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Business Law For Managers

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Module-4

Lecture 16 : Concept, Elements, Importance and Forms of Contracts,

BUSINESS LAW FOR MANAGERS

Key Note

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Law of contracts in India defines Contract as an agreement enforceable by law which offers personal rights, and imposes personal obligations, which the law protects and enforces against the parties to the agreement. The general law of contract is based on the conception, which the parties have, by an agreement, created legal rights and obligations, which are purely personal in their nature and are only enforceable by action against the party in default.

KEY POINTS

- Introduction
- What is Contract
- Essentials of a Valid Contract
- Privity of Contract
- Classification of Contract

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Law of Contract

Introduction

An agreement is made when a proposal by one party is accepted by another lawful consideration. A contract is made when an agreement becomes enforceable by law. There is no legal obligation as long as it is a mere agreement. Once the agreement becomes a contract, there is a legal obligation by parties involved

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Law of Contract

What is Contract?

An agreement enforceable by law.

In other words… " A promise or set of promises which the law will enforce".

The agreement will create rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, though in some cases the court may order performance by the party in default.

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Law of Contract

What is Contract?

Examples:

Contract = Agreement + Legal Obligation

1. **A agrees to sales a flat to B at a consideration of Rs. 25 lacs.**
2. **A invites B for a party at his place**
3. **A promises his son to give a Bi-cycles on his Birthday.**

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Law of Contract

Essentials of a Valid Contract

- **Consensus-ad-idem: It means identity of minds. There must be two parties to a contract. The minds of both the parties to the contract must be ad-idem.**
- **Legal Relationship: The agreement must create legal relationship between the parties. If there is no intention on the part of parties to create legal relationship, there is no contract.**
- **Lawful Consideration: Consideration means "something in return". In other words, it means "something in exchange for something".**

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Law of Contract

Essentials of a Valid Contract

- Lawful object: The object or the purpose of an agreement must be lawful. It must not be immoral or illegal or oppose to public policy.
- Competent parties: At least two parties are essential for every valid contract.
- Free consent of parties: The consent of the parties to the agreement must be true, full and free.
- Certainty of terms: The terms of the agreement must be precise and certain. They must not be vague or uncertain. If so, the agreement is not enforceable.
- Possibility of performance: The agreement must be capable of being performed. An agreement to do an impossible act cannot be enforced

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Law of Contract

Essentials of a Valid Contract

- Agreement not expressly declared void: The agreement must not have been expressly declared void by any law in force in the country.
- Compliance with the legal formalities: According to the Indian Contract Act, an agreement may be oral or in writing. Where the agreement is to be in writing, it must comply with the necessary legal formalities as to writing, registration and attestation.

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Law of Contract

Elements

- Founded on an agreement
- An offer and acceptance on that offer
- Supported by consideration
- Something bargained for and given in exchange for a promise
- Made by parties having the capacity to contract
- The legal ability to contract

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Law of Contract

Importance of Contracts

- Legally binding.
- Legally enforceable promise or set of promises.
- Between two or more competent parties.
- Law recognizes a duty.
- Law of contracts affects all aspects of daily life.
- Commercial Law Contracts having to do with commerce.
- Common Law Contracts derived from the judgments and decrees of courts.

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Law of Contracts

Classification of Contracts.

- In writing
- Oral- Contract
- Inferred from the Conduct
  - Hiring a Cabs
  - Purchasing an Item from Shop (ENETRING A MALL – SUIT FILED FOR NON PURCHASE)
- Advisable to have written contract. Mandatory written contract is -
  - Application for transfer of share
  - Application for purchase of share
- Memorandum of Association of Company
- Mortgage or sale of immovable property

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Law of Contract

Other forms of Contracts

- Formal vs. Informal Contracts.
- Unilateral vs. Bilateral Contracts.
- Valid, Voidable, Void, and Unenforceable or illegal Contracts.
- Express vs. Implied Contracts.
- Executory vs. Executed Contracts.
- Quasi Contracts vs. Contracts Implied in Fact.

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Law of Contracts

Unilateral Versus Bilateral Contracts.

- Unilateral Contracts is a promise on one side only.
- Bilateral Contracts are promises on both sides.

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Law of Contract

Valid, Voidable, Void, and Unenforceable Contracts.

- If a contract has all the essential of contact then it is a valid contract.
- If any of the essential are missing the contract is either void, voidable, illegal or unenforceable.
- Voidable contract is voidable at the option of the effected parties but within a reasonable time (it can happen when a contract is entered by misrepresentative, fraud, coercion, undue influence).

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Law of Contract

Valid Contract an Agreement is Void *ab initio*, for example

- Contract with a minor is void ab initio,
- Wagering agreement ,
- An agreement to enter into agreement in future,
- Agreement in restraint of trade
- Agreement to engage child labour
- Agreement not to pay bonus to worker
- Agreement not to join competitors

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Law of Contract

Express Vs. Implied Contract

- Express Contracts the parties set forth their intentions specifically and definitely in writing or oral.
- Implied Contracts is inferred from the actions or conduct of the parties.

