

Topic No. of Sessions

Introduction to Legal Environment 2

Business Contracts 5

Non-Corporate Business Entities 2

Law Relating to Corporate Business Entities 5

| <b>Number of Sessions</b> | <b>Topic</b>                             | <b>Details of the Topic</b>   | <b>Pedagogy</b>              |
|---------------------------|--|---|------------------------------|
| 1                         | <b>Introduction to Legal Environment</b> | Meaning of Law – Purpose of Law – Sources of Law – Classification of Law – Torts – National and International Law   | Lecture                      |
| 2                         | <b>Introduction to Legal Environment</b> | Evolution of Mercantile / Business Law – International Business Law – Justice Delivery System in India.   | Lecture                      |
| 3                         | <b>Introduction to gst</b>               | Classification of Taxes – Income Tax – Wealth Tax – GST   | Lecture                      |
| 4                         | <b>Business Contracts</b>                | Legal Elements of Contracts – Parties – Offer – Acceptance – Consideration-Types of Contracts – Valid Contracts – Voidable Contracts  | Lecture                      |
| 5                         |  | Breach of Contracts and Remedies – Payment of Damages-Liquidated damages  | lecture                      |
|                           |  | Agency – Rights and Duties of Principal and Agent – Termination of Agency   | lecture                      |
| 6                         |  | Special Contracts – Lien / Guarantee / Indemnity / Letter of Credit / Set Off-Important clauses in Corporate & Commercial Agreements-- Conditions – Obligations – Termination — Data Privacy – Confidentiality – Indemnification.   | Lecture using small caselets |
| 7                         |  | Description of Parties – Recitals of Subject – Consideration – Covenants and Undertakings – Signatures and Attestation – Endorsement and Supplement Deeds – Stamp Duty and Registration – Applicable Law – Force Majeure – Notice – Arbitration Employer and Employee Contracts | Lecture using small caselets |
| 8                         | <b>Business Transactions and Cyber</b>   | Application of IT Act, 2000 to Contracts and Transactions<br>Digital Signature and Authentication of Electronic Records<br>Cyber offences   |                              |

|    |  |  |                |
|----|--|--|----------------|
| 9  | <b>Non-Corporate Business Entities</b> | Legal Formalities and Registration – Rights and Liabilities of Members – Sole Proprietorship – Partnership – society       | Lecture        |
| 10 |  | Limited Liability Partnership Firms (LLPs) – Hindu Undivided Family (HUF). Insolvency – Acts of Insolvency – Consequences. | Lecture + Case |

## Chapter 1; Session 1:

A person is a social human being living in the group, called society. He has to do various activities for his livelihood. Some activities are good or some are bad. In other words, some are beneficial for the society and some are harmful to the society. To regulate the activities of human behaviour a group of set activities is introduced by regulatory authorities so that no one could harm the other one, this set of rules is called Law. Let us take a look at the meaning of the law and a brief introduction to Indian Law.

### Meaning of Law

In the real world, the law is an amorphous set of rules govern individuals and group behaviour. We don't even know about many of these rules or we understand them only generally. For example, you don't need to see a written law to know that it's a crime to steal or destroy someone else property.

In other words, the law is a system of rules that are created and enforced through the social or governmental institution to regulate behaviour. Stamp that regulates and ensure that individuals

## SESSION 2

### INTRODUCTION TO BUSINESS LAW MEANING AND DEFINITION OF BUSINESS

The term business may be understood as the organised efforts of enterprises to supply consumers with goods and services and to earn profit in the process. Business is a broad term and includes such varied activities as production, promotion, wholesaling, retailing, distribution, transportation, warehousing, financing, insurance, consultancy, and the like. The two definitions on business given below echo the same meaning. Business is a "complex field of commerce and industry in which goods and services are created and distributed ... in the hope of profit within a framework of laws and regulations." Business "comprises all profit seeking activities and enterprises that provide goods and services necessary to an economic system. It is the economic pulse of a nation, striving to increase society's standard of living. Profits are a primary mechanism for motivating these activities. Business is as important as it is vast in its scope. It is a unique institution which converts ideas into saleable products. From the time we get up early in the morning till we go to bed in the night the products we consume and the services we use are all supplied to us by business. Business offers innumerable opportunities for us to earn money so that we can buy and enjoy the products. We depend so much on business that except for six or seven hours we sleep every day the remaining hours we spend for or on business. It is really shiver to imagine what would happen to us without business. Indeed there is no life without business.

**MEANING AND DEFINITION OF LAW** Law refers to the principles and regulations established by a Government and applicable to people, whether in the form of legislation or of custom and policies recognised and enforced by judicial decision. A few definitions of law are worth quoting in this context. According to BLACKSTONE "Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of

actions whether animate or inanimate, rational or irrational.” Salmond defines law as the “body or principles recognised and applied by the State in the administration of Justice.” Woodrow Wilson defines law as “that portion of the established habit and thought of mankind which has gained distinct and formal recognitions in the shape of uniform rules backed by the authority and power of the Government.” Definitions of law frequently emphasize the coercive power of the State which stands behind the rules. And it is true of many rules that failure to comply with them may lead to the use of coercion by officials. Thus, if a man refuses to perform his/her obligations under a contract, he/she is sued in a ... Business Regulations court of breach of contract, loses the suit and is ordered to pay damages. But many rules of law merely grant permission to do certain things; and if a citizen does not do what he/she is permitted to do, he/she is not subject to any coercion. Moreover, the government often induces people to do what it wants them to do by the lure of benefits. An entrepreneur, for example, is assured of certain concessions if he/she were to set-up his/her plant in a backward area. If he/she ignores the offer, he/she is not penalised, he/she simply does not get the concessions.

