



NALSAR UNIVERSITY OF LAW
HYDERABAD



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Aviation Contracts and Tenders

Fundamentals of Law of Contracts

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by

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Some Questions For Us Before We Start!

- ☐ **WHAT?** Does it speak?
- ☐ **WHY?** It's Importance!
- ☐ **HOW?** Is it Oral or Written or any Legal Formalities
- ☐ **WHEN?** It speaks of Time!
- ☐ **WHERE?** It speaks of Place!

1. FUNDAMENTALS OF LAW OF CONTRACTS

- ❑ Introduction
- ❑ Essentials of a Contract Law
- ❑ Agreement and Contract Meaning
- ❑ Legal Obligation (Balfour v Balfour Case)
- ❑ Agreements which are not Contracts

ESSENTIAL ELEMENTS OF A VALID CONTRACT: AN OVERVIEW

- Offer and Acceptance
- Intention to create legal relations
- Consensus ad idem
- Competency of Parties
- Lawful Consideration
- Free Consent
- Lawful Object
- Written and Registered
- Certainty
- Possibility of Performance

KINDS OF CONTRACTS

❖ **Based on Validity**

- Void Agreement
- Valid Contract
- Void Contract
- Voidable Contract
- Unenforceable Contract

❖ **Based on Formation**

- Express Contracts
- Implied Contracts
- Quasi Contracts

❖ **Based on Performance**

- Executed Contract
- Executory Contract

OFFER

❑ Definition

❑ Rules:

- Offer must be capable of creating legal relationship
- The terms of the offer must be definite and certain
- The offer must be communicated
- The offer may be conditional
- The offer may be general or specific
- Offer must be made with a view to obtaining assent
- Offer must not thrust the burden of acceptance

❑ Exceptions

- Mere declaration of intention; Invitation; Counter-Offer; Auction Sales

■ **Lapse of an Offer**

- By Notice
- By Lapse of time (if time stipulated or time not stipulated)
- By failure to fulfill a condition precedent
- By Death or Insanity
- By Counter-offer
- By Rejection

❖ **Standing Offer**

❖ **Standard Form of Contracts**

ACCEPTANCE

❑ Definition

❑ Rules

- It must be absolute and unconditional
- Note: No acceptance if the acceptance is 'subject to approval of terms of contract', 'subject to a formal contract being prepared and signed by both parties as approved by the solicitors', or simply 'subject to contract'
- It must be expressed in some usual manner
- It must be by the party named in the offer
- An acceptance must be communicated to the offeror

❑ **Exceptions:**

(no communication but can be inferred from circumstances)

❑ **Express Conduct**

- ❑ - By performance of conditions
- ❑ - By acceptance of conditions
- ❑ - By accepting a benefit or service

❑ **Implied Conduct**

- - Acceptance of an offer by conduct
- - Acceptance communicated to an Agent
- - Waiver of the communication of acceptance
- - Acceptance by Post
 - Acceptance must be within a reasonable time
 - Acceptance cannot be in ignorance of the offer

■ **Effect of Silence of Acceptance**

CONSIDERATION

- ❑ Meaning
- ❑ Definition-Section 2 (d)
- ❑ **Rules:**
 - ❑ It must move at the desire of the promisor.
 - ❑ It may move from the promisee or any other person
 - ❑ It may be past, present, or future
 - ❑ It need not be adequate
 - ❑ It must be real and not illusory

■ **Instances of consideration not real**

- Physical Impossibility
- Legal Impossibility
- Illusory or Sham consideration

■ **Instances of Good Consideration**

- Forbearance to sue
- Compromise of disputed claims
- Composition with creditors

- **Privity of Contract**

- Meaning

- **Exceptions:**

- Beneficiaries in the case of a trust
- Marriage Settlement, Partition or other Family Arrangements
- Acknowledgment or Estoppel
- Contracts entered into through an Agent

- **Rule:** No Consideration, No Contract

- **Exceptions:**

- Natural love and affection
- Compensation for voluntary services
- Legally compellable duty
- Promise to pay a time barred debt
- Agency
- Completed Gift

CAPACITY TO CONTRACT

□ **Rule:**

- Sound Mind; Majority Age

□ **Exceptions:**

- Minor
- Unsound Mind [Lunatic, Idiot]
- Intoxicated
- Disqualified by Law
- Black Listed Companies
- Alien Enemy

□ **The law regarding Minor's Agreement:**

- i) Minor's Agreement is void ab initio
- ii) A Minor can be a Promisee or a Beneficiary
- iii) No Ratification
- iv) Claim for Necessaries
- v) Restitution
- vi) No Specific Performance
- vii) No Insolvency
- viii) Minor as a Partner
- ix) Minor as an Agent
- x) Minor's Liability in Tort (Civil Wrong)

FREE CONSENT

- **Section 10:** All agreements are contracts if they are made by free consent of the parties.

