



# BUSINESS LAW AND ETHICS

MBA I SEM





**Presentation  
for  
BUSINES LAW AND ETHICS**

**by**

**Dr. B. V. L. L . Narasimha Rao  
Associate Professor**

# INDIAN CONTRACT ACT, 1872

# What is a Law ?

**Law** is a system of rules and guidelines, usually enforced through a set of institutions. Contract law regulates everything from buying a bus ticket to trading on derivatives markets.

Property law defines rights and obligations related to the transfer and title of personal and real property. If the harm is criminalised in legislation or case law, criminal law offers means by which the state can prosecute the perpetrator.

- **Proposal** - 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 or abstinence, he is said to make a proposal.
- **Promise** - 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.

## Continued...

- The person making the proposal is called the "promiser and the person accepting the proposal is called the It promise":
- **Consideration** - When, at the desire of the promiser, the promisee or any other person has clone or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise.

## Continued...

- **Agreement** - Every promise and every set of promises, forming the consideration for each other, is an agreement.
- **Contract** - An agreement enforceable by law is a contract.
- An agreement not enforceable by law is said to be void.

## Contracts –

- **Contract** - An agreement enforceable by law is a contract.
- 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.



# What is a contract?

## Examples

- I promise to bring chocolates to the whole class. Is there a contract?
- I promise to give you 100 Rs. if ride your bike to Tiananmen Square and back to ICB in less than 2 hours. Is there a contract?
- I give you 2 Rs. for your Coca-Cola. Is there a contract?
- I promise to give you a new bicycle if you agree not to eat Chinese food for one year. Is there a contract?

# Definition of a contract

- **A legally binding agreement**
- that means there must be some kind of agreement between two parties
- However, not all agreements are contracts because not all agreements are legally enforceable
- **legally enforceable** means that a court will say that an agreement is a contract

## Definition of a contract (cont.)

- To decide if an agreement is legally enforceable as a contract, a court will apply the rules and principles of the law of contract
- Therefore, knowing a little about these rules can help businesspeople to create valid contracts

# Contracts

Contract is an agreement enforceable by law. Indian Contract Act 1872.

---Agreement = Offer + Acceptance (agreement is an accepted proposal)

---Enforceability by law

Features of an agreement:

---Consensus ad idem

---Obligation

---Agreement –a wide term—social agreement not a contract

ALL CONTRACTS ARE AGREEMENTS BUT ALL AGREEMENTS  
ARE NOT CONTRACTS.

# Types of Contracts

- ⦿ Classification according to validity: Valid contracts, Void contracts, Voidable Contracts, Illegal Contracts and Unenforceable contracts
- ⦿ Classification according to formation: Express and Implied contracts, Quasi Contracts and E-Commerce Contracts
- ⦿ Classification according to performance: Executed Contracts and Executory Contracts ( In addition, Unilateral or one-sided contracts)
- ⦿ Classification according to English Law: a) Formal Contracts—Contracts of record, contracts under seal and b) Simple Contracts.

## Essentials of valid contract:

- ⊙ Offer and Acceptance
- ⊙ Intention to create legal relationship
- ⊙ Lawful consideration (something in return)
- ⊙ Capacity of parties—competency
- ⊙ Free and genuine consent
- ⊙ Lawful object (purpose)
- ⊙ Agreement not declared void (Sec 24 to 30 and 56)\*\* Next slide
- ⊙ Certainty and possibility of performance
- ⊙ Legal formalities ( like documentation, registration where necessary, witnessing, statutory compliance )

- ⦿ Agreement by incompetent parties
- ⦿ Agreements under mutual mistake of fact material to the agreement (Sec20)
- ⦿ Agreements with unlawful consideration or object (Sec 23)
- ⦿ Agreements unlawful in part (Sec 24)
- ⦿ Agreements without consideration (Sec 25)
- ⦿ Agreements in restraint of marriage (Sec 26)
- ⦿ Agreements in restraint of trade (Sec 27)
- ⦿ Agreements in restraint of legal proceedings (Sec 28)
- ⦿ Agreements which are uncertain and ambiguous (Sec 29)
- ⦿ Agreements by way of wager (Sec30)
- ⦿ Agreements to do impossible acts (Sec 56)

- ⦿ Agreements of trading with enemy
- ⦿ Agreement to commit a crime
- ⦿ Agreement which interfere with administration of justice
- ⦿ Agreement in restraint of legal proceedings
- ⦿ Trafficking in public offices and titles
- ⦿ Agreements tending to create interest opposed to duty
- ⦿ Agreements in restraint of personal liberty
- ⦿ Agreement in restraint of marriage
- ⦿ Marriage brokerage agreements
- ⦿ Agreements interfering with martial duties
- ⦿ Agreements to defraud creditors
- ⦿ Agreements in restraint of trade



## Offer and Acceptance

Offer: Signifying to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other.

- ⦿ Offeror or Proposer or Promisor Vs Offeree, or proposee
- ⦿ When the offer is accepted, he becomes ACCEPTOR or promisee
- ⦿ Offer should show a obvious intention to be bound by it
- ⦿ Offer should be with an intention to obtain an assent of the other
- ⦿ Offer must be definite
- ⦿ Offer must be communicated.

## Offer and Acceptance

Legal rules as to Offer:

- ⦿ Offer must be one which is capable of being accepted and giving legal relationship
- ⦿ Terms of offer must be certain and definite and not loose and vague
- ⦿ An offer is different from a declaration of intention and an announcement
- ⦿ An offer is different from an invitation to make an offer
- ⦿ Offer must be communicated
- ⦿ A statement of price is not an offer
- ⦿ Tender is a definite offer ( person calling a tender is sending an invitation to offer, person submitting tender is making an offer and once tender is accepted, the authority becomes the acceptor

# Offer and Acceptance

## Acceptance:

- ⦿ Giving assent is acceptance
- ⦿ Acceptance can be express or implied. Particular offer must be accepted by the person to whom it is made.
- ⦿ Acceptance must be absolute and unqualified (conform with the offer)
- ⦿ It must be communicated
- ⦿ It must be according to the mode accepted or usual and reasonable mode
- ⦿ It must be given within a reasonable time
- ⦿ It cannot precede an offer
- ⦿ It must show an intention to fulfil the terms
- ⦿ It must be given by the parties to whom the offer is made
- ⦿ It must be given before lapse of time or before the offer is withdrawn
- ⦿ It cannot be implied by silence.

