

# Legal Aspects for Business

1. A small Recap
2. Types of contracts
3. Performance
4. Special Contracts
5. Agency contract
6. Employment contracts
7. General Contracts
8. Conditions & covenants

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Contracts Laws

# A small recap.....

1. Is a minor competent to enter into contracts?
2. Betting agreements- can they become contracts?
3. Can we contract to buy/ sell land in moon?-  
Impossible contracts
4. A third person becomes a party to a contract.  
How?
5. Can a husband force his rich wife to gift him?
6. Is it legally tenable if you fail the promise made to  
a close friend?

# 1. VOIDABLE CONTRACT

An agreement which is **enforceable by law** at the **option of one** or more of the parties thereto, but not at the option of the other or others, is a voidable contract. (2i)

● (a) When consent is obtained by **coercion, undue influence, misrepresentation or fraud** is voidable at the option of aggrieved party i.e. party whose consent was obtained by coercion/fraud etc. However, other party cannot avoid the contract.

● (b) When a contract contains reciprocal promises and one party to contract **prevents** the other from performing his promise, the contract becomes voidable at the option of the party to prevented. (section 53). Obvious principle is that a person cannot take advantage of his own wrong

● (c) When time is essence of contract and party **fails to perform in time**, it is voidable at the option of other party (section 55).

● A person who himself **delayed** the contract cannot avoid the contract on account of (his own) delay.

## 2. VOID CONTRACT

- A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. [section 2(j)]. Thus, initially a contract cannot be void, i.e. a contract cannot be void *ab initio*. The simple reason is that in such a case, it is not a contract at all to begin with.
- A valid contract can become void contract due to some subsequent events. e.g. the person dies or property is destroyed or Government imposes a ban etc
- A void agreement is void *ab initio*. It never becomes a contract. It is nullity and cannot create any legal rights.

### 3. Quasi Contracts

‘*Quasi*’ means ‘almost’ or ‘apparently but not really’ or ‘as if it were’.

- It is an obligation which law created in absence of any agreement & similars a valid contract. It is based on equity.
- (a) Supply of necessaries (section 68)
- (b) Payment of lawful dues by interested person (section 69)
- (c) Person enjoying benefit of a gratuitous act (section 70)
- (d) Finder of goods (section 71)
- (e) Goods or anything delivered by mistake or coercion (section 72).

**Quasi contract’ is not a ‘contract’.**

## **4. Contingent contract**

A “contingent contract” is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

*Illustration* - A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract. [section 31].

**Contract happens ONLY if the event takes place**

# Wager Agreements

Agreement: Every promise and every set of promises forming consideration for each other (s2(e))

An unenforceable contract is neither void nor voidable but it cannot be enforced in the court because it lacks some items of evidence such as writing, registration or stamping.

**Wagering agreement** is “An agreement to betting, an agreement in restraint of trade, an agreement to do an impossible advertisement”.

An obligation which does not have its origin in an agreement does not give rise to a contract.

In India , the wagering agreements have been declared unlawful by statute

# Examples

1. A agrees to B that he will get his daughter married to him if he wins a lottery prize of Rs.1 crore
2. R promised S, while they were drunk, that he will sell his house for Rs.1 next morning.
3. X and Y enter into agreement to sell a piece of land. This is an agreement which is required to be registered & stamped. It will be unenforceable if the same is not stamped at all or is under stamped and it is also called as wagering agreement.



# **A contract may be discharged:**

1. by **performance**
2. by **agreement of mutual consent.**
3. by **impossibility.**
4. by **lapse of time.**
5. by **operation of law.**
6. by **breach of contract.**
7. by **cancellation**

# Discharge of contract & Performance

Normally, a contract is expected to be performed. The performance may be actual or by way of tender, i.e. attempted performance.

It is discharged if:

1. **Novation** (Substituted with a new contract), **rescission** (Cancellation of parts/ whole of the contract) and **alteration** of contract
2. Promisee may **dispense with or remit performance** of promise
3. Effect of neglect of promisee to afford promisor reasonable facilities for performance
4. **Merger of superior rights with inferior right** under contract.

