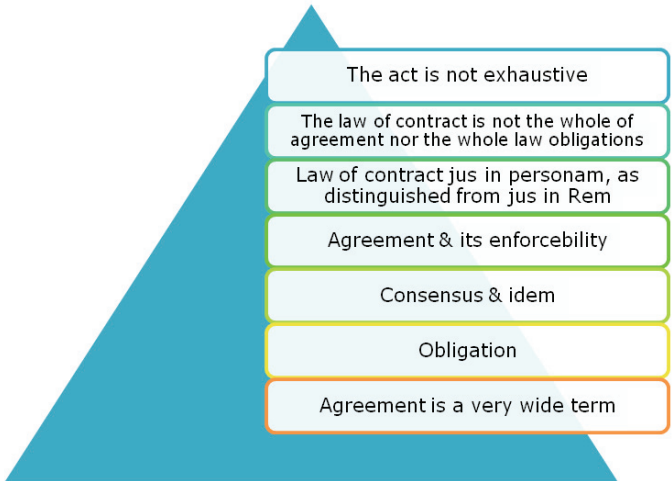
or

Consensus ad idem:

“The parties to a agreement must have agreed about the subject matter of the agreement in the same sense and at the same time”

Ex: A, Who owns two horses Rajhans and Hansraj, is selling horse Rajhans to B. B thinks he is purchasing horse Hansraj

7. Features of the Law of Contracts.



(1) The act is not exhaustive (Not complete):

The Indian contract act does not provide to be complete and exhaustive code. It deals with the general principles of contract and with some special contracts only. The law of contract differs from other branches of law in an important respect. The law contract does not define precisely to the parties as to, how a contract is to be done. It is rather demarcates certain dos and don'ts or which can be defined as limiting factors, within which the parties to a contract are supposed to create a contract. As long as the parties to a contract do not infringe these set of prohibitions, they are free to create any contract and terms of contract as they feel free. This means that the parties to the contract create the laws for themselves. They can make what rules they like in respect of the subject matter of the agreement, and the law will give effect to their decisions.

(2) The law of contract is not the whole of agreement nor the whole law obligations:

There are several agreements which do not give rise to legal obligations. They are, therefore, not contracts. Similarly, there are certain obligations which do not necessarily spring from an agreement. For example, civil wrong, quasi-contracts judgements of courts etc. Salmond has rightly observed that the law contract is "not the whole law of agreement, or the whole law obligations. It is the law of those agreement which create obligations, and those obligations which have their sources in agreement. It excludes from its purview all those obligations which are not contractual in nature and agreements which are social in nature.

(3) Law of contract creates Jus in Personam As distinguished from in Rem:

Means a right against or in respect of a thing. Jus in Personam means a right against or in respect of a specific person. A Jus in rem is available against the world at large; Jus Personam is available only against a particular person.

(4) Agreement and its enforceability:

If we analyze the definitions of a contract, we find that a contract essentially consists of two elements (1) an agreement, and (2) its enforceability by law. An agreement is defined as "every promise and every set of promises, forming consideration for each other." "When the person to whom a proposal is made, signifies his assent there to, the proposal is said to be accepted, A proposal when accepted, becomes a promise. This, in other words, means, that an agreement is an accepted proposal. TO form an agreement , there must be proposal or offer by one party and its acceptance by the other.

(5) Consensus ad idem:

The essence of an agreement is the meeting of the minds of the parties in full and final agreement; there must, in fact, be Consensus ad idem. For there to be all agreement between two parties, there must be consensus ad idem. This means that the parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless there is consensus ad idem, there can be no contract.

(6) Obligation:

An agreement to become a contract must give rise to a legal obligation or duty. The term obligation is defined as a legal tie which imposes upon a definite person or persons. The necessity of doing or abstaining from doing a definite act or acts. It may relate to social or legal matters. An agreement which gives rise to a social obligations is not a contract. There must be a legal obligations in order to become a contract.