## CONSIDERATION: (Sec 2(d) ) and Sec 25

- ⦿ Past Consideration
- ⦿ Executed or Present Consideration
- ⦿ Executory or Future Consideration
- ⦿ Must move at the behest of the promisor
- ⦿ May move from the promisee or on the desire of the promisor or from any other person
- ⦿ Need not be adequate
- ⦿ Must be real and not illusory
- ⦿ Performance of an existing legal duty will not constitute consideration.

## CONSIDERATION: (Sec 2(d) ) and Sec 25

Exceptions to the rule of consideration:

- ⦿ Love and affection
- ⦿ Voluntary services
- ⦿ Time-barred debt
- ⦿ Gift
- ⦿ Agency
- ⦿ Charitable subscriptions

# Capacity to Contract

## INCOMPETENT TO CONTRACTS:

- ⊙ Minors (immature mind)
- ⊙ Persons of unsound mind –Idiot, Lunatic, drunkard
- ⊙ Persons disqualified by law- Alien Enemy, Insolvent, Convict

## Capacity to contract

### Incompetent to contracts:---MINORS

- ◎ Sec 3 of the Indian Majority Act:- 18 years
- ◎ Court guardianship---21 years
- ◎ No estoppel
- ◎ Doctrine of Restitution does not apply to minors
- ◎ No ratification on attaining the majority
- ◎ No liability for breach or for tort arising out of contract
- ◎ Minor can be a promisee
- ◎ Contract of marriage
- ◎ Contract of service or apprenticeship
- ◎ Position of parents or guardian
- ◎ Surety for a minor

# Capacity to Contract

## Incompetent to contracts:---MINORS

- ⦿ Minor as an agent
- ⦿ Specific performance
- ⦿ Can be admitted to the benefits of partnership ( liability limited to his share in the Pp
- ⦿ Not a debtor under insolvency
- ⦿ Cannot be a shareholder in a company (except through lawful guardian)-cannot be liable for payment of call money
- ⦿ Under NI Act, he may draw, endorse, deliver and negotiate so as to bind all parties except himself
- ⦿ He cannot become a Principal or appoint an agent under the contract of Agency



## Incompetent to contracts:-PERSONS OF UNSOUND MIND

- ⦿ If at the time of making a contract, he is not capable of forming a rational judgement as to its effect upon his interests. Mere weakness of mind is not enough.
- ⦿ Permanent unsoundness of mind
- ⦿ Temporary unsoundness of mind
- ⦿ IDIOT: one who is devoid of the ability to think
- ⦿ LUNATIC: One whose mental power has been damaged
- ⦿ DRUNKARD: One is under the influence of intoxicating liquors or drugs equal to that of a lunatic

## Capacity to contract

### Incompetent to contracts:-PERSONS DISQUALIFIED BY LAW:

- ⦿ Alien Enemy—on the grounds of public policy may hamper the economic interests
- ⦿ Insolvent—one who is unable to discharge his liabilities. However, after of discharge he is competent to enter into contracts
- ⦿ Any other person expressly disqualified from entering into any legal act

# Free Consent

CONTRACTs should be entered with a Free Consent Sec 14

Consent is said to be free when it is not caused by

- ⦿ Coercion
- ⦿ Undue Influence
- ⦿ Fraud
- ⦿ Misrepresentation
- ⦿ Mistake

# Discharge of Contracts

- ◎ By performance: actual or attempted
- ◎ By agreement or consent (novation—new agreement in lieu of the old ones)
- ◎ By impossibility and supervening impossibility (destruction of the subject matter, non-existence or non-occurrence, death or incapacity for personal service, change of law or outbreak of war)
- ◎ By lapse of time
- ◎ By Operation of Law; merger acquisition, insolvency etc
- ◎ By breach of contract

## Remedies for breach of contract

- ⊙ Sec 73—compensation for loss or damage caused by breach of contract—Proximate losses not remote/indirect losses
- ⊙ Sec 74 –compensation for breach of contract where penalty specified-
- ⊙ Sec 75: Party who is rightfully rescinding is entitled for compensation
- ⊙ Suit for Rescission
- ⊙ Suit for injunction
- ⊙ Suit for Specific Performance
- ⊙ Suit for damages—Ordinary or special. exemplary(vindictive),nominal, damages for loss of reputation; damages for inconvenience and discomfort, mitigation of damages; difficulty of assessment; cost of decree; damages agreed in advance; liquidated damages and penalty:
- ⊙ Suit for Quantum Meruit ( as much as earned)
- ⊙ Penalty by Courts

## Bailment and Pledge

- ⦿ Bailment is the delivery of goods to another person for some specified purpose upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
- ⦿ The person delivering the goods is BAILOR and the person to whom the delivery is made is BAILEE.
- ⦿ Examples: a) A librarian delivers books to the student for examination studies; b) An insurance company gives possession of a damaged car to a godown keeper for safekeeping; c) An FMGC dealer sold goods to a customer and received the money. The goods are still in the custody of the dealer. It is a bailment from the buyer to the dealer; d) Customs department seized GOLD which is missing thereafter—It is an implied bailment (deemed bailment as the importer can pay the duties and penalties and take the gold.e) Hire purchase contract; f) acceptance of goods by a transport company; g) Acceptance of goods by post office or courier as value payable parcel.

