

Law of Contracts (Basics)

Introduction to the law of contracts



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Applicable law

- Roman-Dutch law.

What is a contract ?

- "A contract is an agreement entered into by two parties, with the intention of creating a legally binding relationship." *[Professor William Anson]*

- There are two parties to a contract, called the offeror and offeree.
- Offeror :the party that is making the offer to contract.
- Offeree :the party to whom the offer is made by the offeror.

How can a contract be made ?

- Orally
- In writing
- By the implied conduct of the parties

Form of a contract

- Specific form, formality or procedure that has to be followed in order to comply with certain statutory requirements, in making a valid contract.

- some of the main formalities imposed by certain statutes in Sri Lanka in making a contract.

Ex:

Main elements or requirements of a valid contract

- There should be a valid offer and acceptance.
- The parties must have an intention to create legally binding relations.
- The terms of the contract, should be certain.
- The performance of the contract should be possible.
- There must be a genuine consent or agreement of the parties to the contract.
- The parties should have capacity to contract.
- The objective of the contract should be legal.

Consideration

- An essential requirement of a valid contract under English law
- Roman-Dutch law is the law relating to contract law in Sri Lanka
- What is consideration:
 - something that can be measured in monetary terms
 - a normal obligation or a promise is not treated as consideration under English law unless a financial value is attached to it.

Consideration

- Roman Dutch law recognizes: "reasonable cause" or "justa causa".

Consideration

Lipton Buchanan (1904) 8 NLR 49

- Case Law : "Consideration" as defined in Sri Lanka under Roman-Dutch law
- L promised B, that L will not sue B on a debt due to L from B's former partner, until L has exhausted all remedies to recover from that partner. At the trial the judgment was that L's promise was not valid, as B had not given any consideration. This judgment was appealed against.
- **Held** by the Supreme Court of Sri Lanka : that this matter should be governed by Roman-Dutch law, and not by English law. Therefore under Roman-Dutch law, L's promise is enforceable legally as it was made voluntarily and seriously.

Offer and Acceptance

"invitation to treat"

- An "invitation to make an offer." (an invitation to the public)
- An "invitation to treat." Is not an offer.
- Example : Instances which are considered as "invitations to treat."
 - Advertisements
 - Display of goods in a shop window
 - Self-service counters in shops
 - Catalogues
 - Auctions

Offer

- For a contract to form, this offer has to be accepted as it is. If the offer is not accepted, then the contract is not formed; i.e., the contract is equal to being "dead", and it can never be revived again.

Offer

- An offer can be made in three ways,
 1. **To a single person:** Specific offer
 2. **To a class of people:** usually made through the mass media. Acceptance is done by merely acting on the offer, and there is no need to specifically communicate the acceptance to the offeror.
 3. **To the world at large:** Acceptance is done by merely acting on the offer, and there is no need to specifically communicate the acceptance to the offeror.

Example : Reward

Offer

Case Law : Offer to the world-at-large

Carlill V Carbolic Smoke Ball Co. (1893) Q.B. 256

- Here a company, offered to pay a reward of E100 to anyone who contracted influenza after using their smoke ball as prescribed. Ms. Carlill contracted influenza, even after using the smoke ball as prescribed. She claimed the reward of E100, which the co. refused.
- Held : This was an offer made to the world at large. The fact that Ms Carlill acted on the offer by using the smoke ball as prescribed, amounts to her accepting this offer. Therefore the co.was bound to pay the E100 to her.

Communication of an offer and acceptance

- Any offer, to be a valid offer, has to be first communicated to the offeree.
- The offeree can only accept an offer if he is aware of it. That means that the offeree cannot accept an offer which he is not aware of.

Communication of an offer and acceptance

- **Example : Communication of an offer for reward**
- Harry puts an advertisement in the newspapers, offering a reward of 100,000 for anyone who returns his lost dog. Larry, who does not know about this offer of a reward, finds the lost dog, and upon inquiry locates its owner, and hands over the dog to Harry.
- As Larry did not know of the offer for the reward, he is not entitled to the reward. The reason being that Larry cannot accept an offer which he did not know existed.

The rule on communication in a postal offer

- An offer made through the post.
- The general rule where any offer, to be valid, has to first reach the offeree, applies in the case of postal offers as well.
- Mere posting of the offeror is not sufficient. For this offer to be valid, the posted offer must reach the offeree. At this point it becomes a valid offer.

Termination of an offer

1. By the offer lapsing
2. By the offer being revoked by the offeror
3. By the offer being rejected by the offeree being rejected by the offeree

1. By the offer lapsing

On the occurrence of any of the following events, an offer will lapse.

These events are,

- Death of either the offeror or offeree before the offer is accepted.
- The offeree does not accept the offer within the prescribed time period.
- When no time period is prescribed for acceptance, if the offeree does not accept the offer within a reasonable time period.

2.By the offer being revoked by the offeror

- The offer can be revoked any time before it is accepted by the offeree.
- The revocation must be communicated to the offeree, and must actually reach the offeree.

2.By the offer being revoked by the offeror

Case Law : revocation must reach the offeree

Byrne v. Van Tienhoven (1880) 5 C.P.D. 344

- A posted a letter to B on 1st October, offering to sell some goods. B received this letter on 11th October, and immediately telegraphed his acceptance.
- On 8th October, A posted another letter to B, revoking his earlier offer. This letter was received by B, on 20th October.
- Held : The revocation, in order to be effective, had to reach B. But the contract had already been formed when B telegraphed his acceptance.

