General Principles of Contracts

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An Agreement, *Sec 2(h)* of ICA enforceable at law is a Contract.

Agreement*- 'Every promise & every set of promises forming the consideration of each other'. *[sec 2(b)]

What Agreements are contracts?

Every Contract is an Agreement.
But not all agreements become contracts.

For an agreement to become a contract, the following conditions must be satisfied.

a) There is some consideration for it.

b) The parties are competent to consent.

c) Their consent is free.

d) Their object is lawful.

e) Parties intend entering into legally binding obligations.

Proposal Or An Offer :-

When one person signifies to another his willingness to do or abstain from doing anything, With a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal.

Sec 3 of the ICA: Communication, Acceptance and Revocation of Proposals:-

The communication of Proposal, Acceptance of Proposal, Revocation of Proposal, are respectively deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Sec 4:- Communication when complete:-

The communication of a proposal is complete when it comes to the knowledge of the person to whom is made. So as to be out of the power of the acceptor;
as against the acceptor, when it comes to the knowledge of the proposer.

The communication of an acceptance is complete -

As against the proposer, when it is put in a course of transmission to him.

The communication of a revocation is complete,

- As against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; As against the person to whom it is made, when it comes to his knowledge.

Illustrations:

- a) A Proposes, by letter to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.
- b) B accepts A's proposal by a letter sent by post .
  The communication of the acceptance is complete,-
  As against A, when the letter is posted;
  As against B, when the letter is received by A.

A revokes his proposal by Telegram.

The revocation is complete as against A, when the telegram is dispatched. It is complete as against B, when B receives it. B revokes his acceptance by telegram. B's revocation is complete as against A, when it reaches him.

General Offers:-

Can be to unascertained person, who merely accepts the offer by performing the conditions, no matter he did not actually communicate it.

Acceptance:- [***Sec 2(h)*** of the ICA]

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,-

Acceptance must be absolute.*(sec 7)*

In order to convert a proposal into a promise, the acceptance must be absolute & unqualified.

Therefore, acceptance with a condition, is only a counter offer, and does not make the first offer, a promise.

When a counter proposal is accepted, a contract arises in terms of the counter proposal and not in terms of the original proposal.

<u>Standing Offer Or Tenders</u> :-

A Tender is in the same category as quotation of prices. When a Tender is approved, it is converted into a standing offer.

A contract arises only when an order is placed pursuant to a Tender.

Lapse Of Offer:-

Acceptance should be made before the offer lapses.

But,

'an acceptance to an offer, is like lightened match stick to a train of gun power'-Anson.

Consideration:-

[Sec 2 (d) of the ICA]
When at the desire of the promisor,the promisee or any other person has done or abstained from doing, or promises to do or to abstain from doing something such act or abstinence, or promise is called "*Consideration*".

Privity Of Contract/privity Of Consideration :-

Contract without consideration is void. Exception to the rule of absence of consideration.

1) Past services rendered.
2) Past consideration.
3) Gifts out of love & affection.
4) Contract of Surety.

Agreement without consideration is void, unless it is in writing and registered or is a promise to compensate for something done, or is a promise to pay a debt barred by Limitation Law (Sec.25)

An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent to the promise was freely given.

Illustrations

1) A promises for the consideration , to give to B Rs.1,000/-.This is a void agreement.
2) A, for natural & affection promises to give his son B, Rs.1,000/- .A puts his promise to B into writing & registers it. This is a contract.
3) A finds B's purse and gives it to him. B promises to give A Rs.50/-. This is a contract.
4) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
5) A owes Rs.1,000/- but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs.500/- on account of the debt. This is a contract.
6) A agrees to sell a horse worth Rs.1,000/- for Rs.10/-.A's consent to the agreement was freely given.
7) A agrees to sell a horse worth Rs.1,000/- for Rs.10/-.A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact, which the Court should take into account in considering whether or not A's consent was freely given.

Capacity to Contract:

Persons having incapacity:-

a) Minors
b) Lunatics
c) Undischarged insolvent.

