BUSINESS LAW

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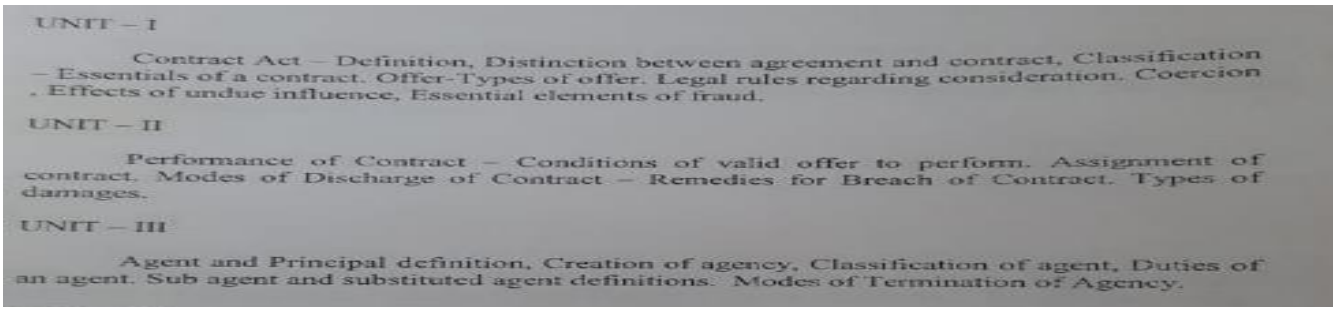


UNIT – I

Contract Act – Definition, Distinction between agreement and contract, Classification – Essentials of a contract. Offer-Types of offer. Legal rules regarding consideration. Coercion . Effects of undue influence, Essential elements of fraud.

UNIT – II

Performance of Contract – Conditions of valid offer to perform. Assignment of contract. Modes of Discharge of Contract – Remedies for Breach of Contract. Types of damages.

UNIT – III

Agent and Principal definition, Creation of agency, Classification of agent, Duties of an agent. Sub agent and substituted agent definitions. Modes of Termination of Agency.

Contract Act

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

This definition has two major elements in it viz – "agreement" and "enforceable by law". So in order to understand a contract in the light of The Indian Contract Act, 1872 we need to define and explain these two pivots in the definition of a contract.

Agreement

In section 2 (e), the Act defines the term agreement as "every promise and every set of promises, forming the consideration for each other".

Now that we know how the Act defines the term "agreement", there may be some ambiguity in the definition of the term promise.

Promise

The Act in its section 2(b) defines the term "promise" here as: "when the person to whom the proposal is made signifies his assent thereto, the proposal becomes an accepted proposal. A proposal when accepted, becomes a promise".

In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition says that in order to establish or draft a contract, we need to initiate some steps:

i. The definition requires a person to whom a certain proposal is made.
ii. The person (parties) in step one has to be in a position to fully understand all the aspects of a proposal.
iii. "signifies his assent thereto" – means that the person in point one accepts or agrees with the proposal after having fully understood it.
iv. Once the "person" accepts the proposal, the status of the "proposal" changes to "accepted proposal".
v. "accepted proposal" becomes a promise. Note that the proposal is not a promise. For the proposal to become a promise, it has to be an accepted proposal.

To sum up, we can represent the above information below:

Agreement = Offer + Acceptance.

Enforceable By Law

Now let us try to understand this aspect of the definition as is present in the Act. Suppose you agree to sell a bike for 30,000 bucks with a friend. Can you have a contract for this?

Well if you follow the steps in the previous section, you will argue that once you and your friend agree on the promise, it becomes an agreement. But in order to be a contract as per the definition of the Act, the agreement has to be legally enforceable.

Thus we can say that for an agreement to change into a Contract as per the Act, it must give rise to or lead to legal obligations. In other words, must be within the scope of the law. Thus we can summarize it as Contract = Accepted Proposal (Agreement) + Enforceable by law (defined within the law)

So What Is A Contract?

Now we can define a contract and more importantly, understand what is "Not" a contract. A contract is an accepted proposal (agreement) that is fully understood by the law and is legally defined or enforceable by the law.

So a contract is a legal document that bestows upon the party's special rights (defined by the contract itself) and also obligations that are introduced, defined, and agreed upon by all the parties of the contract.

Difference Between Agreement and Contract

Let us see how a contract and agreement are different from each other. This will help you summarize and make a map of all the important concepts that you have understood.

Contract	**Agreement**
A contract is an agreement that is enforceable by law.	A promise or a number of promises that are not contradicting and are accepted by the parties involved is an agreement.
A contract is only legally enforceable.	An agreement must be socially acceptable. It may or may not be enforceable by the law.
A contract has to create some legal obligation.	An agreement doesn't create any legal obligations.
All contracts are also agreements.	An agreement may or may not be a contract.

