BUSINESS LAW

SUBJECT HANDLED

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BUSINESS LAW (UNIT-1)

WHAT IS LAW?

- Law refers to all the rules and principles that regulate our relationships with other individuals and the state(The Government).

DEFINITION OF LAW:

- Law may be defined as ‘a body of rules developed and enforced by the state in the administration of justice’.

OBJECTIVES SOUGHT TO BE ACHIEVED BY LAW:

- To assure the certain basic rights to the citizens.
- To ensure peace and internal security
- To regulate international relations
- To establish socio-economic justice
- To regulate business, trade and employment
- To regulate social customs and practices
- To prevent crime and to punish offenders

BRANCHES OF LAW:

The various branches of law include,among others the following:

- International law
- Constitutional law
- Criminal law
- Civil law

Each branch of law regulates and controls a particular sphere of activity..

WHAT IS THE NEED FOR THE KNOWLEDGE OF LAW:

Although it is not possible for the citizen of the country to have knowledge of every branch of law, yet it becomes necessary to know the law to which he is subject at a give point of time. one must remember that ignorance of law is no excuse (ignorantia juris non excusat).

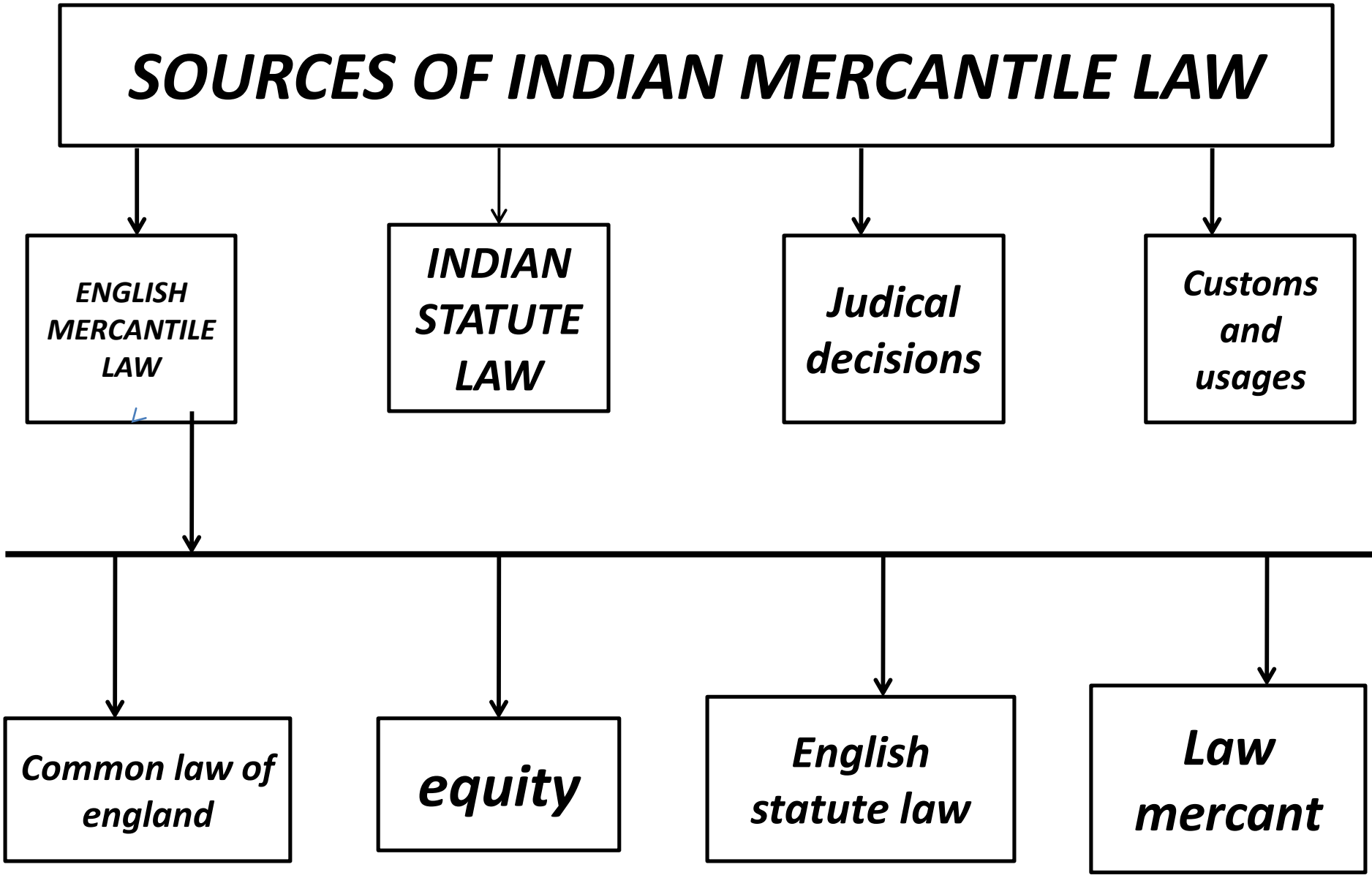
MERCANTILE LAW:

Mercantile law is concerned with the rights and obligations arising out of mercantile or commercial transactions between persons (individuals and institutions).

Among others, the law in respect of the following will be part of mercantile law:

- Contracts
- Sale of goods
- Insurance
- Carriage of goods
- Negotiable Instruments
- Partnership and
- Companies

Source of mercantile law



Each of these has been explained below

1.***English mercantile law*** – The Indian Mercantile law is basically derived from the english Mercantile law which itself is derived from the following sources:

(a) The common law of England: It is a system of law developed centuries by the English courts based on English customs and usages, It is unwritten.

(b***)Equity:***

It overcame the limitations of the common law.

(c) ***English statute law:*** It refers to the law enacted by the british parliament. It is superior to the common law and equity.

(d)***Law Mercantile:*** It was based on customs and usage prevalent among the merchants and traders over a period of time.

2.Indian statute law: The act passed by the parliament in India are also an important source of the Indian mercantile law. A few examples:

- ✓ ***The Indian contract Act, 1872***
- ✓ ***The sale of goods Act,1930***
- ✓ ***The Indian partnership Act,1932***
- ✓ ***The Companies Act,1956.***

3.Judicial decisions: A Court decision in a particular case becomes a precedent for similar future case.

4.Customs and usage: Customs and usages prevalent among certain sections of the business community are also an important source of the Indian Mercantile law.

