


Legal Aspects of Business – (111)


What is Law ?

- Set of rules – for a citizen
 - Vocation– for a lawyer
 - Created by him–for a legislator
 - Guiding principles to be applied in decision making–for a judge
 - Standards by which people & businesses interact
- 


Definition

In the words of Salmond” law is the body of principles recognized and applied by the state in the administration of justice. “


Note: Law is not static as circumstances and conditions in a society changes, laws are changed to fit the requirements of the society.



Features of law

- Commanding & influencing
 - Social system
 - Binding force
 - Rule of action
 - Regularity in natural occurrences
 - Judicial remedy
- 

Objectives of law

- To establish standards
 - To maintain order
 - To resolve disputes
 - To protect liberties & rights
- 

Nature of law

On the basis of form

1. Institution
2. Personal: police, legal professionals, judges
3. Form legal processes


On the basis of function

This is an prescriptive or normative sense


Set of standards of conduct



Classification of law

- Public & private law
 - Civil & criminal law
 - Substantive & procedural law
 - Municipal/domestic & international law
 - Written & unwritten law
- 


Business law

- BL includes all the laws that dictate how to form & run a business.
 - How to start, buy, manage, close, or sell any type of a business.
 - It relates to trade, industry, & commerce.
 - It includes state, federal laws as well as administrative regulations
- 


Definition for BL


- According to S.R. Daver, “ B L is the branch of law which is application to or concerned with trade & commerce in connection with various business transactions”.

objectives of B L

1. To lay the framework in order to carry out the commercial transactions of individuals, partnership concerns or JSC
 2. It helps the merchants avoid & settle their conflicts
 3. It has social objectives, to serve the country at large
 4. It strive towards equitable distribution of wealth by preventing the concentration of economic power in the hands of few business houses.
 5. Facilitates the businesses to achieve their goal faster.
- 

SOURCES OF MERCANTILE OR BUSINESS LAW

- English Mercantile law
 - Common law
 - Equity
 - Statute law
 - Law of merchant
 - Statute Law
 - Indian contract act
 - Sale of goods act
 - The Indian Parternership act
 - The companies act
 - Judicial decisions / the system of precedents
 - Case laws
- 

- Customs and usages.
 - Principles of justice & public utility
 - Rational expectations
 - Observance over a long period
 - Interest of the society
- 

INTRODUCTION TO CONTRACT LAW, 1872 (CHAPTER-1)

The term contract is derived from 'CONTRACTUM' which means drawn together. ICA came into force with effect from sep 1, 1872. it is applicable to whole of India except to the state of Jammu & Kashmir. It is the most important & basic part of the BL & foundation for many other laws. When a person buys a dress or has a haircut, stays in hotel or gives a loan to another person, he enters into a contract. It creates a legal relation giving rise to certain rights & obligations.


DEFINITION OF CONTRACT

An agreement which is enforceable at law- section 2 of ICA

Two important components

1. AGREEMENT(offer+acceptance=promise/agreement)
2. LEGAL OBLIGATION

ESSENTIALS OF VALID CONTRACT

- 1.Offer & acceptance
 - 2.Legal obligation
 - 3.Consensus & Idem
- 

4. Free consent
5. Competence of the parties
6. Lawful consideration
7. Lawful object
8. Not declared to be void
9. Certainty & possibility of performance
10. Legal formalities

CLASSIFICATION OF CONTRACTS

ON THE BASIS OF VALIDITY


Valid contracts
Void contracts
Voidable contracts
Unenforceable contracts
Illegal contracts

ON THE BASIS OF FORMATION

Express contracts
Implied contracts
Quasi contracts

ON THE BASIS OF PERFORMANCE

Unilateral contracts
Bilateral contracts
Executed contracts
Executory contracts



OFFER

- Proposal, willing to do
- Offer is the starting point in the formation of a contract, first required element of a contract.
- the person making proposal or offer is proposer or offeror & the person to whom the proposal is made called offeree or proposee or acceptor.