(7) Agreement is a very wide term:

An agreement may be a social agreement or legal agreement. If 'A' invites 'B' to a dinner and 'B' accepts the invitation, it is a social agreement. A social agreement does not give rise to contractual obligation and is not enforceable in a court of law. It is only those agreements which are enforceable in a court of law, which are contract.

To conclude:

Contract = Agreement + Enforceability by law

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UNIT : 3 : OFFER OR PROPOSAL

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UNIT : 3 : OFFER OR PROPOSAL

OFFER OR PROPOSAL

1. Proposal

Definition:

Acc to 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 that other to such act or abstinence he is said to make a proposal.

ESSENTIALS OF OFFERS:

- Capable of creating obligations
- Must be certain, definite and not vague
- Must be communicated to the offeree
- Must be made with a view to obtaining assent
- Should not contain a term the non-compliance of which would amount to acceptance.
- Statement of price is not an offer
- Lapse of an offer
- An invitation to offer is not an offer.

Legal rules (OR) Essential elements of a valid offer / proposal:-

1) Offer must be capable of creating legal relations: A social invitation, even if it is accepted does not create legal relationship because it is not so intended to create legal relationship. Therefore, an offer must be such as would result in a valid contract when it is accepted.

2) Offer must be certain, definite and not vague: If the terms of the offer are vague, indefinite, and uncertain, it does not amount to a lawful offer and its acceptance cannot create any contractual relationship.

3) Offer must be communicated: An offer is effective only when it is communicated to the person whom it is made unless an offer is communicated; there is no acceptance and no contract.

An acceptance of an offer, in ignorance of the offer can never be treated as acceptance and does not create any right on the acceptor.

4) Offer must be distinguished from an invitation to offer: A proposer/offer must be distinguished from an invitation to offer. In the case of invitation to offer, the person sending out the invitation does not make any offer, but only invites the party to make an offer. Such invitations for offers are not offers in the eyes of law and do not become agreement by the acceptance of such offers.

5) Offer may be expressed (or) implied: An offer may be made either by words (or) by conduct. An offer which is expressed by words (i.e., spoken or written) is called an **'express offer'** and offer which is inferred from the conduct of a person (or) the circumstances of the case is called an **'implied offer'**.

6) Offer must be made between the two parties: There must be two (or) more parties to create a valid offer because one person cannot make a proposal/offer to himself.

7) Offer may be specific (or) general: An offer is said to be specific when it is made to a definite person, such an offer is accepted only by the person to whom it is made. On the other hand general offer is one which is made to a public at large and may be accepted by anyone who fulfills the requisite conditions.

8) Offer must be made with a view to obtaining the assent: An offer to do (or) not to do something must be made with a view to obtaining the assent of the other party addressed and it should not be made merely with a view to disclosing the intention of making an offer.

9) Offer must not be statement of price: A mere statement of price is not treated as an offer to sell. Therefore, an offer must not be a statement of price.

10) Offer should not contain a term "the non-compliance" of which may be assumed to amount to acceptance. Thus a man cannot say that if acceptance is not communicated a certain time, the offer would be considered as accepted.

11) Offer may contain any number of conditions:

The offer is free to include any terms and conditions in his offer. The terms & condition should be communicated to the offeree before or at the time of making the offer. Any terms & conditions made after the formation of contract, shall not be binding to the offeree.

2. Offer

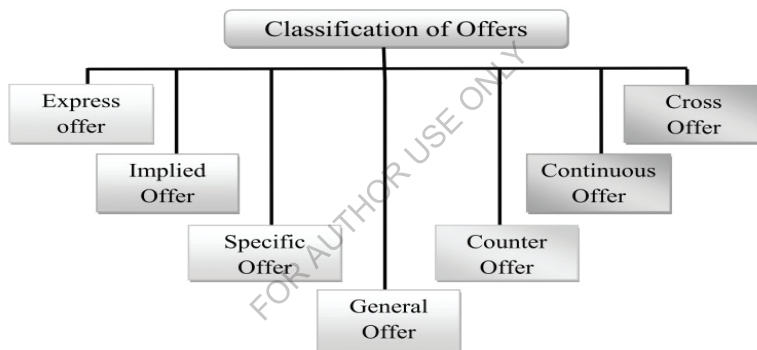
COMMUNICATION OF OFFER AND REVOCATION OF OFFER: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated to the offeree. The following are the rules regarding communication of offer and revocation of offer:

(a) Communication of offer:

- i) The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.
 - ii) An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.
 - iii) When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
- (b) Revocation of offer:** A proposal/offer may be revoked at anytime before the communication of its acceptance is complete as against the proposer, but not afterwards.

3. Types of offers.

Classification of Offers/Kinds of Offers



1. Express Offer

The offer made by using words spoken or written is known as an express offer.

2. Implied Offer

The offer which could be understood by a conduct of parties or circumstances of case is called the implied offer.

3. Specific Offer

The offer made to a specific person or a particular person or two or more than two specific persons. The specific offer is made to an ascertained person.

4. General Offer

It is not necessary that the offer should be made to a specific person. The offer can be made to the world at large. If the offer is made to the world at large, it is known as the general or public offer.

5. Cross Offer

When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. There is not binding contract in such a case, as one's offer cannot be construed as acceptance by the other.

6. Continuous/Standing/Open Offer

It is the offer which is open for a continuous period of time, it is also known as the open offer or the standing offer.

7. Counter Offer

When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer.

4 .Revocation of offer otherwise than by communication

According to section 2(a) of Indian contract act, 1872, defines offer as "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 has said to make a proposal".

Revocation (or) lapses of offer: Section 16, of the Indian contract act, 1872 deals with various modes of revocation of offer. According to it, an offer is revoked/lapses (or) comes to an end under following circumstances.

1) By communication of notice: An offeror may revoke his offer at any time before the acceptance

by giving a simple notice of revocation, which can be either oral (or) written.

2) By lapse of reasonable time: An offer will revoke if it is not accepted within the prescribed/reasonable time. If however, no time is prescribed it lapses by the expiry of a reasonable time.

3) By non-fulfillment of some conditions: When offeror has prescribed some conditions to be fulfilled and offeree/ acceptor fails to fulfill the conditions required to acceptance. In such a case offer will be revoked.

4) By death (or) insanity of the offeror: The death of the offeror does not automatically revoke the offer. When the death (or) insanity of the offeror provided the offeree comes to know before

its acceptance it will be revoked. Otherwise if he accepts an offer in ignorance of the death (or) insanity of the offeror, the acceptance is valid.

5) By a counter offer: “counter offer” means when the offeree/acceptor offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer. Therefore counter offer amounts to rejection of the original offer.

6) By change in law: An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal (or) incapable of performance.

7) An offer is not accepted according to the prescribed (or) usual mode: If the offer is not accepted according to the prescribed (or) usual mode, provides offeror gives notice to the offeree with in a reasonable time that the offer is not accepted according to the prescribed/usual mode. If the

offeror keeps quiet, he is deemed to have accepted the offer.

8) By death (or) insanity of the offeree/acceptor.

9) By destruction of the subject matter.

ACCEPTANCE

DEFINITION

According to section 2(b) of the Indian contract Act, 1872, defines an acceptance is “When a person to whom the proposal is made signifies his assent thereto, it is an acceptance of the proposal” (Express/implied). A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something e.g. A offers to sell his old bike to B for 10000. B accept the offer to purchase the bike for Rs 10000.

On the acceptance of the proposal, the proposer is called the promisor/offeror and the acceptor is called the promisee/offeree.

ESSENTIALS OF AN ACCEPTANCE

- Must be absolute and unconditional.
- Must be communicated to the offeror.
- Must be made within a reasonable time.
- Must be according to the mode prescribed.
- It cannot precede the offer
- Must be aware of the proposal at the time of the acceptance.
- Must be given before the offer lapses or revoked.
- Cannot be implied from silence.

