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Centre for Distance and Online Education,
Punjabi University, Patiala

Class: BBA-Part-II Semester: III
Paper : BBA-304 (Business Laws) Unit : I
Medium : English

Lesson No.

1.1 : Nature of Contract

1.2 : Offer and Acceptance

1.3 : Consideration

1.4 : Capacity of Parties

1.5 : Free Consent

1.6 : Legality of Object and Void Agreements

1.7 : Performance and Discharge of Contracts

1.8 : Sale of Goods Act - I

1.9 : Sale of Goods Act - II

Department website: www.pbidde.org

BBA-304 : BUSINESS LAWS

Time Allowed : 3 Hrs. *Max. Marks : 100*

Theory : 60

Internal Assessment : 40

Note : The question paper covering the entire course shall be divided into three sections as follows :

Section-A

It will consist of 10 very short answer questions with answers

to each question up to five lines in length. All questions shall be compulsory. Each question shall carry two marks; total weightage of the section shall be 20 marks.

Section-B

It will consist of essay type questions with answers to each question up to 7 pages in length. Four questions shall be set by the examiner from Part-I of the syllabus and the candidate shall be required to attempt two. Each question shall carry ten marks; total weightage of the section shall be 20 marks.

Section-C

It will consist of essay type questions with answers to each question up to 7 pages in length. Four questions shall be set by the examiner from Part-II of the syllabus and the candidate shall be required to attempt two. Each question shall carry ten marks; total weightage of the section shall be 20 marks.

COURSE INPUT :

Part- I

Law of Contract (1872) : Nature of contract, Classification, Offer and acceptance, Capacity of parties to contract, Free consent; Consideration, Legality of object, Agreement declared void, Performance of contract; Discharge of contract, Remedies for breach of contract.

Sale of Goods Act 1930 : Formation of contracts of sale; Goods and their classification, price; conditions, and warranties, Transfer of property in goods; Performance of the contract of sales; Unpaid seller and his rights, sale by auction; Hire purchase agreement.

Part-II

Negotiable Instruments Act 1881: Definition of negotiable instruments; Features; Promissory note, Bill of exchange, cheque; Holder and holder in the due course; Crossing of a cheque, types of crossing. Negotiation; Dishonour and discharge of negotiable instrument.

The Consumer Protection Act 1986: Salient features, Definition of consumer; Grievance redressed machinery.

LESSON NO. 1.1 AUTHOR : MS. HARPREET KAUR

NATURE OF CONTRACT

1.1.0 Objective of the lesson

This lesson's goal is to make the student aware of his or her rights, privileges, and obligations while entering into a contract with another person. The elements of a contract and a categorization of contracts are covered in the course that follows so that we are aware of the type of contract we are dealing with.

1.1.1 Introduction

The law of contract deals with agreements which can be enforced through courts of law. The law of contract is the most important part of commercial law because every commercial transaction starts from an agreement between two or more persons. It determines the circumstances in which the promise made by the parties shall be legally binding on them. Law defines the remedies that are available in a court of law against a person who fails to perform his contract and the conditions under which remedies are available.

The law relating to contracts is contained in the Indian Contract Act, 1872. The act lays down certain general rules regarding contracts. The act is not exhaustive. There are other acts relating to particular types of contracts, e.g., the Negotiable Instrument Act, The Transfer of Property Act, Partnership Act, Sale of Goods Act, etc.

1.1.2 Definition of contract

Indian Contract Act, Sec. 2(h) defines contract as, "an agreement enforceable by law". Therefore, a contract is an agreement made between two or more parties which the law will enforce.

According to Salmond, a contract is, "an agreement creating and defining obligations between the parties."

Therefore, in a contract there must be (1) an agreement and (2) the agreement must be enforceable by law.

An agreement comes into existence whenever one or more persons promise to one or the others to do or not to do something. "Every promise and every set of promises, forming the consideration for each other is an agreement," Sec. 2 (e). Some agreements cannot be enforced through the courts of law, e.g., an agreement to play cards or go to a cinema. An agreement which can be enforced through the court of law, is called a contract.

1.1.3 Essential Elements of a contract

An agreement becomes contract when it is enforceable by law if they are made by the free consent parties competent to contract, or lawful consideration and with a lawful object and are not declared as void contracts. In order to become a contract an agreement, must fulfil certain conditions, which may be called the essential elements of a contract and are explained as under:

1. Offer and Acceptance : In order to create a valid contract there must be a lawful offer by one party and a lawful acceptance of the offer by the other party or parties. The word 'lawful' implies that the offer and acceptance must conform to the rules laid down in Indian Contract Act regarding offer and acceptance. The terms of the offer must be definite and the acceptance of the offer must be absolute and unconditional. The acceptance must be made according to the mode prescribed and must be communicated to offeror.

Intention to create legal relationship : The parties which enter into contract must have the intention to create legal relations between them. If there is no such intention, there is no contract between them. Agreement of social or domestic nature like- to dine at a friend's house or agreement for getting pocket money from father by his son are not agreements intended to create legal relations and are not a contract. But a commercial agreement to buy and sell goods or an agreement to marry, are agreements intended to create some legal relationship and are, therefore, contracts.

2. Lawful Consideration : An agreement is enforceable by law when it is supported by consideration. The word 'consideration' implies an advantage or benefit moving from one party to the other or in simple words, it means something in return. An agreement to do something for nothing is usually not enforceable by law. But only those considerations are valid which are 'lawful'. The consideration may be an act or forbearance or a promise to do or not to do something. Consideration may be past, present or future.

3. Capacity of Parties : The parties to an agreement must be competent to contract. Every person is competent to contract if he is

(a)) of the age of majority

(b) of sound mind

(c) not disqualified from contracting by any law.

4. Free Consent : It is essential for every valid contract that there must be free consent of both the parties to the agreement. There is absence of free consent if the agreement is induced by coercion, undue influence, mistake, misrepresentation and fraud. In case of mutual mistakes, the contract would be void fully, but in case the consent is obtained by unfair means, the contract would be voidable.

5. Lawful Object : The object of an agreement must be lawful. But object has nothing to do with consideration. An object is lawful when it is not

(a) illegal (b) immoral

(c) opposed to the public policy of (d) forbidden by law.

6. Not declared to be void : The agreement must be declared to be expressly void by law of the country. These agreements are covered from sec. 24 to 30 and 56.

7. Certainty and possibility of performance : The agreement must be capable of being performed and the terms of the contract must be precise and certain. If the agreement is vague and it is not possible to ascertain its meaning, it cannot be enforced by law. Thus, an agreement to buy hundred meters of cloth is void unless the kind and the price of the cloth is decided by both the parties.

8. Legal formalities : An oral contract is a perfectly good contract, except in those cases where writing and registration is required by some statute. But it is always in the interest of parties that the

contract should be in writing. There may be some formalities also, which have to be complied with, in order to make an agreement legally enforceable.

The elements mentioned above must be present in order to make a valid contact. If any one of them is missing, an agreement cannot become a valid contract. An agreement which fulfils all the essential elements is enforceable by law and is called a contract. From this, it follows that every contract is an agreement but all agreements are not contracts.

1.1.4 Classification of Contract

1.1.4.1 Classification according to validity

(a) Valid Contract : An agreement becomes a valid contract when it is enforceable by law and it is possible only when all the above mentioned essentials of a valid contract laid down in sec. 10 are fulfilled.

(b) Void Contract : A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable by law. A contract may be originally valid at the time when it was made but it may become void subsequently. For example, a contract to import goods from America is a valid contract but it becomes void when a war breaks out between India and America. The law will not enforce such void contracts, and with no means they can it be made valid by the parties.

(c) Voidable Contract : An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the opinion of the other or others is a voidable contract. This happens when the consent to a contract is not free and it would be open to the party whose consent has been so obtained to avoid the contract if he so desires. Such contracts are valid upto the time when they are rescinded or avoided, before that they are good or valid contracts.

Example : X promises to sell his house to Y for rupees one lakh. His consent was obtained with undue influence by Y. The contract is voidable at the option of X. He may avoid the contract at his own will.

(d) Illegal Contract : A contract which is prohibited by law or against the public policy or criminal in nature or immoral is an illegal contract. Both illegal contracts and void contracts are unenforceable by law. All illegal contracts are void but all void contracts are not illegal. For example, any contract with minor is void but not always illegal.

(e) Unenforceable Contract : The contract which cannot be enforced in a court because of some technical defects such as absence of writing or absence of a proper stamp. This type of contract is otherwise a valid contract and may be carried out by the parties concerned but in the event of breach or repudiation of such a contract, the aggrieved party will not be entitled to the legal remedies.

1.1.4.2 Classification according to formation :

(a) Express Contract : Express contract is one which is expressed in words spoken or written. When such a contract is formed, there is no difficulty in understanding the rights and obligations of the parties.

(b) Implied Contract : Where the conditions of a contract are understood from the acts, conduct of parties or from surrounding circumstances, it is an implied contract. In other words, where the proposal or acceptance of any promise is made otherwise than in words, the contract is said to be implied. For example, there is an implied contract by getting treatment from doctor, getting into a bus, taking something from a store.

(c) Quasi-Contract : There are certain dealings which are not contracts strictly, though the parties act as if there is a contract. A contract is intentionally entered into by the parties. A quasi-contract, on the other hand, is created by law, initially parties may not be interested.

Example : When some goods are delivered to a wrong person, he is under an obligation to pay for them or return them.

(d) Contracts over Internet E-contracts : These contracts are entered into between parties using internet. In electronic commerce, different parties create networks which are linked to other networks through EDI (Electronic Data Interchange).

(e) Standard Form Contracts : Business firms have to enter into large number of contracts daily. For the sake of conveniences firms may use standard form of contracts e.g. an insurance company may draft as insurance policy contracts, railway/airport authorities may print various terms and conditions in Time Tables. The contract in such a case is not made by negotiation. Rather one party prepares the draft of the contract which the other party has agreed.

1.1.4.3 Classification according to performance :

(a) Executed Contracts : There are some contracts where the parties perform their obligation immediately, i.e., as soon as the

contract is formed. Executed means that, which is done. An executed contract is one in which both parties have performed their respective obligations.

Example : A agrees to sell his house to B for Rs. 75,000. When A receives payment and B gets the papers of house or when both the parties perform their obligations, the contract is said to be executed.

(b) Executory Contract : In this contract, the obligations of the parties are to be performed at a later stage. Executory means, which remains to be carried into effect. An executory contract is one in which both the parties have yet to perform their obligations.

Example : A agrees to sell the goods to B for Rs.10,000. Yet A has not delivered the goods and B has not made the payment. Both will perform their obligations in future. It is an executory contract.

If A has performed his obligation and has delivered goods to B, the contract is executed as to A and executory as to B.

(c) Unilateral Contract : In certain contracts, one party has to fulfil his obligation whereas the other party has already performed his obligation. Such a contract is called unilateral contract. In this contract, one party fulfils its obligations at the time of the contract or before the contract comes into existence and other party has yet to perform his obligation.

Example : A goes to a doctor and gets the medicine from doctor. Here the doctor has fulfilled his obligation and A's obligation to pay doctor, his fee is pending. So, it is an unilateral contract at that time.

(d) Bilateral Contract : A bilateral contract is a contract in which the obligations of both the parties to the contract are outstanding at the time of formation of the contract. In this way, bilateral contracts are similar to executory contracts.

1.1.5 Summary

The law of contract is the most vital part of commercial law as every transaction is based on the contract. This law defines the remedies available in a court of law against the person who fails to perform his contract. The different types of contracts that can be entered into have been discussed, viz valid, void, voidable, illegal etc.

Self-Check exercise:

Q.1. Define valid contract.

Q.2. Define voidable contract.

Q. 3 X invites Y to a meal. Y agrees to the invitation but doesn't show up. Can X bring a claim against Y for the losses?

1.1.6 Glossary

Contract: A contract is an agreement between two parties that places an obligation of performance on one party.

Legal relationship: A legal connection or legal relation is a binding legal agreement between two individuals or other organizations.

Enforceable by law: A contract is defined as an agreement between two or more parties that satisfies all of the requirements for enforceable law.

1.1.7. Answer to Self-check exercise:

Ans.1 According to the Contract Act of 1872, a contract that may be legally enforced is deemed to be valid. A contract must be enforceable by law in order to be deemed legal. The agreement should contain all necessary components.

Ans.2. A written agreement between two parties that is voidable might become unenforceable for a variety of legal reasons, such as: failure to reveal a crucial truth by one or both parties. a blunder, false statement, or fraud, excessive pressure or coercion.

Ans. 3 Due to the fact that the agreement between X and Y is not legally binding, X is unable to sue Y for any damages. Since it is a social arrangement, it is typically assumed that the parties do not seek to establish a formal legal connection.

1.1.8 Questions for exercise

Long questions:

1. What is the object and nature of law of contract?
2. "All contracts are agreements but all agreements are not contracts." Discuss the statement explaining the essential elements of a valid contract.

Short questions:

1.Distinguish between:

(a)) Valid, Void and Voidable Contracts

(b) Executory and Executed Contracts

(c) Express and Implied Contracts

2. Write notes on :

(i) Unenforceable contract

(ii) Illegal contract

(iii) Quasi-contract

1.1.10. Suggested readings:

Mercantile Law: Avtar Singh

Mercantile Law: N.D. Kapoor

Business Law: P C Tulsian

LESSON NO. 1.2 AUTHOR : DR. RITU LEHAL

OFFER AND ACCEPTANCE

1.2.0 Objectives of the lesson

According to Indian Contract Act, 1872, all agreements are contracts if they fulfil the essentials of a valid contract. The following lesson includes the very first essential of a valid contract, i.e., offer and acceptance. The aim of this lesson is to make it clear that what are the essentials of a valid offer and acceptance and when an offer can be revoked before acceptance.

1.2.1 Introduction

A contract is an agreement between two parties. One party will make an offer and other will accept it. This is the first essential of a valid contract that there is a proposal from one party and acceptance from the other party. First, we will discuss the meaning of an offer and then some provisions related to offer.

1.2.2 Offer

One party makes a proposal for entering in a legally bound agreement, to another party. Section 2(a) of contract act defines an offer, as, "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence."

Example

A offers to sell his house to B for Rs. 5,00,000. B agrees to pay A Rs. 5,00,000 for his house. Here A is an offeror/promisor and B is the offeree/promisee. It means a person who makes an offer is willing to enter in a contract, on the terms stated in that contract, provided the other party also gives its assent for the same. An offer may be expressed or implied. Expressed offer is made by spoken or written words, e.g., A offers to sell his cycle to B for Rs. 300. It is an expressed offer.

Implied offer is one, where conduct may also convey as clearly as words. e.g., if a person goes to a doctor for treatment, his conduct implies that if treatment is given, as offeror he will pay the normal charges of the doctor.

Offer may be specific or general. When it is made to a specific person or body of persons it is known as specific offer. When an offer is addressed to the whole world, it is called a general offer, e.g. A promises B, his servant, that if he brings back his lost suitcase, A will give him Rs. 500, this is a specific offer. If A announces that whosoever will bring back the lost suitcase, will be paid Rs. 500, it is a general offer.

1.2.2.1 Essentials of a valid offer

(1) An offer must create legal relations

There should be a legal relationship between the parties. If A invites B for lunch to his house and because of some reasons B could not join A, A cannot sue B. Because here parties had never intended for having a legal relationship.

In 'Balfour V. Balfour', when a husband serving in some other country, could not send promised money to his wife, wife was not able to get anything through court, because it was just a domestic arrangement and parties had no intention of creating legal obligation.

(2) Offer must be certain, definite and not vague

An offer should not be vague and uncertain. It should be definite, so that rights of the parties can be determined exactly.

In "Taylor V Portington", A was ready to take B's house on rent only if it is thoroughly repaired and drawing rooms are decorated according to modern style. The terms are very unclear and uncertain. The modern style can not be defined exactly. So contract can not be enforced.

(3) Offer must be communicated to the offeree

Proper communication of an offer to the offeree makes it a valid offer, e.g. A writes a letter to B that he is interested in selling his car to B for Rs. 1,00,000. But he forgot to post the letter. It is not an offer because it is not communicated to B, who in turn is not in a position to accept it.

(4) An offer may be conditional

An offer may be subject to a condition. A conditional offer lapses when the condition is not accepted.

In 'Thomson V/s.L.M. & S. Railway', T could not read the conditions, which were written on the back of an excursion ticket issued by the railway. One of the conditions was that, the railway company would not be liable for personal injuries to passengers. In case of an accident, T could not recover any damage from the railway company as the offer was a conditional offer.

(5) Offer should not contain a term, the non-compliance of which would amount to acceptance

For example : A writes to B that "I offer to sell my horse for Rs. 10,000. If I do not receive any reply from you by next Sunday, I shall assume that you have accepted the offer. If B does not reply, there will be no contract.

Self-Check Exercise No.1

A offers to sell his horse to B for Rs. 20,000. He also writes a letter that if B does not reply till next Monday, it will be assumed as his acceptance to the offer. Is it a valid offer?

(6) The aim of the offer should be to obtain the assent of the other party

(7) Lapse of an Offer

An offer lapses:

(i) If either offeror or offeree dies before acceptance. (ii) If it is not accepted within (a) specified time or (b) a reasonable time. The term reasonable time depends upon the circumstances of a particular case.

(iii) If acceptance made is not valid, e.g., if acceptance is conditional.

(iv) An offer can also lapse by revocation, before its acceptance.

(8) An invitation to an offer is not an offer

The aim of an invitation to an offer is to circulate the information only. Such invitations are not offers in the eyes of law. e.g. A prospectus issued by a company is just an invitation to offer but not an offer.

1.2.2.2 Standing or open offer

e.g. An offer for the continuous supply of a certain article, at a certain rate over a definite period is called a standing offer. The offeror can withdraw his offer at any time before an order is placed with him.

1.2.2.3 Counter offer

A counter offer is rejection of original offer and making a new offer. This new offer is a counter offer.

Self-Check Exercise No.2

Solve the following case:

A father promises to give Rs. 100 to his son as pocket money daily. One day, there was some problem between the father and the son and the father did not give him pocket money for 2-3 days. The son filed a case on father. Can he sue his father?'

1.2.3 Acceptance

Without the acceptance of a proposal, no agreement can come into existence. To understand these terms clearly, take an example. A prospectus issued by a company is an invitation to offer. An application for the shares of a company is an offer. The allotment of shares by the company is an acceptance.

Like an offer, acceptance may also be expresed or implied. Acceptance made by words, spoked or written, is an expressed acceptance. Acceptance given by the conduct of parties is an implied acceptance, e.g., if a person goes to hotel and eats some food, it is implied that he accepts to pay for it.

An offer can be accepted only by the person to whom it is made, e.g. if A offers to sell his scooter to B for Rs. 10,000 and C accepts it, it is not a valid contract.