ESSENTIALS OF A VALID OFFER

1. Offer must be capable of creating legal relations
2. It must be definite, certain & not vague
3. It must be communicated to the offeree
4. It must be made with a view to obtain the assent of the other party
5. An offer may be conditional
6. It should not contain any assumptions
7. Lapse of an offer
8. An invitation to offer is not an offer
9. It may be specific or general
10. Quoting the price is not an offer.

KINDS OF OFFER

- Express offer
- Implied offer
- Specific offer
- General offer
- Counter offer
- Standing offer
- Cross offer
- Conditional offer


IMPORTANT RULE OF CONDITIONAL OFFER

1. Conditions must be communicated to the offeree
 2. Conditions should attract the attention of offeree
 3. Conditions may be in any language
 4. Conditions should be reasonable
- 

CONSIDERATION

When a party to an agreement promises to something, he must get something in return. This getting of something in return is called consideration. This is called in Latin as “Quid pro Quo” an agreement without consideration is called naked or bare promise.

Essentials of a valid consideration

1. consideration at the desire of the promisor
 2. consideration by the promisee or any other person
 3. consideration may be past , present, or future.
 4. consideration need not be adequate
 5. consideration must be real
 6. consideration must be lawful
 7. consideration must be something which the promisor is not already bound to do.
- 

Capacity of parties

Sec 11 of ICA deals with the competency of parties. The term capacity to contract means the competency or qualification of the parties to enter into a valid contract.

Acc to sec 11, the following persons are competent to enter into the contract.


1. Major
 2. Sound minded persons
 3. The persons who are not disqualified by any law of the land.
- 

MINORS


According to sec 11 of ICA a minor is an incompetent person to enter into a contract.

DEFINITION: sec 3 of Indian majority act 1875 defines a minor as “a minor is one who has not completed the age of his or her 18 years”

SPECIAL CASES: In the following cases a person continuous to be minor until he completed the age of 21 years.

1. Where a guardian is appointed to look after the minor & his property under the guardian and wards act 1890
 2. where the superintendence of minor property is assumed by a court acts as a guardian
- 

LAW RELATING TO CONTRACTS OF MINOR

- An agreement by or with minor is void
 - No ratification
 - Minor can be promise or beneficiary
 - No estoppel against minor
 - No specific performance
 - Liability for torts
 - No insolvency
 - Minor as a partner
 - Minor as an agent
 - Minor cannot bind parent or guardian
 - Joint contract by minor or adult
 - Minors liability for necessities
- 

FREEE CONSENT


Consent means the willingness of the parties to enter into a contract. In English law consent means “Consensus Ad Idem” which means identity of minds. So the parties to the contract must give their willingness with identity of minds.

DEFINITION– consent(sec 13): “Two or more persons are said to contract when they agree upon the same thing in the same sense”

Consent is said to be free when is it not caused by coercion, undue influence, fraud, misrepresentation or mistake

COERCION: means a threat or force used by one party against another for compelling him to enter into an agreement.

ESSENTIALS THAT AMOUNTS TO COERCION

1. Committing any act Forbidden by IPC
 2. Threatening to commit any act forbidden by the IPC
 3. Unlawful retaining of property of another
 4. Threatening to detain the property unlawfully
- 

UNDUE INFLUENCE


Undue influence is the domination of one person who is having strong mind over another who is having weak mind or weak will. This creates mental fear on the person who is having weak mind.

ESSENTIALS ELEMENTS OF UNDUE INFLUENCE

1. Existence of apparent authority
2. Existence of by fiduciary relationship
3. Existence of mental-in-capacity
4. Existence of unconscionable bargains
5. Contracts with pardanashin ladies
6. Burden of proof
7. Effect of undue influence

FRAUD AND ITS ESSENTIALS

Fraud is a willful misrepresentation made by a party to a contract with the intention to deceive the other party.

1. Fraud must be committed by a party to the contract
 2. There must be false suggestion
 3. There must be active concealment of the fact
 4. There was no intention to perform the promise
- 

- Where law specifically declared an act to be fraudulent
- Any other act fitted to deceive
- There must be an intention to deceive & must actively deceive
- Mere silence is not fraud


MISREPRESENTATION

A statement believing it to be true without any intention to deceive is misrepresentation. Wilful false representation is otherwise termed as fraudulent representation or fraud.

