

Legal aspects of business – indian contracts act 1872

Law



Indian Contract Act 1872 is the main source of law regulating contracts in Indian law. Citation Act No. 9 of 1872 Enacted by Parliament of India Date enacted 25 April 1872 Date commenced 1 September 1872 The law relating to contracts in India is contained in Indian Contract Act, 1872. The Act was passed by British India and is based on the principles of English Common Law. It is applicable to the All States of India except the State of Jammu & Kashmir. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them.

All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties. Indian contract deals with the enforcement of these rights and duties upon the parties in India. History The Indian Contract Act came into force on 1 September 1872. It Was Enacted Mainly With a View To ensure Reasonable Fulfillment of Expectation Created By the promises of the parties and also enforcement of obligations prescribed by an agreement between the parties.

The Third Law commission of British India formed in 1861 under the stewardship of chairman Sir John Romilly, with initial members as Sir Edward Ryan, R. Lowe, J. M. Macleod, Sir W. Erle (succeeded by Sir. W. M. James) and Justice Wills (succeeded by J. Henderson), had presented the report on contract law for India as Draft Contract Law (1866). The Draft Law was enacted as The Act 9 of 1872 on 25 April 1872 and the Indian Contract Act, 1872 came into force with effect from 1 September 1872. Before the enactment of the Indian Contract Act, 1872, there was no codified law for contract in India.

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In the Presidency Towns of Madras, Bombay and Calcutta law relating to contract was dealt with the Charter granted in 1726 by King George I to the East India Company. Thereafter in 1781, in the Presidency Towns, Act of Settlement passed by the British Government came into force. Act of Settlement required the Supreme Court of India that questions of inheritance and succession and all matters of contract and dealing between party and party should be determined in case of Hindu as per Hindu law and in case of Muslim as per Muslim law and when parties to a suit belonged to different persuasions, then the law of the defendant was to apply.

In outside Presidency Towns matters with regard to contract was mainly dealt with English Contract Laws; the principle of justice, equity and good conscience was followed. Development The Act as enacted originally had 266 Sections, it had wide scope and included. General Principles of Law of Contract: 1 to 75 Contract relating to Sale of Goods: 76 to 129 Special kinds of Contracts (includes indemnity, guarantee, bailment & pledge: 25 to 238 Contracts relating to Partnership: 239 to 266 Indian Contract Act embodied the simple and elementary rules relating to Sale of goods and partnership. The developments of modern business world found the provisions contained in the Indian Contract Act inadequate to deal with the new regulations or give effect to the new principles. Subsequently the provisions relating to the sale of goods and partnership contained in the Indian Contract Act were repealed respectively in the year 1930 and 1932 and new enactments namely Sale of Goods and Movables Act 1930 and Indian Partnership act 1932 were re-enacted. At present the Indian Contract Act includes:

General Principles of Law of Contract

1 to 75 Special kinds of Contracts (includes indemnity, guarantee, bailment & pledge 125 to 238 Definition Section 2(h) of the Act defines the term contract as " any agreement enforceable by law". There are two essentials of this act, agreement and enforceability. Section 2(e) defines agreement as " every promise and every set of promises, forming the consideration for each other. " Again Section 2(b) defines promise in these words: " when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise. " And other words Say Agreement is Sum of all contract are agreement, but all agreement are not 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 with a lawful object, and not hereby expressly to be void. "

Essential Elements of a Valid Contract are:

1. Proper offer and proper acceptance. there must be an agreement based on a lawful offer made by person to another and lawful acceptance of that offer made by the latter. section 3 to 9 of the contract act, 1872 lay down the rules for making valid acceptance
2. Lawful consideration: An agreement to form a valid contract should be supported by consideration. Consideration means " something in return" (quid pro quo). It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration should be real and lawful.

3. **Competent to contract or capacity:** In order to make a valid contract the parties to it must be competent to be contracted. According to section 11 of the Contract Act, a person is considered to be competent to contract if he satisfies the following criterion: The person has reached the age of maturity. The person is of sound mind. The person is not disqualified from contracting by any law.
4. **Free Consent:** To constitute a valid contract there must be free and genuine consent of the parties to the contract. It should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake.
5. **Lawful Object and Agreement:** The object of the agreement must not be illegal or unlawful.
6. **Agreement not declared void or illegal:** Agreements which have been expressly declared void or illegal by law are not enforceable at law; hence they do not constitute a valid contract.
7. **Intention To Create Legal Relationships:-** when the two parties enter in to an agreement, there must be intention to create a legal relationship between them ... if there is no such intention on the part of the parties .. there is no contract between them .. agreements of a social or domestic nature do not contemplate legal relationship; as such they are not contracts.
8. **Certainty, Possibility Of Performance**
9. **Legal Formalities**

10. By surety

Types of Contracts

On the basis of validity:

1. Valid contract: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.
2. Void contract[Section 2(g)]: A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void. There are many judgments which have stated that where any crime has been converted into a " Source of Profit" or if any act to be done under any contract is opposed to " Public Policy" under any contract— than that contract itself cannot be enforced under the law.
3. Voidable contract[Section 2(i)]: An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it.

However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.
4. Illegal contract: A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy.

These agreements are punishable by law. These are void-ab-initio. " All illegal agreements are void agreements but all void agreements are not illegal. "

5. Unenforceable contract: Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

On the basis of formation:

1. Express contract: Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.
2. Implied contract: An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases.

Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.
3. Quasi contract: A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it.

