**Contract act :**

**Introduction**



**Business law is wider than Mercantile and Commercial laws.**

**It is devided in Contract, Sale, Agency, Bailment, Negotiable Instrument, and partnership.**

**It’s origin is in English law with some changes.**

**It control to trade and commerce.**

**In daily life we are entering infinite contracts.**

**Since morning to night - newspaper, to eat ice cream,**

**It came into force on the first day of September 1872**

**Applies to whole of India except Jammu Kashmir**

**It will not affect to usage or custom**

**It is inclusive - other conditions also allowed**

**Nature of contract**

**Introduction :**

**In simple words contract means give and take**

**It is a private law. It means terms and condition can be determined by the parties**

**It provides Limited principles under which Right and duties of the parties are determined**

**It is the exchange of promises by two or more parties.**

**Contract - 2(h) An agreement enforceable by law.**

**Agreement - 2(e) Every promise or set of promise forming consideration for each other.**

**Enforceable - can sue in court in case of non performance. Social agreements are not contract.**

**Obligations arise due to status not covered. To maintain wife and children due to order of court.**

**Offer /proposal - both are used interchangeably**

* **One person show his intention**
* **Obtaining the assent of others**
* **Do or not to do an act**

**Mere intention is not sufficient.**

**I want to marry is not an offer.**

**Do you want to marry with me is an offer.**

**Hence for obtaining assent of others is required in offer.**

**Person who makes the offer is an offeror.**

**Person to whom offer is made is an offeree.**

**Person who accept the offer is known as acceptor or promisee.**

**Types of offers**

**General offer made to public- anyone can accept by doing**

 **Desired act.**

**Performance of the condition is an acceptance of the offer.**

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**A Damayanti's swayamvara. Sita's swayamvara. Or dropadi swaymvara**

**B. Advertisement in newspaper for missing person**

**C. Influenza by using medicines**

1. **Special offer - definite person. A offers to b then only**
2. **B can accept. Marriage bio data.**
3. **Cross offer – two offers similarly to each other without listening to other. One’s offer is not acceptance of other. Example : message from both party in mobile on way due to no coverage.**
4. **Counter offer : offeree adds certain conditions in original offer. It is rejection of original offer. – vegetable market, negotiation, bargaining.**

**A offers to B for purchase of his dog at Rs. 100. B replies if u ready to purchase my cat at Rs. 60. I will purchase your dog at Rs. 100.**

1. **Standing offer : such offer can be accepted within period of time. Government and company tenders, registration form, exam form are example of standing offer. These are required to fill within given time.**

**Rules :**

1. **Intention to create legal relationship : it means if it is accepted by offeree, offerer can sue for non performance in court. Social invitations are not valid offer.**

**Foundation rank – Tejwanisir unable to come.**

**Friend invited for dinner.**

**Husband promises to his wife to purchase saree. These are social agreement no body will sue.**

1. **Certain : it should be definite. A offers to B to sell oil but what kind of oil he needs not specified. It can not be accepted due to lack of certainity.**

**But if it is capable of being certain. It is valid.**

**Example B sells only one type of oil. Or B wants as similar to purchase by C.**

1. **It should not be only invitation of offer :**

**In invitation of offer, try to attract to others for offer. E.g. Auction sale, price list in restaurant, display in mall, prospectus of college or for share.**

**Whether is it offer or invitation to offer depends on person’s intention. In offer it can be accepted and offer is binding to himself.**

**But in invitation to offer only circulating the information**

 **Person making is not binding although it is accepted. E. G.**

**Auction is cancelled some body came by reading notice in**

**News pepar. He can not sue for his expenses.**

1. **It can be specific or general – Discussed as above.**
2. **It must be communicated : Person who is not aware of offer can not accept although he has fulfilled the condition of offer. Missing person traced by some body who is not aware of reward of this act declared in news paper can not claim reward.**
3. ***It should be for the obtaining the consent of other. Mere intention is not offer. I want to marry is not offer. Do you want to marry with me ? Is an offer.***
4. ***It can be conditional : Offeree can accept through the fulfillment of condition. Like mode of acceptance, advance deposit, time for acceptance etc.***
5. ***No answer does not mean it is accepted.***

***A offers to B to purchase my Mobile in Rs.10,000. If you will not reply within 2 days, I shall believe it is accepted, is not valid.***

**Acceptance :**

**Meaning :**

**1 there should be offer**

**2. It can be accepted(consented) by offeree.**

**3. Act can be do not to do. (i will not produce a u will not produce b) (as well as i will not ca coaching u will not start b.com.)**

**Rules :**

1. **It should be absolute and unqualified (unconditional)**

**Offer can be conditional but acceptance not.**

**If acceptance is conditional it is counter offer.**

**Example in first meeting boy offers i need house wife it is conditional offer.**

**But if girl makes the conditions like 4g net, apple mobile, activa etc. It is only counter offer. It is not acceptance because there is a variation (change) in terms of offer.**

