

Contract Law

The law is governed by the Indian Contract Act, 1872.

The act is divisible in two parts. The first part (section 1-75) deals with the general principles of law of contract and second part (section 124-238) deals with certain special kinds of contracts such as contract of indemnity and Guarantee, Bailment, Pledge and Agency.

Agreement

As per Section 2(e) of Indian Contract Act, every promise and every set of promise forming the consideration for each other is an agreement.

According to Section-2(b) of Indian Contract Act, "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."

An agreement is the sum total of offer and acceptance.

Obligations

A contract is an exchange of promises by two or more persons, resulting in an obligation to do or abstain from doing a particular act and such obligation is recognized and enforced.

by law.

Agreements which are not contract -

- (a) Agreements ~~on~~ relating to social matters
- (b) domestic arrangements between husband and wife.

Points related to contract -

- i To constitute a contract, the parties must intend to create legal relationship.
- ii The law deals with those agreements which create obligations and these obligations have source in agreement.
- iii All contracts are agreements but all agreements are not contract.

Other types of contracts

Contingent Contract (section-31)

Contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen.

Contract contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened.

If event becomes impossible, the contract becomes void.

There are some special type of contracts.

They are-

1. Indemnity
2. Guarantee
3. Bailment
4. Pledge
5. Joint ventures, collaborations and multinational agreements.

Essential Elements of a valid contract ~

As per 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.

* The essential elements of a valid contract are -

- I An offer or proposal by one party and acceptance by another party.
- II An intention to create a legal relation.
- III Agreement is supported by lawful consideration.
- IV Parties are legally capable of contracting.
- V Genuine consent between the parties.

What is an offer or a Proposal ~

A proposal is termed as an offer. An offer is a proposal by one person who expresses his willingness to enter into a contractual obligation in return for a promise or act.

Person making the offer is called as offeror and person to whom proposal is made is called the offeree.

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.
(Section - 2(a))

Kinds of offers ~

1. Particular / Specific offer - when offer is made and addressed to a certain person only & it can only be accepted by person to whom it is made.
2. General offer - when the offer is made to public at large and may be accepted by any one is a general offer.
3. Cross offer - when two parties gives offer to each other.
4. Open / continuing / standing offer - where a person offers to another to supply specific goods, upto a stated quantity, at a certain rate, during a fixed period he makes a standing order.
5. Counter offer - An offer made against an offer already made. In these, the

contract can be made only after acceptance of counter offer.

6. Contract by post
7. Contract over telephone.

A valid offer must comply with following rules -

1. Offer must be clear, definite, complete and final, it must not be vague.
2. Offer must be communicated to the offeree.
3. Communication of offer may be made by express words - oral or written, or it may be implied by conduct.

Lapse of offer -

An offer lapses if -

- (a) it is not accepted within the specified time
- (b) it is not accepted in the mode prescribed
- (c) offeree rejects the offer
- (d) either offeror or offeree dies before acceptance.
- (e) acceptor fails to fulfill a condition prescribed
- (f) offeree makes a counter offer.

Revocation of an offer -

A proposal may be revoked in different ways. It may be made either by act or by omission. Modes of revocation are -

- (1) by the communication of notice of revocation
- (2) by proposer or other party.
- (3) by the lapse of the time prescribed in such proposal for its acceptance.
- (4) by failure of acceptor to fulfill a condition prescribed.
- (5) by death or insanity of the proposer.

Acceptance

Acceptance is the act of assenting by the offeree to an offer.

Section-2(b) when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted, proposal when accepted becomes a promise.

Rules of acceptance

- (1) Acceptance may be expressed by words spoken or written.
- (2) If particular manner is prescribed then offer must be accepted in prescribed manner.
- (3) It must be unqualified and absolute.
- (4) It must be communicated to the offeror.
- (5) Mere silence does not amount to acceptance. It must be given within a reasonable time or before the lapse of offer.

In Lalman Shukla v. Gauri Dutt it was held that performance of conditions of an offer

without the knowledge of the specific offer is no acceptance.

Here, a servant brought a boy without knowing the reward, so he was not entitled to reward as he didn't know about the offer.

Consideration

Section (2)(d) 'when at the desire of the promisor, the promisee or any other person has done or abstained from doing something, such act or abstinence or promise is called a consideration for that promise.'

Extent of consideration & parties to it

- (a) Consideration at the desire of the promisor
- (b) consideration may move from the promisee or any other person.

