Unit 6-1

Date 11/10/24

Chapter → 2

Indian Contract Act, 1872

Law :- Rules and Regulations for regulating the human conduct in a society. It is imposed by government.

Purpose for Making Law

- Peaceful Living
- Natural Justice
- Social Security

Sources of law

- Act
- Precedent or case study
- Custom or Usage

* Business law is also known as Commercial or Mercantile law.

Contract Law Before Indian Contract Act 1872:-

Contract law before ICA based on following:-

- In ancient & Medieval time → No specific law for contracts

- Mauryas law :- It is in the form of bilateral transactions, based on free consent.

- Mohammedan Law :- Law governed contracts b/w Muslim based on Islamic principles & custom.

- Hindu Law :- Minor, Intoxicated person, old man, handicapped can't enter into a valid contract.

- English law :- It is applied in Madras, Bombay & Calcutta under the charter of 1726 by King George.
  If one party of contract is from either religion or from other religion then law of defendant is used.
  But outside the presidency town, the matters were solved on the basis of justice, equity & good conscience.

The Law of Contract : Introduction

→ Law of Contract is the foundation of mercantile/ or commercial / business law/ civilized world.

→ Formed on April 25, 1872 and came into force on September 01, 1872.

→ Purpose of this law is to define and amend certain parts of the law relating to contract.

→ It apply to all over India, including Jammu and Kashmir.

→ It is of two types :-

General Principles
→ Includes sec 1-75
→ Applicable to all

Specific Principles
→ Includes sec 124-238
→ Applicaple to Specific Act

→ It is concerned with enforceability of promises.

→ The purpose of law of contract is to ensure that the 1. expectations created by promises of the parties are fulfilled and 2. obligations created by agreements are enforced.

Applicability to Business Community as well as others :-

→ The law of contract is not only related to the business community, but also to others.

→ Every one of us enters into contracts day after day.

→ When you buy a book or keep your vehicle at the scooter stand, etc. in all these transaction of your daily life, entering into contract.

Contract Law is not Exhaustive :-

→ Contract Act is not exhaustive law because it does not deal with all the branches of the law of contract.

→ There are seperate Acts which deals with contracts related to SOGA, LLP, Company, Negotiable Instrument, Etc.

→ Contract Act contains general and specific principles of contract & does not deal with contractual relationship which are dealt under special Act.

Contract :- Agreement which is enforceable by law. [Sec 2(h)]

Contract = Agreement + Enforceable by law

Agreement :- Mutual promises forming consideration for each other. [Sec 2(e)]

Promise :- Offer + Acceptance [Promise Sec :- 2(b)]

Offer: declaration of will + with the view to obtain the consent of the other

Acceptance: When the person to whom the proposal has been made, signifies his assent.

Enforceability by law :- Must give rise to legal obligation / legal relation / legal intention. Not related to social / Personal / Moral relation.

All contracts are Agreements but all agreements are not contracts :-

→ An agreement is the basic structure and when the agreement is legally bounding it becomes contract.

→ Agreement is wider term & contract is narrow sense.

Right in Personam :- It means a right available against a particular person.

Right in Rem :- It means a right available against the whole world.
Example :- Your property

Essentials of a valid Contract :-
Essentials of a valid Contract is defined under (Section -10) of Indian Contract Act. Essentials are :-

(i) **Offer and Acceptance**
There must be an ~~intention~~ legal offer and a lawful acceptance in an agreement which satisfy the requirements of Contract Act.

(ii) Legal Obligation
To become a contract, it must give rise to legal obligation i.e legal duty which is govern by law.

(iii) Legal Object
The object of the agreement should be lawful and it should be authorised by law.
★ Object unlawful in case of :-
Forbidden by law, fraudulent, immoral or opposed to public policy.

(iv) Lawful Consideration
Consideration means something in return. It must be real, valuable and lawful

(v) Free Consent
Consent of the parties must be free. Section - 14 lays down that consent is not free if it is caused by Coercion, Undue Influence, Fraud, Misrepresentation or Mistake.

(vi) Certainity
The terms of the contract should be certain and definite and not vague (fake).
"Section 29" says Agreements, the meaning of which is not certain or capable of being made certain are void.

(vii) Possibility Of Performance.
To become a valid contract it must be capable of performance.
"Sec 56" says, An agreement to do an act impossible in itself is void.

(viii) Capacity of Parties
The parties to a contract must be capable. It includes :- Major, Sound Mind and Not Disqualified by any law.

(ix) Writing and Registration
A contract may be oral or written. An oral contract is same treated as written.
★ But in some Act, writing of the contract is ~~not~~ essential e.g. Transfer of Property Act.

(X) Not Expressly declared void
The ICA 1872, has expressly declared certain agreements to be void. If the parties fall under this category, this will not be enforceable by law.

Law of Limitation :-

Debtors = Recovery money in three years

If not recovered in 3 years known as 'Time Barred debt'

After 3 years = No money recovered

Recovered only in case when it is written and registered.