5 . Acceptance

Legal rules as to acceptance: A valid acceptance must satisfy the following rules:-

1) Acceptance must be absolute and unqualified:

- An acceptance to be valid it must be absolute and unqualified and in accordance with the exact terms of the offer.
- An acceptance with a variation, slight, is no acceptance, and may amount to a mere counter offer (i.e., original may or may not accept.)

2) Acceptance must be communicated to the offeror:

- For a valid acceptance, acceptance must not only be made by the offeree but it must also be communicated by the offeree to the offeror.
- Communication of the acceptance must be expressed or implied.
- A mere mental acceptance is no acceptance.

3) Acceptance must be according to the mode prescribed (or) usual and reasonable manner:

- If the offeror prescribed a mode of acceptance, acceptance must be given according to the mode prescribed.
- If the offeror prescribed no mode of acceptance, acceptance must be given according to some usual and reasonable mode.
- If an offer is not accepted according to the prescribed (or) usual mode. The proposer may within a reasonable time give notice to the offeree that the acceptance is not according to the mode prescribed.
- If the offeror keeps quiet he is deemed to have accepted the acceptance.

4) Acceptance must be given within a reasonable time:

- If any time limit is specified, the acceptance must be given within that time.
- If no time limit is specified, the acceptance must be given within a reasonable time.

5) It cannot precede an offer:

- If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.
- In other words "acceptance subject to contract" is no acceptance.

6) Acceptance must be given by the parties (or) party to whom it is made:

- An offer can be accepted only by the person (or) persons to whom it is made.
- It cannot be accepted by another person without the consent of the offeror.

7) It cannot be implied from silence:

- Silence does not amount to acceptance.
- If the offeree does not respond to offer (or) keeps quiet, the offer will lapse after reasonable time.

· The offeror cannot compel the offeree to respond offer (or) to suggest that silence will be equivalent to acceptance.

8) Acceptance must be expressed (or) implied:

· An acceptance may be given either by words (or) by conduct.

· An acceptance which is expressed by words (i.e., spoken or written) is called ‘**expressed acceptance**’.

· An acceptance which is inferred by conduct of the person (or) by circumstances of the case is called an ‘**implied or tacit acceptance**’.

9) Acceptance may be given by performing some condition (or) by accepting some consideration.

10) Acceptance must be made before the offer lapses (or) before the offer is withdrawn.

1. Acceptance must be absolute and unqualified:

As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

2. The acceptance must be communicated

An acceptance must be communicated to the person who made the offer. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.

3. Acceptance must be in the prescribed mode

Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner.

4. Mere silence is not acceptance

The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

5. The proposer cannot prescribe the method of refusal

The proposer needs to be informed if the offer made by him is accepted, but he cannot insist on him being informed of its non-acceptance. It is the right of the offeree to accept the proposal or not to accept it.

6. An offer once rejected cannot be accepted until it is renewed.

A rejected offer is dead offer and needs to be revived before it can be considered for acceptance.

7. Acceptance may be express or implied

Express acceptance may be written or by word of mouth whereas implied acceptance could be reflected by the action or behavior of the person accepting the offer. The latter is also called tacit acceptance. According to Section 8 of the Act, tacit acceptance can be acceptance by performing conditions or acceptance by receiving consideration.

8. An action without the knowledge of the proposal is no acceptance

Without the knowledge of the proposal, even if the action conforms to the conditions of the proposal, it does not constitute an acceptance. Acceptance can be given only by the person to whom the proposal is made.

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UNIT :4 : CONSIDERATION

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CONSIDERATION

1. Introduction:

A valuable consideration in the sense of law may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given or suffered or undertaken by other”

Consideration is one of the essential and important part of valid contract. For the formulation of the valid contract consideration is compulsory. In the law it is used as “quid pro-quo” it means something in return. This something is become essential element for becoming contract. In a contract it is necessary to creation of mutual benefit of the parties.

