

Mercantile Law

By: Divya Chawla

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Sample Preview of The Chapter

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MERCANTILE LAW

GENERAL LAW OF CONTRACT-I

Essentials of a Contract



INTRODUCTION

This introductory chapter deals with the most important branch of Mercantile Law. It is also very important for such to exist for the smooth functioning of any trade or business in the country as the Law of Contract is applicable to both business dealings and day-to-day dealings.

This chapter begins with an explanation towards the need and purpose of law and its various branches and sources. After which it provides an understanding of the Mercantile Law by giving its definition and sources.

The meaning of the contract and its differentiation from an agreement has also been provided in this chapter in detail, along with the classification of contracts in different categories.

The chapter also provides a difference between void, voidable and illegal contracts thereby describing the essentials of a valid contract.

CHAPTER AT A GLANCE

The human conduct and actions which can be enforced in a court of law are regulated by a body of rules stated under the law. The various branches of law would include international law, constitutional law, criminal law, civil law, etc. The other important branch of law which deals with laws relating to the business transactions is the Mercantile Law.

The main sources of Mercantile Law in India would include:

- (i) English Laws,
- (ii) Indian Statute Laws,
- (iii) Past Judicial Decisions,
- (iv) Local Customs and Usages.

It is the Law of Contracts under the Mercantile Law which is given high importance as it relates to all the types of contracts and covers the special provisions relating to some specific contracts.

An agreement enforceable by law is known as a contract which is inclusive of the two main elements, namely (a) an agreement and (b) its enforceability by law.

Contracts may be categorized based on their

(i) Creation

- (a) Express or
- (b) Implied

(ii) Execution

- (a) Executed or executory
- (b) Unilateral or bilateral

(iii) Enforceability

- (a) Valid
- (b) Void
- (c) Voidable
- (d) Illegal
- (e) Unenforceable

A void agreement is the one which is not enforceable by law. Where as a void contract refers to an agreement which was valid when it was entered into however, it became void due to one reason or another.

A voidable contract is the one which is voidable at the option of one party known as the aggrieved party

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and not the other. And an illegal agreement is where the object or the consideration is unlawful, also that such agreements are not enforceable by law. An unenforceable agreement is the one which is valid but cannot be enforced because of some technical defect.

Certain elements which are important for an agreement to become a contract would include:

- (i) There must be proper offer and its proper acceptance;
- (ii) There must be an intention to create legal relationship;
- (iii) The consent of the parties must be free;
- (iv) The parties must be competent to contract;
- (v) It must be supported by lawful consideration;
- (vi) The object of the agreement must be lawful;
- (vii) The agreements must not have been expressly declared void;
- (viii) The terms of the agreements must be clear and unambiguous;
- (ix) The act involved should be such as capable of performance;
- (x) If there are certain formalities like registration then they should be complied with.

CHECK YOUR PROGRESS

Q. 1. What is Law?

Ans. Law refers to a set of rules. It can also be defined as the rules of conduct recognized and enforced by the state to control and regulate the conduct of people to protect their property and contractual rights with a view to securing justice, peaceful living and social security.

‘Law is a rule of civil conduct, prescribed by the supreme power of state commanding what is right and prohibiting what is wrong.’

–Blackstone

‘Law is the body of principles recognized and applied by the state in the administration of justice.’

–Salmond

Q. 2. State the sources of mercantile law.

Ans. The main sources of mercantile law in India are as follows:

(i) English Mercantile Law: Our laws are primarily based on the English Laws which were developed through customs and usages of traders and their dealings with each other. The most common part of mercantile law in India would include the Law of Contracts.

(ii) Indian Statute Law: The Acts passed by the Indian Legislature are considered a main source of Indian Mercantile Law, which include, Indian Contracts

Act 1872, The Negotiable Instruments Act 1181, The Sale of Goods Act 1930, The Indian Partnership Act 1932, The Companies Act 1956, etc.

(iii) Judicial Decisions: Another important source of law are the past judicial decisions, which are referred by the courts while deciding similar cases before them.

(iv) Customs and Usages: The customs and usages of particular trade play an important role in regulating the dealings between the merchants of that trade.

Q. 3. Define an agreement.

Ans. According to Section 2(e) of the Indian Contract Act, 1872, ‘Every promise and every set of promises forming the consideration for each other is an agreement.’

According to Section 2(b) of the Indian Contract Act, 1872, ‘A proposal when accepted becomes a promise.’

For example:

Ramesh offers to sell his scooter for Rs. 8000 to Shyam. Shyam accepts the offer. It becomes a promise and is treated as an agreement between Ramesh and Shyam.

It can also be said that an agreement is inclusive of an offer by one party and its acceptance by the other.

Therefore,

Agreement = Offer (or proposal) + Acceptance of Offer (or proposal).

Q. 4. What do you mean by legal obligation?

Ans. It is important for an agreement to be treated as a contract it must create some legal obligation. That is, the parties to an agreement must be bound to perform their promises and in case of any default by either of them, must intend to sue.

Any obligation which is not enforceable by law is not treated as a contract. Social, moral or religious agreements do not create any legal obligation.

Q. 5. What is a void contract?

Ans. According to Section 2(j) of the Indian Contract Act, 1872, ‘A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.’

It can also be said that a void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reasons. It is a contract without any legal effects and is a null.

Q. 6. When is a contract voidable?

Ans. According to Section 2(i) of the Indian Contract Act, 1872, ‘an agreement which is enforceable

by law at the option of one or more of the parties thereon, but not at the option of other or others, is a voidable contract.'