Contract –meaning and classification

- The legel provisions governing contracts are contained in the indian contract act of 1872.
- **Definition of a contract**
- According to section 2 (h),” a contract is an agreement enforceable by law”. It is clear from this definition that a contract must fulfil two conditions.
- There must be an agreement and
- Such an agreement must be enforceable in a court of law.
- **What is an agreement?**
- Section 2(e) defines an agreement as “ every promise and every set of promises forming the consideration for each other**”.**
- **What is a promise?**
- According to section 2(b),”a proposal when accepted becomes a promise”.
- Examples: A offers to sell his motor cycle to B, it becomes a promise.
- An agreement thus consists of a proposal or an offer by one person and its acceptance by another, i.e.,
- Agreement= offer + acceptance.
- Obligation
- A contract gives rise to a certain obligations that the parties to it are expected to fulfil.
- **Social and legal obligations**
- An agreement may give rise to a social obligation or a legal obligation. Those agreement that give rise to legal obligations alone are enforceable is a court of law. All contracts, therefore, are based on agreement, therefore, is not enforceable in a court of law. All contracts, therefore are based on agreement, but al agreement do not become contracts.

DISTINCTION B/W AN AGREEMENT AND A CONTRACT

AGREEMENT

1. Agreement=Offer + Acceptance.
2. An agreement may create social or legal obligations.
3. All agreements do not become contracts.

CONTRACT

1. Contract= Agreement+ts Legal Enforceability.
2. A contract creates only legal obligations between the parties.
3. All contracts are based on agreements.

Consensus Ad Idem

Consensus ad idem means identity of minds or meeting of minds. The parties to an agreement must agree on the subject matter in the same sense and at the same time. Without consensus ad idem there is no contract.

CLASSIFICATION OF CONTRACT

Contracts may be classified as shown in the following chart:

CLASSIFICATION OF CONTRACT

Classification According to Enforceability

Based on enforceability contracts are classified as follows:

- **Void Agreement:** According to section 2(g),"An agreement not enforceable by law is said to be void". A void agreement is void "ad initio"(a latin phrase the meaning of which is "from the beginning"). At no stage can such an agreement be enforced.
- **Void contract:"**A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". A contract may be valid at the time when it is entered into. But due to certain subsequent happenings it may become void.
- **Voidable contract:** Defines a voidable contract as" an agreement which is enforceable by law at the option of one or more of the parties , but not at the option of the other or others.". A contract is a voidable contract when the consent or willingness of one party has been obtained by the other by such unfair means as coercin under influence, fraud etc.
- **Unlawful Agreement:** An unlawful agreement is one that is not opposed by law on some ground of public policy. Such an agreement is void from the very beginning and, therefore, is not enforceable in a court of law.

- **Illegal Agreement:** An agreement is illegal if the activities of the parties to it:
  1. involve the commission of a crime, or
  2. violate basic public policy, or
  3. are immoral in nature.

Such an agreement is void, i.e, cannot be enforced in a court of law.

- **Unenforceable contract:** Sometimes a contract may become unenforceable owing to certain technical defects in it.
- **CLASSIFICATION ACCORDING TO FORMATION**

Based on the mode of formation, contracts may be classified as follows:

- **Express Contract:** An express contract is one that is entered into by the parties by words-spoken or written. Usually it will be in a written form.
- **Implied Contract:** An implied contract does not aries out of express promise by the parties but is inferred from their acts or from the circumstances of a particular case.
- **Quasi-Contract:** A quasi –contract is not actually entered into by the parties but is something imposed on a party by law. It is based on the principle that a person shall not be allowed to enjoy certain benefits unreasonably at the cost of another.

CLASSIFICATION ACCORDING TO PERFORMANCE

Based on the extent of performance, contracts may be classified as:

- **Executed Contract**: A contract is said to be executed when both the parties to it fulfil their respective obligations.
- **Executory Contract**: An executory contract is one in which both the parties are yet to fulfil their respective obligations.
- **Partly Executed Contract:** It is a contract in which one party has already fulfilled his obligation and the other is yet to fulfil his obligation.

ESSENTIALS OF A VALID CONTRACT

According to it," All agreement 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".

Let us now discuss these varies essential elements.

- **A Valid Offer and acceptance:** A contract is a valid contract only when there exists a valid offer and its valid acceptance. The terms of the offer must be precise and clear. The acceptance of the offer must be absolute and unconditional.
- **Intention to create legal relationship**: The intention of the parties to a valid contract must be to create legal relationship between them.

- **Lawful Consideration**: For a contract to be valid, the agreement between the parties must be backed by consideration. Consideration means ‘Something in return’.
- **Capacity of parties**: The parties must be competent to contract, i.e., capable of entering into a valid contract. A person is capable of entering into a valid contract if he has attained the age of majority, is of sound mind and is not disqualified from contracting by any law to which he is subject.
- **Free Contract:** Consent means willingness. The condent of the parties to a valid contract must come freely. It must not be obtained by force or by suppressing facts.
- **Legality of object**: The object of the agreement must not be illegal, immoral or opposed to public policy.
- **Agreement not declared void:** The agreement between the parties must not have been declared void expressly by any law in force in the country.
- **Terms of the agreement must be certain**: The terms of the agreement must be clear, precise and certain. If the terms are vague, the agreement cannot be enforced.

- **Possibility of Performance:** What is undertaken by the parties to an agreement must be such that it can be performed. An agreement to do an impossible act cannot be enforced.
- **Legal Formalities:** For a contract to be enforceable in a court of law, it must comply with the necessary legal formalities as to writing, stamp duty, registration, certification, witness etc.

Distinction b/w a void contract and a voidable contract

VOID CONTRACT

1. *A Void contract was valid when it was made. Due to subsequent happenings, it has become void, i.e, unenforceable.*
2. *Something beyond the control of the party makes a valid contract void, e.g., change of law, destruction of the subject matter etc.*
3. *A void contract cannot be enforced by either party.*
4. *The question of a third party acquiring rights does not arise.*
5. *Ther is no question of payment of damages to anyone under a void contract.*

VOIDABLE CONTRACT

1. *A voidable contract is valid until it is avoided or rescinded by the affected party. Such a party, however, has to avoid it within a reasonable time.*
2. *A contract is a voidable contract when the element of free consent is missing.*
3. *A voidable contract is vaild until it is avoided by the affected party.*
4. *There is scope for a third party to acquire right over what has been obtained under a voidable contract.*
5. *The affected party can claim damages.*

Distinction b/w an unlawful agreement and an illegal agreement:

UNLAWFUL AGREEMENT

1. Unlawful acts are simply not approved by law. They do not result in the commission of a crime.
2. What is unlawful need not be illegal.
3. As no crime is committed, the party to the agreement is not awarded punishment.

ILLEGAL AGREEMENT

1. Illegal acts result in the commission of a crime.
2. What is illegal is always unlawful.
3. As an illegal act results in the commission of a crime, punishment is awarded.

UNIT-2 OFFER AND ACCEPTANCE

Two equations:

Contract= Agreement +its enforceability

Agreement=Offer + Acceptance

OFFER

An 'offer' is also known as a 'proposal'. According to section2(a), "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 , he is said to make a proposal".

The person making the offer or proposal is called the offer or ,promisor or proposer. The person to whom the offer is made is called the offeree or propose.