Self-Check Exercise No.3

If A goes to a shop after watching the things through window display. The shopkeeper tells him the price of the articles and A accepts to pay for it. Specify clearly when one party is making an offer and when another party is accepting it.?

1.2.3.1 Essentials of a valid acceptace

(1) Acceptance must be absolute and unconditional

An offer may be conditional but an acceptance should always be unconditional. Any variation in the terms and conditions of the offer, while accepting the offer will make it invalid.

e.g. If A offered to sell a car to B for Rs. 1,00,000. B in reply, made an offer of Rs. 90,000. This is not a valid acceptance.

(2) Acceptance must be communicated to the offeror

If an offeree does not say anything or show any response to the offer, no contract is framed. Offeree must convey his intention for acceptance. Mental acceptance or uncommunicated assent does not result in a contract.

e.g. if A agrees with the offer made by B, but fails to post the letter of acceptance, it is not a valid acceptance.

(3) Acceptance must be made within a reasonable time

Acceptance should be given within the time mentioned in the offer or if no time is specified, it should be made within reasonable time. The meaning of reasonable time will vary from case to case.

In 'Ramsgate Victoria Hotel Co. V. Montefier', when a person applied for shares in a company in June, he can not be bound by an allotment made late in November.

(4) Acceptance must be given according to the mode prescribed or usual/reasonable mode

Acceptance should be given in the same manner, as it is demanded in the offer. In 'Surender Nath V. Kedar Nath', it was a condition that acceptance should be given in writing at some given address. Instead of writing it, the offeree sent his agent on the same address. This

acceptance was held invalid.

(5) The acceptor must be aware of the proposal at the time of the offer

If the acceptor is not aware of the offer and conveys his acceptance, no contract comes into being. In 'Lalman Shukla V. Gauri Datt', D sent P (D's servant) in search of his missing nephew. After that D announced a reward in this context. P brought the nephew back and asked for the reward. But it was held that there can be no acceptance unless offeree has the knowledge of the offer.

(6) Acceptance cannot be implied from silence of offeree

If offeree remains silent, no contract is entered in. Silence does not mean acceptance given for a contract. It should be rather clearly expressed.

1.2.3.2 Effect of silence on acceptance

Proposal made to other cannot be valid merely because the offeree makes no reply even though the proposal states that silence will be taken as acceptance. But in following cases even silence may be indicative of acceptance.

A. Where offeree has the opportunity to reject the offered goods or services but even then he takes the benefit of them, it will amount to an acceptance.

B. Where because of previous dealings the offeree has given the proposer reason to understand that the silence was intended by the offeree as a manifestation of assent and the offeror does so understand.

1.2.4 Revocation of an offer

An offer can be revoked any time before it's acceptance. Revocation must be communicated to the other party.

In 'London and Northern Bank V. Jones', A applied for shares in a company. After sometime, he withdrew the offer. In the meantime, the company allotted him the shares, but the company received his letter of revocation before posting the allotment letter. It was held that revocation was good enough and applicable.

Modes of revocation

1. Revocation by notice

The offer may be revoked by giving a notice to the other party. The

notice is effective if it is communicated to the offeree. The offer may be withdrawn at any time before it is accepted.

2. After lapse of time

If the time for acceptance is prescribed in the offer, an offer is revoked by lapse of the time given. If no time is prescribed, then reasonable time will be considered for this.

3. By non-fulfilment of condition precedent

e.g. If A offers to sell certain goods to B on the condition that if Y makes the payment before a certain date. The proposal is revoked if Y fails to pay before given time, because the condition has not been fulfilled.

4. By death or insanity

If the fact of death or insanity comes to the knowledge of the acceptor before acceptance, a proposal is revoked by death/insanity of the proposer.

5. By counter offer

If offeree makes a counter offer, an offer is revoked.

e.g. A offers to sell his house to B for Rs. 1,00,000. B replies offering Rs. 95,000. A refuses and then B writes accepting the original offer. There is no contract as the original offer has lapsed.

6. By non-acceptance of the offer according to prescribed mode. Even in such a case the offer will stand revoked.

1.2.5 Revocation of an acceptance

An acceptance may be revoked any time before the communication of acceptance is complete as against the acceptor but not afterwards.

e.g. X offers by a letter sent by post to sell his house to Y. Y accepts the offer by a letter sent by post. The letter of acceptance is on the course of transmission to X. Y may revoke his acceptance at any time before the letter communicating the acceptance reaches X but not afterwards.

If the letter of acceptance is delayed, the benefit thereof goes to the acceptor.

1.2.6 Offer and acceptance through telephone or telex

When a contract is made by post, it is clear that acceptance is complete, as soon as the letter of acceptance is put into the post box. But in case of telephone or telex, the contract is complete when the

acceptance is received by the offeror and the contract is made at the place where the acceptance is received.

1.2.7 Summary

This lesson included the following topics :

1. Offer

Offer is proposal made by one party for entering in a legally bound agreement, to another party.

An offer may be expressed or implied.

An offer may be specific or implied.

Essentials of a valid offer :

(i) An offer must create a legal relationship.

(ii) Offer must be certain, definite and not vague.(iii) Offer must be communicated to the offeree. (iv) An offer may be conditional

(v) Lapse of an offer.

An invitation to an offer is not an offer.

Standing offer.

Counter offer.

2. Acceptance

Without acceptance of a proposal, agreement can not come into existence. Acceptance may be expressed or implied.

Essentials of a valid acceptance:

(i) Acceptance must be absolute and unconditional.

(ii) Acceptance must be communicated to the offeror.

(iii) Acceptance must be given within reasonable time.

(iv) Acceptance must be given according to the mode expressed.

(v) Acceptance can not be implied from silence.

Effects of silence on acceptance

Revocation of an offer and modes of revocation.

Revocation of acceptance, offer and acceptance through telephone or telex.

1.2.8 Answers to self-check exercises

1. A can make such an offer. There will be no contract if B does not reply actually.

2. The son cannot sue his father because this was a domestic arrangement between the parties and parties were never interested in creating a legal obligation when the agreement was entered in.

3. The goods which were displayed in window was an invitation to an offer. The rate given by shopkeeper was an offer and If A is ready to pay it is an acceptance to the offer.

1.2.9 Glossary/Key words

Words	Meanings
Abstinence	To stop from something that you enjoy
Assent	Acceptance
Non-compliance	Not to act according to the terms
Lapse of time	When a particular duration of time is over
Variation	Change
Manifestation	It is a sign that something exists
Revocation	Cancellation of an order

1.2.10 Questions for exercise:

Long questions:

Q.1. What are the essentials of a valid offer?

Q.2. Explain the following terms:

(i) Standing Offer

(ii) Counter Offer

(iii) Effect of Silence on Acceptance

Q.3. How an offer can be revoked?

Short questions:

Q.1. To whom an offer can be made?

Q.2. When is communication of offer complete?

Q.3. how can an offer be accepted?

Q.4. What is an acceptance?

1.2.11 S**uggested readings:**

Mercantile Law: Avtar Singh

Mercantile Law: N.D. Kapoor

Business Law: P C Tulsian

LESSON NO. 1.3 AUTHOR : HARPREET KAUR

CONSIDERATION

1.3.0 Objective

The next chapter covers consideration, one of the crucial components of a legal contract. Understanding the many forms of consideration and crucial consideration aspects is the goal of this chapter.

1.3.1 Introduction

Consideration is an essential element in a contract. Subject to certain exceptions, an agreement is not enforceable unless each party to the agreement gets something. When a party to an agreement promises to do something, he must get 'something' in return. This something is called consideration and consideration is the foundation of every contract.

1.3.2 Definition of Consideration

Sec. 2(d) of the Contract Act defines consideration as "When at the desire of Promisor, the Promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise." In English case Carrie Vs Misa, consideration is defined as, "Some right, interest, profit or benefit accruing to one party or some forbearance detriment, loss of

responsibility, given, suffered or undertaken by the other."

The term consideration has been defined in various ways. Consideration is defined to be the price for which the promise of the other is bought. It is something which is of some value in the eyes of law. It does not mean payment of money only. Forbearance to sue is a good consideration. A promise can be a consideration for another promise. A single consideration may support more than one promise. It

can also consist in performance. Settlement of dispute can be a good consideration for the promise. But not the mere doing of a thing whicha person is already legally bound to do.

Example

(i) X agrees to sell his car to Y for Rs. 1,00,000. For X's promise, consideration is Rs. 1,00,000 and for Y's promise, consideration is the car.

(ii)) Promises not to file a suit against Q, if he pays him Rs. 2,000.The abstinence of P is the consideration of Q's payment.

1.3.3 Types of Consideration

Consideration can be classified into three types, which are as follows:

1. Present Consideration : The consideration which moves simultaneously with the promise is called present consideration or Executed Consideration.

Example : A buys a book from a shop and pays the price immediately. The consideration moving from A is present consideration.

2. Past Consideration : When the consideration of one party was given before the date of promise, it is called past consideration.

Example : Suppose X does some work for Y in the month of April and in May Y promises to pay him some money. The consideration of X is past consideration.

In English law past consideration is no consideration and a contract based on past consideration is void. But under Indian Law a past consideration is good consideration.

3. Future Consideration : When the consideration is to move at a future date, it is called future consideration or executory consideration. In a contract, the consideration may be executed on both sides. A promise may support a promise.

Example : X's promise to Y, to pay money at a future date for goods to be delivered at a future date is a valid contract.

1.3.4 Essential Factors of Consideration

1. At the desire of the promisor : The act done or loss suffered by promisee constituting consideration must have been done at the desire of promisor. It follows that any act performed at the desire of third party or without the desire of promisor cannot be a good consideration. The desire of promisor may be expressed or implied.

Example: X saves Y's goods from the fire without being asked to do so.

X cannot demand payment for his services.

2. The consideration must be real: The consideration must have some values in the eyes of law. Though consideration need not be adequate, it must be real and not illusory. Thus, a promise to do that a person is by law bound to do, does not amount to consideration. The consideration should be competent if consideration is physically or legally impossible or vague, the contract cannot be enforced.

Example : (i) A promises B to supply some goods on a specified day. This date has already expired when the contract was entered into. The consideration in this case is physically impossible so the contract cannot be enforced.

(ii) A promises Q to pay a reasonable sum if he sells him his car. The contract is unenforceable as the consideration is uncertain.

(iii) G promises for no consideration, to give H, Rs. 5,000. This is a void agreement. No consideration, no contract.

3. Consideration need not be adequate: By consideration we mean something in return. This something in return need not necessarily be equal in value to something given. The law only provides that a contract should be supported by consideration. If the consideration is there, its adequacy is not important, provided it should have some value. The reason behind this rule is that it is impossible to decide what is adequate consideration. The parties of the contract must decide the quantum of consideration and if the consent was freely given, the court will enforce the agreement.

Example: P agrees to sell a house worth Rs.1,00,000 for Rs. 1,000. P's consent to the agreement was freely given, the agreement is a contract not withstanding the inadequacy of the consideration. This matter is to be decided between both parties.

4. Consideration may be Past, Present or Future : According to the definition of consideration, it can be past, present or future. When consideration for a present promise was given in the past, i.e., before the date of the promise, it is past consideration. When consideration is given simultaneously with promise, it is said to be present consideration and when consideration from one party to the other is to pass subsequently to the making of contract, it is future or executory contract.

Example : A delivers goods to B and gets payment for that at the same time. It is a present consideration and if A gets payments at some

future date, it will be a future consideration. If A delivers goods in consideration of some past debt from B, it is a past consideration.

5. Consideration must not be illegal, Immoral or Opposed to Public Life: The consideration for an agreement must be lawful. An agreement becomes void if it is based on unlawful consideration.

Example : X promises to get Y an employment and Y promises to pay Rs. 50,000 to X, the agreement is void as the consideration for it is, unlawful.

6. Consideration may move from promisee or any other person: The consideration may proceed from the promisee or any other person, i.e., even a stranger to the contract may provide consideration. This means that as long as there 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. Consideration moving from the party who is a minor, is not a consideration.

Example : A, B and C enter into an agreement under which A pays Rs. 10,000 to B and B agreed to build a house for C. Here B is a party to the contract but stranger to consideration and can enforce the contract.

7. Public Duty : A promise to do what one is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation, like wise, a promise to perform a public duty by a public servant is the pre-existing legal or contractual obligation, like wise, a promise to perform a public duty by a public servant is not a consideration.

Example : A promised his lawyer to pay an additional sum, if the suit was successful. The promise was void because lawyer was under a pre-existing contractual obligation to render the best of his services under the original contract.

1.3.5 Stranger to Contract and Stranger to Consideration

According to law, only the parties to contract can sue and be sued on that contract. Except certain recognised cases, a third person cannot demand performance of a duty or obligation under it even though he has a direct interest in such performance, nor can any liability under it be imposed on a third person without his consent. This rule is known as the doctrine of privity of contract. "Privity of Contract" means

relationship subsisting between the parties who have entered into contracted obligations. It implies a mutuality of will and creates a legal tie between the parties to the contract.

Example : X bought an insurance policy on his own life for the benefit of his wife. It could not be sued upon by his wife because she was not the party to the contract, done by her husband with insurance Company.

1.3.5.1 Exceptions :

A stranger to a contract cannot sue except in the following cases:

1. Beneficiaries in Case of Trust or Charge : A person is called beneficiary in whose favour a trust or other interest in some specific immovable property has been created and can enforce it even though he is not a party to the contract.

Example : A agrees to transfer certain property to B to be held by B in trust for the benefit of C. C can enforce the agreement though he is not a party to the contract.

2. Marriage Settlement or Other Family Arrangements : When an agreement is made in connection with marriage or some other family matter and a provision is made for the benefit of a person, he may take advantage of the agreement even if he is not a party to it.

Example : X's wife deserted him because of his ill treatment. X entered into an agreement with his father-in-law to treat her properly or else pay her monthly maintenance. Subsequently, she was again ill treated and also driven out. So, she was entitled to enforce the promise made by J to her father.

3. Contract entered into through an agent: The Principal can enforce the contracts entered into by an agent, provided the agent acts within the scope of his authority and in the name of the principal.

4. Assignee of a Contract : Under certain circumstances a party to a contract can transfer his rights under the contract to third parties. For example, the holder of a bill of exchange can transfer it to any person he wishes. In such cases, the transferee or the assignee can sue on the contract even though he was not a party to it originally. Assignment may occur through operation of law.

Example : When a person becomes insolvent, all his properties and rights rest in the official assignee who can sue upon Contracts entered into by him.

5. Acknowledgement : Where the promisor by his conduct, acknowledges or otherwise constitutes himself as an agent of a third party, a binding obligation is thereby incurred by him towards the third party.

Example : X receives some money from Y to be paid over to Z. X admits this receipt to Z. Z can recover the amount from X, who shall be regarded as the agent of Z.

1.3.6 No Consideration No Contract

Consideration is the foundation of every contract and is essential for the validity of contract. The law insists on the existence of consideration if a promise is to be enforced as creating legal obligations. A promise without consideration, is null and void and called a naked promise.

Exceptions : An agreement made without consideration is void and unenforceable except in certain cases. Section 25 specifies the cases where an agreement though made without consideration will be valid. These are as follows:

1. Natural Love and Affection : An agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties in a near relation to each other. In other words, a written and registered agreement based on natural love and affection between the relatives is enforceable even if it is without consideration.

Example : X, for natural love and affection promises to give his son, Y Rs. 50,000. X puts his promise in writing and registers it. This becomes a contract and is enforceable by law.

The mere existence of a near relation between the parties without the motivating force of love and affection will not render an agreement enforceable even though it is in writing and registered. Nearness of relationship does not necessarily mean blood relations. There is no blood relation between husband and wife, but a contract on the basis of natural love and affection between these two is valid.

Example : There was a constant quarrel between a husband and wife. If husband gives Rs.50,000 to wife on the basis of natural love and affection, it is not a valid contract.

2. Voluntary Compensation : A promise made without any

consideration is valid, if it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do. In simple words, a promise to pay for a past voluntary service is binding. This applies when there is a voluntary act by one party and there is a subsequent promise by the party benefitted to pay compensation to the former. The term voluntary signifies that the act was done, otherwise than the desire of the promisor.

Example : X finds Y's 8 bags and gives it to him. Y promises to give him Rs.100. This is a contract, even consideration is missing.

3. Time-Barred Debt : A promises to pay, wholly or in part, a debt which is barred by the law of limitation. It can be enforced if the promise is in writing and is signed by the debtor or his authorised agent. A debt barred by limitation cannot be recovered. Therefore, a promise to repay such a debt is, strictly speaking, without any consideration. But nevertheless such a promise can be enforced if the debtor or his authorised agent makes written and signed promise to repay it. The debt must be a definite promise to pay. A mere acknowledgement of debt is not enough.

Example: P owes Q Rs. 10,000 but the debt is barred by the Limitation Act. P signs a written promise to pay Rs. 10,000 on account of the debt. This is a contract.

4. Completed Gifts : The rule 'no consideration no contract' does not apply to completed gifts. It will not affect the validity of any gift actually made between the donor and the donee.

Example : A gives certain property to B according to the provisions of the 'Transfer of Property Act'. He cannot subsequently demand the property back on the ground that there was no consideration.

5. Agency : There is no need of consideration to create an agency.

1.3.7 Summary

Consideration is an important pre-requisite for a contract. It is the basis of the contract. However, under certain exceptional circumstances, it may not be present. These exceptions have been discussed alongwith the essential features of consideration.

Self-check exercise:

Q.1. Who is the promisor and promisee in a contract?

Q.2. What is time-barred debt?

Q.3. What is stranger to consideration?

1.3.8. Glossary/Key words:

Exception: a subject or object that is not included in a generalisation or violates a rule.

Forbearance: the denial of a legal right.

Immoral: Being immoral involves acting in a manner that is not regarded as righteous, moral, or acceptable by society.

Voluntary: Voluntary behaviour is that which you choose to engage in without outside pressure or influence.

1.3.9. Answer to self-check exercise:

Ans.1. There are two separate roles that each party plays when two parties engage into an agreement: the promisee and the promisor. The person making the promise is known as the promisor, and the one receiving it is known as the promisee.

Ans.2. Unpaid debt that has passed the statute of limitations, making it illegal for a debt collector to sue you to collect it, is known as time-barred debt.

Ans.3. If it is provided by someone other than the promisee, the promisee is no longer "stranger to consideration" and cannot be held to the promise. The 'Privity of Consideration' doctrine is what is used to describe this.

1.3.10 Questions for exercise

Long questions:

1. Define consideration. Critically discuss the essential elements of consideration.
2. "Insufficiency of consideration is immaterial, but an agreement with consideration is void." Discuss.
3. State the circumstances in which a contract without consideration may be treated as valid.
4. Discuss the rule that a stranger to a contract cannot sue on contract and the exception to the rule.