### **Session 3:**

#### Taxation in India

The India Constitution is quasi-federal in nature, and the country has three tier government structure.

To avoid any disputes between the centre and state the Constitution envisage following provisions regarding taxation:

- Division of powers to levy taxes between centre and state is clearly defined.
- There are certain taxes which are levied by the centre, but their proceeds are distributed between both centre and the state. Example- Union Excise Duty.
- There are certain taxes which are levied by the centre, but their proceeds are transferred to the states. Example-Estate duty on property other than agriculture income.
- There are certain taxes which are levied by the central government, but the responsibility to collect them is vested with the states. Example- Stamp Duty other than included in the Union List.
- There are certain taxes which are levied by the states, and their proceeds are also kept by states. Example: Erstwhile VAT

#### Classification of Taxes

##### **What is a Tax?**

Taxes are generally an involuntary fee levied on individuals and corporations by the government in order to finance government activities. Taxes are essentially of quid pro quo in nature. It means a favour or advantage granted in return for something.

#### **Direct Tax versus Indirect Tax**

| <b>Basis</b> | <b>Direct Tax</b> | <b>Indirect Tax</b> |
|--------------|-------------------|---------------------|
|--------------|-------------------|---------------------|

|                  |   |   |
|------------------|---|---|
| <b>Meaning</b>   | The tax that is levied by the government directly on the individuals or corporations are called Direct Taxes.   | The tax that is levied by the government on one entity (Manufacturer of goods), but is passed on to the final consumer by the manufacturer.   |
| <b>Incidence</b> | The incidence and impact of the direct tax fall on the same person.   | The incidence and impact of the tax fall on different persons.  |
| <b>Examples</b>  | Income Tax, Corporation Tax and Wealth Tax.   | VAT, Service tax, GST, Excise duty, entertainment tax and Customs Duty.   |
| <b>Nature</b>    | They are progressive in nature.   | They are regressive in nature.  |
| <b>Objective</b> | Both Social and Economical. Social objective of direct tax is the distribution of income. A person earning more should contribute more in the provision of public service by paying more tax. This provision is also known as progressive taxation. | Only Economical. When an indirect tax is levied on a product, both rich and poor must pay at the same rate. A person earning 10 lakh a month pays the same tax on the Wheat purchase as the person earning 3000 Re a month. This principle is called regressive taxation. |
| <b>Impact</b>    | Not at all Inflationary.  | Is inflationary.  |

#### Session 4:

##### INDIAN CONTRACT ACT 1872 INTRODUCTION

- The Law of Contract deals with the law relating to the general principles of contract. It is the most important part of Mercantile Law. It affects every person in one way or the other, as all of us enter into some kind of contract everyday. · Since this law was not happily worded, two subsequent legislations namely Indian Sale of Goods Act – Sections 76 to 123 of the Indian Contract Act 1872 were repealed; and Partnership Act was also enacted and Sections 239 to 266 of the Contract Act were also repealed. What is `Contract`
- The term `Contract` is defined in Section 2(h) of the Indian Contract Act, which reads as under “An agreement enforceable by law is a contracts.”
- The analysis of this definition shows that a contract must have the following two elements: 1. An agreement, and 2. The agreement must be enforceable by law.
- In other words: Contract = An Agreement + Enforceability (by law) Agreement (Section 2(e) Every promise and every set of promises forming the consideration for each other is an agreement. Promise (Section 2(b)) A proposal when accepted becomes a promise.

· Every agreement is not a contract. When an agreement creates some legal obligations and is enforceable by law, it is regarded as a contract.

2.1 ESSENTIAL ELEMENTS OF CONTRACT 1. Agreement 2. Intention to create legal relationship 3. Free and genuine consent. 4. Parties competent to contract. 5. Lawful consideration. 6. Lawful object. 7. Must be in writing. (Generally, oral contract is not enforceable) 8. Agreement not declared void or illegal. 9. Certainty of meaning. 10. Possibility of performance. 11. Necessary legal formalities.

Ex – Where 'A' who owns 2 cars x and y wishes to sell car 'x' for Rs. 30,000. 'B', an acquaintance of 'A' does not know that 'A' owns car 'x' also. He thinks that 'A' owns only car 'y' and is offering to sell the same for the stated price. He gives his acceptance to buy the same. There is no contract because the contracting parties have not agreed on the same thing at the same time, 'A' offering to sell his car 'x' and 'B' agreeing to buy car 'y'. There is no consensus-ad-idem.