ESSENTIALS

1. Making a positive assertion
2. Committing the breach of duty
3. Causing a party to make a mistake as to substance
4. Innocent intention of the party

Essential Elements of Misrepresentation

- It must be a representation of material fact, mere expression of the opinion does not amount to misrepresentation, even if turns out to be wrong.
 - It must be made before the conclusion of the contract with a view to induce the other party to enter into a contract.
 - It must actually have been acted upon by the other person under a contract
 - It must be made within the intension that it should be act upon by the person to whom it is addressed.
 - It must be actually wrong but the person making it believes it to be true.
 - It must be made without only intension to deceive other party under the contract.
- 

MISTAKE:


Mistake is a misconception or error. A mistake means that the parties are intending to do one thing but have done something else. To create a valid contract 'consensus ad idem' is necessary. If consent is obtained by mistake its not a free consent.

1. MISTAKE OF LAW

- Mistake of general law
- Mistake of foreign law
- ▮ Mistake as to private property rights

2. MISTAKE OF FACT

a. Bilateral Mistake

- Mistake as to subject matter
- ### b. Mistake as to possibility of performance
- Physical impossibility
 - Legal impossibility
 - Unilateral mistake
- 

WAGER AGREEMENT

Wager means a bet. Wagering agreement is nothing but a betting agreement . It is a game of chance in which the chance of either winnings or loosing wholly depends on a specified uncertain event.

DEFINITION:

“A promise to give money or moneys worth upon the determination of an uncertain event”

ESSENTIALS OF A WAGER AGREEMENT

- There must be promise to pay
- The promise must be conditional
- Event must be uncertain
- There must be 2 parties
- Parties should have no interest

Exceptions:

1. CROSSWORD COMPETITION
2. SKILL GAMES & SPORTS
3. INSURANCE CONTRACTS
4. SHARE MARKET TRANSATIONS
5. BETTING ON HORSE RACES
6. AGREEMENT OF LOTTERY

REMEDIES AVAILABLE TO THE INJURED PARTY

- Rescission of the contract
- Damages
- Quantum merit
- Specific performance of the contract
- Injunction
- Restitution

RESCISSION OF THE CONTRACT

Rescission means the setting aside of the contract. When there is a breach of contract by one party, the aggrieved party may rescind (cancel) the contract & no need of performing his part of the contract.

DAMAGES

The term damages is used to mean monetary compensation as a substitute for the promised performance.

TYPES:

1. Ordinary or general damages
2. Special damages
3. Exemplary or vindictive damages
4. Nominal damages
5. Liquidated damages & penalty

QUANTUM MERUIT

Quantum meruit means “as much as is earned or according to the quantity of work done”. A quantum meruit claim is a claim for services rendered. It means payment in proportion to the amount of work done.

SPECIFIC PERFORMANCE OF THE CONTRACT

In some cases where damages are not an adequate remedy or actual damages cannot be measured, on a petition filed by the aggrieved party the court may direct the party who has broken the contract to actually perform his promise.

INJUNCTION

Where a party is in breach of a negative term of contract i.e where he is doing something which he promised not to do. The court may, by issuing an order, restrain him from doing what he promised not to do such an order if the court is termed as an INJUNCTION.

RESTITUTION :

Restitution means an act of restoration (repairing or renewing something).



SALE OF GOODS ACT

The sale of goods act 1930 deals with the law relating to sale of goods in India but not with mortgage or pledge of the goods. This act came into force from 1st July 1930

DEFINITION: SEC 4(1) of The ISGA 1930, A Contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price. A contract of sale may provide for,

1. Transfer of property(sale) or
2. Agreement to transfer the property (Agreement to sell)

ESSENTIAL OF CONTRACT OF SALE

- Two parties
- Subject matter to be goods
- Transfer of ownership of goods
- Consideration is price
- Essentials elements of a valid contract

SALE & AGREEMENT TO SELL

A contract of sale is a generic term & includes both an actual sale & an agreement to sell. If the property in goods is transferred from the seller to the buyer under a contract, the contract is called a sale. Where the transfer of the property in the goods will take place at a future time or is subject to some condition which has to be fulfilled, the contract is called an agreement to sell.

