

Chapter -9

Business Law and Contract Act

To maintain an environment of economic, social, political, educational, religious, technological developments and law and order of a country, the government, society and other classes operate activities through customs, traditions, rules, by-laws, which fulfil the country. Peaceful arrangements, effective management and resources can be creatively used. In order to systematize and control this effort, the law regulation system and other laws are required. In the field of business, for quick and uninterrupted business operations and regulations in the environment of e-commerce, laws are needed.

Meaning of law

In general terms, the meaning of the law is legal activities by central, state or local government, in order to organize and control human behaviour in the socio-economic, political sphere, rules, by-laws, legal procedures etc., created by the government. These are also known as act or law.

According to the scholar –

“Laws mean the group of theories that are recognized and used by the state as means of administering justice.”

Meaning of Business Law

According to Professor M.C. Shukla, "Business laws is the branch of rule that describes the rights and obligations of the business persons, which are traded in the general sense of business dealings related to business property, Group of statutory rules that are systematic and effective, are called business laws. In a general sense, a business practice or a group of statutory rules that affect the

regular control arrangements is called a business law.

Scope of business law

The most important act that comes in the field of business laws as follows:

1. Indian Contract Act 1872
2. The Sale of Goods Act 1930
3. The Indian Partnership Act 1932
4. Negotiable Instrument Act 1881
5. Arbitration and Conciliation Act 1996
6. Company Act 2013
7. Banking Companies Act 1949
8. Consumer Protection Act 1986
9. Essential Commodities Act 1955
10. Industrial Laws
11. Labour Laws
12. Insurance Act
13. SEBI Act
14. Foreign Exchange Management Act 1999
15. Patents, Trademarks and Copyright Act
16. Information Technology Act
17. Goods Transportation Act

Sources of Indian Business Law

There was British rule for hundreds of years in India. Due to this, the main source of Indian commercial laws is based on the Commercial Act of England, but its structure has been kept in mind, the available environment, customs, business dealings and special circumstances in India. The main sources of Indian business laws are as follows:

1. **English Common Law** - This is England's oldest rule of law. It is composed by the qualified judges

on the basis of the judgment given in important matters.

2. **Statutes** - The Statute implies from acts which are made by Member of Parliaments (MP) and Legislatures under the Parliament of any country, in which special circumstances of the country are kept in mind.

3. **Indian customs** – The customs and uses of a particular trade are an important source of Indian mercantile law. They play an important role in regulating the business dealings.

4. **Important decisions given by courts** - Keeping in view the current circumstances, the decisions made by other courts and the Supreme Court, on disputes arising on new subjects, have been used as an illustration while deciding by the subordinate court (lower). The past judicial decisions of courts are the important source of law.

5. **Justice** - When general rules cannot solve simple rules for then execution / disposal of disputed business matters, then the court has the right to settle disputes on the basis of justice.

An Introduction to The Indian Contract Act 1872

The Indian Contract Act 1872 is an important branch of business law. Every person in general life, comes in contact with someone, at every moment and this is the basis of the contract. We fulfil the various needs of our life - to move around, to arrange for taxis, read books, buy necessities, tailor made clothes, buy tickets for travel or entertainment, etc. All these activities are based on contracts.

In a way we all have lives based on contracts. In the business world, the parties who are doing business from the Contract Act get protection of their business rights. Without the contract act, the

building of all business world will be left and without a full commercial transaction an atmosphere of fear will arise.

The Indian Contract Act 1872 was implemented in our country in September 1872, in which there were a total of 266 sections, but some sections were dismissed from this in 1930 and 1932. The Sale of Goods Act, 1930 and The Indian Partnership Act 1932 were introduced. Following these changes, the subject matter of The Indian Contract Act 1872 is currently as follows:

1. General Principles of contract and Quasi-contract (Section 1 to 75)
2. Contracts of Indemnity and Guarantee (Section 124 to 147)
3. Contracts of Bailment and Pledge (Section 148 to 181)
4. Contracts of Agency (Section 182 to 238)

Meaning and definition of Contract

The term contract is derived from the Latin word "*contractum*", which literally means "meeting with one another", so the contract is an agreement between two or more parties (individuals), which creates legal obligation and rights.

In the Indian Contract Act, the contract has also been defined. Also various scholars and judges have explained it in their decision. We study here the definitions given by some scholars and in the Act-

1. According to Sir William Anson - "*Contract is a legally binding agreement, made between two or more persons by which, rights are acquired by one or more to acts or forbearances on the part the other or others.*"

2. According to Justice Salmond – "*A contract is an agreement creating and defining obligations between the parties*"

3. According to Section 2 (h) of The Indian Contract Act 1872 - *“An agreement, enforceable by the law, is a Contract.”*

From all the above definitions it is clear that there are mainly two elements in the contract

1. An agreement between parties, and
2. The agreement must be enforceable by law.

Section 10 of the Indian Contract Act, clearly explains that *“All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”*

By analyzing all above definitions, it is clear that there are two major elements in contract -

1. The contract is an agreement, which is created by the acceptance of proposal.
2. This agreement is enforceable by law and creates legal obligation between the parties.