LAW OF CONTRACT CREATES jus in personam·The term jus in personam means a “right against or in respect of a specific person.” Thus, law of contract creates jus in personam and not jus in rem. A jus in rem means a right against or a thing. CLASSIFICATION OF CONTRACTS 1. Classification according to validity or enforceability. a) Valid b) Voidable c) Void contracts or agreements d) Illegal. e) Unenforceable 2. Classification according to Mode of formation (i) Express contract (ii) Implied contract 2. Classification according to Performance

CONTRACT ACT (i) Executed contract (ii) Executory contract. (iii) Unilateral Contract (iv) Bilateral Contract

2.2 OFFER AND ACCEPTANCE [Sections 3-9] OFFER What is 'Offer/Proposal' · A Proposal is defined as quot;when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.quot; [Section 2(a)]. How an Offer is made? · An offer can be made by (a) any act or (b) omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it to the other (Section 3).

ESSENTIAL REQUIREMENTS OF A VALID OFFER · An offer must have certain essentials in order to constitute it a valid offer. These are: 1. The offer must be made with a view to obtain acceptance. 2. The offer must be made with the intention of creating legal relations. [Balfour v. Balfour (1919) 2 K.B.571] 3. The terms of offer must be definite, unambiguous and certain or capable of being made certain. The terms of the offer must not be loose, vague or ambiguous. 4. An offer must be distinguished from (a) a mere declaration of intention or (b) an invitation to offer or to treat. An auctioneer, at the time of auction, invites offers from the would-be-bidders. He is not making a proposal. A display of goods with a price on them in a shop window is construed an invitation to offer and not an offer to sell. Offer vis-a-vis Invitation to offer An offer must be distinguished from invitation to offer. θ A prospectus issued by a company for subscription of its shares by the members of the public, is an invitation θ to offer. The Letter of Offer issued by a company to its existing shareholders is an offer. 5. The offer must be communicated to the offeree. An offer must be communicated to the offeree before it can be accepted. This is true of specific as well as general offer. 6. The offer must not contain a term the non-compliance of which may be assumed to amount to acceptance. Cross Offers · Where two parties make identical offers to each other, in ignorance of each other's offer, the offers are known as cross-offers and

neither of the two can be called an acceptance of the other and, therefore, there is no contract.

**TERMINATION OR LAPSE OF AN OFFER** · An offer is made with a view to obtain assent thereto. As soon as the offer is accepted it becomes a contract. But before it is accepted, it may lapse, or may be revoked. Also, the offeree may reject the offer. In these cases, the offer will come to an end. 1) The offer lapses after stipulated or reasonable time 2) An offer lapses by the death or insanity of the offeror or the offeree before acceptance. 3) An offer terminates when rejected by the offeree. 4) An offer terminates when revoked by the offeror before acceptance. 5) An offer terminates by not being accepted in the mode prescribed, or if no mode is prescribed, in some usual and reasonable manner. 6) A conditional offer terminates when the condition is not accepted by the offeree. (7) Counter Offer

**TERMINATION OF AN OFFER** 1. An offer lapses after stipulated or reasonable time. 2. An offer lapses by the death or insanity of the offeror or the offeree before acceptance. 2. An offer. **CONTRACT ACT** rejection. 4. An offer terminates when revoked. 5. It terminates by counter-offer. 6. It terminates by not being accepted in the mode prescribed or in usual and reasonable manner. 7. A conditional offer terminates when condition is not accepted. **ACCEPTANCE** · Acceptance has been defined as "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted". Acceptance how made · The offeree is deemed to have given his acceptance when he gives his assent to the proposal. The assent may be express or implied. It is express when the acceptance has been signified either in writing, or by word of mouth, or by performance of some required act. Ex- A enters into a bus for going to his destination and takes a seat. From the very nature, of the circumstance, the law will imply acceptance on the part of A.] · In the case of a general offer, it can be accepted by anyone by complying with the terms of the offer.

**ESSENTIALS OF A VALID ACCEPTANCE** 1) Acceptance must be absolute and unqualified. 2) Acceptance must be communicated to the offeror. 3) Acceptance must be according to the mode prescribed. Ex- A sends an offer to B through post in the usual course. B should make the acceptance in the "usual and reasonable manner"; as no mode of acceptance is prescribed. He may accept the offer by sending a letter, through post, in the ordinary course, within a reasonable time.

**COMMUNICATION OF OFFER, ACCEPTANCE AND REVOCATION** · As mentioned earlier that in order to be a valid offer and acceptance. (i) the offer must be communicated to the offeree, and (ii) the acceptance must be communicated to the offeror. The communication of acceptance is complete: (i) as against the proposer, when it is put into a course of transmission to him, so as to be out of the power of the acceptor; (ii) as against the acceptor, when it comes to the knowledge of the proposer. Ex- A proposes, by letter, to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of acceptance is complete: (i) as against A, when the letter is posted by B; (ii) as against B, when the letter is received by A. The communication of a revocation (of an offer or an acceptance) is complete: (1) as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it. (2) as against the person to whom it is made when it comes to his knowledge. Ex- A revokes his proposal by telegram. The revocation is complete as against A, when the telegram is dispatched. It is complete as against B, when B receives it. Revocation of proposal and acceptance: · A proposal may be revoked at any time before the

communication of its acceptance is complete as against the proposer, but not afterwards. Ex- A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

**CAPACITY TO CONTRACT (Sections 10-12) WHO ARE NOT COMPETENT TO CONTRACT** · The following are considered as incompetent to contract, in the eye of law: -