Write Short Notes:

Q. 1 No consideration no contract.

Q. 2 Doctrine of Privity of Contract.

Q. 3 What is meant by stranger to consideration?

1.3.11 Suggested readings:

Mercantile Law: Avtar Singh

Mercantile Law: N.D. Kapoor

Business Law: P C Tulsian

CAPACITY OF PARTIES

1.4.0 Objective:

This course covers both competent and incompetent parties to a contract. The lesson on the capacity of parties explained who is eligible to enter into a contract and who is not.

1.4.1 Introduction

An agreement will be a contract if it has been entered into by the parties who are competent to contract. An essential ingredient of a valid contract is competency of the parties. Every person is presumed to have capacity to contract but there are certain persons whose age, condition or status renders them incapable of binding themselves by a contract. Incapacity must be proved by the party claiming the benefit of it and until proved, the ordinary presumption remains.

According to Section 11 of Contract Act the following persons are incompetent to contract: (a) Minor; (b) Person of unsound mind, and (c) Persons disqualified by law to which they are subject

1.4.2 Minor

According to Section 3 of the Indian Majority Act, 1875, a minor is a person who has not completed eighteen years of age. In the following two cases, he attains majority after twenty years of age: (a) Where a guardian of a minor person or property has been appointed under the Guardian and Wards Act, 1890, or (b) Where the superintendence of a minor's property is assumed bya court of words.

The rules Governing minor's agreements are based on his fundamental rules.

The first rule is that the law protects minor against their own inexperience and against the possible improper designs of those who are more experienced in years.

1.4.2.1 Effects of Minor's Agreements

A minor's agreement being void is wholly devoid of all affects. When there is no contract, there should be no contractual obligation on either side. The various rules regarding minor's agreements are discussed below:

1. An agreement with or by a Minor is void

According to Section II, a minor is not competent to contract. But Contract Act does not make it clear whether the contract entered into by a minor is void or voidable. Till 1903, courts in India were not unanimous on this point.

Example: A, a minor, borrowed Rs. 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was viod and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to repayment of money (Mohori Bibi Vs Dharmo Das Ghose).

2. No Ratification

Agreement with minor is completely void. A minor cannot ratify the agreement even on attaining majority because a void agreement can not be ratified. A person who is not competent to authorise and act can not give it validity by ratifying it.

3. Minor can be a promisee or a beneficiary

If a contract is beneficial to a minor, it can be enforced by him. There is no restriction on a minor from being a beneficiary, for example, being a payee or a promisee in a contract, thus a minor is capable of purchasing immovable property, and he may sue to recover the possession of the property upon tender of the purchase money.

4. No estoppel against a Minor

When a minor by misrepresenting his age has induced the other party to enter into a contract with him, he can not be made liable on the contract. There can be no estoppel against a minor. In other words a

minor is not estopped from pleading his infancy in order to avoid a contract.

5. No Specific Performance

A minor's contract being absolutely void, there can be no question of the specific performance of such a contract. A guardian of a minor can not bind the minor by an agreement for the purchase of immovable property. So the minor can not ask for the specific performance of the contract which the guardian had no power to enter into.

6. Liability for Torts

A minor is, however, liable in tort, where a minor borrowed a horse for riding only, he was held liable when he lent the horse to one of his friends who jumped and killed the horse. Similarly, a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend. But a minor can not be made liable for a breach of contract by framing the action on tort, you can not convert a contract into a tort to enable you to sue an infant.

7. No Insolvency

A minor can not be declared insolvent even though there are dues payable from the properties of the minor.

8. Partnership

A minor being incompetent to contract can not be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefit of partnership.

9. Minor can be an agent

A minor can act as an agent, but he will not be liable to his principal for his act. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

10. Minor can not bind Parent or Guardian

In the absence of authority expressed or implied, an infant is not capable of binding his parents or guardian, even for necessaries.

11. Liability for Necessaries

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. A claim for necessaries supplied to a minor is enforceable at law. But a minor is not liable for a price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor but only his property is liable. A

minor is also liable for the value of necessaries supplied to his wife. Necessaries mean those things that are essentially needed by a minor. These can not include luxuries or costly or unnecessary articles. Necessaries extended to all such things as reasonable persons would supply to an infant in that class of society to which the infant belongs. Certain services rendered to a minor have been held to be necessaries. These include education, medical advice, a house given to a minor or rent for the purpose of living and continuing his studies, etc. Goods necessary when ordered might have ceased to be necessary by the time they are delivered, e.g., where a minor orders a suit from a tailor but buys other suits before, that order is actually delivered. Here the minor could not be made to pay the tailor. The following have been held to be necessaries:

(i) Liability for an Officer's servant.

(ii) Horse when doctor advised riding as exercise. (iii) Goods supplied to a minor's wife for her support.(iv) Rings purchased as gifts to the minor's fiance.

(v) A Racing bicycle.

On the other had, following have not been held to be necesaries:

(i) Goods supplied for the purspose of trading.

(ii) A silver gilt goblet.

(ii) Cigars and tobacco.

(iv) Refreshment to an undergraduate for entertaining.

1.4.3 Persons of Unsound Mind

Section 11 disqualifies a person who is not of sound mind from entering into a contract. Contract made by persons of unsound mind is void like a minor's contract. The reason is that a contract requires assent of two minds but a person of unsound mind has nothing which the law recognises him as a mind. Section 12 deals with the question as to what is a sound mind for the purpose of entering into a contract. It lays down that a person is said to be of sound mind for the purpose of making a contract, if at the time, when he makes it he is capable of understanding it and of forming a rational judgement as to its effect upon his interest. A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

Example

(a) A patient in a lunatic asylum, who is at intervals of sound mind,

may contract during those intervals. Soundness of mind of a person depends on two facts:

(i) his capacity to understand the contents of the business concerned and

(ii) his ability to form a rational judgement as to its effect upon his interest.

If a person is incapable of both, he suffers from unsoundess of mind. Whether a party to a contract is of sound mind or not is question of fact to be decided by the court. There is a presumption in favour of sanity. If a person relies on the unsoundness of mind, he must prove it sufficiently to satisfy the court.

1.4.3.1 Contracts with a Person of Unsound Mind

Lunatics

A lunatic is a person who is mentally deranged due to some mental strain or mental illness or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of a sound mind.

Idiots

An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiocy is permanent whereas lunacy devotes periodical insanity with lucid intervals. An agreement of an idiot, like that of minor, is void.

Drunken or Intoxicated Persons

A drunken person suffers from temporary incapacity to contract, i.e., at the time when he is so drunk that he is not capable of forming a rational judgement. The position of a drunken person is similar to that of a lunatic.

Agreements Entered into by Persons of Unsound Mind are Void

There are, however, liabilities for necessaries supplied to them or their minor dependents. But even in such cases, no personal liability attaches to them. It is only their estate which is liable (Section 68).

1.4.4 Other Persons disqualified by law

(i) Alien Enemies

An alien (a citizen of a foreign country) is a person who is not a subject of the Republic of India. He may be (i) an alien friend, (ii) an alien enemy. Contracts with an alien friend (an alien whose state is at

peace with the Republic of India) subject to certain restrictions, are valid. But an alien friend cannot acquire property in an Indian ship. Similarly, he can not be employed as Master of any other chief officer of such ship. Contracts with an alien enemy (an alien whose state is at war with the Republic of India) may be studied under two heads, namely:

(a)) Contracts during the war and

(b) Contracts made before the war.

During the continuance of war, an alien enemy can not enter in a contract with neither with an Indian subject nor he can be sued in an Indian court. He can do so only after he receives a licence from the Central Government. Contracts made before the war may either be suspended or dissolved. They will be dissolved if they are against the public policy or if their performance would benefit the enemy. For this purpose, even an Indian who resides voluntarily in a hostile country or who is carrying on business he would be treated as an alien enemy.

(ii) Foreign Sovereigns, their Diplomatic Stage and Accredited Representatives of Foreign States

They have some special privileges and generally can not be sued unless they, on their own, submit to the jurisdiction of our law courts. They can enter into contracts and enforce those contracts in our courts. But an Indian citizen has to obtain a prior sanction of the Central Government in order to sue them in our law courts.

(iii) Corporation

A corporation is an artificial person created by law having a legal existence apart from its members. it may come into existence by a special Act of the Legislature or by registration under the Companies Act, 2013. As regards a statutory corporation, i.e., a corporation formed by a special Act of the Legislature, its contractual capacity is limited by the statute governing it.

(iv) Insolvents

When a debtor is adjudged insolvent, his property vests in the official Receiver or Official Assignee. As such, the insolvent is deprived of his power to deal in that property. It is only the Official Receiver or Official Assignee who can enter into contracts relating to his property and sue and be sued on his behalf. The insolvent also suffers from certain disqualifications which are removed when the court passes an order of discharge.

(v) Convicts

A convict when undergoing imprisonment is incapable of entering into a contract. He can, however, enter into, or sue on a contract if he is lawfully at large under a licence called " ticket of leave". This incapacity to contract, or to sue on a contract, comes to an end when the period of sentence expires or when he is pardoned. The convict, however, does not suffer from rigours of the law limitation. Limitation is held in abeyance during the period of his sentence.

1.4.5 Summary

An essential requirement of a valid contract is the competency of the parties to contract. Every person is presumed to have the capability to contrcat but there are certain exceptions. These persons whose age, conditions or status makes them incapable have been discussed.

Self-check exercise:

Q.1. Who is minor?

Q.2 . What is contract of unsound mind?

Q.3. Define estoppel.

1.4.6 Glossary

Insolvent: Being insolvent refers to not having enough money to fulfil your debts.

Sovereign: A sovereign is someone who has unrestricted power.

Person disqualified by law: Their legal standing renders them incompetent to enter into contracts, which is the basis for disqualification.

1.4.7 Answer to self-check exercise

Ans.1. A person under the age of 18 would be regarded as a minor under the Indian Contract Act of 1872.

Ans.2. A person who is temporarily or permanently insane cannot sign a contract. Any agreement made by someone who is not of sound mind is invalid.

Ans.3. Estoppel is a legal theory that prohibits people from making claims or claiming rights that are inconsistent with what they have already said or what has been legally committed upon.

1.4.8 QUESTIONS

Long questions:

1. Discuss the provisions of law relating to contracts by minors.
2. Name the various persons who are incompetent to contract.

Short Questions:

1. Who is competent to contract?
2. Is a minor is of sound mind competent to contract?
3. Is an unsound person competent to contract?

1.4.9 SUGGESTED READINGS

Mercantile Law : Avtar Singh

Mercantile Law : N.D.Kapoor

LESSON NO. 1.5 AUTHOR : MS. HARPREET KAUR

FREE CONSENT

1.5.0. Objective:

One of the key components of a legally binding contract is free consent. Both parties must freely consent before entering into a contract with another person. The definition of free consent is covered in this lesson, which also provides examples of situations in which free consent was not given.

1.5.1 Introduction

A contract which is valid in all other respects may still fail because there is no real consent to it by one or both of the parties. It is essential to the contract that parties to it should agree to the same thing in the same sense. The parties to a contract should have the identity of mind. This is called in English law as consensus ad idem.

The parties must understand the subject matter of the contract in the same sense.

Free Consent:

Two or more persons are said to consent when they agree upon the same thing in the same sense (Sec 13). It means that there is no contract if the parties have not agreed upon the same thing and in the same sense. If the parties enter into an agreement concerning particular persons or things but each has different persons or things in his mind, there is no agreement and no contract comes into existence between them. No effective contract can come into existence unless the parties are ad idem on all the essential terms of the transaction. Absence of consent may arise from number of causes, namely,

(1) by reason of an error as to the nature of the contract itself,

2) by reason of an error as to identity of the party with whom the contract is entered into,

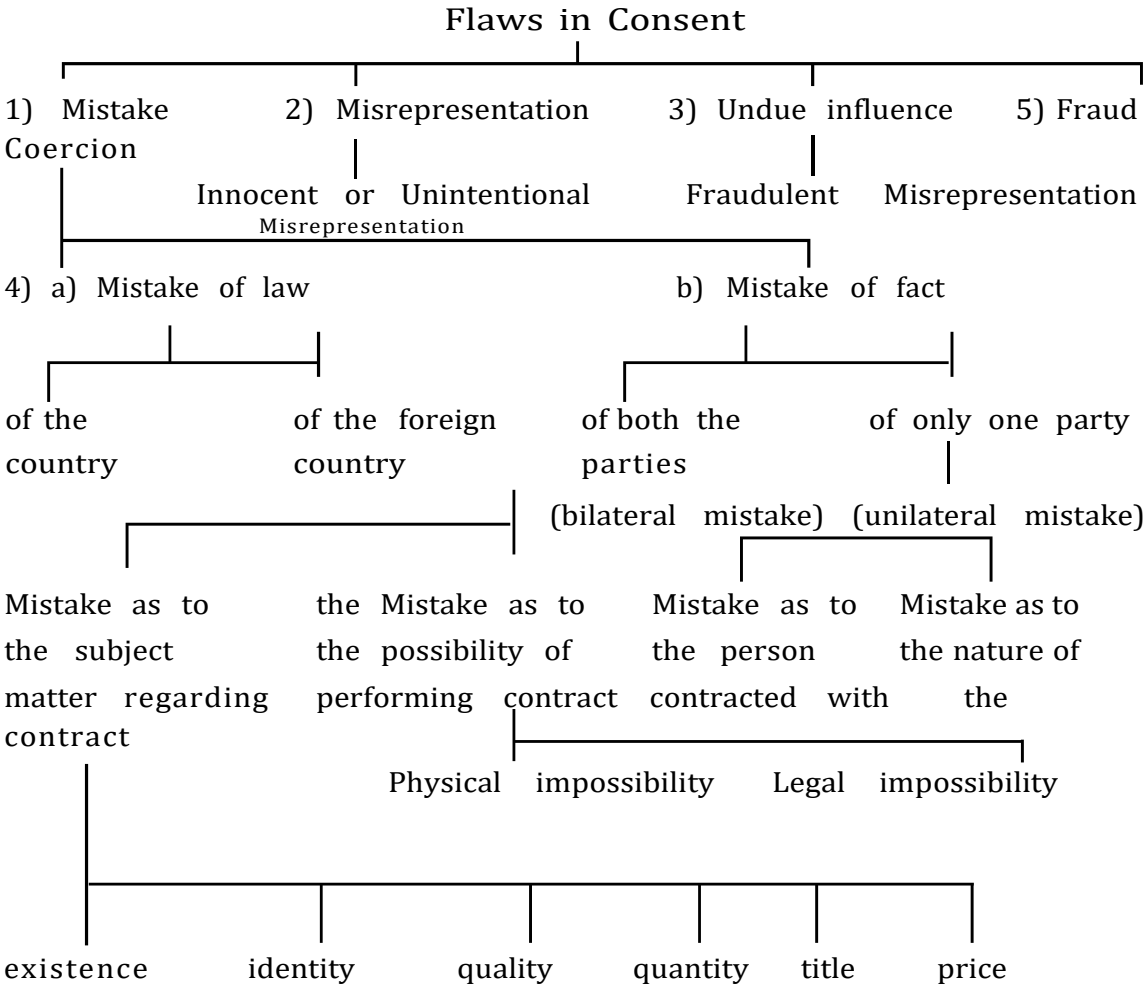
3) by reason of an error as the subject matter of the agreement. In all the cases, there is no contract at all because the law of contract requires consensus ad idem as a condition essential to the formation of contract.

1.5.2 Meaning of Free Consent

Not only the parties to a contract should have identity of mind but the consent of the parties must also be real and free. Free consent is an essential requisite of a valid contract. Free consent is the consent which has been obtained by the free will of the parties out of their own accord. According to section 14, consent is said to be free when it is not caused by:

1. Coercion
2. Undue influence
3. Fraud
4. Mis-representation or
5. Mistake

For various flaws in consent refer to the following chart:



These flaws are explained in detail.

1.5.3 Coercion

Section 15 of the Indian Contract act defines coercion as committing or threatening to commit any act forbidden by the Indian Penal Code or any unlawful detaining or threatening to detain, any property to the prejudice of any person with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or is not in force at a place where the coercion is employed.

Example:

A, on board on English Ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian penal code. A afterwards sued B for breach of contract at Calcutta. A has employed coercion although his act is not an offence by the law of England, and although Section 506 of the Indian Penal Code was not in force at the time when or where the act was done.

Threats of imprisonment are included under the head 'coercion' e.g. where A was induced to part with valuable documents by threats of continued confinement, Consent obtained at the gun point with valuable documents by threats of continued confinement. Consent obtained at the gun point or intimidation is also an act of coerciion. Similarly, a threat to commit suicide with the intention of causing a person to enter into an agreement is an act of coercion. It is not necessary that coercion must proceed from a party; to the contract nor it is necessary that the subject of the coercion must be the other contracting party it may be directed against any third person what ever.

It is not necessary that coercion must proceed from a party to the contract nor it is necessary that the subject of the coercion must be the other contracting party it may be directed against any third person whatever.

An act will amount to coercion if the following essentials are fulfilled:

1. There must be clear utterance of threat.
2. The threat should be to commit an act forbidden by the Indian Penal Code.
3. It must be uttered with the intention of causing plaintiff to enter in an agreement.

1. Consent is said to be caused by coercion when it is obtained by committing or threatening to commit any act forbidden by the Indian Penal Code.

Example:

A girl of 13 lost her husband and her husband's relatives refused to have the husband's corpse removed unlesss she adopted one of their choices. It was held that the adoption was not binding on her as the consent was obtained under coercion within the meaning of section 15. Any person who obstructed a dead body from being removed would be guilty of an offence under section 297 of the Indian Penal Code.

2. The unlawful detaining or threatening to detain any property.

Example:

An agent refused to hand over the account books of the business at the end of his term of office to a new agent sent in his place, unless the principal gave him a release from all liabilities and such a release had to be given before the new agent could get the books. It was held that the release deed was viodable at the instance of the principal who was made to execute the released to deed under coercion.

Effect of Coercion

According to section 19, when consent to an agreement is caused by coercion, the agreement is a contract voidable at the option of the party whose consent was so caused. But according to section 72, a person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

Example:

A railway company refused to deliver up certain goods to the consignee, except upon the payment of an illegal charge of carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

The onus of proving that the consent of party to a contract was caused by coercion and that he would not have entered into it, has the coercion not been employed, lies on the party who want to relieve himself of the consequences of coercion.

1.5.4 Undue Influence

Sometimes a party is compelled to enter into an agreement against his will as a result of unfair persuasion by the other party. This happens when a special kind of relationship exists between the parties such that the party is in a position to exercise undue influence over the other . Section 16 defines undue influence as follows:-

A contract is said to be induced by "undue influence" where the relations subsisting betweeen the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other (Section 16).