When the offer is accepted the offeree will be called the promisee or the Acceptor.

TYPES OF OFFER

Offer may be of the following types

1.Express offer

2.Implied offer

3.Specific offer

4.General offer

5.Cross offer

6.Counter –offer

7.Standing offer

- **Express offer**: An offer made by express words – spoken or written is known as express offer.
- **Implied offer:** An offer that is to be inferred or understood from the conduct of the parties or the circumstances of each particular case is known as implied offer.
- **Specific offer:** An offer made to a specific person or group is known as a specific offer.
- **General offer**: When an offer is made to the world at large, it is known as a general offer. Any member of the public who is aware of such an offer may accept it.
- **Cross offer**: Cross offers take place when two persons make identical offers to each other with respect to the same subject matter and without knowing the intention of the other.
- **Counter offer**: Counter offer takes place when the person to whom the offer is made, accepting the terms of the offeror, desires modification of the same.

- **Standing offer:** A standing offer is of a continuous nature. It is not restricted to a single transaction. It applies to a series of future transaction.
- **Tender:** A tender involves inviting quotation from different parties. For example, invite quotations from the suppliers of steel either for a particular project or for a certain number of projects to be undertaken in the near future. The quotation f the applicant that is found most favourable is finally accepted.

LEGAL RULES RELATING TO OFFER

The important rules relating to a valid offer are given below:

- An offer, when accepted, must create legal relationship between in parties.
- The terms of the offer must be clear and certain.
- Declaration of intention by one person to another does not constitute a valid offer.
- An invitation to offer is different from a valid offer.
- Offer must not contain a term the non-compliance of which would amount to acceptance.
- A statement of price is not an offer.
- Offer must be communicated.

ACCEPTANCE

- **Definition:** According to section2(b),"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise".
- **Legal rules regarding acceptance**

1.It must be absolute and unqualified.
2.It must not be a mere mental acceptance.
3.It must be given according to the prescribed mode.
4.It must be given within the specified time.
5.It must be given only by the person to whom the offer is made.

1.It must be conveyed to the offeror.
2.It cannot, normally, be implied from silence.
3.It cannot be made on the presumption of an offer.
4.It must be given before the offer lapse.

LEGAL RULES AS TO ACCEPTANCE

The acceptance of an offer is the very essence of a contract. To be legally effective. It must satisfy the following conditions.

- It must be absolute and unqualified. i.e., it must conform with the offer.
- It must be communicated to the offeror.
- It must be according to the mode prescribed or usual and reasonable mode.
- It must be given with in a reasonable time.
- It cannot precede an offer.
- It must show an intention on the part of the acceptor to fulfil terms of the promise.
- It must be given before the offer lapses.
- It must be given by the party or parties to whom the offer is made.
- It cannot be implied from silence.

COMMUNICATION OF OFFER AND ACCEPTANCE

According to section4,

The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

The communication of acceptance is complete-

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

REVOCATION OF OFFER AND ACCEPTANCE

Revocation means 'withdrawal'. An offer or its acceptance may be revoked subject to the following rules.

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

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

WHEN DOES AN OFFER COME TO AN END?

- By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him.
- By the lapse of time if it is not accepted within the prescribed time.
- By non-fulfilment by the offeree of a condition precedent to acceptance.
- By death or insanity of the offeror provided the offeree comes to know of it before acceptance.
- If a counter offer is made to it.
- If an offer is not accepted according to the prescribed or usual mode.
- If the law is changed.

CONSIDERATION

- What is consideration?

‘ Quid Pro Quo’is a Latin pharse the meaning of which is ‘something in return’. A party to an agreement who promises to do something must gain something in return.

Definition of consideration: “A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other”.

Legal rules regarding consideration

- Consideration must always be provided at the desire of the promisor.
- It may be provided by the promisee or any other person.
- It may be an act or abstinence means avoidance.
- It may be past, present or future.
- **1.Past consideration**: It refers to consideration provided already in the past by a party for a present promise.

2.Present consideration: It refers to consideration provided simultaneously with the promise.

- 3.Future consideration: It refers to consideration to be provided in future by the parties, i.e., after the formation of the contract.
- A promise by which the promisor does not gain anything in return is not enforceable.
- Where the promise has incurred a liability on the strengh of the promise made by the promisor.
- Consideration need not be adequate.
- Consideration must be real and lawful and not illusory.
- Consideration must be something which the promisor is not already bound to do under law.
- The act constituting consideration must not be illegal, immoral or opposed to public policy.

Capacity to contract

The parties who enter into a contract must have the capacity to do so. ‘capacity’ means competence of the parties to enter into a valid contract.

1.Minors.

2.Persons of unsound mind, and

3. Other persons.

According to sec (11) every person is competent to contract who (a) if the age majority,(b) is soundmind person, (c) persons are disqulified by any law to which they are subject.

Minor:

According to sec 3 of the indian majority act 1875, a person who has not completed 18 years of the age. In the following cases, he attains majority after 21 years of ago.

Where a guardian of a minors person or property has been appointed under the guardians act 1890.

- **MINOR’S AGREEMENT**
- A agreement with or by a minor is void and inoperated.

- He can be a promisee or a beneficiary.
- His agreement cannot be ratified by him on attaining the age of majority.
- If he has received any benefit under a void agreement, he cannot be asked to compensate or pay for it.
- He can always plead minority.
- There can be no specific performance of the agreement entered into by him as they are void.
- He cannot enter into a contract of partnership.
- He can be an agent.
- **PERSONS OF UNSOUND MIND**

  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 interests.

  A person who is usally of unsound mind but occasionally of unsound mind.

Contracts of persons of unsound mind:

- Lunatics
- IDIOTS
- Drunken person

Other person:

- Alien enemies
- Corporations
- Insolvents
- Convicts.

According to section 10,All agreements are contracts if they are made by the free consent of parties….”

Consent means ‘willingness’. The willingness of the parties to a contract must come freely.