(Source: https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-i/what-is-a-contract/)

Essential Elements of a Contract

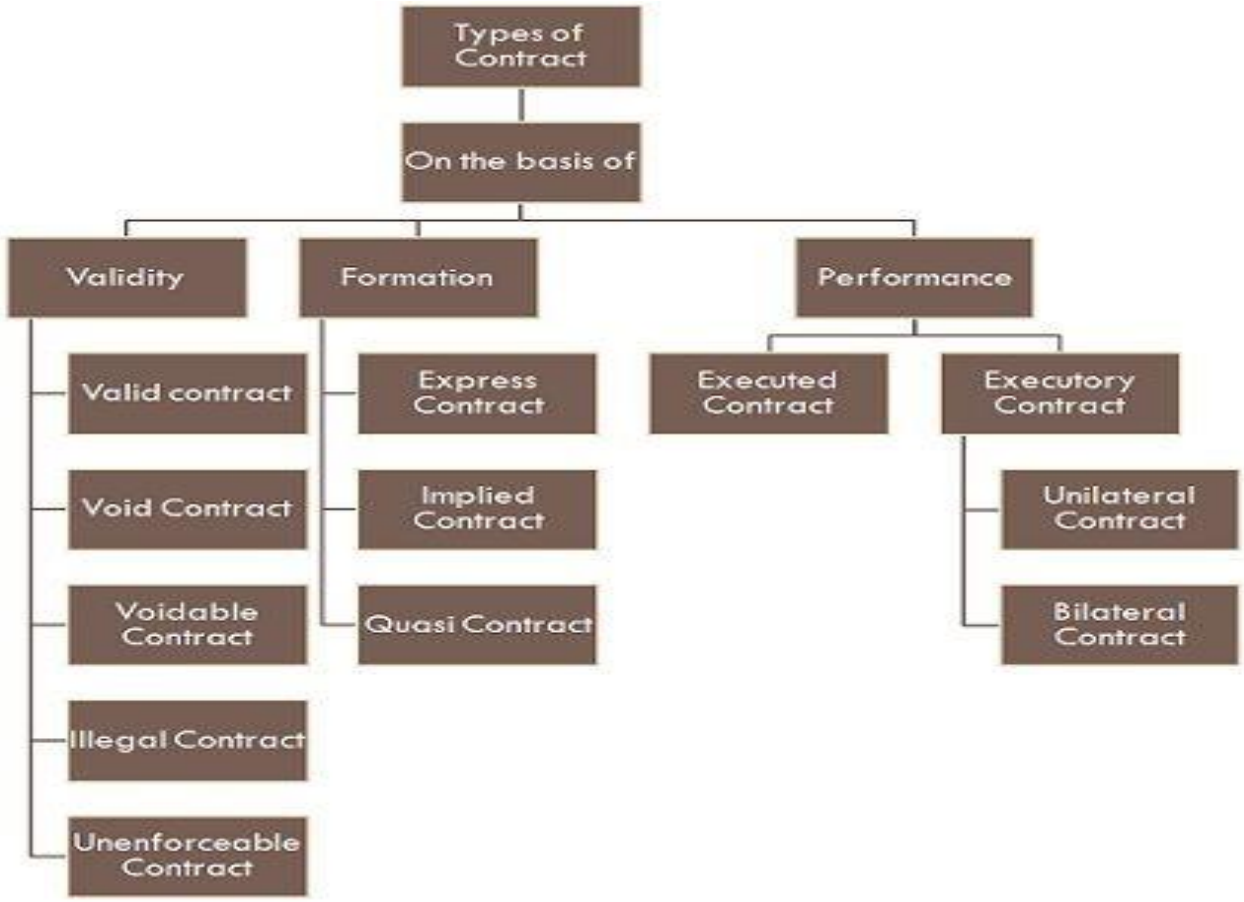
1. **Agreement**: The primary element that creates a contract between parties is an agreement, which is a result of offer and acceptance, that forms consideration for the parties concerned.
2. **Free Consent**: Consent of the parties is another important aspect of a contract, which means the parties entering into the contract, must agree upon the same thing in the same sense. The consent of the parties is said to be free when it is not influenced by coercion, undue influence, fraud, misrepresentation and mistake.
3. **Competency**: Competency refers to the capacity of the parties to enter into the contract, i.e. he/she has reached the age of maturity, he/she must be of sound mind, and he/she is not disqualified from contracting, as per the law like the alien enemy, foreign sovereigns, etc.
4. **Consideration**: It implies the price agreed to be paid for the promisor's obligation by the promisee. It must be adequate and lawful.
5. **Lawful object**: The object for which the contract is created must be lawful, or else it is declared as void.
6. **Not expressly declared as void**: The law should not expressly declare the contract as void, such as contract in restraint of marriage, trade or legal proceedings.

Other important elements of the Contract

- There must be at least two parties to constitute a contract, i.e. one who proposes and another accepts the same.
- The parties entering into the contract must intend to create a legal obligation for one another.
- It must be in writing.
- There must be certainty of meaning. the terms of the parties must be clear to the parties, i.e. the party should not interpret anything wrong, there must be a consensus ad idem.
- There should be a possibility of performing the contract.