# INDEMNITY AND GUARANTEE

## Indemnity:

- ⊙ “ A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.”
- ⊙ The promisor is known as INDEMNIFIER and the promisee is known as INDEMNIFIED (INDEMNITY HOLDER)
- ⊙ The Indian Contract Act has not included certain contracts like a) implied promises to indemnify; b) claims arising from accidents and events not depending on the promisor or any other person; c) Contract of insurance. Still they are contracts of INDEMNITY;

# INDEMNITY AND GUARANTEE

## Rights of Indemnity holder:

- a) All damages which he may be compelled to pay in any suit; b) all costs which he may be compelled to pay in bringing or defending ay such suit (provided he acted prudent); c) all sums which he would have paid under the terms of compromise of any such suit (compromise shall not be against the orders of the indemnifier)



# INDEMNITY AND GUARANTEE

## Guarantee:

- ⦿ “ A contract to perform the promise or discharge the liability of a third person in case of his default.”
- ⦿ Person giving the guarantee is known as ‘GUARANTOR’ OR “SURETY”
- ⦿ The person on whose behalf the guarantee is given is known as ‘PRINCIPAL DEBTOR’ or simply “DEBTOR”
- ⦿ Person to whom the guarantee is given is known as “CREDITOR”
- ⦿ Guarantee may be express or implied or by the course of the conduct of the parties.

## Guarantee: Essential Features:

- ⦿ Three parties
- ⦿ Guarantor's primary liability
- ⦿ Essentials of a valid contract must be present—all parties to the contract of guarantee shall have the capacity to contract
- ⦿ Consideration received by the principal debtor is a sufficient consideration for the contract of guarantee.
- ⦿ Contract in Writing not necessary – Some contracts are implied
- ⦿ Guarantee is not a contract “ WHERE ONE SHALL DISCLOSE ALL MATERIAL FACTS BY THE PRINCIPAL DEBTOR”—It is the guarantor's primary liability on the debts of the principal debtor.

# Distinction between Indemnity and Guarantee

## INDEMNITY

- ⦿ TWO PARTIES
- ⦿ Indemnifier's liability is primary and independent
- ⦿ Only one contract
- ⦿ Not necessary to act at the request of the indemnified
- ⦿ Liability arises only in contingencies
- ⦿ An Indemnifier cannot sue a third party as there is no privity of contract between such third party and himself

## GUARANTEE

- ⦿ THREE PARTIES
- ⦿ Guarantor's or Surety's liability is secondary or collateral, primary liability being that of the principal debtor
- ⦿ Three contracts: a) Guarantor and guarantee; b) Creditor and debtor and c) guarantor and the debtor
- ⦿ It is essential that the surety shall give the guarantee at the request of the principal debtor
- ⦿ Liability can be existing or future debts
- ⦿ Surety gets into the shoes of the creditor once he performs his obligations

# INDEMNITY AND GUARANTEE

## Extent of surety's liability:

- ⦿ It is co-extensive with that of the principal debtor which means that the quantum of obligation of a surety is the same as that of the principal debtor. Example, in case of dishonour of a Bill of exchange, the surety is also responsible for all the interest and expenses.
- ⦿ Sometimes the surety's liability may be fixed less than the responsibility of the principal debtor. That means liability of the principal debtor may be higher than the guarantor's promise. This can be done by specific clauses in the contract
- ⦿ Guarantee may be for a single debt or a series of debts or for a time period: (single transaction guarantee or continuing guarantee)

# INDEMNITY AND GUARANTEE

## Kinds of Guarantee:

- ⊙ Specific Guarantee
- ⊙ Continuing Guarantee
- ⊙ Performance Guarantee
- ⊙ Deferred payment Guarantee

Continuing Guarantee can be revoked as to future transactions: a) by giving notice; b) by death of the surety; c) by other modes like NOVATION, variations in the terms of contract, by release or discharge of the principal debtor; by compounding with the principal debtor; by creditor's act or omission impairing surety's remedies or by loss of security

# INDEMNITY AND GUARANTEE

## Rights of surety: a) Rights against the Creditor

- ⦿ Before the payment of the guaranteed debt: require the creditor to first proceed (sue) against the principal debtor
- ⦿ Right of set-off (steps into the shoes of the debtor)
- ⦿ On payment of the guaranteed debt: surety is subrogated to all the rights of the creditor. Surety can claim the securities lying in the hands of the creditor (time by which the securities came into the possession of the creditor is irrelevant—all existing securities on the date of payment of the debt by the guarantor)
- ⦿ Right to equities against all parties to the transaction

## Rights of surety: b) Rights against the Principal Debtor:

- ⦿ Right to be relieved of the liability
- ⦿ Right to indemnity (implied promise or a written agreement to that effect)

- ⦿ A person who has capacity to contract with another person either by himself or through another person. When contracts are entered through another person/s, the contracts are said to have been entered through agents.
- ⦿ An agent is a person employed to do any act for another or to represent another in dealings with third persons.
- ⦿ The person on whose behalf the acts are done is known as the **PRINCIPAL**. The person who represents another is known as the **AGENT**.
- ⦿ It implies an agreement not necessarily a contract. So a minor can be an agent. But the principal must be a person competent to contract.
- ⦿ Intention of the Agent is a question of fact.

## Contract of Agency

- ⦿ The test of An Agency is “whether the agent can bind the principal (for legal relationships with the third parties) by his acts and make the principal answerable”.
- ⦿ An agent establishes the privity of contract between the Principal and the third parties
- ⦿ The relationship of Agent and Principal may be express or implied or by ratification or by operation of law
- ⦿ Express terms: Where there the agency is through a power of attorney (though oral agreements are welcome, written form is more popular). The power of attorney may be general or specific.
- ⦿ Implied Agency: By relationship or conduct of the parties. Two Brothers with the knowledge of both hire out a building belonging to one of them, and the other brother collects the rent and remits, there is an agency



## Contract of Agency

- ⊙ Implied agency: Agency by estoppel: Once you make the third party believe that you are stating that Mr X is your agent by your words or conduct, you cannot later deny stating that Mr X was not your agent. This is known as Agency by Estoppel. You are stopped from denying the fact and your position is reversed to the original position. The same is applicable where the agent acts without authority and the principal is in the knowledge of things and makes the third parties to believe then the agency is agency by estoppel
- ⊙ Implied Agency: Agency by Necessity or Emergency: Sale of perishable by a transporter where there is a continuous strike or where the animal is transported, the animals are to be fed, there is an agency for the expenses incurred for feeding the animals.
- ⊙ Implied Agency: Husband and Wife: Husband is supposed to maintain (supposed to supply necessities of life according to his status). If the wife purchases some necessities, the husband is responsible. Even where the husband deserts the wife, the wife can bind the husband. This has to be properly interpreted where the wife has independent income.

