ANNAMALAI UNIVERSITY

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1

PARAG SHETH

FIE, FIV, MICA, MASCE, LL.B, DPM

CHARTERED ENGINEER ▪ ARBITRATOR ▪ GOVT. REGD. VALUER
INSOLVENCY PROFESSIONAL

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M.Sc. (REAL ESTATE VALUATION)
COURSE: VI –LAWS FOR ACQUISITION AND CONTRACT
SYLLABUS

Unit-I : Elementary Jurisprudence

- Law – Its Origin, Source and Ramifications
- Legislative Enactments – Subordinate Legislation – Judicial Precedents

Unit-II : India Legal System

- Salient Features of the Indian Constitution, Fundamental Rights, Directive
- Principles of State Policy.
- Executive, Legislature and the Judiciary
- Center –State Relationship

Unit-III : Local Government

- Types –Rural and Urban, Constitutional Provisions, Powers and Functions
- Sources of Revenue: Tax and fee, Municipal Finance, Essential Civic Service.

M.Sc. (REAL ESTATE VALUATION)
COURSE: VI –LAWS FOR ACQUISITION AND CONTRACT
SYLLABUS

Unit-IV : Contract and Tort

- Formation of a Contract – Parties -Void , Voidable and Unenforceable
- Contract – Contingent Contract, Misrepresentation and Fraud Effect there of
- Termination of Contract, Remedies for Breach – Performance of Contract –
- Indemnity and Guarantee, Law of Agency, General Principles of Tort, Tort
- Affecting Valuation.

Unit-V : Conveyance

- Outline the Procedure for sale of Immovable Property Contracts and
- Conveyance, Preliminary Inquiries, Open Contract, Contract by Correspondence
- Title : Requisition and Searches
- Effects : Completion and Breach’s

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SYLLABUS

Unit-VI : Acquisition and Requisition of Immovable Properties-Enactments

- Land Acquisitions Act 1894(1of 1894)
- Land Acquisition under the Municipal Laws
- Law of Arbitration and Conciliation: Salient Features
- Rent Control Laws

Contract and Tort

5

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Contract & Tort

1. General Features of Contract
2. Formation of a Contract
3. Parties
4. Void , Voidable and Unenforceable Contract
5. Contingent Contract
6. Misrepresentation and Fraud Effect there of
7. Termination of Contract
8. Remedies for Breach
9. Performance of Contract
10. Indemnity and Guarantee
11. Law of Agency
12. General Principles of Tort
13. Tort Affecting Valuation

CONTRACT

General features of a Contract

Introduction

- *"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.

- A contract is formed when two or more different people or groups make a formal, **legally binding agreement**(either written or spoken). Contracts are legally binding

DEFINITION OF CONTRACT

The definition given in the **Halsbury's Laws** of England is extracted below.

- "A contract is an agreement made between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer aid to him by the other party to do or to abstain from doing some act".

Section 2(h) of the Indian Contract Act, 1872, defines a Contract as follows:

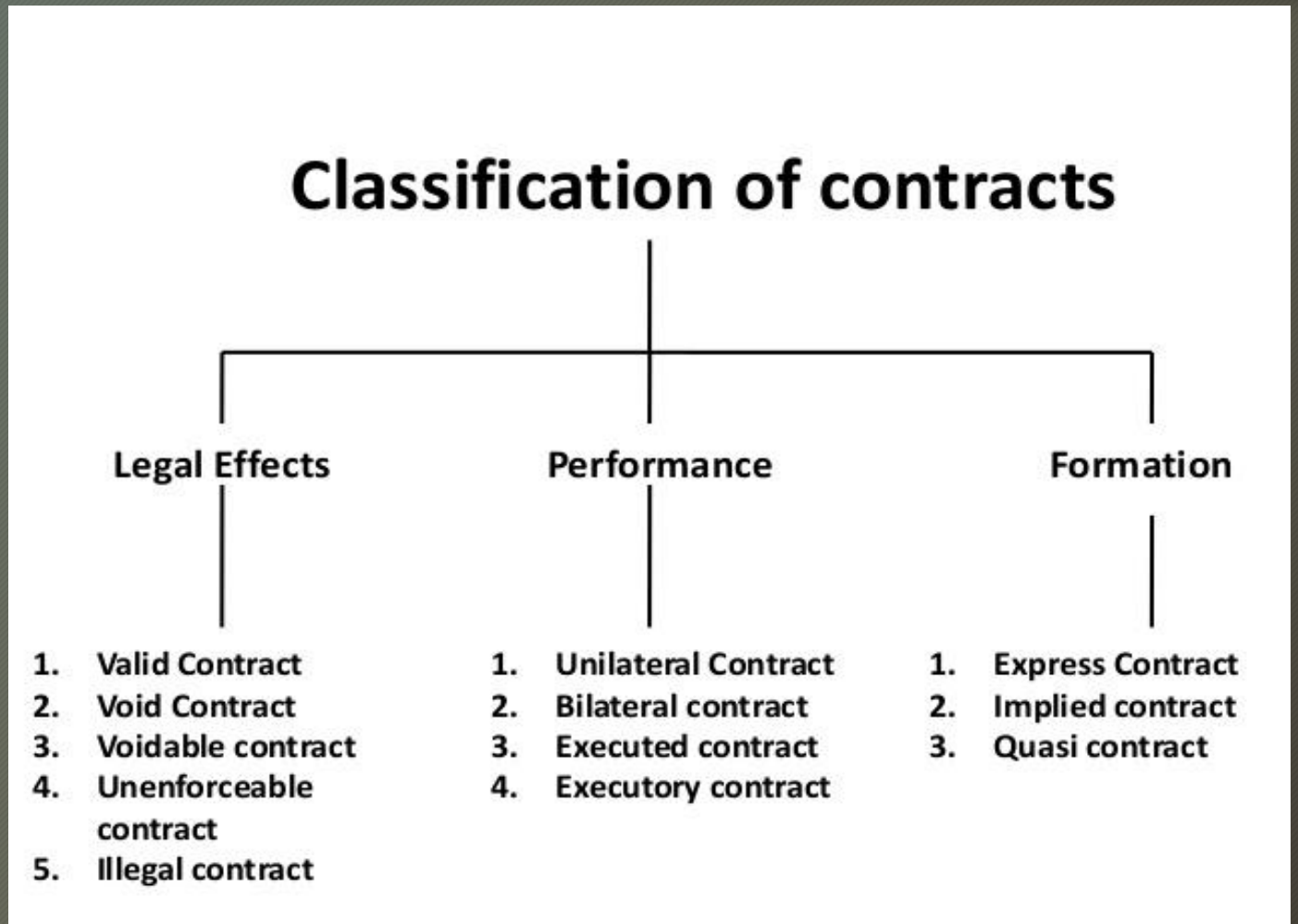
- "An agreement enforceable by law is a contract". An agreement is defined by Section 2(e) "as every promise and every set of promises forming the consideration for each other".

DEFINITION OF CONTRACT

The definition of the American Restatement of Contracts is accepted as the most accurate. 'A contract is a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty'.

- Pollack defines a contract as 'a promise or a set of promises which the law will enforce'.
- Anson describes the law of contracts 'as the branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it'.
- Blackstone in his commentaries defines a contract 'as an agreement upon a sufficient consideration to do or not to do a particular thing".

CLASSIFICATION OF CONTRACT



CLASSIFICATION OF CONTRACT

1. **Valid contracts**: The agreement enforceable by law is a valid contract. It is the contract which is binding. A contract made between two or more parties with a lawful object and consideration, free consent, certainty and possibility of an agreement with necessary legal formalities by the people who are competent to contract fall under a valid contract.

   E.g. X offers to marry y. y accepts X offer. This is a valid contract.

2. Void contracts: The agreement that is not enforced by law is a void contract. The social agreement relating to illegal activities, agreement with a competent person is considered to be void.

