

05<sup>th</sup> November, 2021

## SERIES ON DAMAGES: ISSUE 1

# LAW OF CONTRACT: ENFORCEABILITY, BREACH AND REMEDIES

### Introduction

Indian Contract Act, 1872 (for short the Act) governing the entire universe of the commercial transactions between the parties was passed by the then Legislature on 25th April, 1872 and it came into force on 1st September, 1872. The instant articles attempts to bring forth the very basic understanding of the Contract Act, which has evolved and been interpreted over the years.

A contract is formed when one party makes an offer (offeror) and the other party accepts the same (offeree). A contract is considered to be complete only when the acceptance of such offer is expressly or impliedly communicated to the other party.

Section 2(h) of the Indian Contract Act (for short the Act) defines the term 'contract' as an agreement that is legally enforceable by law. Whereas Section 2(g) categorically provides that agreement not enforceable by law shall be void.

An agreement does not result in a contract from a mere state of mind and/or an intention to accept an offer. There must be some external manifestation that may be in the form of express words, either written or spoken, etc.

In prominent judgment of *Lalman Shukla v. Gauri Dutta, 1913 11 ALJ 489*- The Court held that the reward can only be claimed when there is a contract between the parties but when the plaintiff had no knowledge of the offer then there is no acceptance of it and hence there is no valid contract.

### Offer and acceptance

Section 2(a) of the Act provides that an offer is made by one person to another; it by itself does not create a contract, unless such offer is accepted and communication of acceptance is complete.

Section 2(b) of the Act provides that a proposal becomes a promise (i.e. agreement) only when it is accepted by the other party to whom the proposal is made.

### Consideration

**Section 2(d) of the Act defines 'consideration' which means 'something in return'.** A promise to do something

without getting or claiming anything in return would not be enforceable at law and such agreement is invalid as there is no consideration. Consideration is one of the important sine qua non for formation of an enforceable agreement.

For eg.-If 'X' offers to sell 'Y' a pen for Rs. 100, and 'Y' accepts the offer, there is a consideration. 'X' is providing goods, and 'Y' is giving cash in return. Hence, it would be an enforceable agreement.

### Reciprocal promise

Section 2(f) of the Act defines reciprocal promises as "promises which form the consideration or part of the consideration for each other, are called reciprocal promises."

'Reciprocal promise' is the one when one party gives a proposal and the other party gives acceptance to the given proposal. The acceptance of the proposal creates a reciprocal promise that binds both the parties to fulfill the part of their respective reciprocal promises, as mandated under the terms and conditions of the agreement.

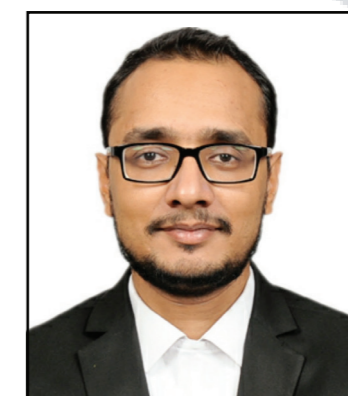
There are different types of reciprocal promises that include- Mutual and independent, conditional and concurrent.

### Formation of a contract

Offer + Acceptance = Promise + Consideration = Agreement + Enforceability by law = Contract

### Essentials of a valid contract

- 1 Offer and acceptance between two parties:** The most essential element of a valid contract is that there must be at least two parties one of them makes the offer and the other accepts it. The offer when accepted becomes an agreement.
- 2 Legal relationship:** It is a must that the parties to a contract must intend to constitute a legal relationship. When either of the party to a contract fails to fulfill his part of the promise, he/ she would be liable for the breach of the contract. The parties that had no intention to create a



**Abinash Agarwal**

Senior Associate, MCO Legals

B.Com (Hons)

L.L.B,

Faculty of Law

Delhi University

### Expertise:

Corporate Litigation &  
Corporate/Commercial Arbitration

✉ abinash.a@mcolegals.co.in



**Shivangi Dubey**

Research Partner

Master's in Business Laws

Amity University,

Noida

legal relationship cannot form a contract.

