Contracts-1/ASR

Introduction

- Law of contracts affects each and every person because we enter into some kind of contract every day

- CONTRACT = An agreement enforceable by law = **Agreement + Enforceability**

 AGREEMENT = **Offer + Acceptance**

- ENFORCEABILITY **= Ageement attains the status of contract if certain conditions are fulfilled.**

EXPRESS or IMPLIED

- Contract may be **express** or **implied.**
- An **express** contract may be **oral** or **in writing.**
- As a matter of rule, formalities are **not** required for a contract. (**there are exceptions,as usual**)

ESSENTIALS OF A VALID CONTRACT

(**conditions for an agreement to become a contract**)

1. Consideration
2. Capacity
3. Meeting of minds
4. Legality of object and consideration
5. Certainty
6. Possibility
7. Intention to create legal relationship
8. Free consent (otherwise –viodable)
9. Legal formalities (for certain type of contracts)*[Unenforceable Contract]*

CAPACITY

- 1. **Minor**
- 2. **Person of unsound mind**
  - (a)   Idiot
  - (b)   Lunatic
  - (c)   Intoxicated
- 3.   **Other persons disqualified by law**.
- (a) Alien enemy
- (b) Undischarged insolvent **etc**

INTENTION TO CREATE LEGAL RELATIONSHIP

- The following serve as examples for agreements which are not treated as contracts because of absence of intention to create legal relationship ----
- **Informal agreements between father & son.**
- **Informal agreements between husband & wife.**
- **Invitation for social functions and acceptances.**

CONSENSUS AD IDEM

- **Meeting of minds.**

- Eg. `A' has two houses in Delhi. One at Nai Sadak and another in Chandni Chowk. `A' offers to sell `B' his house at Delhi for Rs.30 lakhs. `A' has in his mind the house in Nai Sadak and `B' has in his mind the house in Chandni Chowk --- since there was no meeting of minds, so there was no contract.

CONSIDERATION

Something for something.

Something = **promise**

or

to do

or

abstain from doing sth

- Both object and consideration must be lawful.

- Should not be against public policy

CERTAINTY

- Terms of offer must be certain.

POSSIBILITY

- `A' offers to pay `B' Rs.10 lakhs if `B' runs from Mussoorie to Dehradun within 15 minutes, however, if `B' fails `B' is obligated to pay Rs. One lakh. `B' accepts to the proposal. The agreement between `A' and `B' is not a contract because `A' offers to do something impossible.

LEGAL FORMALITIES

- <u>As a matter of rule-no formalities for a contract</u>

<u>Some Exceptions(Examples)</u>

- **Promissory note must be stamped.**

- **All negotiable instruments must be in writing.**

- **Contracts of sale of immovable property should be registered.**

NOTE: If a formality is to be complied with and it is not complied it is a case of <u>unenforceable contract</u>. **If defect is removed or the requisite formalities are complied with, it becomes enforceable.**

FREE CONSENT

If consent is obtained by -

(a) Fraud.(Dishonest intention) (Rolex)

(b) Misrepresentation(Honest misstatement)

(c)Coercion(Force/Duress/Compulsion)

(d) Undue influence(Doctor-Patient)

Then consent is not free

NOTE: **It is a case of voidable contract. Such a contract is valid till invalidated by one party.**

• **Avoidable at the instance of a party whose consent is not free.**

Void Agreements

1. Agreement of which the consideration or the object is not lawful

2. **Agreement without consideration**

3. Agreement in restraint of marriage

4. Agreement in restraint of trade

5. **Agreement in restraint of legal proceeding**

6. **Agreement – uncertain and ambiguous**

7. Agreement by way of wager

8. Agreement to do an impossible Act

S. 23. Unlawful consideration and object

The consideration or object of an agreement is lawful, unless -

- It is forbidden by law; or

- is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or

- involves or implies, injury to the person or property of another; or

- **the Court regards it as immoral, or opposed to public policy.**

- In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.