(1) Minor: - (i) A contract with or by a minor is void and a minor, therefore, cannot, bind himself by a contract. (ii) A minor's agreement cannot be ratified by the minor on his attaining majority. (iii) If a minor has received any benefit under a void contract, he cannot be asked to refund the same. (iv) A minor cannot be a partner in a partnership firm. (v) A minor's estate is liable to a person who supplies necessaries of life to a minor. **CASE EXAMPLE** In 1903 the Privy Council in the leading case of *MohiriBibi v. DharmodasGhose* (190,30 Ca. 539) held that in India minor's contracts are absolutely void and not merely voidable. The facts of the case were: DharmodasGhose, a minor, entered into a contract for borrowing a sum of Rs. 20,000 out of which the lender paid the minor a sum of Rs. 8,000. The minor executed mortgage of property in favour of the lender. Subsequently, the minor sued for setting aside the mortgage. The Privy Council had to ascertain the validity of the mortgage. Under Section 7 of the Transfer of Property Act, every person competent to contract is competent to mortgage. The Privy Council decided that Sections 10 and 11 of the Indian Contract Act make the minor's contract void. The mortgagee prayed for refund of Rs. 8,000 by the minor. The Privy Council further held that as a minor's contract is void, any money advanced to a minor cannot be recovered. (2) **Mental Incompetence** θ A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is incapable of understanding it, and of forming a rational judgement as to its effect upon his interests. θ A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. Ex- A patient, in a lunatic asylum, who is at intervals, of sound mind; may contract during those intervals. A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effect on his interest, cannot contract whilst such delirium or drunkenness lasts. (3) **Incompetence through Status** (i) Alien Enemy (Political Status) (ii) Foreign Sovereigns and Ambassadors (iii) Company under the Companies Act or Statutory Corporation by passing Special Act of Parliament (Corporate status) (iv) Insolvent Persons .

**FREE CONSENT (Sections 10; 13-22) What is the meaning of `CONSENT` (SECTION 13)** · When two or more persons agree upon the same thing in the same sense, they are said to consent. Ex- A agrees to sell his Fiat Car 1983 model for Rs. 80,000. B agrees to buy the same. There is a valid contract since A and B have consented to the same subject matter. **What is meant by `Free Consent`** · Consent is said to be free when it is not caused by Causes affecting contract Consequences 1. Coercion Contract voidable 2. Undue influence Contract voidable 2. Fraud Contract voidable 4. Misrepresentation Contract voidable 5. Mistake – (i) of fact (a) Bilateral Void (b) Unilateral Generally not invalid (ii) of Fact Void Ex - (i) A railway company refuses to deliver certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive. (ii) The directors of a Tramway Co. issued a prospectus stating that they had the right to run tramcars with steam power instead of with horses as before. In fact, the Act incorporating the company provided that such power might be used with the sanction of the Board of Trade. But, the Board of Trade refused to give permission and the company had to

be wound up. P, a shareholder sued the directors for damages for fraud. The House of Lords held that the directors were not liable in fraud because they honestly believed what they said

**CONSIDERATION** [Sections 2(d), 10,23-25, 148, 185] Definition · Consideration is what a promisor demands as the price for his promise. In simple words, it means 'something in return.' · Consideration has been defined as quot;When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or promises to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.quot;

**IMPORTANCE OF CONSIDERATION** · A promise without consideration is purely gratuitous and, however sacred and binding in honour it may be, cannot create a legal obligation. · A person who makes a promise to do or abstain from doing something usually does so as a return or equivalent of some loss, damage, or inconvenience that may have been occasioned to the other party in respect of the promise. The benefit so received and the loss, damage or inconvenience so caused is regarded in law as the consideration for the promise.

**KINDS OF CONSIDERATION** · A consideration may be: 1. Executed or Present 2. Executory or Future 2.6 **LEGALITY OF OBJECT** (Sections 23, 24) ·An agreement will not be enforceable if its object or the consideration is unlawful. According to Section 23 of the Act, the consideration and the object of an agreement are unlawful in the following cases: What consideration and objects are unlawful – agreement VOID 1. If it is forbidden by law 2. If it is of such a nature that if permitted, it would defeat the provisions of any law. 2. If it is fraudulent. An agreement with a view to defraud other is void. 4. If it involves or implies injury to the person or property of another. If the object of an agreement is to injure the person or property of another it is void. 5. If the Court regards it as immoral or opposed to public policy. An agreement, whose object or consideration is immoral or is opposed to the public policy, is void. Ex- A partnership entered into for the purpose of doing business in arrack (local alcoholic drink) on a licence granted only to one of the partners, is void ab-initio whether the partnership was entered into before the licence was granted or afterwards as it involved a transfer of licence, which is forbidden and penalised by the Akbari Act and the rules thereunder [VeluPayaychi v. Siva Sooriam, AIR (1950) Mad. 987]. 2.7 **VOID and VOIDABLE Agreements** (Sections 26-30) Void agreement 1. The following are the additional grounds declaring agreements as void: - (i) Agreements by person who are not competent to contract. (ii) Agreements under a mutual mistake of fact material to the agreement. (iii) Agreement with unlawful consideration. (iv) Agreement without consideration. (Exception – if such an agreement is in writing and registered or for a past consideration) (v) Agreement in restraint of marriage. (vi) Agreement in restraint of trade (vii) Agreements in restraint of legal proceedings, (viii) Agreements void for uncertainty (Agreements, the meaning of which is not certain, or capable of being made certain) (ix) Agreements by way of wager (a promise to give money or money's worth upon the determination or ascertainment of an uncertain event) (x) Agreements against Public Policy (xi) Agreements to do impossible act. Voidable agreements ·An agreement, which has been entered into by misrepresentation, fraud, coercion is voidable, at the option of the aggrieved party.