## Contract of Agency

- ⊙ Agency by ratification: A subsequent acceptance or rejection of an existing contract entered into by an agent without authority of the principal is known as Agency by Ratification.
- ⊙ Agency by Operation of Law: In a new company, the promoters are agents by operation of law (company being an artificial person). Thereafter, the BOD may delegate certain duties or powers to various officers. All the officers who are authorised to bind the company are agents of the company.

# Contract of Agency

## Classification of agents:

- ◎ Special agent (particular task)
- ◎ General agent ( business in the normal course)
- ◎ Universal agent ( unlimited authority of the agent to bind the principal: Universal Agents may be: a) mercantile agents(factors, auctioneers, brokers, commission agent and DEL CREDRE AGENTS (works for an extra commission and guarantees performance of the third parties to his principal); b) Bankers and c) Non-Mercantile agents—solicitors, attorneys, insurance agents, Clearing and forwarding agents, husband and wife etc

# Contract of Agency

## Duties of an Agent:

- ⦿ Follow the principal's directions
- ⦿ Reasonable care, skill and diligence
- ⦿ Render proper accounts to the principal
- ⦿ Communicate with principal in case of difficulty
- ⦿ Not to deal in his own account
- ⦿ Pay sums due to the principal duly recovering his commission and expenses
- ⦿ Protect and preserve the interests of the Principal in case of his death or insolvency or becoming of unsound mind
- ⦿ Not to enter into competition against the interests of the principal
- ⦿ Not to make secret profits
- ⦿ Not to set up an adverse title

# Contract of Agency

## Duties of an Agent:

- a) Follow the principal's directions;
- b) Reasonable care, skill and diligence;
- c) Render proper accounts to the principal;
- d) Communicate with principal in case of difficulty;
- e) Not to deal in his own account;
- f) Pay sums due to the principal duly recovering his commission and expenses;
- g) Protect and preserve the interests of the Principal in case of his death or insolvency or becoming of unsound mind;
- h) Not to enter into competition against the interests of the principal;
- i) Not to make secret profits;
- j) Not to set up an adverse title;
- k) Duty of full disclosure of conflicting interests;
- l) Not to delegate authority

## Rights of an Agent:

- a) Right of retention;
- b) Right of receiving remuneration;
- c) Right of lien;
- d) Right of indemnification;
- e) Right of compensation;
- f) Right of stoppage in transit

# Contract of Agency

## Duties and Rights of the Principal:

- ⦿ Duties: a) To indemnify the agent against the consequences of all lawful acts; b) to indemnify the agent against the consequences of acts done in good faith; c) to indemnify the agent for injury caused by principal's neglect; d) to pay the commission and other remuneration
- ⦿ Rights: a) To recover damages; b) to obtain proper accounts; c) to obtain an account of secret profits and d) to resist agent's claim where the agent has acted himself as the principal.

Personal Liability of Agent: a) where the contract expressly provides; b) agent acting on behalf of the foreign principal; c) agent acting on behalf of an undisclosed principal; d) agent acting on behalf of a principal who cannot be sued (incapacity to enter into contracts); e) agent signing contracts in his own name; f) principal not existing ( company yet to be formed— preliminary operations); g) breach of warranty of authority; h) receives money by mistake or fraud; i) clash of conflicting interests; j) trade usage

# Contract of Agency

## Termination of Agency:

- ⦿ By the Act of parties: a) Agreement; b) Principal's revocation; c) Agent's revocation
- ⦿ By Operation of Law: a) Performance; b) Expiry of Time; c) Death or Insanity or Insolvency of either party; d) Destruction of subject matter; e) Principal becoming an alien enemy; f) Dissolution of a company; and g) Termination of a sub-agent's authority

Irrevocable Agency: Agency coupled with interest: Agency securing some benefits over and above his remuneration. Such agencies cannot be terminated detrimental to the agents' interests or where such agents have incurred a personal liability or where such agents have partly exercised authority.

## Essential elements of a valid contract: (Sec. 10)

- ★ Agreement - Offer & acceptance
- ★ Legal consequences - rights & obligations
- ★ Capacity of the contracting parties
- ★ Consideration
- ★ Legal object
- ★ Free consent
- ★ Certainty
- ★ Possibility of performance
- ★ Writing & registration
- ★ Not expressly declared to be void.



## Offer: Sec.2(a)

An Offer Can be Defined as follows:

An expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed.

- ★ It must be an expression of the willingness to do or abstain from doing something.
- ★ Such expression must be to another person.
- ★ Such expression must be made with the intention to obtain the assent of the other person to such an act or abstinence.

- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- E.g. - A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

## Acceptance: Sec 2(b)

Acceptance is the second ‘half’ of a contract. If Bill offers Ben a bag of sweets for 20p, and Ben says ‘I accept’, clearly a contract has been made. The law explains that there must be evidence from both sides of genuine agreement between parties – the old idea of *consensus ad idem*, or meeting of minds.

□ Acceptance can be defined as:

Agreement to all terms of an offer by words or conduct.

# Essentials of Acceptance

- ★ Acceptance must be given only by the person to whom the offer is made.
- ★ Must be absolute & unqualified.
- ★ Must be in prescribed mode or reasonable manner.
- ★ Must be communicated.
- ★ Within reasonable time.
- ★ Acceptance must succeed an offer.
- ★ Rejected offers can be accepted only if renewed.

## Communication of an acceptance

The communication of an acceptance is complete, -  
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge, of the proposer.

