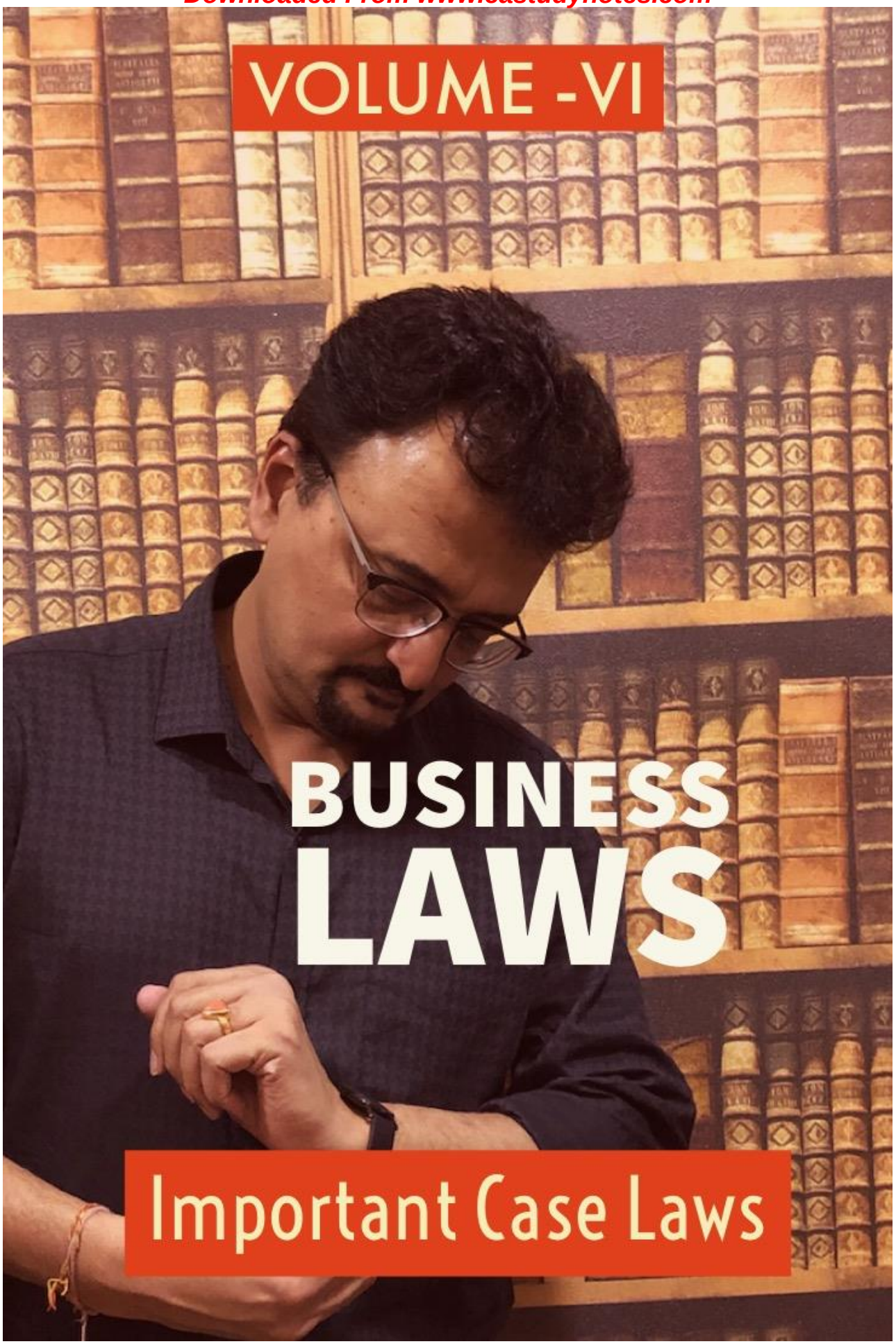

Indian Contract Act, 1872

Balfour v. Balfour,

Intention to create legal relationship. When the two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no such intention on the part of the parties, there is not contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. As such they are not contracts.