# Breach of contracts

- Compensation is payable for breach of contract. Penalty is also payable if provided in contract. Breach of contract may be actual or anticipatory.
- Compensation for loss or damage is payable. Since the word used is 'compensation', punitive damages cannot be awarded.
- These should be in usual course or known to parties i.e. both parties must be aware
- No compensation for remote and indirect loss or damage
- <sup>11</sup> • Same principle applies to *quasi contract* also.

# PAYMENT OF DAMAGES

1. General
2. Special
3. Exemplary

# 1. General damages

**These are the damages which result from 'direct and proximate' consequences from breach of contract.**

- **Normally, what can be awarded is compensation for loss or damage which can be directly or proximately attributed to the breach of contract.**
- **One way of assessing damages is the difference between the contract price and the market price on date of breach of contract, plus reasonable expenses incurred by him on account of the breach plus cost of suit in court of law.**

## 2. Special damages or consequential damages

These arise due to existence of special circumstances.

- Such damages can be awarded only in cases where the special circumstances were foreseeable by the party committing the breach or were specifically known to the party.
- Consequential losses like loss of profit due to breach, which may occur indirectly due to breach cannot be normally awarded unless there are special circumstances which parties were aware.
- Loss of profit can be awarded only in cases where seller could have foreseen those losses and arose directly as result of breach.

### **3. VINDICTIVE OR EXEMPLARY DAMAGES**

Vindictive or exemplary damages cannot be awarded under Contract Act. However, these may be awarded by Court under tort under special circumstances

e.g. \* Dishonor of cheque by Bank when there was balance in account, as it causes loss of reputation of credit worthiness of person issuing cheque \* Breach of contract to marry, as it hurts both feelings and reputation.

### **Quantum Meruit**

'*Quantum meruit*' means 'as much as earned'. A contract may come to end by \* breach of contract \* contract becoming void or \* Voidable contract avoided by party. In such case, if a party has executed part of contract, he is entitled to get a proportionate amount i.e. 'as much as earned by him'.

# Special Contracts

Legal contracts even if one of the contract element is missing

1. **Agency contracts- No consideration**
2. **Guarantee/Indemnity contracts- 3<sup>rd</sup> party enters the contract**
3. **Bailment contracts- Trusteeship**
4. **Employment contracts- Special covenants**
  - Confidentiality condition
  - Not Compete condition



# Agency contracts-Classic cases

- Bata Shoe Co. wants to open a shop in UAE. How should it do?
- Classic Co. Ltd wants its agents to market its products in Srilanka. It appoints DSAs based at Colombo. One DSA sold an inferior quality goods at high prices. What can be done?
- Dominos has few advertising plans for Indian outlets. How to expand market in Bhutan?
- Wonderla wants to add few more facilities. Can they call up other entertainment Cos. To bid for it?

# Contracts of Agency

- Agency is a special type of contract.
- The concept of agency was developed as one man cannot possibly do every transaction himself. Hence, he should have opportunity or facility to transact business through others like an agent.
  - The principles of contract of agency are –
    - (a) Excepting matters of a personal nature, what a person can do himself, he can also do it through agent (*e.g. a person cannot marry through an agent, as it is a matter of personal nature*)
    - (b) A person acting through an agent is acting himself, i.e. act of agent is act of Principal. - - Since agency is a contract, all usual requirements of a valid contract are applicable to agency contract also, except to the extent excluded in the Act.

# Rights and Duties of Principal

## • Rights

- Recover damages from agent if he disregards directions of Principal
- Obtain accounts from Agent
- Recover moneys collected by Agent on behalf of Principal
- Obtain details of secret profit made by agent and recover it from him
- Forfeit remuneration of Agent if he misconducts the business.

## • Duties

- Pay remuneration to agent as agreed
- Indemnify agent for lawful acts done by him as agent
- Indemnify Agent for all acts done by him in good faith
- Indemnify agent if he suffers loss due to neglect or lack of skill of Principal.

