

# Chp 8 Commercial contract Management

classmate

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## \* Introduction →

↓  
contracts are key part of everyday life, from buying groceries to making business deals.

↓  
ICA, 1872 sets the rules for contracts and how they can be enforced.

↓  
not every agreement is a contract, only those that meet the criteria are enforceable.

- "until the contract is signed, nothing is real."

## \* Nature of contract law →

"law of contract is that Branch of law that determines the circumstances in which a promise shall be legally binding on persons making it."

## \* Meaning & Definition of contract →

- ↳ simplest definition - "promise enforceable by law."
- ↳ promise can be
  - to do something
  - refrain from doing something.
- ↳ contract = binding agreement b/w 2 or more parties.
- ↳ Sec 2(h) of ICA, 1872 = contract is an agreement enforceable by law.
- ↳ Sec 2(e) of ICA, 1872 = agreement is "every promise or set of promises forming consideration for each other."

## \* CONTRACT \*

Accepted proposal  
(agreement)

Enforceable by law.

### \* purpose of contract →

① Avoids misunderstanding & legal disputes →

- Both parties are aware & have consented to the rules & obligations.
- Avoid misunderstanding & conflicts.

② Acts as a Record →

- written contract = record for future reference
- Reminds of tenure, scope & time for performance.

③ Evidence in court of law →

- can be used in case of breach of contract.

④ Increases operational efficiency →

- contracts outline each parties' obligations
- contracts also includes delivery time, payment terms, quality standards etc.
- issues in contract can disrupt revenue, so clear contracts prevent problems.
- well drafted contracts facilitate smooth operations, helping generate more revenue.
- Allows business → save money.  
↳ focus on growth.

### ⑤ Proof of details →

- prime purpose of contract = recording the details to which both parties have consented to.
- clarity on services to be provided by one.
- consideration is clear too.

### ⑥ provides security →

- gives clarity on tenure, responsibilities & breach.

### ⑦ provides confidentiality →

- non-disclosure clauses secure info. of data, scope of work & payment details.
- EE sign NDA that secures ER'S business matters that are confidential.

### ⑧ prevents conflicts & minimizes the RISK →

- Better clarity & understanding regarding the deal.

### ⑨ Record of commitment →

- contracts defines 

}	rights	of each party.
	responsibilities	

- contracts help to reduce risks by outlining liabilities, such as ~~prop~~ protecting personal property in case of dissolution.

## \* Business / commercial contracts →

commercial contracts are essential for defining rights, obligations, terms b/w parties inclu. Dispute Resolution mechanism.

Governed by ICA, 1872, these contracts outline the principles for claiming damages & enforcing obligations, while specific Relief Act, 1963 offers remedies for violation.

They detail each party's responsibilities & consequence of non-compliance.

## \* Negotiation of best commercial & operational terms with vendors →

- Negotiation is a crucial skill for entrepreneurs, helping them improve vendor contracts and build beneficial rls. Here are key steps for effective negotiation with vendors →

① prepare a plan → Outline what you need, including services, payment terms, cancellation clauses, penalties etc.

② finalise the communication system → maintain an open communication to build trust, respond promptly & designate a single point of contact for clarity.

③ offer competitive prices → Research similar products/services to ensure that your pricing is → attractive  
→ competitive.

- ④ Respect the expertise the other party has → Treat the vendor as an expert & express interests in long-term partnerships & show them how you can help their business grow.
- ⑤ Be open for competition → Obtain quotes from multiple vendors to keep prices in check & evaluate different quantities for best deals.
- ⑥ Negotiate other terms → If prices are not flexible, discuss payment terms (a) discounts etc.
- ⑦ Deposits → offering deposits can reassure vendors of your commitment & build trust.
- ⑧ Win-win solution → Propose options that benefit both the parties & enable a positive & long lasting rel.

### \* Good contract : Analysis →

↳ Contracts are imp. because they legally bind the parties & allow for resolving issues if someone breaks their commitment. Here are main points :

Clarity	Collaboration	Key components	Legal basics
Good contracts are clear & easy to understand, reducing confusion.	They promote teamwork & transparency, helping to prevent problems.	Imp. parts of contract : - Goal of parties - scope of work - payment terms - liability limits - conditions for ending contract.	They should also include jurisdiction & arbitration clauses for enforceability.

## \* General &amp; special conditions of a

contract →

- ↳ General terms in a contract cover the basic rules like duration, indemnity & penalties.
- ↳ Special terms are tailored to specific needs of parties involved, such as individual responsibilities.

