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SUBJECT: LAW OF CONTRACT PART 1

TOPIC OF ASSIGNMENT: AN AGREEMENT ENFORCEABLE BY LAW IS A CONTRACT. DISCUSS?(Q.3)

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AN AGREEMENT ENFORCEABLE BY LAW IS A CONTRACT

All agreements enforceable by law is a contract. In other words, only those agreements become contract which is enforceable by law or which arises a legal obligation. Thus, there are two essentials of Contract: I) Agreement II) enforceability by law.

Some agreements may be enforceable by law while others may not.

According to Section 2, “an agreement enforceable by law is a contract”. In other words, a contract is a legally enforceable agreement or legally binding promises between two or more parties to do or not to do something.

According to Section 2, “every promise and every set of promises, forming the consideration for each other, is an agreement”. Thus, an agreement means that every promise that contains consideration from two or more parties which may not enforceable by the law.

According to Section 10(1), “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.”

It is clear that if an agreement is not capable of creating an obligation enforceable by law it is not a contract. Therefore, an agreement has a broader term than a contract and for a contract to form there must be an agreement.

For an agreement to be able to enforce by law, the agreement must consist of legal and valid elements of contract. It must have offer and acceptance from parties who have the capacity to form a contract and the acceptance must be supported by consideration. The parties of the contract or agreement must have the intention to create legal relations with each other and the act must have certainty.

Example:

i) An agreement to sell the cotton seeds is a valid contract.

ii) but, an agreement to meet someone is not a contract as it doesn't arise any legal obligation on either of the parties.

Thus, from the above examples, it is clear that all agreements are not contract. Only those agreements are contracts that satisfies the conditions in Section 10 of the Indian Contract Act.

What is an Agreement?

Every promise and every set of promises, forming the consideration for each other is an agreement. Promise is nothing but an offer or proposal from one of the parties and the acceptance of the same from the other party. Thus, in other words, to form an agreement there should be I) Offer II) Acceptance and III) Consideration.

In an agreement, promises are from both the sides i.e. from the offeror and offeree. For example, A promises to deliver certain goods to B on a certain date and B promises to pay from the same. All Contracts are Agreements, but all Agreements are not Contracts. As stated earlier only those agreements become contracts that satisfies the condition mentioned in Section 10 of the Indian Contract Act.

According to Section 10, 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 declared to be void.

The essentials of a valid contract are discussed below:

1. **Agreement between the parties**:

To form a valid contract there should be an agreement between the parties. Thus, there should be an offer from one side and the acceptance from the other side. An offer is made to obtain the assent of the other party, thus, if a statement is made to obtain the assent of the other party then it would not be an offer. An offer should be made with an intention to create a legal creation, thus, a promise by the husband to pay for the maintenance of his wife for the time she had to live apart was not held to be a contract. However, if there is a general offer and the party acts per the terms of the offer then it would form the valid contract, given that the person acting in accordance of the offer had knew about such offer.

The proposal to whom the offer is made signifies his assent thereto, it is called acceptance. Acceptance may be express or implied. A valid contract is created only when the offer is accepted, the offeree has the right either to accept the offer or reject it, as he likes. Acceptance should be communicated to the offeror if a person thinks of accepting the offer and he fails to communicate his acceptance to the offeror then it will not be a contract.

2. **Parties should be competent to contract**:

According to Section 11 “Every person is competent to contract who is of the age of the majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.” In other words, a person should not be minor, should not be of unsound mind and should not be disqualified from the contract. An agreement with the minor is void. However, in a case before the Lahore High Court, where a minor obtained benefit by way of fraud was held liable to refund the same to the plaintiffs. The reason for the same was that one of the parties i.e. minor was unjustly benefited at the cost of the other party i.e. the plaintiff.

Similarly, a person who is of unsound mind i.e. who is unable to form a rational judgement at the time of agreeing, such an agreement with a person of unsound mind would be void. Thus, an agreement with a person who is usually of sound mind but occasionally of unsound mind will give rise to a valid contract if a person was of sound time at the time of entering into the contract. The burden of proof that the person was of unsound mind at the time of entering into the contract lies on the plaintiff.

It must be noted that a person who is incompetent to contract is supplied with the necessaries suited to the life, then the person who supplies the necessities is entitled to recover from the property of such incapable person.

3. **Lawful Consideration and Object**:

The consideration or object of an agreement should be lawful. It should not be forbidden by law; should not be of such a nature that if permitted, it would defeat the provisions of law; should be fraudulent; should not involve or imply injury to the person or property of another, should not be one which is regarded as immoral by the court or opposed to public policy. If the consideration or object of an agreement is unlawful then the agreement would be void.