A person is deemed to be in a position to dominate the will of other:-

(a)) Where he holds a real or apparent authority over the other, e.g. the relationship bewteen master and servant.

(b) Where he stands in a fiduciary position (relation of trust and

confidence) to the other. It is supposed to exist, for example, between father and son, solicitor and client.

(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. Such a relation exists, for example, between a medical attendant and his patient.

Example:

(a)) A having advanced money to his son, B, during his minority obtains upon B's coming of age of majority by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A has used his undue influence.

(b) A, a man enfeebled by disease or age, is inducted, by B's influence over his medical attendant, to agree to pay B an unreasonable sum for his professional services, B uses undue influence.

Undue influence is also sometimes called moral coercion. Halsbury defined undue influence as " the unconscientious use by a person of power possessed by him over another in order to induce the other party to enter into a contract."

1.5.4.1 Effect of Undue Influence

When consent to an agreement obtained by undue influence, the agreement is a contract voidable at the point to the party whose consent was so obtained. Any such contract may be set aside absolutely or if the party who is entitled to avoid has received any benefit their upon, such terms and conditions as to the court may seem just and equitable (Section 19-A)

Example:

(a) A's son has forged B's name to promissory note. B under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the court may set the bond aside as it's not a valid contract.

1.5.4.2 Burden of Proof

If an action to avoid a contract on the ground of undue influence, the plaintiff has to establish that;

(1)) The other party was in a position to dominate his will. Mere proof of nearness of relationship is not sufficient for the court to assume

that one relation was in a position to dominate the will of the other.

(i) The other party actually used his influence to obtain the plaintiff's consent to the contract; and

(ii) The transaction is unconscionable where a person, who is in a position to dominate the wish of another, enters into contract with him; and the transaction appears, on the face of it or on the evidence abducted, to the inconsiderable, lies upon the person in the position to dominate the will of the other section [16(3)].

Example:

A being in debt to B, a money lender of his village, contracts a fresh loan on terms which appear to bad unconscionable.

It lies on B to prove that the contract was not induced by undue influence.

Influence is suspected in the following cases:

(i) Inadequacy of consideration.

(ii) Inequality between the parties as regard to age, intelligence, social status etc.

(iii) Fiduciary relationship between the parties.

(iv) Paradanashin women.

(v) Unconscionable bargains.

1.5.5 Fraud

Fraud is the wilful representation made by a party to a contract with the intention to deceive the other party to induce such party to enter into a contract. It means a false statement made knowingly without belief in its truth or recklessly without caring whether it is true or false . Fraud denotes an absence of honest belief and a wicked mind. Whenever one person obtains any material advantages from another by unfair and wrongful means, it is said that he has committed fraud. According to Section 17, fraud includes any of the follwoing acts done with intention to deceive or to induce a person to enter into contract:

(i) A false suggestion as to a fact known to be false or not believed to be true; or

(ii) The active concealment of a fact with knowledge or belief of the fact: or

(iii) A promise made without any intention of performing it; or

(iv) Doing any other act fitted to deceive: or

(v) Doing any such act or making any such omission as the law specifically declares to be fraudulent

1.5.5.1 Elements of Fraud:

(i) The fraud must have been committed by a party to the contract or with his connivance or by his agent. Fraud by a stranger to contract does not affect its validity.

Example:

The director of a company issued a prospectus containing false representation, on the faith of which Z agreed to buy some shares from the company. Z may avoid the contract because the directors are deemed to be the agents of the company.

(ii) There must be any of the following ingredients in the act of fraud:

(a) A suggestion as to a fact which is not true by one who does not believe it to be true.

(b) An active concealment of a fact by one having knowledge or belief of the fact.

(c) A promise made without any intention of performing it.

(d) Any other act committed to deceive.

(e) Any such act or omission as the law specially declared to be fraudulent.

(iii) The act of fraud must have been committed with intention to deceive and must actually deceive. A fraud which does not deceive is not a fraud. No cause of action rises where there is fraud without damage or damage without fraud.

(iv) The representation must have been aimed at the other party to the contract.

Mere Silence is not Fraud:

Mere silence of a party as to certain facts does not generally amount to fraud. A party to the contract is under no obligation to disclose the whole truth to the other party.

1.5.5.2 Exceptions:

However, there are two exceptions to the rule which are given in the explanation to section 17, These are:

(i) Where circumstances create a duty on the part of the person keeping silence to speak; and

(i) Where silence in itself is equivalent to speech.

Duty to Speak:

Where there is a duty or obligation to speak and a man in breach of that duty or obligation holds his tongue and does not say the thing he was bound to say, there is fraud.

1.5.5.3 Effect of Fraud:

When consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so obtained. A party whose consent to an agreement was caused by fraud has two remedies, namely:

(a) He may rescind the contract, or

(b) He may insist that the contract shall be performed and that he shall be put in the position in which he would have been, if the representation made had been true.

Example:

A fraudulently informs B that A's estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may avoid the contract or may insist on its being carried out and the mortgage debt repaid by A.

Apart from the above, the person defrauded may obtain recission, restitution or damages.

1.5.6 Misrepresentation

A statement of fact which one party makes in the course of the negotiations with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation, when wrongly made, either innocently or intentionally is a misrepresentation. Misrepresentation may be:

(i) An innocent or unintentionl misrepresentation, or

(ii) An Intentional, deliberate or wilful misrepresentation with an intent to deceive or defraud the other party.

The former is called 'representation' and the latter 'fraud'. Misrepresentation is a false statement which the persons making it honestly believed to be true or which he does not know to be false. It also includes no disclosure of a material fact or facts without any intent to

deceive the other party.

Example:

(a) A, while selling his mare to B, tells him that the mare is thoroughly sound. A generally believes the mare to be sound although he has no sufficient ground for the belief. Later on, B finds the mare to be unsound. The representation made by A is a misrepresentation.

Section 18 defines " misrepresentation"

According to it, there is misrepresentation:

()) When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.

() When there is any breach of duty by a person which brings an advantage to the person committing by misleading another to his prejudice.

() When a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing which is subject of the agreement.

1.5.6.1 Requirements of Misrepresentation:

A misrepresentation is relevant if it satisfies the following requirements:

(1) It must be representation of a material fact.

(2) it must be made before the conclusion of the contract with a view to inducing the other party to enter into contract.

(3) It must be made with the intention that it should be acted upon by the person to whom it is addressed.

(4) It must actually have been acted upon and must have induced the contract.

(5) It must be wrong but the person who made it honestly believed it to be true.

1.5.6.2 Consequences of Misrepresentation:

The aggrieved party, in case of mis representation by the other party, can:

(i) Avoid or rescind the contract.

(ii) Accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true.

1.5.7 Mistake

Mistake is a misconception or error. A mistake means that parties intending to do one thing have by unintentional error done something else. It is a slip made not by designs but by mischance. Mistake in the formation of a contract may be of three kinds, unilateral mistake, mutual mistake and common mistake.

1.5.7.1 Types of Mistakes

Unilateral Mistake

Where only one of the contracting parties is mistaken and the other knows of his mistake. There is, thus no valid proposal and acceptance.

Mutual Mistake

Where the parties misunderstand each other and are at cross purpose. Hence, there is no real correspondence of offer and acceptance. In fact, in such cases, there is no agreement at all.

Common Mistake

When both parties make the same mistake. Each party is mistaken about some fundamental fact. The minds of the contracting parties are ad idem and there comes into being an agreement but it lacks effectiveness.

Mistake may also be classifed as

(i) Mistake of fact,

(ii) Mistake of Law

Mistake of Fact

Mistake of fact may be either : mistake of both the parties i.e. Mutual or Bilateral mistake or mistake of only one party i.e. unilateral mistake.

Bilateral Mistake

A mistake of fact in the minds of both parties is like a negative consent and the contract becomes void. Four Conditions must be fulfilled before a contract can be avoided on the ground of mistake :

(a)) There must be a mistake as to the formation of contract.

(b) The mistake must be of both the parties i.e. bilateral and unilateral.

(c) It must be mistake of fact and not of law.

(d) It must be about a fact essential to the agreement.

The cases falling under bilateral mistakes are discussed below:

1.5.7.2 Mistake as to the Subject Matter:

Mistake as to subject matter falls into six heads namely :

(a) Existence (b) Identity (c) Title (d) Price (e) Quantity (f) Quality

(a) Mistake as to the Existence of the Subject Matter :

The parties may be mistaken as to the existence of the subject matter of the contract at the date of contract. The contract is void if without the knowledge of the parties, the subject matter does not exist at the date of the contract.

(b) Mistake as to the Identity of the Subject Matter:

A mistake of both parties in relation to the identity of the subject matter (as where one party had one subject in mind and the other party had another) prevents consensus ad idem and invalidates the agreement.

The result would be same even if the mistake is caused by the negligence of a third party.

(c) Mistake as to the Title of the Subject Matter:

Where unknown to the parties the buyer is already the owner of that thing which the seller wants to sell him, the contract is void.

(d) Mistake as to the Price of the Subject Matter:

The Agreement is void if there is a mutual mistake as to the price of the subject matter. Where a seller of certain plots mentioned in his letter the price as Rs. 1250 when he really intended to write Rs. 2250, the agreement is void.

(e) Mistake as to Quantity of the Subject Matter:

There is no contract between the parties if there is a difference between the quanity sold and purchased. Thus, where a broker gave two invoices under a contract to a seller and buyer, and if the two invoices differed as to quantity sold and purchased there was no enforceable contract.

(f) Mistake as to Quality of the Subject Matter:

Mistake as to the quality of the thing does not affect consent unless it is the mistake of both parties and it is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be.

1.5.7.3 Mistake as to the possibility of Performing the Contract:

(a) Physical impossibility (b) Legal impossibility

Unilateral Mistake:

Section 22 provided that if one party alone is under a mistake of fact, the contract is not rendered voidable.

In the following cases even though the mistake is unilateral the agreement would be void.

(a) Mistake as to the Nature of the Contract:

A blind man signing a document read over to him wrongly will not bind him. This is because of the fact that the mind of the signatory does not accompany the signature. But this rule will not apply to a person who can read.

(b) Mistake as to the Identity of the person contracted with:

Mistake as to the identity of a person may also avoid a contract. The indentity of the person contracted is of fundamental importance i.e. the mistaken party would not have entered into the contract if he had known the true identity of the other.

(c) Mistake as to the attribute of the other party:

Mistake as to the attribute of a person can not make the consent negative. Thus, where one person enters into a contract with another person, falsely representing himself to be a rich man, the contract does not become void but at the most it will make the contract voidable.

1.5.7.4 Mistake of Law

Mistake of law may be of two kinds:

(a) Mistake of Law of the Land; (b) Mistake of Foreign Law.

The effect of mistake of law on a contract is expressed by the principal 'Ignorance of law is no excuse'. Mistake of law is no ground for avoiding a contract. But this rule is applicable only to law of the country and not to foreign law.

Self-check exercise:

Q.1. Define undue influence.

Q.2. Define bilateral mistake.

Q.3. Define fraud.

1.5.9. Glossary:

Consensus ad idem: same thing in the same sense

Plaintiff: Plaintiff is the legal term for a person who files a lawsuit against another.

1.5.10. Answer to self-check exercise:

Ans. 1 An equitable principle known as "undue influence" refers to when one individual abuses their influence over another. Because one party cannot freely express their independent will due to the imbalance of power between the parties, their consent may be void.

Ans. 2 A mutual legal error is another name for a bilateral error. When both parties are acting incorrectly based on faulty information, it happens.

Ans. 3 Fraud is a deliberate act of deception intended to give the offender an unauthorised benefit or to deny the victim of a right.

1.5.11 Questions

Long questions:

1. Under what conditions a consent is not said to be free. What is the effect of such consent on the formation of the Contract?
2. Discuss the law relating to the effect of the mistake on Contracts.

Short questions:

1. What is misrepresentation?
2. What is coercion?
3. What is Consensus ad idem?
4. On whom the burden of proof lies in case of coercion?

1.5.12 Suggested Readings

Mercantile Law : Avtar SinghMercantile Law: N.D.Kapoor

LEGALITY OF OBJECT AND VOID AGREEMENTS

1.6.0 Objective

This chapter's goal is to enlighten the reader about a contract's legal purpose and proper consideration. There are certain contracts whose consideration is legal but whose purpose is illegal; these kinds of contracts are invalid. There are several distinct kinds of void agreements included in this chapter.

1.6.1 Introduction

According to Section 23 of the Indian Contract Act, an agreement, of which the object or consideration is unlawful, is void, Object means purpose or design of the contract. It implies the manifestation of intention. Thus, if a person, while in insolvent circumstances transfers to another for consideration some property with the object of defrauding his creditors. The consideration of the contract is lawful but the object is unlawful. Both the object and the consideration of

agreement must be lawful, otherwise the agreement would be void. The word lawful means "permitted by law". Section 23 of the contract act speaks of three things:

(i) Consideration for the agreement;

(ii) Object for the agreement; and

(iii) Agreement

1.6.2 When consideration or the object of an agreement is unlawful :

(i) If it is forbidden by law:

If the consideration or object for a promise such as, is forbidden by law, the agreement is void. The agreement is forbidden by law, if the legislature penalises it or prohibits it. It is illegal and can not become valid even if the parties act according to such agreement. For example, where the lawful wife was alive, any agreement by the husband to marry another woman is unenforceable as being forbidden by law.

Examples

A promises to obtain an employment for B in the public service and B promises to pay Rs. 1000 to A. The agreement is void as the consideration for it is unlawful.

(ii) If it is of such a nature that if permitted it defeats the provisions of any law

A contract which seeks to exclude the applications of a statutory provision equal to the parties is not valid.

(iii) If it is fraudulent

Agreements which are entered into for promoting fraud are void. Thus, an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the payment of the goods so sold can not be recovered.

Example: (a) A, B and C enter into an agreement for the division among them of gains acquired by them by fraud. The agreement is void as its object is unlawful.

(iv) If it involves or implies injury to the person or property of another.

The object or consideration of an agreement will be unlawful if it tends to injure the person or property of another. Thus, an agreement to pull down another's house is unlawful. The word 'injury' means criminal or wrongful harm. Loss which ensures to a trader as a result of competition by a rival trader is not injury within the meaning of this clause.

Example: A asks an editor of a newspaper to publish a defamatory article against B and promises to pay Rs. 4,000 for the work. The agreement is void as it involves injury to the person or B and, therefore, a suit can not be brought to recover Rs. 4,000 by the editor.

(v) If the Court regards it as immoral:

Where the consideration or object of an agreement is such that the court regards it as immoral, the consideration is void. The word immoral means inconsistent with what is right. Rent due in respect of a flat let to a prostitute for the purpose of her trade can not be recovered. Similarly, money lent for the purpose of assisting the trade can not be recovered. Similarly, money lent for the purpose of assisting the borrower to visit brothels and bring in prostitutes can not be recovered in a court of law.

Example: A agrees to let her daughter to B for concubinage. The agreement is void because it is immoral.

(vi) If the court regards it as being opposed to Public Policy:

An agreement is unlawful if the court regards it as opposed to public policy. A contract which is opposed to public policy can not be enforced by either of parties to it. Any agreement which tends to promote corruption or injustice or is against the interests of the public is considered to be opposed to public policy. Public policy is that principle of law which holds that citizen can lawfully do that which has a tendency to be injurious to the public. Public policy is not capable of exact definition and, therefore, courts do not generally go beyond the decided cases on the subject.

1.6.3 Agreements opposed to public Policy

(1) Trading with Enemy

Trading with enemy is clearly against public policy in so far as it helps the enemy to the detriment of the country. Besides, it is against national honour to indulge in such acts in times of national emergency. But where a contract is made during peace times and then war breaks out, one or the two things may result. Either the contract is suspended or it stands dissolved depending upon the intention of the parties.

(2) Stifling prosecutions

An agreement to stifle a prosecution, i.e., to prevent proceedings already instituted from running their normal course or to compromise a prosecution is illegal and void. It is not open to the parties to take the administration of justice out of the hands of the authorities and themselves determine what should be done. Thus, a pronote executed as consideration for compounding charge of grievous hurt is void. But an agreement for compounding of a compoundable offence is not void.

(3) Maintenance and Champerty

Maintenance and champerty agreements are void as opposed to public policy Maintenance may be defined as an agreement whereby a person promises to maintain a suit in which he has no interest. Champerty is an agreement whereby a person agrees to share the results of litigation.

Example: An advocate entered into an agreement with his client which was embodied in his client's letter to him. The letter read, "I hereby engage you with regard to my claim against the Baroda Theatres Ltd. for a sum of Rs. 9,400. Out of the recoveries you may take fifty percent of the amount recovered. " The Supreme Court held that a contract of this kind was highly objectionable for a lawyer and void.

(4) Traffic relating to Public Offices

Agreements concerning the sale of public offices are bad as they promote corruption, Section 6(f) of the Transfer of Property Act provides that a public office cannot be transferred nor can the salary of a public officer.

Example: A paid B, a public servant, a certain amount inducing him to retire from service, thus paving way for A to be appointed in his place. The agreement was held to be void.

(5) Agreement tending to create interest opposed to Duty

An agreement which tends to create an interest in favour of a person which would conflict with his duty is illegal on the ground that is opposed to public policy. Thus, an agreement by a person in Government service for the purchase of land situated within his circle is illegal as opposed to public policy.

(6) Marriage brocage Agreement

A marriage brocage agreement is an agreement where a person promises for reward to procure the marriage of another. Such agreements are void being against public policy. Thus if A pays B, a stranger, a certain sum of money to procure a wife for him, he cannot enforce the agreement as it is clearly against public policy.

(7) Agreements tending to create Monopolies

An agreement to create monopoly is void as opposed to public policy. There can be monopoly rights given to one person to the exclusion of others. e.g. In matters like- selling of vegetables.

(8) Agreements to influence Elections to Public Offices

An agreement with votes tending to influence them by improper means and any agreement with third person to influence voters by indirect means are all valid. Similarly, an agreement between rival candidates that one shall withdraw in consideration of a promise by the other to appoint him to office is void.

Example: A promises B, the owner of newspaper, Rs. 500 in consideration of the publication by B, in his newspaper of false statement in regard to a candidate for election. B published them. The agreement is void as opposed to public policy.

(9) Agreement in Restraint of Personal Liberty

A contract which restricts the liberty of an individual is illegal.

Harwood v/s Miller's Timber and Trading Co, A borrowed money from a money lender and agreed that he would not without the lender's written consent leave his job, borrow money, dispose of his property or move from house. It was held that the contract was illegal as it unduly restricted the liberty of A.

(10) Agreement interfering with Marital Duties

Agreements which interfere with the preference of marital duties are void as being opposed to public policy. Thus, an agreement to lend money to a woman in consideration of her getting a divorce and marrying the lenders, is void.

