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Indian CONTRACT ACT, 1872 (25TH April, 1872)

PREAMBLE

Where as it is expedient to define and amend certain parts of the law relating to contract; It is hereby enacted as follows: The Act contains 266 sections. These 266 are divided into 11 chapters.

PRELIMINARY-Ss.1, 2

1) OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS –Ss. 3-9

2)OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS-Ss. 10-30

3)OF CONTINGENT CONTRACTS-Ss. 31-36

4)OF THE PERFORMANCE OF CONTRACT-Ss. 37-67

5)OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT-Ss. 68-72

- 6) OF THE CONSEQUENCES OF BREACH OF CONTRACTS-Ss. 73-75
- 7) OF SALE OF GOODS-Ss.76-123
- 8) OF INDEMNITY AND GUARANTEE- Ss.124-147
- 9) OF BAILMENT-Ss. 148-181
- 10) AGENCY-Ss.182-238
- 11) OF PARTNERSHIP-239-266

CONTRACT AND AN AGREEMENT:

An agreement enforceable by law is a contract –S.2 (h)

Every promise is an agreement.

An offer when accepted becomes a promise.

Offer+Acceptance=Promise=Agreement.

An agreement enforceable by law is a contract.

Every contract consists of two connected elements. Those are a) Obligation and b) Agreement.

Obligations are of two types. Those are a) Social obligations and b) Legal obligations.

Agreements are of two types. Those are a) Social agreements and b) Legal agreements.

Those agreements, which create social obligations, are called social agreements. Those agreements, which create legal obligations, are called legal agreements.

Contract means 'an agreement enforceable by law'.

Here those agreements, which create legal obligations, are enforceable and those agreements, which create social obligations, are not enforceable by law.

That's why Salmond rightly said 'all contracts are agreements but all agreements are not contracts'.

KINDS OF CONTRACTS: -

- 1) **VALID CONTRACT:** - An agreement enforceable by law is a contract –S.2 (h)
- 2) **VOID AGREEMENT:** - An agreement not enforceable by law. –2(g)
- 3) **VOID CONTRACT:** - An agreement which ceases to be enforceable by law- S. 2(j)
- 4) **VOIDABLE CONTRACT:** - An agreement, which is enforceable by law at the option of one party but not at the option of the other party is called voidable contract. It is valid until avoided and void when avoided. –S.2 (i)
- 5) **UNLAWFUL AGREEMENT:**-An agreement, which is prohibited by law.
- 6) **ILLEGAL AGREEMENT:** - An agreement, which is not only prohibited by law but also punished by law.

7) UNENFORCEABLE CONTRACT: - A contract which is not enforceable by law due to some technical defect.

8) UNITERAL OR EXECUTED CONTRACT: - One party to the contract performed his obligation, but the other party to the contract is yet to perform his obligation under the contract.

9) BILATERAL OR EXECUTORY CONTRACT: - Both the parties to the contract are yet to perform their obligations under the contract.

10) EXPRESS CONTRACT: - Oral or in writing.

11) IMPLIED CONTRACT: - (By conduct of the parties)

12) AGREEMENT: - Every promise and every set of promises, forming the consideration for each other, is an agreement. – S. 2(e)

PART-I

FORMATION OF CONTRACT

- 1) Offer-2 (a)
- 2) Acceptance-2 (b)
- 3) Consideration-2 (d)
- 4) Capacity of Parties-10, 11,12
- 5) Free Consent –13,22
- 6) Legality of object and consideration-23
- 7) Agreement should not be opposed to public policy.-24-30

PART-II

DISCHARGE OF CONTRACT

MODES OF DISCHARGE: -

- 1) By performance
- 2) By Breach of contract
- 3) By impossibility of performance
(Frustration)
- 4) By novation
- 5) By lapse of time.

PART-III

REMEDIES FOR BREACH OF

CONTRACT: -

Damages, (monetary compensation)-73-75

ESSENTIALS OF A VALID CONTRACT: -

ALL AGREEMENTS ARE CONTRACTS IF THEY ARE MADE BY THE FREE CONSENT OF THE PARTIES, COMPETENT TO CONTRACT, FOR A LAWFUL CONSIDERATION AND WITH A LAWFUL OBJECT, AND ARE NOT HEREBY EXPRESSLY DECLARED TO BE VOID. (S.10)

- 1) Identity of minds (s.13)
- 2) Offer –2(a)
- 3) Acceptance-2 (b)
- 4) Consideration-2 (d)
- 5) Capacity of parties-10, 11,12
- 6) Free Consent-14-20
- 7) Lawful object-23
- 8) Agreements, which are not hereby expressly declared to be void. -
23-30

OFFER

“When one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”. –2(a).