Example:- A husband promised to pay his wife a household allowance of £ 30 every month. Later the parties separated and the husband failed to pay the amount. The wife sued for the allowance. Held, agreements such as there were outside the realm of contract altogether.

Carlill v. Carbolic Smoke Ball Co.

When an offer is made to the world at large, it is called a general offer.

Example: - A Company advertised in several newspapers that a reward of £ 100 would be given to any person who contracted influenza after using the smoke balls of the company according to its printed direction. One Mrs. Carlill used the smoke ball according to the directions of the company but contracted influenza. Held, she could recover the amount as by using the smoke balls she had accepted the offer.

Lalman v. Gauri Dutt,

Offer must be communicated. An offer, to be complete, must be communicated to the person to whom it made. Unless as offer as communicated to the offeree by the offeror or by his duly authorized agent, there can be no acceptance of it.

An acceptance if an offer, in ignorance of the, is no acceptance and does not confer any right on the acceptor.

Example: - S sent his servant, L to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward.

Harvey v. Facey

A statement of price is not an offer. A mere statement of price is not construed as an offer to sell

Example:- Three telegrams were exchanged between Harvey and Facey.

1. "will you sell us your Bumper Hall Pen? Telegraph lowest cash price-answer paid."
2. "Lowest price for bumper hall pen £ 900."
3. "We agree to buy Bumper Hall Pen for the sum of £ 900 asked by you."

Held, there was no concluded contract between Harvey and Facey.

Dunlop v. Higgins,

Loss of letter of acceptance in postal transit

Acceptance is complete as against the offeror as soon as the letter of acceptance is posted. The contract is complete even if the letter of acceptance goes astray or is lost through an accident in the post. But in order to bind the offeror, it is important that the letter of acceptance is correctly addressed. Sufficiently stamped and posted. If it is not correctly addressed and sufficiently stamped, the communication of acceptance is not complete within the meaning of Sec. 4 even if it is posted. Lord Cottenheam L. C., in delivering the judgement in the House of Lords in Dunlop v. Higgins enunciated the principle in the following words:

"If the letter of acceptance is posted in due time, the acceptor is not responsible for any casualties in the post office…., if the party accepting the offer puts his letter into post on the correct day, has be not done everything he was bound to do? How can he be responsible for that over which he has no control?

Durga Prasad v. Baldeo,

It must move at the desire of the promisor. An act constituting consideration must have been done at the desire or request of the promisor. If it is done at the instance of a third party or without the desire of the promiser, it will not be a good consideration.

Example:- B spent some money on the improvement of a market at the desire of the collector of the district. In consideration of this D who was using the market promised to pay some money to B. Held, the agreement was void being without consideration.

Chinnaya v. Ramayya,

It may move from the promise or any other person. Consideration may move from the promise or any other person, i.e. even a stranger. This means that as long is consideration for a promise it is immaterial who has furnished it. But the stranger to consideration will be able to sue only if he is a party to the contract.

Example:- An old lady, by a deed of gift, made over certain property to her daughter D, under the direction that she should pay her aunt, P (Sister of old lady), a certain sum of money annually. The same day D entered into an agreement with P to pay her the agreed amount. Later, D refused to pay the amount on the plea that no consideration had moved from P to D. Held, P was entitled to maintain suit as consideration had moved from the, old lady, sister of P to the daughter, D

Rajlukhy v. Bhoothnath,

Nearness of relationship, however, does not necessarily import natural love and affection.

Example:- A Hindu husband, after referring to quarrels and disagreement between him and his wife, executed a registered

document in favor of his wife agreeing to pay her for maintenance, but no consideration moved from the wife. Held, the agreement was void for want of consideration as the essential requirement that the agreement is made on account of natural love and affection between the parties was missing.

