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CA FOUNDATION LAW NOTES

Chapter 1 - The Indian Contract Act, 1872

Unit 1: Nature of Contracts

Contract [Sec.2(h)]: An Agreement enforceable by law is a Contract.

Contract: Agreement + Enforceability by law

Agreement [Sec.2(e)]: Promise + Consideration

Enforceability by law: Legal Obligation + All essential elements of Section 10

Legal Obligation: Intention to create legal relation at the time of Agreement

Essentials of a Valid Contract:

(a) Agreement between two parties,

(b) Consensus-ad-idem - meeting of minds - agreeing to the same thing in the same sense and the same time,

(c) Intention to create legal relationship. No domestic and social nature,

(d) Consent of parties must be free,

(e) Parties should be competent to contract,

i. age of majority

ii. sound mind

- able to understand the terms of Contract
- capable of forming a rational judgment

iii. not disqualified from contracting

- Alien Enemy
- Foreign Sovereign and Ambassadors
- Convicts (He can enter into contracts only when the term is completed.)
- Insolvents

(f) Lawful consideration,

(g) Lawful and legal object,

(h) Not expressly declared void,

- (i) Meaning of agreement must be **certain** or capable of being made certain,
- (j) Capable of performance, and
- (k) **Legal formalities**, wherever required. [Sec. 1]

Invitation to offer Vs Offer

1. Offer should be distinguished from an invitation to offer:

Basis of Distinction	Offer	Invitation to Offer
1. Meaning	Where a person shows his willingness to enter into a contract, it is called as an offer.	Where a person invites others to make an offer to him, it is called as an invitation to offer.
2. Purpose	An offer is made by a person with the purpose of entering into a contract .	The purpose of making an invitation to offer is to receive the offers or to negotiate the terms on which the person making the invitation is willing to contract.
3. Legal effect	An offer, if acted upon (i.e., accepted), results in a contract.	An invitation to offer, if acted upon, only results in making of an offer.

- 2. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.
- 3. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer.
- 4. An invitation to offer is an act precedent to making an offer.
- 5. When advertisement in newspaper is made for reward, it is the general offer to public.

Offer [Section 2 (a)]

A person is said to make a Proposal when he **signifies** to another, his **willingness**, to do or to abstain from doing anything, **with a view (intention)** to obtaining the assent of that other to such act or abstinence.

Rules of a Valid Offer

- (a) Creation of **legal relationship**.
- (b) **Certain, definite and not vague**. It should not contain a term the non compliance of which would amount acceptance.
- (c) Offer can be **express or implied, specific or general**.
- (d) Communication of offer is a must.
- (e) Offer should be made to obtain the consent of the offeree.

(f) Offer may be conditional or non-conditional.	
Acceptance	
When the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted.	
Rules of a Valid Acceptance	
<ol style="list-style-type: none"> 1. Acceptance only by the person to whom offer is made 2. Absolute and unqualified 3. Acceptance must be communicated to Offeror 4. As per the prescribed mode 5. Within specified Time 6. Acceptance by conduct or implied acceptance 	
William Anson's saying	
Acceptance is to a proposal what a lighted matchstick is to a train of gun-powder.	
Communication of Offer and Acceptance [Section 4]	
Communication of offer	Complete when it comes to the knowledge of the person to whom it is made
Communication of acceptance	<p>As against the Offeror - when letter of acceptance is posted by the acceptor. [Dec 18 MCQ]</p> <p>As against the acceptor - When letter of acceptance comes to the knowledge of the proposer.</p>
Revocation of Offer and Acceptance [Section 5]	
Time for revocation	<p>Offer - before communication of its acceptance is complete, as against the proposer.</p> <p>Acceptance - before communication of its acceptance is complete, as against the acceptor.</p>
Lapse of offer	
<ol style="list-style-type: none"> (a) Revocation of offer, (b) Rejection of offer, (c) Acceptance not made within a stipulated time or reasonable time, (d) Non fulfillment of conditions by the acceptor, (e) Death or insanity of offeror or offeree before acceptance, (f) Acceptance not in prescribed mode, (g) Cross and counter offers, and (h) Change in law or circumstances 	