STIPULATION

In a contract of sale of goods, stipulation refers to represent action made by the buyer & the seller reciprocated as a part of negotiation between them before they enter into a contract. Stipulation means a requirement or a specified item in an agreement.

TYPES OF STIPULATIONS

1. A CONDITION

2. A WARRANTY


3. A condition is a stipulation essential to the main purpose of the contract. The breach of which gives rise to right to treat the contract as repudiated

4. Warranty is a stipulation collateral to the main purpose of the breach of which given rise to claim for damage but not a right to reject goods & treat the contract as repudiated

IMPLIED CONDITIONS & WARRANTIES

IMPLIED CONDITIONS & WARRANTIES are those which are not expressly made by the parties in the contract, but law incorporates them into the contract. It means that the law presumes certain conditions & warranties are made by the parties in the contract through the parties really did not.

RIGHTS OF BUYER

1. Stipulation of time
 2. Repudiation on breach of a condition
 3. To verify with sample
 4. To take delivery
 5. To reject the goods
 6. Nature of insurance
 7. Not to accept instalment delivery
 8. Not to take risk
 9. Right to examine the goods
 10. Not to return rejected goods
 11. Damages for non delivery
 12. Claim for specific performance
 13. To keep the contract subsisting
 14. To claim interest or special damages
 15. In connection with action sale
 16. To demand for reduction of price
- 

DUTIES OF BUYER

1. To treat breach of condition as breach of warranty
2. To accept unconditional appropriation
3. To pay price & to accept goods
4. To apply for delivery
5. Demand for delivery at a reasonable hour
6. To accept & pay for instalment delivery
7. To pay for excess
8. To accept delivery to carrier
9. To be liable for neglecting or refusing delivery
10. To pay price in advance
11. To pay increased tax

DOCTRINE OF CAVEAT EMPTOR

Caveat emptor is a fundamental principle of the law relating to sale of goods. It means caution buyer i.e. let the buyer beware, the buyer shall examine the goods thoroughly & must see that they are suitable for the purpose for which he buys them. If the goods turned out to be defective or do not suit for the purpose, the buyer cannot hold the seller liable.

EXCEPTIONS TO THE DOCTRINE OF CAVEAT EMPTOR

1. Where the buyer relies on the skill & judgement of seller
2. Non merchantability of goods
3. Consent by fraud
4. Usage of trade

RIGHTS OF AN UNPAID SELLER

A seller who has not received the whole of the price of the goods sold to known as unpaid Seller.

1. Rights against the goods

- a) Right of lien
- b) Right of stoppage in transit
- c) Right of resale

2. Right against the buyer personally

- a) Right to sue for price
- b) Right to sue for damages
- c) Right to sue for interest

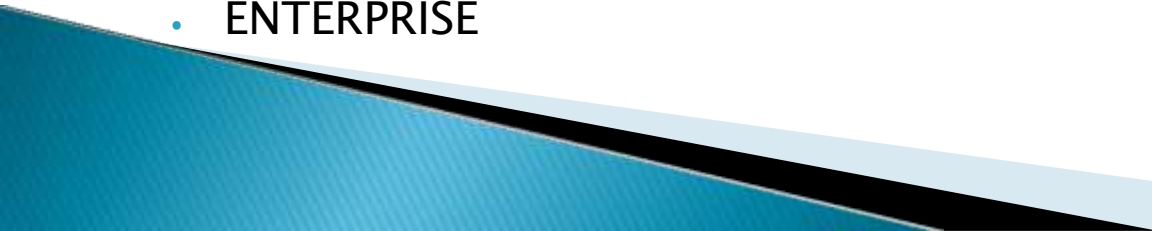
(LIEN– Right to keep possession of property belong to another person until the debt is discharged)



COMPETITION ACT 2002

Competition Act was needed in India which ensured the implementation of free economic policies & free flow of resources which could protect the fair competition & curb the anti competitive practices. The Competition Act was passed by the Parliament in the year 2002. The Competition Act is a tool to implement & enforce competition policy & to prevent & punish anti-competitive business practices by firms & unnecessary government interference in the market. Competition Act generally covers 3 areas a) Anti-competitive agreements e.g. cartels b) Abuse of dominance position by enterprises e.g., predatory pricing, barriers to entry & c) Regulation of mergers & acquisitions(M&As)