1. *Coercion,*
2. *Undue influence,*
3. *Fraud,*
4. *Misrepresentation or*
5. *Mistake*

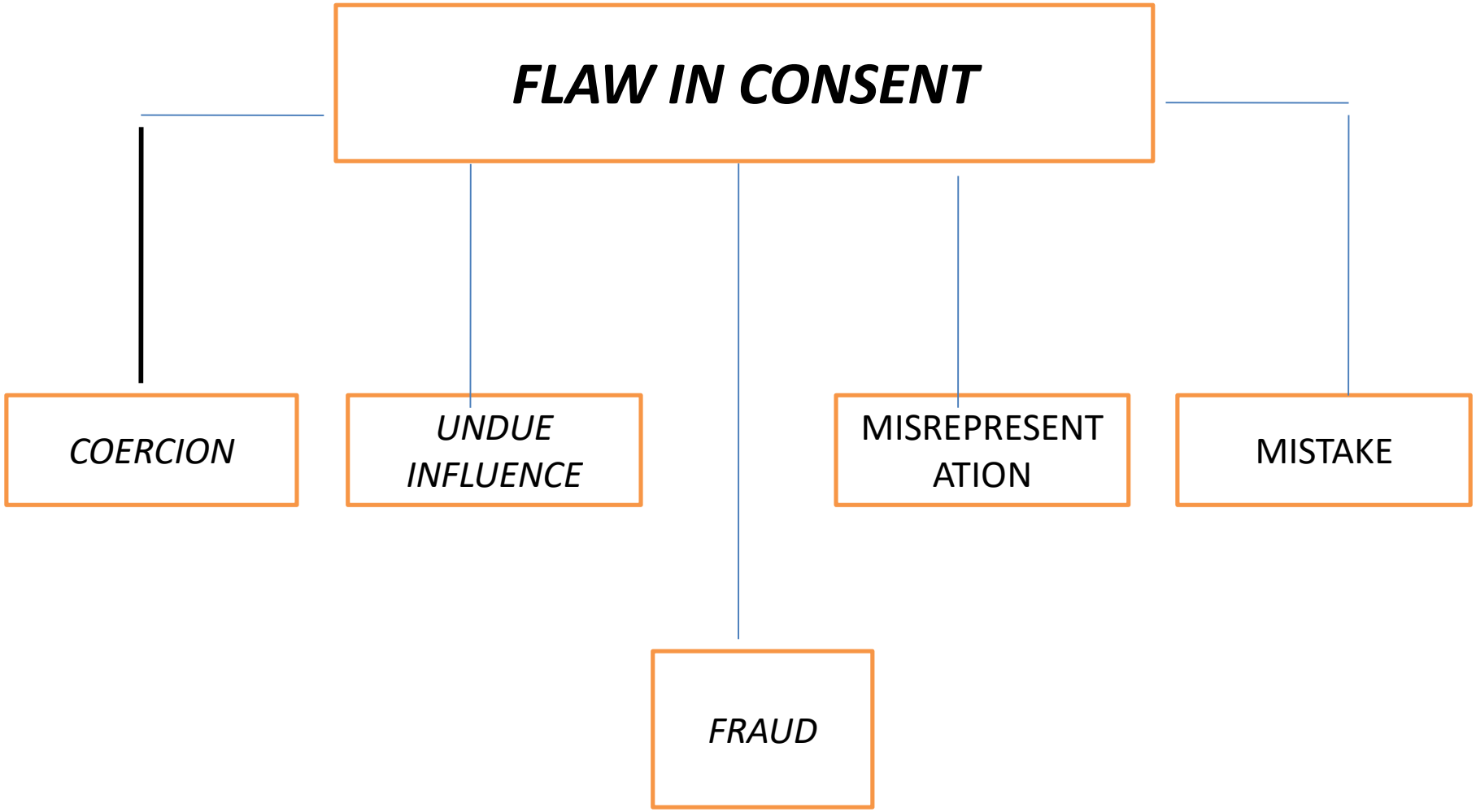
DURESS AND COERCION

DURESS

1. *Unlawful detaining or threatening to detain any property will not amount to duress.*
2. *Duress can be employed ony againts a party to a contract or his family members.*

coercion

1. *Unlawful detaining or threatening to detain any property belonging to a person will amount to coercion.*
2. *Coercion can be employed by an against a stranger too.*


FLAW IN CONSENT
COERCION
UNDUE INFLUENCE
FRAUD
MISREPRESENTATION
MISTAKE

UNDUE INFLUENCE

Sometimes, a party to a contract may, by reason of his position, exercise undue influence over the other.

Definition of undue Influence

According to section 16 (1),

"A contract is said to be induced by undue influence where the relations subsisting between 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".

Important cases on undue influence:

- Mannu singh vs. umadat pandey

  A devotee, in this case, agreed to gift his entire property to a spiritual gun, who promised to save the devotee from all his sins.
- Ranee annapurni vs. swaminath: A poor hindu widow, in this case, agreed to pay 100% rate of interest to money lender on the amount lent by him.
- Sher singh vs. priithi singh: In this case , an old man about 90 years, physically and mental weak, executed a gift deed in favour of a close relative who looked after him.

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DISTINCTION B/W COERCION AND UNDUE INFLUENCE

COERCION

1. Law does not presume coercion under any circumstances.
2. It may be exercised by or against a stranger to the contract also.
3. It involves a threat to one's life or property.
4. It amounts to commission of a crime punishable under the indian penal code.

UNDUE INFLUENCE

1. Law presumes undue influence under certain circumstances.
2. It is exercised only by a party to the contract and not by a stranger.
3. It involves the use of one's position to one's advantage.
4. It does not amount to commission of a crime.

FRAUD

- When a party to an agreement makes a false representation of fact deliberately with a view to deceive the other, it amounts to fraud.

Definition of fraud : According to section 17,'Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent with intent to deceive another party thereto or his agent, r to induce him to enter into the contract.

MISREPRESENTATION

Misrepresentation is a false representation of fact made by a party to agreement without any intention to deceive the other party.

DEFINITION OF MISREPRESENTATION

According to section 18,

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

Essential elements of misrepresentation

- *There must be a representation or assertion by a party to a contract.*
- *It must relate to a fact.*
- *The person making it must honestly believe it to be true.*
- *His intention is not to deceive the other party.*
- *It must have induced the other party to act upon it.*
- *The party acting upon it must have suffered some loss.*

Distinction between misrepresentation and fraud

Misrepresentation

- The party making the false statement believes it to be true.
- There is no active concealment of truth.
- The false representation made is without any intention to deceive the other party to the contract.
- The party making the representatIon is innocent.
- The affected party cannot claim damages.
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Fraud

- The party making the false statement does not believe it to be true
- There is active concealment of truth.
- The false representation made is with the intention of deceiving the other party.
- The part making the representation is not innocent.
- The affected party can claim damages.

MISTAKE

Mistake may be two type:

a. Mistake of law and

b. Mistake of fact

Mistake of law

A person may be under a mistake of-

a. Indian law or

b. Foreign law

Mistake of fact

Classified into-

a. Bilateral mistake and

b. Unilateral mistake

Mistake of Indian law

Every citizen of indian is expected to be familiar with the law of the country," Ignorance of law is no excuse".

Mistake of Foreign law

A citizen of india, while in india, is not expected to be familiar with the law of a foreign country. An agreement made by parties in india making a mistake of a certain foreign law, therefore, is void.

Mistake of fact

Bilateral mistake

It means that both parties to the agreement are under a mistake. According to section 20.

"Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void".

Bilateral mistake may relate to-

1. The subject matter of the contract or
2. The possibilty of performing the contract

Bilateral mistake as to subject matter

- Mistake as to the very existence of the subject matter
- Mistake as to the identity of the subject matter
- Mistake as to the quality of the subject matter
- Mistake as to the quantity of the subject matter
- Mistake as to the title of the subject matter

Bilateral mistake as to possibility of performing the contract

- Physical impossibility
- Legal impossibility

Unilateral mistake

"A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact".