In Chinnaya v. Ramaya, a lady by a deed of gift made over a property to her daughter directing her to pay an annuity to the donor's brother. On the same day, her daughter executed in writing in favour of donor's brother agreeing to pay the annuity. Afterwards the daughter declined to pay her uncle, saying that no consideration had moved from him.

The court held that the uncle could sue even though no consideration received by his niece was moved from him.

The consideration from her mother was sufficient consideration.

Privity of Contract -

A stranger to a contract cannot sue, both under the English and Indian law for want of privity of contract.

e.g D supplied tyres to a wholesaler X, on condition that any retailer to whom X re-supplied the tyres should promise X not to sell them to the public below the list price. X supplied tyres to S upon condition but S sold the tyres below the list price, here D could not obtain damages from S.

Exception to the doctrine of privity of contract -

- ① A beneficiary under an agreement to create a trust can sue upon the agreement, though not a party to it.
- ② An assignee under an assignment made by the parties or by the operation of law.
- ③ In cases of family arrangements or settlements between male members of family.
- ④ In case of acknowledgement of liability.

Privity of Consideration -

In India it is not strictly applicable.

It means that consideration may be paid by parties or any other person.

It is applicable in India with certain exceptions.

Kinds of Consideration

- 1) Executory or future which means that it makes the form of promise to be performed in future.
- 2) Executed or present, it is an act made or suffered for a promise.
- 3) Past which means past act or forbearance, a consideration which is completed before the promise is made.

Rules of Consideration-

1. Every contract must be supported by valuable consideration otherwise it is void.
2. Consideration may be an act of promise.
3. There must be mutuality i.e. each party must do or agree to do something.
4. Consideration must be real and not vague.
5. Consideration must be lawful.

When consideration is not necessary

General rule is that a contract made without consideration is void.

But there are certain exceptions to it.-

- ① If it is in writing & registered & is made out of natural love and affection
- ② If it is made to compensate a person who already done something voluntarily for promisee.
- ③ If it is in writing and signed by the person, to pay a debt barred by law of limitation
- ④ In case of gift.

A contract is always based upon-

- (i) Agreement (consensus ad idem)
- (ii) An intent to create legal obligations
- (iii) Consideration

Void, voidable and Illegal Contracts -

(a) Void agreement

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no right on either party.

e.g A miner's contract is void.

(b) voidable contract

Voidable contract is one which a party can put to an end. He can exercise his option if his consent was not free. If parties consent is not free, he is entitled to avoid the contract if he has given his consent due to misrepresentation, fraud or undue influence.

c. Illegal Agreement

An illegal agreement is an unlawful agreement. Law prohibits agreements made with unlawful or illegal object and consideration. Parties to an unlawful agreement cannot get any help from a court of law.

The chief flaws in contract are-

- | | |
|----------------------|--------------------|
| a. Incapacity | e. Undue Influence |
| b. mistake | f. coercion |
| c. misrepresentation | g. Illegality |
| d. fraud | h. Impossibility |

Capacity to Contract

(Flaw in capacity - capacity and people)

Person are either natural or artificial. The general rule is that all natural persons have full capacity of make binding contracts. But there are certain exceptions in case of

- (i) minor,
- (ii) lunatics, and
- (iii) persons disqualified from contracting by any law.

These persons are not competent to contract.

As per law both the parties to the contract shall have a mature mind and hence there is a bar on minors and lunatics to contract.

The contractual capacity of corporation depends on the manner in which it was created.

Minor's Contract -

A minor is a person, who has not completed the age of 18 years.

Where a guardian has been appointed to the minor, the person continues to be a minor until he completes the age of 21 years.

As per Indian Contract Act, no person is competent to enter into a contract who is not of the age of majority.

In case of *Mohori Bibi v. Sharmodas Ghose*, it was held that a minor has no capacity to contract and minor's contract is absolutely void.

Following points must be kept in mind with respect to minor's contract -

- (a) A minor's contract is altogether void in law and a minor cannot bind himself by a contract.
- (b) Since the contract is void-ab-initio, it cannot be ratified by the minor on attaining majority.
- (c) Estoppel is an important principle of the law of evidence.
- (d) An agreement by a minor being void, the court will never direct specific performance of the contract.
- (e) A minor can be an agent, but he cannot be a principal nor can be a partner.