For Example: if Mr. A promises to deliver a car to Mr. B for Rs. 2, 00,000. Here, For Mr. A 2,00,000 is consideration where as car is consideration for Mr.B.

2. Definition:

Section 2 (d) of the Indian Contract Act, 1872 defines consideration as ‘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 an act or abstinence or promise is called consideration for the promise’.

From the above definition it can be inferred that,

- (1) Consideration must be at the desire of the promisor.
- (2) Consideration may move from one person to any other person
- (3) Consideration may be past, present or future and
- (4) Consideration should be real though not adequate.

3. Contract without consideration is “nudum pactum” (nude contract) and is void

Consideration=“Quid Pro Quo”= something in return

• RULES GOVERNING CONSIDERATION

- may move from the promisee or any other person.
- must move at the desire of the promisor.
- may be act, abstinence, or forbearance or a return promise
 - Forbearance to sue
 - Compromise of disputed claim
 - Composition with creditors

- May past, present or future
- need not to be adequate
- Must be real not illusory
 - Physical impossibility
 - Legal Impossibility
 - Uncertain consideration
 - Illusionary consideration
- Must be something which the promisor is not already bound to do
- Must not be illegal , immoral, or opposed to public policy

4. "A contract without consideration is void"-

Legal Rules for valid consideration

1.Consideration must move at the desire of the promisor constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.

2. Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya's Vs Ramayya]

A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A's account. Held, the discharge of A's account was consideration for C's promise.

3. Consideration may be past, present, Future:

- Under English law, Past consideration is no consideration.
- Present consideration :- cash sale
- Future or executory consideration:- A Promises to B to deliver him 10bags of sugar at a future date . B promise to pay first on delivery.

4. Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.

- (i) Physically impossible (ii) Legally not permissible
- (iii) Uncertain (iv) illusory (fulfillment of a pre existingobligation)

5. Must be legal:-

Consideration must not be unlawful, immoral or opposed to public policy.

6. Consideration need not be adequate. A contract is not void merely because of the fact that the consideration is inadequate. The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.

Example:

A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not. [Section 25 Explanation II]

7. The performance of an act what one is legally bound to perform is not consideration for the contract means something other than the promisor's existing obligation –

VALID WITHOUT CONSIDERATION (Exceptions)/Exceptions to the rule “ No Consideration, No Contract” for Nudum Pactum

- Made out of natural love and affection.
- Promise to compensate for past voluntary services.
- Promise to pay time barred debt.
- Completed gift.
- Agency
- Charitable subscription

UNLAWFUL CONSIDERATION AND OBJECT:

1. Object or consideration is forbidden by law.
2. Object or consideration defeats the provisions of law
3. Objects and Consideration are fraudulent
4. Object and Consideration are injurious to any person
5. Object and Consideration are immoral
6. Objects and Consideration are against public policy

CAPACITY OF PARTIES

Definition : “Every person is competent to contract who is *of the age of majority* according to the law to which he is subject, and who is *of sound mind* and is *not disqualified from contracting by any law* to which he is subject”

Persons incompetent to contract

- Minor
- Person of unsound mind
- Person disqualified by any law to which they are subject

5. 'MINOR'

Definition

“A minor is one who has not completed his or her 18 years of age.”

According to section 3, of the Indian majority act, 1875 'A minor is a person who has not completed "18" years of age. However, minority will continue up to "21" years in case, if Hon.court has appointed guardian for a minor's property'.

Legal rules regarding an agreement by a minor:

A minor is incompetent to contract u/s 11 of the Indian contract act, 1872. Minor's incompetence is not a punishment but it is a protection given to minors by law. The law becomes the guardian of minors to protect their rights because their mental capacity is not well developed.

The following are the legal rules regarding minor's agreement are as follows:-

1. An agreement by minor is absolutely void: Where a minor is charged with obligations and the other contracting party seeks to enforce these obligations against minor, in such a case the agreement

is deemed as void-ab-initio.