# Rights and Duties of Agent

An agent can act on behalf of Principal and can bind the Principal. His duties are

- Conducting principal's business as per his directions
- Carry out work with normal skill and diligence
- Render proper accounts [section 213].
- Agent's duty to communicate with principal [section 214]
- Not to deal on his own account, in business of agency [section 215].
- Agent's duty to pay sums received for principal [section 218]
- Agent's duty on termination of agency by principal's death or insanity - [section 209].
- REMUNERATION TO AGENT - Consideration is not necessary for creation of agency. However, if there is an agreement, an agent is entitled to get remuneration as per contract.

# Rights of agents

- To receive salary
- To receive commission
- To charge bad debts to P
- To deal with other principal's items

**One important feature is that as per section 185, no consideration is necessary to create an agency**

# Termination of Agency

- An agency is terminated by the principal revoking his authority
- by the agent renouncing the business of the agency
- by the business of the agency being completed
- by either the principal or agent dying or becoming of unsound mind
- by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. [section 201].
- In following cases, an agency **cannot** be revoked
- Agency coupled with interest (section 202)
- Agent has already exercised his authority (section 203)
- Agent has incurred personal liability.

- **Employer and Employee Contracts**
- **Objective: to understand & sign emp. contracts**
- **Conditions – Obligations – Termination – Liquidated damages – Data Privacy – Confidentiality – Indemnification**

## **Contract terms can come from a number of different sources**

They could be:

- verbally agreed
- in a written contract, or similar document
- in an employee handbook or on a company notice board
- in an offer letter from your employer
- required by law (for example, your employer must pay you at least the minimum wage)
- in collective agreements
- implied terms



# Employer and Employee Contracts

An **employment contract** is an agreement entered into between an employer and an employee at the commencement of the period of employment and stating the exact nature of their business relationship, specifically what compensation the employee will receive in exchange for specific work performed.

The terms of an employment contract set out what you and your employer can expect of each other .

# **Classifications of workers within a company**

1. Some are full-time and permanent and receive a guaranteed salary, while others are hired for short term contracts or work as temps or consultants.
2. These latter differ from permanent employees in that the company where they work is not their employer, but they may work through a temp-agency or consulting firm.
3. It is important to distinguish independent contractors from employees, since the two are treated differently both in law and in most taxation systems

# CONDITIONS & OBLIGATIONS

## CONDITIONS

### General conditions:

- HR POLICY

- Discipline

- Wage policy

### •SPECIFIC CONDITIONS:

- Position wise/ business unit wise

- Profit sharing

- Target & pet projects

## •OBLGATIONS

- To provide information

- identity of the parties;

- place of work;

- title, grade, nature or category of work or brief job specification;

- date of commencement of contract or employment relationship;

- in the case of a temporary contract or employment relationship, its expected duration;

- amount of paid leave or procedures for allocating and determining such leave;

- periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated, method for determining such periods of notice;

- basic amount, and other components of remuneration and frequency of payment;

- length of working day or week;

- any relevant collective agreements

# TERMS OF THE CONTRACT

- CONFIDENTIALITY AGREEMENT.

- NONCOMPETITION AGREEMENT

- OWNERSHIP OF INVENTIONS

- BEST EFFORTS

- EXCLUSIVE EMPLOYMENT

- NO ADDITIONAL COMPENSATION

- NO AUTHORITY TO CONTRACT

- TERMINATION.

- ARBITRATION.

- CHOICE OF LAW

# Termination

- ❖ A standard part of any employment contract is the termination clause.
- ❖ It states that either party may terminate the employment contract for any reason by giving a certain amount of notice, such as two weeks' notice.
- ❖ It may also give the employer the right to just terminate the contract without notice if the employee violates the contract in any way.
- ❖ Another aspect of the termination clause is a statement that the employer has the right to terminate the contract if the employee becomes permanently disabled because of ill health or physical or mental disability such that the employee can no longer do the job.

# Indemnification

- **The employer may protect his business interest by inserting this clause to indemnify himself**
- **Example: If a competitor hires you, your new employer may want you to sign an agreement that protects them from any non-compete or proprietary rights agreement you had with your old employer.**
- **These contracts are generally used in cases where a job requires a high degree of technical ability, skill and experience.**
- **These employees are in high demand and employers often offer contracts designed to entice these valuable employees**

Thank You