Restitution Benefit :- It means restore back
अपना पैसा वापसी

→ Valid Contract :- Not recover (NO Ques ×)

→ Void contract :- can be recover ; only in case of
- Supervening Impossibility
- Subsequent Illegality
- Voidable का result
- contingent

→ Void agreement → can Not Recover
(शुरू से खराब)

→ Voidable Contract
- Void (Yes)
- Valid (NO)

Types Of Contracts :-

Types of Contracts are classified in three categories :-

(i) On the basis of Validity
(ii) On the basis of formation of contract
(iii) On the basis of the performance of the contract.

1.) On the basis of Validity :-

Validity

Valid Contract
All 10 essentials of a valid contract must be present

Illegal Agreement
It is contrary to law.
It is due to :-
→ Forbidden by law
→ Permitted, defeat the prov. of any law
→ fraudulent
→ Immoral
→ Injury to person or property
→ oppose to public policy
→ Lays down Section 23

Void Agreement
→ void from very beginning.
→ It is void - ab - initio
→ Lays down under Sec 2(g)

8 – x = void ag.
1 – void = void ag.
$\frac{1}{10}$ – free consent = void ag.

Unenforceable Contract
It is one, which suffers from some technical defect.
Ex:- Insufficiency of stamp, etc.

Void contract
Valid at beginning but becomes void later. It is due to :-
- Supervening impossibility
- Subsequent illegality
- Voidable consequence
- Contingent

Void contracts are laid down under Sec 2(j)

Voidable Contract
It is enforceable at the option of one party. There is no free consent due to coercion, undue influence, fraud & misrepresentation. It lays down under Section 2(i)

2.) On the Basis of formation of Contract

Formation

Express Contracts
It is created by the words of the parties, whether oral or written.

E-contracts
When a contract is entered into by two or more person / parties using electronic means like e-mail is known as E-contracts

Implied Contract
Created by law & circumstances of law or by the conduct of the parties

Quasi- Contract
It is not an actual contract but created by law under certain circumstances.
Law enforces rights & obligation when no real intention appears

Tacit Contract :- Tacit means silent. These are those contracts that are inferred throughs the conduct of parties without spoken or written.

3.) On the basis of Performance of the Contract

Performance of the Contract

- **Executed Contract**
  Contract Performed by all parties
- **Executory Contract**
  Both the parties have still to perform their respective contractual obligation
  - **Unilateral contracts**
    One party has performed his obligation and other party has to perform his obligation.
  - **Bilateral Contracts**
    Both the parties are yet to perform their respective obligations at the time of formation of contract.

★ Executory contract is also known as contract with executory consideration.

★ Unilateral contract also known as one sided contract / Partly Executed or partly Executory / Contract with Executed consideration.

OFFER AND ACCEPTANCE

10 Essentials
⇓
Offer and Acceptance
⇓
Starting | Basic point

Negotiation & Bargaining
⇓
deal Hit
⇓
Acceptance
⇓
contract

In Modern Time, Big firms made offer → Standard form due to enormous transaction
[Either take it or leave it]
⇓
Adhesive Contract.

★ No Bargaining and no Negotiation in this.

Due to enormous transactions, frauds were increasing day-by-day. As a result :-

→ In England, they made a English Law [Unfair contract term Act, 1977] to decrease the number of frauds in business.

→ In India, There is no law for it but High Court and Supreme Court has made some remedy to prevent from frauds.

What is an Offer ?

→ Proposal and offer are interchangle & Synonyms to each other.

→ Declaration of will + with a view to obtain the assent of other

to do something | or | Abstain from doing something

→ To such act
→ To such Abstinence

→ When a person signifies his will to do something or abstain from doing something with a view to obtain the assent of other to such act or to such abstainence.

→ Offer is ———— offeror or ~~offeree~~ promisor
To whom offer is made ———— offeree or promisee
This is written under [Section 2(c)]

Essentials of a Valid Offer :-

(i) It must be capable of Creating legal obligation
If the offer does not intend to give rise to legal consequences and creating legal relations, it is not considered as valid offer in the eyes of law.

(ii) It must be certain, definite and not vague
- → Terms of an offer must be clear
- → Complete and not confusing
- → If it is vague then it can't create legal relationship.

(iii) It must be communicated to the offeree
An offer to be completed, must be communicated to the person to whom it is made. Otherwise there can be no acceptance of it.

(iv) It must be made with a view to obtain the assent of the other party
Offer must be made with the intention to obtain the assent of other. This is crucial aspect of a valid offer.

(v) It may be conditional
An offer may be conditional, that means it is dependent on the fulfillment of certain conditions or requirement. An offer can be conditional but acceptance cannot be conditional.

(vi) Offer should not contain a term the non-compliance of which would amount to acceptance.
Offer must not be in negative terms. This means that offeror shouldn't include a condition that would be deemed acceptance if the offeree fails to ~~ma~~ meet it.

(vii) The offer may be either specific or general
The offer may be made either to specific person or made to general public.

(viii) The offer may be express or implied
An offer may be made either by words or by the conduct of the parties.

(ix) Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and Advertisement.

→ Mere statement of Intention :- A statement expressing a person's will to do something without a commitment to be bound by their words.