“ The person making the proposal is called the “promisor”, and the person making the accepting the proposal is called the “promisee”.

Proposer , Offeror , Promisor

Proposee , Offeree, Promisee , Acceptor.

Contract means “an agreement to do or not to do something”

ESSENTIALS OF A VALID OFFER: -

- 1) The terms of an offer must be intended to create or at least capable of creating legal relations
- 2) The terms of an offer must be certain or at least capable of being made certain-s.29
- 3) Offer must be communicated to the offeree-s.4
- 4) Offer must be made with a view to obtain the assent or consent from the other party.

KINDS OF AN OFFER: -

- 1) Offer is something different from General Offer –S.8
- 2) Offer is something different from invitation to offer
- 3) Offer is something different from standing offer or tender
- 4) Firm offer and option
- 5) Cross offers.

ACCEPTANCE

“When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted” –s.2 (b)

RULES RELATING TO ACCEPTANCE: -

- 1) Acceptance must be by the offeree and none else.
- 2) Acceptance must be absolute and unconditional
- 3) Acceptance must be in the mode prescribed- S.7
- 4) Acceptance must be communicated to the offeror
- 5) Acceptance must be given within a reasonable time
- 6) Provisional acceptance.

REVOCAION OF OFFER: -

S.6-MODES OF REVOCAION

- A) By notice
- B) By lapse of time
- C) Non fulfillment of a condition precedent
- D) By the death or insanity of the offeror, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

LAW RELATING TO CONTRACT MADE THROUGH POST:- (s.4 & 5)

S.4: - The Communication of proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of acceptance is complete—

- a) as against the proposer, when it is put into course of transmission to him, so as to be out of the power of the acceptor
- b) as against the acceptor, when it comes to the knowledge of the proposer

S.5: - REVOCATION OF PROPOSAL AND ACCEPTANCE: -

a) A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

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

REVOCATION OF REVOCATION: -

The communication of revocation is complete: -

a) as against the person who makes it when it is put into a course of transmission to the person to whom it is made, so as to be out of the power, so as to be out of the power of the person who makes it.

b) As against the person to whom it is made, when it comes to his knowledge

LAW RELATING TO CONTRACTS MADE THROUGH TELEPHONE AND FAX: -
LAW RELATING TO CONTRACTS MADE THROUGH INTERNET:
INFORMATION TECHNOLOGY ACT, 2000 –
S.12 & 13

CONSIDERATION

S.2 (d): - “ When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

In *Currie v. Misa*, their Lordships defined consideration as “some right, profit, benefit or interest accrued to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party.

RULES RELATING TO CONSIDERATION: -

- 1) Consideration must move at the desire of the promisor
- 2) Consideration may move from the promisee or any other person
- 3) Consideration may be past, present or future
- 4) Consideration must be real and not illusory
- 5) Consideration need not be adequate to the promise
- 6) Consideration must be lawful

CONSIDERATION MAY MOVE FROM THE PROMISEE OR ANY OTHER PERSON: - In this principle there are two connected doctrines.

- 1) Privity or Stranger to consideration
- 2) Privity or Stranger to Contract.

STRANGER TO CONSIDERATION:

-

English Law: - In England consideration may be supplied by the promisee and promisee only. If any other person other than the promisee supplies consideration then that consideration is not valid. In case of breach of contract, the promisee cannot enforce the contract against the promisor, because he is a stranger to the consideration.

INDIAN LAW: - the promisee or any other person may supply consideration. In case of breach of contract the promisee may enforce the contract even though other person supplies the consideration.

STRANGER TO A CONTRACT: -
IN BOTH THE LEGAL SYSTEMS A STRANGER TO A CONTRACT CANNOT SUE. HOWEVER THERE ARE CERTAIN EXCEPTIONS TO THIS RULE.

- 1) Charge created on a specific immovable property
- 2) Beneficiary of a trust
- 3) Family arrangements or marriage settlements
- 4) Estoppel
- 5) Contracts running with the land
- 6) Agency
- 7) Negotiable Instrument
- 8) Assignee of a contract

S.25- AN AGREEMENT WITHOUT CONSIDERATION IS VOID.