**E.g. :** B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted as against B, when the letter is received by A.

# Void Contracts

- In fact, these are not contracts at all
- They have no legal effect
- As we will see in later classes, there are a number of things which can make a contract void
  - e.g. mistake, illegality
- The important thing to remember is that you cannot enforce a void contract

# Void Agreements:

- Agreements in restraint of marriage [Sec. 26]
- Agreements in restraint of trade [Sec. 27]
- Agreements in restraint of legal proceedings [Sec. 28]
- Agreements the meaning of which is uncertain [Sec. 29]
- Agreements by way of wager [Sec. 30]
- Agreements contingent on impossible events [Sec. 36]
- Agreements to do impossible acts [Sec. 56]



# Void Contracts - Example

- Daniel gives his students so much homework that they decide to kill him
- They pay a Russian hit man 5000 RMB to kill Daniel

- However, the Russian simply spends all the money in bars in Sanlitun and then goes home
- He does not kill Daniel
- The students cannot claim their money back because it is illegal to hire a hit man to kill someone

# LAWFUL CONSIDERATION

AGREEMENT IS A MUTUAL EXCHANGE OF PROMISES BETWEEN PARTIES. EACH PARTY MAKING A PROMISE GETS SOMETHING IN RETURN OF HIS PROMISE. IT CONSTITUTES A CONSIDERATION FOR HIS PROMISE.

# CONTRACTUAL CAPACITY

- ⦿ the person to have contractual capacity must satisfy the following conditions-
  1. he must be a major age and not a minor
  2. he must be of sound mind and not lunatic
  3. he must not have been declared disqualified by law.

# FREE CONSENT OF THE PARTIES

- ⊙ the consent is said to be free if it has not been induced by any one of the following factors-:
  1. coercion
  2. undue influence
  3. misrepresentation
  4. fraud
  5. mistake

- ⦿ the object of an agreement must be to do some act which is legal. contrary to it, agreements made for doing some thing illegal, immoral or against public policy, cannot be enforced in the court of law.

## AGREEMENTS NOT DECLARED EXPRESSLY VOID

- ⦿ there are certain agreements which have been expressly declared void by the law. thus an agreement made by parties should not fall in this category.

# CLASSIFICATION OF CONTRACTS



## 1. express contract-

express contracts results from express agreements and express agreement is formed by making offer and giving acceptance in the words spoken or writing.

## 2. Implied contract

- ⦿ In this type of contract one of the party conduct himself or does some act which is being accepted by other party either by his conduct or course of his dealings or circumstances.

### 3. QUASI CONTRACTS

- ⦿ these contracts are based on the principle of justice and equity. in spite of not having contract between parties , the rights and obligations are created by operation of law rather than offer and acceptance.

## ON THE BASIS OF PERFORMANCE

1. EXECUTED CONTACT- ON THE COMPLETE DISCHARGE OF THE OBLIGATIONS BY THE PARTIES , THE CONTRACT IS SAID TO HAVE BEEN EXECUTED.
2. EXECUTORY CONTRACT- THE CONTRACT HAS NOT BEEN YET PERFORMED.

VALID CONTRACT- CONTRACT IS SAID TO BE VALID IF IT SATISFIES ALL CONDITIONS REQUIRED FOR ITS ENFORCEABILITY.

VOID CONTRACT- A CONTRACT WHICH CEASES TO BE ENFORCEABLE BY LAW BECOMES VOID

VOID AGREEMENT- AGREEMENT WHICH IS NOT ENFORCEABLE BY LAW IS VOID AGREEMENT. IN OTHER WORDS IF IT LACKS ANY ONE OF THE ESSENTIALS OF VALID CONTRACT IT IS CALLED VOID.

4. VOIDABLE CONTRACT- AN AGREEMENT WHICH IS ENFORCEABLE BY LAW AT THE OPTION OF ONE OR MORE PARTIES , BUT NOT AT THE OPTION OF OTHER OR OTHERS IS A VOIDABLE CONTRACT.
5. ILLEGAL CONTRACT- IF THE OBJECT IS ILLEGAL THE CONTRACT IS SAID TO BE ILLEGAL.
6. UNENFORCEABLE CONTRACT- IF DUE TO SOME TECHNICAL REASONS THE CONTRACT MAY NOT BE ALLOWED TO BE ENFORCED IN THE COURT.IT IS UNENFORCEABLE CONTRACT.

# Sale and Agreement to Sale

## Contract of Sale of Goods :

A Contract of Sale of Goods is a Contract whereby the Seller transfers or agrees to transfer , the property in goods to the buyer for a price.

- Such a contract of goods may be absolute or conditional. There may be contract of Sale between one part –owner and the other

## Sale of Goods (Defn)

- When under a contract of Sale the property in the goods is transferred from the Seller to the Buyer, the Contract is called as a Sale of Contract.



## Essentials of Valid Sale

1. There must be two parties for eg Buyer and the Seller . The Parties must be competent to Contract : (Sec 11 of the Contract Act).
2. There must be mutual consent
3. There must be a transfer of property ie transfer of general property in goods
4. The Buyer must pay or promise to pay a Price in money

# Conditions and Warranties

- What is a Condition ??
- A condition is a Stipulation essential to the main purpose of the Contract , breach of which gives rise to treat the Contract as repudiated or Broken

- Warranty is a Stipulation collateral to the main purpose of the Contract the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as broken or Repudiated.

# Condition and Warranty Difference

- Condition is an essential ingredient of the Contract

Warranty is a auxiliary or subsidiary or Collateral term of the Contract

## Contd

- Remedy :
- Breach of Condition gives right to repudiate or treat the Contract as broken and also to claim for the damages.
- Breach of Warranty gives the right to claim damages only. Buyer cannot reject And treat the contract as repudiated

- **Section 31. Duties of the seller and buyer** It shall be the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.
- The general rule enunciated in this section follows from the nature of the contract of sale, by which the property in the goods is transferred, or agreed to be transferred, from the seller to the buyer in return for the price.