- When there is a mistake as to the identity of the person contracted.

LEGALITY OF OBJECT

A contract must not only be based upon mutual assent of competent parties but must also have a lawful object. The word object means purpose or design. Both the object and the consideration of an agreement must be lawful, otherwise the agreement is void.

When consideration or object is unlawful (sec.23)

- If it is forbidden by law.
- If it is of such a nature that, if permitted, it would defeat the provisions of any law.
- If it is fraudulent.
- If it involves or implies injury to the person or property of another.' Injury' means 'wrong', 'harm', or 'damage'. 'Person' means one's body. 'property' includes both movable and immovable property.
- If the court regards it as immoral.
- Where the court regards it as opposed to public policy.

UNLAWFUL AND ILLEGAL AGREEMENTS

An unlawful agreement is one which like a void agreement, is not enforceable by law.

Agreements opposed to public policy

An agreement is said to be opposed to public policy when it is harmful to the public welfare.

- Agreements of trading with enemy.
- Agreement to commit a crime.
- Agreements which interfere with administration of justice.
- Agreements in restraint of legal proceedings.
- Trafficking in public offices and titles.
- Agreement tending to create interest opposed to duty.
- Agreements in restraints of parental rights.
- Agreements restricting personal liberty.
- Agreements in restraints of marriage.

- Marriage brokerage or brocage agreements.
- Agreements interfering with marital duties.
- Agreement to defraud creditors or revenue authorities.
- Agreements in restraint of trade.

Exceptions:

- Sale of goodwill.
- Partners agreements.

Trade combination: Traders and manufacturers in the same line of business normally form association to regulate business or to fix prices. The regulations as to the opening and closing of business in a market.

Service contracts: Sometimes an employee, by the terms of his service agreement is prevented from accepting-

- Any other engagement during his employment,
- A similar engagement after the termination of his services.

UNIT- III -PERFORMANCE OF CONTRACT

- A contract is performed when the parties to it fulfil respective obligations arising under it.

According to section 37

- The parties to a contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of this act or any other law.

Requistes of a valid tender :

- It must be unconditional.
- It must be of the whole quantity contracted for or of the whole obligation.
- A person who is in a position and iswilling to perform the promise.
- The proper time and place.
- The proper person.
- To one of the several joint promisees.
- Tender of goods.
- Tender of money.

Effect of refusal of a party to perform promise wholly

According to section 39,

- Where the party to a contract fails to perfom his promise in its entirely, The promise may put an end to the contract. But if the promisee has by words or conduct given his consent to the continuance of the contract he cannot avoid it afterwards.

Example:

- There is a contract between a singer and a manager of a star hotel whereby the former would sing at the hotel every Sunday during the specified time for the six months. The hotel manager agrees to pay the singer Rs.5000 for each performance. After singing on the first three sundays, the singer fails to pay for fourth sunday. The hotel manager is at liberty to put an end to the contract.

By whom must contracts be performed?

According to section 40,

If the contract provides for the performance of the promise by the promisor himself, such promise must be performed by the promisor in other cases it may be performed by the promisor or a person authorised by him.

- The promisor himself
- Agent
- Legal representative
- Third person
- Joint promisors.

Devolution of joint liabilities

- Devolution means transfer or passing over from one person to another.

According to section 42,

When joint promisor dies his legal representative must fulfil the promise jointly with the surviving promisors.

Section 43,

When two or more person makes a joint promise, the promisee may in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Three rules as regards performance of joint promises:

- Any one of the joint promisors may be compelled to perform.
- A joint promisor compelled to perform may claim contribution.
- Sharing of loss arising from default.

Devolution of Rights

According to section 45,

- When a person makes a promise to many joint promises, unless a contrary intention appears from the contract, all such joint promises can claim performance. If any joint promises dies his legal representative along with the surviving joint promises can claim performance.

Time and place of performance

Section 46 to50 lay down the rules in respect of time and place of performance of a contract.

- Where no application is to be made and no time is specified the promise must be performed with in a reasonable time.
- Where time is specified and no application is to be made.
- Application for performance on a certain day and place. It is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.
- Application by the promisor to the promisee to appoint place.
- Performance in manner or at time prescribed or sanctioned by the promisee.

Reciprocal promises

Promises which form the consideration or part of the consideration for each other are called “reciprocal promises”.

These promises have been classified into:

- Mutual and independent.
- Conditional and dependent.
- Mutual and concurrent.

Rules regarding performance of reciprocal promises

- Simulatenous performance of reciprocal promises.
- Order of performance of reciprocal promises.
- Effect of one party preventing another from performing promise.
- Effect of default as to promise to be performed.
- Reciprocal promise to do things legal and also other things.

Time as the essence of the contract:

The performance of the promise by a party to the contract is essential within the specified period, in order to entitle him to enforce performance from the other party.

Appropriation of payments

When a debtor owes several debts to a creditor and makes a payment insufficient to satisfy the indebtedness. The following three rules in this regard.

- Where the debtor intimates(sec.59).

  "There is an established maxim of law that, when money is paid, it is to be applied according to the expressed will of the payer, not of the receiver".
- Where the debtor does not intimate and the circumstances are not indicative.
- Where the debtor does not intimate and the creditor fails to appropriate.

Assignment of contracts

To 'assign' means to 'transfer' Assignment of a contract means transfer of contractual rights and liabilities under the contract to a third party with or without the concurrence of the other party to the contract.

1**. Act of the parties**

Assignment is said to take place by an act of the parties when they make the assignment.

- **Assignment of contractual obligations**: This is subject to the following rules.

1.Contractual obligations involving personal skill or ability cannot be assignment.

2.A promisor cannot assign his liabilities or obligations under a contract.

Assignment of contractual rights.

- The rights benefits under a contract not involving personal skill may be assigned.
- An actionable claim can always be assigned but the assignment to be complete and effectual must be effected by an instrument in writing.

2. **Operation of law:** the following two cases.

- Death
- Insolvency.

Discharge of contract

Discharge of contract takes place when the rights and obligations created by it come to an end. It results in the termination of the contractual relationship between the parties to a contract.

Methods of Discharge of contract

- Performance
- Mutual consent
- Impossibility
- Operation of law
- Breach
- Lapse of time

DISCHARGE BY PERFORMANCE

- Actual Performance and
- Attempted performance or tender

Actual performance : The usual manner in which a contract is discharged is by the parties to it fulfilling their respective obligations arising under it.

Attempted performance or Tender

When the promisor offers to perform his obligation as per the terms of a contract but the promisee does not accept the performance, it is knows, ’attempted performance’ or ‘tender’.

