



MERCANTILE LAW

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As a result of increasing complexities of business environment, innumerable contracts are entered into by the parties in the usual course of carrying on their business. CONTRACT is the most usual method of defining the ‘give and take’ rights and duties in a business transaction. This branch of Private law is different from other branches of law in a very important transaction. The law relating to contracts is contained in the Indian Contract Act, 1872. This module contains the general principles of the Law of Contracts. In these wide prospects, a contract is an exchange of promises of two or more persons that is an agreement creating an obligation to do or to refrain from doing a particular act, which is enforced by law.

WHAT IS CONTRACT?

According to Section 2(h) of the Act, the term contract is defined as “an agreement enforceable by law”. On analyzing the definition we find that, the contract is consist of two essential elements:

- An agreement, and
- Enforceability by law.

Agreement= Offer/ Proposal+ Acceptance
 Enforceability by law- An agreement to become a contract must give rise to a legal obligation, which means a duty enforceable by law.

Contract= Accepted proposal + Enforceability by law.

ESSENTIAL ELEMENTS OF A VALID CONTRACT:

According to Section 10”All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.” The following essential elements must co-exist in order to make a valid contract:

1. Proper offer and proper acceptance with intention to create legal relationship.
2. Lawful Consideration and lawful object.
3. Capacity to contract.
4. Free Consent.
5. Agreements not declared void or illegal.
6. Certainty of meaning.
7. Possibility of performance of an agreement.
8. Necessary legal formalities.

Certainty of meaning: The agreement must be certain and not vague or indefinite.

OFFER AND ACCEPTANCE:

- Offeror undertakes to do or to abstain from doing a certain act if the offer is properly accepted by the offeree.
- Offer may be expressly made or may even be implied in conduct of the offeror, but it must be capable of creating legal relations and must intend to create legal relations. The terms of offer must be certain or at least be capable of being made certain.

Communication of Offer and Acceptance, and revocation thereof:

- Communication of an offer is complete when it comes to the knowledge of the offeree.



- Communication of an acceptance is complete: As against the offeror when it is put in the course of transmission to him as against the acceptance, when it comes to the knowledge of the offeror.
- Communication of revocation of an offer or acceptance is complete: It is complete as against the person making it, when it is put into a course of transmission to be out of power of the person making it and as against the person to whom it is made, when it comes to his knowledge.
- A price in money should be paid or promised.
- A contract of Sale must be absolute or conditional.
- A transfer of property should take place between sellers to the buyer.
- All other essential elements of a valid contract must be present in the Contract of Sale.

CONTRACT FOR SALE:

Contract for Sale of Goods is a contract between buyer and seller intending to exchange property in goods for a price. Section 4(1) of the Sale of Goods Act, 1930 defines the term “Contract of Sale” as – a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

The definition mentioned above reveals important elements of transfer of ownership for a price. Here, two parties to a contract are willing to exchange their goods or services to gain a mutual benefit called price.

Essentials of Contract of Sale:

The following elements must co-exist to constitute a contract of sale of goods under the Sale of Goods Act, 1930:

- There should be atleast two parties, the seller and buyer.
- The subject matter of the contract must necessarily be goods covering only movable property.
- It may be either existing goods, owned or possessed by the seller or future goods.

Thus, whether a Contract of Sale of Goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date.

FORMALITIES OF CONTRACT OF SALE:

Section 5, lays down the rule as to how a contract of sale may be made and has nothing to do with transfer or passing of the property in the goods.

A contract of Sale may be made in any of the following modes:

- There may be immediate delivery of the Goods,
- There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date;
- There may be immediate delivery of the goods and an immediate payment of price;
- It may be agreed that the delivery or payment or both are to be made in installments;
- It may be agreed that the delivery, payment, or both are to be made at some future date.



STIPULATION AS TO TIME (SECTION 11)

As regard time for the payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of a contract of sale. However, delivery of goods must be made immediately. Price for goods may be fixed by the Contract or may be agreed to be fixed later on in a specific manner.

- Promise to pay time barred debt
- Agency: According to section 185 of the Indian Contract Act, no consideration is necessary to create an agency.
- Completed gift
- Bailment
- Charity¹: if the promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

ASCERTAINMENT OF PRICE:

Price means the monetary consideration for sale of goods

By virtue of Section 9, the price may be,

- Fixed by the Contract, or
- Agreed to be fixed in a manner provided by the Contract, e.g. , by a value, or
- Determined by the course of dealings between the parties.

CONSIDERATION:

Section 2(d) defines consideration as follows: “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 promises to do or abstain from doing something, such act or abstinence or promise is called the consideration for the promise.”

CAPACITY TO CONTRACT:

Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract.