IMPORTANT DEFINITIONS OF THE ACT

- ACQUISITION
 - AGREEMENT
 - CARTEL
 - CONSUMER
 - GOODS
 - MEMBER
 - PERSON
 - PRICE
 - PRACTICE
 - NOTIFICATION
 - ENTERPRISE
- 

FEATURES OF CA 2002

- To prevent practices having adverse effects on competition
- Curtail abuse of dominance
- Promote & sustain competition
- Ensure quality of products & services
- Protect the interest of consumers
- Ensure freedom of trade
- Quality of products & services
- Facilitates fast M&As

DIFFERENCE BETWEEN MRTPACT 1969 & CA 2002

| MRTPACT 1969 | CA 2002 |
|---|---|
| It is based on pre-liberalization | Based on post-liberalization |
| Objective is to prevent concentration of economic power | Promote & sustain healthy competition in the market |
| Focussed on individual interest | Focuses on public interest |
| Chairman of the MRTP was appointed by the CG | Appointed by a committee |
| Registration of agreement was mandatory | Not mandatory |
| It focuses on the size of the firm | It focuses on the structure not size |

OBJECTIVES OF CA 2002


- ANTI-COMPETITIVE AGREEMENTS- (SECTION 3)

1. Price Fixing
2. Control Quantities Of Production
3. Share Sources Of Supply
4. Bid Rigging

- ABUSE OF DOMINANCE- (SECTION 4)

1. Imposing Unfair Conditions
2. Limiting Or Restricting Production
3. Denial Of Market Access
4. Using A Dominant Position To Protect Others
5. Making Any Contract Unrelated To Subject

- COMBINATIONS & REGULATION(M&As)- (SECTION 5)

1. Acquisition Of Shares, Voting Rights Or Assets By A Person Or Enterprise Of Another
 2. Acquisition Of Control By A Person Over An Enterprise
 3. Merger Or Amalgamation Between Or Amongst Enterprise
- 

COMPETITION COMMISSION OF INDIA

CCI is a government body constituted to enforce the CA 2002 throughout India. It is the duty of the commission to prevent activities that have an adverse effect on competition in India, promote & sustain competition, protect the interests of consumers & ensures freedom of trade in India. It was established on 14 Oct 2003.

FEATURES OF CCI

- It is a body corporate
- It has regulatory & quasi-judicial powers, functions through benches
- Each bench shall consist of at least 2 members & one of such member must be a judicial member
- CCI comprises of a chairperson, not less than 2 & not more than 6 members, appointed by the central government of India
- It provides for the director general instigation for the CCI.

STRUCTURE OF CCI

CHAIRPERSON- Sri Devender Kumar Sikri

5 MEMBERS- Sri S.L. Bunker, Sri Sudhir Mital, Sri Augustine Peter, Sri U.C. Nahta, Justice G.P. Mittal




TERM OF OFFICE OF CHAIRPERSON & OTHER MEMBERS

The term of office of all the members of CCI is 5 yrs or till the attainment of age of 65yrs(whichever is early)

RESIGNATION, REMOVAL, & SUSPENSION OF CHAIRMAN & OTHER MEMBERS

By notice in writing addressed to the central government, resign his office, they continue to hold office until the expiry of 3 months from the date of receipt to such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

DUTIES OF CCI

1. To inspire businesses to be fair, competitive, & innovative
 2. To enhance the consumer welfare
 3. To support economic growth
 4. To establish strong, healthy competitive environment through proactive engagement
 5. Ensuring fairness & equity in market place transactions
 6. Protecting the public interest
 7. Protecting opportunities for small & medium businesses.
- 

FUNCTIONS & POWERS OF CCI

Under sec 19, the powers & functions of the commission shall include the powers & functions specified in sub-sections 3 to 7


FUNCTIONS:

1. It is the duty of the cci to eliminate such practices that have adverse effect on competition
2. Promote & sustain competition
3. Protecting the interest of the consumers
4. CCI also create public awareness & imparts training on competition issues
5. CAT was also set up
6. To carry out the mandated functions

THE COMPETITION APPELLATE TRIBUNAL(CAT)

The tribunal is established by the central govt. to hear & dispose of appeals against orders & directions passed by the CCI. CAT is composed of a chairperson & maximum 2 members. The term of office of all the members of CAT is 5 yrs or till the attainment of age of 65yrs(whichever is early), the member of the tribunal are eligible for re-appointment.