1.6.4 Void Agreements

All agreements may not be enforceable by law. Only those agreements which fulfil the essentials laid down in Section 10 can be enforced. In addition to these The Contract Act provides for certain Types of agreements which have been specially declared to be void. These are:

1.6.4.1 Agreement in Restraint of Marriage

An agreement in restraint of a person other than a minor, is void. Every person has the freedom to marry. A person is bound by law to marry; by an agreement restraining a person not to marry, is contrary to public policy and illegal.

1.6.4.2 Agreements in Restraint of Trade

An agreement seeking to restrain a person from exercising a lawful profession, trade or business of any kind is void to that extent. Public policy requires that every person should be at liberty to work for himself and nobody else can deprive him from this right of using liberty for himself or his labour skill or talent by any contract that he enters into.

1.6.4.3 Service Agreement

An agreement of contract of service by which an employee binds himself during the term of his agreement not to compete with his employer directly by carrying on similar business, or accepting any other employment during the term of his agreement is not in restraint of trade. The employer can prevent the employees from working elsewhere during the period covered by the agreement.

Example: A agreed to become assistant for 3 years to B who was a doctor practising at Zanzibar. It was agreed during the term of the agreement that A was not to practise on his own account in Zanzibar. At the end of the one year, A ceased to act as B's assistant and began practice on his own account. It was held that the agreement was valid and A could be restrained by an injunction from doing so.

1.6.4.4 Trade Combination

An agreement between different firms in the nature of a trade combination in order to maintain a price level and avoid understanding is not illegal. Further, an agreement between certain ice-manufacturers not to sell the ice below a certain minimum price has been held to be valid, Because mutual benefit is not the purpose. But an out and out monopoly is sought to be created, the Section 24 hits at the agreement as void.

1.6.4.5 Agreement in Restraint of Legal proceedings

An agreement which purports to oust the jurisdiction of the courts in country to public policy are void. Section 28 provides that every agreement by which a party is restrained absolutely from enforcing his rights under a contract by ordinary legal proceedings or which limits the time within which he can enforce his rights is void to that extent. Thus, here a servant agrees not be sue for wrongful dismissal is void under this section.

1.6.4.6 Uncertain Agreements

Section 29 provides that an agreement, the meaning of which is not certain or capable of being made certain void. If there is ambiguity in the wording of the contract, it is not possible to read the exact intention of the parties to the contract. Where the term in an agreement is vague in the extreme and might be interpreted in as many ways as there are interpretations thereof the agreement is certainly one which is void because of uncertainty. Thus, an agreement to sell at a concessional rate is void for uncertainty. Similarly, an

agreement to pay rent in case without the rate being definitely fixed is void for uncertainty.

1.6.4.7 Agreements by way of a wager

An agreement by way of wager is void. No suit will lie for recovering anything alleged to be won on any wager or entrusted to any person to abide by the results on any game or other uncertain event on which any wager is made.

Wager means a bet. A wager may be defined as an agreement to pay money or money's worth on the happening of a specified uncertain event. All agreements by way of wager are void. A wagering contract being only void is not illegal. A collateral contract can well be enforced by law. An agreement for actual purchase and sale of any commodity is not a wagering agreement. But sometime it becomes difficult to determine whether a particular transaction was in fact a contract of purchase and sale of a wagering contract for the payment of differences.

1.6.5 Summary

For an agreement to be valid, the consideration and object should be lawful. The cases where object and consideration are unlawful have been discussed.

Self-check exercise:

Q. 1 Define void agreement.

Q. 2 Define uncertain agreement.

1.6.6. Glossary:

Restrain: means to regulate, limit, or restrict.

Unlawful: refers to behaviour that is against the law or otherwise improper.

Champerty: describes a procedure in which a third party bargains for a piece of the litigation's subject matter in exchange for assistance with or execution of the prosecution or defence of a lawsuit.

1.6.7 Answer to self-check exercise:

Ans.1 A contract or agreement that is declared invalid is no longer valid or enforceable. They are often classified as having never been legitimate and being invalid from the start.

Ans.2 Any agreement whose meaning cannot be ascertained or whose meaning cannot be determined with certainty is invalid.

1.6.8 Questions

Long questions:

1. Under what circumstances is the object of a contract unlawful?
2. Name the several types of agreements which are opposed to public policy.

Short questions:

1. What is an illegal agreement?
2. What is a void agreement?

1.6.9 Suggested Readings

Mercantile Law : Avtar Singh

Mercantile Law : N.D.Kapoor

PERFORMANCE AND DISCHARGE OF CONTRACTS

1.7.0 Objective:

This chapter aims to make it clear how a contract may be ended or dismissed. We can discharge a contract in a variety of ways, including by executing it, by operation of law, by agreement, etc. This chapter clarifies this clause in the contract.

1.7.1 Introduction

When the obligations which are created come to an end, we say that the contract is discharged or terminated. A contract may be terminated in any one of the following ways :

1. By performance
2. By agreement
3. By operation of law

4. By material alterations
5. By subsequent impossibility of performance
6. By breach of contract by one party.

1.7.2 Dischare of Contracts

1. Termination by Performance :

When the parties perform their respective promises, the contract is

said to be performed thus obligations come to an end. In this way the contract is discharged. A refusal to accept offer to perform or render also discharges the contract. So, even if there is a valid offer a party to a contract to perform his promise but the offer is not accepted by the other party, obligation of the first party is terminated.

2. Termination by Agreement :

If all the parties by mutual agreement decide to terminate the contract, they can do so. They may also decide to substitute the original contract for a new one. In this case, the old contract is terminated.

(a) Novation : Novation can occur with the consent of all parties. When the parties by agreement substitute the old contract for a new one, this is called novation. This novation is created by exchange of old contract into a new one. This new contract may either be between the same parties or between the different parties. In this, the old contract is said to be discharged. Novation can only take place by agreement between the parties. Novation cannot be compulsory.

Novation may be between the same parties by substituting the contract but generally in this, there is change of parties but the contract remains the same. For example, O owes Y Rs. 1,000, Y owes Z Rs. 1,000. By mutual agreement, X, Y and Z enter into a contract in which X shall pay Rs. 1000 to Z, accepts X as his debtor. This is called novation.

(b) Alteration : When there is some change in terms of the contract, it is called alteration of contract. In alteration, there is no change in the parties. So, it is different from novation in which there may be change of parties.

(c) Remission : It means acceptance of somewhat less than what was actually due under the contract. Sec. 63 says about this, "Every promise may dispense with or remit wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. "We can give an example also. A owes B Rs, 5,000. B may accept Rs. 2,000 in full and final satisfaction of his claim of Rs, 5,000. Hence, whole of the contract is discharged and the rest of the amount is remitted.

Now we shall tell you the meaning of the two English law terms—Accord and Satisfaction. In English Law, a promise to accept less than what is

actual due under the contract is not enforceable. But if this is actually carried out, i.e., the sum is actually paid and accepted, the contract will be discharged. For example, A is to pay Rs, 100 to B. B agrees to accept Rs. 80 is actually paid and it is also accepted by B, it discharges the contract. This is called accord and satisfaction. Accord means to accept less than what is due under the contract and satisfaction means the payment of lesser obligation. So, in their satisfaction also, then it is enforceable. This role of accord and satisfaction is not applicable in India. Even the promise to pay less is not enforceable.

(d) Rescission : It means cancellation of the contract. A contract can be rescinded in any of the following ways :

(1) By mutual consent: The parties may enter into an agreement to rescind the contract before the breach of contract.

(2) Where one party does not perform the contract, the other party can rescind the contract and also apply for compensation.

(3) As we have already studied that in voidable contract, it is the option of one of the parties to rescind the contract.

(e) Waiver : It means intentionally relinquishing the rights under the contract. If in a contract a party has certain rights and that party abandons those, other party is discharged from the obligations.

(f) Merger : In one contract, a person has certain rights and also if he gets some superior rights, then inferior rights are merged in superior rights.

A person holding property under a lease, buys the property, his rights as a lessee vanishes. They are merged into the rights of ownership which he has now acquired.

3. Operation of Law

The termination or discharge of the contract can also be done by operation of law in case of insolvency, death or merger which we have just studied.

Insolvency : In the case of insolvency of a person, all the rights and liabilities of the insolvent are transferred to the official receiver or assignee. An insolvent is released from performing his part of obligations from his earlier contract.

Death : There are some contracts which involve personal skill of the promisor. This type of contract is discharged by the death of the promisee. But in other types of contract all the rights and liabilities of the promisor are passed on the legal representatives in case of death of promisor.

4. Material Alteration

Material alteration means any change in the document containing the terms of a contract by which there is direct effect on the nature of operation of the contract or it changes the validity of document. This alteration is made intentionally and without the consent of the other party. For example, if one party changes the amount of money or the name of the party, it will be considered to be a material alteration. In such a case, the party making the alteration can not enforce the contract. But if there is some clerical error like spelling mistake etc., the change in the document will not amount to material alteration.

5. Impossibility of Performance

Impossibility may be of two types :

(i) Impossibility at the time of making the contract whether known or unknown to the parties.

(ii) Impossibility which arises after the contract is entered into.

In the first case, the contract is void ab-initio because of absolute impossibility, in case impossibility is known to both the parties. But if it is not known the case will be bilateral mistake for fact and hence void.

Hence, we shall be dealing in detail with the second type of impossibility, i.e. supervening or subsequent impossibility. This arises after the contract is made. When the contract was entered into, it was capable of performance, but by some reasons it becomes impossible after some time, It is called doctrine of supervening impossibility. In this case, the contract becomes void when the act becomes impossible or unlawful.

The following are the causes by which the supervening impossibility may occur :

(a) By destruction of subject matter : When the contract is in respect to a subject matter that destroyed the fault of parties, the contract is discharged. Here we take the case of Taylor Vs Caldweil, In this case, a music hall was let out for a series of contracts on certain days. But the hall was burnt before the date of contract. It was held that the contract becomes void because of impossibility of performance.

(b) By nonexistence or non-occurrence of state of things necessary for performance : Sometimes the contract is entered into on the basis of continued existence of certain state of things. In this case, if the state of things changes, the contract is discharged. Here

we take the example given in Sec. 56. A and B contract to marry each other. Before the time fixed for marriage, A goes mad and the contract becomes void. In a leading case, Krell Vs Henry, H hires room from K for two days in order to use the room to view the procession of King Edward VII. Both parties knew the object of agreement. King fell ill and the procession was abandoned. Here, the contract was discharged and H was excused from paying the rent.

(c) Death or personal incapacity : When the personal qualification is the basis of contract, the contract becomes impossible by either death or incapacity of the promisor, Now, we take another example given in Sec. 56. A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions, A is too ill to act. The contract to act on these occasions becomes void.

(d) Declaration of War : Those contracts which are entered into during the war with alien enemies, are void ab-initio. The contracts which were entered into before the declaration of war between citizens of countries subsequently at war are suspended and cannot be enforced. But these can be enforced after the war is over. Of these contract which are in one way or the other for aiding the enemy, are cancelled.

(e) Change of Law : Sometimes due to change in law, the performance of the contract may become impossible. As in case of Reshipton Anderson & Co. Vs. Harrison Brus & Co., A Sold to B a specified parcel of wheat in a warehouse. Before delivery could be made, the own godown was sealed by the Government and the entire quantity was requisitioned by the Government. The delivery being legally impossible, the contract was dischanged.

These are the ways in which supervening impossibility may occur. But there are many cases which are not covered by the Doctrine of supervening impossibility. We may call these exceptions to the above doctrine.

Exceptions :

(i) Difficulty of Performance : Mere fact that performance is difficult or more expensive or less profitable does not discharge the contract. As in a leading case of Blackburn Bobbin Co. Vs. Allen & Sons, A sold to B certain quantity of Finland Timber to be delivered between July and September, 1914. No deliveries could be made before August when war broke out and transport was disorganised. So, A could not bring any

timber form Finland. Here B was not concerned with the way which a war going to affect the timber from Finland. So his possibility of getting timber from Finland did not excuse performance. Here A will have to compensate B for any loss he has incurred.

(ii) Commercial impossibility does not discharge the contract : Sometimes though the performance becomes very expensive or less profitable yet the contract can not be said to be impossible.

(iii) Strikes, Lockouts & Civil Disturbances : All these will not discharge a party from performance of the contract unless there is a clause in the contract regulating this provision. In the case of 'Jacob Vs Credit Lyonnias' a contract was entered into between two London merchants for sale of certain Algeria goods. Owing to riots and civil disturbance in that country, the goods could not be bought. Hence, there was no excuse of no performance of the contract.

Meaning : When common object of the contract is no longer to be carried out, the court may declare the contract be at an end. So, according to the doctrine of frustration when the performance depends on continued existence of a person or things and it is known to both parties from the beginning, then in case of perishing of the person or things without default of parties, the performance of the contract will be excused. The promisor then, need not perform the contract. So the law does not compel to do the impossible things.

But this doctrine is not applicable to the case of commercial impossibility which we have already studied. Another thing to note here is that the contract can be discharged on the ground of frustration when the common object of the contract can no longer be carried out.

The doctrine of frustration of English law is really a part of law of discharge of contract. In fact, impossibility and frustration are used as interchangeable expressions. In India, doctrine of frustration is applied not on the ground that parties themselves agreed to an implied term which operated to release them from the performance. The court will form its own conclusion on the basis of evidence whether the changed circumstances have destroyed altogether the basis of contract and its object.

So Indian and English law do not stand on the same footings as regards to doctrine of frustration.

6. Termination by Breach of Contract : There are two ways in which

breach of contract can arise : (a) Anticipatory breach of contract and (b) Actual breach of contract.

Anticipatory Breach : A refusal by the promisor to perform his part of the contract before the due date is known as anticipatory breach of contract. When one party repudiates the contract before the time due for performance or refuses to perform before the time due or by one's act- disables oneself from performing the contract, the breach so occurred is known as anticipatory breach of contract. It is also called constructive breach of contract. For example, A contracts to supply some goods to B on 1st June. Before this date A tells B that he is unable to supply the goods. This is anticipatory breach of contract.

Consequences of anticipatory Breach of Contract : In case of anticipatory breach, the aggrieved party has got the following remedies :

(a) He can treat the anticipatory breach as actual breach and sue for damages and claim other rights, as are available in case of actual breach. In this case, he need not wait for the arrival of due date for the performance of contract.

(b) He can wait until the time falls due for performance and then start legal proceedings.

(c) He can treat the contract as discharged so that he is no longer bound to any obligations under the contract.

Actual Breach of Contract : Actual breach of contract means the failure on the part of one party to perform when the performance of contract is due or during the performance of the contract. It includes the refusal to perform. For example, A promises or fails to supply the wheat. This is actual breach of contract.

1.7.3 Remedies for Breach of Contract

When there is breach of contract, the injured or aggrieved party is entitled to any of the remedies :

(a) Rescission of the Contract
(b) Suit for Damages
(c) Quantum Meruit
(d) Injunction
(e) Special Performance
(f) Restitution

1.7.3.1 Rescission of the Contract : As already studied, if one party

rescinds the contract, it means, setting aside of the contract. But the party rescinding the contract will have to restore all the benefits received by him under the contract to the other party. Of course, he will be entitled to get the compensation for the loss suffered by him.

Damages may be of following kinds:

(i) Ordinary Damages

(ii) Special Damages

(iii) Exemplary or Punitive or Vindictive Damages

(iv) Nominal or contemptuous damages

(i) Ordinary Damages : These are damages calculated in such a way as to compensate the loss suffered by a party. These are calculated on the basis of circumstances prevailing on the date of breach of contract. These can also be called Compensatory Damages.

(ii) Special Damages : These are the result of breach of contract under some special circumstances. These arise due to indirect loss suffered. These types of damages must be known to both the parties at the time of entering into a contract. The example may be loss of profit caused by breach.

(iii) Exemplary or Punitive or Vindictive Damages : These are awarded by way of punishment. These are more than the actual loss suffered. The object of these damages is to prevent the party from committing the breach. These are awarded generally in the case of breach of contract to marry and dishonour of a customer's cheque by the bank without any proper reason.

(iv) Nominal or Contemptuous Damage : These damages are not granted for compensation and are of very small amount. These are in case where the loss is insignificant or negligible. These damages are awarded to recognise the right of the party to claim the damages for the breach of contract.

1.7.3.2 Suit for Damages

Rules regarding the determination of amount of damages :

Now the main point to discuss here is determination of damages, i.e., how much damages should be granted to the injured party. The rules are summarised as follows:

1. In general, only actual loss suffered is allowed as damages.
2. Where a party suffers a loss by breach of contract, he is to be

placed in the same situation with respect of damage if the contract had been performed.

3. When the amount of damages is calculated, the court takes into only that loss which is fairly and reasonably considered as arising naturally and in the usual course of things from the breach.

4. Court may allow remote damages i.e., damages not arising naturally from the breach. These are also called special damages. To clarify all these points a student is expected to read all the illustrations given under Section 73 of Indian Contract Act. For the sake of convenience we can take here an example. A delivers to B, a common carrier, a machine to be conveyed without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine and A, in consequences, loses a profitable contract with the amount of profit which would have been made by the working of the mill during the loss of the delivery of it was delayed; but not the loss sustained through the loss of the Government contract.

5. If the damages are difficult to calculate, it does not mean that the damages can not be recovered.

6. It is the duty of the injured to intimate the loss.

7. If already it has been agreed upon between the parties about damages, only the agreed amount will be paid as damages and not more than that. But the court may allow less.

Payment of Interest as damages

In the following cases, injured party is entitled to get the interest on the payment he is to receive :

(i) Where the contract provides the payment of interest.

(ii) If there is custom of trade to pay interest.

(iii) Under the provision of Interest Act of 1839, the interest is allowed in two cases : (a) Where there is fixed date of payment on a written document then from this date of payment, (b) Where party demands the payment in case no date is fixed, in this case from the date of demand, interest will be payable.

1.7.3.1 Quantum Meruit : It means 'as much as merited' or 'as much as earned'. Sometimes a person does some part of work or supplies a part of goods and the contract is terminated or becomes void for some reason. In these circumstances, a person can claim compensation for the work he

has done. This is called Doctrine of Quantum Meruit. It is applicable in the following ways :

(i) Simple Stating : When there is a breach of contract the injured party can claim compensation for the work he has already done. For example, a contractor was engaged to build a house, when half of the house was completed, the house was destroyed. Here, the contractor can claim for what he had done.

(ii) Sec. 65 explains that in case a contract becomes void for some technical defects, any person who had done something under the contract is entitled to reasonable compensation.

(iii) Sometimes there is an implied agreement to pay for the work done, goods supplied or services rendered. For example, A by mistake leaves his goods in B's house. He has no intention to give the goods to B. B knowingly uses the house. Here, A can compel B for payment of the goods.