2.8 **CONTINGENT CONTRACTS** (SECTIONS 31-36) ·A contingent contract is a contract to do or not to do something, if some event, collateral to such contract does or does not happen. When a contingent contract may be enforced · Contingent contracts may be

enforced when that uncertain future event has happened. If the event becomes impossible, such contracts become void.

ESSENTIAL ELEMENTS OF A CONTINGENT CONTRACT 1. There must be a valid contract. 2. The performance of the contract must be conditional. 3. The event must be uncertain. 4. The event must be collateral to the contract. 5. The event must be an act of the party. 6. The event should not be the discretion of the promisor.

2.9 QUASI CONTRACTS [SECTIONS 68- 72] · The term `quasi contract` may be defined as a `contract which resembles that created by a contract.` as a matter of fact, `quasi contract` is not a contract in the strict sense of the term, because there is no real contract in existence. Moreover, there is no intention of the parties to enter into a contract. It is an obligation, which the law creates in the absence of any agreement. CIRCUMSTANCES OF QUASI CONTRACTS · Following are to be deemed Quasi-contracts. (i) Claim for Necessaries Supplied to a person incapable of Contracting or on his account. (ii) Reimbursement of person paying money due by another in payment of which he is interested. Obligation of a person enjoying benefits of non-gratuitous act. (iii) Responsibility of Finder of Goods (iv) Liability of person to whom money is paid, or thing delivered by mistake or under coercion Ex- A, who supplies the wife and children of B, a lunatic, with necessaries suitable to their conditions in life, is entitled to be reimbursed from B's property.

2.10 PERFORMANCE OF CONTRACTS [SECTIONS 37-67] Offer to perform or tender of performance · According to Section 38, if a valid offer/tender is made and is not accepted by the promisee, the promisor shall not be responsible for non-performance nor shall he lose his rights under the contract. A tender or offer of performance to be valid must satisfy the following conditions: 1. It must be unconditional. 2. It must be made at proper time and place, and performed in the agreed manner.

WHO MUST PERFORM · Promisor - The promise may be performed by promisor himself, or his agent or by his legal representative. · Agent - the promisor may employ a competent person to perform it. · Legal Representative - In case of death of the promisor, the Legal representative must perform the promise unless a contrary intention appears from the contract.

CONTRACTS, WHICH NEED NOT BE PERFORMED I. If the parties mutually agree to substitute the original contract by a new one or to rescind or alter it 2. If the promisee dispenses with or remits, wholly or in part the performance of the promise made to him or extends the time for such performance or accepts any satisfaction for it. 2. If the person, at whose option the contract is voidable, rescinds it. 4. If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise.

2.11 DISCHARGE OF CONTRACTS [Sections 73-75]

1. · The cases in which a contract is discharged may be classified as follows: A. By performance or tender B. By mutual consent θ A contract may terminate by mutual consent in any of the following ways: - a. Novation (substitution) b. Recession (cancellation) c. Alteration C. By subsequent impossibility D. By operation of law E. By breach

## SESSION:5

REMEDIES FOR BREACH OF CONTRACT (SECTIONS 73-75) · As soon as either party commits a breach of the contract, the other party becomes entitled to any of the following reliefs: - a) Rescission of the contract b) Damages (monetary compensation) c) Specific performance d) Injunction e) Quantum meruit Ex – A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her Rs. 100 for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B in consequence, rescinds the contract. B is entitled to claim compensation for the damages for which he has sustained through the non-fulfilment of the contract.

2.13 CONTRACTS OF INDEMNITY [SECTIONS 124-125] What is contract of indemnity · A contract of indemnity is a contract whereby 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 party. · A contract of indemnity may arise either (1) by an express promise or (2) by operation of law i.e. the duty of a principal to indemnify an agent from consequences of all lawful acts done by him as an agent.

RIGHTS OF INDEMNIFIED (THE INDEMNITY HOLDER) · The indemnity holder is entitled to recover from the promisor a) All the damages which may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies b) All costs of suit which he may have to pay to such third party provided in bringing or defending the suit (i) he acted under the authority of the indemnifier or (ii) he did not act in contravention of the orders of the indemnifier and in such a such as a prudent man would act in his own case. c) All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the indemnifier, and was one which it would have been prudent for the promisee to make.

RIGHTS OF INDEMNIFIER · The Contract Act makes no mention of the rights of the indemnifier. It has been held in *Jaswant Singh Vs. State* 14 Bom 299 that the indemnifier becomes entitled to the benefit of all the securities, which the creditor has against the principal debtor whether he was aware of them, or not.

## **SESSION :6**

### **Special Contracts: Indemnity, Guarantee, Bailment and Pledge**

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 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.