→ Invitation to offer :- Supply of Information + so that negotiation can start

→ Communication of Information :- Sharing information about something, without any intention to enter into a contract.

→ Prospectus :- A document providing information about a company's investment opportunities, which is not an offer itself.

→ Advertisement :- A public notice promoting a product or service, which is generally an invitation to offer rather than an offer

(x) A statement of price is not an offer.
A statement of price is not an offer in itself. It's merely a statement of the price at which a person is willing to buy or sell a particular thing.

Essentials of Proposal :-

→ Offeror / promisor must made offer to the offeree / promisee / acceptor.

→ Party must express his willingness to do or abstain from doing something

→ offer — Positive
  — Negative

→ Offer must be made with the intention to obtain the assent of other.

Kinds Of Offer :-

(i) General and Specific offer

General offer :- It is an offer made to public at large and anyone can accept it.

Section 8 says, anyone performing the conditions of the offer can be considered to have the offer.

Specific offer :- When offer is made to specific person then it is known as specific offer.

(ii) Express and Implied offer

→ When the offer is made in words, it is sade to express offer.

An Implied offer is one which is made from the act or by the conduct of the parties.

Sec 9 says Insofar proposal of any promise is made in words the promise is said to be express. Insofar proposal is made other than words is known as a Implied offer.

(iii) Standing offer

An offer which is allowed to remain open for acceptance over a period of time is known as continuous offer / standing / open offer.

(iv) Counter offer

→ Acceptance must match the offer.
→ It must be a mirror image of offer.
→ If any alteration is made, or anything added then this will be counter offer.
→ A counter offer is an implied rejection of original offer.

(v) Cross offer

When two person makes an offer to each other on similar terms, without having the knowledge of the offer being made by the other side, it is known as cross offer.

Acceptance :- Defined under Section 2(b) of the act as :-

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be acceptance.

Relationship b/w offer and Acceptance

According to Sir William Anson, "Acceptance is to offer what a lighted match is to a train of gun powder."

Legal Rules Regarding a Valid Acceptance :-

(i) Acceptance must be given only by the person to whom the offer is made.

In case of specific offer, it can be accepted only by that person to whom it is made.
In case of general offer, it can be accepted by anyone by complying with the terms of the offer.

(ii) Acceptance must be absolute or unqualified

→ A conditional acceptance is not an acceptance at all.
→ It should be mirror image of the offer.
→ The acceptance must be match with offer.

(iii) The acceptance must be communicated

→ Acceptance is not complete unless / until it is communicated to the offeror.
→ Mental acceptance is no acceptance.
→ But the party entitled to get the communication of acceptance can waive the rightly expressly or impliedly.

(iv) Acceptance must be in prescribed form

This means that the offeree must accept the offer in exact manner specified by the offeror as :-
→ In writing, signed and dated
→ By Email
→ Within a specific time period

→ In a particular location

If offeree fails to follow the prescribed mode of acceptance, the offeror may reject the acceptance.

(v) Time
Acceptance must be made in prescribed time, if any, and if there is no prescribed time then it must be within a reasonable time.
[Reasonable time depends upon the facts of each case].

(vi) Mere silence is not an acceptance.
→ The acceptance of an offer cannot be taken as implied from the silence of the offeree.
→ A mere silence of the offeree not evidenced by words or conduct, it is in the eye of law no acceptance at all.

(vii) Acceptance by conduct / Implied acceptance.
Section 8, says that the performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal.

Communication Of Offer & Acceptance

When the contracting parties are face to face & negotiate in person there is instantaneous communication of offer & acceptance.

But where services of the post offices are utilised for communication the following rules as laid down in Section 4 & 5 will apply.

Communication of Offer :- Section 4 apply here

The communication of offer is complete when it comes to the knowledge of the person to whom it is made.

Communication of Acceptance :- As per Section 4

The communication of acceptance has two aspects

Against the Proposer

⇓

When acceptance is out of the power of acceptor

or

Acceptance is put in the course of transmission

⇓

communication of acceptance is completed against the proposer

Against the acceptor

⇓

when acceptance reaches/comes to the knowledge of proposer

⇓

communication of acceptance is completed against the acceptor.

Ques Till when offer can be revoke ? $\boxed{\text{(Sec - 5)}}$

Ans → Before, acceptance is out of the power of acceptor.

→ Before, when acceptance is put in the course of transmission

→ Before communication of acceptance is completed against the proposor.

Ques Till when accepton can be revoke ? $\boxed{\text{(Sec - 5)}}$

Ans → Before acceptance reaches / comes to the knowledge of the proposor.

→ Before, Communication of acceptance is completed against the acceptor.

Ques When communication of revocation is completed as per $\boxed{\text{section - 4}}$?

Ans

(i) Against the person who make it :- When it is out of the power / put in the course of transmission who makes it.

(ii) Against the person to whom it is made :- When it comes to his knowledge.

Ques How an offer lapse or comes to an end ? $\boxed{\text{Section - 6}}$

Ans (i) By Notice

(ii) By Passage of time

(iii) By death or incapable Insanity [Personal nature offer are only cancelled.

(iv) By failure of condition of offer

(V) By counter offer

(vi) By rejection