So, these are some paramount elements of a contract, without which it cannot be enforced in the court of law.

Classification of Contract



- **On the basis of validity**
  - **Valid Contract**: An agreement which is enforceable by law, is a valid contract.
  - **Void Contract**: The contract which is no longer enforceable in the court of law is a void one.
  - **Voidable Contract**: A contract in which one of the parties to the contract has a choice to avoid performing his/her part, then it is termed as a voidable contract.

When the consent of the party is not free, the contract becomes voidable, at the option of the aggrieved party.
    - **Illegal Contract**: A contract which is forbidden by law is termed as an illegal contract.
    - **Unenforceable Contract**: The contract whose substance is good, but due to some issues, it is not enforceable, is called an unenforceable contract.
- **On the basis of formation**
    - **Express Contract**: When the terms of the contract are expressed orally or in writing, it is known as an express contract.
    - **Implied Contract**: The contract which is constituted by implication of law or action, is an implied one.
    - **Quasi-Contract**: These are not a real contract, but are identical to a contract, which is formed out of some circumstances.
- **On the basis of Performance**
    - **Executed Contract**: When the contract is performed, it is known as an executed contract.
    - **Executory Contract**: When the obligation in a contract, is to be performed in future, it is described as an executory contract.
        - Unilateral Contract
        - Bilateral Contract

To sum up, agreements are termed as a contract, if it comprises all the essential elements that constitute a contract.
(Source: https://businessjargons.com/contract.html)

Offer

A contract lies on the basic block called OFFER. An Offer is usually understood as a Proposal. According to Section 2(a) of the Contract Act-
"An individual is said to have made the offer when he implies to another his readiness to do or to avoid doing anything with a perspective to getting the consent of that other to such act or restraint."

Parties

The parties involved in offer are:-

- Offeror- The person who is making an offer to other is called Offeror or Propose.
- Offeree- The Person to whom the offer has been made is called Offeree or Proposee.

As per Section 2(c), when the offeree accepts the proposal by the offeror than he becomes the Acceptor of that offer.

<u>Different Types Of Offers</u>

(i). Express offer: – It is an offer that is done through words that can be either oral or written. The oral offer can be made face to face or via telephone. The written offer can be made via text messages, advertisements, letters or e-mail.
(ii). Implied Offer: – It is an offer conveyed through acting or signs. But if a party observes a silence over the offer then that offer cannot be valid.
(iii). Specific Offer: -It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

E.g William offers to buy a car from Miley for Rs 10 Lakh. Thus, a specific offer is made to a specific person, and only Miley can accept the offer.

(iv). General Offer: -It is the offer made to public at large and not to any particular person. it can be accepted by anyone by abiding by the terms of it.

E.g. Mr. A advertises in the newspaper that whosoever find his missing son would be rewarded with $500.Mr. B reads it and after finding the boy, he calls Mr. A to inform about his missing son. Now Mr. A is entitled to pay $500 to Mr. B for his reward.

(v). Cross Offer: -When both the parties involved makes a similar offer to one another without knowing the each other's offer then it is called Cross offer.

E.g X sends an e-mail to Y to purchase his car for $200 while at the same time, Y unknowingly is also sending an e- mail to X stating his desire to buy the car at $200.This is the cross offer made where one party needs to accept the offer of the another.

(vi). Standing or Open Offer: The offer that is continuous in nature is the standing offer.

(Source:https://studiousguy.com/offer-meaning-types-rules/)

Legal Rules Regarding Consideration:

According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as follows:

"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 is called a consideration for the promisee."

Following are the rules as to consideration:

Every contract must be supported by consideration: No valid contract can arise without consideration. According to Salmond A promise without consideration is a gift; one made with consideration is a bargain. Except for certain exceptions provided in Section 25 of the Indian Contract Act, the rule is, no consideration, no contract.

Consideration must move at the desire of the promisor: An act shall not be a valid consideration for the promise unless it is done at the desire of the promisor. So the act or abstinence must be done or promised to be done at the desire of the promisor. It is not necessary that the promisor himself should be benefited by his act, but his desire is essential. Example: D, on the order of the Collector of a district, built at his own expense certain shops in a bazar. The shops were occupied by different shopkeepers who promised to pay D a commission on articles sold. In a suit filed by D to recover the commission it was held. that the promise was not supported by consideration since the market was not constructed at the desire of the shopkeeper but the District Collector.

Consideration may move either from the promisee or any other person: It is not necessary_that the consideration must move from the promisee. As long as there is a consideration, it is not important who has given it. Therefore, a stranger to consideration can sue on a contract provided he is not a stranger to contract.

Consideration may be past, present or future: Where the promisor has received consideration before the date of the promise, it is past consideration. When the promisor receives consideration simultaneously with his promise, it is present consideration. Where the promisor has to receive consideration in future for his promise, it is future consideration.