This doctrine of Quantum Meruit has some limitations which are as follows :-

(i) In a contract, which is not divisible into parts and a lump sum of money is to be paid for entire work, part performance does not entitle a party to claim any compensation. As in the case of Cutter Vs. Powell, a sailor was appointed on ship on Voyage from Jamaica to Liverpool on a lump sum payment. After two third of voyage was completed, he died. It was decided that his legal representatives can not recover anything.

(ii) A person guilty to breach of contract can not recover by way of claim any payment for the work done.

1.7.3.4 Injunction : It means the order of the court. When the contract is of negative nature, i.e., a person has promised to do something and he commits a breach, the injured can apply to the court for getting negative injunction. It means court will issue and order to the other person prohibiting him for doing something. So, court will order a person to refrain from some act which has been the subject matter of contract. Here, we take the case of Metropolitan Electric Supply Co. Vs. Ginder. In this case, G agreed to buy electricity from the other company. Upon doing so, he was restrained by an injunction (order) from buying electricity from any other company.

1.7.3.5 Specific Performance : In those cases, where money is not the adequate remedy or the actual damages can not be correctly determined, courts may order for the specific performance of a

contract. In this case, court gives an order to the party guilty of breach of contract directing him to perform what he promised to do. It is not allowed in contracts of personal nature, e.g. contract of marriage etc. In contract for the sale of land or rare articles, court generally orders for the specific performance of the contract.

1.7.3.6 Restitution : Sec. 64 provides that in case of voidable contract, if the person on whose option is voidable, rescinds the contract, then he must restore any benefit received the contract under the contract. For example A, by undue influence enters into a contract with B for the sale of house and gives B some money as advance payment. Now, if B rescinds the contract he must pay back that money. Sec. 65 deals with the contract which becomes void. It says that when an agreement is discovered to be void, then any person who has received any benefit must restore or make compensation for into the person from whom he received that. For example, A pays B Rs. 1,000 in consideration of B's promising to marry, C, A's daughter. C is dead at the time of promise. The agreement is void but B must repay to A the 1,000 rupees.

1.7.4 Quasi contract

A contract is the result of an agreement enforceable by law. It comes into existence from the action of the parties. The parties make actual promises knowing fully well that legal relationship will come into existence. But sometimes there is no intention on the part of the parties to enter into a contract, but obligation resembling those created by a contract are imposed by law. A quasi contract is a kind of contract by which one party is bound to pay money in consideration of something done to the suffered by the other party. Though no contractual relation exists between the parties, law makes out a contract for them and such a contact is called a quasi-contract. The basis of the quasi contract is to prevent unjust enrichment or unjust benefit. No man should grow rich out the another person's loss.

The Indian Penal Code recognises such types of contract and Section 68-72 deal with such contracts. They are as follows :

(1) Claim for necessaries supplied to person incapable of contracting or on his account (Section 68).

(2) Reimbursement of person paying money due to another in the payment of which he is interested (Section 69).

(3) Obligation of person enjoying benefit of non-gratuitous act

(Section 70).

(4) Responsibility of finder of goods (Section 71).

(5) Liability of person to whom money is paid or goods delivered under mistake or coercion (Section 72).

(1) Claim for necessaries supplied (Section 68)

If a person, incapable of entering into a contract or any one whom he is legally bound to support, by another person with necessaries suited to his condition in life, the supplier is entitled to recover the price from the property of the incapable person.

Example :

(a) A supplies to B, (a lunatic), with necessaries suitable to his condition in life. A is entitled to reimburse from B's property. A contract by a minor is wholly void and unenforceable. He cannot even satisfy it on attaining majority. But Section 68 of the Act provides an exception to this rule and makes the estate of the minor liable for necessaries supplied to him. In order to make an infant liable for necessaries supplied, the plaintiff must prove :

(1) That the goods supplied were reasonably necessary for supporting a person in his position; and

(2) That the infant had not already a sufficient supply to these necessaries.

(2) Payment by an interested person (Section 69).

This section provides that a person who is interested in the payment of money which another is bound by law to pay, pays it, is entitled to be reimbursed by the other.

Example

B holds land in Bengal on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the government under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequence of his own lease, pays to the government, the sum due from A. A is bound to make good to B the amount so paid. In order that Section 69 may apply, the following conditions must be satisfied :

(1) A person must by law be bound to pay some money.

(2) Another person must be interested in the payment of that money.

(3) The other person must have paid the money because of such interest.

A person who is interested in the payment of money with another is bound by law to pay it, he is entitled to be reimbursed by the other. If he has no interest in paying he cannot claim protection.

Example

(a) A' s goods were wrongfully attached to realise the arrears of Government revenue due by A. A pays the dues to save his property. He is entitled to recover the amount from B.

(3) Obligation of a person enjoying benefit of non-gratuitous act (Section 70)

Where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit restore the thing so done or delivered.

Example

(a) A trademan leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them. Where, irrespective of any agreement or contract, a person lawfully does something for another person which was never intended to being gratiutious and the other person enjoys the benefit of the thing done, the latter is bound to pay compensation to the former in respect of that.

(4) Responsibility of finder of lost goods (Section 71)

A person who is bound to take as much care of the goods found as a man of ordinary prudence would take of his own under similar circumstance. He cannot appropriate the goods without taking proper steps to find out the owner and should wait for a reasonable time so that the owner may turn up and take them. The finder of the goods is entitled to retain the goods against the owner until he receives compensation from him. The finder may sell the goods if the true owner cannot be found after a reasonable search or if the true owner refuses to pay the compensation.

(5) Money paid by mistake or under coercion (Section 72)

A person to whom money has been paid for anything delivered by mistake or under coercion, must repay or return it.

Example

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C.

and not knowing of this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

Payment by mistake under this section must refer to a payment which was not legally due. The mistake is thinking that the money paid was due when infact it was not due. Thus, if money is sent to a wrong person by the money order due to bonafide mistake of fact, the sender can recover it. Similarly, a debtor can recover the amount of over payment to a creditor paid under a mistake. Payment made under coercion can be recovered like payment made under a mistake. Thus, money paid as income tax under threat of attachment can be recovered. Similarly, where a consumer of electricity pays money to the electric company under protest on being threatened with disconnection in case of default the case is open of the coercion under Section 72.

Example

A had obtained decree against B but obtained an attachment against C's property and took possession of it to obtain satisfaction for the amount of the decree. C on being ousted from property paid the sum under protest. C then sued for refund of the money. It was held that C having paid the money under coercion within meaning of Section 72 was entitled to recover the sum.

1.7.5 Quantum Meruit

By 'Quantum meruit' we mean 'as much as earned' when a person has done some work under a contract and the other parties repudiate the contract or some event happens which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done. The object of allowing a claim on quantum meruit is to compensate the party or person for value of work which he has done. Likewise, where one person has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to paid for, there is implied promise to pay quantum meruit, i.e. so much as the party rendering the service deserves. The right to claim quantum meruit does not arise out of contract as the right to damages does; the claim for quantum meruit only when the original contract is discharged. The claim for quantum meruit arises in the following cases:

-) When an agreement discovered to be void.
-) When something is done without any intention to do so

gratuitously.

(iii) When there is an expressed or implied contract to render services but there is no agreement as to remuneration.

(iv) When the completion of the contract has been prevented by the act of the other party to the contract.

(v) When a contract is divisible.

(vi) When an indivisible contract is completely performed but badly.

1.7.6 Summary

The various ways by which a contract is discharged has been discussed. There are various remedies for breach of contract i.e. rescission suit for damages, injunction etc. quasi contracts, which come into existence sometimes when there is no intention on the part of the parties to enter into a contract, are also enforceable at law. The contracts which are recognised as quasi contracts have been described in detail.

Self-check exercise:

Q. 1 Meaning and Concept of Rescission of Contract

Q. 2 What is injuction?

1.7.7. Glossary:

Rescission: The legal phrase used when a contract is cancelled or cancelled is "contract rescission." The term "overturning" or "cancellation" of a contract may also be used. Rescission of the contract puts an end to it. This frequently also nullifies any legal obligations contained in the contract.

Waiver agreement: allow either party to a contract to freely give up a claim without the other party being held responsible.

1.7.8. Answer to self-check exercise:

Ans. 1 It is a legal remedy that enables the contract's parties to be terminated for specific reasons, making the agreement worthless from the start. Rescission differs from cancellation or termination since it treats the contract as if it never existed.

Ans.2 A court's direction to one or more parties in a civil trial to refrain from performing, or less frequently to perform, a specific conduct or actions is known as an injunction in the law.

1.7.9 Questions for Exercise

Long questions:

1.Explain the ways by which a contract can be discharged.

2. What are the remedies available for breach of a contract ?

Short questions:

1.What are Quasi Contracts ?

2. What is meant by novation?

3. Define quantum meruit.

1.7.10 Suggested Readings

Mercantile Law by N.D. Kapoor
Mercantile Law by Avtar Singh.

BBA PART-II | PAPER : BBA-304
SEMESTER-III | BUSINESS LAWS

LESSON NO. 1.8 | AUTHOR : DR. RITU LEHAL

SALE OF GOODS ACT, 1930 - I

1.8.0 **Objective:**

The first of July 1930 saw the implementation of the sale of commodities legislation. Except for the state of Jammu & Kashmir, it covers all of India. The purpose of this course is to familiarize you with the components of a legally binding contract of sale, including how it is created, the terms of the sale, and any implied guarantees.

1.8.1 Introduction

Sale and purchase of goods form the basis of modern day business and commerce. The Sale of Goods Act contains the provisions for sale, the rights of sellers and buyers against each other and the conditions of sale. These provisions help in regulating the sale, purchase transactions and provide remedies to the aggrieved party

1.8.2 Contract of Sale (Section 4)

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part owner and another. A contract of sale may be absolute or conditonal. It is absolute when it is a sale pure and simple, transferring the property in absolute to the buyer. It is conditional if there are conditions annexed to contract by the parties.

The term "Contract of Sales" is a generic term and includes both sale and an agreement to sell.

Sale

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, it is called a sale.

1.8.2.1 Agreement to Sell

Where under a contract of sale, the transfer of the property in the goods is to take place at a future time or subject to some conditions therefore to be fulfilled, the contract is called agreement to sell. An agreement to sell becomes a sale when the time elapses on the condition, subject to which the property in goods is to be transferred is fulfilled.

The term 'property' as used in the Sale of Goods Act means general property in goods as distinguished from special property. If A owns certain goods, he had general property in the goods. If he pledges them to B, B will have special property in the goods.

1.8.2.3 Essential Elements of a Valid Sale

The following essential elements are necessary to constitute a sale of goods :

1. There must be two parties, i.e., buyer and seller, to effect the sale. The parties must be competent to contract.
2. There must be some goods, i.e. the property which is transferred from the seller to the buyer.

3. The goods which form the subject-matter of the contract of sale must be moveable and not immoveable.
4. A price in money must be paid or promised to be paid. The consideration must be in the form of money.
5. There must be a transfer of general property as distinguished from special property in goods from the seller to the buyer.
6. All the essential elements of a valid contract must be present.

1.8.3 Contract of Sale, How is it made ? (Section 5)

It is, like any other contract, made by ordinary offer, to buy or sell goods by one party and its acceptance to sell or buy goods respectively by the other party. It may be expressed or implied from the conduct of the parties. It may be :

(i) made in writing or
(ii) made by words (oral)
(iii) made partly in writing and partly by words of mouth, or
(iv) implied from the conduct of the parties, or
(v) implied from the course of business between the parties.

Payment of price or delivery of goods is, however, not the necessary condition unless otherwise agreed upon by the parties. The contract of sale may provide for the immediate delivery of the goods, or immediate payment or the price of both, shall be postponed.

1.8.3.1 Sale and hire-purchase agreement

A hire purchase agreement is a contract whereby the seller of goods agrees to transfer the property in the hire purchase when a certain fixed number of instalments of the price is paid by the buyer. Till that time, the instalments paid by the hire-purchaser are regarded as the hire charge for the use of the goods. If there is default by hire-purchaser in paying of instalment, the seller can recover the goods and the instalments paid by the hire-purchaser shall not be recoverable by him from the seller. This is because the ownership still rests with the seller. The hire-purchaser is entitled to use the goods by paying periodically, a certain fixed amount. He eventually becomes the owner of the goods, but until it happens there is no transfer of property from the seller to the hire-purchaser.

Example

B hires a piano from A on the condition that B should pay Rs. 100 monthly,

as rent. The stipulation is that if he regularly pays the rent for 20 months, the piano becomes his property at the end of 20 months. Further, it is provided that B can return the piano any time and need not pay any more. This is hire-purchase agreement proper. If, however, it is agreed that 20 months' rent must be paid and that he cannot return the piano, the agreement is a sale and not hire-purchase agreement.

1.8.3.2 Subject matter of Contract of Sale of Goods

Goods form the subject-matter of the contract of sale. According to Section 2(7), "goods means every kind of movable property other than actionable claims and money' and includes stocks and shares, growing crops, grass and things attached to or forming part of land which are agreed to be before sale or under the contract of sale."

An actionable claim is something which can be recovered only by means of a suit or action in a court of law. A debt from one person to another is actionable claim and cannot be bought or sold as goods. It can only be signed. Money also does not come under goods.

1. Existing Goods

There are the goods which are owned and possessed by the seller at the time of sale. These may be specified goods, ascertained goods or obtained goods.

2. Future or Contingent goods

These are the goods which the seller does not possess at the time of the contract but which will be acquired, manufactured or produced by him at some future date, or on the happening of some contingency, e.g., "The eggs yet to grow."

1.8.3.3 Effect of Destruction of Goods

Goods damaged before making of contract : (Section 7) where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have (at the time when the contract was made) perished or become so damaged as no longer to answer to their description in the contract.

Example : A agrees to sell a horse to B who tells A that he (B) needs the horse for riding to Bombay immediately, the horse died at the time of agreement. Both A and B are ignorant of this fact. The agreement is void.

In the above example, the intention of the parties is completely frustrated and there is nothing on which the contract can operate and hence it is

void. This rule is based either on the ground of mutual mistakes or on the ground of impossibility of performance.

2. Goods perishing after the agreement to sell but before the sale is effected (Section 8). Where there is an agreement to sell the specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as description in the agreement before the agreement is thereby avoided.

1.8.3.4 Delivery of Title of Goods

A document of title to goods is one which is, used in the ordinary course of business as proof of the possession or control of goods. It authorised either by endorsement or delivery, it possesses, to transfer or receive goods represented by goods. It symbolises the goods and confers a right on the purchaser to receive the goods or to further transfer such rights to another person. This may be done by mere delivery or proper endorsement.

1.8.3.5 Prices : (Section 9)

The price in a contract of sale must be expressed in money, it

(i) may be fixed by the contract itself, or

(ii) may be left to be fixed in an agreed manner, or

(iii) may be determined from the course of dealing between the parties.

Where the price is not determined in accordance with the foregoing provision, the buyer must pay the seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case.

1.8.4 Conditions and Warranties : (Section 12)

A stipulation on a representation in a contract of sale with reference to goods which are the subject thereof may be condition or a warranty.

If the parties regard a stipulation or representation as vital and essential to the main purpose of the contract, it is a condition. It forms the very basis of the contract. If there is a breach of condition, the aggrieved party can treat the contract as repudiated.

A warranty, on the other hand, is a stipulation which is subsidairy or collateral to the main purpose of the contract. It is not vital to the existence of the contract. If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition, or a warranty depends in each case at the time of entering in a contract. A stipulation may be a condition, though called a warranty in a contract.

For example, A agrees to supply a suit to B by 15th November, which the latter wants to wear on the day of his marriage to be held on 16th November, the time of the delivery of the suit is a condition. On the other hand, if the suit which A agrees to deliver to B by the 15th November is required by the buyer to be used in the forthcoming winter season the time of delivery is a warranty. The court has to look to the intention of the parties by referring to the terms of the contract and the surrounding circumstances to judge, whether a stipulation is a condition or a warranty. A stipulation may be a condition though called a warranty in a contract.

Expressed and Implied Condition and Warranties

In a contract of sale, conditions and warranties may be expressed or implied. Expressed conditions and warranties are those which have been agreed upon by the parties at the time of the contract and expressly provided in the contract. Implied conditions and warranties are those which are implied by law unless the parties stipulate to the contrary.

1.8.4.1 Implied Condition

1. Condition as to title (Section 14)

In a contract of sale there is an implied condition on the part of the seller that

-) In the case of a sale, he has a right to sell the goods, and
- In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

2. Sale by description (Section 15)

Where there is a contract for sale of goods by description there is an implied condition that the goods correspond with the description. If the sale is by sample as well as by description, the goods must correspond both with the sample and the description.

3. Sale by Description and Sample (Section 17)

In the case of contract for sale by sample there is an implied condition :

(a) that the bulk correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent of reasonable examination of the sample.

4. Conditions as to quality or fitness (Section 16)

The condition as to quality or fitness is implied :

-) where the goods sold are such as the seller deals in ordinary course of business;
- where the buyer relies on the seller's skill or judgement as to fitness of the goods for any particular purpose; and
- where the buyer expressly or impliedly makes known to the seller that he wants the goods for that particular purpose.

5. Condition as to Merchantability (Section 16 (2))

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be in a merchantable quality.

6. Condition as to Wholesomeness (Section 16 (3))

In case of eatables and provisions, there is, in addtion to the implied condition as to merchantability, another condition that the goods shall be wholesome.

7. Condition Implied by Customs : (Section 16 (3))

An implied condition as to quality or fitness for a particular purpose may also be annexed by the usage of trade in the locality concerned.

1.8.4.2 Implied Warranties

There are two implied warranties in a contract of sale :

1. Implied warranty of quiet possession : In a contract of sale, unless there is a contrary intention there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

2. Implied warranty of freedom encumbrance : In a contract of sale, unless there is a contrary intention, there is an implied warranty that the goods are free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

1.8.5 Caveat Emptor (Section 16)

The maxim “Caveat Emptor” means “Let the buyer beware”. According to

this rule the buyer himself should be careful while purchasing. If the goods are subsequently found to be unsuitable for his purpose he cannot blame the seller of the same, as there is no implied undertaking by the seller that he shall supply such goods as suit the buyer's purpose.

For example : A purchases a horse from B. A needs the horse for riding but he does not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in carriage. A can neither reject the horse nor can claim any for being driven in carriage. A can neither reject the horse nor can claim any compensation from B.

Exception : The doctrine of Caveat Emptor has certain important exceptions.

These are :

1. Implied conditions and warranties : The law implies certain conditions and warranties on the part of the seller and the buyer can rely upon them to avoid the applications of this maxim.