A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another. On the basis of performance:

1. Executed contract: An executed contract is one in which both the parties have performed their respective obligation.

2. Executory contract: An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.
3. Unilateral contract: A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.
4. Bilateral contract: A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

Offer Proposal is defined under section 2(a) of the Indian contract Act, 1872 as " when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer". Thus, for a valid offer, the party making it must express his willingness to do or not to do something.

But mere expression of willingness does not constitute an offer. An offer should be made to obtain the assent of the other. The offer should be communicated to the offeree and it should not contain a term the non compliance of which would amount to acceptance.

Classification of Offer

1. General Offer: Which is made to public in general.

2. Special Offer: Which is made to a definite person.
3. Cross Offer: Exchange of identical offer in ignorance of each other.
4. Counter Offer: Modification and Variation of Original offer.
5. Standing, Open or Continuing Offer: Which is open for a specific period of time.

The offer must be distinguished from an invitation to offer. Invitation to offer " An invitation to offer" is only a circulation of an invitation to make an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in formation of a contract and only an offer emerges in the process of negotiation. A statement made by a person who does not intend to bound by it but, intends to further act, is an invitation to offer. Acceptance According to Section 2(b), " When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

Rules

1. Acceptance must be absolute and unqualified.
2. Communicated to offeror.
3. Acceptance must be in the mode prescribed.
4. Acceptance must be given within a reasonable time before the offer lapses.
5. Acceptance by the way of conduct.
6. Mere silence is no acceptance.

Silence does not per-se amounts to communication- Bank of India Ltd. Vs. Rustom Cowasjee- AIR 1955 Bom. 419 at P. 430; 57 Bom. L. R. 850- Mere silence cannot amount to any assent. It does not even amount to any
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representation on which any plea of estoppel may be founded, unless there is a duty to make some statement or to do some act. 7. free and offerer must be consent Lawful consideration According to Section 2(d), Consideration is defined as: " When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain something, such an act or abstinence or promise is called consideration for the promise. " Consideration" means to do something in return. In short, Consideration means quid pro quo i. e. something in return. An agreement must be supported by a lawful consideration on both sides. The consideration or object of an agreement is lawful, unless and until it is: forbidden by law, or is of such nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral, or opposed to public policy. consideration may take in any form-money, goods, services, a promise to marry, a promise to forbear etc.

Contract Opposed to Public Policy can be Repudiated by the Court of law even if that contract is beneficial for all of the parties to the contract- What considerations and objects are lawful and what not-Newar Marble Industries Pvt. Ltd. Vs. Rajasthan State Electricity Board, Jaipur, 1993 Cr. L. J. 1191 at 1197, 1198 [Raj.]- Agreement of which object or consideration was opposed to public policy, unlawful and void- – What better and what more can be an admission of the fact that the consideration or object of the compounding agreement was abstention by the board from criminally prosecuting the

petitioner-company from offence under Section 39 of the act and that the Board has converted the crime into a source of profit or benefit to itself.

This consideration or object is clearly opposed to public policy and hence the compounding agreement is unlawful and void under Section 23 of the Act. It is unenforceable as against the Petitioner-Company. Competent to contract Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor i. e. an individual who has not attained the age of majority i. e. 18 years.
2. He should be of sound mind while making a contract. A person with unsound mind cannot make a contract.
3. He is not a person who has been personally disqualified by law.
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Free Consent

According to Section 14, " two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem). A consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake. Elements Vitiating free Consent

1. Coercion (Section 15): " Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45, 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

2. Undue influence (Section 16): " Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other. "
3. Fraud (Section 17): " Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.
4. Misrepresentation (Section 18): " causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".
5. Mistake of fact (Section 20): " Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void".

Performance Of Contracts

The promise under a contract can be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

1. Promisor himself: " The contracts which involve the exercise of personal skill must be performed by the promisor himself.
2. Agent: " Where personal skill is not required, the promisor may appoint his agent to perform it.

3. Representatives: " On the death of the promisor, the legal heirs of the promisor must perform the contract unless a contrary intention appears in the contract. (section 37)
4. Third persons: " When a promisee accepts performance from a third person, he cannot afterwards enforce it against promisor".
5. Joint promisors: " When two or more persons have made a joint promise, all such persons must jointly fulfil the promise, unless a contrary intention appears from it".

Agency

In law, the relationship that exists when one person or party (the principal) engages another (the agent) to act for him, e. g. to do his work, to sell his goods, to manage his business. The law of agency thus governs the legal relationship in which the agent deals with a third party on behalf of the principal. The competent agent is legally capable of acting for this principal vis-a-vis the third party. Hence, the process of concluding a contract through an agent involves a twofold relationship.

On the one hand, the law of agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of the principal. On the other hand, it rules the internal relationship between principal and agent as well, thereby imposing certain duties on the representative (diligence, accounting, good faith, etc.). Under section 201 to 210 an agency may come to an end in a variety of ways:

- By the principal revoking the agency - However, principal cannot revoke an agency coupled with interest to the prejudice of such interest.

Such Agency is coupled with interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, e. g. , where the goods are consigned by an upcountry constituent to a commission agent for sale, with power to recoup himself from the sale proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold, nor is the agency terminated by death or insanity. Illustrations to section 201)

- By the agent renouncing the business of agency;
- By the business of agency being completed;
- By the principal being adjudicated insolvent (Section 201 of The Indian Contract Act. 1872)

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal (Section 204), though he can always do so, before such authority has been so exercised (Sec 203).

Further, as per section 205, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill continuous

disobedience of lawful orders, and rude or insulting behavior has been held to be sufficient cause for dismissal of an agent.

Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid (Section 206). As per section 207, the revocation or renunciation of an agency may be made expressly or impliedly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them (Section 208). When an agent's authority is terminated, it operates as a termination of subagent also. (Section 210)