Mohiri Bibi v. Dharmodas Ghose,

An agreement with or by a minor is void and inoperative ab initio. The privy Council affirmed this view most emphatically in Mohiri Bibi v. Dharmodas Ghose, In this case, a minor mortgaged his house in favour of a money-lender to secure a loan of Rs.20,000 out of which the mortgagee (The money-lender) paid the minor sum of Rs. 8,000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when the executed the mortgage. Held, the mortgage was void and, therefore, it was cancelled, Further the money-lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.

Bala Debi v. S. Majumdar, A.I.R.,

If there is no consensus ad idem, there IS no contract. One such circumstance which interferes with consensus ad idem is mistake.

Exmaple:- An illiterate woman executed a deed of gift in favour of her nephew under the impression that she was executing a deed authorizing her nephew to manage her lands. The

evidence showed that the woman never intended to execute such a deed of gift, nor was the deed ever read or explained to he, Held, the deed was void and inoperative Bala Debi v. S Majumdar, A.I.R.,

Smith v. Chadwick,

The other party must have been induced to act upon the representation or assertion. A mere falsehood is not enough to give a right of action. It must have induced the other party to act upon it. The other party cannot shut his eyes to the obvious defects or flaws which he could have easily ascertained by reasonable investigation or inspection.

Example: - A bought shares in a company on the faith of a prospectus which contained an untrue statement that one B was a director of the company. A had never heard of B and, therefore, the statement was immaterial from his point of view. A's claim for damages in this case was dismissed because the untrue statement had not induced A to buy the shares Smith v. Chadwick.

Cundy v. Lindsay,

Mistake as to the identity of the person contracted with. It is a fundamental rule of law that if one of the parties represents himself to be some person other than he really is, there is a mistake as to the identity of the person contracted with. If, for example, A intends to contract with B but finds he has contracted with C, there is no contract if the identity of B was a

material element of the contract and C knows it. Likewise if A make an offer to B, C cannot give himself any rights in respect of the contract by accepting the offer. If he does so, the agreement will be void.

Example:- Blenkarn ordered by letter goods from Lindsay and signed it in such a way that Lindsay believed it came from the well-known firm of Blenkiron & Co. Held, there was no contract between Lindsay and Blenkarn as Lindsay never intended to deal with Blenkarn, having never heard of him Cundy v. Lindsay.

Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.

FACTS:

Dunlop, a tire manufacturing company, made a contract with Dew for sale of tires at a discounted price on condition that they would not resell the tires at less than the listed price and that any reseller who wanted to buy them from Dew had to agree not to sell at the lower price either. Dew sold the tires to Selfridge on the same Price Maintenance Terms, but Selfridge proceeded to sell the tires below the price he promised to sell them for.

ISSUES:

(1) Whether there was any contract between Dunlop and Selfridge?

(2) Whether Dew contracted with Selfridge in the capacity of an agent of Dunlop?

(3) Whether Dunlop gave any consideration by itself or through the promisee, acting as his agent in giving it?

HELD:

(1) Dunlop was acting as complete stranger to the contract between Selfridge and Dew and thus on account of privity of contract couldn't sue Selfridge for breach of its agreement with Dew. It was a mere beneficiary to it on account of Price Maintenance Clause.

(2) On whatever terms the contract between Selfridge and Dew was made was to be solely determined by them and was not in any way regulated or stipulated by Dunlop apart from the Price Maintenance Clause. While Dew was assumed to be acting as agent while inserting PMC in the contract it was acting as principal while stipulating terms of the contract with Selfridge–but as held by Court, a person can't contract in two capacities in the same agreement. Hence, HoL held that Dunlop wasn't acting as the undisclosed principal of Dew.