There would be breach of the ‘duty to accept’ when the buyer unjustifiably rejects the goods. Taking of delivery of the goods is an important aspect of the ‘duty to accept’ and refusal to do so will constitute rejection of the goods and therefore , would amount to a non-acceptance of the goods. There is however a distinction between acceptance of goods and taking delivery of them. The buyer signifying his approval of the goods accepts them though he may not have taken delivery of the goods. It will be noticed that the Act does not expressly impose any duty to take delivery although it prescribes sanctions when there is delay in taking delivery.

# The Negotiable Instruments Act 1881



# Introduction

- The word negotiable means transferable from one person to another and the term instrument means any written document by which a right is created in favour of some person. Thus the negotiable instrument is a document by which the right vested in a person can be transferred to another person in accordance with the Negotiable Instruments Act 1881.

The term Negotiable Instrument has been defined as  
“Negotiable Instrument means a promissory note, bill  
of exchange, or cheque payable either to order or to  
the bearer”

# Promissory Note

## Promissory Note

Principal Amount U.S. \$3,000

Due 24 months from the date of this note

Monthly payments of blended principal and interest of \$132.86

FOR VALUE RECEIVED, the undersigned, John Smith (the "Borrower"), hereby acknowledges itself indebted to Jane Doe (the "Lender") and promises to pay to or to the order of the Lender at 3572 Comfort Lane, New York, New York, 12345, USA, or as otherwise directed in writing by the Lender, the principal sum of \$3,000 with interest thereon at the rate of 6% per annum, calculated semi annually, not in advance, both before and after demand, maturity, default and judgment until paid.

The principal sum and interest thereon shall be due and payable in 24 equal consecutive monthly payments of blended principal and interest in the amount of \$132.86 commencing the 1<sup>st</sup> day of the month following the date of this note and thereafter on the 1<sup>st</sup> day of each month through and including 24 months from the date of the first payment, with the balance of principal sum, if any, payable on the date of the final payment.

In the event of default in payment of any amount of principal or interest under this promissory note, the entire remaining principal sum and all interest accrued shall, at the option of the Lender, become immediately due and payable without notice or demand.

The Lender may assign all of its right, title, and interest in, to and under this promissory note. All payments required to be made hereunder shall be made by the Borrower without any right of set off or counterclaim.

DATED: \_\_\_\_\_

Borrower

Witness

\_\_\_\_\_

\_\_\_\_\_

# Egs of Promissory Note

## Promissory Note

Singapore, 31.01.2000

**Amount** US\$ 250,000

**On** 25 April 2000 **we promise to pay against this Promissory Note**

**the sum of** US Dollars Two hundred and fifty thousand

**to the order of** UK Export Company Ltd

**for value** Received

**Payable at:**

UK Export Banking Company plc  
Sterling Street  
London, UK

**For and on behalf of:**

Import Buyer Company  
Singapore



Managing Director

## Promissory Note

- A promissory note is an instrument in writing (not being a part of a bank note or a currency – note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money to, or to the order of a certain person or to the bearer of the instrument

- Examples :
- “ I promise to pay B or order Rs 500/-”
- “I promise to pay Rs 500 and all other sums which shall be due to him”
- “I promise to pay Rs 500 on D’s death , provided D leaves me enough to pay that sum”.
- “ I promise to pay Rs 500/- and to deliver to him my black horse on 1<sup>st</sup> January next”

## Essentials of Promissory Note

- **Writing** : A promissory note must be in writing. Writing includes print and typewriting
- **Promise to pay:**
- It must contain an Undertaking or promise to pay. Thus a mere acknowledgement of debt is not sufficient. Notice that the use of the word ‘promise’ is not essential to constitute an instrument as a promissory note . Promise should be to pay money only and that should be certain

## Essentials of Promissory Note (Cond)

- **Signed by the maker** :
- The promissory note must be signed by the maker otherwise it has no effect
  
- **Parties** :
- There are 2 parties involved ie maker and the payee



# Bill of Exchange

§ 1675 <sup>30</sup>/<sub>100</sub> Des Moines, Iowa, June 1, 1918

Ninety days after date Pay to  
the order of Iowa National Bank  
Sixteen hundred seventy five and <sup>30</sup>/<sub>100</sub> Dollars

Accepted and charge the same to account of  
U. L. Kelly } H. L. Jones.  
No. 31 Pittsburgh, Pa. }  
[drawee] [drawer or maker]

ACCEPTED  
AUG 21 1918  
A. W. NEASE

# Bill of Exchange

## Bill of Exchange

London, 31 January 2000

**Amount** US\$ 250,000

**At** 60 days after sight

**pay against this Sole Bill of Exchange**

**to the order of** Ourselves

**the sum of** US Dollars Two hundred and fifty thousand

**for value** Received

**To:**

Singapore Import Banking Company  
 Bank Street  
 Singapore

Drawn under UK Export Banking  
 Company Ltd, Documentary Credit  
 N° 12345, Dated 29 September 1999

**For and on behalf of:**

UK Export Company Ltd

*James Smith*

James Smith, Director

# Bill of Exchange


- A bill of exchange is defined as an instrument in writing containing an unconditional **order** signed by the maker, **directing a certain person** to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument

## Characteristic of Bills of Exchange

- It must be in writing
- It must contain an order to pay and a promise or request
- The order must be unconditional
- There must be 3 parties ie : drawer, drawee, and payee
- The parties must be certain
- It must be signed by the drawer
- Number, date and place are not essential

# Cheque

THIS CHEQUE PAPER CONTAINS A CHAIN WATERMARK AND GREEN BACKGROUND — DO NOT ACCEPT WITHOUT EITHER — HOLD TO LIGHT TO VERIFY WATERMARK