All the other persons have capacity to contract until the contrary is proved (Sec.11)

“*Free Consent*” (Sec.14)

Consent is said to be free when it is not caused by:

1) Coercion, as defined in *Sec 15*, or

2) Undue influence, as defined in *Sec 16* , or

3) Fraud, as defined in *Sec 17* , or

4) Misrepresentation, as defined in *Sec 18* , or

5) Mistake, subject to the provisions of *sections 20-22*.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

DISCHARGE OF CONTRACTS:-

A contract may be discharged in the following ways:-

1) By performance of the contract ***(Sec 37 - 67)***
2) BY impossibility of performance ***(Sec 56)***
3) By Agreement ***(Sec 62-67)***
4) Breach ***(Sec 39)***

<u>**TIME FOR PERFORMANCE**</u>**:-**

Sometimes the parties of a Contract specify the time for its performance. Ordinarily it is expected that either party will perform his obligations within the stipulated time. But if one of them fails to do so, the question arises what is the effect upon the contract.
Sec 55 **provides the answer.**

When a party to a contract promises to do a certain thing at or before a specified time, but fails to do such thing at or before the specified time, the contract, or such of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties, was that, time should be the essence of the Contract. ***(Sec. 55)***

If it was not the intention of the parties that time should be of essence of the contract, the contract does not become, voidable, by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Measure Of Damages:-

1) Damages are compensatory and not penal under Law of Contract.

2) Normally in a contract, damages for mental pain & suffering are not allowed in a claim based on contracts.

3) Duty of mitigation of damages.

Duty To Mitigate (*Sec 73*)

In estimating loss or damage arising from a Breach of Contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

Thus, the injured party has to take reasonable steps to see that his loss is kept to the minimum. The most frequent application of this rule takes place in contracts for sale or purchase of goods. On the buyer’s refusal to take delivery, the seller should re-sell the goods at the prevailing market price and he may then recover the enhanced loss.

<u>Liquidated Damages And Penalty</u>:- *Sec. 74*

When a contract has been broken, if a sum is named in the contract as the amount to be paid in such case of breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated..

Explanation 1:-

A stipulation for increased interest from the date of default maybe be stipulation by way of penalty.

Explanation 2 :- When any person enters into any bail bond, recognizance or the other instrument of the same nature or, under the provisions of the law, or, under the orders of the Central Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation 3 :- A person who enters into a contract with the Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

<u>Illustrations</u> : –

1) A gives a bond for repayment of Rs.1,000/- with interest at 12% at the end of 6 months with a stipulation that, in case of default, interest shall be payable at the rate of 75% from the date of default. this is a stipulation by way of penalty, and B is only to recover from A such compensation as the court considers reasonable.

2) A who owes money to B, a moneylender undertakes to pay him money by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

3) A undertakes to repay B a loan of Rs.1,000/- by five equal monthly installments, with a stipulation that, in default of any installment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

4) A borrows Rs.100/- from B and gives him a bond of Rs.200/- payable by yearly installments Rs.40/- with a stipulation that, in default of payment of any installment, the whole shall become due. This is a stipulation by way of penalty.

Quasi Contracts Or Certain Relations Resembling A Contractual Obligation:- ***[Sec 68]*** : –

1) Supply of necessaries where necessaries are supplied to a person who is incompetent to contract or someone whom he is legally bound to support, the supplier is entitled to recover the price from the property of the incompetent person.

2) Payment by a interested person *[Sec 69]* :-

Reimbursement by a person paying money due by another, in payment of which he is interested.

- A person who is interested in the payment of money which another is bound by law to pay, and who there pays it, is entitled to be reimbursed by the other.

Illustration:-

B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears, his land advertised for sale by the Government. Under the revenue law, the consequences of such sale will be annulment of B's lease. B, to prevent the sale and consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

3) Liability to pay for Non-Gratuities Acts *(Sec. 70):-*

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of , or to restore, the thing so done or delivered.

Illustration:-

1] A, a tradesman, leaves goods to B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

2] A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

4) Finder of LOST Goods *(Sec. 71)*

A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as a bailee.

5) Mistake or Coercion (Sec. 72):-

A person to whom money had been paid, or anything delivered by mistake or under coercion, must repay or return it.

Illustration:-

1] A and B jointly owe 100 Rupees to C. A alone pays the amount to C and B, not knowing this fact, pays 100 Rupees over again to C. C is bound to repay the amount to B.

2] A railway company refused to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

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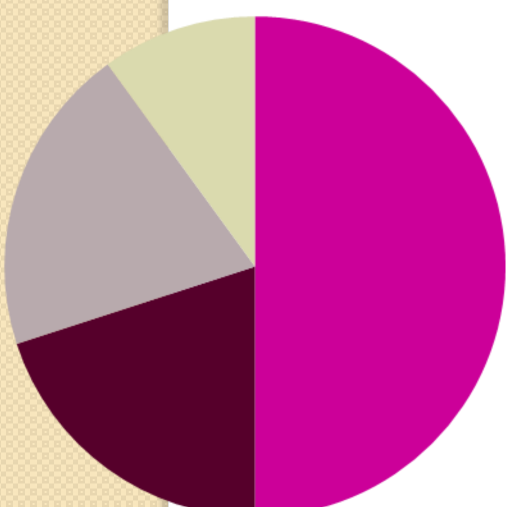

ANY QUESTIONS?

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