2. He can be a promisee (or) a Beneficiary: Any agreement which is some benefit to the minor and under which he is required to bear no obligation is valid. Thus, a minor can be a beneficiary (or) a promisee

3. His agreement cannot be ratified by him an attaining the age of majority: An agreement by minor is void-ab-initio and therefore ratification by minor is not allowed. There is a fundamental principle in law (i.e., an agreement Void-ab-initio cannot be validated by subsequent action).

4. If he has received any benefit under a void agreement, he cannot asked to compensate (or) pay for it: Under section 64 and 65 of the act, provides a minor cannot be ordered to make compensation for a benefit obtained in a void agreement. Because section 64 and 65, which deals with restitution of benefit.

5. Minor can always plead minority: A minor's contract being void, any money advanced to a minor on a promissory note cannot be recovered even though a minor procures (or) take a loan by falsely representing that he is of full age it will not stop him from pleading his minority in a suit, to recover the amount and the suit will be dismissed. "The rule of estoppel cannot be applied against a minor".

6. There can be no specific performance of the agreement entered into by him as they are void ab-initio: A contract entered into, on behalf of a minor by his parent/guardian (or) the manager of his estate can be expressly enforced by (or) against the minor, provide the contract is

- With in the authority of the guardian and
- For the benefit of the minor.

7. He cannot enter into a contract of partnership: A minor being incompetent to contract but be a partner of a partnership firm, but u/s 30 of the Indian partnership Act, provides he can be admitted for the 'benefits of a partnership' with the consent of all the partners.

8. He can be an agent: A minor can be an agent. It is so because the act of the agent is the act of the principal and therefore, the principal is liable to the third parties for the act of a minor agent.

9. His parents/guardian is not liable for the contracts entered into by him: The parents/guardian is not liable for the contract entered into by minor. The parents can held liable for contracts for their minor children only when they are acting as agent.

10. A minor is liable for necessaries: Minor's estate is liable for necessaries supplied to minor during minority. Minor does not personally liable for the supply of necessaries. The necessaries such as food, clothing, and shelter etc..., necessaries also include 'goods' and 'services'.

PERSON OF UNSOUND MIND

6. Person of unsound mind.

According to section 12 of the Indian contract Act, 1872 "A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he his capable of understanding it and of forming a rational judgment as to its effects upon his interests".

Soundness of mind of a person depends on two facts:

1. Ability to understand the contract at the time of making.
2. Ability to form a rational judgment about the effect of the contract on his interest.

Unsoundness may arise from

- Idiocy
- Lunacy or insanity

- Drunkenness
- Hypnotism
- Mental Decay

A person who is usually of unsound mind and occasionally of sound mind can contract when he is of sound mind.

A person who is usually of sound mind and occasionally of unsound mind cannot contract when he is of unsound mind.

Thus, the burden of proof will be lie upon the person who claims that he was not of sound mind at the time of making a contract.

PERSONS DISQUALIFIED FROM CONTRACTING BY ANY OTHER LAW

7. Contract by disqualified person.

Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting partially (or) wholly. So, the contracts by such persons are void. If, by any provisional legislation, a person is declared “**disqualified proprietor**”, he is not competent to enter into any contract in respect of the property.

The following persons are disqualified from contracting;

- Alien enemies
- Foreign sovereigns and ambassadors
- Insolvents
- Convict
- Corporations

QUASI CONTRACT sec 68 to 72

- “Under certain circumstances, a person may receive a benefit in which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties.
- Such relationships are termed as Quasi contracts.” under English Law & "certain relations resembling those created by contract" under Indian contract act, 1872.
- Also called a contract implied in law or a constructive contract.

Definition and Meaning

An obligation that the law creates in the absence of an agreement between the parties. It is invoked by the courts where Unjust Enrichment, which occurs when a person retains money or benefits that in all fairness belong to another, would exist without judicial relief.”