DISCHARGE BY MUTUAL CONSENT

A contract comes into existence by the mutual consent of the parties, the same manner, the parties may agree mutually to terminate it. The various ways of discharge by mutually consent.

Discharge of contract by mutual consent

- Novation
- Rescission
- Alteration
- Remission
- Waiver
- Merger

DISCHARGE BY IMPOSSIBILITY

The provisions in respect of 'an agreement to do an impossible act'.

'An agreement to do an act impossible in itself is void'. The existences is the impossibility may or may not be known to both the parties.

- When both the parties to the agreement know the existence of the impossibility- In this case, the agreement is void.
- When the promisor alone knows the existence of impossibility.

Supervening Impossibility

Impossibility that arises subsequent to the formation of the contract is known as 'Supervening Impossibility'. In such a case, the contract becomes void. The various contract is discharged by supervening impossibility.

- Destruction of the subject-matter.
- Death or personal incapacity
- Declaration of war
- Change of law
- Change in the state of a thing forming the basis of contract.

Contract not discharged on the ground of impossibility

Impossibility of performance –not an excuse

- Difficulty in performance
- Commercial impossibility
- Default of a third person
- Strikes,lock-out &civil disturbances
- Failure of one of the objects

Discharge by operation of law

- By the death of the promisor
- By insolvency
- By unauthorised material alteration
- By liabilities and rights accruing to the same person.

DISCHARGE BY BREACH

A breach of contract takes place when a party to a contract fails to fulfil his obligations arising under it. The way in which breach of contract may occur may be shown as follows:

BREACH OF CONTRACT

- Actual breach

  1.On the due date

  2. During performance

- Anticipatory breach

  1.Express

  2. Implied

Discharge by lapse of time

Under the limitation Act,1963, a contract must be performed within specified period known as the period of limitation. If the promisee fails to the legal action within the period of limitation, he loses his legal remedy.

REMEDIES FOR BREACH OF CONTRACT

A contract gives rise to correlative rights and obligations. A right accruing to a party under a contract would be of no value if there were no remedy to enforce that right in a law court in the event of the infringement or breach of contract. A remedy is the means given by law for the enforcement of a right.

When a contract is broken the injured part has one or more of the following remedies :

- Rescission
- Damages
- Quantum meruit
- Specific performance and
- Injunction

RESCISSION

The right of aparty to a contract to avoid his obligations arising under is what is called ‘rescission’. When one party to a contract commits a breach the other party may treat the contract as rescinded or cancelled and there relieve himself of his obligations.

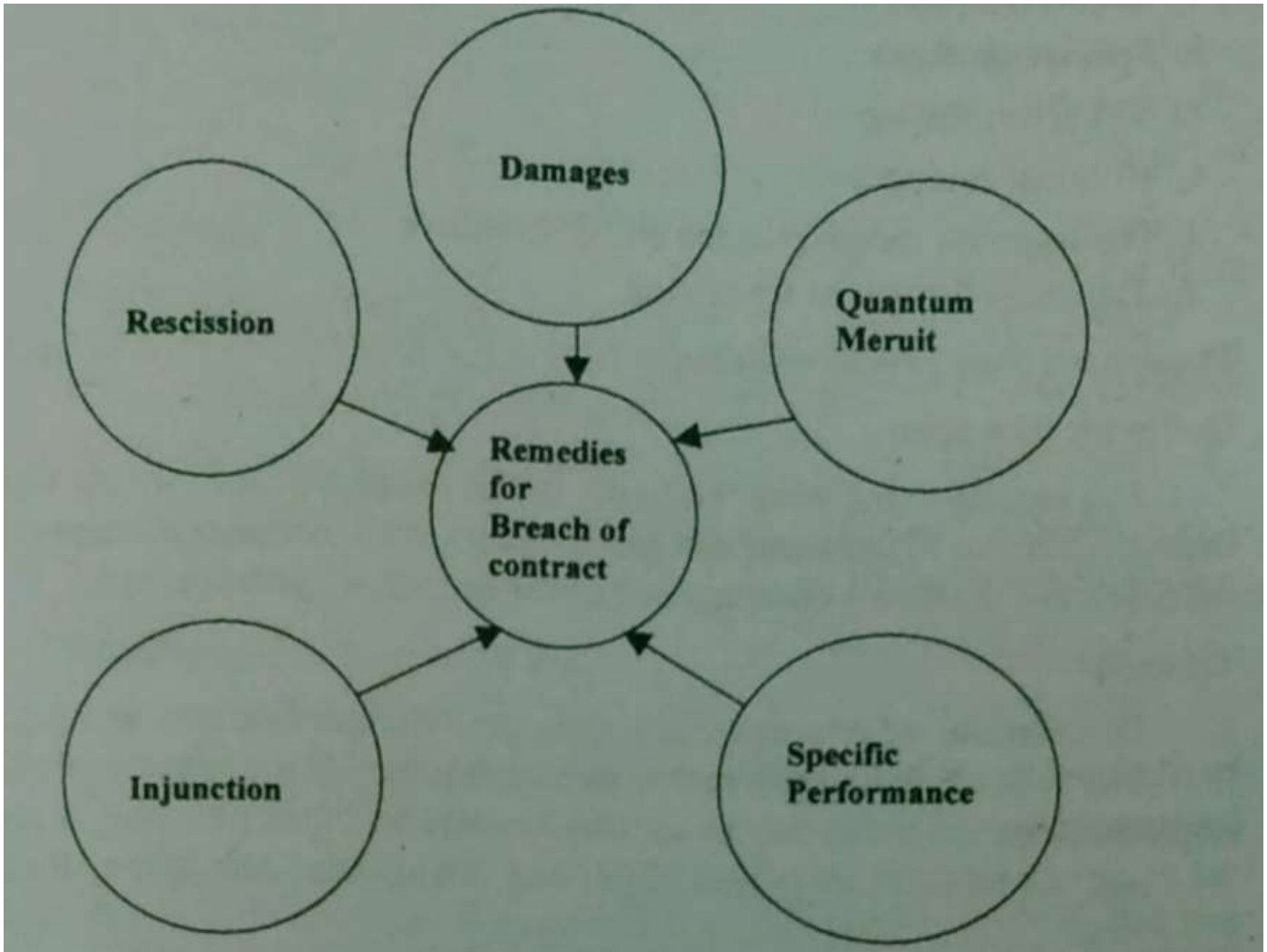


Figure 10. 1– Remedies for Breach of contract

Damages

'Damages' are nothing but the monetary compensation awarded to the affected party by the court for the loss suffered by him in view of the breach of a contract.

Types of damages

The damages awarded to an affected party in case of breach of contract may be of the following types :

- Ordinary damages
- Special damages
- Vindictive damages
- Nominal damages
- Damages for inconvenience and discomfort
- Damages for loss of reputation.
- Mitigation of damages
- Difficulty of assessment
- Cost of decree
- Damages agreed upon in advance in case of breach

1.Liquidated damages and penalty

2.Payment of interest

QUANTUM MERUIT

‘Quantum meruit’ means ‘ as much as merited or ‘ as much as earned’. In simple terms, it means payment in proportion to the amount of work done.