<p>GOOGLE INC.                  1600 AMPHITHEATRE PARKWAY                  MOUNTAIN VIEW, CA 94043</p>	<p>Cheque No: <span style="border: 1px solid black; display: inline-block; width: 50px; height: 15px;"></span>                  Client No: <span style="border: 1px solid black; display: inline-block; width: 50px; height: 15px;"></span>                  Date: JULY 25, 2008</p>
<p>Pay against this cheque  <b>To</b> MR JINNAT UL HASAN                  LEYTONSTONE</p>	<p><b>AMOUNT:</b> <span style="border: 2px solid red; padding: 2px;">GBP *****197.53</span></p>
<p>The Sum of ONE HUNDRED NINETY-SEVEN AND 53/100 STERLING POUND .....</p>	<p>Or Order</p>
<p>Payable at CITIBANK CRS ACCOUNT                  CANADA SQUARE, CANARY WHARF                  LONDON E14 5LB, SORT 08-60-71</p>	<p style="text-align: center;"> <span style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">ACCOUNT</span> <span style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">PAYEE</span> </p> <p style="text-align: right;">                 For: Citibank Europe plc                    AUTHORIZED SIGNATURE             </p>

⑈349423⑈ 08⑈607⑈ 03932875⑈

- A cheque is defined as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand
- Thus a cheque is a bill of exchange with 2 added features:
- It must be drawn on a specified banker &
- It is always payable on demand and not otherwise

# Crossed Cheque





## Crossing of the Cheque

- Crossing of a cheque is a unique feature associated with a cheque affecting to a certain extent the obligation of the paying Banker and also its negotiable Character.
- Crossing of a Cheque is a direction to a particular Banker by the Drawer that Payment should not be made across the Counter. The payment on the crossed Cheque can be collected only through a Banker.



# Distinction

## Cheque

- It must be drawn only on Banker
- The amount is always payable on demand
- The Cheque is not entitled to days of grace
- Cheque can be crossed

## Bill of exchange

- It can be drawn on any person including a Banker
- The amount may be payable on demand or after a specified time
- A usance ( time) bill is entitled to 3 days of grace.
- Crossing of Bill of Exchange is not possible

## Promissory Note

- There are 2 parties – Maker (Debtor) and the payee (Creditor)
- A note contains an unconditional promise by maker to pay the payee

## Bill of Exchange

- There are 3 parties – The Drawer, the drawee, and the payee
- It contains an unconditional order to the drawee to pay according to the drawer's directors

# Goods and services taxes

- ◎ GST is also known as goods and services taxes which is implemented on the supply and selling of the products at the national level. GST came into effect from 1<sup>st</sup> july 2017 implemented by the government of India.

# Launch Of GST

- ◎ The GST was launched on 1<sup>st</sup> july,2017 by the president of India and by the government of India .
- ◎ The launch was marked by the historic midnight session which was attended by the celebrities from business class and entertainment industry.

- ◎ The reform of India's tax regime was started in 1986 by Vishwanath Pratap Singh, Finance minister in Rajiv's Gandhi government, with the introduction of the Modified Value Added Tax (MODVAT).
- ◎ GST was proposed and given go – ahead in 1999 during a meeting between the prime minister Atal Bihari Vajpayee and his economic advisory panel.

- ◎ GST council is the governing body of GST having 33 member committee . It is chaired by the finance minister of India .

It is apex member committee which modifies, reconcile or procure any law or act of regulation on the context of goods and services tax.

# GOODS AND SERVICES TAX NETWORK

- ⦿ This network is introduced by Infosys Technologies and information network to provide resources maintained by NIC.
- ⦿ GSTN is a non profit organization formed for creating a sophisticated network accessible to stakeholders, government and taxpayers from a single source.

# GOODS AND SERVICES TAX

## IMPACT OF GST

### PRE-GST INDIRECT TAX STRUCTURE IN INDIA



### GST STRUCTURE IN INDIA



## GST

replacing taxes at the State and Centre

### Centre Taxes





# Ethics and Values

- ⦿ Ethics is the discipline dealing with what is good and bad, or right and wrong, or moral duty and obligation.
- ⦿ Ethics refers to the code of conduct that guides an individual in dealing with a Situation.
- ⦿ Values are general belief concerning what is good or bad and desirable or not desirable which are shared by individual and organization in societies

## Relevance of Ethics in Business

- ⦿ The need for business ethics spring from the philosophy that since business operate and exists within the society and is a part of the subsystem of society its functioning must contribute to the welfare of the society
- ⦿ However, oft en profits and social responsibilities are at cross-purposes. Organisational growth can be hastened by unethical practices, but it reduces the long-term frame of work to short-term. Subsequently, the organisation may lose its face in society and its existence may be questioned by the actions it upholds

# BENEFITS OF ETHICAL BUSINESS

1. Maintains a moral cause in turbulent times.
2. Cultivates strong teamwork and productivity .
3. Supports employee growth and meaning.
4. Helps to ensure that policies are legal.
5. Helps to avoid criminal acts of “omission” and can lower fines.
6. Helps to manage values associated with quality management and strategic planning.
7. Promotes a strong public image.
8. Improves trust in relationships.
9. Legitimizes managerial actions.
10. Strengthens the coherence and balance of the organisation’s culture.

# IMPORTANCE OF BUSINESS ETHICS

- ⦿ The power and influence of business in society is greater than ever before
- ⦿ Business has the potential to provide a major contribution to our society, in terms of producing the products and services that we want, providing employment, paying taxes, and acting as an engine for the economic development, which are just a few examples. How, or indeed whether, this contribution is made raises significant ethical issues that go to the heart of the social role in business in the contemporary society
- ⦿ The demands being placed on business that it should be ethical, by its various stakeholders are constantly becoming more and more complex and challenging

## VALUES IN BUSINESS

Values are the best means in routine life for purification of the mind and heart. Today's business requires value-driven management combined with the requisite skills.

They reduce conflicts and disputes at workplace. The following are

some organizational or business values for a group of service executives:

1. Contribute to society and humanity.
2. Be fair; do not discriminate on the basis of race, sex, religion, and other parameters.
3. Do not suppress the voice of conscience even if it means sacrificing achievements.