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Law of Contracts

Executory Vs. Executed Contract

- Executory Contract is when a promise remains unfulfilled by one party.
- Executed Contract is when the parties have fully performed the promise.

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Law of Contracts

Quasi Contracts versus Contracts Implied in Fact

- Quasi Contracts are implied in law.
- Implied in Fact Contracts hold that sufficient evidence exists for a court to determine that the parties were meant to contract with each other.

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Law of Contracts

Offer and Invitation to Offer

- **Example**

  - **Shareholder filling an application is an offer**
  - **Shopping Mall offering items is an invitation to offer**

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- Peel, E., and Treitel, GH. (2011). Treitel on the Law of Contract (13th ed, Sweet & Maxwell)
- Poole, J (2014). Casebook on Contract Law (12th ed, Oxford University Press.
- Stone R and Devenney J. (2014). Text, Cases, and Materials on Contract Law (Third edition, Routledge
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- Peek v Gurney: HL 1873, https://swarb.co.uk
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CONCLUSION

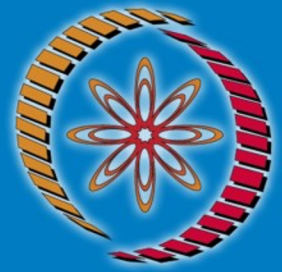
This lecture session has covered various aspects of an agreement or contract including- introduction, what is contract, essentials of a valid contract, privity of contract, classification of contract. Learning all about will help learners generate their knowledge and capacity.

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Module-4

Lecture 17 : Concept of Offer, Valid Offer and Essentials of Valid Offer

BUSINESS LAW FOR MANAGERS

Key Note

In the context of an offer to be valid, generally assumed that it must be clearly communicated, giving the offeree a chance to accept or reject it. Clear communication can include actions, oral communication, or in writing. A valid offer can be made to a group, a single person, or the public at large. Valid offers are definite in their substance. We will learn various aspects of valid offer from this lecture session

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KEY POINTS

- Concept of Offer
- Essentials of Valid Offer
- Elements of a valid offer
- Capacity to Contract
- Free Consent

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Concept of Offer

Introduction

Contracts play an important role in our daily life and living. It may be ranging from insurance policies as well as to employment contracts. In Fact, we enter into contracts even without thinking, and the whole process of contract starts with an offer by one party and acceptance by another party. We may have a brief discussion on the issues relating to offer and acceptance.

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Concept of Offer

Proposal or Offer

According to the Indian Contract Act 1872, proposal or offer is defined in Section 2(a) as "when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."

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Concept of Offer

Essentials of a Valid Offer

- The terms of the offer must be definite, unambiguous and certain or
- Capable of being made certain.

- An offeree must have knowledge of the offer before he can accept it.

- An offer cannot contain a term the non-compliance of which may be assumed to amount to acceptance.- free credit cards first year no fees – second year huge fees

- If a person makes a statement without any intention of creating a binding obligation this does not amount to an offer. A made an advertisement for sale of car in the newspaper , B travelled 50 kms to purchase but it was sold off. No compensation is legally payable.

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Concept of Offer

Essentials of a Valid Offer

- The offer must be made with a view to obtain acceptance thereto.
- The offer must be made with the intention of creating legal relationship.
- The offer must be communicated to the offeree before it can be accepted.
- If no time is fixed by the offeror with in which the offer is to be accepted, the offer does not remain open for an indefinite period. Reasonable time concept. Tenancy agreement , alterations in flat- should not be unreasonably withheld.
- An offer must be distinguished from a mere invitation to offer.

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Concept of Offer

Elements of a Valid Offer

- There must be two parties.
- The offer must be communicated.
- It must create legal relations.
- It must be certain and definite
- It may be specific or general.

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Concept of Offer

Classification of Offer

There are some offers based on the design, timing, purpose, etc. However, it can be classified as follows.

- Express offer means expression by words, spoken or written.
- Implied offer is derived from the actions and circumstances of the parties, e.g., transport company to carry passengers for a certain fare is implied offer.
- General offer is made by public at large
- Specific offer is made to a specific person/groups can be accepted by the same, not by anyone else.

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Concept of Offer

Classification of Offer

- Cross offer is made between two parties means both make the same offer at the exact time to each other.
- Counter offer is an answer given to initial offer that means original offer has been refused and replaced by another.

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Concept of Offer

Lapses and revocation of an Offer

- An offer lapses after a defined or reasonable time.
- An offer lapse by not being accepted in the specified mode
- An offer lapses by rejection.
- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer lapses by revocation before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

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Concept of Offer

Capacity to Contract

- Age of majority
- Sound mind
- Not disqualified from contracting by any law.

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Can a Minor enter into a contract?