Contract = Agreement + Enforceable by law

Essential elements of a valid contract

Section 2 (h) of the Indian Contract Act indicates the contract's definition, while Section 10 of the Act deals with the validity of the contract. The description of all these essential elements, is as follows:

1. **To have two or more parties** - The first element of any valid contract is to have at least two parties. A proposer or promiser and the other, is called offeree or the promisee. The proposer holds the proposal and the offeree can accept that proposal. Just like marriage requires two parties, bride and bridegroom, it is mandatory to have at least two parties for the contract. Such as landlord and tenant, insured and insurer in the insurance contract, buyer and seller in the case of sale of goods etc.
2. **Agreement** - There should be an agreement

between the two parties for the creation of any valid contract. The offer, when accepted, becomes agreement. But if the two parties offer simultaneous purchases and sales of the same item, simultaneously at the same time, then it is not treated as an agreement. It is a cross offer.

Example - Seema proposes to sell Rita, her beauty parlor for ₹ 50,000. Rita accepts this proposal. It is an agreement between Seema and Rita, because Rita gets beauty parlor and she gives ₹ 50,000 to Seema as consideration.

3. Intention to create legal relationship - The intention of both parties must be to establish a mutual legal relationship. We make many such agreements in daily activities such as playing together, going to a picnic, going to a club, going to a wedding or birthday, going to a function, eating together, walking around, etc. Such instances create family, political or social obligations. But their aim is not to establish any kind of legal relationship. For this reason, such agreements are not contracts. For the valid contract, both the parties must be certain that they owe some legal rights to each other and if either party does not complete the contract, it will be completed by the court.

Example - Ram invites his friend Shyam for dinner on birthday party of his daughter Apurva. Shyam accepted the invitation, but on that day and time, Shyam did not reach for dinner, for some reason. On which Ram presented a dispute in the court on Shyam for the price of the food items unconsumed, which was canceled by the court, because the agreement was not done with the intention of establishing legal relation.

4. Contractual capacity in parties - The parties to the contract must be competent to

contract. i.e., an adult person, of sound mind, and not disqualified by any law.

5. **Consent** - It is necessary for the parties to mutually agree, that means all parties of the agreement must agree upon the same thing and in the same sense.

6. **Free consent of parties** - It is compulsory for the parties to have the consent to be free. If physical and mental pressures are allowed for contract with deception, delusion or mistake, then it is not considered to be a free consent. This means that such consent should not be obtained on the basis of coercion, undue influence, fraud, misrepresentation and mistake.

7. **Lawful consideration** - Lawful consideration to legal contract is mandatory. The agreement without consideration is usually considered as void. Consideration, in other words, mean 'something for something'.

8. **Lawful objectives** - The objectives of the contract must be lawful. The objectives of contract is not lawful if it is illegal, defeats the provisions of any law, is fraudulent, immoral, or against public policy.

9. **Certainty** - Certainty in the contract is compulsory. Therefore, the conditions of agreement which are meaning, value, quantity, time of delivery, location, execution method, nature of the goods, etc. must be certain.

10. **Possibility of performance** - If it is impossible to perform any kind of performance, then this agreement becomes void. Some agreements are such that execution is impossible from the beginning. Other agreements are those that are possible to execute while doing it, but later it becomes impossible to execute some situations. Such as destruction of subject matter, due to war, due to foreign enemies, etc. due to the rule of law.

11. **Agreement, not expressly declared void** - Some Agreements of the Contract Act have been expressly, declared void. If any agreement is from those agreements, then it can never be valid contract. For example, agreement without consideration, agreement with minor, agreement in restraint of trade etc.

12. **Completion of legal formalities** – Contract Act does not require a contract in writing for its being valid. An oral agreement is as good as written one. In certain cases, only when it is mandatory by any act or law, the contract must be written, certified or registered by the witness.

Contract Act Terminology

1. **Agreement** – An agreement is created when one person propose to another and the other accepts it.
Agreement = Proposal + Acceptance

2. **All contracts are agreements but all agreements are not contracts.** Only those agreements become contract, which are enforceable by law.

3. **Valid Contract** – An agreement, enforceable by law and which create legal obligations between parties.

4. **Void Agreement** - An agreement, which is not enforceable by law and which does not have any legal effects.

5. **Void Contract** – It is valid at the time creation but later it becomes void due to changes in circumstances.

6. **Voidable Contract** – It is an agreement which is enforceable at the option of one party ie aggrieved party. If such a party does not opt to avoid the contract, it remains valid.