Unit 2: Consideration

CONSIDERATION [Section 2(d)] - Something in return

- When at the **desire of the promisor**,
- the **promisee or any other person**,
- has done or abstained from doing, or [**past consideration**]
- does or abstains from doing, or [**present consideration**]
- promises to do or abstain from doing, [**future consideration**]
- something.
- Such act/ abstinence/ promise consideration.
- **No consideration No contract.**

Rules of consideration

- Consideration **must move at the desire of the Promisor.**
- It can be done by the promisee himself or by any other person.
- Consideration may be **past, present or future.**
- Consideration must be **real and not illusory.**
- Not valid if - physically impossible, legally not permissible, uncertain, fulfillment of pre existing obligation.
- It must be lawful.
- Consideration **need not be adequate.**

Exceptions to "no consideration no contract"

- Written and registered** agreements arising out of **love and affection** between parties standing in **near relation**,
- Past Voluntary service,
- Promise to pay a **time barred debt**,
- Completed gifts,
- Bailment,
- Contract of agency, and
- Charity - If a person promises to contribute to charity and on this faith, the promisee undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid.

Doctrine of Privity of Contract

Only those persons, who are parties to a contract, can sue and be sued upon the contract. Third party to a contract cannot sue upon it, even though the contract may be for his benefit.

Exceptions to Doctrine of Privity of Contract

- (a) Trust,
- (b) Marriage settlement, partition and other family arrangements,
- (c) Acknowledgement of liability,
- (d) Assignment of a contract,
- (e) Contracts entered into through an Agent, and
- (f) Covenants running with land.

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Unit 3: Other Essential Elements of a Contract

Free consent

Coercion [Section 15]

Coercion and its effects under section 15 and 19 of The Indian Contract Act, 1872

Coercion is -

Act	Intention
(a) the committing, or threatening to commit any act forbidden by the Indian Penal Code, or (b) the unlawful detaining or threatening to detain, any property, of any person,	With the intention of causing any person to enter into an agreement.

Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

Undue Influence [Section 16]

A Contract is said to be induced by undue influence where the relations subsisting between the parties are such that

-

- (a) one of the parties is in a position to dominate the will of the other and
 (b) uses that position to obtain an unfair advantage over the other.

Deemed dominating position

1. Real or apparent authority
2. Fiduciary relation
3. Mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress

Consequences [Section 19A]

- (a) The Contract is Voidable at the option of the party whose consent was so obtained.
 (b) Any such Contract may be set aside
- either absolutely, or
 - if the party has received any benefit under the Contract, upon such terms and conditions as the Court may deem fit.

Representation is a statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a Contract.

Misrepresentation is a representation wrongly made, either innocently or intentionally.



Innocent and Unintentional.



Intentional, Deliberate and Wilful.

Believes the representation to be true. No intention to deceive or defraud the other party.	With an intent to deceive the other party. Then, Misrepresentation = Fraud.
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Fraud [Section 17]

Definition [Sec. 17]: Fraud means and includes -

Commission of the following acts -	Committed by -	Intention
(a) Suggestion as a Fact, of something which is not true , by a person who does not believe it to be true, (b) Active concealment of a Fact by one having knowledge or belief of the fact, (c) Promise made without any intention of performing it, [June 19 MCQ] (d) Any other act fitted to deceive , (e) Any such act or omission as specifically declared by law to be fraudulent .	(a) A party to the Contract, or (b) By any person with the connivance of the party to the Contract, or (c) An agent of the party to the Contract.	To deceive another party to the contract, or his Agent, OR To induce another party to enter into the contract.

Silence Not Fraud

- (a) Mere silence as to facts, likely to affect the willingness of a person to enter into a Contract is not Fraud.
- (b) **Exceptions i.e.**, Silence Fraud, in the following circumstances -
- if it is the duty of the person (keeping silence) to speak,
 - Silence by itself is equivalent to Speech.

Misrepresentation [Section 18]

1. **Positive false statement** made without any basis for info
2. **a breach of duty** which brings advantage to person committing it
3. **inducement of mistake** about subject matter

Voidability of agreements without free consent [Section 19]

The Contract is Voidable at the option of the party whose consent was so obtained.