- Point to note is that : Minor may be a party to the contract but not bound by that contract, however the minor make other party bound by the contract.
- A minor can be pledgee or mortgagee or payee, can derive the benefit under the contract but he is not bound by that contract.

Concept of Offer

Capacity to Contract

- Can an agreement with a minor be legal and enforceable after he/she attains majority ?
- Is the minor allowed to cheat by falsely stating his/ her age ?
- Can minor be a partner in a partnership farm ?
- Can minor act as an agent ?
- A contract with a minor is void, and a minor, therefore cannot bind himself by a contract. A minor is not competent to contract.

Reference: Mohiri Bibi Vs. Dharmodas Ghosh case.

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Concept of Offer

Capacity to Contract

- Can a person who is drunk enter into a contract ? Definition of drunkard and habitual drunkard . . Test is whether it can be proved that the drunkard was incapable of understanding the contract.
- Permanently Unsound mind - idiot
- What is an alien enemy & what is an alien friend?

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Concept of Offer

Free Consent

A consent is said to be free when it is not caused by:-

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

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Example of Coercion:

- Threatens to kill and threatens to commit suicide

Example of Undue influence :

- Example of matter given under will.

Concept of Offer

Presumption of undue influence in following cases

- Parent & child
- Guardian and ward
- Doctor & patient – Hernia operation suggested by Doctor
- Spiritual guru & disciple (Great profession – no impact on downturn)
- Lawyer & client (Derivative transactions – cases in Chennai – corporate heads pleading ignorance and taking plea of undue influence) legal covenants containing clauses of understanding the contract in full
- Trustee & beneficiary

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Concept of Offer

No Presumption of undue influence

- Husband & wife
- Master & servant
- Creditor & debtor
- Landlord & tenant

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- Peel, E., and Treitel, GH. (2011). Treitel on the Law of Contract (13th ed, Sweet & Maxwell)
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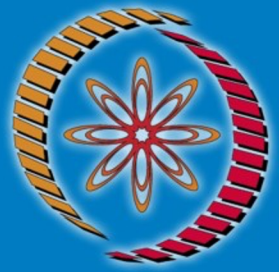
In this lecture, attempt has been made to give an overall idea of offer so that discussion has been held on various aspects of offer and valid offer including -concept of Offer, essentials of Valid Offer, elements of a valid offer, lapses and revocation of offer, capacity to Contract and free Consent

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Module-4

Lecture 18 : Concept of Fraud, Misrepresentation and Consideration

BUSINESS LAW FOR MANAGERS

Key Notes

Periodically, the latest major fraud hits the headlines as other organisations sit back and watch, telling themselves that 'it couldn't happen here.' But the reality is that fraud can happen anywhere. While only relatively few major frauds are picked up by the media, huge sums are lost by all kinds of businesses as a result of the high number of smaller frauds that are committed. Here various aspects of fraud and considerations will be discussed.

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KEY POINTS

- Concept of Fraud
- Remedies in case of Fraud and Misrepresentation
- Consideration
- Restraint of Legal Procedure

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Concept of Fraud

Introduction

The evidence reveals that the incidence of fraud and financial scandal to be historically contingent and skewed towards certain sectors, particularly banking and finance, international capital mobility, and mediated by managerial incentives and ownership concentration.

In the development of interconnected and international business networks, which, combined with wider financial deregulation, has led to a resurgence of fraud and financial scandal.

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Concept of Fraud

What is Fraud ?

- Fraud means inducing any other parties to enter into contract to deceive other parties.

- Section 17 of the Indian Contract Act defines fraud in contracts that –

Fraud implies and involves any of the following acts committed by a contracting party or his connivance or his agent with the intention of deceiving or inciting another party or his agent to enter into the agreement.

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Concept of Fraud

Ingredients of Section 17 of Indian Contract Act

When analysed s 17(1) shows the following ingredients:

i. **There should be a suggestion as to a fact;**

ii. **The fact suggested should not be true;**

iii. **The suggestion should have been made by a person who does not believe it to be true; and**

iv. **The suggestion should be made with intent either to deceive or to induce the other party to enter into the contract.**

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Concept of Misrepresentation

Misrepresentation

A misrepresentation is an untrue statement of a material fact made by one party which affects the other party's decision in corresponding to a contract. If the misrepresentation is identified, the contract can be declared void and depending on the situation, the unfavorably impacted party may seek damages.

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Concept of Misrepresentation

Misrepresentation

Misrepresentation is classified into the following three group:

The positive assertion in a manner not warranted by the information of the person making it, of that which is not true through he believes it to be true.

Example:

- **A prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression thereby created was that the company was a prosperous one which actually was not the case. Held, the suppression of truth amounted to fraud [peek. vs .Gurny (1873) 6 H.L.377]**

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Concept of Misrepresentation

Misrepresentation

Example

- Satyam case
- Similarly in the prospectus one of the contingent liabilities was not appearing as a disclosure as the company interpreted it differently but should have disclosed by a Note It is a case of misrepresentation.