EXCEPTIONS: -

- 1) NATURAL LOVE AND AFFECTION
 - a) It must be in writing
 - b) It must be registered under the law
 - c) It must be between the parties standing in near relation to each other
 - d) It must be made on account of natural love and affection.
- 1) Past voluntary services
- 2) Written promise to pay a time barred debt

COMPETENCY OF CONSIDERATION: -

- 1) Charitable consideration
- 2) Forbearance to sue
- 3) Composition with the creditors
- 4) Compromise of a disputed claims
- 5) Pre-existing obligation
 - a) Pre-existing legal obligation
 - b) Pre-existing contractual obligation

CAPACITY OF PARTIES

S.10: - AN AGREEMENT BECOMES A CONTRACT WHEN IT IS ENTERED INTO BETWEEN THE PARTIES WHO ARE COMPETENT TO CONTRACT.

Incapacity to contract may arise out of: -

I) Status and II) Mental deficiency

I) STATUS:-

- 1) Political or Civic: -
 - a) Foreign Sovereign and Ambassador
 - b) Alien enemy
 - c) Felon or Convict
 - d) Bankrupt or Insolvent
- 2) Professional
- 3) Artificial
- 4) Married woman

II) Mental Deficiency: -

- 1) Minority
- 2) Persons of unsound mind
 - a) Idiocy
 - b) Lunacy
 - c) Insanity
 - d) Drunkenness

S.11: Every person is competent to contract

a) Who is of the age of majority according to the law to which he is subject,

b) Who is of sound mind and
Who is not disqualified from
contracting by any law to which he is
subject

MINOR'S CONTRACT UNDER INDIAN LAW: -

- 1) Contracts for necessaries
- 2) Beneficial contracts of service
- 3) Repayment of money lent to the infant
- 4) Enforceability of a contract by a minor
- 5) Minor and Restitution
- 6) Position of minor's parents
- 7) Minor and guardian
- 8) Minor and negotiable instrument
- 9) Minor and insolvency
- 10) Minor and partnership
- 11) Minor as a member of a company
- 12) Minor's liability under law of tort
- 13) Minor's liability under law of contract

FREE CONSENT (SS.13-22)

Two or more persons are said to consent when they agree upon the same thing in the same sense. When they agree upon the same thing in the same sense they are said to be ad idem. (Identity of minds)

S.14: Free Consent: A Consent is said to be free when it is not caused by

- a) Coercion as defined in s.15 or
- b) Undue influence as defined in s. 16 or
- c) Fraud as defined in s. 17 or
- d) Mis-representation as defined in s. 18 or
- e) Mistake subject to the provisions of ss.20, 21 and 22.

When the consent is caused by coercion, undue influence, fraud or mis-representation the agreement becomes a contract voidable at the instance of one party (aggrieved party).

When the consent is caused by mistake the agreement becomes void.

MISTAKE: -

Mistake means erroneous belief concerning something.

Mistake is of two kinds.

1) Mistake of Law and 2) Mistake of fact

1) Mistake of Law: - Ignorance of one's own law is no excuse. So when both the parties to the contract commit mistake with reference to one's own law the contract is valid. When both the parties to the contract commit mistake with reference to a foreign law the agreement is void.

2) Mistake of fact: -a) Bilateral mistake b) Unilateral mistake

a) Bilateral mistake: - When both the parties to the contract commit mistake with reference to the subject matter of the contract the agreement becomes void.

b) Unilateral mistake: - When one of the parties to the contract commit mistake with reference to the subject matter of the contract the agreement is valid.

LEGALITY OF OBJECT AND CONSIDERATION (ss.23-30)

S.23: - Consideration or object of an agreement must be lawful unless

- a) It is forbidden by law or
- b) It is of such a nature that if permitted it would defeat the provisions of any other law or
- c) It is fraudulent or
- d) It involves or implies an injury to the person or property of another or
- e) The court regards it as immoral or opposed to public policy.