(3) Dew had the title to goods manufactured by Dunlop independently of any contract with Selfridge. They were free to sell the tyres to anyone they wished. Secondly, the consideration by way of discount was given wholly out of Dew and neither directly nor indirectly out of Dunlop. Neither Dunlop gave any consideration directly to Selfridge nor through Dew as his agent. Further since all the terms of the contract including whether to give any discount to Selfridge or not was solely stipulated by Dew on its own

account and not as Dunlop's agent, therefore HoL unanimously held appellant's contention that their permitting and enabling Dew, with the knowledge and desire of Selfridge, to sell to the latter on the terms of its contract was consideration moving from Dunlop to Selfridge, as unsustainable.

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Company Law

Salomon vs Salomon & Co. Ltd.

- Salomon carried on business as a leather merchant.
- He sold his business; for a sum of 30,000 to a company formed by him along with his wife, daughter and four sons.
- The purchase consideration was satisfied by allotment of 20,000 shares of 1 each and issue of debentures worth 10,000 secured by floating charge on the company's assets in favor of Mr. salomon.
- All the other shareholders subscribed for one share of 1 each. Mr. Salomon was also the managing director of the company.
- The company almost immediately ran into difficulties and eventually became insolvent and winding up commenced.
- At the time of winding up, the total assets of the company amounted to 6,050; its liabilities were 10,000 secured by the debentures issued to Mr. salomon and 8,000 owing to unsecured trade creditors.
- The unsecured sundry creditors claimed the whole of the company assets viz 6050 on the ground that the company was a mere alias or agent for Salomon.
- It was held that contention of the trade creditors could not be maintained because the company being in law a person

quite distinct from its members could not be regarded as an agent or trustee for Salomon.

- In addition, the company's assets must be applied in payment of the debentures as a secured creditor is entitled to payment out of the assets on which his debt is secured in priority to unsecured creditors.

Sir Dinshaw Maneckjee Petit

- An assesse was earning huge income by way of dividend and interest.
- He formed four private companies and transferred his investments to each of these companies in exchange of their shares.
- The dividends and interest income received by the company was given back to sir dins haw as a pretended loan.
- It was held that the company was formed by the assesse purely and simply as a legal entity to ostensibly receive the dividends and interest and to hand them over to the assesses as pretended loans.

Daimler Co. Ltd. vs. Continental Tyre & Reubber co. Ltd.

- A company was incorporated in England for the purpose of selling tyres made in Germany by German Company.
- All directors of company were German residents. Except one shareholder, all shareholders of company were German Residents.

- During the First World War the English company filed suit to recover trade debt. At the time, war was going on between Germany and England.
- It was held that company was an alien enemy and therefore contract of selling tyres made in Germany would be void. Company cannot recover trade debt.

Merchaandies Transport Limited vs. British Transport Commission.

- In merchandise Transport Limited vs. British Transport Commission, a Transport company wanted to obtain licenses for its vehicles but it could not do so if it made the application in its own name.
- It, therefore, formed a subsidiary company and the application for licenses was made in the name of the subsidiary.
- The vehicles were transferred to the subsidiary.
- Held, the parent and the subsidiary company were one commercial unit and the application for licenses was rejected.

Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd.

Where it was found that the sole purpose for the formation of the new company was to use device to reduce the amount to

be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction

Landmark Case; Ashbury Railway carriage co. vs. Riche

- The doctrine of ultra vires was first applied in case of ashbury railway carriage co vs riche.
- In this case the company was formed 'to make and sell, or lend or hire, railways carriages and wagons and to carry on the business of the mechanical engineers and general contractors.'
- The company enters into contract with riche to finance the construction of railway line in belgium.
- Later, the company repudiated the contract on the ground that it was ultra vires.
- Riche filed a suit against the company for breach of contract and claimed damages. His Olea was that the contract was within the powers of the company as it was covered under the general contractors business.
- The court held that the contract was ultra vires the company and therefore void ab-initio.
- It was further held that it cannot be made valid by ratifications on the part of the shareholder, and so the company was not liable for breach of contract.

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