2. Sale under a patent or trade name : In the case of contract for the sale of a specified article under its patent or other trade name, it is not implied that the goods shall be reasonably fit for any particular purpose.

3. Goods bought by description : Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards to defects which such examination ought to have revealed.

4. Usage of trade ; An implied warranty or condition as the quality or fitness for a particular purpose may be annexed by the usage of trade.

5. Consent by fraud : Where the consent of the buyer is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of Caveat Emptor does not apply.

1.8.6 Transfer of property

Property, Possession, Risk : There are three stages to the performance of a contract of sale on the part of the seller :

(1) the transfer of the property in the goods ;

(2) the transfer of the possession of the goods; and

(3) the passing of the risk.

Transfer of property in goods from the seller to the buyer is the main object of the contract of sale. The term "property in goods" must be distinguished from "possession of goods". "Property in goods" means ownership of goods whereas "possession of goods" refers to the custody or control of goods. An article may belong to A although it is not in his possession. B may be in possession of that article although he is not its owner.

Example : A leaves his damaged radio-set with B for repair. The ownership of the radio-set is with A, but the possession is with B.

1.8.6.1 Passing of Property

The primary rules for ascertaining when the property in goods passes to the buyer are as follows :

1. When there is a contract for the sale of unascertained goods, no property in goods is transferred to the buyer unless and until the goods are ascertained.

2. Where there is a contract for the sale of specific or ascertained goods, the property in term is tranferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties, regard is to be given to the terms of the contract, the contract of the parties and the circumstances of the case. Where the intention of the parties cannot be ascertained, the following rules shall apply :

1.8.6.2 Specific Goods (Section 20, 21 and 22)

In case of a contract for the sale of specific goods in a deliverable state and if the contract is unconditional, property passes as soon as the contract is entered into.

In case of a contract for the sale of specific goods, if the seller has to do something to put them in a deliverable state, property passes only when such thing is due and notice thereof given to the buyer.

In case of a contract for sale of specific goods which are in a deliverable state and the seller has to do something for the purpose of ascertaining the price, property will pass only when such act is done.

Unascertained Goods

It is a condition precedent to the passing of property under a contract of sale that the goods are ascertained. The condition is not fulfilled where

there is a contract for sale of a portion of a specified larger stock. Till the portion is identified and appropriated to the contract, no property passes to the buyer.

According to Section 23(1), where there is a contract of the sale of unascertained or future goods by description and goods of that description are in a deliverable state and unconditionally appropriated to the contract the property in the goods there upon passes to the buyer. The appropriation may be done either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied, and may be given either before or after appropriation is made.

1.8.7 Appropriation of Goods

When unascertained goods are ascertained according to the description of the goods in a contract of sale, it is said the goods have been appropriated to the contract. The appropriation of goods is essentially the process of making the goods ascertained so that the property in them may be transferred to the buyer. Until goods are appropriated there is merely an agreement to sell. The agreement to sell becomes a sale only when the goods for which the contract is to operate are ascertained.

Essentials of an Appropriation

1. The goods must be in a deliverable state.
2. The seller should earmark the goods for fulfilling the contract.
3. The goods should, so far as quality and quantity are concerned, confirm to the description in the contract.
4. The goods should be unconditionally appropriated to the contract. The appropriation is unconditional when the seller does not reserve to himself the right of disposal of the goods.
5. The appropriation must be either by the seller with the assent of the buyer or by the buyer with the assent of the seller.

Various ways of the Appropriation

The appropriation of goods may be made :

1. By the seller with the assent of the buyer : This is more usual way. The selection of the goods by one party and the adoption of that act by the other converts a mere agreement to sell into an actual sale, and the property thereby passes.

2. By the buyer with assent of the seller : This happens when the buyer is already in possession of a large quantity of goods. Where a

warehouse man purchases some goods from a large quantity lying in his godown, he may appropriate the quantity purchased with the assent of seller. When this is done, ownership passes from the seller to the buyer.

Delivery to Carrier

A seller is deemed to have unconditionally appropriated the goods to the contract where he delivers the goods to the buyer or to a carrier or to transmission to the buyer, and does not reserve the right to dispose off.

The delivery to carrier may be :

-) Absolutely of the buyer : Where the bill of landing or railway receipt is made out in the name of the buyer and is sent to him, the presumption is that no right of disposal has been reserved by the seller in respect of those goods. The ownership in such a case passes from the seller to the buyer.
- Absolutely for the seller : Where the bill of loading or railway receipt is taken by seller or by his agent and is sent to the agent of the seller to be delivered to the buyer in the fulfillment of certain conditions, the seller is deemed to have reserved the right of disposal of the goods. In such a case, the ownership does not pass to buyer until the necessary conditions are fulfilled and the documents of title are delivered to the buyer.

1.8.8 Goods sent on approval or on sale on returnable basis (Section 24)

In case of goods delivered to buyer on approval or on sale or return, when he signified his approval or acceptance. If he retains the goods without giving notice of rejection, property passes when the time agreed for returning the goods expires or after a reasonable time has expired.

1.8.9 Transfer By Non-Owners

Nemo dat Qui non habet

When the seller himself is the owner of goods which he sells or he is somebody's agent to dispose off the goods, he conveys the title on the goods to the buyer. Difficulty arises when the seller is neither himself the owner nor has he any such authority from the owner to sell the goods. The general rule of law is that no one can transfer a better title than the owner himself. This is expressed in Latin maxim “Nemo dat quod have.” This means “no one can give that which he has not got.” For example, if A steals an article and sells it to B, B does not become the owner of the article. He does not acquire any title although he may have acted honestly

and may have paid values for the goods. In other words that the title of the Transferee, i.e., the buyer of the goods, cannot be better than that of the transformer, i.e., the seller. This projects that the owner is true.

Section 27 also provides that where goods are sold by a person who is not the owner thereof does not sell them. This is, however exposed to certain exceptions.

1.8.9.1 Exceptions

1. Sale by a merchantile agent (Section 27)

A merchantile agent is one who in the customary course of his business, has, as such agent, authority either to sell the goods or to consign goods for the purpose of selling or to buy goods or to raise money on the security of goods. The buyer of goods from a merchantile agent, who has no authority from the principal to sell, gets a valid title to the goods if the following conditions are satisfied :

(i)) The agent should be in possession of the goods or documentsof the title to the goods with the consent of the owner.

(ii) The agent should sell the goods while acting in the ordinary course of the business.

(iii) The buyer should not act in good faith.

(iv) The buyer should not have at the time of the contract of sale received a notice that the agent has no authority to sell.

Example : P, the owner of a car, delivered it to a merchantile agent for sale with instructions not to sell below a certain price without P's consent. A sold the car to T below the stipulated price and misappropriated the money. Held, T obtained goods title of the car.

2. Sale under the Implied authority of owner or title by estoppel (Section 27)

When the true owner by his conduct, or by an act or omission, leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. To the buyer in such a case gets a better deal than of the seller.

3. Sale by the one of several joint owners (Section 28)

A buyer in good faith of goods of one or the several joint owners, who is in sale possession of the goods by the permission of the co-owners, sets good title to the goods.

4. Sale by a person in possession of goods under the voidable contract (Section 29)

When the seller of goods has obtained the possession under a voidable contract, but the contract has not been rescinded, he buys them in good faith and without any notice of the seller's defect of title. If a contract under which the seller obtains goods is valid, then even an innocent buyer of the goods from such a seller does not acquire title to the goods.

5. Sale by seller in possession after sale [Section 30 (1)]

Where a seller, having sold goods, continues to be in possession of the goods or of the documents or title to goods and sells them either himself or through a merchantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

6. Sale by buyer in possession after sale [Section 30 (2)]

Where a person, having bought or agreed to buy goods obtained with the consent of the seller, possession of the goods, or document of the title to the goods, and sells them either himself or through an agent, the buyer who acts in a good faith and without notice of any or other right of the original seller in respect of the goods, gets a good title.

7. Sale by an unpaid seller [Section 54 (3)]

Where an unpaid seller who has exercised his right or lien or stoppage in transit resells the goods, the buyer acquired a good title to the goods as against the original buyer.

8. Exceptions in the Acts

(a)) Sale by a finder of lost goods under certain circumstances (Section169 of Indian Contract Act.)

(b) Sale by a pawnee or pledge under certain circumstances (Section 176 of the Indian Contract Act).

(c) Sale by an Official Receiver of Official Assignee or Liquidator of companies.

(d) In all the above cases, even though the seller is not the owner of the goods, the buyer gets a valid title.

9. Sale in market overt

In England, person who buys goods in market Overt, obtains a goods title to the goods. “Market overt” means an “open public and legally constituted market” where goods are sold in market overt, buyer acquires a good title

to them respective of the seller's title provided.

(a) the goods are sold in accordance with the custom of the market; and

(b) the buyer acted in good faith and no reason to believe that the seller's title to the goods was either defective or non-existent.

8.10 Performance of Contract

Delivery and Acceptance

It is the duty of the seller to deliver the goods of the buyer to accept and pay for them in accordance with the terms of the contract of sale. The contract may contain special terms as to delivery and acceptance. But in the absence of any such terms, it is the duty of the seller to deliver the goods of the buyer to accept them. If there are no terms in the contract dealing with the matter, delivery at the time of payment of the price are concurred conditions, that is, they both take at the same as in a cash sale time as in a cash over a shop counter.

8.10.1 Delivery of goods (Section 33)

Delivery means voluntary transfer of possession of goods by one person to another. Delivery of goods sold may be made, by which the parties agree shall be treated as delivery the effect of putting the goods in the possession of the other.

Delivery of goods may be actual, symbolic or constructive.

1. Actual delivery : Where the goods are handed over by the seller to the buyer or his duly authorised agent, the delivery is said to be actual.

2. Symbolic delivery : Where goods are ponderous or bulky and incapable of actual delivery, e.g., hay-stack in a meadow, the delivery may be symbolic. Handing over the key of a warehouse to the buyer or documents of goods are the examples of symbolic delivery of the goods to the buyer and is as effective as actual delivery, even though there is no change in the possession of the goods.

3. Constructive delivery or delivery by attornment : Where a third person (bailee) who is in possession of the goods of the seller at the time of the sale acknowledge to the buyer that he holds the goods on his behalf, there takes place a delivery by an allotment or constructive delivery. This may happen in the following cases :

(a)) Where the seller is in possession of the goods and hold them

on behalf of the buyer.

(b) Where the buyer is in possession of the goods and the seller agrees to the buyer's holding the goods as owner.

(c) Where the third person in possession of the goods acknowledges the buyer that he holds them on his behalf.

Example : A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods in his books to B, C assents to such order and transfers the goods in his books to B. This a delivery attornment.

1.8.10.2 Rules of Delivery of Goods

1. Mode of delivery (Section 33) : Delivery should have the effect of Putting the goods in the possession of he buyer or his duly authorised agent. Delivery of goods may be (i) actual (ii) constructive or (iii) symbolic.

2. Payment and delivery (Section 32) : Delivery of the goods and payment of the price must be according to the terms of contract.

3. Effect of part of delivery (Section 34) : A delivery of the goods, progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods, as delivery of the whole, but a delivery of the goods, with an intention of delivering it from the whole, does not operate as a delivery of the seller.

4. Buyer to apply for delivery : Apart from any expressed contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. If the buyer does not apply for delivery, he shall have no cause of action against the seller.

5. Place of Delivery : The place at which the delivery of the goods is to take place must be specified in the contract. Where it is done, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of the sale.

6. Goods in possession of a third party : When at the time of the sale, the seller is bound to send the goods to the buyer, but no time of sending them is fixed, the seller is bound to send them within a reasonable time.

But immediate delivery is contemplated. Demand or tender of delivery

should be made at a reasonable hour. What is reasonable hour is a question of facts.

7. Cost of Delivery : Unless otherwise agreed, all expenses of and incidential to making of delivery shall be borne by the buyer.

8. Delivery of wrong quantity : The delivery of quantity of goods contracted for, should be strictly according to the terms of contract. A defective delivery entitles the buyer to reject the goods. The three contingencies which may arise are :

( ) Delivery of goods less than contracted for : Where the seller delivers to the buyer, a quantity of goods less than be contracted sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay them at the contract rate.

(Delivery of goods in excess of the quantity contracted from where the seller delivers to the buyer a quantity of goods larger than he contracted to sell. The buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(Delivery of goods for sale mixed with other goods, where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

9. Instalment Delivery (Section 18)

Unless it is a term of the contract of sale, the contract must be performed as a whole and account be divided either by the seller or buyer. The powers may be expressed or be inferred from the circumstances of the case.

10. Delivery to a carrier or wharfinger (Section 39)

Where, in pursuance of a contract of sale, goods are delivered to a carrier for the purpose of transmission to the buyer or a wharfinger for sale custody, delivery of goods to them is primafacie deemed to a delivery of the goods to the buyer. In such a case, the seller must enter reasonable contract with the carrier or wharfinger on behalf of the seller responsible in damage.

Acceptance of Delivery

Acceptance of something more than mere receipt or taking of goods by buyer does it mean the final assent by the buyer that he has received the goods under performance of contract of sale. If he wrongfully refuses to

accept the goods under the contract he is liable for damages. According to Section 42 the buyer is deemed to have accepted the goods.

When the goods have been delivered to him and he does any act in relation to them which is consistent with the ownership of the seller, as the instance :

(a)) where he re-sells the goods; or

(b) where he uses the goods in a manner proper only for the owner;

(c) where he makes some alteration in time, the buyer retains the goods without intimation to the seller that he has rejected them.

Buyer's liability for rejecting, neglecting or refusing delivery

Buyer's liability in case of rejection of goods : When the seller is ready and willing to deliver the goods and requests, delivery of the goods.

(a)) any loss caused by his neglect or refusal to take delivery;

(b) a reasonable charge for the care and custody of the goods, where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract, the seller to sue for price or for damages.

1.8.11 Rights and Duties of the Buyer

Rights of the buyer

1. To have delivery of the goods as per the terms of the contract.
2. To repudiate the contract for breach of conditions or if the delivery of the goods is not according to the terms of the contract.
3. To examine the goods before he accepts them.
4. To sue the seller for damages if he wrongfully neglects or refuses to deliver the goods. He may also sue the seller for the return of the price if he has already paid it.

Duties of the Buyer

1. To take delivery of, and pay for, the goods.
2. To apply for delivery.
3. To take risk of deterioration incidental to the transit.
4. To be liable to the seller for any loss occasioned and neglect or refusal to take delivery.

1.8.12 Rights of an unpaid seller

Who is an unpaid seller ?

According to Section 45 A seller is deemed to be an unpaid seller :

(a)) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been fulfilled by result of the dishonour payment, and the condition which it was received has not been fulfilled by result of the dishonour of the instrument, or otherwise.

The following conditions must be fulfilled before a seller can be deemed to be an unpaid seller :

(i)) He must be unpaid and price must be due.

(ii) He must have an immediate right of action for the price.

(iii) A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

When payment is made by a negotiable instrument, it is as usually a condition being that the instruments shall be duly honoured. If the instrument is not honoured, the seller is an unpaid seller." A seller who has a money decree for the price of the goods is still an unpaid seller if the decree has not been satisfied.

Rights of an Unpaid Seller against the goods :

(a)) Where the property in goods has passed to the buyer : In such a case, an unpaid seller has, in addition to his other remedies, a right of with holding delivery similar to and co-existence with rights of lien and stoppage in transit where the property has passes to the buyer.

(b) Where the property in the goods has passed on to the buyer.

In such a case, an unpaid seller has the following rights against the goods :

1. Rights of the Lien (Section 47 to 49)

Lien is the right to retain possession of goods until the payment is made to the unpaid seller of the goods who is in possession of them. He is entitled to retain possession of them until payment of tender of the price in the following cases namely :

(a)) where the goods have been sold without any stipulation as to credit;

(b) where the goods have been sold on credit, but the term of credit has expired; and

(c) where the buyer becomes insolvent.

The seller may exercise his rights of lien not withstanding that he is in possession of the goods as agent or bailee for the buyer. But if he loses the possession of the goods he also loses the rights of lien.

A lien is defined as a right to retain possession of goods until payment or tender of the price. The lien depends on actual possession and not on title. It is not effected even if the seller has parted with the document capable of transferring title.

The following conditions are necessary before an unpaid seller can exercise his right of lien :

(a)) The ownership must have passed on to the buyer.

(b) The goods must be in the possession of the seller or under his control.

(c) The possession of the goods by the seller must not expressly exclude the rights of lien.

(d) The price or part of the price must remain unpaid.

Where an unpaid seller has made part delivery of goods, he may exercise his rights of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49) : The unpaid seller of goods looses his lien on the goods :

(1) When he delivers the goods to a carrier or other bailee for the purpose of termination to the buyer, without reserving the right of disposal of the goods.

(2) When the buyer or his agent lawfully obtains possession of the goods. The buyer in this case must obtain possession of the goods as buyer.

(3) By waiver thereof.

The unpaid seller may waive his right to retain the goods or withhold delivery and he may do this either expressly or impliedly.

Right of Stoppage in transit (Section 60 to 62)

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of goods as long as they

are in the course of transit and may retain them until payment of tender of the price.

Duration of transit (Section 61) : Transit is an intermediate state. Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission of the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

Transit comes to an end in the following cases :

(a)) If the buyer or his agent behalf, obtains delivery of the goods before they arrive at the appointed destination.

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf.

(c) Where the carrier or the other bailee wrongully refuses to deliver the goods of the buyer or his agent in that behalf.

(d) Where partly the delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up the possession of the whole of the goods.

Right of re-sale (Section 64)

The unpaid seller can re-sell the goods :

(i)) Where the goods are of perishable nature;

(ii) Where the unpaid seller has exercised his right of lien or stoppage in transit and given notice to the buyer of his intention to resale the goods, and where the buyer has not within a reasonable time paid the price, and

(iii) Where the seller expressly reserves a right of re-sale in case the buyer should make default.

As against buyer personally :

1. Suit for Price (Section 55) : Where under a contract of sale of the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

2. Damage for non-acceptance (Section 56) : Where the buyer

wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non-acceptance.

3. Repudiation of contract before the sue is due (Section 60) : Where the buyer to contract of sale repudiated the contract, before the date of delivery the seller may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.

4. Suit for Interest : The seller can recover interest on price from the date on which the payment becomes due, if there is a special agreement to that effect.

1.8.13 Summary

In a contract of sale, there are various conditions and warranties that have to be complied with at the time of transferring the goods, passing of property etc. The act provides some rights to sellers and buyers and makes them responsible to do their duties.

Self-check exercise:

Q.1 Define the term caveat emptor.

Q. 2 Define warranties

Q. 3 Who is unpaid seller?

1.8.14. Glossary:

Express: An agreement between you and the other party that has a "express" word is one that is explicit, definite, and agreed upon. It is normally in writing, but if the contract itself is verbal, it may also be.

