

Commercial Law

UNIT- I

Meaning of commercial law :

commercial law is also known as mercantile law or trade law is the body of law that applies to the rights , relations, and conduct of person and business engaged in commerce merchandising , trade and sales

he is often considered to be a branch of civil law and deals with issues of both private and public law

Define law :

law as “essentially and exclusively as a social fact”. – Lenon Duguit

Sources of mercantile law :

Law merchant :

Law merchant is the main source of Mercantile law. It refers to those customs and rules that apply to traders and businessmen on their dealings and tradings with each other.Common law, in this case, refers to the principles of law that have been evolved by judges through their case judgments.

Statute law :

Statute law is the written law of England enacted by the Parliament of England. This written law always overrides the unwritten law i.e. Common Law and Equity It is one of the very vital sources of Mercantile Law of England. For example English Partnership Act, 1890

Principle of equity :

Equity proceeds in the principle that a right or liability should as far as possible be equalized among all interested. In other words, two parties have equal right in any property, so it is distributed equally as per the concerned law.

Common law :

In law, common law is the body of law derived from judicial decisions of courts and similar tribunal “common law ”is that it arises as precedent”

It is un written law of English which applies to everyone in the country

Mercantile Law :

Mercantile law may be defined as that branch of law which consists of laws relating to trade, industry and commerce. It is one of the important branches of Civil Law. It is also called as “Commercial Law”

case of persons other than Hindus and Muslims, the Courts applied the principles of English Law. Further, where laws and usage of Hindus or Muslims were silent on any point, the principles of English Law were applied.

The first efforts to pass an Act constituting mercantile law in India were made in 1872 by the passing of the Indian Contract Act. From that time a large number of statutes have been enacted concerning matters coming within the purview of mercantile law. For example, the Sale of Goods Act, 1930, the Partnership Act, 1932, the Companies Act, 1955, etc.

Indian mercantile law is based largely upon the English mercantile law. Prior to the enactment of the various Acts constituting mercantile law, the personal laws of the parties to suit regulated mercantile transactions. The rights of Hindus were governed by the Hindu Law and that of Muslims by the Mohammedan Law.

Classification of Contract :

- 1. Express contract**
- 2. implied contract**
- 3. quasi contract**

1. Express contract :

An express contract is a legally binding agreement, the terms of which are all clearly stated either orally or in writing. For an express contract to come together, there must be an offer made by one of the parties, and acceptance of that offer by the other party.

An express contract is an exchange of promises in which the terms by which the parties agree to be bound are declared either orally or in writing, or a combination of both, at the time it is made.

An expressed contract requires that the elements are specifically stated, including offer, acceptance and consideration. There are other elements like mutual assent, capacity and legally accepted terms. Examples include the sale of real estate, employment contracts and even a contract to perform a service.

The first part of Section 9 of the Indian Contract deals with promises which are expressly made. Contracts arising from expressly made promises are called express contracts.

According to Section 9 “insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express”. Thus contracts entered into between the parties by words, spoken or written, are known as express contracts.

2. implied contract :

An implied contract is a contract that exists based on the actions of those involved. Though it is not a written or spoken contract, it is just as legal. A contract is assumed to exist based on the behaviors of the parties to it.

The definition of implied is something that was hinted at or suggested, but not directly stated. When a person looks at his watch and yawns multiple times as you are talking, this is an example of a situation where boredom is implied.

The second part of Section 9 of the Act deals with implied contracts. It says “insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.” Thus contracts entered into between parties by virtue of their conduct are called implied contracts.

The terms of the agreement are not expressed in written or oral form but are inferred from their conduct.

3. quasi contract :

A quasi-contract is a fictional contract recognised by a court. The notion of a quasi-contract can be traced to Roman law and is still a concept used in some modern legal systems.

A quasi contract is a retroactive arrangement between two parties who have no previous obligations to one another.A quasi contract is a court-imposed document designed to prevent one party from unfairly benefiting at another party's expense, even though no contract exists between them.

A contract which does not arise by virtue of any agreement between the parties, but due to certain special circumstances, the law recognizes it as a contract. Such contracts come into existence because of interference from courts in the interest of justice.

There are many several situations in which law, as well as justice, requires that a certain person is required to conform to an obligation, although he has neither broken any contract nor committed any tort. The principle is that there should not be “unjust enrichment” i.e., enrichment of one at the cost of another.

A quasi contract is a court-imposed document designed to prevent one party from unfairly benefiting at another party's expense, even though no contract exists between them.

Example :

where certain letters are delivered to a wrong addresses the addresses is under
An obligation to return the letters

Classification of contract According to performance :

1. unilateral contract
2. bilateral contract

Unilateral contract :

A unilateral contract is a contract agreement in which an offer or promises to pay after the occurrence of a specified act. In general, unilateral contracts are most often used when an offer or has an open request in which they are willing to pay for a specified ac

His act is simultaneously acceptance of and consideration for the promise. “An act done at the request of the offeror in response to his promise is a consideration, and consideration in its essence is nothing else but the response to such a request.”