**ILLUSTRATION** A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity. **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 INDEMNIFIER –** • Section 125 of the Act only lays down the rights of the indemnified and is quite silent of the rights of indemnifier • as if the indemnifier has no rights but only liability towards the indemnified.

**CONTRACT OF GUARANTEE** • A "contract of guarantee " is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the " surety". • the person in respect of whose default the guarantee is given is called the " principal debtor ", and the person to whom the guarantee is given is called the " creditor ". A guarantee may be either oral or written. •

**WHO CAN EMPLOY AN AGENT** • Any person, who is capable to contract may appoint as agent. Thus, a minor or lunatic cannot contract through an agent since they cannot contract themselves personally either.

**WHO MAY BE AN AGENT** •In considering the contract of agency itself (i.e., the relation between principal and agent), the contractual capacity of the agent becomes important.

**HOW AGENCY IS CREATED** • A contract of agency may be created by in any of the following three ways: - (1) Express Agency (2) Implied Agency (3) Agency by Estoppel (4)

Agency by Holding Out (5) Agency of Necessity (6) Agency By Ratification DUTIES OF AGENT 1. To conduct the business of agency according to the principal's directions 2. The agent should conduct the business with the skill and diligence that is generally possessed by persons engaged in similar business, except where the principal knows that the agent is wanting in skill. 3. To render proper accounts. 4. To use all reasonable diligence, in communicating with his principal, and in seeking to obtain his instructions. 5. Not to make any secret profits 6. Not to deal on his own account 7. Agent not entitled to remuneration for business misconducted. 8. An agent should not disclose confidential information supplied to him by the principal [Weld Blundell v. Stephens (1920) AC. 1956]. 9. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

### **Session 7:**

#### **Representations, Warranties and Covenants: Back to the Basics in Contracts**

“Representations,” “warranties” and “covenants” are so common in contracts that the words are likely to be overlooked. They appear not only as nouns, but as verb forms as well. Sometimes there is a separate section for each word, implying that they have distinct meanings. Often they are grouped together as “represents and warrants” or “represents, warrants and covenants.” Unfortunately, these repetitious phrases blur their meanings. Their imprecise use does not frequently result in litigation, but there’s much to be said for reducing redundancy and ambiguity.

These words are basic building blocks of contracts and have a long history. Each has traditionally had a distinct meaning and purpose. The key difference among these words is temporal – past and present for representations; past, present, but mainly future for warranties; and mainly future for covenants. The remedies for a false representation, breach of a warranty or violation of a covenant also have differed. Giving attention when drafting or editing a contract to their backgrounds and the traditional distinctions among them will promote clarity.

#### **Representations**

In traditional usage, a representation precedes and induces a contract. It is information by which a contracting party decides whether to proceed with the contract. A representation is an express or implied statement that one party to the contract makes to the other before or at the time the contract is entered into regarding a past or existing fact. An example might be that a seller of equipment represents that no notice of patent infringement had been received.

A representation traditionally was not part of a contract, and a claim for damages due to a misrepresentation generally would not be allowed. Instead, a claim that a misrepresentation induced a contract might be pursued in fraud, either to rescind the contract or for damages. In some instances, a claim might be based on the tort of negligent misrepresentation.

If a representation was included as part of a contract, it typically would function as a “condition” or “warranty.” A condition is a vital term going to the root of the contract (for example, that a lawyer hired under an employment agreement must be licensed to practice law), which, if the condition were false, would entitle the employer to repudiate the contract. In contrast, a representation in a contract might be a “warranty,” which would be an independent, subsidiary promise that did not go to the root of the contract (such as that the lawyer claims to always wear a suit to the office), and, if false, might give rise only to a claim for damages.

## **Warranties**

Warranties generally are promises that appear on the face of the contract. They are important parts of the contract, requiring strict compliance. Warranties may include representations, agreements or promises that a proposition of fact is true at the time of the contract and will be true in the future. A warranty provides that something in furtherance of the contract is guaranteed by a contracting party, often to give assurances that a product is as promised. It often is equivalent in effect to a promise that the warranting party will indemnify the other if the assurances are not satisfied.

Warranties may be categorized as affirmative warranties, i.e., those that focus on assurances that certain facts are true or acts have been performed at the time of the contract, and promissory warranties, i.e., those that are agreements for the future. Either type of warranty entitles the protected party to damages for breach or to the particular remedies set forth in the contract. Damages are based on the difference between the value of contract as agreed upon compared to the value of the contract given the facts at the breach.

Warranties now commonly provide protection for consumer products, and are subject to the Uniform Commercial Code and federal law. An “extended warranty” protects beyond the initial agreement between a buyer and seller. It is a form of insurance and may be regulated as such depending on state law and the particulars involved.

### **Q1. What do you mean by “force majeure”?**

The term ‘force majeure’ has been defined in Black’s Law Dictionary, as ‘an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.’ While force majeure has neither been defined nor specifically dealt with, in Indian statutes, A force majeure clause typically spells out specific circumstances or events, which would qualify as force majeure events, conditions which would have to be fulfilled for such force majeure clause to apply to the contract and the consequences of occurrence of such force majeure event. As such, for a force majeure clause to become applicable (should any force majeure event occur), the occurrence of such events should be beyond control of the parties and the parties will be required to demonstrate that they have made attempts to mitigate the impact of such force majeure event. If an event or circumstance comes within the ambit of a force majeure event and fulfills the conditions for applicability of the clause then the consequence would be that parties would be relieved from performing their respective obligations to be undertaken by them under the contract during the period that such force majeure events continue.