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Fraud and Misrepresentation

Difference between Two

- Fraud is deliberate whereas Misrepresentation is innocent.
- Fraud – remedy is voidable & damages where as in case of misrepresentation it is voidable only.

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Remedies in case of Fraud and Representation

In case of misrepresentation, the party aggrieved or wronged has two remedies viz,

(i) He can avoid the performance of the contract

(ii) He can insist that the contract shall be performed and that shall be put in the position in which he would have been if the representation made has been true.

In case of fraud he has an additional remedy i.e., he can sue for damages.

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Consideration

Salient Features

- Something in return
- No Consideration No Contract
- Consideration from both side i.e. Promisor & Promisee.

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Exception to the rules:

- Natural love & affection - Probate
- A promises without consideration is valid if it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something the promisor was legally compellable to do. Thus, where A finds B's purse and gives it to him, and B promises to give A Rs.100, this a valid contract.

Consideration

Salient Features

- A promise to pay wholly or in part a debt which is barred by the Limitation Act can be enforced if it is in writing and is signed by the debtor or his authorized agent. A debt barred by limitation cannot be recovered. Therefore, a promise to pay such a debt is strictly speaking, without any consideration . But if a written Promise to pay is made by the debtor then the same is enforceable by the creditor.
- Gift
- Agreement between principal and agent

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Consideration

Rules of Consideration

- Consideration need not be adequate
- Consideration must be real & competent

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Example:

* A contract to build the home in moon for Rs. 2 cores

- Consideration must move at the desire of the promisor.
- Consideration must be legal
- Consideration may be present, past or future.

Agreement Declared Void

Agreement against Public Policy

- Trading with enemy
- Agreement for sale of public offices.
- Agreement in restraint of trade.
- Agreement employing child labour
- Agreement interfering in the court of justice.
- Is agreement to prevent a person to engage to any employment or service during the period of employment in a company is a case of restraint of trade?

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Agreement Declared Void

Agreement against Public Policy

- If a partner enters into an agreement of not getting engaged in any business of that firm or engaging to be a partner of any firm engaged in that business for a certain number of period , is it restraint of trade.
- If some of manufacturer want to regulate the sale price by an agreement, which is not against public interest, then is such agreement is restraint of trade ?
- Is service bond restraint of trade? Not really but if unreasonable - yes

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Restraint of Legal Procedure

- An agreement between A & B in which agreement state incase of any dispute A's decision shall be final & binding on B, moreover not to take any legal recourse , is such agreement enforceable?

- A & B enter into a contract in which stated all dispute shall be mutually settled within 15 days of occurrence , and if it cannot be settled , it shall be referred to arbitration. One arbitrator to be appointed by each party, who will jointly appoint the third arbitrator, And it states that the decision of the arbitration will be final & binding & no party to take any legal recourse. Is such agreement enforceable? Yes as legal recourse has to be there unless specifically ruled out after arbitration.

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REFERENCES

- Peel, E., and Treitel, GH. (2011). Treitel on the Law of Contract (13th ed, Sweet & Maxwell)
- Poole, J (2014). Casebook on Contract Law (12th ed, Oxford University Press.
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CONCLUSION

The lecture session has briefly discussed on the concept of Fraud , remedies in case of Fraud and Misrepresentation, consideration and restraint of Legal Procedure. Learners might have learnt and get enhanced their knowledge.

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Module-4

Lecture 19 : Major Issues related to Contract

BUSINESS LAW FOR MANAGERS

Introduction

Contracts can get much more complicated if there are more than two parties involved. Since the initial structure of contract law focused on the traditional two-party system, multiple parties require special attention when determining liability and responsibility. Every contract is unique, but there are some constants that stretch across all areas of industry.

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KEY POINTS

- Wagering Agreement
- Quasi Contract- Responsibility of finder of goods
- Quantum Contract
- Assignment of Contract
- Discharge of contract due to Impossibility
- Circumstances and discharge of Contract

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Major Issues related to Contract

Wagering Agreement

- Wagering agreements are speculative agreement

Example:

- Someone said, 'If India wins I will give Rs. 1 crore'.
- Wagering agreement are void but not illegal.
- All illegal agreements are void but all void agreement are not
-

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Major Issues related to Contract

Contract of Insurance

Contract of Insurance is not wagering contract

❖ **Difference of Contract of Insurance & Wagering Contract:**

- **Beneficiaries – in case of insurance – general public.**
- **Insurance is not making profit as in case of fire only the actual loss suffered by the party is paid by the insurance company.**
- **Insurance for indemnification & not profit maximisation.**
- **Insurance is for making good & not making profit**
- **Only person having insurable interest can enter into the contract of insurance, where as anyone can enter into wagering contract.**

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Major Issues related to Contract