E.g. X offers to marry Y, Y accepts X offer. Later on Y dies this contract was valid at the time of its formation but became void at the death of Y.

Void Agreement: According to Section 2(g), an agreement not enforceable by law is said to be void. Such agreements are void-ab- initio which means that they are unenforceable right from the time they are made.

E.g. in agreement with a minor or a person of unsound mind is void –ab-initio because a minor or a person of unsound mind is incompetent to contract.

CLASSIFICATION OF CONTRACT

3.Voidable Contracts: The agreement that is enforceable by only one party is known as a voidable contract. However, the voidable contracts induced by coercion, undue influence, misrepresentation, mistake or fraud can be taken to the court to make the contract void.

E.g. X threatens to kill Y, if the does not sell his house for Rs. 1 lakh to X. Y sells his house to X and receives payment. Here, Y consent has been obtained by coercion and hence this contract is void able at the option of Y the aggrieved party. If Y decides to avoid the contract he will have to return Rs. 1 lakh which he had received from X. If Y does not exercise his option to repudiate the contract within a reasonable time and in the meantime Z purchases that house from X for 1 lakh in good faith. Y can not repudiate the contract.

4. Illegal agreement:The agreements relating to acts that are illegal, immoral and that are causing harm to the public policy falls under illegal agreements. For example, drugs dealing, gambling, prostitution etc.

For example, drugs dealing, gambling, prostitution etc. e.g. X agrees to y Rs. 1 lakh Y kills Z. Y kill and claims Rs. 1 lakh. Y cannot recover from X because the agreement between X and Y is illegal and also its object is unlawful.

CLASSIFICATION OF CONTRACT

5. Unenforceable contracts:When the contract is backed by all the essential elements of a valid contract but consists of a technical defect like writing, forbidden by limitations etc.

6. Expressed contract: The contract which is made according to the words spoken or written by parties is known as expressed contract.

Example No. 1: X says to Y, will you buy a car for Rs. 100000? Y says to X, I am ready to buy your car for Rs. 100000. It is an express contract made rally. **Example No. 2:** X writes a letter to Y, I offer to sell my car for Rs. 100000 to you. Y send a letter to Y, I am ready to buy your car for Rs. 100000. It is an express contract made in writing.

CLASSIFICATION OF CONTRACT

7. Implied contract: The contract that comes into existence on account of the conduct of parties is known as implied contract.

Example: X, a coolie in uniform picks up the bag of Y to carry it from railway platform to the ------ without being used by Y to do so and Y allow it. In this case there is an implied offer by the coolie and an implied acceptance by the passenger. Now, there is an implied contract between the coolie and the passenger is bound to pay for the services of the coolie.

8. Quasi-contract: The contract that is created by law under several situations and enforces by legal rights and duties when there is the absence of a real contract.

For example, where certain letters are delivered to a wrong addressee, the addressee is under an obligation to return the letters.

CLASSIFICATION OF CONTRACT

9. UNILATERAL: It is also called as one-sided contract. In a unilateral contract, only one party has to satisfy his obligation at the time of the formation of it, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

For example, A takes a public auto to go to Mount Road. A contract comes into existence as soon as A was dropped in Mount Road. By that time, auto man has fulfilled his obligation, only A has to fulfill his obligation i.e. paying the auto- man

10. Bilateral Contract: A contract is said to be a bilateral contract where the obligations of both the parties to the contract are pending at the time of formation of the contract. In this type of contract, a promise on one side is exchanged for a promise on the other.

For example, A promises to stitch a blouse and 0 promises to pay Rs.30. Here A promises to stitch the blouse and 0 promises to pay. Thus each party is both a promisor and a promisee.

CLASSIFICATION OF CONTRACT

11. Executed Contract: A contract is said to be executed contract when both the parties to contract have performed their share of obligation.

Example: X offer to sell his car to Y for Rs. 1 lakh, Y accepts X offer. X delivers the car to y and Y pays Rs. 1 lakh to X. it is an executed contract.

12. Executory Contract: An executory contract is one, which is either wholly unperformed, or something remains in there to be done by both the parties to contract. Sometimes, a contract may be partly executed and partly executory.

Example: X offers to sell his car to y for Rs. 1 lakh. Y accepts X offer. It the car has not yet been delivered by X and the price has not yet been paid by Y, it is an Executory contract.

ESSENTIALS ELEMENT OF CONTRACT

1. Offer and acceptance:

- In a contract there must be at least two parties one of them making the offer and the other accepting it. There must thus be an offer by one party and its acceptance by the other. The offer when accepted becomes agreement.

2. Legal relationship:

- Parties to a contract must intend to constitute legal relationship. It arises when the parties know that if any one of them fails to fulfil his part of the promise, he would be liable for the failure of the contract.
- If there is no intention to create legal relationship, there is no contract between parties. Agreements of a social or domestic nature which do not contemplate a legal relationship are not contracts.

ESSENTIALS ELEMENT OF CONTRACT

3. Consensus-ad-idem:

- The parties to an agreement must have the mutual consent i.e. they must agree upon the same thing and in the same sense. This means that there must be consensus ad idem (i.e. meeting of minds).

4. Competency of parties:

- The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract.
- According to Sec 11 of the Act, "Every person is competent to contract who is of the age of majority according to the law to which he is subject to and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Contd…

ESSENTIALS ELEMENT OF CONTRACT

- Thus, according to Section 11, every person with the exception of the following is competent to enter into a contract:-

(i) A minor,

(ii) A person of unsound mind, and

(iii) A person expressly declared disqualified to enter into a contract under any Law.

5. Free consent:

- Another essential of a valid contract is the consent of parties, which should be free. Under Sec. 13, "Two or more parties are said to consent, when they agree upon the same thing in the same sense." Under Sec. 14, the consent is said to be free, when it is not induced by any of the following:- (i) coercion, (the action or practice of persuading someone to do something by using force or threats)
- (ii) misrepresentation, (iii) fraud, (iv) undue influence, or (v) mistake.

ESSENTIALS ELEMENT OF CONTRACT

6. Lawful consideration:

- Consideration is known as ‘something in return’. It is also essential for the validity of a contract. A promise to do something or to give something without anything in return would not be enforceable at law and, therefore, would not be valid.
- Consideration need not be in cash or in kind. A contract without consideration is a ‘wagering contract’ or ‘betting’. Besides, the consideration must also be lawful.

- **7. Lawful objects:**
- According to Sec. 10, an agreement may become a valid-contract only, if it is for a lawful consideration and lawful object. According to Sec. 23, the following considerations and objects are not lawful:-

Contd…

ESSENTIALS ELEMENT OF CONTRACT

(i) If it is forbidden by law;

(ii) If it is against the provisions of any other law;

(iii) If it is fraudulent;

(iv) If it damages somebody's person or property; or

(v) If it is in the opinion of court, immoral or against the public policy.

Thus, any agreement, if it is illegal, immoral, or against the public policy, cannot become a valid contract.

ESSENTIALS ELEMENT OF CONTRACT

8. Agreement not expressly declared Void:

- An agreement to become a contract should not be an agreement which has been expressly declared void by any law in the country, as it would not be enforceable at law.
- Under different sections of the Contract Act, 1872, the following agreements have been said to be expressly void, viz :-

(i) Agreements made with the parties having no contractual capacity, e.g. minor and person of unsound mind (Sec. 11).

(ii) Agreements made under a mutual mistake of fact (Sec. 20).

(iii) Agreements with unlawful consideration or object (Sec. 23).

ESSENTIALS ELEMENT OF CONTRACT

(iv) Agreements, whose consideration or object is unlawful in part (Sec. 24).
(v) Agreements having no consideration (Sec 25).
(vi) Agreements in restraint of marriage (Sec. 26).
(vii) Agreements in restraint of trade (Sec. 27).
(viii) Agreements in restraint of legal proceedings (Sec. 28).
(ix) Agreements, the meaning of which is uncertain (Sec. 29).
(x) Agreements by way of wager (Sec. 30). and
(xi) Agreements to do impossible acts (Sec. 56).