## \* General conditions:

- |                                    |                       |
|------------------------------------|-----------------------|
| ① Name & particulars of parties    | ⑪ Termination         |
| ② Definitions                      | ⑫ Disclaimer          |
| ③ Interpretation clause            | ⑬ Indemnity           |
| ④ scope of work                    | ⑭ Liability           |
| ⑤ warranties                       | ⑮ confidentiality     |
| ⑥ contractual period               | ⑯ Force majeure       |
| ⑦ cost                             | ⑰ Jurisdiction        |
| ⑧ mode of payment                  | ⑱ Dispute             |
| ⑨ Effective date                   | ⑲ Default.            |
| ⑩ Rights & obligations.            | ⑳ Precedence, if any. |
| ⑪ withdrawal (same as termination) |                       |

## \* Special conditions →

- sub-contracting
- Assignment
- Add<sup>n</sup> scope of work
- Alternative Dispute Resolution
- Data deletion / Data purging → permanently deleting of data.
- Privilege & immunities
- Tax Exemption
- choice of law.

## \* Execution of contracts →

Contract execution involves both parties signing the contract, which makes it legally binding.

Unfinalized contracts are ineffective & cannot be enforced in court, potentially leading to costly litigations etc.

once a contract is executed, no changes can be made to its terms.

## \* Contract Related Docs and correspondence →

↳ contracts typically include a clause stating that all documentation & correspondence must be in English.

↳ This clause highlights that all documents  
correspondence } are essential to a contract.

↳ "contract documents": all docs that makeup the entire agreement, incl. agreed terms, conditions, rights & duties of parties involved.

↳ Types of contract docs:

Addendum

↓  
add<sup>n</sup> to main contract.

scope of work

Technical specifications

↓  
Schedules

T&C

↓  
Insurance

maps & drawings

## \* maintainence of contract documents →

- Document management is imp. as contracts serve as evidence of rights & obligations.
- Effective contract mgt involves organizing & tracking all related docs & communications.
- Doc mgt = organizing & storing docs for easy access with minimal effort.
- 2 main types of document mgt system:

manual doc mgt system  
(MDMS)

↓  
controlled by people, using physical files @ online data entry.

Electronic doc mgt system  
(EDMS)

↓  
controlled by computers, allowing remote access @ offline file storage.

## \* Compliance with laws →

- ↳ contracts must always comply with applicable laws, and parties are bound to follow these laws. Most contracts include a clause confirming this compliance. Key laws include:

ICA, 1872

Indian Stamp Act,  
1899

Regn Act, 1908

- ↳ in specific cases, addn laws may also apply, like:

POA Act,  
1882

SOGA,  
1930

TOPA,  
1882

A&C  
Act,  
1996

specific  
Relief Act,  
1973

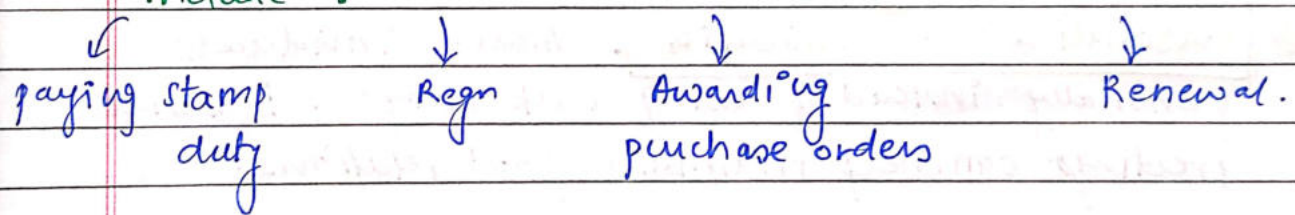
and others

\* Tracking of contracts for   
 Renewal  
 Closure  
 Extension

- contract tracking is the process that allow stakeholders to easily monitor the status of contract without needing to search through multiple systems. Steps:

- ① preparation of draft
- ② Negotiating & finalizing TFC of contract
- ③ signing of contract
- ④ Storage of contract
- ⑤ performance as agreed in the contract
- ⑥ making payments.
- ⑦ Renewal / closure of the contract.

- Each stage of contract requires specific actions, making it essential to track contract documents. Key actions include:



- Tracking can be done   
 manually  
 through software.

\* Rules for Tracking contracts for   
 Renewal  
 closure  
 extn

- ① Store contracts securely → Keep contracts safe and easily accessible. Use online systems if you have many contracts.
- ② Setup Reminders → Use reminders to notify users well in advance about <sup>up</sup> coming actions needed.

③ Classify imp. contracts → organize contracts by importance to ensure timely action on critical contracts.

④ Notify stakeholders early → Give stakeholders enough time to get necessary approvals before deadlines.

\* Build & maintain MS with vendors & clients →

① Maintain proper communication: keep vendors / clients informed about necessary actions but respect your personal time & productivity.

② Effective communication: communicate clearly & regularly to enhance trust & strengthen MS.