# INCULCATING VALUES IN MANAGEMENT

- ⦿ Values should be an integral part of corporate mission and objectives. Else, there should be a separate statement for values. They should be expressively mentioned in the strategic intent”.
- ⦿ The members of the management team and the union leaders must be regularly exposed to spiritualization seminars and workshops, meditations, introspections, common prayers, and so on. The organization should inculcate the spirit of giving rather than taking

# CATEGORIES OF BUSINESS VALUES

- ⦿ Managerial Values
- ⦿ Leadership Values
- ⦿ Organizational Values

# NEED FOR ETHICS IN GLOBAL CHANGE

- ⦿ Even more pertinent with the advancement in science and technology, and the industries have benefitted from such development, like that of in the cosmetic industries, soft-drink companies, and medicine companies, as a lot of these products can be harmful to the body on the whole.
- ⦿ Businesses today exist only to maximize their profits. These profits can be earned in numerous ways, even through black marketing, hoardings, and adulteration. But no business can exist without the acceptance and the sanction of the society in which it carries out its activities



# MANAGING ETHICS

- ◎ Organizations can manage ethics in their workplaces by establishing an ethics management programme
- ◎ Benefits of Managing Ethics as a Programme
  1. Establish organizational roles to manage ethics.
  2. Schedule the ongoing assessment of ethics requirements.
  3. Establish the required operating values and behaviours.
  4. Align the organisational behaviours with operating values.
  5. Develop an awareness and sensitivity to ethical issues.
  6. Integrate ethical guidelines and decision making.
  7. Structure mechanisms to resolving ethical dilemmas.
  8. Facilitate the ongoing evaluation and updates to the programme.

Heads	Ethical Impacts of Globalisation
Shareholders	Globalisation provides potential not only for greater profitability, but also for greater risks. Lack of regulation of global capital markets leading to additional financial risks and instability.
Employees	Corporations outsource production to the developing countries in order to reduce costs in the global marketplace—this not only provides jobs but also raises the potential for exploitation of employees through poor working conditions.
Consumers	Global products not only provide social benefits to consumers across the globe but may also meet protests against cultural imperialism and Westernisation. Globalisation can bring cheaper prices to customers, but vulnerable consumers in the developing countries may also face the possibility of exploitation by MNCs.
Suppliers and competitors	Suppliers in the developing countries face regulations from MNCs through supply-chain management. Small-scale indigenous competitors are exposed to powerful global players.
Civil society (pressure groups, NGOs, local communities)	Global business activities bring the company in direct interaction with local communities, with a possibility for erosion of traditional community life; globally active pressure groups emerge with an aim to “police” the corporation in countries where governments are weak and tolerant.
Government and regulation	Globalisation weakens the governments and increases the corporate responsibility for jobs, welfare, maintenance of ethical standards, etc. Globalisation also confronts governments with corporations having different cultural expectation about issues such as bribery, corruption, taxation, and philanthropy.

# BUSINESS ETHICS IN INDIA

- ⦿ Business in the Indian context has changed drastically in the 1990s when globalization and FDI inflows have created immense prosperity in some segments.
- ⦿ Many areas are underdeveloped with hunger, starvation, and marginalization of the most vulnerable segments of our society
- ⦿ In India, CR is not merely a function of wealth or size of a company
- ⦿ The corporates are created by the society and, therefore, must have a vision beyond profits.
- ⦿ More companies need to take a stand on issues such as communal violence, female feticide, misuse of technology, human rights, and so on

# HOW TO IMPLEMENT BUSINESS ETHICS

1. Trade associations can be formed by the business users which should bolster the efforts of running any business with ethics

Trade association can promote business ethics in business user by

- Educating the members of the association and by consistent persuasion.
- Formulation a code of conduct for their members which should contain code of ethics.
- Praising and rewarding those firms and business users who keep up the ethics in business & by publishing.

1. Principle of sacredness of ends and means
2. Principle of not to do evil
3. Principle of proportional judgment
4. Attention to best alternative
5. Principle of non-cooperation in evil
6. Principle of cooperation with others
7. Principle of publicity
8. Principle of equivalent price
9. Principle of consciousness on business

# IMPORTANCE OF ETHICS IN BUSINESS



1. Ethics corresponds to basic human needs
2. Values create credibility with the public
3. Value give management credibility with employees
4. Value help better decision making
5. ethics and profit ethics and profit go together
6. Law cannot protect society, ethics can

# CYBER LAWS IN INDIA

- ITACT PASSED IN 2000
- IMPLEMENTATION OF CYBER LAW
- REASONS FOR DELAY IN IMPLEMENTATION OF CYBER LAWS IN INDIA



# NEED FOR CYBER LAWS

- TACKLING CYBER CRIMES
- INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHTS PROTECTION ACT





# Types of Cyber crimes

- Credit card frauds
- Cyber pornography
- Sale of illegal articles-narcotics, weapons, wildlife
- Online gambling
- Intellectual Property crimes- software piracy, copyright infringement, trademarks violations, theft of computer source code
- Email spoofing
- Forgery
- Defamation
- Cyber stalking (section 509 IPC)
- Phishing
- Cyber terrorism



# TACKLING CYBER CRIME

- Observing human behavior
- Technological improvement
- Strong legal framework



# OFFENCES AND LAWS IN CYBER SPACE

- TAMPERING WITH COMPUTER DOCUMENTS
- HACKING WITH COMPUTER SYSTEM
- PUBLISHING OBSCENE MATERIAL ON INTERNET
- BREACHING OF CONFIDENTIALITY AND PRIVACY



# CYBER LAWS AMENDMENTS

- INDIAN PENAL CODE,1860
- INDIAN EVIDENCE ACT,1872
- BANKER'S BOOK EVIDENCE ACT,1891
- GENERAL CLAUSES ACT,1897

- Avoid getting conned in cyberspace
- How to maintain your privacy online
- Virus prevention
- Internet Security



# Computer security

- Viruses: programming code disguised
- Worms: propagate w/o human intervention
- Trojan horses: gets secretly installed.
- Logic bombs: execute conditionally.
- Bacteria or rabbits: multiply rapidly.
- Computer crimes: embezzlement.
- Hackers: vandalism or exploration.
- Denial of service attack: flood a target site.