Quasi Contract- Responsibility of finder of goods

A person is not bound to take care of goods belonging to another, left on a road or other public place by accident or inadvertence, but if he takes them to his custody, an agreement is implied by law. Although, there is in fact no agreement between the owner and the finder of the goods, the finder is, for certain purpose, deemed in law to be a bailee and must take as much as care of the goods as a man of ordinary Prudence would take of similar goods of his own. This obligation is imposed on the basis of a quasi contract. Section 71, which deals with this subject, says:" A person who find good belonging to another and takes them into his custody, is subject to the same responsibility as a Bailee"

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Major Issues related to Contract

Quantum Contract

The phrase ‘ quantum meruit ‘ means as ‘as much as merited’ or ‘ as much as earned ‘. The general rule of law is that unless a person has performed his obligations in full, he cannot claim performance from the other. But in certain cases, when a person has done some work under a contract, and other part repudiated the contract, or some event happens which makes the further performance of the contract possible, then the party who has performed the work can claim remuneration for the work he has already done.

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Major Issues related to Contract

Quantum Contract

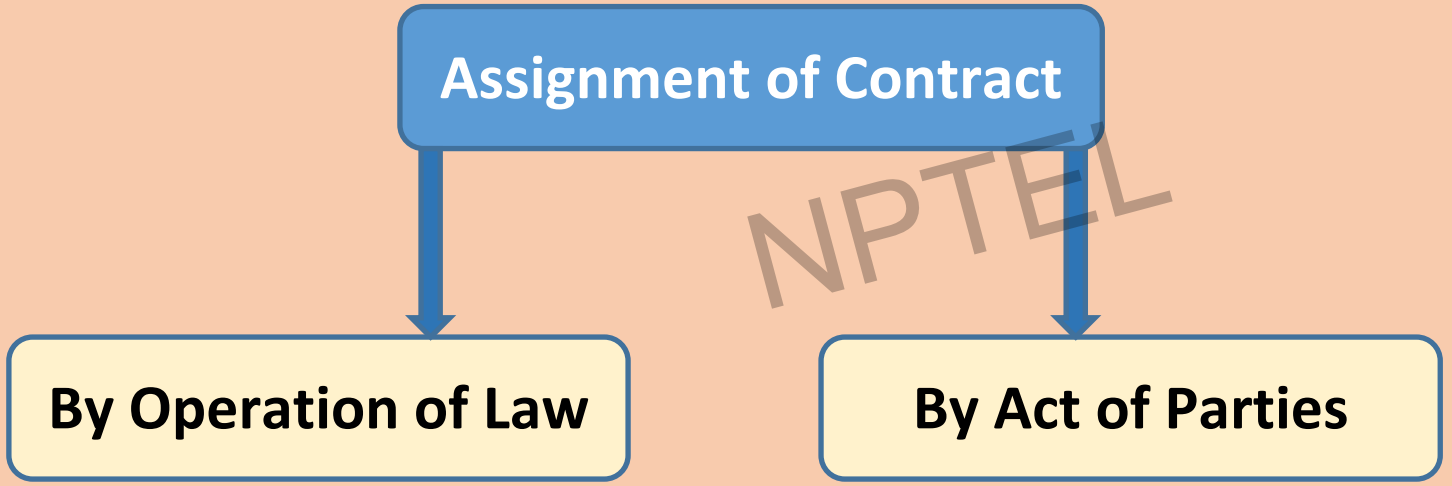
- The right to claim quantum meruit does not arise out of the contract as the right to damages does; it is a claim on the quasi- contractual obligation which the law implies in the circumstances.

- A contract with B to deliver to him 250 kilos of rice before the 1st of May. A delivers130 kilos only before that day and none after. B retains the 130 kilos after the 1st of May . He is bound to pay A for them.

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Major Issues related to Contract

Assignment of Contract



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Major Issues related to Contract

Assignment of Contract

- **By Operation of law**

In case of death, the legal representative of the deceased, who was a party to the contract gets the interest in the contract. (permitted assigns in contracts - what does it mean?)

- **By Act of Parties :**

By act of parties means " novation".

- Example : A owes B Rs.10000, B may assign his right to C. However such a right can only be done by a contract. However, such a assignment cannot be done if it involve personal skill, ability or other personal Qualification .eg Manna Dey by Jhantu dey

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Major Issues related to Contract

Discharge of Contract due to Impossibility

- Destruction of the subject matter of the contract.
- By the death or disablement of the parties.
- Subsequent illegality – (production of carbon black banned y govt)
- Declaration of war
- Non- existence or non-occurrence of a particular state of things. (Conditions precedent clause)

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Major Issues related to Contract

Circumstances and Discharge of Contract

There may be the similar circumstances but contract can not be discharged due to the following:

- **Difficulty of performance.**
- **Commercial impossibility – no profit.**
- **Strike, lockout and civil disturbance.**
- **Failure of one of the object.**

SOLUTION

Force majeure clause – very very important. Beyond the reasonable control of either party.