- **Section 13:** Defines the meaning of the term 'Consent'
"Two or more persons are said to consent when they agree upon the same thing in the same sense"

□ **Section 14:** Stipulates under what circumstances consent is 'Free'.

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

- i) Coercion (Sec. 15)
- ii) Undue Influence (Sec. 16)
- iii) Fraud (Sec. 17)
- iv) Misrepresentation (Sec. 18)
- v) Mistake subject to provisions of Ss. 20, 21, 22.

❖ **COERCION**

□ **Rules:**

- By committing of any act forbidden by IPC
- By threatening to commit any act forbidden by IPC
- By threatening to detain any property
- It is immaterial whether IPC is or is not in force in the place the coercion is employed

❖ **UNDUE INFLUENCE**

❑ **Rules:**

- ❑ Relationship must subsist
- ❑ Dominates over the will of the other
- ❑ Obtains an unfair advantage over the other

❖ **FRAUD**

❑ **Rules:**

- There must be a representation or assertion and it must be a false
- There must be active concealment of fact
- A promise made without any intention of performing it
- Any other act fitted to deceive
- Any such act or omission as the law specifically declares to be fraudulently
- The other party must suffer loss

□ **Can Silence be a Fraud?**

□ **General Rule:** Mere Silence is no Fraud

□ **Exceptions:**

□ Where the circumstances of the case are such that regard being had to them, it is the duty of the person to keep silence to speak.

□ Where the silence is, in itself, equivalent to speech.

■ Where silence is deceptive (is steel of good quality or not?)

■ Half-truths

❖ **MISREPRESENTATION**

□ **Rules:**

- Unwarranted Assertion
- Breach of Duty
- Innocent Mistake

❖ **MISTAKE**

❑ **Rules:**

- ❑ Mistake of Law
- ❑ Mistake of Fact
- ❑ Bilateral Mistake
- ❑ Unilateral Mistake

LEGALITY OF OBJECT AND CONSIDERATION

- ❑ **Rule:** The Object and Consideration must be lawful
- ❑ **Exceptions:**
 - 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
 - If the Court regards it as immoral or opposed to public policy

VOID AGREEMENTS

□ **Agreements Void ad Initio**

- Agreements by a minor or a lunatic (Sec. 11)
- Agreements void where both parties are under mistake (20)
- Agreements, the consideration or object of which is unlawful (23)
- Agreement, the consideration or object of which is unlawful in part (24)
- Agreement made without consideration (25)

□ **Agreements declared to be void**

- Agreement in restraint of marriage (26)
- Agreements in restraint of trade (27)
- Agreements in restraint of legal proceedings (28)
- Agreements, the meaning of which is not certain (29)
- Agreements by way of Wager (30)
- Agreements to do an act impossible in itself (56(1))
- Agreements whose objects or considerations are unlawful in part (24, 57, 58)

CONTINGENT CONTRACTS

□ **Essentials:**

- Event in future
- Event uncertain
- Event Collateral

□ **Rules:**

- The happening of a future uncertain event
- The non-happening of an uncertain future event
- The happening of an event within a fixed time
- The non-happening of an event within a fixed time
- When the event deemed impossible
- Impossible event

PERFORMANCE OF CONTRACT

❑ **By whom contracts must be performed**

- Personal performance
- Performance by representatives
- Performance by third persons
- Death of the Promisor

❑ **When contracts need not be performed**

- Novation
- Alteration
- Rescission
- Remission
- Waiver
- Voidable Contract Negligence or refusal

DISCHARGE OF CONTRACT

❑ Modes of Discharge

- By Performance
- By mutual consent or agreement (novation, alteration, rescission, remission, waiver, merger)
- By subsequent impossibility
- Impossibility existing at the time of formation of contract
- Discharge by subsequent impossibility(or Doctrine of Frustration)
- Destruction of subject matter
- Non-existence of a set of things
- Death, Personal incapacity of the promisor
- Chance of Law
- Out break of war

❑ Exceptions to the Doctrine:

- Difficult of performance
- Commercial Impossibility
- Strikes, lock-outs and Civil disturbances

REMEDIES FOR BREACH OF CONTRACT

1. Rescission (party agrees to rescind or breach by one party or under voidable contract)
2. Damages (Liquidated)
3. Quantum Meruit
4. Specific Performance
5. Injunction
6. Rectification and Cancellation

Government Contracts

- ❖ **Procedure**

- Tenders

- ❖ **Execution**

- Art. 299 of the Indian Constitution
- Only in Written Form
- No Implied Contract with the Government

- ❖ **Principles underlying Government Contracts**

- Reasonableness; Fairness
- Public Interest
- Equality, Non-Arbitrariness

- ❖ **Contractual Liability**

- ❖ Judicial Review in Contractual Matters (Balancing Administrative Discretion)

Thanks To One and All!

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