(f) A minor is never personally liable, he cannot be adjudicated as an insolvent.

Lunatics Agreement

A person of unsound mind is a lunatic. A person of unsound mind cannot enter into a contract. A lunatic agreement is therefore void. But if he makes a contract when he is of sound mind i.e. during lucid intervals, he will be bound by it.

Agreement by person of unsound mind are void. But for necessities supplied to a lunatic or to any member of his family, the lunatic's estate if any, will be liable.

There is no personal liability incurred by the lunatic.

Contract entered by lunatic person for his benefit, it can be enforced.

Other Persons qualified and disqualified from contracting -

- ✓ A contract with an alien enemy becomes unenforceable on the outbreak of war.
- ✓ Foreign sovereigns gov. can enter into contract through agents residing in India & here agent becomes personally liable for performance of contract.
- ✓ A properly incorporated corporation has the right to enter into a contract, it can be sue and sued on its own name.

Flaw in consent : Free consent

The basis of contract is agreement i.e mutual consent. The parties should mean the same thing in the same sense and agree voluntarily. Not only consent but there should be free consent. Consent is not free when it is caused by -
coercion,
undue influence, misrepresentation
fraud or mistake
where there is no consent there is no contract.

Mistake (Section 20 and 21)

The law also realises that mistakes do occur and these mistakes are fundamental that there may be no contract at all. If there is mistake in contract, the contract will be void.

Effect of mistake -

mistake is the nature of miscalculation or error of judgement by one or both the parties has no effect on the validity of contract.

To render the contract void, the mistake must be -

- (a) of fact and not of law or opinion
- (b) the fact must be essential to agreement
- (c) must be on the part of both the parties

Misrepresentation (Section-18)

Misrepresentation may therefore be either

- (i) Innocent misrepresentation
- (ii) Wilful misrepresentation with intent to deceive & is called fraud.

- (i) Innocent misrepresentation - Any false representation, which is made with an honest belief in its truth is innocent. Its effect is the party can avoid the contract, but cannot sue for damages in the normal circumstances.

Damages for Innocent misrepresentation -

In following cases the damages can be obtained -

- > from promoter or director who through a prospectus invites the public to subscribe the share.
- > Against an agent who commits breach of warranty of authority
- > Negligent representation made by one person to another between a confidential relationship.

Wilful misrepresentation or fraud (Section 17)

Fraud is an untrue statement made knowingly or without belief in its truth, whether it be true or false with the intent to deceive.

Ingredients of frauds are -

- (i) a false representation or assertion
- (ii) of fact
- (iii) made with an intention that it should be acted upon.
- (iv) the representation must have actually induced the other party
- (v) the party deceived must be indemnified
- (vi) statement must have been made either with the knowledge or without.

The party defrauded can avoid the contract and also claim damages.

Coercion (Section - 15)

The committing or threatening to commit any act forbidden by the law, with the intention of causing any person to enter into an agreement.

There must be a contract made under the threat and that contract should be sought to be avoided because of coercion.

Undue Influence (Section - 16)

Where the relations subsisting between the parties are such that one of the parties is in position to dominate the will of the other & uses that position to obtain an unfair advantage over the other is undue influence.

Elements of undue influence -

- (i) a dominant position
- (ii) the use of it to obtain an unfair advantage

Void and Illegal contracts -

A void contract is one which is destitute of legal effects altogether. An illegal contract has no legal effects as between the immediate parties to the contract.

Consequences of illegal Agreements -

- ① an illegal agreement is entirely void.
- ② no action can be brought by a party to an illegal agreement.
- ③ money paid or property transferred under illegal agreement cannot be recovered.
- ④ where agreement consists 2 parts, the illegal part is separable from it.
- ⑤ any agreement collateral to illegal agreement is also termed as illegal.

Wagering Agreements -

The meaning of 'wager' is 'bet'. Wagering agreements are nothing but ordinary betting agreements. The essence of wagering is that one party is to win and the other lose upon a future event.

In India except Mumbai, wagering agreements are void.

where an agent acts on behalf of his principle and loses and pays over the money to the winner he cannot recover the money from his principle.

Void Agreements -

The following types of agreements are void under the Indian Contract Act -

- (a) Agreement by or with a minor or a person of unsound mind or person disqualified.
- (b) Agreements made under mistake of facts
- (c) Agreement whose consideration or object is unlawful.
- (d) Agreement made without consideration
- (e) Agreement restrain to marriage or restrain to trade or legal proceedings etc.