They are one-sided contracts. A unilateral promise is a promise from one side only and intended to induce some action by the other party. The promisee is not bound to act, for he gives no promise from his side. But if he carries out the act desired by the promisor, he can hold the promisor to his promise

A unilateral contract is an agreement which is one-sided; in other words, one person makes a promise to do something while the other does not take action immediately. Rather, the other party will act in the future.

Example : unilateral contracts include contests. Take an eating contest, for instance.

Bilateral contract :

The bilateral contract is the most common kind of binding agreement. Each party is both an obligor (a person who is bound to another) to its own promise, and an obligee (a person to whom another is obligated or bound) on the other party's promise.

The bilateral contract is the most common kind of binding agreement. Any sales agreement is an example of a bilateral contract. A car buyer may agree to pay the seller a certain amount

A bilateral contract is a legally binding contract formed by the exchange of reciprocal promises. Here both parties are outstanding at the time of formation of the contract. In such a case, each party is a promisor and promisee. They are also known as reciprocal contracts because mutuality of obligation is essential for their enforceability.

In the case of bilateral contracts, an offer made is accepted in the form of a counter-promise. They are very common in everyday life.

CONTRACT: INDIAN CONTRACT ACT, 1872 :

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Meaning of certain terms:

- 1. Proposal [(offer) Section 2(a)]:** When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act; he is said to make a proposal (i.e. offer).
- 2. Promise [Section 2 (b)]:** When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.
- 3. Agreement [Section 2(e)]:** Every promise and every set of promises, forming consideration for each other, is an agreement
- 4. Contract [Section 2(h)]:** An agreement enforceable by law is a contract.
- 5. Promisor and Promisee [Section 2(c)]:** When the proposal is accepted- the person making the proposal is called as 'promisor'; and the person accepting the proposal is called as 'promisee'.
- 6. Consideration [Section 2(d)]:** When, at the desire of the promisor, the promisee- has done or abstained from doing something; or does or abstains from doing something; or any other person: promises to do or abstain from doing something, Such act, abstinence or promise is called a consideration for the promise.
- 7. Void agreement [Section 2(g)]:** An agreement not enforceable by law is said to be void. A void agreement is not enforceable from the very beginning, i.e. it is void ab initio.
- 8. Voidable Contract [Section 2(i)]:** An agreement is a voidable contract if:
 - a) It is enforceable by law at the option of one or more of the parties thereto,
 - b) It is not enforceable by law at the option of the other or others. Simply speaking, a contract which can be set aside (i.e. terminated or repudiated or avoided) at the option of

the aggrieved party is a voidable contract. Until the contract is repudiated, it remains a valid contract. As per Section 64, the aggrieved party must restore the benefit that he has received under the contract. The other party is freed from his obligation to perform the contract.

- 9. Void contract [Section 2 (j)]:** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Simply speaking, a contract which, when entered into, was valid, but subsequently became void due to impossibility of performance or change in circumstances or change in law or some other reason (termed as supervening impossibility), is termed as void contract.

FORMATION AND ESSENTIAL ELEMENTS OF A CONTRACT:

Section 10 mentions the essentials of a valid contract. According to it, “all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void”.

1. **A valid offer and acceptance:** A contract is a valid contract only when there exists a valid offer and its valid acceptance. The terms of the offer must be precise and clear. The offer must be communicated to the person to whom it is made. The acceptance of the offer must be absolute and unconditional.
2. **Intention to create legal relationship:** The intention of the parties to a valid contract must be to create legal relationship between them.
3. **Lawful consideration:** For a contract to be valid, the agreement between the parties must be backed by consideration. Consideration means “something in return”. Both the parties to the agreement must give and get something in return.
4. **Capacity of parties:** The parties must be competent to contract that means capable entering into valid contract. A person is capable of entering into a valid contract if he is attained the age of majority, is of sound mind.
5. **Free consent:** Consent means willingness. The consent of the parties to a valid contract must come freely. It must not be obtained by force or by suppressing facts.
6. **Legality of object:** The object of the agreement must not be illegal, immoral or opposed to public policy.

7. **Agreement not declared void:** The agreement between the parties must not have been declared void expressly by any law in force in the country.
8. **Terms of the agreement must be certain:** The terms of the agreement must clear, precise and certain. If the terms are vague or ambiguous, the agreement cannot be enforced.
9. **Possibility of performance:** What is undertaken by the parties to an agreement must be such that it can be performed. An agreement to do an impossible act cannot be enforced.
10. **Legal formalities:** For a contract to be enforceable in a court of a law, it must comply with the necessary legal formalities as to writing, stamp duty, registration, certification, witness etc.