ESSENTIALS ELEMENT OF CONTRACT

9. Certainty and possibility of performance:

- Agreements to form valid contracts must be certain, possible and they should not be uncertain, vague or impossible. An agreement to do something impossible is void under Sec. 56.

10. Legal formalities:

- The agreement may be oral or in writing. When the agreement is in writing it must comply with all legal formalities as to attestation, registration. If the agreement does not comply with the necessary legal formalities, it cannot be enforced by law.

FORMATION OF A CONTRACT

- Two main elements:

1) Agreement
    a) Offer
    b) Acceptance

2) Consideration

- Other elements:
    1) Intention to create legal relations
    2) Capacity
    3) Formalities

Agreement

Offer

- **Definition** – Statement by one person to another person, evincing his/her willingness to enter into contractual relations with that person on certain terms.

- **Distinguish offer from an "Invitation to Treat" – E.g. auctions, tenders – Test of intention: Did the party making the statement intend that an affirmative response would give rise to an agreement or simply result in further negotiation? If YES, then you have a legal offer. If NO, then there is no offer which may be accepted which subsequently gives rise to legal obligations.**

OFFER

- **Scope** – An single offer may be made to a distinct person or people, or the world at large (Carbolic Smoke Ball case).

- **Central requirement** – The statement alleged to be an offer must indicate a willingness to be bound without further negotiations as to the terms of the proposed contract.

- **Termination** – 1) Revocation; 2) Rejection; 3) Lapse of time; 4) Death of the offeree; and 5) Failure of condition precedent.

TYPES OF OFFER

1. Express offer
2. Implied offer
3. Specific offer.
4. General offer
5. Standing offer
6. Cross offer
7. Counter offer

Agreement

Acceptance :

Definition – Unequivocal statement (oral, written or by conduct) by the offeree agreeing to the offeror's offer.

Requirements:

1) Must exactly correspond with the offer (otherwise will be deemed a counter-offer).

2) Must be unequivocal (hence an offeree must have knowledge of an offer before accepting it).

3) Must be communicated by the offeree to the offeror (onus of communication is on the offeree). An agreement is concluded upon the communication being received by the offeror.

Note that there are several exceptions to the requirement of communication which may apply. E.g. waiver by offeror.

Consideration

1. Must be sufficient but need not be adequate (Chappell & Co v Nestle & Co Ltd)- Illegal consideration is not sufficient, and excessively inadequate consideration may not be sufficient.

2. Past consideration is not good consideration (Lampleigh v Brathwait).

Exceptions to the requirement of consideration:

1) Promises under seal (deeds).
2) Doctrine of Promissory estoppel – Where it would be inequitable for the promisor not to be held to the promise.

Consideration

- **Rationale for the requirement of consideration?:**

1) Evidentiary and cautionary function – Corroborates the seriousness of intent to be bound.

2) Maintains equity/fairness – Contracts ought to be of quid pro quo nature. (mean an exchange of goods or services, in which one transfer is contingent upon the other; "a favour for a favour")

3) Identifies the measure of relief in circumstances of breach.

4) Distinguishes equitable remedies applicable in circumstances of contract and circumstances of gift –Different equitable remedies become available

INTENTION TO CREATE LEGAL RELATIONS

- Concept- For a contract to exist the parties to an agreement must intend to create legal relations.
- Role of consideration – Consideration is often evidence of intention.
- Presumptions of intent – Certain relationships between persons carry with them a rebuttable presumption. E.g. familial relationships are presumed not to give rise to an intention to create legal relations, while the opposite is true for commercial relations.

Capacity

- **Concept** – For a contract to exist the parties must have contractual capacity. There are certain persons and classes of persons that lack the capacity to enter into a contract with the consequence (normally) that resulting contracts will not be enforceable against them.

- **Rationale?** - Protection of persons who may be vulnerable to exploitation.

Capacity

Classes of Person

1) Mental disorder or intoxication – A contract is voidable at the option of a party who, as a result of mental disorder or intoxication, is unable to understand the nature of the contract being made (provided that the other party knew, or ought to have known, of that person's disability).

2) Bankrupts – A bankrupt person may make a contract but unprofitable contracts made prior to bankruptcy may be disclaimed by the trustee.

3) The Crown – At common law proceedings could not be taken against the Crown, but legislation has removed this immunity in most cases.

4) Minors – Generally, both the common law and statute restrict the capacity of minors to enter into contracts.

5) Companies – At common law, a company only has capacity to enter into contracts permitted by its constitution.

Formalities

- **Concept** – As a general rule contracts do not need to comply with any sort of formalities. However, nowadays many categories of contract are governed by statute.
- **Contracts for sale of land -** Must be in writing, otherwise are unenforceable.
- **Effect of non-compliance** – Renders a contract unenforceable.
- **Doctrine of part-performance** – This doctrine provides that where the plaintiff has partly carried out the contract, relying on the defendant's promise, equity may enforce the contract despite non- compliance with formalities.
- Rationale – Formalities requirements are generally designed to prevent fraud, but strict adherence to such requirements might themselves facilitate fraud by enabling those who entered into such contracts to deny the existence of the contract or otherwise seek to avoid their promised obligations by relying on non-compliance as a defence to a contractual claim

Fraud

- An act of fraud is committed when a person induces another to act on a false belief by a representation which he does not himself believe to be true. Lord Herschell in Derry Vs. Peek (1889) 14 App. Case 337 observed as follows; Fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth or recklessly careless whether it be true or false". For ascertaining the fraud, the test of honest belief is subjective. The question in such circumstances is not whether the belief that the statement was true could be entertained, but the test is whether the person who made the statement believed it to be true in the sense in which he understood it albeit erroneously when it was made. In this lesson we are going to study about Misrepresentation and fraud, its impact in contract in detail

INGREDIENTS OF FRAUD

INGREDIENTS OF FRAUD

- 1) An act must be done by a party with an intention to deceive.
- 2) The act may be done by the party himself or by his agent or by someone acting with his connivance.
- 3) It is done by suggesting a falsehood, or by suppressing the truth which is the duty of the party to disclose.
- 4) Such act must be done under a false promise.
- 5) It may be any act or omission which the law declares as fraudulent.

Section 17 in The Indian Contract Act, 1872

- 17. ‘Fraud’ defined.—‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:— —‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract
-
- (1) the suggestion, as 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 having knowledge or 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 law specially declares to be fraudulent.

Section 17 in The Indian Contract Act, 1872

- Explanation to sec. 17 makes it clear that mere silence as to the 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 the duty of person keeping silence to speak, or unless silence is equivalent to speech.

1. Mere silence is not fraud:

- A person is not bound to disclose the defect of his articles.

Example: A sells by auction to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. It is not fraud.

2. Silence is fraud if silence is equivalent to speech:

- Again where silence is equivalent to speech, silence amounts to fraud. For example, B says to A "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech and as such, it is fraud.

Section 17 in The Indian Contract Act, 1872

Exception :

Duty to Disclose

- Mere silence amounts to fraud when the person keeping silent, is under a duty to speak. The duty to speak arises, where one party reposes trust and confidence in the other.

Contract of Uberrimae Fidei (utmost good faith)

- There are certain contracts which are contracts of uberrimae fedei meaning contracts of utmost good faith. In such a type of contract it is supposed that the party in whom good faith is reposed, would make full disclosure of it and not keep silent.
- One instance of contract of uberrimae fedei is contract of insurance . In such a contract, there may be certain facts which are in full knowledge of the insured or policy holder. He must make full disclosure of such facts to the insurer or insurance company.