Thus, an agreement to do an illegal act is void and can not be enforced in the court of law. It should also be noted that there is a distinction between void and illegal agreements. Every illegal agreement is void but all void agreements need not necessarily be illegal.

If a person does any act by circumventing the law which would result in defeating the provisions of any law, then such acts would be considered unlawful. Thus, a thing which can not be done directly, cannot be done indirectly.

Similarly, the agreement of which the consideration or object is fraud is unlawful.

If an agreement is to cause injury to the person to the property, then such an agreement would be unlawful. It is worthy to note that such an injury should be unlawful. If the real object of the agreement between the parties is to promote their interest rather than to harm the other party, then such an agreement is

valid. Therefore, if two parties submitting the tender enters into the contract to not to compete, such an agreement is a valid contract. Similarly, if the consideration or object of the agreement is regarded as immoral or opposed to public policy by the court, such an agreement is void. For example, a person agrees to sell his daughter to someone, such an agreement is void as it is regarded as immoral by the law.

However, if the part of the consideration or object of an agreement is legal and both are separable from each other then such part of an agreement will be valid.

4. **Free Consent of the Parties**:

Parties should enter into the contract with their free consent. According to section 14, consent should not be influenced by Coercion, undue influence, fraud, misrepresentation or mistake.

(i) Coercion: If the consent of the party is obtained by

Committing or threating to commit any act which is forbidden by the Indian penal Code. Unlawful detaining or threatening to detain any property to cause any person to agree. Such consent is said to be induced by Coercion. A threat to commit suicide is also coercion.

(ii) Undue Influence: A consent is said to be obtained by undue influence when:

The relation between the parties is such that one of the parties is in the position to dominate the will of the other. This happens when either the parties have a fiduciary relationship with each other i.e. relationship based upon trusts or a party has real or apparent authority over the other, an example of such a relationship is one of the employers and the employee.

Such a person should use his dominant position to obtain an unfair advantage.

(iii) Fraud: A consent is said to be induced by fraud when –

A person makes a statement which is not true, and he knows that statement so made by him is not true

The statement should be made to deceive the other party and thus inducing him to enter into the contract.

(iv) Misrepresentation: When a person makes the false statement, but he believes it to be true then such consent is said to be obtained by misrepresentation.

(v) Mistake: Consent to the contract is caused by mistake when

There is no consensus ad idem among the parties

There is a mistake as to a matter of fact relating to the agreement

It should be noted that the agreement caused by mistake is void, whereas, the agreement entered because of coercion, undue influence, fraud and misrepresentation is voidable at the option of the party who was induced to enter into the contract.

5. **The Agreement should not be expressly declared to be void**:

There are certain agreements which are expressly declared void. Even if such agreements fulfill all the conditions of a valid contract the agreement is not enforceable. The agreement which is expressly declared void is as follows:

Agreement of which the consideration or the object is not lawful.

Agreement without consideration

Agreement in restraint of marriage

Agreement in restraint of trade

Agreement in restraint of legal proceedings

An Agreement which is ambiguous and uncertain

Agreement by way of wager

Agreement to do an impossible act

[1] Section 2(h) of The Indian Contract Act, 1872

[2] Section 2(e) of The Indian Contracts Act, 1872

The agreement must give rise to legal obligation, i.e., it should be enforceable by law:

An agreement to become a contract must be coupled with obligation. An obligation is the legal duty to do or abstain from doing something. Here a distinction needs to be made between legal and social obligations. Agreements creating social or moral obligations do not make a contract. Thus an agreement to have lunch together or to go to a movie is not legally binding.

In such agreements no legal duty is imposed on any party. Such agreements are social agreements which do not give rise to legal consequences. To make a contract, an agreement must be enforceable by law. This means that the agreement must give rise to legal obligation.

Lawful consideration:

The agreement must be supported by a lawful consideration on both sides. Consideration means something in return. Section 25 provides that an agreement without consideration is not enforceable barring certain exceptions. Each party to an agreement must give and receive something in return.

This something in return for the promise is the consideration for the promise. Consideration May consist of some act or abstinence or a promise to do or abstain from doing something. It need not be adequate but must have some value in the eyes of law. Not only this it should be lawful also, i.e., it should not be forbidden by law, should not be fraudulent, or immoral or opposed to any public policy. It may be past, present or future.

CONCLUSION:

A contract is an agreement, enforceable by law where every promise and every set of promises, forming the consideration for each other, is an agreement. The law of contract is most important part of commercial law because every commercial transaction starts from an agreement between two or more persons.