- When an agreement is void or when a contract becomes void.
- When a person does something without any intention .
- When there is no specific agreement as to remuneration for a certain service rendered.
- When one party is prevented from completing his task.
- When a contract is divisible.
- When an indivisible contract is fully but badly performed.

Specific performance

‘Specific performance’, thus is a direction by the court, on a suit filed by the plaintiff, requiring the other party to fulfil his promise.

INJUNCTION

‘Injunction’ is an order of the court preventing a person from doing a particular act. It is also known as ‘ Stay Order’.

QUASI-CONTRACTS

A quasi-contract is not a contract entered into intentionally by the parties. It is an obligation created by law on a person in the absence of any agreement.

The necessary provisions regarding quasi-contractual obligations are contained in sections 68 to72.

- Claim for necessaries supplied to a person incapable of contracting.
- Reimbursement of amount paid by a person an behalf of another.
- Obligation of a person enjoying the benefit of a non-gratuitous act.
- Responsibility of finder of goods.
- Liability of a person to whom is paid or thing delivered by mistake or coercion.

UNIT-IV INDEMNITY AND GUARANTEE

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 other person, is called a' contract of indemnity'.

Definition of contract of indemnity " a promise to save another harmless from loss caused as a result of a transaction entered into at the instance of the promisor".

The essential elements of a valid contract:

- Rights of indemnity-holder when sued.
- Rights of indemnifier.

CONTRACT OF GUARANTEE

Meaning : A ’contract of guarantee’ is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the ‘surety’, the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is gien is called the ‘creditor’.

A guarantee may be either oral or written. It may be express or implied and may even be inferred from the course of conduct of the parties concerned.

Essential features of a contract of guarantee :

- Concurrence
- Primary liability in some person
- Essentials of avalid contract
- Writing not necessary.

Extent of surety’s liability

- Nature of surety’s liability-it is co-extensive
- Limitation of surety’s liability
- Liability under continuing guarantee

Distintion between a contract of indemnity and a contract of guarantee

Contract of indemnity

- There are two parties to the contract viz., the indemnifier and the indemnified.
- The liability of the indemnifier to the indemnified is primary and independent.
- There is only one contract in the case of a contract of indemnity.
- It is not necessary for the indemnifier to act at the request of the indemnified.
- The liability of the indemnifier arises only on the happening of a contingency.
- An indemnifier cannot sue a third party for loss in his own name because there is no privity of contract.

Contract of guarantee

- There are three parties to the contract viz., the creditor, the principal debtor and the surety.
- The liability of the surety to the creditor is collateral or secondary, the primary liability being that of the principal debtor.
- In a contract of guarantee there are three contracts :
- It is necessary that the surety should give the guarantee at the request of the debtor.
- There is usually an existing debt or duty, the performance of which is guaranteed by the surety.
- Asurety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor

KINDS OF GUARANTEE

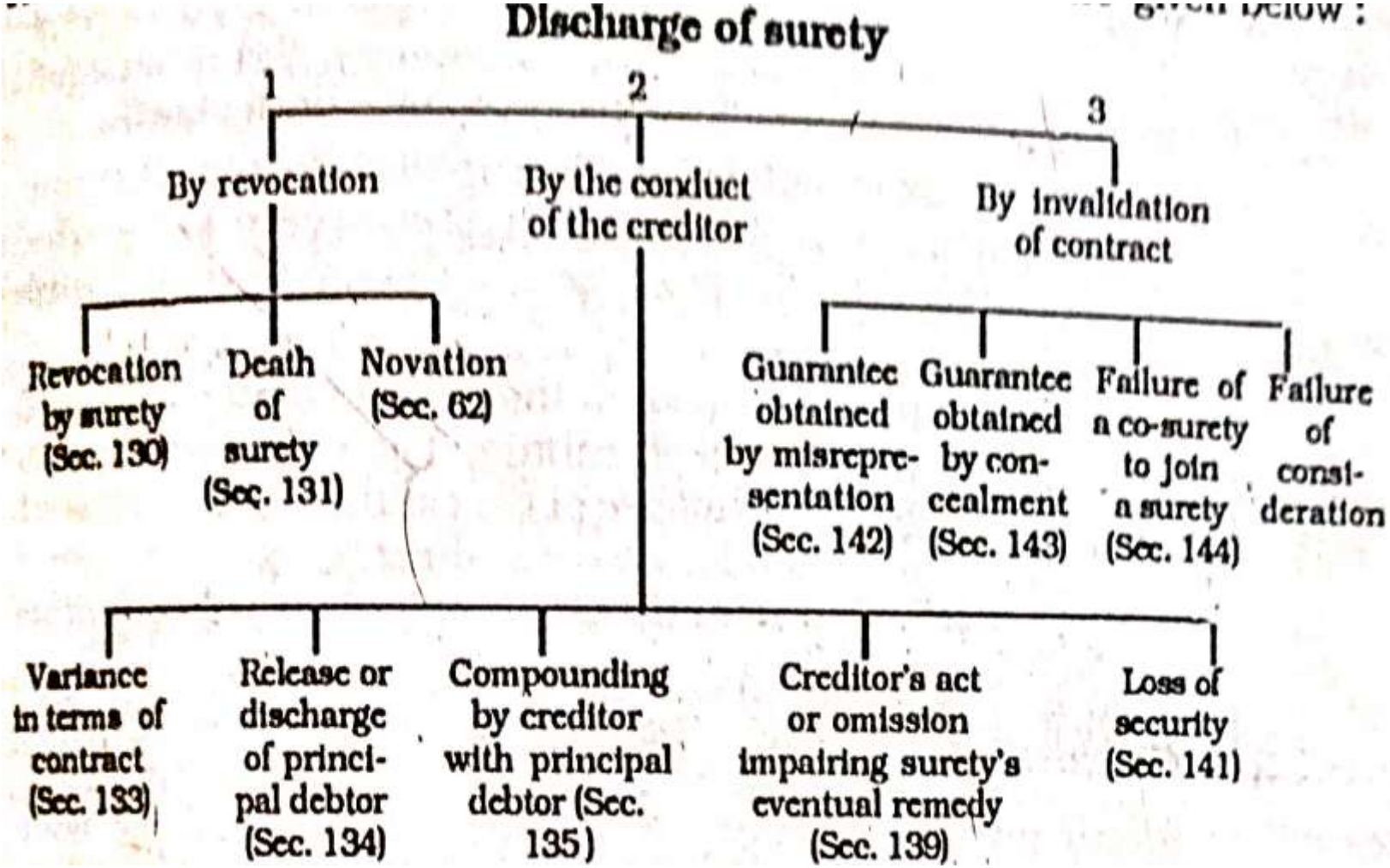
The function of a contract of guarantee is to enable a person to get a loan, or goods on credit, or an employment. **There are five types of guarantee:**

- Retrospective guarantee
- Prospective guarantee
- Fidelity guarantee
- Specific guarantee
- Continuing guarantee
  1. By notice
  2. By death of surety
  3. By other modes.