A contract is voidable when the consent of a party is not free, that is, it has been obtained either by coercion, undue influence, misrepresentation or fraud. The contract is voidable at the option of the aggrieved party, which is at the option of the party whose consent has been so caused.

Q. 7. What is an illegal agreement?

Ans. An illegal agreement is the one the object of which is unlawful. Such an agreement cannot be enforced by law. It is because of this nature of illegal agreements that they are always *void-ab-initio*, that is, void from the very beginning.

TERMINAL QUESTIONS

Q. 1. Define contract. Explain the essentials of a valid contract.

Ans. In simple words, a contract is an agreement made between two or more persons to do or to abstain from doing a particular act.

According to Section 2(h) of the Indian Contract Act, 1872, 'An agreement enforceable by law is a contract.'

'A contract is an agreement, creating and defining the obligation between parties.' – *Salmond*

'Every agreement and promise enforceable at law is a contract.' – *Sir Fredrick Pollock*

'A contract is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of others.' – *Sir William Anson*

On the basis of analysis of the above definitions, a contract must have the following two elements:

- (i) An agreement
- (ii) Its enforceability by law.

Section 10 provides for the essential elements for a valid contract, which include:

(i) Proper offer and proper acceptance: There must be at least two parties in order to create a valid contract, one making the offer and the other accepting it. Such offer and acceptance must be valid. The law has laid down specific rules for making the offer and its acceptance, that is, it must be absolute and unconditional.

(ii) An intention to create legal relationship: The agreement must be capable of creating legal obligation among the parties. It does not mean that it is not a contract. As in case of social or domestic agreements the usual presumption is that the parties do not intend to create legal relationship however in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

(iii) Free consent of the parties: It is essential that there must be free and genuine consent of the parties to the contract so as to create a valid contract. According to Section 14, Consent is said to be free when it is not caused by:

- (a) coercion;
- (b) undue influence;
- (c) fraud;
- (d) misrepresentation, and
- (e) mistake. The contract is voidable at the option of the aggrieved party if the consent is obtained by any of the above four factors.

(iv) Capacity of parties: The parties to the contract must be capable of entering into a contract. The contract is not valid if any of the parties is not competent to contract. According to Section 11 of the Act, states that, 'every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.'

(v) Lawful consideration: The agreement must be based on a consideration. Consideration means something in return. In other words, it is the price paid by one party to buy the promise of the other. The consideration may be past, present or future, however it must be real.

(vi) Lawful object: An agreement which is made for any act which is prohibited by law is not valid. That is the object of an agreement must be lawful.

(vii) Agreements not expressly declared void: Sections 24 to 30 clearly specify certain types of agreements which have been expressly declared void.

(viii) Certainty of meaning: The terms of the contract must be certain and unambiguous. As per Section 29 of the Indian Contract Act, 'agreements the meaning of which is not certain or capable of being made certain are void.'

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(ix) Possibility of performance: The terms of the agreement must be such are capable of performance. According to Section 56, 'an agreement to do an impossible act is void.'

(x) Legal formalities: The agreement must comply with the required formalities as to writing, registration, stamping, etc. so necessary to make it enforceable at law.

Q. 2. Comment on the following statements:

- (a) 'All contracts are agreements but all agreements are not contracts.'**
- (b) 'The law of contract is not the whole law of agreements nor is it the whole law of obligations.'**
- (c) 'In commercial and business agreements, the presumption is that the parties intend to create legal obligation.'**

Ans. (a) According to Section 2(h) of the Indian Contract Act, 1872, 'An agreement enforceable by law is a contract.'

'A contract is an agreement, creating and defining the obligation between parties.' –Salmond

'Every agreement and promise enforceable at law is a contract.' –Sir Fredrick Pollock

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- (ii) Its enforceability by law.

According to Section 2(e) of the Indian Contract Act, 1872, 'Every promise and every set of promises forming the consideration for each other is an agreement.'

According to Section 2(b) of the Indian Contract Act, 1872, 'A proposal when accepted becomes a promise.'

For example: Ramesh offers to sell his scooter for Rs. 8000 to Shyam. Shyam accepts the offer. It becomes a promise and is treated as an agreement between Ramesh and Shyam.

It can also be said that an agreement is inclusive of an offer by one party and its acceptance by the other.

Therefore,

Agreement = Offer (or proposal) + Acceptance of Offer (or proposal).

Based on the above definitions Section 10 states that, 'all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.' In other words, it is important for a contract to fulfil all the necessary requirements for it to be a valid contract. Also the fact that an agreement with all the essential elements mixed with a valid acceptance makes it to being a valid contract.

(b) The statement may be answered in two parts. The law of contracts is not the whole law of agreements because it is concerned with only those agreements where the parties have the intention of creating legal obligations like in the case of business or commercial agreements and is not concerned with those agreements where the parties do not have the intention of creating a legal obligation like in the case of social or domestic agreements.

As regards the later part of the statement, the law of contracts is not the whole law of obligations because it is concerned with only those obligations which arise out of agreements and is not concerned with those obligations which do not arise out of agreements like the obligation to maintain wife and children.

(c) It is a true statement that in commercial and business agreements the presumption is that the parties intend to create legal relations, though this presumption may be negative by express terms to the contrary. As in the case of *Rose & Frank Co. to Crompton Brothers*, there was an agreement between them whereby the former was appointed as selling agent in North America. One of the clauses in the agreement said that, it will not be subject to legal jurisdiction in the law courts, the agreement was not enforceable by law as the parties never agreed to create legal obligation despite being a business agreement.

Q. 3. Distinguish between:

- (a) Void and Voidable Contracts**
- (b) Void and Illegal Agreements.**