**Now boy may think whether he can suffer such girl. Boy only can accept such counter offer made by girl.**

1. **It should be communicated : Offeree must**

**Communicate the acceptance to offerer.**

**Example : in abc ltd. Mr. X was appointed as a ca in meeting.**

**But appointment letter was not given to him. He knows from other person for his appointment. Afterward another person was appointed in next meeting. Mr. X can not sue because he was not communicated.**

1. **It should be accepted in prescribed mode (given method in offer) if it is given in offer, it should be accepted in written, then only written acceptance is valid. But if acceptance is in other mode, offerer has not objected, it is valid. In above example acceptance was given orally, acceptor has not opposed, it is valid.**
2. **Time of acceptance**

**If time is specified than within that time**

**If time is not specified it should be within reasonable time or before offer lapses(ends)**

**Example : a girl offered to a boy for marriage but when boy came after 5 years for acceptance. A child wel comes by saying uncle. It can not be accepted because offer already lapses and acceptance is after reasonable time. When applicant applies for shares during june but allotment by the company was made during november. Applicant may reject due to non acceptance during reasonable time.**

1. **Mere silence is not acceptance : it can not be assumed (implied) that offer is accepted if offeree has not replied.**

**But if from his previous conduct or act, evicence is available for his use. It may assume that it is accepted.**

**Example : magazine continuously used by the person after end of subscription. Use is liable for payment.**

**Acceptance by act (conduct)**

**Consent/assent was not given expressly.**

**But act or condition of offer is satisfied it is assume that offer is accepted.**

**Trademan has not replied to his customer for his order. But goods are delivered to him it means offer of customer is accepted by trademan through conduct.**

**Completion of Communication and revocation of offer and acceptance :**

**Mr. A(offeror) offers to Miss B(offeree)**

**11th February (sent) 12th February (reaches)**

**Miss B Accepts for Mr. A**

**13th February (sent) 14th February(reaches)**

**When offer is completed - 12th February when reaches to the offeree.**

**When Acceptance is completed :**

**Against A (offerer ) - 13th February Sent by B**

**Against B (offeree ) - 14th February Reaches to A**

**Revocation/Cancellation :**

**Revocation of offer : Before 13th February**

 **I.e. Before acceptance complete against offeror (A)**

**Revocation of acceptance : Before 14th February**

**I.e. Before acceptance complete against offeree (B)**

**In England acceptance cannot be revoked but in india it is allowed.**

**In india acceptance and its revocation reaches simultaneously revocation is valid.**

**Law of country is applied at which acceptance is received. A of America offers to B of Japan. B accepts the offer. Law of America will be applicable.**

**Revocation of offer and Acceptance :**

**Against sender – put in to transmission.**

**Against receiver – comes to his knowledge.**

**Methods of revocation of offer :**

 **By inform to offeror**

**By end of time**

**Death or insanity either of party**

**Nonfulfillment of condition of offer**

**Counter offer.**

**Consideration : no consideration no contract**

**Meaning : Quid Pro quo - something in return A sells goods to B at Rs. 100. For A Rs. 100 is consideration While for B goods is consideration.**

**Right, interest, profit and benefit to promisor while loss, responsibility or obligation to promisee.**

 **Section 2 (d) :**

**At the desire of the promiser**

**Promisee or other person**

**Has done or abstained from doing**

**Does or abstains from doing**

**Promises to do or to abstain from doing**

**Such act or abstinence or the promise is a consideration**

**A carries goods of B without consideration is also valid. – due to detriment – To do**

**A maintains B’s child and charges RS. 1,000. – To do**

**C promises not to sue to D for compoundable offence against Rs .10,000. – abstinence.**

**Legal Requirement of consideration**

1. **At the desire of the promisor not at the third party.**

 **Act done voluntary is not consideration – R saved goods**

 **Of S from fire voluntary.**

**2. Stranger to A consideration but not stranger to A contract. – Activa purchased by your father.**

**A gifts his property to his daughter for annual allowances to his brother by executing deed. But she failed to pay hence A’s brother can sue to A’s daughter.**

1. **Executed - performance of act. Or Executory – promise to act.**

**A pays Rs. 5,000 to B for purchase of wheat – performance of an act it is executed.**

 **B promise to deliver wheat to A to next day is an executory consideration.**

**4 Past consideration : It should be performed at the desire of promisor which is not gratuitous. Subsequent promise is valid.**

**A performed some act with his desire for B. B promise after a week. Act was not with previous request hence it is present consideration.**

1. **Adequeacy of consideration : having some value need not**

**Equal value. Although there is inadequacy of consideration**

**Contract is valid. But for determining existence of fraud,**

 **Misrepresentation, undue information this factor can be**

**Considered.**

**6 No body can ask consideration for the act for which he is legally bound to perform. Witness, over and above the fees, client will pay to the solicitor in case of success.**