Consideration need not be adequate: Section 25 clearly provides that an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate. This means that consideration need not be adequate to the promise.
Consideration may be an act or abstinence or promise: Consideration may be a promise to do something or not to do something. So it may be either positive or negative.
Consideration must be lawful: According to Section 10, all agreements are contracts if they are made for a lawful consideration'. So consideration should be lawful, otherwise the agreement is void. Every agreement of which the consideration is unlawful is void, Section 23. It means that an agreement must be supported by lawful consideration. Section 23 also gives certain instances of unlawful consideration. It means that should not:— Be forbidden by law,

- — Defect any provision of any law.
- — Imply injury to the person or property of another person.
- — Be immoral or opposed to any public policy.

Consideration must be real and not illusory or impossible: The consideration must be real and not illusory. Real consideration is one which is not physically or legally impossible. Illusory means it may give the impression of a consideration which is not actually there
(Source: https://www.owlgen.in/define-consideration-what-are-the-legal-rules-regarding-consideration/)

Coercion

Definition: Coercion is the primary element that vitiates free consent of the party. It refers to the method of inducing another party to act in a certain manner, which is against their will.
Section 15 of the **Indian Contract Act, 1872** deals with Coercion.
It must be noted that in coercion, it is not necessary that coercion must be practised by a party to the contract. Further, it is not required that the subject of the coercion has to be the contracting party, i.e. it may be aimed at against third person, even a stranger, goods, documents or property.
The examples given below explains the agreements induced by coercion:

- Paul threatens to implicate Michael in the false murder case if he denies marrying Paul's daughter. Michael gets ready to marry Paul's daughter out of threat.

(Source: https://businessjargons.com/coercion.html)

Comparison Chart

BASIS FOR COMPARISON	COERCION	UNDUE INFLUENCE
Meaning	Coercion is an act of threatening which involves the use of physical force.	Undue Influence is an act of influencing the will of the other party.

BASIS FOR COMPARISON	COERCION	UNDUE INFLUENCE
Sections	It is governed by Section 15 of the Indian Contract Act, 1872.	It is governed by Section 16 of the Indian Contract Act, 1872.
Use of	Psychological pressure or Physical force	Mental pressure or Moral force
Purpose	To compel a person in such a way that he enters into a contract with the other party.	To take unfair advantage of his position.
Criminal Nature	Yes	No
Relationship	The relationship between parties is not necessary.	The act of undue influence is done only when the parties to the contract are in relationship. Like teacher - student, doctor - patient etc.

(Source: https://keydifferences.com/difference-between-coercion-and-undue-influence.html#:~:text='Coercion'%20is%20the%20act%20of,position%20of%20the%20first%20party.)

Fraud:

Section 17 defines "fraud" as under: Fraud means and includes any of the following acts committed by (a) a party to a contract: or (b) with his connivance; or (c) by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract –

1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
2) the active concealment of a fact by one knowledge of belief of the fact;
3) a promise made without any intention of performing it;
4) any other act fitted to deceive;
5) any such act or omission as the laws specially declares to be fraudulent (Sec 17).

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that, regard being had to them, it is duty of the person keeping silence to speak, or unless his silence is, in itself equivalent to speech.
A concealment of any material fact is just as serious as a misrepresentation of it.

Effect of undue influence

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely, or if the party who was entitled to avoid it has received any benefit there under, upon such terms ad conditions as the Court may deem, just (Sec 19 A).
Only a party to the contract can avoid or rescind the contract. This right does not lie in the hands of a third party.

Illustrations:

1) A's son has forged B's name on a promissory note. B, under threat of prosecuting A's son, obtains a bond from A, for the amount of the forged note. If B sues on this bond, the Court may set it aside.

Burden of proof

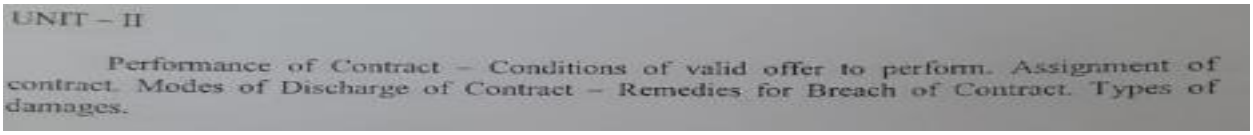
Generally, the party bringing a claim has the burden to prove the truth of the facts on which he or she is relying. The burden of proof is on the claimant to show that undue influence was exerted by a stronger party over the weaker party, and the latter could not exercise free choice when entering the agreement. However, this burden can be shifted to the defendant in an undue influence case if the plaintiff can demonstrate that a confidential relationship existed between the testator and defendant, and that suspicious circumstance surrounded the preparation and execution of the will. When this occurs, the burden shifts totally on the defendant to prove that undue influence did not occur. When a person is found to be in a position by which he can dominate the will of the other or a transaction appears to be affected due to dominance, the burden of proof that no undue influence was exercised in the transaction lies on the party who is in a position to dominate the will of others.