AGREEMENTS OPPOSED TO PUBLIC POLICY: -

- 1) Stifling prosecution
- 2) Agreements interfering with the course of justice
- 3) Agreements in restraints of legal proceedings
- 4) Agreements for improper promotion of litigation
- 5) Trading with enemy
- 6) Traffic in public offices
- 7) Agreements in restraint of trade
- 8) Agreements tending to create monopolies

- 9) Trade ethics
- 10) Agreements interfering with the marital duties
- 11) Agreements in restraint of marriage of major
- 12) Marriage brokerage contracts
- 13) Agreements in restraint of parental rights
- 14) Agreements restraining personal freedom
- 15) Maintenance and champerty
- 16) Wagering agreements

CONTINGENT CONTRACTS (Ss.31-36)

A contract to do or not to do some thing, if some event, collateral to such contract does or does not happen.

DISCHARGE OF CONTRACT

I) DISCHARGE BY PERFORMANCE: -

S.36: - Parties to a contract must either perform or offer to perform their respective promises under the contract.

An offer to perform one's obligations under a contract is called 'tender'.

II) DISCHARGE BY BREACH: -

Breach means failure or inability to perform one's obligations under a contract. Breach may be either actual breach or anticipatory breach. When one party to the contract commits breach on the due date it is called actual breach.

When he commits breach before the due date it is called anticipatory breach.

Remedies in case of anticipatory breach: -

- 1) Acceptance of repudiation: -
- 2) Non acceptance of repudiation: -

III) DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE:

S.56: - An agreement to do an act impossible itself is void.

Three types of impossibility:-

- 1) Impossibility known to both the parties to the contract at the time of entering into the contract.
- 2) Impossibility unknown to the parties to the contract at the time of entering into the contract.
- 3) Impossibility, which arises subsequent to the formation of the contract.

REMEDIES FOR BREACH OF CONTRACT

The object of law of contracts is to award liquidated damages.

Damages are monetary compensation allowed to the injured party by the court for the loss suffered by him as a result of breach of contract.

The fundamental principle underlying the theory of damages is not punishment but compensation.

The object of awarding damages for breach of contract is to put the injured party in the same financial position in which he would have been, had there been performance and no breach.

KINDS OF DAMAGES: -

1) GENERAL OR ORDINARY DAMAGES:

-

General damages are those damages, which arise, naturally in the ordinary course of events from the breach of contract. The injured party is entitled to claim the actual amount of loss.

2) SPECIAL DAMAGES: -

Special damages are those damages, which result from the breach of contract under special circumstances. Special damages are those damages, which the aggrieved party claims, beside general damages for any loss he suffered owing to special circumstances known to both the parties at the time of entering into the contract.

3) VINDICTIVE OR EXEMPLARY OR PUNITIVE DAMAGES: -

Exceptions: -

- a) Breach of promise to marry
- b) Wrongful dishonour of a cheque by a banker

4) NOMINAL OR CONTEMPTIOUS DAMAGES: -

It is based on the principle 'where there is a right there must be a remedy'

PENALTY AND LIQUIDATED DAMAGES

RULES RELATING TO ASSESSMENT OF DAMAGES: -

- 1) The aggrieved party must as far as possible, minimize the damages.
- 2) The injured party is entitled to get the costs of getting the decree
- 3) Damages should not be refused on the ground that they are difficult to assess.
- 4) In the case of sale and purchase of goods the measure of damages will be the difference between the agreed price and the market price at the time of breach of contract.

CERTAIN RELATION RESEMBLING THOSE CREATED BY CONTRACT (QUASI CONTRACTS)

Under certain special circumstances, the law creates and enforces legal rights and obligations though the parties have never entered in to a contract.

Obligations imposed by law or contracts constituted by law are known as quasi contracts.

In England these contracts are called 'implied contracts' or 'constructive contracts'

In U.S.A. these contracts are called
'Restitution'

It is based on the principle
'Justice, equity and good
conscience.'

The main object of law of
contracts is to prevent unjust benefit
or unjust enrichment.

Sections 68 to 72 of the Act deals with quasi contracts

S.68. CLAIMS FOR NECESSARIES SUPPLIED

S.69. PAYMENT BY AN INTERESTED PERSON

S.70. BENEFIT OF A NON-GRATUITOUS ACTS

S.71 RESPONSIBILITY OF FINDER OF GOODS

S.72 MONEY PAID BY MISTAKE OR UNDER COERCION

QUANTUM MERIUT: - ' AS MUCH AS IS MERITED OR AS MUCH AS EARNED'.

- 1) Breach of contract**
- 2) Contract discovered to be void.**

Exceptions:-a) Guilty of breach of contract b) Indivisible contract.