**But over and above legally bound to perform consideration can be paid.**

**7 It should be real having some value –discover treasure by magic is not real.**

**8 It can not be unlawful, immoral and opposed to public policy.**

**Suit by third party or Stranger can sue or exceptions of stranger to a contract or exception of privity of contract**

**P indebted to Q. P sold property to R. R promise to pay to Q**

**But he fails Q can not sue to R because Q is third party.**

 **In following cases third party also can sue.**

1. **There is a contract between settlor and trustee but beneficiary can sue to trustee–College,student can sue**
2. **Members of family can sue for family contracts if provided in terms of family settlement.**
3. **Provision of marriage expenses raised during partition of HUF, female member can enforce.**
4. **In case of assignment of contract, assignee can enforce – post paid mobile bill. Audit Facilities as per agreement require to provide to assignee.**
5. **L gives to M Rs 2,000/-to be given to N. M inform same to N. Afterwards, M refuse to pay N can sue to M. Acknowledgement of liability is an acceptance.**
6. **Purchaser of land is liable for Agreement attached with land if he is informed at the time of purchase. Complex – 32C**
7. **Principal can enforce the contracts entered by Agent if it is within apparent authority of agent and with name of principal.**

**Exceptions of rule “contract without consideration is void.”**

**Natural Love and affection : written and registered agreement between parties standing near relation is enforceable without consideration. (Husband and wife)**

**Past voluntary services :**

**Services rendered voluntarily**

**Services rendered for promisor**

**Promisor exist at the time of service**

**Promisor intends to compensate.**

**E.g. Shoes polish, cleaning car glass, vehicle washing in garage.**

**Time barred debt (after 3 years) period of sue is lapse as per limitation act. Written promise of person liable or his agent is valid. Foundation fees at reception promised by student in written is valid. After 3 year Debtor signs written promise for his dues he is liable.**

**Agency : New agencies like Bharat D Biscuit have no consideration. But agreement of area, commission and other matters are valid**

**Completed Gift : Donor is liable for his gift although it is without consideration. Hariya - B.A.D. College.**

**Bailment : Bailment means goods given to others for any purpose. Repair, courier etc. Under this no consideration is required goods should be returned by bailee to bailor**

**Charity : Promisee accepts the liability on the basis of**

**Of charity. Contract is valid. Hariya - B.A.D. College.**

Essential elements of a valid contract

**Section 10 - Agreement becomes contract if**

**A. Free consent -** consensus ad idem - same thing in the same sense for the subject matter (Titanic ship) (C.A. OR B.A.) **not due to coercion, undue influence, misrepresentation and fraud and mistake .**

**B. Competent person - sound and major,**

**C. Lawful object and consideration - drop legal action, immoral or illegal are not allowed**

**D. Not expressly void by law –in restrain of trade or marriage are void contract**

Capacity of parties - major, sound mind and not disqualified

Age of majority - Indian majority act 1875 person domiciled in India attaining the age of 18 years

Position of the minor -

Void ab initio - Mohiribibi vs. Dharmdas Ghose

No ratify after attaining the age of majority - bank loan- new promisory note accepted instead of old one is not valid

Minor can be a beneficiary promissory note

Promissory note executed in favour of minor is Valid.

Minor can become a partner in profit only in the firm with the consent of all partner.

He can always plead minority although he entered in contract with false representation of age

All the necessary supplies to the minor - his property is liable, he is not personally liable food, cloth and education not luxuries items,

Guardian - his guardian can enter in to contract for the benefit of minor like marriage contract ,

**Bride can sue to her father in law for allowances agreed by her father in law to her father.**

**Certain contracts like for immovable property, guardian can not enter on behalf of minor except he is a certified guardian (appointed by court)**

**Sound mind :**

**At the time of contract he should be capable of understanding his own interest and forming rational judgement. E.g. A sane man, Severe fever, Drunken,**

**Additional General Rules : We already discussed separately each point.**

1. **Social agreements are not contract : marriage invitation**
2. **Meaning certain - oil**
3. **Possible to perform swim to Indian Ocean. Magic,**
4. **Legal formalities - Gift deed in writing and registered.**

**Types of contract :**

**Validity :**

**Valid - satisfy all essential elements. Satisfy section 10**

**Void – Not enforce at all. Star from sky. Ship turn out in to sea, goods lost due to fire.**

**Voidable - Enforceable at the option of one or more party but not at the option of other. Aggrieved party can enforce it. Student can cancel contract with sir.**

In India there are certain disabilities due to which partnership firm is required to register

1 Firm cannot sue to third party

2 Partners cannot see to each other

3 If thir d party sue to the fir firm can avail the set off of rupees hundred only

Business law is wider than mercantile law business law is divided in contract, sale,, agencies, bailment, negotiation, partnership, etc.