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Major Issues related to Contract

Liquidated Damages and Penalty

Sometimes parties themselves at the time of entering into a contract agree that a particular sum will be payable by a party in case of breach of the contract by him. Such a sum may either by way of 'liquidated damages' or it may be way of 'penalty' The essence of liquidated damages is a genuine covenanted pre-estimate of the damages. Thus, the stipulated sum payable in case of breach is to be regarded as liquidated damages if it be found that parties to the contract conscientiously tried to make a pre-estimate of the loss which might happen to them in case the contract was broken by any of them.

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Major Issues related to Contract

Liquidated Damages and Penalty

On the other hand, the essence of a penalty is a payment of money stipulated as “in terrorem” of the offending party. Thus if it is found that the parties made no attempt to estimate the loss that might happen to them on breach of the contract but still stipulated a sum to be paid in case of a breach of it, with the object of coercing the offending party to perform the contract it is a case of penalty.

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Major Issues related to Contract

Applicability

- The Act is applicable at any place wherein manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, not with standing that:
  - The number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or
  - The persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner

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CONCLUSION

In this lecture discussion has been made on wagering agreement, quasi contract- responsibility of finder of goods, quantum contract, assignment of contract, discharge of contract due to impossibility circumstances and discharge of contract. Learners will have knowledge and lessons on all about these.

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Business Law For Managers

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Module-4

Lecture 20 : Law of Insurance

BUSINESS LAW FOR MANAGERS

Introduction

Insurance is generally described as a socially support mechanism to reduce or eliminate risks or loss to life and property. It is a provision which a prudent man makes against inevitable contingencies, loss or misfortune. It provides financial protection against a loss arising out of happening of an uncertain event. A person can avail this protection by paying premium to an insurance company .Insurance works on the basic principle of risk-sharing. A great advantage of insurance is that it spreads the risk of a few people over a large group of people exposed to risk of similar type.

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KEY POINTS

- Essential requirements
- General Principles
- Form of Insurance
- Who has insurable interest
- Voyage and deviation

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Law of Insurance

Essential requirements

- The insured is really subject to a risk; otherwise it will amountto betting.
- The time and occurrence of risk must involve some uncertainty.
- Both the insurer and the insured should not have any control over the happening of the event insured against.
- The risk insured against should not be a very minor one otherwise the cost of insurance may be uneconomical.
- The cost of insurance should not be prohibitive.
- The risk must be capable of approximate mathematicalestimation

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Law of Insurance

Insurance is a contract and not a wagering contract

Under a contract of Insurance the insurer agrees to indemnify the insured against a loss which may accrue ontime happening of some event

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Law of Insurance

General principles of Insurance

- Indemnity – Example – X insures his car against accident and theft for Rs. 90,000. The car meets with an accident and the loss thereby occasioned is Rs. 10,000.The amount recoverable from the insurance company will be Rs. 10,000 only.
- And in case the car is stolen, thus resulting in a total loss, the amount recoverable from the insurance company shall be Rs. 90,000 (minus depreciation) even though the car may be of a value more than this, say, Rs. 95,000.
- Good Faith – (Medical Insurance disclosure of decease) Therefore, all contracts of insurance are contracts uberimae fidei, i.e., contracts of utmost good faith and therefore non-disclosure of a material fact entitles the other party to avoid the contract.

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Law of Insurance

Insurable Interest

Causa proxima. In case of marine and fire insurance we have the principle of *causa proxima,* i..e., the proximate cause. When a damage has resulted due to two or more causes, we have to look to the proximate or the nearest cause of damage, although the damage might not have taken place without the remote cause. Thus, in the event of the loss, it is the proximate and not the remote cause that is to be looked into. If the cause of the loss is a peril insured against, the insured can recover, otherwise not.

- **Example –**

Cargo (sugar) being shipped is insured against sea perils. Certain rats make holes into the bottom of the ship wherefrom the seawater enters the ship, thereby destroying the whole cargo. The remote cause in this case is rats which is not a peril insured against but the proximate cause is "sea water" which isa peril insured against and thus the loss will be recoverable.

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Law of Insurance

Insurable Interest

- In Pink v. Fleming (1899) 25 Q.B.D. 396, Lord Esher observed, "The question, which is the cause proxima of a loss, can only arise where there has been a succession of causes.
  When a result has been brought about by two causes, you must, in insurance law, look to the nearest cause, although the result would no doubt, not have happened without the remote cause." In the above case the ship collided with another ship, resulting in delay and mishandling of cargo of oranges which deteriorated. *Held,* that the damage to oranges was not direct result of collision (the peril insured against) but of delay and mishandling and as these causes were not insured against, the insured could not recover.
- Mitigation of loss
- Risk must attach

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Law of Insurance

Subrogation

- Subrogation is, thus, the substitution of one person in place of another in relation to the claim, its rights, remedies or securities. After satisfying the claim of the insured, the insurers stand in his place. For instance, a ship called 'Indira' is insured for Rs. 30,00,000 and it is damaged through collision with another ship called 'Vikram'. If the owners of 'Indira' received from the underwriter compensation of Rs. 30,00,000 as per the policy, then the underwriters acquire a right to recover this amount from the owner of 'Vikram' if it can be proved that the collision was due to the negligence of the captain of 'Vikram'. The insurance company can take this action to recover money in the name of the owner of 'Indira'.