### **Q2. What would force majeure clauses typically include and what happens if, a contract does not include a force majeure clause?**

A force majeure clause in a contract would typically include an exhaustive list of events such as acts of God, war, terrorism, earthquakes, hurricanes, acts of government, explosions, fire, plagues or epidemics or a non- exhaustive list whether acts or events that are beyond the control of parties”. As discussed above, it would also include conditions which would have to be fulfilled for such force majeure clause to apply to the contract and the consequences of occurrence of such force majeure event. Consequences would include the suspension of obligations of the parties upon occurrence of a force majeure event.

## **Arbitration Employer and Employee Contracts**

It has become a common practice for employers to include an employment arbitration agreement in most employment contracts these days, but many employees are unsure about what they are signing. This article evaluates arbitration agreements, including whether you should sign a contract with an arbitration agreement and what to do if you need to sue your employer.

So, read everything before you sign it. Make sure to read through:

- All the clauses in an employment contract
- Your employee handbook, particularly if you are asked to sign a paper that says you have read and understood everything contained in the employee handbook

SESSION 8:

### Cyber Laws

#### Information Technology Act, 2000

The Information Technology Act, 2000 or ITA, 2000 or IT Act, was notified on October 17, 2000. It is the law that deals with cybercrime and electronic commerce in India. In this article, we will look at the objectives and features of the Information Technology Act, 2000.

#### **Information Technology Act, 2000**

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e-commerce) to bring uniformity in the law in different countries.

Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.

While the first draft was created by the Ministry of Commerce, Government of India as the ECommerce Act, 1998, it was redrafted as the 'Information Technology Bill, 1999', and passed in May 2000.

#### **Objectives of the Act**

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934. The objectives of the Act are as follows:

- i. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- ii. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- iii. Facilitate the electronic filing of documents with Government agencies and also departments
- iv. Facilitate the electronic storage of data
- v. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- vi. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

### **Features of the Information Technology Act, 2000**

- a. All electronic contracts made through secure electronic channels are legally valid.
- b. Legal recognition for digital signatures.
- c. Security measures for electronic records and also digital signatures are in place
- d. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- e. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- f. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- g. Digital Signatures will use an asymmetric cryptosystem and also a hash function
- h. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
- i. The Act applies to offences or contraventions committed outside India
- j. Senior police officers and other officers can enter any public place and search and arrest without warrant
- k. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

## Applicability and Non-Applicability of the Act

### **Applicability**

According to Section 1 (2), the Act extends to the entire country, which also includes Jammu and Kashmir. In order to include Jammu and Kashmir, the Act uses Article 253 of the constitution. Further, it does not take citizenship into account and provides extra-territorial jurisdiction.

Section 1 (2) along with Section 75, specifies that the Act is applicable to any offence or contravention committed outside India as well. If the conduct of person constituting the offence involves a computer or a computerized system or network located in India, then irrespective of his/her nationality, the person is punishable under the Act.

Lack of international cooperation is the only limitation of this provision.

### **Non-Applicability**

According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

1. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
3. Creation of Trust under the Indian Trust Act, 1882.
4. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

## **SESSION 9:**

### **Forms of Business Organisation: Different Forms of Business Organisation**

---

**Forms of Business Organisation – Sole Proprietorship, Partnership Firm, Limited Liability Partnership, Private Company and Public Limited Company**

#### **Form # 1. Sole Proprietorship:**

‘Sole Proprietorship’ form of business organisation refers to a business enterprise exclusively owned, managed and controlled by a single person with all authority, responsibility and risk.

### **Definition of Sole Proprietorship:**

According to J. L. Hanson – “A type of business unit where one person is solely responsible for providing the capital and bearing the risk of the enterprise, and for the management of the business.”

### **Characteristics of Sole Proprietorship:**

- i. Single Ownership – The sole proprietorship form of business organisation has a single owner who himself/herself starts the business by bringing together all the resources.
- ii. No Separation of Ownership and Management – The owner himself/herself manages the business as per his/her own skill and intelligence.
- iii. Less Legal Formalities – The formation and operation of a sole proprietorship form of business organisation does not involve any legal formalities.
- iv. No Separate Entity – The businessman and the business enterprise are one and the same, and the businessman is responsible for everything that happens in his business unit.
- v. No Sharing of Profit and Loss – The sole proprietor enjoys the profits and losses alone.
- vi. Unlimited Liability – The liability of sole proprietor is unlimited.
- vii. One-man control- The owner has complete control of operations.

### **Form # 2. Partnership Firm:**

‘Partnership’ is an association of two or more persons who pool their financial and managerial resources and agree to carry on a business, and share its profit. The persons who form a partnership are individually known as partners and collectively a firm or partnership.

### **Definition of Partnership:**

Indian Partnership Act, 1932 defines partnership as “the relation between persons who have agreed to share the profits of the business carried on by all or any of them acting for all”.