Altered Circumstances

Misrepresentation & Its Types

‘**Misrepresentation**‘ means a bonafide representation which is false. The former is an untrue statement given by one party that indues other party to enter to the contract, whereas the latter is the statement of fact, made by one party,

There are three types of Misrepresentation as under :

1. Fraudulent misrepresentation

Fraudulent misrepresentation is very serious. Fraudulent misrepresentation occurs when a party to a contract knowingly makes an untrue statement of fact which induces the other party to enter that contract. Fraudulent misrepresentation also occurs when the party either does not believe the truth of his or her statement of fact or is reckless as regards its truth. A claimant who has been the victim of alleged fraudulent misrepresentation can claim both rescission, which will set the contract aside, and damages.

Misrepresentation & Its Types

2. Negligent misrepresentation

A party that is trying to induce another party to a contract has a duty to ensure that reasonable care is taken as regards the accuracy of any representations of fact that may lead to the latter party to enter the contract. If such reasonable care to ensure the truth of a statement is not taken, then the wronged party may be the victim of negligent misrepresentation. Negligent misrepresentation can also occur in some cases when a party makes a careless statement of fact or does not have sufficient reason for believing in that statement's truth. As with fraudulent misrepresentation, claimants can pursue both damages and a rescission of the contract.

3. Innocent misrepresentation

In innocent misrepresentation, a misrepresentation that has induced a party into a contract has occurred, but the person making the misrepresentation had reasonable grounds for believing it was true at the time the representation was made. A claimant who has been the victim of innocent misrepresentation can still pursue damages, but he or she cannot pursue rescission. Again, to pursue damages it must be shown that the claimant suffered a loss because of the misrepresentation.

Comparison

BASIS FOR COMPARISON	FRAUD	MISREPRESENTATION
Meaning	A deceptive act done intentionally by one party in order to influence the other party to enter into the contract is known as Fraud.	The representation of a misstatement, made innocently, which persuades other party to enter into the contract, is known as misrepresentation.
Defined in	Section 2 (17) of the Indian Contract Act, 1872	Section 2 (18) of the Indian Contract Act, 1872
Purpose to deceive the other party	Yes	No
Variation in extent of truth	In a fraud, the party making the representation knows that the statement is not true.	In misrepresentation, the party making the representation believes the statement made by him is true, which subsequently turned out as false.
Claim	The aggrieved party, has the right to claim for damages.	The aggrieved party has no right to sue the other party for damages.
Voidable	The contract is voidable even if the truth can be discovered in normal diligence.	The contract is not voidable if the truth can be discovered in normal diligence.

Discharge of Contract

Discharge of a contract implies termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of contractual obligations were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete.

A Contract is deemed to be discharged, that is, concluded and no longer binding, in the following circumstances:

- Discharge by performance.
- Discharge of Contract by Substituted Agreement.
- Discharge by lapse of time.
- Discharge by operation of law.
- Discharge by Impossibility of Performance.
- Discharge by Accord and Satisfaction.
- Discharge by breach.

Discharge of Contract

Discharge by performance.

Where both the parties have either carried out or tendered (attempted) to carry out their obligations under the contract, is referred to as disc performance. Because performance by one party constitutes the occurrence of a constructive condition, the other party's duty to perform is also triggered, and the person who has performed has the right to receive the other party' s performance. The overwhelming majority of contracts are discharged in this way.

Discharge of Contract by Substituted Agreement.

A contract emanates from an agreement between the parties. It thus follows that, the contract must also be discharged by agreement. Therefore, what is required, inevitably, is mutuality. Discharge by substituted agreement arises when a contract is abandoned, or the terms within it are altered, and both the parties are in conformity over it.

For example, A and B enter into some agreement, and A wants to change his mind and not to carry out his terms of the contract. If he does this unilaterally then he will be in breach of contract to B. However, if he approaches B and states that he would like to be released from his liabilities under the contract then the latter might agree. In that case the contract is said to be discharged by (bilateral) agreement. In effect B has promised not to sue A if he does not perform his part of the contract and the consideration for his promise is A 's promise not to sue B. Discharge by agreement may arise in the following harge of the contract by ways.

Discharge of Contract

Discharge of Contract by Substituted Agreement

Novation

- The term novation implies the substitution of a new contract for the original one. This arrangement may be either with the same parties or with different parties. For a novation to be valid and effective, the consent of all the parties, including the new one(s), if any, is essential. Moreover, the subsequent or second agreement must be one capable of enforcement in law, the consideration for which is the exchange of promises not to enforce the original contract.

Rescission

- This refers to cancellation of all or some of the material terms of the contract. If the contracting parties mutually decide to do so, the respective contractual obligations of the parties stand terminated.

Discharge of Contract

Discharge of Contract by Substituted Agreement

Alteration

- This refers to a change in one or more of the terms of a contract with the consent of all the contracting parties. Alteration results in a new contract but parties to it remain the same. Here the assumption is that both the parties are to gain a fresh but different benefit from the new agreement. Remission This means the acceptance (by the promisee) of a lesser sum than what was contracted for, or a lesser fulfillment of the promise made. As per Section 63, ‘every promisee may (a) remit or dispense with it, wholly or in part, or (b) extend the time of performance, or (c) accept any other satisfaction instead of performance’.

Waiver

- The term waiver implies abandonment or relinquishment of a right. Where a party deliberately abandons its rights under the contract, the other party is released of its obligations, otherwise binding upon it.

Discharge of Contract

Discharge by lapse of time

- A contract stands discharged if not enforced within a specified period called the 'period of limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. For instance, period of limitation for exercising right to recover an immovable property is twelve years, and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

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.

Discharge of Contract

However, if whatever happens to prevent the contract from being performed

- has not been caused by either party
- could not have been foreseen, and
- its effect is to destroy the basis of the contract
- then the courts will, generality, state that the contract has become impossible to perform. If that happens then the contract is discharged and neither party will have any liability under it. Section 56 of the Indian Contract Act clearly provides that an agreement to do an act impossible in itself is void

The performance of a contractual obligation may become subsequently impossible on a number of grounds. They include the following.

- Objective impossibility of performance
- Commercial impracticability
- Frustration of purpose
- Temporary impossibility

Discharge of Contract

Discharge of operation of law

- A contract stands discharged by operation of law in the following circumstances.

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.

Statutes of Limitations

- A contract stands discharged if not enforced within a specified period called the 'period of limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. For instance, limitation period for exercising right to recover an immovable property is twelve years and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

Discharge of Contract

Insolvency

- A discharge in bankruptcy will ordinarily bar enforcement of most of a debtor's contracts.

Merger

- A contract also stands discharged through a merger that occurs when an inferior right accruing to party in a contract amalgamates into the superior right ensuing to the same party.

For instance, A hires a factory premises from B for some manufacturing activity for a year, but 3 months ahead of the expiry of lease purchases that very premises. Now since A has become the owner of the building, his rights associated with the lease (inferior rights) subsequently merge into the rights of ownership (superior rights). The previous rental contract ceases to exist.

Discharge of Contract

Discharge by Accord and Satisfaction

- To discharge a contract by accord and satisfaction; the parties must agree to accept performance that is different from the performance originally promised. It may be studied under the following sub-heads.

Accord

- An accord is an executory contract to perform an act that will satisfy an existing duty. An accord suspends, but does not discharge, the original contract.

Satisfaction

- Satisfaction is the performance of the accord, which discharges the original contractual obligation.

If the obligor refuses to perform

- The obligee can sue on the original obligation or seek a decree for specific performance on the accord.

Discharge of Contract

Discharge of contract by breach

- Breach occurs where one party to a contract fails to perform its contractual obligations, or the performance is defective. A breach of contract does not per se bring a contract to an end. The breach may give to the aggrieved party the right to terminate the contract but it is for the non-breaching side to decide whether or not to exercise that option. The aggrieved party has a right of election; that is to say, it can choose either to affirm the contract or to terminate it. However, once that decision has been taken, it is, in principle, irrevocable.

  A Breach may be anticipatory or actual.