③ personalized communication: Address individuals personally instead of using bulk msgs. Personal greetings can help maintain good relations.

④ Share opinions: offer suggestions, but don't expect them to agree always.

⑤ Do more than expected: Delivering more than what clients / vendors expect can build trust & expectation.

⑥ Be Adaptability / ready for change: Be open to changes from imp. clients / vendors, but assess the costs to ensure they are reasonable for your business.

⑦ Seek feedback → Requesting feedback can build trust and provide valuable insights for professional growth.

\* Control over any changes for services out of scope of the contract →

in a contract, goods/ services should be provided as agreed. Sometimes, things outside the agreement may be provided/ offered. If this happens, both parties should discuss & evaluate the changes and their costs.

If they agree, there are no further issues. If they disagree, the person at fault could be held responsible.

For unexpected situations that arise after the contract is signed, parties should try to agree on how to handle them. If they can't, the matter can be resolved by paying for work done. Quantum Merit

\* Quantum Merit →

↳ "Quantum Merit" means "as much as one deserves" and allows someone to be paid for work done when there's no contract (or) when the contract doesn't cover specific tasks.

↳ under Sec 70 of ICA, 1872, a person can claim payment if:

work is done legally

work isn't done for free.

The other party benefits from work.

↳ The principle is about fairness and making sure people are compensated for their efforts.

↳ Matheson v. Smiley → surgeon who tried to save a suicidal person was entitled to payment for his services, even though he couldn't save the person.

↳ Alopi Pawhad and Sons Ltd vs. Union of India → Quantum meruit applies where there is no set price in a contract. If the contract states a price, you cannot claim extra payment.

↳ Mulamchand vs. State of MP. → Court decided that claims up to cannot be based on current contracts. They need to come from different responsibilities.

\* Actions in case of breach of contract →

- A Breach of contract happens when one party refuses to fulfill their obligations under the contract without any reason.

\* Section 73 : Deals with compensation for loss/damage caused by breach of contract →

- When a contract is broken, the affected party can claim compensation for losses caused by the breach.

- Damages are money paid for harm caused by someone else's actions, but they must be direct losses, not indirect ones.

- If someone doesn't fulfill a similar obligation to a contract, the injured party can seek compensation just as if a normal contract existed.

- Sec 73 of ICA, 1872 is based on case of Hadley vs. Baxendale — In this case, a mill stopped working because a crankshaft wasn't returned on time. The court decided that the defendant wasn't responsible for losses because the special situation of mill wasn't communicated to them.

- Overall, damages should cover losses that are either expected from breach (or) were known to both parties when the contract was made.

\* Section 74: Compensation for breach of contract where penalty is stipulated for →

- When a contract is broken and states a specific amount to be paid (or) includes a penalty, the affected party can claim the amt. as compensation, even if they can't prove actual damages. This compensation can't exceed what's specified in the contract.

- Key points :

Higher interest for late payment can count as penalty.

If someone signs a bond for public duties, they must pay full amt. if they breach it.

[Just signing a contract with govt. doesn't mean you automatically have a public duty.]

## \* Section 75: Party rightfully rescinding contract, entitled to compensation →

- if someone cancels a contract correctly, they can get paid for any damages caused by the other party not keeping the promise.
- eg: "A" agrees to perform twice a week at theatre for 2 months, earning ₹ 100 per night. If "A" skips a performance, the theatre manager can cancel the contract and ask for compensation for losses from "A".

## \* A decree for specific performance →

- U/s 10 of Specific Relief Act, 1973, courts can enforce contracts, but there are certain rules:

  1. If one party cannot complete the entire contract & the part which is left unperformed is a small part and can be compensated in money, court can order them to fulfill that part & pay for what's left.
  2. If the unperformed part is large (or) cannot be compensated with money, party in default can't demand specific performance. However, if the other party pays for the part that can be done & gives up any claims for the rest, court may still order them to perform what they can.
  3. If part of the contract can be performed separately from part that cannot, the court can enforce the part that can be fulfilled.

[A party is seen as unable to perform if something they were supposed to deliver no longer exists when its time to fulfill the contract.]

## \* Injunction →

↳ An injunction (or "stay order") is a court order telling someone to do (or) not to do something. It is covered by Specific Relief Act, 1963.

↳ Types of injunction :

① Temporary injunction -

- lasts for certain time / until the court says
- can be given at any point in a lawsuit.

② perpetual injunction -

- given after complete court hearing.
- permanently stops defendant from doing something harmful.

③ Mandatory injunction -

- forces someone to perform specific actions.

↳ An injunction is defined as an order of competent court, which :

forbids commn of threatened wrong.

forbids continuation of wrong already ~~but~~ begun

commands restora-tion of status quo (former course of things)