PENALTIES


1. Penalty for contravention of orders of competition commission: Imprisonment for 3 yrs or fine of 25 crores or both
 2. Penalty for failure to comply with directions of commission: 1 lakh to maximum 10 crores
 3. Penalty for making false statement or omission to furnish material information: Not less than 50 lakhs to maximum of 1 crore
 4. Penalty for offences in relation to furnishing of information: 10 lakhs to 1 crore
- 

CONSUMER PROTECTION ACT 1986

CP means the protection of the consumers from the exploitation by the unfair trade practices of the producers/sellers. In fact, providing proper protection of the fundamental rights & interests of the consumers, freeing them from exploitation, creating consumer awareness, consumer providing the rights to clean business environment to the consumers by means of legal amendments is all that protection means.

The CPA 1986 was a very unique & highly progressive piece of legislation & is called the 'MAGNA CARTA' of Indian consumers. It applies to all type of goods & services, public utilities & public sector undertakings. It was amended in the year 2002.

IMPORTANT DEFINITIONS

1. CONSUMER
 2. GOODS
 3. SERVICES
 4. RESTRICTIVE TRADE PRACTICES
 5. DEFECT
 6. DEFICIENCY
 7. UNFAIR TRADE PRACTICE
 8. COMPLAINT
 9. CONSUMER DISPUTES
- 

OBJECTIVES OF CPA

1. Right to protection against hazardous goods
2. Right to access variety of goods & at competitive prices
3. Right to consumer information
4. Right to due attention at appropriate forums
5. Right to seek redressal against unscrupulous exploitation, restrictive & unfair trade practices
6. Right to consumer education
7. Right to a healthy environment


MAIN FEATURES OF CPA 1986

- It applies to all kinds of goods & services
- This act does not limit or reduce the scope of any other act
- CP councils composing of both official & non-officials members. The objectives of the council are:
 1. To promote the rights & interests of the consumers
 2. To educate & protect them

This act provides for the following rights to the consumers

Right to safety

Right to be heard



Right to consumer education

Right to choose

Right to be informed


CONSUMER COMPLAINT

- UNFAIR TRADE PRACTICES
- DEFECTIVE GOODS
- DEFICIENT SERVICES
- FALSE BARGAIN PRICE
- NON-COMPLIANCE OF STANDARDS

WHERE TO GIVE A COMPLAINT

- DISTRICT FORUM
- STATE COMMISSION
- NATIONAL COMMISSION

PROCEDURE OF FILING COMPLAINT

- Notice To Opposite Party
 - Prepare The Consumer Complaint
 - Get The Complaint Affidavit Notarized
 - Submit The Complaint Form & Court Fee
- 

- On Admission Hearing Case Fitness Is Decided
- Court Sends Complaint Copy To Opposite Party Seeking Reply Within 30 Days
- The Forum Send It To The Laboratory To Find Out Whether There Is Any Defect Or Not ?
- The Hearings Will Continue Till The Matter Is Decided
- The Complaint Should Be Decided Within 90 Days

THE TIME LIMIT TO FILE COMPLAINTS

Sec 24 of the act provides that a consumer dispute can be filed within 2 years from the date on which the cause of action arises. Appeals are require to be filed within 30 days from the date of receipt of the court's order.

CONSUMER DISPUTE: CD refers to a dispute where the person against to whom a complaint has been made. Thus it is clear that if a person against whom complaint is made does not agree to the complaints, there is CD

CONSUMER DISPUTES ADVISORY & REDRESSAL AGENCIES

1. Advisory bodies

- The central consumer protection council
- The state consumer protection council
- The district consumer protection council

2. Consumer Redressal agencies

- The district forum
- The state commission
- The national commissions