Anticipatory Breach

- Also known as 'breach by repudiation', anticipatory breach occurs when one party states, before the arrival of the date fixed for performance, without justification that it cannot or will not carry out the material part of the contractual obligations on the agreed date or that it intends to perform in a way that is inconsistent with the terms of the contract. This may also occur where one party by some action makes performance impossible. For instance, A, after agreeing to sell his car to B on a fixed date, sells it to C. This is anticipatory breach.

Discharge of Contract

Effect of anticipatory breach

- Where there is an anticipatory breach, the non-breaching party may either
- - rescind the contract, or
- - treat the contract in force and wait for the time of performance. In first case, it can immediately sue for damages, i.e., it is not required to wait for the time for performance to expire.
- For example, [D agreed to employ P] as a courier for three months commencing on June 1. Before the said date D told P that his services would not be required. This was to be an anticipatory breach of contract and it entitled P to sue D for damages immediately. If the non-breaching party elects to treat the contract operative, it waits until the time of performance and then holds the other party liable for the non-performance. Thus, by doing so the non-breaching party is giving an opportunity to the breaching party to still perform, if it can, in order to get a valid discharge.

Discharge of Contract

Actual Breach

- Actual breach refers to the failure to perform contractual obligations when performance is due. Failure to perform obligations is the most common form of breach, wherein a seller fails to deliver the goods by the appointed time, or where, although delivered, the goods are not up to the mark in respect of quality or quantity specified in the contract.

Effect of actual breach

- Breach is described as a method of discharge although it may not automatically discharge the contract. Breach of contract leads to two main remedies, namely breach of condition, and breach of warranty.

Discharge of Contract

- ***Breach of a condition*** This is a major term, known as material breach, which entitles the injured party to damages, and gives it an option to treat the contract as subsisting or discharged.

- ***Breach of a warranty*** This is a minor term, known as non-material breach, which entitles the non-breaching party to damages. It does not have the right to repudiate the contract, although a non-material breach can give it the right to defer performance until the breach is made good. However, once the breach is remedied, the non-breaching party must go ahead and render its performance, minus any damages caused by the breach.

- Thus, it is clear from the above that not every breach entitles the injured party to treat the contract as discharged. It must be shown that the breach has affected a vital part of the contract, and that it is a breach of condition rather than breach of warranty.

Indemnity & Guarantee

- **Contract Of Indemnity And Law Of Guarantee**

- The term Indemnity literally means “Security against loss". In a contract of indemnity one party – i.e. the indemnifier promise to compensate the other party i.e. the indemnified against the loss suffered by the other.
- The English law definition of a contract of indemnity is – “it is a promise to save a person harmless from the consequences of an act". Thus it includes within its ambit losses caused not merely by human agency but also those caused by accident or fire or other natural calamities.
- The definition of a contract of indemnity as laid down in Section 124 – “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.
- The definition provided by the Indian Contract Act confines itself to the losses occasioned due to the act of the promisor or due to the act of any other person.
- Under a contract of indemnity, liability of the promisor arises from loss caused to the promisee by the conduct of the promisor himself or by the conduct of other person. [Punjab National Bank v Vikram Cotton Mills].

Contd….

Indemnity & Guarantee

- Every contract of insurance, other than life insurance, is a contract of indemnity. The definition is restricted to cases where loss has been caused by some human agency. [Gajanan Moreshwar v Moreshwar Madan]

- Section 124 deals with one particular kind of indemnity which arises from a promise made by an indemnifier to save the indemnified from the loss caused to him by the conduct of the indemnifier himself or by the conduct of any other person, but does not deal with those classes of cases where the indemnity arises from loss caused by events or accidents which do not depend upon the conduct of indemnifier or any other person. [Moreshwar v Moreshwar]

- "Contract of indemnity" defined.-A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Letter of Undertaking (LoU): PNB ~ Nirav Modi

Letter of undertaking (LOU) is a form of bank guarantee under which a bank can allow its customer to raise money from another Indian bank's foreign branch in the form of a short term credit.

- A. There is a widely accepted provision of bank guarantees known as a letter of undertaking (LOU) under which a bank can allow its customer to raise money from another Indian bank's foreign branch in the form of a short term credit. The LOU serves the purpose of a bank guarantee for a bank's customer for making payment to its offshore suppliers in the foreign currency.
- B. For raising the LOU, the customer (importer) is supposed to pay margin money to the bank that issues the LOU and accordingly, they are granted a credit limit. But in Nirav Modi's case, neither was there a credit limit, nor did he ever give any margin money, reported Reuters.
- C. Once the letter of credit is acknowledged and accepted, the lender (foreign branch of Indian bank) transfers money to the nostro account of the bank that has issued the LoU. In this case, Nostro account is the Punjab National Bank's account held in another bank in a foreign country for the purpose of holding foreign currency.
- D. As a matter of fact, letter of undertaking is a letter of credit issued by one bank (let's call it Punjab National Bank) that paves way for another bank (let's call it Allahabad Bank-AB) to give money to supplier of Punjab National Bank's customer. As mentioned earlier, the money is transferred by AB to supplier of PNB's customer via a nostro account that PNB holds in AB in abroad.
- E. The credit is ideally meant for short-term only. In the Nirav Modi-Mehil Choksi case, the term of loan was allegedly extended far beyond what is prescribed as per the rule book. Even the PNB and other lenders are slugging out over the loan term, which should not have been extended, says PNB, longer than 90 days.

Nature Of Contract Of Indemnity

- A contract of indemnity may be express or implied depending upon the circumstances of the case, though Section 124 of the Indian Contract Act does not seem to cover the case of implied indemnity.

- A broker in possession of a government promissory note endorsed it to a bank with forged endorsement. The bank acting in good faith applied for and got a renewed promissory note from the Public Debt Office. Meanwhile the true owner sued the Secretary of State for conversion who in turn sued the bank on an implied indemnity. It was held that – it is general principle of law when an act is done by one person at the request of another which act is not in itself manifestly tortious to the knowledge of the person doing it, and such act turns to be injurious to the rights of a third person, the person doing it is entitled to an indemnity from him who requested that it should be done. [Secretary of State v Bank of India].

Nature Of Contract Of Indemnity

The Indian Contract Act also deals with special cases of implied indemnity –

1. U/s 69 if a person who is interested in payment of money which another is bound by law to pay and therefore pays it, he is entitled to be indemnified. For instance – if a tenant pays certain electricity bill to be paid by the owner, he is entitled to be indemnified by the owner.

2. Section 145 provides for right of a surety to claim indemnity from the principal debtor for all sums which he has rightfully paid towards the guarantee.

3. Section 222 provides for liability of the principal to indemnify the agent in respect of all amounts paid by him during the lawful exercise of his authority.

The plaintiff, an auctioneer, acting on the instruction of the defendant sold certain cattle which subsequently turned out to belong to someone else other than the defendant. When the true owner sued the auctioneer for conversion, the auctioneer in turn sued the defendant for indemnity. The Court held that the plaintiff having acted on the request of the defendant was entitled to assume that, if it would turned out to be wrongful, he would be indemnified by the defendant. [Adamson v Jarvis].

Validity Of Indemnity Agreement

- A contract of indemnity is one of the species of contracts. The principles applicable to contracts in general are also applicable to such contracts so much so that the rules such as free consent, legality of object, etc., are equally applicable.

- Where the consent to an agreement is caused by coercion, fraud, misrepresentation, the agreement is voidable at the option of the party whose consent was so caused. As per the requirement of the Contract Act, the object of the agreement must be lawful. An agreement, the object of which is opposed to the law or against the public policy, is either unlawful or void depending upon the provision of the law to which it is subject.

Right Of The Indemnity Holder – (Section 125)

- An indemnity holder (i.e. indemnified) acting within the scope of his authority is entitled to the following rights –

- 1. Right to recover damages – he is entitled to recover all damages which he might have been compelled to pay in any suit in respect of any matter covered by the contract.
- 2. Right to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.
- 3. Right to recover sums paid under compromise – he is entitled to recover all amounts which he had paid under the terms of the compromise of such suit. However, the compensation must not be against the directions of the indemnifier. It must be prudent and authorized by the indemnifier.