LAW RELATING TO MINOR’S AGREEMENTS/POSITION OF MINOR’S

- A contract made with or by a minor is void-ab-initio
- No ratification after attaining the majority
- Minor can be beneficiary or can take benefit out of a contract
- A minor can always plead minority
- Contract for supply of Necessaries
- Contract by guardian- how far enforceable

VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION:

- Nature Love and Affection
 EXAMPLE: A, being the husband, has promised his life partner to pay his earning. Held that agreement between the two is without consideration, out of love and affection, it is a valid contract.
- Compensation for Past Voluntary Services

FREE CONSENT:

Two or more persons are said to consent when they agree upon the same thing in the same sense (Section 13).

- Coercion: The committing or threatening to commit any act, forbidden by the Indian Penal Code or the unlawful detaining, any property, to the prejudice of any person with the intention of causing any person to enter into an agreement. A contract induced by Coercion is voidable at the option of the aggrieved party.
- Undue Influence: When one party to a contract is able to dominate the will of the other and uses the position to obtain an



unfair advantage, the contract is said to be induced by undue influence. Such contract is voidable, not void.

- **Fraud:** Fraud exists when a false representation has been made knowingly with an intention to deceive the other party. Contract will be voidable in this case is voidable.
- **Misrepresentation:** Means a misstatement of a material fact made believing it to true, without an intent to deceive the other party. Contract will be voidable in this case.
- **Mistake:** When both the parties are at mistake to a matter of fact to the agreement, the agreement is altogether void.

LAWFUL OBJECT AND CONSIDERATION:

An agreement where the object or the consideration is unlawful is void. Object or consideration is unlawful if law forbids it, it would defeat the provisions of law; or is fraudulent; or involves injury to the person or property of another; or is immoral; or is opposed to public policy.

Besides the above said agreements, certain agreements have been expressly declared void by the Contract Act such as – wagering agreements, agreements with uncertain meaning, agreements where consideration is unlawful in part etc.

Liability for Damages:

Breach of Contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court. Thus, the liability for the damages may be classified as under,

- Liability for ordinary damages
- Liability for special damages

- Liability to pay vindictive or exemplary damages
- Liability to pay nominal damages
- Damages for deterioration caused by delay

In case of breach of contract by one party, the other party need not perform his part of the Contract and is entitled to compensation for the loss occurred to him. Damages for breach of Contract must be such loss or damage as naturally arise, in the usual course of things or which had been reasonably supposed to be in contemplation of the parties when they made the contract, as the probable result of the breach. Any other damages are said to be remote or indirect damages, hence, cannot be claimed.

Besides claiming damages as a remedy for the breach of Contract, the following remedies are also available:

1. Rescission of Contract
2. Suit upon Quantum Merit
3. Suit for Specific Performance
4. Suit for Injunction

TYPES OF QUASI- CONTRACT:

- Claim for necessaries supplied to persons incapable of contracting
- Right to recover money paid for another person
- Obligation of a person enjoying benefits of Non- gratuitous act
- Responsibility of a finder of goods
- Liability for money paid or thing delivered by mistake or under Coercion.

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Here, two parties to a contract are willing to exchange their goods or services to gain a mutual benefit called price.

ASCERTAINMENT OF PRICE:

The price may be:

- Fixed by the Contract
- Agreed to be fixed in a manner provided by the Contract
- Determined by the Course of dealings between the parties.

Price of goods may be fixed by the Contract or may be agreed to be fixed later on in a specific manner. Stipulations as to time of delivery are usually of the essence of the contract.

Acceptance of Delivery of Goods:

- Intimates to the seller that he had accepted the goods;
- Does any act to the goods, which is inconsistent with the ownership of the seller;
- Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

Delivery of goods denotes the voluntary transfer of possession, which may be actual or even in some constructive form and which is again subject to various rules, which help in deciding when the delivery becomes effective.

An important rule regarding passing of title in goods is that the purchaser does acquire no better title to the goods than what the seller had.

Remedies of Buyer against the Seller:

- Damages for non-delivery
- Suit for specific performance
- Suit for breach of warranty
- Suit for damages for repudiation of Contract by the seller before the due date
- Suit for interest

ESSENTIAL ELEMENTS OF PARTNERSHIP:

- Agreement
- Sharing profits of business
- Business carried on by all or any of them acting for all

MUTUAL RIGHTS AND DUTIES OF PARTNERS:

- Right to take part in the conduct of business
- Right to be consulted
- Right of access to books
- Right to remuneration
- Right to share profits
- Interest on capital
- Interest on advances
- Right to be indemnified
- Right to stop admission of a new partner
- Right to retire
- Right not to be expelled
- Right to be dissolved
