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Meaning

Commercial law is the body of law that governs the way business firms enter into contracts with each other, execute contracts and remedy problems that arise in the process

Definition

Commercial law is the body of law that governs the way business firms enter into contracts with each other, execute contracts and remedy problems that arise in the process

Broadly speaking, a discussion on commercial law may include within its ambit the

Commercial law in India

- Indian Contract Act, 1872;
- the Negotiable Instruments Act, 1882;
- the Transfer of Property Act, 1882
- the Presidency Towns Insolvency Act, 1909
- the Provincial Insolvency Act, 1920
- the Sale of Goods Act, 1930

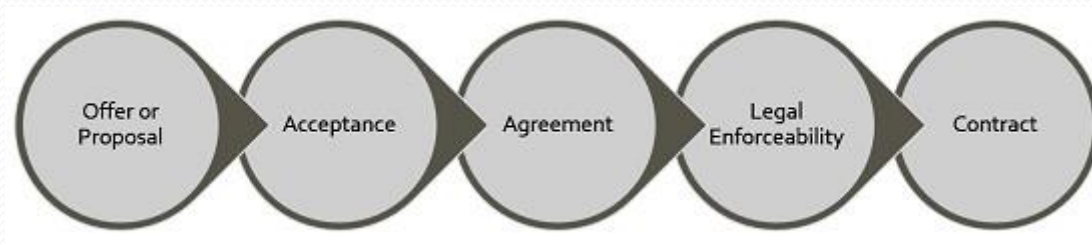
Contract

- **Definition:**

The term contract is defined as an agreement between two or more parties which has a binding nature, in essence, the agreement with legal enforceability is said to be a contract. It creates and defines the duties and obligations of the parties involved.

Process of Contract

First and foremost, an offer is made by one party to another, which when accepted by the party to whom it is made, leads to the agreement. If that agreement is enforceable in the court of law, it is known as a contract.





Proposal or offer

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.
- According to the Indian Contract Act 1872, proposal is defined in Section 2(a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

Essentials and legal rules for a valid offer

1. The offer must be communicated to the other party
2. Offer must be definite and clear
3. The offer must be capable of creating legal relationship
4. The offer must be made with a view to obtain acceptance
5. An offer may be positive or negative
6. The offer should not contain any term the non-compliance of which amounts to acceptance
7. Special terms and conditions of the offer be communicated
8. Two identical cross offers do not result in a contract
9. An offer may be general or specific

Acceptance

- **Acceptance** means agreeing to receive something or the act of receiving it. An **example of acceptance** would be the taking of a bribe.
- The definition of **acceptance** means agreeing with or taking on a belief or beliefs. An **example of acceptance** would be agreeing with the theory of evolution.

Essentials and legal rules for a valid Acceptance

- (1) Acceptance must be Communicated :
- (2) Acceptance should be absolute and unqualified :
- (3) Reasonable Time :
- 4) Acceptance should be expressed in some usual and reasonable manner, unless the proposal prescribes the manner of acceptance
- 5) Acceptance must be made before Revocation of offer
- 6) Acceptance may be Express or Implied
- 7) Acceptance cannot be presumed from silence

Classification of contracts

Legal Effects

1. Valid Contract
2. Void Contract
3. Voidable contract
4. Unenforceable contract
5. Illegal contract

Performance

1. Unilateral Contract
2. Bilateral contract
3. Executed contract
4. Executory contract

Formation

1. Express Contract
2. Implied contract
3. Quasi contract

Consideration

- Consideration constitutes the benefit that you receive from making the contract. In other words, each person in a contract must promise to do something. Conversely, each person may promise not to do something. In addition, consideration results in a benefit to each party
- Quid-pro-quo =something in return

Essentials or Legal Requirements of a Valid Consideration

1. Consideration must move at the desire of the promisor
2. Consideration may move from the promisee or any other party
3. Consideration may be Past, Present, or Future
4. Consideration need not be adequate
5. Consideration must be real and not illusory
6. Consideration must be something which the promisor is not already bound to do
7. Consideration must be lawful
8. The consideration must be either positive or negative

Essentials or Legal Requirements of a Valid Consideration

- **1. Consideration must move at the desire of the promisor:**
The act constituting consideration must have been done at the desire or request of the **promisor**. If it is done on the instance of a third party or without the desire of the promisor, it will not amount to consideration.
- **2. Consideration may move from the promisee or any other party:**
Consideration generally moves from the promisee, but it may also move from a third party, even a stranger, i.e., it may move from a person, who is not a party to the contract. It means that there must be consideration and it is immaterial who furnishes it. Thus, consideration must be offered by the promisee or the third party on the desire of the promisor.

3. Section 2(d) defining consideration clearly makes it clear that it may either be past, present or future as it states:”
Has done or abstained from doing (Past), or does or abstains from doing (Present), or promises to do or abstain from doing (Future) something”.

Thus,

(i) Past consideration is that consideration, which has already been done for a present promise.

(ii) When the consideration is given simultaneously by both the parties, i.e., with the promise is called as present consideration. Cash sale is its best example.

(iii) When the consideration from one party to the other is to pass subsequently to the making of the contract, it will be ‘future or executory consideration.

- **4. Consideration need not be adequate:**

- Consideration is something in return. This 'something in return' need not necessarily be equal in value with "something given". The law simply requires consideration. It does not state how much consideration must be there.
- The courts are concerned with the consideration and not their adequacy, provided it is of some value.
- As per Explanation 2 of Sec. 25, an agreement to which the consent of the promisee is freely given, is not void merely because consideration is inadequate.
- **5. Consideration must be real and not illusory:**
- The consideration, although it need not be adequate, must be real, competent and of some value. Sentiments for making a promise cannot bind the promisee. It must also not be illegal or impossible or illusory or sham. The consideration may not be real because of :-
 - i) Physical impossibility,
 - ii) Legal Impossibility,
 - iii) Uncertainty,
 - iv) Illusory consideration.

- **6. Consideration must be something which the promisor is not already bound to do:**

It is because the performance of a pre-existing obligation is no consideration.

However, the following are good considerations to a contract:-

- (i) Forbearance to sue,
- (ii) Compromise of disputed claims

- **7. Consideration must be lawful:**

- The consideration to a promise must be lawful. If the consideration is unlawful, the courts do not allow an action on the contract. The consideration to an agreement is unlawful, if:-

- (i) It is forbidden by law; or
- (ii) It is of such a nature that, if permitted, it would defeat the provisions of any law; or
- (iii) It is fraudulent; or
- (iv) It involves or implies injury to a person or property of another; or
- (v) The court regards it as immoral or opposed to public policy every agreement of which the consideration is unlawful is void.

- **8. Consideration may be either positive or negative**

Thank

you