Right Of The Indemnity Holder – (Section 125)

4. Right to sue for specific performance – he is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability. The promise in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not

It is important to note here that the right to indemnity cannot be claimed of dishonesty, lack of good faith and contravention of the promisor's request. However, the right cannot be negative in case of oversight. [Yeung v HSBC]

Difference Between Indemnity And Guarantee:-

BASIS FOR COMPARISON	INDEMNITY	GUARANTEE
Meaning	A contract in which one party promises to another that he will compensate him for any loss suffered by him by the act of the promisor or the third party.	A contract in which a party promises to another party that he will perform the contract or compensate the loss, in case of the default of a their person, it is the contract of guarantee.
Defined in	Section 124 of Indian Contract Act, 1872	Section 126 of Indian Contract Act, 1872
Parties	Two, i.e. indemnifier and indemnified	Three, i.e. creditor, principal debtor and surety
Number of Contracts	One	Three
Degree of liability of the promisor	Primary	Secondary
Purpose	To compensate for the loss	To give assurance to the promise
Maturity of Liability	When the contingency occurs.	Liability already exists.

Law of Agency

- www.msu.ac.zw/elearning/material/1298274783Law%20of%20agency.doc

- An Agent is defined as a relationship between two parties called PRINCIPAL and AGENT, whereby, the function of the agent is to create a contract/s between the principal and third parties(or to act as the representative of the principal in other ways
- Agency is the relationship that subsists between the principal and the agent, who has been authorized to act for him or represent him in dealing with others. Thus, in an agency, there is in effect two contracts i.e.
  - a) Made between the principal and the agent from which the agent derives his authority to act for and on behalf of the principal; and
  - b) Made between the principal and the third party through the work of the agent.

Creation Of Agency

By Express Appointment By The Principal

- Generally an authority is conferred by the Principal to the Agent. If the agent exceeds this authority, then the principal will not be bound and the agent will be personally liable to the third party for breach of warranty of authority.
- However the common law may extend the scope of the agent's authority beyond this, to protect an innocent third party.
- The principal will then be bound to the third party, but the principal can sue the agent for overstepping his actual authority, if it's a breach of the agency contract.

By Implied Appointment By The Principal

- The law can infer the creation of an agency by implication when a person by his words or conduct acts as if he has such authority and the principal acknowledges that he was entitled to act accordingly. Implied authority, is not specifically mentioned by contract but assumed or implied by the nature of the relationship, are presumed to be given to an agent if that authority is necessary to perform the duties or responsibilities otherwise assigned to the agent or representative.
- Example : where one person allows another person to order goods on his behalf and habitually pays for them, an agency may be implied. In such a case, he will be bound by the contracts as if he has expressly authorized them.
- - Chan Yin Tee v William Jacks and Co.

Creation Of Agency

Apparent / Ostensible Authority

- While actual authority arises from an agreement, apparent authority is that which the law regards the agent as having, although principal may not have consented to the agent having such authority. Apparent authority can happen in two situations:

a) Where principal by words/ conduct, makes a third party to believe that 'agent' has authority to make contract for the principal

Where the agent previously had authority to act, but that authority was terminated by the principal and the principal did not inform third parties that he has terminated it

By Necessity

- The origins of the doctrine of necessitous intervention by someone who is in a legal relationship with the defendant lie in the principle of agency of necessity, where an agent went beyond his or her authority by intervening on behalf of the principal in an emergency. Because of the circumstances of necessity, particularly the impracticability of the agent communicating with the principal, the courts were prepared to treat the agent as though he or she had the necessary authority to do what was reasonably necessary to save the principal's property. If an agency of necessity was established, the agent would be reimbursed for the expense incurred in rescuing the principal's property.

Creation Of Agency

An agency of necessity may be created if the following three conditions are met:

- a) It is impossible for the agent to get the principal's instruction.
- b) The agent's action is necessary, in the circumstances, in order to prevent loss to the principal to prevent them from rotting.
- c) The agent must have acted in good faith.

In an urgent situation, an agent has authority to act in the best interest for the purpose of protecting his principal from losses. (- Great Northern Railway Co v Swaffield)

Facts: Swaffield arranged for a horse to be transported to himself care of a railway station owned by the plaintiffs. The horse arrived at the station however Swaffield was not there to meet it. As the plaintiffs could not contact Swaffield before nightfall and had no facilities to accommodate the horse, they sent it to a livery stable.

Issue: Could the plaintiffs recover from Swaffield the amount they paid the stable for the horse's accommodation?

Held: The plaintiffs had acted reasonably in placing the horse in the stable and were entitled to recover the expenses (which were reasonable) from Swaffield.

Creation Of Agency

By Estoppel

- A person cannot be bound by a contract made on his behalf without his authority. However, if he by his words and conduct allows a third party to believe that that particular person is his agent even when he is not, and the third party relies on it to the detriment of the third party, he (principal) will be estopped or precluded from denying the existence of that person's authority to act on his behalf.

Ratification By The Principal

- Agency by ratification can arise in any one of the following situations:
- An agent who was duly appointed has exceeded his authority; or
- A person who has no authority to act acted as if he has the authority.
- When one of the above said situations arise, the principal can either reject the contract or accept the contract so made.
- When the principal accepts and confirms such a contract, the acceptance is called ratification. Ratification may be expressed or implied.
- The effect of ratification is to render the contract as binding on the principal as if the agent had been properly authorized before hand.

Kinds of Agent

- Auctioneer
- Broker
- Factor
- Commission Agent
- Del Credere Agent
- Estate Agent
- Solicitors

Termination Of Agency

Sections 154 to 163 of the Contracts Acts states the various ways an agent's authority may be terminated.

By Act Of The Party

a) By mutual consent (both party agree)

b) By revocation by Principal

c) By renunciation by Agent

All the above can be done by giving notice (reasonable notice in the case of revocation and renunciation)

d) By the performance of the contract of agency. This happens when agency is created for single specific transaction. (sc 154 CA)

e) By the expiration of the period fixed/implied in the contract

Termination Of Agency

By Operation Of Law

- By the death of either principal or agent. Because relationship between principal and agent is confidential and personal. (Sec 161 Illust. CA). Section 162 CA states when the principal dies, the agent must take all reasonable steps to protect and preserve the interests entrusted to him.
- By the subsequent insanity of either principal or agent. A person of unsound mind cannot enter into contract to appoint an agent or to act as an agent.
- By the bankruptcy/insolvency of principal.
- By the happening of an event which renders the agency unlawful. This is an application of the doctrine of frustration to contracts. For agency contracts, there are examples of termination when the principal becomes an enemy alien because of war or where the subject matter is lost/destroyed.
- Stevenson v Aktiengesellschaft Fur Cartonnagen Industries
- When an agency is terminated, the A agent cannot bind the principal in transactions that he may have entered into with third parties. He will be personally liable to third parties for the contract.