Essentials of fraud:

1) There must be an intention to deceive.
2) The act must be done by a party to a contract, or with his connivance or by his agent.
3) There must be a false representation of a fact, for example, suggestio falsi.
4) There must be an active concealment of a fact of which he has the knowledge and duty to disclose, for example, supressio veri.
5) There must be a false promise, for example, a promise made without any intention to perform.
6) Any other act or omission which the law considers it to be fraudulent or fitted to deceive which is done with the obvious intention to commit fraud.
7) The party so induced must have acted upon it and suffered loss

Source: https://www.citeman.com/7597-effects-of-undue-influence.html

UNIT-II


UNIT – II

Performance of Contract – Conditions of valid offer to perform. Assignment of contract. Modes of Discharge of Contract – Remedies for Breach of Contract. Types of damages.

What is Performance of Contract?

The term '**Performance of contract**' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, ***A*** visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and ***A*** pays the price. The contract is said to have been **discharged by mutual performance**.

Section 27 of Indian contract Act says that

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.

Promises bind the representatives of the promisor in case of the death of the latter before performance, unless a contrary intention appears in the contract.

Thus, it is the primary duty of each contracting party to **either perform or offer to perform its promise**. For performance to be effective, the courts expect it to be exact and complete, i.e., the same must match the contractual obligations. However, where under the provisions of the Contract Act or any other law, the performance can be dispensed with or excused, a party is absolved from such a responsibility.

Example

A promises to deliver goods to ***B*** on a certain day on payment of Rs 1,000. ***A*** expires before the contracted date. ***A***'s representatives are bound to deliver the goods to ***B***, and ***B*** is bound to pay Rs 1,000 to ***A***'s representatives.

Types of Performance

Performance, as an action of the performing may be actual or attempted.

Actual Performance

When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

Substantial Performance

This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is

deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

Partial Performance

This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

Partial performance must be accepted by the other party. In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.

Payment is made on a different basis from that for substantial performance. It is made on quantum *meruit*, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.

Attempted Performance

When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for.breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

Source: https://accountlearning.com/performance-of-contract-meaning-types-of-performance/)

Conditions Of A Valid Offer To Perform

1. Unconditional
2. Proper time
3. Proper place
4. Opportunity to examine
5. For the whole obligation
6. To the proper person
7. Payment in Legal tender money.

Assignment of Contracts

Assignment of contract means the 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.

It is effected under Transfer of Property Act, 1882. It requires a written document duly signed. defective title of the instrument affects the assignee. Negotiable instruments are also actionable claims, and hence can be assigned.

Meaning of assignment of contract -

The expression assignment literally means 'transfer'. According to Section 130 of the Transfer of Property Act, every actionable claim can be transferred by means of a separate instrument in writing duly stamped and signed by the transferor. It may take place by Act of the parties and By operation of law.

a) **Act of the parties** - This is subject to the following rules

(1) Contracts involving personal skill or ability or other personal qualifications cannot be assigned.
(2) A promisor cannot assign his liabilities or obligations under a contract.
(3) The rights and benefits under a contract may be assigned if the obligation under the contract is not of a personal nature.
(4) An actionable claim can always be assigned but the assignment to be complete and effectual must be effected by an instrument in writing. Notice of such assignment must also be given to the debtor.

b) By operation of law -

This takes place in the following two cases:

Death - Upon the death of the Party to a contract his rights and liabilities under the contract (except in the case of contracts requiring personal skill or services) devolve upon his heirs and legal representatives.

Insolvency - In case of a person, his rights and liabilities incurred previous to adjudication pass to the Official Receiver or Assignee, as the case may be.

(Source: https://www.srdlawnotes.com/2017/12/assignment-of-contract-law-of-contracts.html)

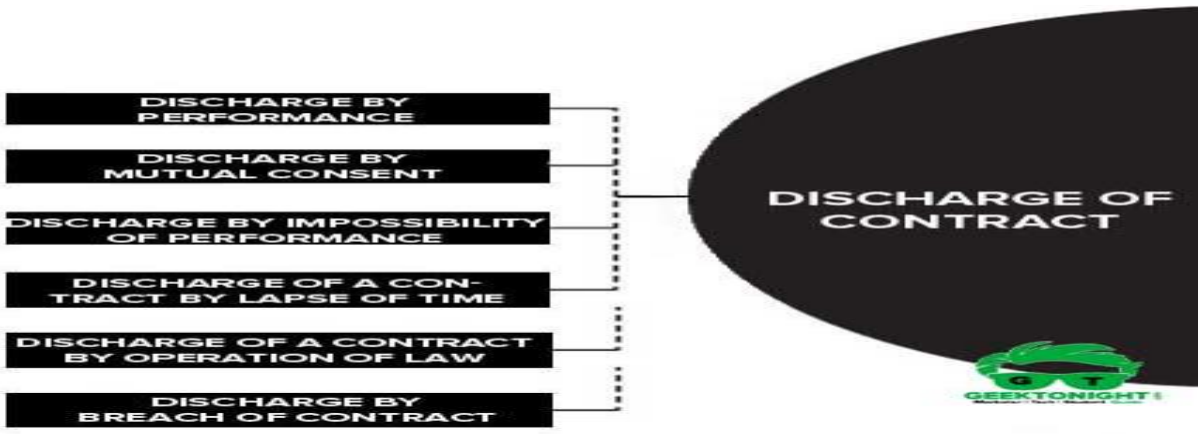
Discharge of Contract Meaning

Discharge of a contract means termination of contractual relation between the parties to a contract.