7. **Illegal agreement** – An agreement, which is expressly or impliedly prohibited or forbidden by law, is an illegal agreement. Such an agreement is

void from the beginning.

8. **Unenforceable contract** – This type of agreement is basically valid but cannot be implemented due to some technical defects. Such a contract can be enforced, after removing legal technical impairments.

9. **Express Contract** – An express contract is one in which parties make oral or written declaration of terms and conditions of the contract, in word.

10. **Implied contract** – An implied contract is inferred from the acts or conduct of the parties or by their surrounding circumstances, but not by the written or spoken word of the parties.

11. **Quasi-contract** - It is an agreement which is not done by the parties' mutual exchange of promises but is imposed on the parties by law, on the ground of principle of equity.

12. **Executed contract** – In this contract, all parties have performed all their obligations.

13. **Executory contract** – This is the type of contract, in which all the parties still have to perform their obligation.

14. **Bilateral agreements** – A bilateral contract is one in which both the parties exchange a promise to each other, to be performed in future.

15. **Proposal** - When a party expresses its intention to do or not to do any work, before any other party, with the intention of obtaining the consent of the other party, then it is called as the proposal.

16. **Express Proposal** – An offer made in words, written or spoken, is called as an Express Offer.

17. **Implied Proposal** - Proposal by actions or conduct is called Implied Offer.

18. **Specific Offer** - When a proposal is made for a particular person, it is known as Specific Offer.

19. **Counter Offer** - When an offer is accepted on the terms and conditions other than set out by the offer or it is said to be a counter offer.

20. **Free Consent** - Consent is considered free when it is not affected by coercion, undue influence, fraud, misrepresentation and any mistake.

21. **Coercion** – Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

22. **Undue Influence** - When a person is in a position to influence another person's wishes and uses the situation to obtain unfair advantage, in contract with that other person.

23. **Fraud** – When a wrong representation is made by a party with the intention to deceive the other party or to cause him to enter into a contract, it is said to be a fraud.

24. **Misrepresentation** – A representation when wrongly made, either innocently or unintentionally, is called misrepresentation.

25. **Mistake** – When the consent of one or both the parties to a contract is caused by misconception, the contract is said to be induced by mistake.

26. **Consideration** – Consideration consists of promises or performances that the parties to a contract, exchange with each other.

27. **Contingent contract** - An agreement to do or not to do any work, in which the collateral of the contract, promises to fulfill that contract, if any specific future event is happening or not happening. Indemnity, guarantee and insurance contracts are considered as contingent contracts.

28. **Quantum Meruit** - It means “As much as earned”. It means that a person can recover compensation in proportion to the work done or services rendered by him.

29. **Injunction** - The court order which prohibits

the party to a contract from doing a particular thing or from doing something against the terms of the contract.

30. Indemnity Contract – A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any person, is called a Contract of Indemnity.

31. Guarantee contract – A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default.

32. Specific or Simple guarantee - When a guarantee is given for a specific loan or transaction, it is known as specific or simple guarantee.

33. Continuing guarantee - which extends up to a series of deals or transactions, it is known as continuing guarantee.

34. Bailment contract – Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, to be returned or otherwise disposed of according to the directions of the person delivering them.

35. Bailor and Bailee- The person who deliver his goods called Bailor. Person to whom the goods are delivered for specific purpose is known as the bailee.

36. Gratuitous bailment – Bailment without any charges or reward.

37. Non-gratuitous bailment – Bailment for some charges or reward.

38. Right of Lien – Right of a person to retain the possession of any property of some other person, until the charges due to the person in possession are paid.

39. Pledge – The bailment of goods as security for payment of a debt or for performance of a promise is called pledge.

40. Pawnor or Pledgor – The person who delivers the goods.

41. Pawnee or Pledgee- The person to whom the goods are delivered as security.

42. Agency - There is a relationship generated by the agreement between the agent and the principal, in which the Principal authorized the agent to represent him or establish his contractual relationship with the other parties.

43. Agent - The person who has been authorized by any person to represent himself and establish his contractual relationship with other parties.

EXERCISE

Very Short Type Answer

1. Is the Indian Contract Act part of the Business law?
2. What is the meaning of the contract?
3. State any four features of the contract.
4. What is a Void contract?
5. Is all agreement are contracts?
6. What is a valid Agreement?
7. What is the unenforceable contract?
8. What do you mean by “As much as earned”?

Short Type Answer

1. Is the Indian Contract Act adequate?
2. What is the scope of ??the Indian Contract Act?
3. A Contract is an agreement which is enforceable by the law. Why?
4. When does an agreement become a contract?
5. What do you mean by illegal agreements?

Essay Type Answer

1. What is the contract? Briefly explain the essential elements of a valid contract?
2. 'All Contracts are agreements, but all Agreements are not contracts. Discuss?
3. What is the source of the Indian Contract Act?