IRREVOCABLE AGENCY

- When the authority has been partly exercised, it cannot be revoked with regard to acts and obligations arising from acts already in the agency.
- Agency is said to be coupled with interest when authority is given for the purpose of securing some benefit to the agent.
- Sec. 202 of Indian Contract Act, 1872 reads as follows.
- “Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest

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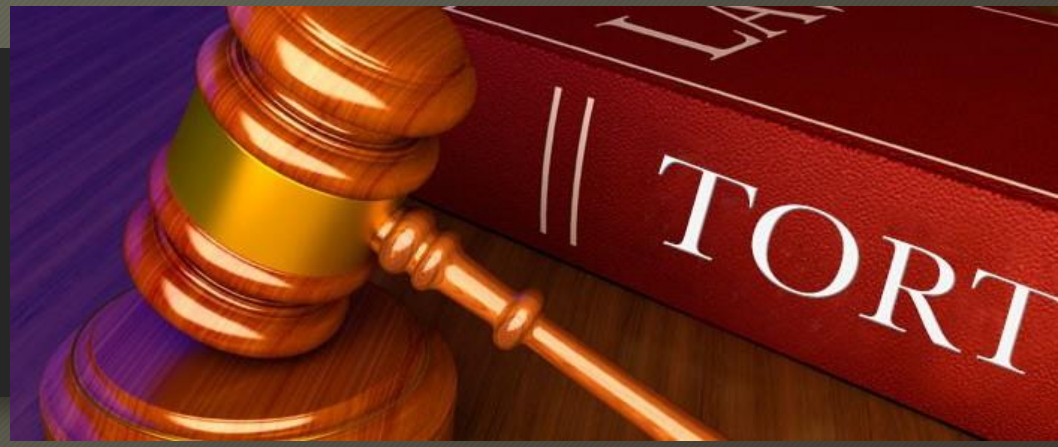
Tort



INTRODUCTION OF TORT :

- Every person in our country is entitled to some legal right. Law imposes a duty on every individual to respect the legal right bestowed on others and any person interfering with someone else's enjoyment of their legal right is said to have committed a tort. The underlying principle of the law of tort is that every person has certain interests which are protected by law. Any act of omission or commission which causes damage to the legally protected interest of an individual shall be considered to be a tort, the remedy for which is an action for unliquidated damages. Tort is generally a breach of duty. In India, the law of tort is uncodified and is still in the process of development.

PRINCIPLES OF TORT :

Following are the 10 most important principles of tort:

1. PRINCIPLE OF DAMNUM SINE INJURIA AND INJURIA SINE DAMNUM
2. PRINCIPLE OF VICARIOUS LIABILITY
3. PRINCIPLE OF VOLENTI NON FIT INJURIA
4. PRINCIPLE OF NEGLIGENCE
5. PRINCIPLES OF PERSONAL SECURITY
6. PRINCIPLE OF NUISANCE
7. PRINCIPLE OF TRESPASS TO PROPERTY
8. PRINCIPLES OF REPUTATION AND PRIVACY
9. PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY
10. POSITION OF MINORS IN LAW OF TORT

PRINCIPLE OF DAMNUM SINE INJURIA AND INJURIA SINE DAMNUM

*Damnum sine injuria*is a Latin maxim which means damage without legal injury.

- Example: A sets up a rival school opposite to B's school with a low fee structure as a result of which students from B's school flocked to A's school thereby causing a huge financial loss to A. This act of A is not actionable in law of torts since it did not lead to the violation of any legal right of the plaintiff although he has sustained financial loss.

Injuria sine damnum is a Latin term which means legal injury without any damage.

- Example : In the leading case of *Ashby v White* the defendant, a returning officer at a voting booth refused to allow the plaintiff, a duly qualified voter from voting. The candidate for whom the plaintiff was voting got elected and therefore no loss was suffered by him. The court held that although the plaintiff did not sustain any actual loss, but his legal right to vote was violated for which he was granted a remedy.

PRINCIPLE OF VICARIOUS LIABILITY

It is a general rule that a person is responsible for his own act of omission and commission but in certain cases a person is liable for the act of others. This is known as vicarious liability. The essential elements of vicarious liability are as follows:

- There must be a relationship of a certain kind.
- The wrongful act must be related to the relationship in a certain way.
- The wrongful act must be done within the course of employment.

Most common example of vicarious liability include:

- Employers liability for the act of his servant during the course of **employment**: This liability is based on the principle of "respondent superior" whereby a person is responsible for the act of his subordinate and*qui facit per aliumfacit per se* which means he who does an act through another is deemed in law to do it himself.

PRINCIPLE OF VICARIOUS LIABILITY

The essential elements amounting to vicarious liability of a master for the tort of his servant are as follows:

- There should be a master-servant relation.
- The act of omission or commission should be done within the course of employment.

Example: If A, driver of B in his course of employment negligently knocks down C while driving a car, B will be responsible for the negligence of his driver A.

- **Principal's liability for the act of his agent**: When an agent performs an act which is authorised by the principle, the latter becomes liable for such an act of the agent provided the act is done within the course of employment.
- **Liability of partners for each other's torts**: When a partner in the normal course of business of a partnership firm commits a tort, all the other partners are equally responsible for the tort as the guilty partner.

PRINCIPLE OF VOLENTI NON FIT INJURIA

The Latin maxim *volenti non fit injuria*literally means “to one who volunteers, no harm is done”. A person who after knowing the risks and circumstances willingly and voluntarily consents to take the risk cannot ask for compensation for the injury resulting from it. A person who voluntarily abandons his rights cannot sue for any damage caused to him. It is used as a complete Defence in the law of torts liberating the defendant from all kinds of liability. Essential elements constituting *volenti non fit injuria* are as follows:

- Voluntary
- Agreement (express or implied)
- Knowledge of the risk

Example: By participating in a football match, the player willingly consents to bear the risk that may arise in the normal course of the game.

PRINCIPLE OF NEGLIGENCE

Negligence is said to have been committed when a person owes a duty of care towards someone and commits a breach of duty by failing to perform it resulting in a legal damage caused to the complainant. In other words, a tort of negligence is committed when a person is injured due to the irresponsibility of another. The damage so caused must be an immediate cause of the act of negligence and not a remote cause.

Essential elements of negligence are as follows:

- Duty to take care
- Beach of such a duty
- Legal damage caused to the complainant due to a breach of duty

Reasonable foreseeability is the basic principle on which the tort of negligence is based. When a person before or at the time of committing an act can reasonably foresee that his act is likely to cause a damage to the other person and he still continues to do it, he is said to have committed a tort of negligence.

PRINCIPLE OF NEGLIGENCE

- **COMPOSITE NEGLIGENCE**: When the negligent act of two or more person results in the same damage, it is called composite negligence. The liability in such a case is joint and several.

- The burden of proof falls on the plaintiff that he has sustained legal damage due to a breach of duty on the part of the defendant.However, in certain cases the plaintiff doesn't have to prove negligence on the defendant's part. Such cases fall under the principle of *res ipsa loquitor* which means "things speak for itself" where it is evident from the facts of the case that there has been negligence on the side of the defendant.

- Example: A doctor while performing an operation leaves a pair of scissor inside the stomach of the patient.

PRINCIPLES OF PERSONAL SECURITY

Principles of personal security are as follows:

ASSAULT

- Assault is an act which creates in the mind of a person reasonable apprehension of a physical threat or a harm accompanied by a capacity to carry out such a threat. It is important to note that there is an absence of physical contact in assault. Essential elements of assault are as follows:

    - Apprehension of harm
    - Intention to use force
    - Capacity to use force

PRINCIPLES OF PERSONAL SECURITY

BATTERY

- Battery refers to a harmful, offensive and unlawful touching of a person against his will. It is an application of force to the body of another in an offensive manner. Battery is an accomplished assault.

<u>Essential elements:</u>

- Intention to use physical force
- Actual physical contact

PRINCIPLES OF PERSONAL SECURITY

FALSE IMPRISONMENT

- Unlawfully restraining a person without his will by someone who does not have any legal authority to do so amounts to false imprisonment. A person may also be made liable for false imprisonment if he intentionally restricts another person's freedom of movement without any lawful justification. Arrest of a person without any legal warrant and authority also amounts to false imprisonment.

Essential elements:

- Wilful detention
- Detention without consent
- Detention is unlawful

Example: A person locking another person in a room without the consent of the person being locked.

PRINCIPLE OF NUISANCE

The word nuisance is derived from the French word '*nurie*' which means 'to hurt' or 'to annoy'. Nuisance is an unlawful interference with a person's enjoyment of land or some rights over or in connection with it.