Modes of Discharge of Contract

The contract may be discharged in the following six **modes of discharge of contract** discussed as follows:

1. Discharge by performance
2. Discharge by mutual consent or agreement
3. Discharge by impossibility of performance
4. Discharge of a contract by lapse of time
5. Discharge of a contract by operation of law
6. Discharge by breach of contract



Modes of Discharge of Contract

Discharge by performance

Performance of a contract is the principal and most usual mode of discharge of a contract. Performance may be:

- **Actual performance:** It means the parties to a contract have performed their respective promises under the contract.

- **Attempted performance or a tender**: It means the promisor has made an

Discharge by mutual consent or agreement

A contract can be discharged by mutual agreement in any of the following ways.

1. **Novation**: The term novation implies the substitution of a new contract for the original one.
   Example: A owed Rs 100 to B, under contract. B owned Rs 100 to C. It was agreed among A, B and C that A would pay Rs 100 to C.
2. **Alteration**: It refers to a change in one or more of the terms of a contract with the consent of all the contracting parties.
   Example: A agreed with B to supply 100 TV sets at a certain price by the end of October. Subsequently, 'A' and 'B' mutually agree that the supply can be made by the end of November. This is an alteration in the terms of the contract by consent of both the parties.
3. **Remission**: Remission means the acceptance (by the promisee) of a lesser sum than what was contracted for, or a lesser fulfilment of the promise made.
   Example: A owes B Rs 5,000. A pays Rs 2,000 to B and B accepts the amount in satisfaction of the whole debt. The whole debt is discharged.
4. **Merger**: The conversion of the inferior right into the superior right is called a merger. It is also called as the vesting of rights and liabilities in the same person.
   Example: A person holds property under lease, purchases the property. On purchase, his lease agreement is discharged.

Discharge by impossibility of performance

Sometimes after a contract has been established, something might occur, though not at the fault of either party, which can render the contract impossible to perform, or illegal, or radically different from that originally undertaken, which leads to discharge of contract.

The impossibility of performance may be of two:

- **Initial impossibility or Pre-contractual impossibility**: It means impossibility exists at the time of making a contract.
  The initial impossibility may be:
  (i) Known or
  (ii) unknown to the parties at the time of making the agreement.
- **Supervening impossibility or Post-contractual impossibility:** The contract becomes void on account of the subsequent impossibility only if the following conditions are satisfied:
  1. The act should have become **impossible after the formation** of the contract.
  2. The impossibility should have been caused by a reason of some event which was **beyond the control of the promissory**.
  3. The impossibility must **not be the result of some act or negligence of the promisor himself.**

Discharge of a contract by lapse of time

Every contract and promise under the contract should be **performed within a time limit**. The contract is discharged if it is not performed or enforced within a specified period called the **period of limitation**.

Example: The period of limitation for recovering the debt is 3 years and 12 years for the recovery of immovable property.

Discharge of a contract by operation of law

In the following circumstances, the discharge of contract by the operation of law.

- Unauthorized material alteration of a written document: A party can treat a contract discharged (i.e., from his side) if the other party alters a term (such as quantity or price) of the contract without seeking the consent of the former.

- Death: The contract that requires personal skill is discharged on the death of the promisors. However, any benefit received before the performance shall be returned by the legal representative of the deceased party.

- Merger: The conversion of the inferior right into the superior right is called a merger. It is also called as the vesting of rights and liabilities in the same person.

- Insolvency: The insolvent is discharged from all the liabilities on all the contracts, entered into, up to the date of insolvency.

Discharge by breach of contract

Breach occurs where one party to a contract fails to perform its contractual obligations, or the performance is defective, which leads to a discharge of contract.

A Breach may be anticipatory or actual.

Anticipatory: is also known as 'breach by repudiation'. Where a person repudiates a contract before the stipulated due date.
For instance, A, after agreeing to sell his car to B on a fixed date, sells it to C. This is an anticipatory breach.

Actual breach refers to the failure to perform contractual obligations when performance is due.

(Source: https://www.geektonight.com/discharge-of-contract/)

Remedies for Breach of Contract

When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party. Let us take a look.

1] Recession of Contract

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

2] Sue for Damages

Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- Liquidated Damages: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

3] Sue for Specific Performance

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

For example, A decided to buy a parcel of land from B. B then refuses to sell. The courts can order B to perform his duties under the contract and sell the land to A.

4] Injunction

An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act.