When Contract becomes void -

An agreement not enforceable by law is void - ab-initio.

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

A contract becomes void by reason of subsequent illegality.

A contingent contract to do or not do to anything if an uncertain future event happens becomes void if the event becomes

impossible.

When a contract becomes void, it is not to be performed by either party. But if any party has received any benefit under such a contract from the other party he must restore it or make compensation for it to another party?

Quasi Contracts -

Nature of Quasi-Contract -

A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent.

A quasi-contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. It is not a contract at all. It is an obligation which the law creates, in absence of any agreement.

Following types of quasi-contracts dealt within the Indian Contract Act -

- (a) Necessaries supplied to person incapable of contracting.
- (b) Suit for money had & received.
- (c) Quantum meruit
- (d) Obligations of finder of goods
- (e) Obligation of person enjoying benefit of non-gratuitous act.

> Necessaries

Contract by minor and unsound mind persons are void. However their estates are liable to reimburse the trader, who supplies them necessaries of life.

Quantum meruit -

Quantum meruit means "as much as earned". It is used where a person claims reasonable remuneration for the services rendered by him where no express promise to pay the definite remuneration.

Thus, the law implies reasonable compensation for the services rendered.

Where party to a contract has not fully performed what the contract demands as a condition of payment, he cannot sue for the payment. The payment can only be demanded on completion of an event.

But where one party who has performed part of his contract is prevented by others from completing it, he may sue for quantum meruit.

> "Obligation of finder of lost goods"

The finder must take care of the goods as a man of ordinary prudence would take of his own goods of the same kind.

If the owner is traced, he must return the goods to him.

The finder is entitled to get the reward that may be offered by the owner and also the expenses he have incurred in protecting or preserving the property.

> obligation of a person enjoying benefit of non-gratuitous act
where a person lawfully does something for another person or delivers anything to him without any intention of doing gratuitously & the other person accepts & enjoys the benefit thereof, the latter must compensate the former.

Discharge or Termination of contracts

Contract may be discharged or terminated by any of the following modes -

- (a) Performance of contract
- (b) mutual consent or agreement
- (c) lapse of time
- (d) operation of law
- (e) Impossibility of performance.
- (f) Breach of contract

Remedies for breach of contract -

- i Rescind the contract and refuse further performance of contract.
- ii Sue for damages
- iii Sue for specific performance
- iv sue on quantum meruit

✓ Sue for an injunction to restrain the breach of a negative term.

The party rescinding a voidable contract shall, if he has received any benefit thereunder, from another party to such contract, restore such benefit so far as may be, to the person from whom it was received.

Damages for breach of contract -

When a contract has been broken, a party who suffers by such breach is entitled to receive, from the party who broke the contract, compensation for any loss or damage caused to him.

Damages are of 2 types -

- (a) Liquidated damages - when the contracting parties agree in advance the amount payable in the event of breach, the sum payable is called as liquidated damages.
- (b) Unliquidated damages - where the amount of compensation claimed for a breach of contract is left to be assessed by the court, damages claimed are called as unliquidated damages.
They are of following kinds -
 - (a) General or ordinary damages
 - (b) special damages

- (c) punitive damages
- (d) nominal damages.

Specific Performance "

Where a party fails to perform the contract the court may, at its discretion order the defendant to carry out his undertaking according to the terms of the contract. Specific performance is usually granted in contracts connected with land.

Specific performance will not be ordered "

- (a) where monetary compensation is an adequate remedy.
- (b) where the court cannot supervise the execution of the contract
- (c) where the contract is for personal service
- (d) where one of the person is a minor

Injunction "

An injunction is an order of a court restraining a person from doing a particular act. The court may in its discretion issue an order to the defendant restraining him from doing what he promised not to do. It may be prohibitory or mandatory. In prohibitory, the court restrains the commission of a wrongful act whereas in mandatory, it restrains continuance of a wrongful commission.

Contract of Indemnity and Guarantee

Meaning of Indemnity ~

A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself.

The person who promises to indemnify the loss is called the indemnifier & the person whose loss is made is called the indemnified or the indemnity holder.

The loss caused due to events or accidents which do not depend on conduct of any person it cannot be reimbursed under contract of indemnity.

Meaning of Contract of Guarantee ~

A contract of guarantee is a contract to perform the promise or discharge liability of a third person in case of his default.