Mistake

1. Mistake of Fact
 - (a) Unilateral - cannot avoid contract. [Section 22]

(b) Bilateral - Void [Section 20]

2. Mistake of law - Law of land - will not affect validity of contract. [Section 21]
Foreign Law - Treated as mistake of fact = void.

Agreements expressly declared void by the Indian Contract Act

1. Agreement to enter into an agreement in future.
2. Agreement that gives rise to social obligations.
3. Sec.11: Agreements entered into by incompetent parties.
4. Sec.20: Agreements entered into through a mutual mistake of fact between the parties.
5. Sec.23: Agreements, the object or consideration of which is unlawful.
 - Trafficking relating to Public Offices and titles (Section 23 of The Indian Contract Act, 1872) - as it interferes with the appointment of a person best qualified for the service of the public.
6. Sec.24: Agreements, part of the consideration or object of which is unlawful and the unlawful object, cannot be separated from the lawful objects.
 - Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.
7. Sec.25: Agreements, made without consideration.
8. Sec.26: Agreements in restraint of marriage.
9. Sec.27: Agreements in restraint of trade. Exceptions - Agreement with buyer of goodwill, trade combinations (without monopoly), service agreements with employees, agreements under Partnership Act, 1932.
10. Sec.28: Agreements in restraint of legal proceedings. Agreement restricting enforcement of rights and Agreement which curtail the period of limitation. Exceptions - Restricting jurisdiction, disputes arising in the contract to be referred to arbitration.
11. Sec.29: Uncertain Agreements.
12. Sec.30: Wagering Agreements. [Dec 18 MCQ]
13. Sec.36: Agreements contingent upon impossible events.
14. Sec.56: Agreements to do impossible acts. [June 2019 MCQ]
15. Sec.57: Agreements to do reciprocal promises, one set of which is legal, and the other set is illegal.

Position of minor's agreement and effect

- (a) Agreement is void ab initio
- (b) Acts cannot be ratified on attaining majority
- (c) No refunds of benefit received
- (d) Not liable even in case of fraudulent representation of age.
- (e) Cannot be a partner - except for benefits
- (f) Partners or Guardian not liable for breach of contract by minor
- (g) Cannot ask for specific performance of contract.
- (h) Cannot be adjudged insolvent.
- (i) Minor is liable in contract
- (j) Minor's property is liable for necessities

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Unit 4: Performance of Contract

1. Performance of a Contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and prescribed manner.

2. Duties of Parties: Perform, or Offer to Perform, their respective promises. [Section 37]

Person by whom promise is to be performed [Sec 40]

1. Only by promisor considering nature of case, personal skill or personal confidence.

2. Promisor's Agent

3. Legal Representatives

4. Third Party - When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

5. Joint Promisors

Effect of refusal to accept offer of performance | Default by Promisee | Refusal to accept performance | non-acceptance of performance - Section 38

Promisor is excused from such neglect as to any non-performance caused thereby.

Effect of refusal of party to perform promise wholly | Default by Promisor | Part Performance by Promisor | Non-performance - Section 39

Promisor has refused or disabled himself from performing his promise in entirety.

- a) Promisee may put an end to the Contract.
- b) Where the Promisee has signified (by words or conduct) his consent to continuance of Contract, he cannot put an end to it.
- c) Promisee is entitled to damages on account of non-performance by Promisor.

Section 42: Devolution of joint liabilities | Section 43: Any one of joint promisors may be compelled to perform | Each promisor may compel contribution | Sharing of loss by default in contribution | Section 44: Effect of release of one joint promisor.

Performance by Joint Promisors:

(a)

(i) Joint lives — all of them,

(ii) death of one promisor - Representative + others,

(iii) **death of last survivor** - representative of all promisors.

(b) **Liability** - joint and several. Default by 1 promisor - others to share the loss equally.

(c) **Release** of 1 joint promisor does not release others. Released promisor liable to other promisors.

Appropriation of payments [Sec 59, 60 & 61]

Appropriation of Payment

(a) When a **debtor owes several distinct debts to a Creditor** and makes a payment insufficient to satisfy the whole indebtedness, a question arises: To which debt should the payment be appropriated? 3 rules -

- Debtor intimates the order - Creditor must do so.
- No intimation from the debtor - at the discretion of Creditor.
- No intimation from debtor and Creditor fails to appropriate - Discharge the debts in chronological order.