There are two types of nuisance:

1. **PUBLIC NUISANCE**: It is an interference with the right to enjoyment of land of a large number of people thereby causing inconvenience and annoyance. It is committed against the community at large and not any particular individual. It covers a wide variety of minor crimes that harms or threatens the safety, comfort and welfare of people at large. The extent to which the inconvenience has been caused may differ from person to person.

Examples: Fireworks in the street, construction of a structure in the middle of a public way obstructing the passage of people, etc.

PRINCIPLE OF NUISANCE

2. PRIVATE NUISANCE: It refers to an unlawful interference with a person's use or enjoyment of his land causing inconvenience and annoyance to the person. It should be noted that while public nuisance affects the community at large, private nuisance affects an individual.

Example: Destruction of crops of an individual, a poisonous dog of a person enters into the neighbour's premises and causes destruction.

REMEDIES :

- Damages
- Injunction
- Abatement

PRINCIPLE OF TRESPASS TO PROPERTY

- Trespass to property refers to an unjustifiable physical encroachment of land of one person by another. If a person directly enters upon another person's land without permission or remains upon the land or places any object upon the land, he is said to have committed the tort of trespass to land.
- For an act of trespass to be actionable, it is necessary that the land in which the trespass has been committed must be in direct possession of the plaintiff. For example, use of camera in order to view activities on the land of another. The encroachment on plaintiff's land should arise out of the direct consequence of the act of the defendant and not any remote or indirect cause.Also, one of the most important elements of trespass to land is the intention in the mind of the defendant not to commit trespass but to commit the act that amounts to trespass. Trespass to land is actionable per se.
- However, it should be noted that there is a difference between trespass to land and nuisance. Trespass is an encroachment or interference on the property of a person whereas nuisance is an interference with the right to enjoy his property.

PRINCIPLE OF TRESPASS TO PROPERTY

CONTINUING TRESPASS: Continuing trespass occurs when there is a continuation of the presence after the permission has been withdrawn or when the offending object remains on the property of the person entitled to possession. For example continuing to keep an object on someone's land even after the permission has been withdrawn.

Ways in which trespass to land can occur:

- Entry upon land
- Trespass to airspace (limited)
- Trespass to the ground beneath the surface

REMEDIES

- Damages: the plaintiff is entitled to full compensation of the loss incurred by him.
- Injunction: order by the court directing the defendant from doing or restraining from doing an act.

Prohibited Airspace: India

- **India**
- The Taj Mahal, Agra, State of Uttar Pradesh, India
- Parliament Building, Prime Minister's residence, and other important centers in New Delhi.
- The airspace around many Defence and Indian Air Force bases are restricted, although new proposals are suggesting opening them up for civilian aircraft.
- The Rashtrapati Bhavan in Delhi.
- The Tower of Silence, Mumbai.
- Mathura Refinery
- Padmanabhaswamy Temple in Thiruvananthapuram district state of Kerala
- Bhabha Atomic Research Centre
- Sriharikota Space Station in Andhra Pradesh
- A 10-km radius no-fly zone over Kalpakkam nuclear installation, Tamil Nadu. All flying activity up to a height of 10,000 feet over the Kalpakkam area is prohibited.[6]
- All Refineries

PRINCIPLES OF REPUTATION AND PRIVACY

The principles of reputation and privacy are as follows:

DEFAMATION

- Defamation means publishing false and defamatory statement about someone without any lawful justification which lowers his reputation in the eyes of the right thinking members of the society. In other words, defamation means intentional false communication either written or spoken which harms a person's reputation.

PRINCIPLES OF REPUTATION AND PRIVACY

Defamation is of two types:

- **LIBEL**: This is a written form of defamation which is actionable per se. Libel refers to the statement which intends to lower the reputation of another person without any lawful excuse. The statement must be in printed form capable of being reproduced like cartoons, drawings, recordings, etc.

- **SLANDER**: Slander is an oral form of defamation where false and defamatory statements are made by words spoken or gestures which intend to lower the reputation of a person.

PRINCIPLES OF REPUTATION AND PRIVACY

Essential elements of defamation are as follows:

1. Statement must be published
2. It must be defamatory
3. It must be false
4. It must refer to the plaintiff

Defences against an action for defamation are as follows:

1. Statements made about a public personality
2. Statements which are true
3. Fair comment
4. Consent of the aggrieved

PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY

- **STRICT LIABILITY:**
- At times a person may be held responsible for doing a wrong even though there had been no negligence on his part or no intention to do such wrong or even if he had taken necessary steps to prevent such a wrong from happening. This is known as the principle of strict liability and is based on a no fault theory. The principle of strict liability was first laid down in the landmark case of Ryland's v. Fletcher.

- " Anyone who in the course of "non-natural" use of his land "accumulates" thereon for his own purposes anything likely to do mischief if it escapes is answerable for all direct damage thereby caused. It imposes strict liability on certain areas of nuisance law."

PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY

The essential elements of strict liability are as follows:

- There has to be some hazardous thing brought by the defendant on his land.
- Escape of the hazardous thing from the territory of the defendant.
- There must be a non-natural use of land.

Exceptions:

- Escape of the hazardous goods was because of plaintiffs own consent
- Act of god
- Act of a stranger
- Act done by any statutory authority
- Default of the plaintiff

PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY

ABSOLUTE LIABILITY:

- Absolute liability is a stricter form of strict liability. It refers to the no fault theory liability in which the wrongdoer is held absolutely liable for the act of omission or commission without any defences which are available to the rule of strict liability. It is applicable only to those people who are involved in hazardous or inherently dangerous activity whereby they become absolutely liable to full compensation for the harm caused to anyone resulting from the operation of such hazardous activity. The rule of absolute liability was first laid down in M.C Mehta v. Union of India (*Oleum gas case*).

POSITION OF MINORS IN LAW OF TORT

In India, a minor is a person who is below the age of 18 years. They can sue just like adults but through their parents and can also be sued like adults if they are old enough to form an intention to commit a tort.

- **CAPACITY TO SUE**

A minor can sue for any wrong done to him through his 'litigation friend' who usually is his father. A minor may even sue his parents for a negligent act. A child who sustained injury while in the mother's womb can also sue the guilty after coming to the world.

- **CAPACITY TO BE SUED**

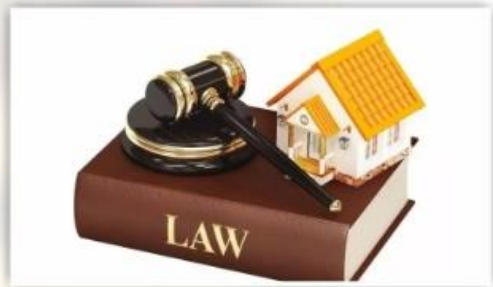
A minor is generally not capable of being sued if he commits a tort since he is incapable of reimbursing damages, but in most of the cases he can be sued just like an adult. Also, a minor can be sued for contributory negligence.

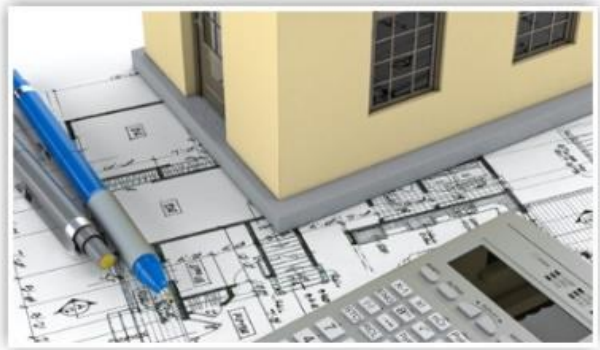
POSITION OF MINORS IN LAW OF TORT

PARENTS LIABILITY FOR A MINORS TORT

- Parents could be held liable for the tort committed by their children if they owed a direct duty of care towards their child while he committed the tort. They are responsible for their children's action the same way as the employers are responsible for the harmful action of their employees.

THANK YOU





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