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Law of Insurance

Subrogation

The right of subrogation does not arise until the insurers have admitted their liability to the assured and have paid him the amount of the loss.. The insurers, however, have only the rights, which the insured himself has. In the words of Lord Cairns, “the right of the underwriters is merely to make such claim for damages as the assured himself could have made and ..... it cannot of course be made against the assured himself.”

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Law of Insurance

Contribution

Contribution – Where a particular property is insured with two or more insurers against the same risk, it is called 'double insurance'. In the event of loss, the insured will get compensation only for the amount of actual loss. He will be compensated by the concerned companies on the basis of 'principle of contribution'. The insurers must share the burden of payment in proportion of the amount assured by each.

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Law of Insurance

Double Insurance

Example –

- **X insures his ship against marine perils of Rs. 5,00,000 with A company and Rs. 3,00,000 with B company. This is double insurance.**

Double insurance is subject to the principle of indemnity and therefore in the event of the loss, the insured will not be allowed to recover more than the actual of the loss, the insured will not be allowed to recover more than the actual loss from all the insurers together. Thus, if in the above example, the ship sinks, thereby resulting in a total loss and the value of the ship is Rs. 5,00,000 the insured cannot claim Rs. 8,00,000 (Rs. 5,00,000 + Rs. 3,00,000) but only Rs. 5,00,000.

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Law of Insurance

Form of Insurance

Life Insurance

Fire Insurance

Marine Insurance

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Law of Insurance

Form: Life Insurance

Insurance or assurance – An objection is raised to the use of the word "insurance" for contracts of insurance upon life. They say that the object of life insurance is not to insure a man's life, nor his death, nor are they in the nature of an indemnity to him for he does not in the event of the loss, (viz. Death) survive to enjoy the fruits of his premium. It is, therefore, more correct to say that in the case of life, something (a particular sum of money) is assured, rather than "insured", either to the nominee or the assignee or to his estate after his death. Thus, the term "insurance" is reserved to the contracts of indemnity (like fire and marine insurance) under which the contingencies insured may or may not happen. When the event is certain to happen, the time of occurrence only being uncertain (as in the case of life insurance) the term "assurance" is applied.

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Law of Insurance

Form: Life Insurance

- Life insurance not a contract of indemnity
- This distinguishes life insurance from other types of insurance.

Suicide – The life policies usually contain a clause that no payment shall be made in case the assured commits suicide. In such cases the insurer can avoid he liability. But, however, if the assured was insane and was incapable of appreciating the nature of his act, his self-destruction is not intentional and therefore the insurance company shall be liable on the policy in spite of the clause. Sometimes, the policies provide that they would become void only if the assured committed suicide within a particular period from the date of the policy.

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Law of Insurance

Form: Life Insurance

- **Assignment of life insurance policy (s.38 of the insurance actof 1938). Life insurance policies are freely assignable like actionable claims. Life insurance policies are marketable commodities, which can be validly assigned with or without consideration, to persons who have no interest in the assured'slife. Thus, life policies may be sold, mortgaged or settled.**

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Law of Insurance

Fire Insurance

- What is a fire – The term ‘Fire’ in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. Thus, ignition is necessary to fire. Heating not accompanied by ignition is not fire. Loss or damage occasioned by fire means loss or damage either by ignition of the articles consumed, or by ignition of that part of the premises, where the article is. In one case there is loss, in the other case, a damage occasioned by fire. Damage from lightning is not included in the fire risk unless it causes ignition. The same is the case with electricity. Also, ‘fire’ does not include ‘ explosion’ unless the explosion is caused by ‘fire’ or explosion causes fire (Stanley v. Western Insurance Co. L.R. 3 Ex.71).

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Law of Insurance

Fire Insurance

- The cause of fire is not material unless it is the deliberate act of insured himself or of someone acting with his knowledge or consent. Loss by fire, which is caused by the negligence of the insured, is recoverable. In Harris v. Poland (1941), I K.B. 462, she hid her jewellery under the coal in the grating near the fire-place. Having forgotten this, she lit the fire and jewellery was damaged. Held, she could recover under the firepolicy.

  Fire insurance is a contract of indemnity and is also subjected to the principles of uberimae fidei, subrogation, and contribution.

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Law of Insurance

Marine Insurance

- Marine Insurance Act of 1963.
- Definition – A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured in themanner and to the extent thereby agreed, against marine losses,that is to say, the losses incidental to marine adventure.