The person who gives the guarantee is called the surety and person for whom the guarantee is given is called Principal debtor & to whom guarantee is given is called the creditor.

Guarantee may be either oral or written. The consideration received by the principal debtor is sufficient for surety.

Surety's Liability ~

A creditor is not bound to proceed against the principal debtor. He can sue the surety.

without suing the principal debtor. (b)
As the debtor made default in payment of the debt, the surety is immediately liable. Until default, the creditor can't call upon the surety to pay. The nature of surety's liability is secondary.

Kinds of Guarantee-

A contract of guarantee may be for an existing debt or for a future debt. It may be a specific guarantee or it may be continuing guarantee.

Specific guarantee is given for a single debt and ends when debt has been paid.

Continuing guarantee is one which extends to a series of transactions. Liability of surety extends to all the transactions contemplated until the revocation of the guarantee.

Revocation of Continuing Guarantee

Continuing Guarantee is revoked in following circumstances -

- (a) By notice of revocation by the surety.
- (b) By the death of the surety.

Discharge of surety -

- (a) By notice of revocation in case of Continuing guarantee.
- (b) By death of surety.
- (c) Any variation in terms of contract between the creditor & principal debtor.

- (d) when the creditor releases the principal debtors.
- (e) The creditor without consent of surety makes an arrangement with principal debtor for composition.

Contract of Bailment and Pledge

(a) Bailment

Bailment is a transaction whereby one person delivers goods to another person for some purpose upon a contract and when the purpose is accomplished he will return it. The person who delivers the goods is called as bailor. Person to whom goods are delivered are called as bailee. The ownership of goods remains with the bailor and the bailee gets only the possession of goods.

Gratuitous Bailment

Gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such bailment may be exercised for the exclusive benefit of the bailor.

It terminates after the death of either bailor or the bailee.

Bailment for reward

This is for the mutual benefit of both the bailor and bailee. The bailee receives a remuneration for carrying goods.

Duties of Bailee -

- ① The bailee must take care of the goods as such of his own goods.
- ② The bailee is under the duty not to use the goods in an unauthorized manner.
- ③ He must keep the goods bailed separate from his own goods.
- ④ must not set up an adverse title to the goods.
- ⑤ Duty to return the goods without demand on the expiry of time fixed.

Duties of Bailor -

- ① The bailor must disclose all the known faults in the goods.
- ② It is bailor's duty to pay an extraordinary expenses incurred by the bailee.
- ③ Bailor is bound to indemnify the bailee for any cost which bailee may incur.

Termination of bailment -

where bailee wrongfully uses or disposes of the goods bailed, the bailor may determine the bailment.

As soon the period of bailment expires the bailment comes to an end.

Gratuitous bailment may be terminated by bailor at any time.

Finder of lost Goods

The right of finder are that he can sue the owner for any reward that might have been offered and retain the goods until he receives the reward.

But he cannot file a suit for recovery of compensation

- (a) The finder has a right to sell the property where the owner cannot with reasonable diligence be found or,
- (b) when found but he refuses to pay lawful charges.

(b) Pledge ~

Pledge or pawn is a contract whereby an article is deposited with a lender of money as a security for the repayment of loan or performance of promise.

The depositor is called as pawnee & depositee is called as pawnor.

Any kind of goods, valuables, documents or securities may be pledged.

Following are essential elements of pledge-

- (i) The property pledged should be delivered to the pawnor.
- (ii) Delivery should be in pursuance of contract
- (iii) Delivery should be for the purpose of security
- (iv) Delivery should be upon a condⁿ to return.

Rights of the Pawnor ~

The pawnor gets a special property to retain possession even against the true owner until the payment of debt or any expense incurred for possession or preservation of goods.

when the pawnor makes a default in payment of debt at the stipulated time the pawnee may -

- (i) file a suit for recovery of amount due to him,
- (ii) sue for sale of goods and realisation of money due to him.
- (iii) himself sell the goods pawned, after giving reasonable notice to the pawnor.

Rights of Pawnor

If pawnee makes an unauthorised sale without giving notice to the pawnor, pawnor has the following rights -

- (i) he can file a suit for redemption of goods by depositing the money or
- (ii) He can ask for damages on ground of conversion.

Pledge by Non-owners

Pledge can be made by a person who is not the owner but is in possession of the goods. Thus a valid pledge may be created by the following non-owners.