Rights or surety

- ❖ Rights against creditor
- ❖ Rights against principal debtor
- ❖ Rights against co-sureties.

DISCHARGE OF SURETY



UNIT V SALE OF GOODS

MEANING : The sale of goods is the most common of all commercial contracts. Contracts for the sale of goods are subject to the general legal principles applicable to all contracts, such as offer and its acceptance, the capacity of the parties, free and real consent, consideration, and legality of the object.

Contract of sale of goods :

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 contract of sale.

Sale and agreement to sell : A contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a 'sale', but the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.

ESSENTIALS OF A CONTRACT OF SALE

The following essential elements are necessary for a contract of sale :

- Two parties
- Goods
- Price
- Transfer of general property.
- Essential elements of a valid contract.

Sale and agreement to sell- distinction:

- Transfer of property
- Type of goods
- Risk of loss
- Consequences of breach
- Right to re-sell
- General and particular property
- Insolvency of buyer
- Insolvency of seller.

Distinction between a sale and a hire- purchase agreement

Sale

- Ownership is transferred from the seller to the buyer, as soon as the contract is entered into.
- The position of the buyer is that of the owner.
- The buyer cannot terminate the contract and as such is bound to pay the price of the goods.
- If the payment is made by the buyer in instalments, the amount payable by the buyer to the seller is reduced for the payment.

Hire-purchase agreement

- Ownership is transferred from the seller to the hire-purchaser only when a certain agreed number of instalments is paid.
- The position of the hire-purchaser is that of the bailee.
- The hire-purchaser has an option to terminate the contract at any stage, and cannot be forced to pay the further instalments.
- The instalments paid by the hire-purchaser are regarded as hire charges and not as payment.

CLASSIFICATION OF GOODS

The goods form the subject of a contract of sale may be either existing goods, or future goods.

- Existing goods

1.Specific goods

2. Ascertained goods

3. Unascertained goods

- Future goods
- Contingent goods.

Effect of destruction of goods

- Goods perishing before making of contract.
- Goods perishing after the agreement to sell.

THE PRICE

The price in a contract of sale must be expressed in money.

- It may be fixed by the contract itsely
- May be left to be fixed in an agreed manner
- May be determined from the course of dealing between the parties.

CONTRACT OF AGENCY

Meaning : A person who has capacity to contract may enter into a contract with another.1.either by himself 2. through another person.

Definition of agent and principal : An 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons

The person for whom such act is done, or who is so represented, is called the 'principal'.

Essentials od relationship of agency

- Agreement between the principal and the agent
- Intention of the agent to act on behalf of the principal.

Rules of agency

- A person can do personally
- An act through another does it by himself.

CREATION OF AGENCY

The relationship of principal and agent may arise-

- Agency by express agreement
- Agency by implied agreement
- Agency by ratification
- Agency by operation of law

CLASSIFICATION OF AGENTS

- Special agent
- General agent
- Universal agent

Another classification of agents

- Commercial or mercantile agents
  1. Factor
  2. Auctioneer
  3. Broker
  4. Commission agent
  5. Del credere agent
  6. Banker
- Non-mercantile agents.

RELATIONS OF PRINCIPAL AND AGENT

Duties and rights or agent

Duties of agent:

- According to the directions given by the principal.
- To carry out the work with reasonable care, skill and diligence.
- To render proper accounts to his principal.
- To communicate with the principal in case of difficulty.
- Not to deal on his own account.
- To pay sums received for the principal
- To protect and preserve the interests of the principal in case of his death .
- Not to use information obtained in the course of the agency against the principal.
- Not to make sercet profit from agency
- Not to set up an adverse title
- Not to put himself in a position.
- Not to delegate authority.

Rights agent:

- Right of retainer
- Right to receive remuneration
- Right of lien
- Right of indemnification
- Right of compensation.

DUTIES AND RIGHTS OF PRINCIPAL

Duties of principal.

- The agent against the consequences of all lawful acts.
- The agent against the consequences of acts done in good faith.
- The agent for injury caused by principal neglect.
- To pay the agent the commission agreed.

Rights of principal.

- To recover damages.
- To obtain an account of secret profits and recover them and a claim fir remuneration.

Delegation of authority: The general rule is that an agent cannot delegate his authority to another, i.e., he cannot appoint a sub-agent.

Sub- agent: A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

Substituted agent

A substituted agent is a person who is named by the agent, holding an express or implied authority from the principal, to act for the principal.

Relations of principal with third parties:

Extent of agent's authority

- Actual or real authority

1.express authority

2.implied authority

- Ostensible or apparent authority

Position of principal and agent in relation to third parties:

1.Named principal.

- Acts of the agent are the acts of the principal.
- The agent exceeds his authority.
- Notice given to agent as notice to principal.
- Misrepresentation or fraud of agent.

2.Unnamed principal.

3.Undisclosed principal

PERSONAL LIABILITY OF AGENT

- When the contract expressly provides.
- The agent acts for a foreign principal
- When he acts for an undisclosed principal.
- He acts for a principal who cannot be sued
- He signs a contract in his own name.
- He acts for a principal not in existence.
- He is liable for breach of warranty of authority.
- He receives money by mistake or fraud.
- Where his authority is coupled with interest.

TERMINATION OF AGENCY

The various modes of termination of agency.

- Termination of agency by act of the parties.

  1.Agreement

  2.Revocation by the principal

  3.Revocation by the agent.

By operation of law

1. Performance of the contract
2. Expiry of time
3. Death and insanity.
4. Insolvency
5. Destruction of subject-matter.
6. Principal becoming an alien enemy.
7. Dissolution of a company.
8. Termination of sub-agent's authority

Irrevocable agency.

When an agency cannot be put an end to, it is said to be an irrevocable agency. An agency is irrevocable where,

- Where the agency is coupled with interest.
- Where the agent has incurred a personal liability.
- Where the agent has partly exercised the authority.

BUSINESS LAW

- **CODE :18K1CO02**
- **UNIT 1 : Introduction to business law**
- **UNIT 2 : Offer and Acceptance**
- **Question paper pattern**

Maximum marks : 75 Time : 3hours

Part A :10 X 2 = 20 (Two questions from each unit)

Part B : 5 x 5 =25 (Either or type – one questions from each unit.)

P art c : 3 x 10=30 (one question from each unit)

BOOKS FOR REFERENCE :

1. N.D.KAPOOR (Unit-I,II,III,IV,V) : Sultan chand & sons, new delhi.
2. J.JAYASANKAR (Unit-I,II,IIIIV,V) :Margham publications, chennai.