So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

5] Quantum Meruit

Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

Types of Damages

Sections 73-75 of the Indian Contract Act, 1872, define remedy by way of damages as the entitlement of the suffering party to recover compensation for losses suffered due to non-performance of the contract. The damages can be of the following types:

1] Ordinary damages

On the breach of a contract, the suffering party may incur some damages arising naturally, in the usual course of events. Even if the suffering party knew about the likely damages if the contract was breached, he can claim compensation for such losses.

Peter agrees to sell and deliver 10 bags of potatoes to John for Rs 5,000 after two months. On the date of delivery, the price of potatoes increases and Peter refuses to perform his promise. John purchases 10 bags of potatoes for Rs 5,500. He can receive Rs 500 from Peter as ordinary damages arising directly from the breach.

2] Special Damages

A party to a contract might receive a notice of special circumstances affecting the contract. In such cases, if he breaches the contract, then he is liable for the ordinary damages plus the special damages.

Peter hired the services of John, a goods transporter, to deliver a machine to his factory urgently. He also informed John that his business has stopped for want of the machine. However, John delayed the delivery of the machine by an unreasonable amount of time. Peter missed out on a huge order since he didn't have the machine with him.

In this case, Peter can claim compensation from John. The compensation amount will include the amount of profit he could have made by running his factory during the period of delay. However, he cannot claim the profits that he would have made if he got the contract since John was not made aware of the same.

3] Vindictive or Exemplary Damages

There are two scenarios for awarding vindictive or exemplary damages:

- Breach of a promise to marry because it causes injury to his/her feelings
- Wrongful dishonour of cheque by a banker because it causes loss of reputation and credibility.

In case of a wrongful dishonour of cheque from a businessman, the compensation will include exemplary damages even if he has not suffered any financial loss. However, a non-trader is not awarded heavy compensation unless the damages are alleged and proved as special damages.

Example: Peter is a farmer. He issues a cheque for procuring seeds for his next crop. He has sufficient funds in his account but the bank erroneously dishonours the cheque. Peter files a suit claiming compensation for damages to his reputation. The Court awards a nominal amount as damages since Peter is not a trader.

4] Nominal Damages

If a party to a contract files a suit for losses but proves that while there has been a breach of contract, he has not suffered any real losses, then compensation for nominal damages is awarded. This is done to establish the right to a decree for a breach of contract. Also, the amount can be as low as Re 1.

5] Damages for Deterioration caused by Delay

In cases where goods are being transported by a carrier and he delays the delivery of goods causing them to deteriorate, the affected party can file a suit for damages for deterioration by the delay. Deterioration can mean physical damage to the goods and/or loss of a special opportunity for sale.

6] Pre-fixed damages

During the formation of a contract, the parties might stipulate payment of a certain amount as compensation upon the breach of the contract. This amount can be a reasonable estimate of the likely loss in case of a breach or a penalty.

Under Section 74 of the Indian Contract Act, 1872, it is specified that if an amount is mentioned in a contract as the sum to be paid in case of a breach, then the suffering party is entitled to reasonable compensation, not exceeding the amount specified.

(Source: https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-ii/suit-for-damages/)

UNIT-III

Agent and Principal definition, Creation of agency, Classification of agent, Duties of an agent. Sub agent and substituted agent definitions. Modes of Termination of Agency.

An **agent**, in legal terminology, is a person who has been legally empowered to act on behalf of another person or an entity. An **agent** may be employed to represent a client in negotiations and other dealings with third parties. ... The person represented by the **agent** in these scenarios is called the principal.

Creation of Agency

Agency system is very popular in the current business scenario. There are two parties in the agency system one is the principal and another the agent. An agent is a person acting on behalf of his principal. It's a connecting link between the principal and the third party. Herein we will discuss the creation of agency under the Indian Contract Act, 1872.

Creation of Agency

A contract of agency may be express or implied. Consideration is not an essential element in the agency contract. Agency contract may also arise by estoppel, necessity or ratification.

Types of an Agency Contract

1. Express Agency

A contract of agency can be made orally or in writing. Example of a written contract of agency is the Power of Attorney that gives a right to an agency to act on behalf of his principal in accordance with the terms and conditions therein.

A power of attorney can be general or giving many powers to the agent or some special powers, giving authority to the agent for transacting a single act.

2. Implied Agency

Implied agency arises when there is any conduct, the situation of parties or is necessary for the case.

a. Agency by Estoppel (Section 237)

Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact.

Thus, where P allows third parties to believe that A is acting as his authorized agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with an even when A had no authority at all.

b. Wife as Agent

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that:

(i) he had expressly warned the tradesman not to supply goods on credit to his wife; or

(ii) he had expressly forbidden the wife to use his credit; or

(iii) he already sufficiently supplies his wife with the articles in question; or

(iv) he supplies his wife with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each other's agents for making contracts in the ordinary course of the partnership business.

c. Agency of Necessity (Sections 188 and 189):

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

For example, a sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of A.

