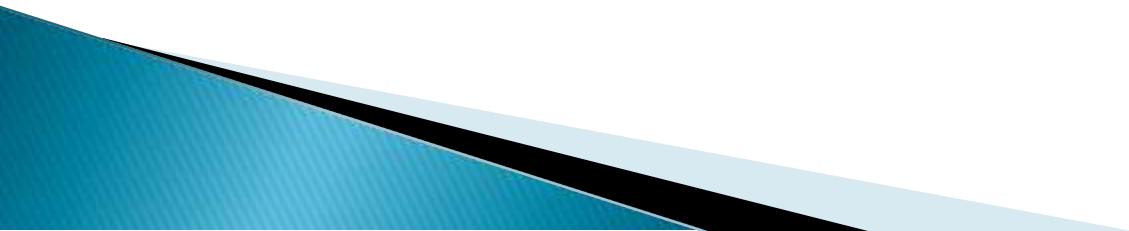
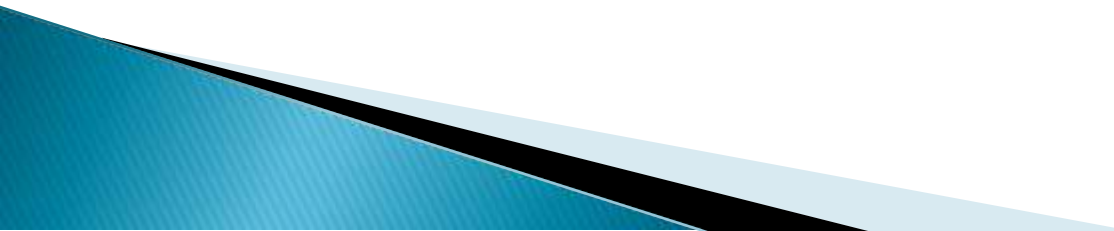


COMMERCIAL LAW



**C. VEERALAKSHMI,
ASSISTANT PROFESSOR,
PG & RESEARCH DEPARTMENT OF
COMMERCE (SF-WOMEN),
JAMAL MOHAMED COLLEGE
(AUTONOMOUS),
TRICHY- 20**



SUBJECT : COMMERCIAL LAW

Course Code: 20UCO1A2

TOPIC : Essentials of Contract



Commercial Law - **The Indian
contract Act 1872**

What is Commercial Law?

- ❖ W. H. Disney "...all that portion of the law of [England] which is more especially concerned with commerce, trade and business."
- ❖ Prof. Roy Goode "...The totality of the Law's response to mercantile disputes..."
- ❖ Includes laws related with **business, trade, commerce, contracts for buying and selling of goods and services, laws that facilitate these.**

1. THE LAW OF CONTRACT

What is a Contract?

A contract is a lawful agreement, made by two or more persons within the limits of their contractual capacity, with the serious intention of creating a legal obligation, communicating such intention, without vagueness, each to the other and being of the same mind as to the subject-matter, to perform positive or negative acts which are possible of performance

(J.T.R. Gibson, South African and Mercantile Law, 5th Ed.)

Essential Characteristics of a Contract

1. The agreement must be lawful
2. The agreement must be made within the limits of the parties' contractual capacity
3. The parties must seriously intend to contract
4. The parties must communicate their intentions to each other
5. The agreement must not be vague
6. The parties must be of the same mind as to the subject matter (*ad idem*)
7. Performance must be possible

1. The agreement must be lawful

- Unless prohibited by statute or common Law.
 - a. It is **prohibited by Common Law** if the contract is against public policy or *contra bonos mores*.
 - b. Agreements **prohibited by Statute** are void whether expressly or impliedly prohibited.
- Prohibition by statute may refer to either form of contract or performance to be made

1. The agreement must be lawful

i. The form of the Contract

- The general rule is that no formal expression need to be given to the will of parties
- By statute, some contracts are void if their creation has not been effected with the necessary formality i.e
 - a. Writing
 - b. Notarial execution, and
 - c. Registration

ii. The Performance to be made (Express or Implied)

2. Parties' contractual capacity

- Persons with limited contractual capacity:
 - i. Minors
 - ii. Mentally ill persons
 - iii. Drunk persons
 - iv. Prodigals
 - v. Insolvent persons
 - vi. Persons who have been convicted of a crime

3. Parties must seriously intend to contract

- Agreements are void if:
 - i. Is of a social nature
 - ii. Entered into as a jest or sarcastic overstatement
 - iii. Agreement state that it 'is not entered into as a formal or legal agreement and shall not be subject to legal jurisdiction in such cases'.

4. The parties must communicate their intentions to each other

- Parties should make each other aware of their reciprocal intentions – verbally, written or otherwise
- Every contract is made of an offer that is accepted by the other party
- i. Offer – is a proposal which expresses a person's willingness to become party to a contract, according to the terms expressed, and the acceptance of which by another person binds both of them contractually.

5. The agreement must not be vague

- An agreement must not be vague that its meaning cannot be ascertained by a court.
- Incompleteness or uncertainty of a contract does not render it void if a meaning can be determined by a court on the evidence before it and there are 4 classes of vagueness.
 1. Where performance is dependent on a condition which in fact reserves an unlimited option to the promisor
 2. Where the vague language justifies the implication that the parties were never ad idem.
 3. Where there is no concluded contract
 4. Where the unspecified details of the contract are questions of determination by evidence and the contract contains sufficient information to enable the object to be accurately ascertained.

7. Performance must be possible

- The general rule is that a contract is void if, at the time of inception, its performance is impossible.
- If a contract becomes impossible after it has been entered into (supervening impossibility of performance) the contract is terminated as soon as it becomes impossible and there shall be no further breach of it.
- Subjective impossibility (ie performance impossible to a debtor but quite possible objectively) doesn't render the contract void eg X buys a house for \$50K without the remotest prospect of raising the money.

THANK YOU