For eg. 'A' inviting 'B' for dinner and 'B' accepting the same though may constitute a personal agreement but does not constitute a valid legal enforceable agreement under the Act.

- 3 **Consensus-ad-idem:** It refers to the 'meeting of the minds'. The parties need to give mutual consent to enter into the contract.
- 4 **Competency of parties:** As per Section 11 of the Act, every person who is of the age of majority and is of sound mind and is not disqualified to enter into a contract is a competent party.
- 5 **Free consent:** Under Section 13 of the Act, when parties agree upon the same thing in the same sense is said to give valid consent.  
Under Section 14, the consent is said to be free, when it is not induced by (i) coercion, (ii) misrepresentation, (iii) fraud, (iv) undue influence, or (v) mistake.
- 6 **Lawful consideration:** Consideration is an essential element in a contract, which must be lawful.
- 7 **Lawful objects:** According to Section 10 of the Act, an agreement may become a valid contract only, if it is for a lawful consideration and lawful object.
- 8 **The agreement did not expressly declare void:** An agreement to become a contract should not be an agreement that has been expressly declared void by any law in the country, as it would not be enforceable at law.
- 9 **Certainty and possibility of performance:** Agreements to form valid contracts must be certain, possible to perform. The contract should not be uncertain, vague, or impossible. Section 56 of the Act, provides that an agreement to do something impossible is void.
- 10 **Legal formalities:** An agreement may be verbal or in writing. A written contract must comply with all legal formalities such as attestation, registration.

#### **Breach of a contract**

'Breach of contract' happens when a party, without lawful excuse, fails to perform what is due from him under the contract, or the party performs defectively, or it incapacitates from performing. In common parlance, breach occurs when one of the parties to the contract fails to fulfill its obligations as per the agreed terms and conditions of the contract.

#### **Compensation for Loss or Damage Caused by Breach of Contract: (Section 73) (Un-liquidated Damages)**

When a contract is breached, the party who has suffered any damage is entitled to receive compensation for any loss or damage caused to him due to the party that has breached the contract.

#### **Remedies for breach of contract**

- **Suit for an Injunction-**'Injunction' is an order of a court restraining a person from doing a particular act. Injunction secures the specific performance of the contract.
- **Suit for Quantum Meruit-** When the injured party has performed a part of his obligation under the contract before the breach of contract has occurred; he is entitled to the value of what he has done.
- **Suit for Specific Performance of the Contract-** There are cases where the damage or loss suffered cannot be measured in terms of money. The Court may direct the defaulting party to perform the contract specifically where the damage cannot be measured.

- **Damages-** Suffering party is entitled to damages in case of breach. Damages under the Contract Act are not granted by way of punishment. They are compensatory.

In the case of *Modi Sugar Mills v. Union of India*, AIR 1984 SC 1248- The Supreme Court held that the buyer was liable to pay the price of containers or return the same, but since he did not do either, the seller was entitled to deduct the price of containers from the buyer's security.

#### **Compensation for breach of contract where penalty stipulated for: Section 74 (Liquidated Damages)**

When the contract specifically provides the amount of compensation that is to be paid in the event of a breach of the contract, the aggrieved party is entitled to receive from the defaulted party a reasonable compensation not exceeding the amount mentioned in the contract.

In the case of *Kailash Nath Associates v. Delhi Development Authority and Another*, (2015) 4 SCC 136, the Hon'ble Supreme Court speaking through Hon'ble Justice Rohinton Fali Nariman held that damage or loss is sine qua non for payment of compensation for breach of the contract and the actual loss is required to be proved even under Section 74. Only when the damages are completely difficult to be proved, then the Court is entitled to award compensation as mentioned in the contract.

#### **Conclusion**

A contract is an agreement that gives rise to obligations that are enforceable or recognized by law.

In case of breach of contract, the aggrieved party is entitled to claim compensation for any loss or damage suffered by him from such breach. The Court decides whether the loss caused is direct or remote and decides the compensation accordingly.