Partnership form of business organisation in India is governed by the Indian Partnership Act 1932. The agreement between the partners may be in oral, written or implied. When the agreement is in writing, it is termed as partnership deed.

However, in the absence of an agreement, the provisions of the Indian Partnership Act 1932 shall apply. Partnership Deed contains the terms and conditions for starting and continuing the partnership firm. It is always better to insist on a written agreement in order to avoid future legal hurdles.

### **Characteristics of Partnership:**

- i. Two or More Persons – To form a partnership firm at least two persons are required.
- ii. Contractual Relationship – Minors, lunatics and insolvent persons are not eligible to become the partners. However, a minor can be admitted to the benefits of partnership firm i.e., he can have share in the profits without any obligation for losses.
- iii. Sharing Profits and Business – There must be an agreement among the partners to share the profits and losses of the business of the partnership firm. If two or more persons share the income of jointly owned property, it is not regarded as partnership.
- iv. Existence of Lawful Business – The business of to be carried on by partners, must be lawful. Any agreement to indulge in smuggling, black marketing or any other lawful activity cannot be called a partnership firm in the eyes of law.
- v. Principal Agent Relationship – There must be an agency relationship between the partners. Every partner is the principal as well as the agent of the firm. When a partner deals with other parties he/she acts as an agent of other partners, and at the same time the other partners become the principal.
- vi. Unlimited Liability – The partners of the firm have unlimited liability. They are jointly as well as individually liable for the debts and obligations of the firms. If the assets of the firm are insufficient to meet the firm's liabilities, the personal properties of the partners can also be utilized for this purpose.
- vii. Voluntary Registration – The registration of partnership firm is not compulsory. But an unregistered firm suffers from some limitations which make it virtually compulsory to be registered.

### **Merits of Partnership:**

### **Form # 3. Limited Liability Partnership (LLP):**

Keeping in view the incapacity of sole proprietor and partnership firms to raise money while facing unlimited liability, a new form of business was introduced through the Limited Liability Partnership Act 2008. This form was primarily created to give flip to small and medium entrepreneurs and professionals who can enjoy the benefits of body corporate while also retaining control over their businesses.

### **Meaning of LLP:**

A Limited Liability Partnership (LLP) means a body corporate registered under the LLP Act 2008, in which some or all partners (depending on the respective jurisdiction of state) have limited liability. It therefore exhibits elements of partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence, as it was the case in case of original form of partnership firms.

This form was introduced in the world by U.S in 1990s in the wake up of fall of real estate and energy prices in Texas. After that, other countries like Poland, Singapore, Canada, China, Germany, Greece and Japan have also felt the need to establish LLPs in their respective countries.

## **Definition of LLP:**

According to Limited liability partnership Act 2008, limited liability partnership means, “a partnership formed and registered under this act”.

LLP agreement means any written agreement between the partners of the LLP or between LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

Any two or more persons can form an LLP. Even a limited Company, a foreign Company, a LLP, a foreign LLP or a non-resident can be a partner in LLP. Although, there is no specific mention, a HUF represented by its Karta and a Minor can also be partner in LLP. An Incorporation document (similar to memorandum) and LLP agreement (similar to articles of association) is required to be filed electronically. The Registrar of Companies (ROC) shall register and control LLPs

## **3. Company Form of Organization:**

A corporation is ‘an artificial being, invisible, intangible, and existing only in contemplation of the law’.

### **Advantages:**

#### **i. Limited Liability:**

Because the company is a separate legal entity, it allows investors to limit their liability to the total amount of their investment in the business. This legal protection of personal assets beyond the business is of critical concern to many potential investors. In other words, corporate form of ownership does not protect its owners from being held personally liable for fraudulent or illegal acts.

#### **ii. Continuity:**

The corporate form of organization is basically continued indefinitely. The corporation’s existence does not depend on the fate of any single individual. Unlike a proprietorship or partnership in which the death of a member ends the business, a corporation lives beyond the lives of those who gave life to the organization.

#### **iii. Ease of Ownership Transfer:**

If the members in a corporation are displeased with the progress of the business, they can freely sell their shares to someone else and leave the organization. Similarly, shareholders can also transfer their shares through inheritance to a new generation of owners. During all of these transfers of ownership, the corporation continues to conduct business as usual.

#### **iv. Ease of Raising Money:**

Just because of limited liability, corporations have proved to be the most effective form of ownership for accumulating large amount of capital. Limited only by the number of shares

authorized in its charter the corporation can raise money to begin business and expand as opportunity dictates by selling shares of its stock to investors.

**v. Diffused Risk:**

The sense of loss is spread over a large number of investors and the possibility of hardship on a few persons as in the case of partnership or on an individual as in the case of sole trade is minimized.

**vi. Scope for Expansion:**

Vast aggregation of capital and ploughing back of company's own large earnings contribute to the expansion of its business. The company offers an excellent scope for self-generating growth.

**4. Co-Operatives (Common Ownership):**

Co-operatives provide a structure for starting up business in which all the members of the cooperative jointly own, control, and work for the business. They share responsibility equally, make collective decisions on the basis of one person one vote and, in most co-operatives receive equal pay.

The concept of a co-operative enterprise is not a political concept but the idea of co-operative working is supported by the Government. Co-operative or common ownership enterprise can be divided basically into a society or a company