CONTRACTS-II//Prof.ASR

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]*

KINDS OF CONTRACTS/AGREEMENTS

1. **Valid** contract
2. **Voidable** contract
3. **Void agreement**
4. **Illegal agreement**
5. **Void** contract
6. **Unenforceable** contract

UNENFORCEABLE CONTRACTS(AGREEMENTS)

- If the **problem is with compliance of a formality** then it is a case of unenforceable contract.
- **If defect is removed or the requisite formalities are complied with, they become enforceable.**
- **Examples** :
- Promissory note
- Negotiable instruments
- Contract of sale of immovable property.

Void contracts

- **Contract is valid at the time of entering but becomes subsequently invalid.**
- **<u>Subsequent impossibility</u>**

<u>or failure of object (Frustration)</u>

(a) Destruction of the subject matter.

(b) Death or incapacity of party (**personal contracts)**

(c) Intervention of war

(d) Government or legislative intervention.

Void Agreements

- If an agreement does not have one of the 6 following essentials, the agreement is a void agreement -----
- 1. Consideration
- 2. Capacity
- 3. Consensus ad idem (meeting of minds)
- 4. Certainty
- 5. Possibility

Void agreements

contd

- 6.. Legality of object and consideration
- (a) Agreements opposed to public policy.
- (b) Agreements in restraint of trade
- (c) Agreements in restraint of marriage
- (d) Agreements in restraint of legal proceedings
- (e) Agreements by way of wager **etc**.

ILLEGAL AGREEMENTS

- Void + Penal element (punishment) **Examples : (a)** An agreement to murder someone.(b) An agreement to supply heroin (a drug).

The difference between void and illegal agreements is that the incidental or collateral transactions of a void agreement is valid, whereas the incidental transactions of illegal agreement are invalid.

EXAMPLES-VOID/ILLEGAL

- **VOID--**Anand requested vijay to lend Anand Rs.50,000, stating the purpose that he wishes to lend the same to K.K.Rawat, a minor. If Vijay lends money,Vijay **can recover** from Anand(although Anand cannot recover from K.K.Rawat).
- **ILLEGAL--** Anand requested Vijay to lend him Rs.50,000 stating the purpose that with the money he wishes to purchase cocaine(drug) from T.T.Rawat.If Vijay lends money he **cannot recover** .
- **In both =vijay lent money to anand.**

Voidable contracts

- **Valid but can be invalidated by one party.**
- **Avoidable at the instance of a party whose consent is obtained by ---**

(a) Misrepresentation

(b) Fraud

(c) Coercion

(d) Undue influence (position to dominate the will /obtain an unfair advantage)

STANDARD FORM CONTRACT

- Standard Form Contract is a fine-print consumer form contract which is generally given to consumers at point-of-sale, with no opportunity for negotiation as to its terms, and which sets out the terms and conditions of the sale, usually to the advantage of the seller.
- Standard form contracts probably account ***for more than ninety percent*** of all formal contracts now made.

BREACH OF CONTRACT

- means non-fulfillment of obligations under the contract.
- **Consequences of breach of contract (remedies for parties)**
- (a) Damages or compensation.
- (b) A decree for specific performance.
- (c) An injunction.

Bills of Exchange

- Bills of exchange are documents that show a buyer has agreed to pay a seller a specific amount to be paid at an agreed-upon point in time.
- The parties usually bring in a bank to issue the bill of exchange, due to the risks that come with international transactions; as such, the bill is also known as a bank draft.

EXAMPLE

- For example, Amit sold goods to Rohit on credit for ` 10,000 for three months. To ensure payment on due date Amit draws a bill of exchange upon Rohit for ` 10,000 payable after three months. Before it is accepted by Rohit it will be called a draft. It will become a bill of exchange only when Rohit writes the word “accepted” on it and append his signature thereto communicate his acceptance

Bills of Exchange

- It must be appropriately dated.
- Contains an order of payment.
- The signature of the drawer/maker is mandatory.
- Bill must be accepted by a drawee.
- Order of payment and its amount should be defined.
- It must be delivered to the relevant payee.

Bills of Exchange

- Drawer: An issuer of this instrument who receives the payment.
- Drawee: An individual who has to pay the relevant amount.
- Payee: This is an individual who receives payment, and in most circumstances, is the same as the drawer.
- NOTE:Normally, the drawer and the payee is the same person

PAYEE

- Payee is the person to whom the payment is to be made. The drawer of the bill himself will be the payee if he keeps the bill with him till the date of its payment. The payee may change in the following situations: (a) In case the drawer has got the bill discounted, the person who has discounted the bill will become the payee; (b) In case the bill is endorsed in favour of a creditor of the drawer, the creditor will become the payee

EXAMPLE

- For example, Mamta sold goods worth `10,000 to Jyoti and drew a bill of exchange upon her for the same amount payable after three months. Here, Mamta is the drawer of the bill and Jyoti is the drawee. If the bill is retained by Mamta for three months and the amount of ` 10,000 is received by her on the due date then Mamta will be the payee. If Mamtagives away this bill to her creditor Ruchi, then Ruchi will be the payee. If Mamta gets this bill discounted from the bank then the bankers will become the payee.

BANK DRAFT/TRADE DRAFT

- **A bill of exchange issued by a bank is referred to as a bank draft**. The issuing bank guarantees payment on the transaction. A bill of exchange issued by individuals is referred to as a trade draft.

Bills of Exchange

- A bill of exchange is a written agreement between two parties—the buyer and the seller—used primarily in international trade. It is documentation that a purchasing party has agreed to pay a selling party a set sum at a predetermined time for delivered goods. The buyer or seller typically employs a bank to issue the bill of exchange due to the risks involved with international transactions. For this reason, bills of exchange are sometimes also referred to as bank drafts.

Bills of Exchange

- Bills of exchange can be transferred by endorsement, much like a check. They can also require the buyer to pay a third party—a bank—in the event that the buyer fails to make good on his agreement with the seller. With such a stipulation, the buyer's bank will pay the seller's bank, thereby completing the bill of exchange, then pursue its customer for repayment.

Bills of Exchange

- A bill of exchange is also a negotiable tool, which is a written note legally bound, and duly stamped and signed by its drawer. It instructs payment of a certain sum of money to the holder of this instrument on demand, or within a specific time frame. Requiring to be accepted by a debtor to be valid, these are usually the payment for goods and services. It has these features mentioned below.