It is the outcome of British law.

Unit 3

Other Essential elements of a valid contract

Section 10

Free consent

Competent Person

Lawful consideration and object

Not expressly declared as a void by law both

Agreement related to the social matters are not enforceable by law

Capacity to contract - Competent Person

Attained the age of majority

Domiciled in India completion of 18 years - Indian majority act

Position of the minor

Void - in a contract promise is required but is unable to give the promise legal obligations cannot be arise

Beneficiary - promissory note executed in favour of minor is valid.

With the consent of all partners minor can become a partner in a firm for the benefit only

Always plead minority - money advanced to a minor on a promissory note, receive a loan by false age, minor is not responsible fraudulently mortgaged and sold property if agreement is cancelled lender and purchaser must be compensated

No ratification - after attaining majority contract can not ratified entered during minority

Second promissory note received after majority instead of old one which is executed during minority is also void due to without consideration

Necessary supply to the minor or his dependent - minor personally not liable his property is liable

Contract by guardian for the benefit of the minor and within his competence is valid

Guardian can enforce marriage contract, purchase of immovable property except certified guardian is not allowed

Liability for necessaries

It means goods suitable to a condition in the life food health education instruction minor personly not liable his property is liable

Loan received due to fraudulent age, it must be restored, may not be identical sum.

Sound mind:

Capable of understanding of contract

Forming a rational judgement

Consider Its effect upon him

Unsound can enter in contract during interval – patient in a lunatic asylum, sane man, delirium, drunkenness last.

Contract with unsound mind is void.

Disqualified person:

Arised from political, corporate or legal status.

Foreign Soverigns or Ambassadors, alien enemy, corporations, convicts, insolvent etc.

Free consent:

Section 13

Consensus ad idem – same thing in same sence

Fundamental error – nature of transaction, person dealt, subject matter of agreement etc. CA-BA, titanic, dhirubhai. Mislead by similarity of name.

No contract without free consent.

If no consent or consent due to mistake contract void.

If consent is due to coercion, undue influence, fraud, misrepresentation, contract is voidable.

Elements of vitiating free consent:

Coercion:

Committing or threatening to commit

Act forbidden by Indian penal code

Unlawful detaining property

Prejudice to any person for entering any contract.

A says to b I will kill ur son otherwise sale ur house in 1,00,000. This contract is for the benefit of A. it can be enforced by party coerced (B) not party using coercion(A)

Husband says to his wife give him release deed otherwise I will suicide. Release deed is voidable due to coercion .

Party coerced must repay the benefit or advance received while contract is cancelled.

Undue influence: (section- 16)

Relation subsists

Dominate the will of weaker party

Uses position for unfair advantages.

Real and apparent authority

Fiduciary relationship

Example:

Father and son, solicitor and client, trustee and beneficiary, creditors and debtors, old age, illness, doctor and patient

Burden of proof for undue influence exists lies on dominant party like doctor, teacher, …

Fraud: (section 17)

Act committed by party or his consent or by his agent

Intention to deceive

Following acts:

Representation as true which is known as not true by him

Concealment of material information

Promise without intention to perform.

Other act fitted to deceive

Act or omission which act declares as fraudulent.

If contract is formed due to fraud then only he is liable.

Share purchase from market, although there is a wrong information in prospectus, company is not liable because share holder is not entered due to prospectus.

A sold horse to B by presenting as sound, in actual horse is unsound hence A is liable.

Mere silence is not fraud.

When there is a duty to speak or silence is equal to speech there is a fraud.

In other words if information is material(which affect to our decision)is not presented or fiduciary relationship, trust is reposed then only silence is fraud.

A purchases a horse from B by saying that if u will not deny I assume horse is sound. A has not replied, but horse is unsound hence there is a fraud.

MISREPRESENTATION:

He believes to be true hence representing as true in actual it is not true.

It is innocent without reasonable ground.

It misleads to others hence can be avoided.

Section 18:

Positively state untrue statement unintentionally

Breach of duty hence gain to one loss to other

Other party in mistake of subject matter.

A says to B, C will be director of his company by knowing from M which is incorrect hence misrepresentation

Difference coercion – undue influence

Physical force or threat - moral or mental pressure

Illegal act like commit or - no such illegal Act.

threatening to commit

no relationship - Absolute relationship

it can be from or to other - between contracting parties

**than contracting parties**

**voidable - set aside or modified or voidable**

**benefit will be restored – at the discretion of court**

**difference between fraud and misrepresentation**

**intention to deceive - no such intention**

**believes untrue - believes to be true**

**repudiation and damages-repudiation, restitution no**

 **Damages**

**Seller will be liable party can escape by saying injured**

**Although means of party has means of discover.**

**Discover Is available. -**