CONTRACTS – BASIC PRINCIPLES

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CONTRACTS ACT – BASIC PRINCIPLES

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:-

Weeks V Tybald(1605) offer must be to an ascertained person.

Carlill Vcarbolic Smoke Ball & Co. (1983)

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

Standard Form Contracts:-
(Take it or Leave Contracts)

Protection to the Consumer:

a) Reasonable notice.
b) Notice of unusual terms.
c) Notice to the Contempareness with the contract.
d) Theory of Fundamental Breach.
e) Strict construction of the contract.
f) Liability in Tort.
g) Unreasonable terms.
h) The (English) Unfair contract Terms Act 1977.

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

When the person to whom the proposal is made, signifies his as 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.

Standing Offer Or Tenders :-

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

A contract arises only when an order is placed in pursuant of 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 it 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.

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.

<u>**Free Consent**</u> **:-**

Free Consent is an essential requirement of a valid contract.

The expression "*Free Consent*" is defined in *Sec 14*:-

"Free Consent" **defined:- 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 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)*

TIME FOR PERFORMANCE:-

Sometimes the parties of a Contract specify the time for its performance. Ordinarily it is expected that either party will perform his obligations at 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.**

(Section 55):-

Effect of a failure to perform at fixed time, a contract in which time is essential,-when a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times and fails to do any such things 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.

Effect of such failure when time is not essential:- If it was not the intention of the parties that the 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:

The explanation attached to ***Sec 73*** provides for the duty to mitigate damages. **It says:-**

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.

Liquidated Damages And Penalty:-

Section 74 of the ICA:-

Compensation for breach of contract where penalty is stipulated for :- 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 for.

Quasi Contracts Or Certain Relations Resembling A Contractual Obligation:-

1) Supply of necessaries ***[sec 68]***:-

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 *[section 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 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 *(Section 70):-*

Obligation of person enjoying benefit of Non-Gratuities Act:-

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.

5) Mistake or Coercion (Section 72):- Liability of person to whom money is paid, or thing delivered, by mistake or under coercion:- A person to whom money had been paid, or anything delivered by mistake 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.

Sale Of Goods

SALE: (*Sec 4:-)*

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.

Condition and Warranties:

(SECTION.12(1):-

A stipulation in a Contract of Sale with reference to the goods may be either CONDITION or a WARRANTY.

Section.12(2):

A Condition is a stipulation essential to the main purpose of the contract, the breach of which gives the other party, the right to treat the Contract as repudiated.

Section.12(3):-

A Warranty is a stipulation collateral to the main purpose of the Contract, the breach of which gives rise to a claim for damages, but not to reject the goods and treat the Contract as repudiated.