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Law of Insurance

Marine Insurance

- The term Marine adventure includes any adventure where

(i) any insurable property is exposed to marine perils,

(ii) the earnings or acquisition of any freight, passage money, commission, profit or other benefit or the security for any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils,

(iii) any liability to a third party which may be incurred by the ownerof or other person interested in or responsible for, insurable property by reason of maritime perils [s.2(d)].

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Law of Insurance

Marine Insurance

- Insurable property is defined by s.2(c) to include any ship, goods or other movables which are exposed to maritime perils.
- Maritime perils [s.2(e)]. The term “maritime perils” is the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures and seizures, restraints and detainments of princes and peoples, jettisons, barratry and other perils which are of the like kind or may be designated by the policy. ”Perils of the Seas” refers only to fortuitous accidents or casualties of the sea and does not include the ordinary action of the wind and waves.

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Law of Insurance

Types of Marine Insurance

- **Voyage Policy**

Where the contract is to insure the subject-matter "at and from" a place, or from one place to another orothers, the policy is called a voyage policy

- **Time Policy**

A policy that covers a specified period of timeis called "Time Policy". A "time policy" cannot be taken for aperiod more than twelve months (s.27).

- **Valued Policy**

A valued policy is a policy, which specifies the agreed value of the subject-matter. In the absence of fraud,the value is conclusive as between the assured and insurer, except for ascertaining 'constructive total loss' (s.29).

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Law of Insurance

Who has Insurable Interest

- The following persons have insurable interest;
- Owners of ship for full value.
- Owners of cargo.
- Bailee in respect of property left in his custodyand care.
- Shippers and their agents.
- An underwriter for the risk insured by him,which he may reinsure.
- Master or any member of the crew of a ship forhis wages.

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Law of Insurance

Marine insurance: Disclosure and Representation

- **Duty of disclosure : Section 20 provides that the assured must disclose to insurer every material circumstance, which is known to him. He is deemed to know everything, which he ought to know in the ordinary course of business. A circumstance is material if it would influence the judgment of a prudent insurer in fixing or determining whether to take the risk. Insurance is a contract of "*uberimae fidei*" ie utmost good faith.**
- **Double Hull ship**
- **Water level at load port.**
- **Water level at discharge port.**

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Law of Insurance

Warranties

- According to s.35(1) of the Marine Insurance Act, warranty is an undertaking by the assured that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particularstate of facts. A warranty may be expressed or implied.

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- Express warranties :

"Express warranties" are those, which are expressly mentioned in the policy or incorporatedin some document, referred to in the policy.

Law of Insurance

Warranties

- **Implied warranties – "Implied warranties" are those warranties, which are presumed to be present in every contract of marine insurance unless excluded by express words to the contrary. These warranties are :**

1. **Warranty of seaworthiness - In a voyage policy there is an implied warranty that the ship will be seaworthy at the commencement of the voyage for the particular adventure insured. Where the voyage is "Seaworthy" means that the ship is reasonably fit in all respects to encounter the ordinary perils of the seas as regards the adventure insured. In a voyage policy on goods there is an implied warranty that the ship shall at the commencement of the voyage be seaworthy as a ship and also that it will be reasonably fit to carry the goods to the agreed destination (s.42).**

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Law of Insurance

Warranties

2. Warranty of legality of voyage – There is an implied warranty in all marine policies that the adventure is lawful and that it shall be arrived out lawfully, in so far as the assured is able to control it (s.43). But, where the master of crew, without the knowledge of the owner, indulge in unlawful activities, the contract will not become void on this ground.

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Law of Insurance

Voyage and Deviation

- Where the place of departure is specified in the policy, theship must sail from that place. If it sails from any other place, the risk does not attach (s.45)
- Where the destination is specified in the policy and ship sails for a destination other than the one specified, the riskdoes not attach (s.46).
- Unless the policy otherwise provides, if after the commencement of the risk, the destination is voluntarily changed, the insurer ceases to be liable as from the time ofchange (s. 47).
- Unreasonable delay in the prosecution of the voyage discharges the insurer from liability (s.50).

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Law of Insurance

Voyage and Deviation

- **Deviation when excused - A ship is permitted to deviate from the prescribed voyage, or, when no voyage has been prescribed by the policy, the customary route, under the following circumstance:**

1. Where allowed by any special term in the policy;

2. Where caused by circumstances beyond the control of the mater or his employees;

3. When the master of the ship finds that, in order to make the ship seaworthy, the ship must be rushed to the nearest port of refuge;

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Law of Insurance

Voyage and Deviation

4. Where necessary to ensure safety of the ship or the subject matter insured;
5. For the purpose of saving human life or a ship in distress, when loss of life is feared.
6. Where reasonably necessary to obtain medical or surgical aid for a person on board.

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CONCLUSION

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In this lecture discussion has been made on law of insurance including essential requirements of insurance, general principles, form of insurance, who has insurable interest and voyage & deviation with an aim to have a detail idea on insurance to the learners.



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