- (i) A mercantile agent - A mercantile agent is with the consent of owner, in possession of goods, any pledge made by him, when acting in ordinary course of business of a mercantile agent, is as valid as if he were expressly authorised by the owner of the goods to make the same.

- (ii) Pledge by seller or buyer in possession after sale - A seller, left in possession of goods sold, is no more the pawnee, but pledge by him will be valid.
- (iii) Pledge where pawnee having limited interest when pawnee is not the owner of goods but have limited interest on the goods, the pledge will be valid.
- (iv) Pledge by co-owner - when there are several co-owners, pledge with the assent of other co-owners will be a valid pledge.
- (v) Pledge by person under voidable contract - A person may obtain a possession under a voidable contract. The person may pledge the goods before the other party avoided the contract.

Creation of Agency -

A contract of agency may be express or implied, but consideration is not an essential element in this contract. Agency may also arise by estoppel, necessity or ratification.

- (a) Express Agency - A contract of agency may be made orally or in writing. Its usual form is the Power of Attorney.

- (b) Implied Agency - Implied agency may arise by conduct, situation of parties or necessity of the case.
- (i) Agency by Estoppel
 - (ii) wife as an agent
 - (iii) Agency of necessity
 - (iv) Agency by ratification

Classes of Agents -

Agents may be special or general, they may be mercantile agents -

- (a) Special agent: Special agent is appointed to do a specified act or to perform a specified function. Any act of agent beyond that authority will not bind the principal.
- (b) General Agent: General agent is appointed to do anything within the authority given to him by the principal in all transactions related to a specified trade or matter.

Sub-Agent

Person who is appointed by the agent and to whom the principal's work is delegated is known as sub-agent.

A sub-agent is a person employed by & acting under the control of the original agent. So, sub-agent is the agent of original agent.

Mercantile Agent

A mercantile agent having in the customary course of business as such agent authority

either to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.

Duties of Agent -

- (a) An agent must act within the scope of the authority conferred upon him.
- (b) He must do the work with reasonable skill and diligence.
- (c) He must disclose promptly any material information coming to his knowledge.
- (d) He must not disclose confidential information.
- (e) Agent must keep true a/c.
- (f) He must not make any secret profit.
- (g) An agent must not delegate his authority to sub-agent.

Rights of Agent -

Where the services rendered by the agent are not gratuitous or voluntary, the agent is entitled to receive the agreed remuneration or a reasonable remuneration.

As agent represents the principal, the agent has a right to be indemnified by the principal against all charges, expenses and liabilities incurred to him in the course of agency.

Extent of Agent's Authority -

The extent of authority of an agent depends upon the terms expressed in his appointment or it may be implied.

An agent has authority to do all such things which may be necessary to protect the principal from loss in an emergency.

Responsibilities of Principal to third-parties

The effect of a contract made by an agent varies according to the circumstances under which the agent contracted.

There are 3 circumstances in which an agent may contract -

- (a) **Disclosed principal**: where the agent contracts as agent for a named principal, he generally incurs neither rights or liabilities under the contract. The contract made between principal and third party has the same legal effect as the principal directly contracted with third party.
- (b) **Undisclosed principal**: where the agent discloses that he is merely an agent but concedes the identity of principal. The principal on being discovered will be responsible for contract made by the agent.
- (c) **Concealed principal**: where an agent appears

to be contracting on his own behalf, without either contracting as an agent he becomes personally liable.

Termination of Agency -

- (a) By the performance of the contract
- (b) By an agreement between principal & agent
- (c) By expiration of the period fixed for the contract of agency.
- (d) By the death of principal or agency
- (e) By the insolvency of the principal etc.

E-Contract

Electronic contracts are not paper based but rather in electronic form.

In electronic age, the whole transaction can be completed in seconds, with both the parties simply affixing their digital signatures to an electronic copy of the contract.

An electronic contract also requires the following necessary ingredients -

- (1) An offer need to be made
- (2) offer need to be accepted
- (3) has to be lawful consideration
- (4) Intention of parties to create legal relation
- (5) Parties must competent to contract
- (6) Object must be lawful
- (7) Possibility of performance.

* Basic type of e-contracts -

- i. Shrink wrap agreements
- ii. Clickwrap agreements
- iii. Browse wrap agreements
- iv. Scroll wrap agreements
- v. Sign-in wrap agreements