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BUSINESSCONTRACT

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete against the acceptor, but not afterwards.

A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party;
2. By the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance;
4. By the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

Legal Obligations

Both parties must be willing to enter into a contract with each other in order to create a legal obligation, either orally or in writing, which is based on the Latin phrase *pacta sunt servanda* (agreements are to be kept).

Consider the example cited earlier where the purchase manager invites offers for the supply of garden-fresh vegetables from suitable vendors. The manager decides to negotiate the rates with three shortlisted vendors, which signifies the willingness of the hotel to enter into a contract with any one of them, subject to other terms and conditions of the contract. However, only two of the shortlisted vendors express their willingness to negotiate with the hotel; hence, the negotiations by the hotel will be conducted with them.

Lawful Consideration

Consideration is an essential element of a valid contract which is of value or benefit to both the parties. It is the price for which the promise of the other is bought. A contract without a lawful consideration is void. The consideration may be in the form of money, services rendered, goods exchanged, or a sacrifice which is of value to the other party. This consideration may be past, present, or future. Consideration means *quid pro quo*, that is, something in return.

However, under Section 25 of the Act, consideration is not required to establish a contract under the following circumstances:

1. It is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
2. It is a promise to compensate, wholly or in part, a person who has already

voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

3. It is a promise made in writing and signed by the person to be charged therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation1. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Competent Parties

The parties making the contract must be legally competent in the sense that must not be minors, both should be of a sound mind, and not expressly disqualified from contracting. A person of sound mind is one who is able to understand proposal and rationally evaluate it keeping his interest in mind.

Free Consent

Free consent implies that the parties must agree about the subject matter of agreement in the same sense as it is proposed without any ambiguity at the same which is consensus ad idem meaning that there is a meeting of the minds between two parties as to the subject matter of the agreement.

Free consent is elaborated in the Act under Sections 15-21, which stipulate should be obtained without coercion, undue influence, fraud, or misrepresentation and mistake as of fact.

•**Coercion (Section 15)**—threatening to commit any act forbidden by law or do an unlawful act of detaining or threatening to detain any property, with the intention of making a person enter into an agreement

•**Undue Influence (Section 16)**—Where a person is in a position to dominate the will of another in order to secure an unfair advantage it is regarded as exercising of

undue influence. A person is in a position to dominate the will of another

- Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(a) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(b) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

- **Fraud (Section 17)**—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party there with or his agent, or to induce him to enter into the contract

(1) The suggestion as a fact of that which is not true, by one who does not believe it to be true;

(2) The active concealment of a fact by one having knowledge or belief of the fact;

(3) A promise made without any intention of performing it; Any other act fitted to deceive;

(4) Any such act or omission as the law specially declares to be fraudulent

Misrepresentation (Section 18) means

(1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of anyone claiming under him;

(3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is subject of the agreement

Voidable agreements (Section 19)—When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so obtained.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.

Exception- Even though the consent was obtained by incorrect means a contract will not be voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. Or if incorrect means is practised but do not influence the consent by the party it does not render the contract voidable.

- Mistake as of fact (Section 20)—'Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.'
- Effect of mistake as to law (Section 21)—A contract is not voidable because it was caused by a mistake as to any law in force in India, but mistake as to a law not in force in India has the same effect as a mistake of fact.

Lawful Object

The object of the agreement must be lawful. An agreement is unlawful, if it is (i) illegal, (ii) immoral, (iii) fraudulent (iv) of a nature that, if permitted, it would defeat the provisions of any law, (v) causes injury to the person or property of another, and (vi) opposed to public policy. Such agreements are void ab initio, that is, from the beginning.

Not Expressly Declared Void

An agreement expressly declared to be void under the Contract Act or under any other law, is not enforceable and is, thus, not a contract. The Contract Act declares the following types of agreements as expressly void:

- Agreement in restraint, to marriage (Section 26)
- Agreement in restraint of trade, profession, or business (Section 27)
- Agreement in restraint of legal proceedings (Section 28)
- Agreements having uncertain meaning (Section 29)
- Wagering agreement (Section 30)

Certainty and Possibility of Performance

The terms of a contract must not be vague or uncertain such that their meaning cannot be ascertained, or that it is impossible to carry out the contract. Such agreements are not enforceable by law.

Essentials of a valid contract

A valid contract is between two consenting parties who agree of their own free will to create a legal relationship by one party making the offer and the other accepting the offer for a lawful consideration either orally or in writing, where there is a reasonable certainty of the contract being fulfilled. This contractual obligation on the part of the hotel is created when the hotel confirms a guest reservation against a deposit and gets validated once the guest is received at the airport and a room is allotted to him and he signs the guest registration card.

DIFFERENCE BETWEEN VOID, VOIDABLE, AND UNENFORCEABLE CONTRACTS

All void contracts are unenforceable by law. Examples of such contracts are as follows:

1. Contracts for promoting illegal activities, such as gambling, prostitution, or other crimes
 - (ii) Contracts made by minors or persons of unsound mind, who do not have legal capacity to make decisions
 - (iii) Contracts that were not supported by adequate consideration or where consideration was unlawful
 - (iv) Contracts for the performance of impossible acts
 - (v) Unconscionable contracts, which are so unfair to a person that no

prudent reasonable person would enter into one

(vi) Contract that is contingent upon the occurrence of an impossible event

(vii) Agreements that are fraudulently contracted

(viii) Contracts that restrain a person's choice of marriage, trade or commerce, or legal proceedings or hearing.

Voidable contracts are valid agreements where the affected party can seek the performance of the contract or rescind it on any of the following grounds:

(i) Contracts where one of the parties to the agreement is a minor

(ii) Contracts that were made under duress

(iii) Contracts involving fraud in the inducement, that is, fraud that induces a person to enter into a contract

(iv) Contracts where one party was incapacitated, such as situations involving intoxication or insanity

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TYPES OF CONTRACTS

The most common forms of contract that one is familiar with are between two more parties and contingency contracts like insurance, indemnity, and so on; however, under certain circumstances contractual obligations are created even though there is no formal agreement such as quasi contracts.

Bilateral Contract

A bilateral contract is an agreement in which both the parties make a promise each other. For example, Rajiv decides to sell his car for ₹2,000,000 upon receipt the payment from Sudhir.

Unilateral Contract

Unilateral contract is one where only one of the parties makes a

promise to pay upon the completion of a specified action. For example, Krishna has misplaced his house; keys in his office and offers a reward of ₹500 to any person who can find it for him.

Express Contract

Express contract is one that is either in writing or orally expressed between two parties promising to do or not to do an action. For example, Rajiv decides to sell his laptop to Sudhir for ₹20,000 upon receipt of the payment from Sudhir.

References :

1. Hotel law by Amithabh devendra
2. Hotel laws by jack P. Jeff