A quasi contract is a contract that exists by order of a court, not by agreement of the parties. Courts create quasi contracts to avoid the **unjust enrichment** of a party in a dispute over payment for a good or service.

8. “Quasi Contract”.

Types of Quasi Contract:

Section 68 to 72 deals with five types of quasi- contracts:

- ❖ Claim for necessities supplied to persons incapable of contracting
- ❖ Right to recover money paid for another person
- ❖ Obligation of person enjoying benefits of non-gratuitous act
- ❖ Responsibility of finder of goods
- ❖ Liability for money paid or thing delivered by mistake or by coercion

Section-68 Supply of Necessaries

- Any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other person’s property.
- Similarly where money is paid to such persons for purchase of necessities, reimbursement can be claimed.

Section-69 Payment by an Interested person

- A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
- Here the person who makes the payment must honestly believe that his own interest demands payment.
- Essentials requirements of sec.69:
 - The payment made should be bona fide for the protection of one’s interest
 - The payment should not be a voluntary one.
 - The payment must be such as the other party was bound by law to pay.

Section-70 Obligation for Payment Of Gratuitous act

- When a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
- Before any right of action under sec. 70 arises, three conditions must be satisfied :
 - The things must have been done lawfully
 - The person doing the act must not have intended to do it gratuitously.
 - The person for whom the act is done must have enjoyed the benefit of the act

Section-71 Responsibility of Finder of Goods

- A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.
 - Thus a finder of lost goods has:
 - **To take proper care of the property as men of ordinary prudence** would take of his own goods in similar circumstances
 - **Take all necessary measures to trace its owner.** If he does not, he will be guilty of wrongful conversion of the property
 - No right to appropriate the goods
 - Till the owner is found the property in goods will vest in finder & he can retain the goods against whole world except the owner
 - To restore the goods if the owner is found
 - The finder can sell the goods in following cases:
 - When the things found are in danger of perishing
 - When owner cannot, with reasonable diligence, be found out
 - When the owner is found but he refuses to pay the lawful charges of the finder
 - When the lawful charges of the finder in respect of the things found, amount to two- third of the value of the things found.

Section-72 Mistake or Coercion

- A person to whom money has been paid or any thing delivered by mistake or under coercion, must repay or return it. Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable. [*Shivprasad vs Sirish Chandra A.I.R. 1949 P.C. 297*]
- Similarly any money paid by coercion is also recoverable. The word coercion is not necessarily governed by section 15 of the Act. The word is interpreted to mean and include oppression, extortion, or such other means [*Seth Khanjelek vs National Bank of India*].

- Sec. 72 does not draw any distinction between a mistake of fact and mistake of law [D. Cawasji & Co. v. State, A.I.R. (1969) S.C.J. 53

Compensation for failure to discharge obligation created by quasi- contract u/s 73, para 3

- When obligation created by quasi contract is not discharged, the injured party is entitled to receive the same compensation from the party in default, as is that person has contracted to discharge it and had broken his contract.

Quantum meruit

- Quantum meruit means “ as much as earned” or “as much as is merited”
- When a person has done some work under a contract, and the other party repudiates the contract, or some event happens which makes the future performance of contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.

Essentials for quantum Meruit

- The **right to claim** quantum meruit does not arise out of contract as the right to **damages** does; it is a claim on the **quasi- contractual obligation** which the law implies in the circumstances
- Right to claim for quantum meruit arises only when the **original contract is discharged**. If the original contract exists, the aggrieved party cannot have quantum meruit remedy, he has to take resort to remedy in damages
- The claim for quantum meruit can be **brought by party not at fault**.

Claim for quantum meruit arises in following cases:

- When agreement is discovered to be void
- When something is done without any intention to do so gratuitously.
- Where there is expressed or implied contract to render services but there is no agreement as to remuneration.
- When completion of the contract has been prevented by the act of the other party to the contract.
- When a contract is divisible
- When indivisible contract is completely performed but badly.

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