Implied: A word that has been "implied" into a contract by a court is one that was not explicitly mentioned in the agreement.

Encumbrance: It is a claim made against a piece of property by someone other than the owner.

Possession: the quality of possessing, controlling, or having something.

1.8.15 Answer to self-check exercise:

Ans. 1 Caveat Emptor, which translates to "Let the Buyer Beware," warns that dishonest dealers may conceal flaws in the products they offer.

Ans. 2 A warranty is a promise made by a seller to a customer that a product will fulfil particular requirements. The purchaser may request the manufacturer or seller to make the necessary adjustments if the item does not fulfil those requirements.

Ans. 3 Unpaid sellers are those who have not been paid in full for the things they have sold. EXAMPLES: If X sold Y products for Rs. 5,000 on credit for a month, but Y failed to pay the amount when the month was over, X would be considered an unpaid seller.

1.8.16 Questions for exercise

Long questions:

1. Define a contract of sale. Explain the essentials of a valid contract of sale.
2. What are the conditions and warranties in a contract of sale?
3. Define an unpaid seller. Explain his right against the goods and against the buyer personally.

Short questions:

1. Define the term agreement to sell.
2. Explain the rules regarding the place of delivery.

1.

1.8.17 Suggested Readings

Merchantile Law N.D. Kapoor
Merchantile Law Avtar Singh

BBA PART-II | PAPER : BBA-304
SEMESTER-III | BUSINESS LAWS

LESSON NO. 1.9 | AUTHOR : RAVI GOYAL

SALE OF GOODS ACT II
(Sale by Auction & Hire Purchase Agreement)

1.9.0 Objectives

The following lesson deals with the law of Sales of Goods 1930 , and in this chapter, we will discuss what is an Auction Sale and What is a Hire Purchase Agreement ?

1.9.1 An auction is a manner of selling property by bids. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other manner.

1.9.2 Sale By Auction

1.9.2.1 Meaning

An auction is a manner of selling property by bids usually to the highest bidder by public competition. The auctioneer, who sells goods by auction, is an agent of the seller only. He may, however sell his own property as principal and need not disclose the fact that he is so selling. The auctioneer holds the goods as a bailee. On a sale by auction, a contract is formed between the auctioneer and the buyer, and incurs certain liabilities though not all liabilities of a seller.

1.9.2.2 The rules regarding auction sale are laid down in section 64 and are as under :

1. Where an auction sale is made in lots, each lot is prima facie deemed to be the subject of a Separate contract of sale

2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner. Until such announcement is made any bidder may withdraw his bid. This can be done by the bidder on the principle that each bid is only an offer by the bidder to the auctioneer and it may be retracted at any time before it is accepted. When the auctioneer announces the completion of the sale by the fall of the hammer, the sale is complete and the property in the goods passes immediately to the buyer.

Donnant V. Skinner (1948), A purchased a car in an auction sale and gave false cheque for the price and obtained delivery of the car. D, the seller had inserted a clause in the agreement that the property in the car would not pass to the buyer until the cheque was cleared. Before D could discover the fraud, A sold the car to Skinner. Held the property in the car had passed to A at the fall of the hammer and therefore the defendants acquired a good title to the car and the plaintiff could not recover it back.

3. A right to bid may be reserved expressly by or on behalf of the seller.

4. Where a right to bid is so reserved, the seller or any other person on his behalf may bid at the auction.

5. In case the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful---

(a) For the seller to bid himself or to employ any person to bid atsuch sale, or

(b) For the auctioneer knowingly to take any bid from the seller or any such person.

6. Any sale contravening the above rule may be treated as fraudulent by the buyer. He will be entitled to avoid it under section 19 of the Indian Contract Act. Knock-outs i.e., combinations among bidders not to bid against each other are not illegal. But if the object of the knock-outs is to depress the sale i.e. the price, the purchase may be fraudulent and therefore, voidable.

7. A sale by auction may be notified to be subject to a reserved or upset price. The seller, can fix a reserved price in order to protect himself against "knock-out" agreement. A combinations of persons not to bid against on e another at auction called Knock-outs is not illegal.

8. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of buyer.

When an auctioneer sells goods, he impliedly undertakes the following obligations-

a) He undertakes that such possession will not be distributed by his principal or himself.

b) He warrants his authority to sell.

c) He undertakes to give possession against the price paid in to his hands.

Self-Check Exercise-1

1. What is Auction sale and what are the various rules regarding auction sales?

1.9.3 HIRE PURCHASE AGREEMENT

1.9.3.1 Meaning

A very significant development in the field of trade is "instalment selling"

which has gained acceptance among buyers and sellers all over the world. The hire-purchase system is quite popular for business transactions, particularly in consumer durables. Now a days, we find offers like sale of Motor Cars, Motor-Cycles, Refrigerators, TVs, air-conditioners at 0% interest. Manufacturers tie-up with financers to sell such products to buyers on easy instalments terms.

Unlike cash-sales, where price has to be paid in lump sum at the time of taking delivery of goods and credit sales where full price is to be paid by the buyer on expiry of credit period allowed by the seller, in case of instalment system, the buyer is allowed to make the payment in easy instalments over a period of time.

1.9.3.2 Definitions

1. Hire Purchase agreement

It is an agreement under which the goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of agreement and includes an agreement under which:

-) The possession of goods is delivered by the owner there of to a person on the condition that such person pays the agreed amount in periodical instalments;
- The property in the goods is to pass to such person on payment of the last such instalment; and
- Such person has a right to terminate the agreement at any time before the property so passes. That is he has the option to return the goods in which case the need not pay instalments falling due thereafter. However, the hirer cannot recover the sums already paid as such sums legally represent hire charges of goods in question.

Special features of the Hire-purchase agreement are :

-) The hire vendor transfers only the possession of Goods to hire purchaser immediately after the agreement of hire purchase is made.
- Goods should be delivered by the hire vendor on the condition that the hire purchaser should pay the agreed amount in periodical instalments.
- Hire-purchaser generally makes a down payment on signing the agreement and the balance of amount along with interest is paid in instalments at regular intervals for a Specified period.

(iv) Each instalment, including down payment (if any) is treated as hire charge by the seller

(v) Each instalment consists partly of interest and party of capital payment.

(vii) The property in goods is to pass to the hire-purchaser on the payment of the last instalment

(viii) The hire-purchaser has the right to terminate the agreement at any time before the property so passes.

(viii) In case of default in respect of payment of even the last instalment, the hire vendor has the right to take the goods back without making any compensation.

2. Hire :

Hire means any periodical sum payable by the hirer to the owner of the property under a hire-purchase agreement.

3. Hirer :

Hirer means the person who acquires or has acquired the possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law

4. Owner :

Owner means the person who lets or has let, delivers or has delivered possession of goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law.

5. Hire-Purchase Price :

Hire-purchase price means the total amount payable by the hirer under hire-purchase agreement to complete the purchase of, or the acquisition of property in the goods to which the agreement relates and includes any sum so payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment on him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means. But it does include any sum payable as penalty or as Compensation or damages for a breach of the agreement.

6. Down Payment :

Initial payment made at the time of signing hire-purchase agreement and taking possession of the goods.

1.9.3.3 CONTENTS OF HIRE PURCHASE AGREEMENT

According to' Sec. 4 of the Hire-Purchase Act, 1972. The following shall be the contents of any hire purchase agreement.

1. The hire purchase price of the goods.
2. The cash price of the goods, that is to say, the price at which the goods may be purchased by the hirer for cash.
3. The date on which the agreement shall be deemed to have commenced.
4. The number of instalments, the amount of each of those instalments and the date or the mode of determining the date, upon which it is payable, and the person to whom and the place , where it is payable
5. Description of the goods covered by the agreement.

Self Check Exercise-2

1. Define Hire Purchase Agreement and explain its contents and features in detail.

1.9.4 Hire-Purchase Charges

1.9.4.1 Meaning

'Hire-purchase charges' are the difference between hire-purchase price and cash price of the goods. Section 7 has restricted the hire charges, which can be levied by the owner. A statutory limitation is imposed on the amount that can be levied with respect to each cash price instalment. The H.P. charges may be determined by applying the formula

$$SC = \frac{CI \times R \times T}{100}$$

where SC represents the statutory charges

CI the amount of cash price instalment expressed in rupees or fractions of the rupee.

R represents the rate, and

T represents the time, expressed in years and fractions of years," that elapse between the date of agreement and the date on which the hire-purchase instalment corresponding to the cash price instalment is payable under the agreement.

The rate (R) is determined by the Central Government after consulting Reserve Bank of India but it should not be less than 10% p.a.

Cash price instalment in relation to a hire-purchase instalment is calculated as follows:

$$\text{Cash Price Instalment} = \frac{\text{Hire-purchase instalment}}{\text{Hire-purchase price}} \times \text{Net cash price}$$

Net cash price means cash price as specifically mentioned in the agreement less any deposit. The term deposit refers to initial payment whether actually paid or agreed to be paid because of delivery of goods or any other mode of settlement. "Net hire-purchase price" means the hire-purchase price of the goods as specified in the agreement less:

-) any amount payable to the hirer to cover the delivery of goods and included in the hire-purchase price.
- any amount payable to cover registration or other fees and included in the hire-purchase
- any amount payable for insurance (other than third party risk insurance) of the goods and included in the hire-purchase price.

Where the net hire-purchase charges exceed the statutory charges, the hirer can either avoid the agreement or restrict his liability to statutory amount.

1.9.4.2 RIGHTS OF HIRE-PURCHASER

The hire-purchaser has following rights:

91..5.2.1 Right to purchase

During the course of the hire-purchase agreement, the hirer may, after giving the owner at least 14 days' notice in writing of his intention to purchase the goods, complete the purchase of the goods by paying to the owner the hire-purchase price or the balance thereof as reduced by the rebate. Rebate is equal to two-thirds of an amount which bears to the hire-purchase charges, the same proportion as the balance of the hire-

purchase price not yet due bears to the hire-purchase price. Where hire-purchase charges mean the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement. The formula for calculating rebate is

$$= \left[\text{Hire purchase Charges} \times \frac{\text{Balance of H.P. price not yet due}}{\text{Total Hire purchase price}} \times \frac{2}{3}\right.$$

Or

$$= \left[\text{Hire purchase Charges} \times \frac{\text{No. of Instalments due}}{\text{Total No. of Instalments}} \times \frac{2}{3}\right.$$

1.9.5.2.2 Right to terminate

The hirer has, after giving 14' days notice and returning the goods, right to terminate the agreement at any time before the property passes and the final instalment payment under the hire-purchase agreement falls due. However, the payments made by the hirer prior to the final payment are treated as payments in respect of hire, (i.e. hire charges) are not returned to the hirer if he does not continue the agreement. The provisions are as follows:

(1) The hirer can terminate the agreement at any time after giving 14 days' notice to the owner and redelivering or tendering the goods to the owner. Hire-purchase agreements may impose severe liability if the hirer wants to terminate the agreement. To mitigate this, the Act provides:

(a)) Where the sum-total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one half of the purchase price the hirer shall not be liable to pay the amount so mentioned.

(b) Where the sum-total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be

liable to pay the difference between the said sum-total and the said one-half, or sum mentioned in the agreement whichever is less.

1.9.5.2.3 Right of hirer when goods are seized by the owner

Where the owner seizes the goods on the termination of the agreement, he has to refund to the hirer the amount by which the amount paid by the hirer plus the value of the goods on the date of seizure exceed the hire-purchase price. The value of the goods is the best price that can be reasonably obtained for the goods by the owner less expenses incurred for seizing, repairing, storing, selling, etc., of such goods. He has to refund the amount within 30 days from the date on which notice is served by the hirer, failing which interest at 12% p.a. has to be paid on the amount from the date of expiry of thirty days. This is intended to ensure that an owner by exercising his right of seizure does not acquire any unconscionable benefit.

1.9.5.2.4 Owner requires permission of court to repossess the goods

Goods can be repossessed only by making an application to the appropriate court in the following Cases:

-) Where the hire-purchase price is less than Rs. 15,000 and one-half of the price is paid.
- In other cases when three-fourth has been paid.

If goods are recovered in contravention of above provisions, the agreement is terminated and the hirer will be released from all liability and will have the right to recover from the owner all sums paid by him under the agreement. The surety also will have the right to recover all the sum paid by him under the contract of guarantee.

1.9.5 Difference Between Sales & Hire Purchase Agreement

Under hire-purchase agreement the owner of the goods lets them out on hire for a periodic rent on the terms that on completion of the agreed number of payments, the hirer is to have the option to buy the goods. On payment of the full amount, the property in the goods passes to him but the owner shall have the right to resume possession of the goods on the hirer's failure to pay any of the instalments of rent or any other breach by the hirer of the terms of the agreement.

Where the hirer agrees to buy the goods through the price paid by instalments, he not merely acquires an option to purchase them in future, then the contract is a contract of sale and not a contract of hire-purchase.

The essential feature of a hire- purchase agreement is that a person has a right to terminate the agreement for hire at his pleasure and is not bound to pay the value of the goods. The difference between a contract of sale and hire purchase agreement are listed below.

	Sale	Hire-Purchase agreement
1. Nature of Contract	A sale is an executed contract in which the ownership is transferred from the seller to the buyer as soon as the contract is entered.	In a hire purchase agreement it becomes the property of buyer only after certain numbers of instalments are paid.
2. Termination	The buyer in this case cannot terminate the contract and as such is bound to pay the price of the goods.	Hire purchaser is at liberty to terminate contract at any stage and cannot be forced to pay remaining instalments.
3. Resale	The buyer in a sale can resell the goods.	The hire purchaser cannot sell until he has paid all instalments of hire.
4. Implied conditions & warranties	A sale is subject to the implied conditions & warranties.	A hire purchase agreement is not subject to such things.
5. Insolvency	In sale, seller takes the risk of any loss resulting from insolvency of the buyer.	In this, owner is not atany risk.

1.9.6 DIFFERENCE BETWEEN HIRE PURCHASE AND INSTALMENT SALE CONTRACTS

In the case of hire purchase the ownership in property is never transferred

to the hirer by the owner, i.e., the property must be returned to its owner. Whereas in the case of sale contracts, the ownership in property is transferred to the buyer immediately at the time of contract, i.e., the, property cannot be returned to its seller.

Difference between Hire purchase and Instalment System

'Instalment sale' is different from goods sold under 'hire-purchase' agreement.

In 'instalment sale', ' possession' as well as 'ownership' of goods is transferred to the buyer immediately. The main differences between instalment sale and hire purchase are as follows:

		Instalment Sales	Hire-Purchase
1.	Ownership	Ownership in goods passes to buyer the moment, transaction is completed.	Ownership passes at stipulated time, usually on payment of Last instalment.
2.	Right of buyer	The buyer has no right to terminate the agreement by returning goods	The buyer has the option to return the goods and terminate the agreement .
3.	Right of seller	The seller can only sue for the unpaid balances.	The seller can repossess the goods on default of payment by buyer
4.	Right of disposal	The buyer has the right to dispose of the goods in any manner he likes.	The buyer being in the legal position of bailee has no right of disposal of goods.
5.	Risk of loss	Any loss of goods should be borne by the buyer as risk lies with the ownership.	If buyer take reasonable care of the goods expected of a bailee,then loss occuring to goods has to be borne by the seller.

Self-Check Exercise-3

Make a difference between the followings:

a) Hire Purchase Agreement & Sales

b) Hire Purchase & Instalment Sales

1.9.7 Summary

From the above discussion it is easy to understand what is sales by auction and how it is done and what is hire purchase. An auction is a manner of selling property by bids usually to the highest bidder by public competition. The auctioneer, who sells goods by auction, is an agent of the seller only. He may, however sell his own property as principal and need not disclose the fact that he is so selling.

Under hire-purchase agreement the owner of the goods lets them out on hire for a periodic rent on the terms that on completion of the agreed number of payments, the hirer is to have the option to buy the goods. On payment of the full amount, the property in the goods passes to him but the owner shall have the right to resume possession of the goods on the hirer's failure to pay any of the instalments of rent or any other breach by the hirer of the terms of the agreement.

The essential feature of a hire- purchase agreement is that a person has a right to terminate the agreement for hire at his pleasure and is not bound to pay the value of the goods.

1.9.8 Answers to self check exercises

1. See 9.3.1 & 9.3.2
2. See 9.4.1, 9.4.2 & 9.4.3
3. See 9.6 & 9.7

1.9.9 Glossary

1.	disposal	:	removal/discarding
2.	obligation	:	compulsion/responsibility
3.	compensation	:	reparation/reimbursement
4.	repossess	:	take back/recapture
5.	seized	:	in custody
6.	terminate	:	come to an end/lapse

1.9.10 Questions for exercise:

Long questions:

Q. 1 What is an auction sale? Explain in brief the rules applicable to an auction sale.

Q. 2 What do you mean by hire purchaser? Explain the rights of a hire purchaser.

Short questions:

Q. 1 Define hire purchase.

Q. 2 distinguish between sales and hire purchase agreement.

Q. 3 Distinguish between installment sales and hire purchase.

1.9.11 Suggested Readings

1.	Mercantile Law	:	Kapoor G.K.
2.	Mercantile Law	:	Kapoor N.D.
3.	Principles of Mercantile Law	:	Singh Avtar
4.	Business Laws	:	V.K. Sharma

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PAPER : BBA-304
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BBA PART-II (Semester-III)

LESSON NOs : 1.1-1.9
RESPONSE SHEET NO. 1

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Examiner.....

No. of pages attached.....

Write your name and address below in BLOCK LETTERS

Date of receipt in the Department.....
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Maximum Marks : 40

Attempt any four questions.

1. "Insufficiency of consideration is immaterial, but an agreement without consideration is void." comment.
2. Discuss the rule that a stranger to contract cannot sue on contract and the exceptions to the rule.
3. Discuss the provisions of law relating the contracts by minors.
4. Name the various persons who are incompetent to contract.
5. Under what conditions a consent is not said to be free. What is the effect of such consent in the formation of the contract?
6. Discuss the law relating to effect of mistake on contracts.
7. Under what circumstances is the object of a contract unlawful?
8. Name the several types of agreements which are opposed to public policy.

9. Explain the various modes, how a contract can be discharged?

10. What are the different remedies available against the breach of contract?

11. What are Quasi-Contracts? State and discuss their nature and kind.

12. What are the conditions and warranties in a contract of sale ?

13. How is hire-purchase different from sale ?

14. Write short notes :

    (i) Compare void and voidable contracts.

    (ii) Quasi Contracts.

    (iii) Adequacy of consideration.

    (iv) Minor.

    (v) Agreements opposed to public policy.

Please send this Response-Sheet along with your answers to : The Deputy Registrar, Department of Distance Education, Punjabi University, Patiala—147002

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