A wife deserted by her husband and thus forced to live separate from him can pledge her husband's credit to buy all necessaries of life according to the position of the husband even against his wishes.

d. Agency by Ratification (Sections 169-200):

Where a person not having any authority act as agent, or act beyond its authority, then the principal is not bound by the contract with the agent in respect of such authority. But the principal can ratify the agent's transaction and accept liability. In this way, an agency by ratification arises.

This is ex post facto agency— agency arising after the event. By this ratification, the contract is binding on principal as if the agent had been authorized before. Ratification will have an effect on the original contract and so the agency will have effect from the original contract and not on ratification.

(Source: https://www.toppr.com/guides/business-laws-cs/indian-contract-act-1872/creation-of-agency/)

- **Agent's Duties**:
  - Performance: must use reasonable diligence & skill in performing work required
  - Notification: must notify principal of all matters concerning subject matter of agency
  - Loyalty: actions must be strictly for the benefit of the principal, not in the interest of the agent or a third party
  - Obedience: must follow lawful & clearly stated instructions of the principal
  - Accounting: must maintain separate accounts for the principal's funds & for the agent's funds, no intermingling is permitted
- **Principal's Duties**:
  - Compensation: must pay the agent for services rendered, & do so in a timely manner

- Reimbursement & indemnification: must reimburse agent that disburses money at principal's request. Must compensate (indemnify) agent for any costs incurred as a result of principal's failure to perform the contract
- Cooperation: must cooperate with & assist an agent in performing his duties
- Provide safe working conditions
- Agent's Rights & Remedies: has a corresponding right for every duty of the principal.
- Normal contract & tort remedies

Subagent and substituted agent Definition

No	Sub-Agent	Substituted-Agent
1	**Definition :** According to Section 191 of the Indian Contract Act, 1872 - A "sub-agent" is a person employed by, and acting undue the control of, the original agent in the business of the agency.	**Definition :** A Substituted agent is a person who is named by the Agent for performing such part of the business of the agency as is entrusted to him.
2	Sub-Agent works under the control of the Agent. He is the agent of the Principle.	Substituted Agent works under the control of the Principle and he is an agent of the agent.
3	Sub-Agent is responsible to the Agent.	Substituted Agent is responsible to the principal
4	The Agent is responsible for the acts of the sub-agent.	The agent is not responsible for the acts of the substituted-agent
5	There is no Privity of contract between the Principle and sub-agent.	There is privity of Contract between the Principal and substituted-agent.

Termination of Agency -

As above said termination of agency means putting end to the legal relationship between principal and agent. Section 201 to 210 of the Indian Contract Act 1872 lay down the provision relating to the termination of Agency.

Section 201, Indian Contract Act 1872 provides for termination of an agency -

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent

debtors.

Agency may be terminated two ways -

1) By the Act of the Parties -

2) By Operation of Law -

1) By the act of the parties -

i) By agreement - The Contract of Agency can be terminated at any time by mutual agreement between the principal and agent
ii) By revocation of the principal - The Principal revoke agency at any time by giving notice to the agent
iii) By Renunciation of an agent - Renunciation which means withdrawing from responsibility as Agent. Like Principal, Agent can also renounce the agency. According to Section 206 of the Indian Contract Act 1872, the agent must give to his Principal reasonable notice of renunciation. Otherwise, he will be liable to make good for the damage caused to the principal for want of such notice.

2) By operation of law -
Agency can be terminated by operation of law
i) By the completion of agency - Agency can become to an end after the completion of work for which the agency is created.
ii) By expiry of the time - Agency can also be terminated by the expiry of time. if the agency is created for the specific period, it is terminated after the expiry of the time.
iii) Death or insanity of principal or agent - Section 209 of the Indian Contract Act 1872 imposes an agent, duty to terminate the contract of agency on the death of the principal. In other words, Agency comes to an end on the death or insanity of the principal or agent.
iv) Insolvency of principal - According to Section 201 of the Indian Contract Act 1872, an insolvent or bankrupt is a person who is unable to run the business due to Excess of liabilities over assets. In this way, if the principal becomes an insolvent agency can be terminated.
v) Destruction of the subject matter - If this subject matter of the agency is destroyed agency comes to an end.
For example - Any agency is created for sale of an Airplane if the Airplane caught fire before the sale the agency comes to an end. In this contract Airplane is the subject matter.
vi) Principal becoming an alien enemy - If the Principal becomes an alien enemy the contract of agency comes to an end.
vii) Dissolution of company or firm - A Firm or company may be regarded as a Principal in the contract of Agency. If the company or firm is dissolved the agency comes to an end.
(Source: https://www.srdlawnotes.com/2018/06/termination-of-agency-contract-of-agency.html)

Questions

1. Define contract.
2. What is an agreement?
3. Define offer.
4. Explain the classification of contract.
5. Write the types of offer.
6. State the legal rules regarding consideration.
7. Define coercion.
8. What is attempted performance?
9. Discuss the modes of discharge of contract.
10. Elaborate on the remedies for breach of contract.
11. What do you mean by agency by ratification?
12. Explain about sub agent and substitute agent.
13. Describe about termination of agency.