(b) Creditors can apply the payment against Time Barred Debt. Apply the payment **FIRST** against Interest and when fully paid off apply the payment against Principal.

Discharge Of Contract

1. By performance
2. By lapse of time
3. By operation of law - death, insolvency, merger, unauthorized alteration of terms and vesting of rights.
4. By **mutual agreement** - Novation (substitution), Rescission (termination), Alteration (change in terms), Remission (accepting lesser fulfillment of promise) and Waiver (relinquishment of right)
5. Impossibility of performance - **initial** impossibility (**agreement** void ab initio), **subsequent** impossibility - **contract** void. (English law it is called Doctrine of Frustration)
6. Actual Breach and Anticipatory Breach

Obligation of person who has received advantage under void agreement, or contract that becomes void [Sec 65]

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Unit- 5: Breach of Contract and its Remedies

Modes:

(a) **anticipatory breach:** Occurs when the party declares his intention of not performing the contract (by refusing to perform or disabled himself from performing his promise in its entirety) before the performance is due.

Option to Aggrieved party:

(a) He can **rescind the contract** and claim damages for breach of contract **without waiting until** the due date for performance, or

(b) He may **treat the contract as operative** and wait till the due date for performance and claim damages if the promise still remains unperformed.

Consequences of Treating Contract as Operative:

(a) The promisor may perform his promise on or before the due date of performance and the **promisee will be bound to accept** the performance.

(b) The **promisor may take advantage of the discharge by supervening impossibility** arising between the date of breach and the due date of the performance and in such a case, the **promisee shall lose his right to sue for damages.**

(b) **actual breach:** Party refuses or fails to perform his part of the contract on due Date of Performance or during the Course of Performance.

Remedies for Breach of Contract

1. Rescission of Contract [Section 39] Rescission means a right not to perform obligation.

2. Suit for Damages

(a) Such damages which **naturally arose in the usual course of things** from such breach. This relates to ordinary damages arising in the usual course of things.

(b) Such damages **which the parties knew**, when they made the contract, to be likely to result from the breach. This relates to special damages. [Section 73]

(c) The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach, and

3. Suit for Specific Performance i.e. demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

4. Suit for Injunction i.e. demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act.

5. Suit for Quantum Meruit Quantum Meruit means as much as is earned. Right to Quantum Meruit means a right to claim the compensation for the work already done.

Liquidated Damages and Penalty

Liquidated Damages

The specified sum payable by the party responsible for breach which represents a fair and genuine pre estimate of the damages likely to result due to breach is called liquidated damages.

Penalty

The specified sum payable by the party responsible for breach which is disproportionate to the damages likely to result due to breach.

In India, there is no distinction between penalty and liquidated damages. The Courts in India allow only reasonable compensation not exceeding the specified sum [Section 74].

Unit – 6: Contingent and Quasi Contracts

Quasi Contracts

- Not a contract at all. Obligation created by law due to absence of agreement.
- Doctrine of unjust enrichment
- Applicability -
 - Supply of necessaries to minor: The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. [Section 68]
 - Payment by interested party: If payment is made by interested person which another is bound to pay is entitled to be reimbursed by the other. [Section 69]
 - Person enjoying benefits under non gratuitous act [Section 70]
 - Responsibility of finder of goods: a finder of lost goods has: [Section 71]
 - to take proper care of the property as man of ordinary prudence would take
 - no right to appropriate the goods and
 - to restore the goods if the owner is found.
 - Obligation of a person to whom money is paid by mistake. [Section 72]

Contingent Contracts [Sec 31-36]

Contract to do or not to do something if some event, collateral to such contract, does or does not happen.

Essentials -

1. Happening or non happening of event,
2. Collateral event and
3. Uncertain event.

Happening of Uncertain Future Event [Sec. 32]	Non- Happening of Uncertain Future Event [Sec. 33]	Future Conduct of a living person [Sec. 34]	Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Non-Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Impossible Events [Sec. 36]
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