Classification of contracts According to execution :

1. Executed Contract
2. Executory Contract

Executed Contract :

An executed contract is a legal document that has been signed off by the people necessary for it to become effective. The contract is often made between two or more people, but it can also be between a person and an entity, or two or more entities

Executory Contract :

An executory contract is a contract that has not yet been fully performed or fully executed. It is a contract in which both sides still have important performance remaining. However, an obligation to pay money, even if such obligation is material, does not usually make a contract executory

A contract under which unperformed obligations remain on both sides, or where both parties have continuing obligations to perform.

For example : most leases or contracts for the sale of goods where the goods have not been delivered by the seller and the buyer has not paid, are executory contracts.

Valid and Void Contract :

A voidable contract is a contract which may appear to be valid and has all of the necessary elements to be enforceable under the act, but has some flaws which could cause one or both of the parties to void the contract. The contract is legally binding but could become void

The main difference between the two is that a void contract cannot be performed under the law, while a voidable contract can still be performed, although the unbound party to the contract can choose to void it before the other party performs.

Example : A valid contract is one that meets the basic elements of contract law. For example, you sign to buy a blue house, and the house is blue; thus the contract is valid. A voidable contract provides the option to rescind by either party. At the creation of the contract, it is valid but it could be voided in the future

Void Contract :

A void contract is a formal agreement that is effectively illegitimate and unenforceable from the moment it is created. A void contract differs from a voidable contract, although both may indeed be nullified for similar reasons. A void agreement is not enforceable at the option of either party. Section 2(g) of the Act explains the meaning of a void agreement.

- Agreements unlawful in part(S. 24)
- Agreements without consideration(S. 25)
- Agreements in restraint of marriage(S. 26)
- Agreements in restraint of trade(S.27)
- Agreements in restraint of legal proceedings(S. 28)
- Unmeaning agreements(S. 29)
- Wagering agreements(S. 30)

Valid Contract :

A valid contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document.

A void contract is missing an element. In a voidable contract, there is an option for the parties to enforce the terms even though an element is missing, or some other issue exists with the terms.

Essentially, the difference between void and voidable contracts is enforceability: a void contract is illegal and unenforceable; a voidable contract is legal and enforceable. A contract that is void is unenforceable, meaning that neither party has legal recourse against the other for a breach.

Voidable and Unenforceable Contract :

- An unenforceable contract or transaction is one that is valid but one the court will not enforce. Unenforceable is usually used in contradiction to void a in and voidable. If the parties perform the agreement, it will be valid, but the court will not compel them if they do not.

- Essentially, the difference between void and voidable contracts is enforceability: a void contract is illegal and unenforceable; a voidable contract is legal and enforceable. A contract that is void is unenforceable, meaning that neither party has legal recourse against the other for a breach.

- A void contract is missing an element. In a voidable contract, there is an option for the parties to enforce the terms even though an element is missing, or some other issue exists with the terms.

- When a contract is unenforceable, it means the contract terms are too confusing, unclear or lack several elements.

- A "voidable" contract, on the other hand, is a valid contract and can be enforced. Usually, only one party is bound to the contract terms in a voidable contract.

- A voidable contract is legal and enforceable. A contract that is void is unenforceable, meaning that neither party has legal recourse against the other for a breach.

- What is undertaken by the parties to an agreement must be such that it can be performed. An agreement to do an impossible act cannot be enforced.

Difference Between Valid and Voidable contract :

Void Contract	voidable Contract
A void contract is a formal agreement that is effectively illegitimate and unenforceable from the moment it is created. A void contract differs from a voidable contract, although both may indeed be nullified for similar reasons	A valid contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document
A contract will be considered void, for example, when it requires one party to perform an act that is impossible or illegal	A "voidable" contract, on the other hand, is a valid contract and can be enforced. Usually, only one party is bound to the contract terms in a voidable contract.
A void contract can give rise to no legal liability since transaction is nullity	A voidable contract remains Valid until rescinded
A void contract becomes void when it cases to be enforceable	Voidable contract as misrepresentation

Books of References:

- 1. Commercial law - Rkbert Bradgate**
- 2. Company Law - Pankaj Kumar Roy and Sujit Kumar Dos.**
- 3. Businees Law - Sankaran**

QUESTIONS :

2 Marks :

01. Define law
02. what is mean by implied contract ?
03. what is commercial law ?
04. Briefly Explain Executory Contract ?
05. what is void Contract ?

5 Marks :

06. difference between void and voidable contract
07. Explain source of mercantile law
08. Explain voidable and unenforceable contract
09. Explain : a) Executed Contract
b) Executory Contract

10 Marks :

10. what is contract ? Explain Classification of contract ?
11. Define Contract : Explain Contract According to performance ?