2. By the offer being revoked by the offeror

Case Law : revocation must reach the offeree

Dickinson v Dodds (1876) 2 Ch.D. 463

- X agreed to sell his property to Y. The offer stated that "this offer is to be left over until Friday, 9a.m."
- However, on Thursday, X sold this property to Z.
- Y learned about the contract between X and Z from B, a reliable source as far as Y was concerned.
- Thereafter on Friday at 7 a.m., Y communicated his acceptance of X's offer to X.
- Held : The acceptance by Y is not valid, as Y knew when accepting, that the offer had been revoked by the sale of the property to Z.

3. By the offer being rejected by the offeree being rejected by the offeror

- Instances where an offer can be rejected,
 1. By the offeree, communicating his rejection, to the offeror.
 2. By a qualified acceptance [refer Section 3.5 below for the explanation.]
 3. By the offeree making a counter-offer [refer section 3.5 below for the explanation.]

Rules applicable to a valid acceptance

- 1. The acceptance must be made when the offer is still in force**
- 2. The acceptance must be absolute and unqualified**
- 3. Counter-offer**
- 4. The acceptance must be communicated to the offeror**

Rules applicable to a valid acceptance

Case Law : Acceptance to be in the prescribed manner.

Eliaison v Henshow (1819) 4 Wheaton 225

- E offered to buy flour from H. E made this offer through a letter he sent by wagon. In his offer, E requested H to send his reply through this offer through the same wagon.
- H thinking that the post would be faster than the wagon, sent his acceptance of E's offer, by way of a letter which he sent through the post.
- But this letter got delayed in the post, and E purchased flour from a third party.
- H sued E for a breach of the contract.
- Held : There was no contract between E and H, as the acceptance was not made in the manner prescribed by the offeror.

Rules relating to acceptance in special circumstances

Instantaneous contracts

Rules relating to acceptance in special circumstances

Valid in a direct face - to - face conversation

A and B were talking in a crowded market place. A made an offer to B to sell 1 kg of tomatoes, which was accepted by B verbally then and there.

In establishing whether there was a valid acceptance by B, it has to be first determined whether A actually heard B's acceptance.

Rules relating to acceptance in special circumstances

Valid acceptance in a telephone conversation

X and Y were talking on the telephone. X made an offer to Y. which was accepted by Y in this same telephone conversation.

In establishing whether there was a valid acceptance by Y, the law requires that X confirms having clearly heard and understood Y's acceptance.

Rules relating to acceptance in special circumstances

Case Law : mere transmission of acceptance is not a valid acceptance

Entores Ltd. V. Miles Far East Corporation (1955) 2QB 327

In this case, the offeror was a company in London, and the offeree was a company in Holland.

The offeror telexed its offer from London to the offeree, which was accepted by the offeree by telexing from its fax machine in Holland.

The courts were entrusted with the task of determining where the contract concluded.

Held : That an acceptance that is faxed from the offeree's fax machine has to be received by the offeror's fax machine, in order for it to be a valid acceptance.

Therefore the contract in this instance was concluded in London, where the offeror's fax machine was.

Rules relating to acceptance in special circumstances

Postal contracts

- the posting of the letter of acceptance by the offeror amounts to a valid acceptance. It is not necessary for the letter of acceptance reach the offeror.
- **When postal rule for acceptance does not apply**
- During a postal strike, the postal rule relating to acceptance will not be valid.

Rules relating to acceptance in special circumstances

Silence is not a valid acceptance

Case Law : silence is not a valid acceptance.

Felthouse v Brindley (1862) 11 CB (NS) 869

F wrote to his nephew, B, offering to buy his horse, and saying that "if I hear no more about this offer, I shall consider that the horse is mine for \$30."

B did not respond, but verbally told his auctioneer that this particular horse has been sold to F, and therefore not to sell it through the auction.

B, by mistake, sold that horse to another through the auction, Thereafter F sued B, saying that the horse belonged to F.

Held : The offer made by F was not properly accepted by his nephew. Therefore the horse did not belong to F.

Intention to create legally binding relations

- **Domestic and Social agreements**

Domestic and Social agreements

- The general rule is that all domestic and social agreements will not be legally binding on the parties to it.

Domestic and Social agreements

Case Law : domestic agreements

Balfour v Balfour [1919] 2 KB 571

Mr. Balfour was a civil servant in Ceylon. He and his wife came to England on holiday. Once the holiday was over he had to return to Ceylon, but since his wife was not well, he had to leave her behind in England on her doctor's orders. When leaving England, he promised a household allowance to his wife, until she could join him in Ceylon.

Subsequently, the parties separated. The wife sued the husband for the household allowance.

Held : as this was a domestic agreement between a husband and wife, it will not be legally binding on the parties, and hence will be outside the realm of a legal contract.

Domestic and Social agreements

Case Law : looks like a domestic agreement, but not so

Merritt v Merritt [1970] 1 W.L.R. 1211

- The husband and wife had decided to separate, due to the husband having an affair with another woman, but before the separation the husband and wife were one day negotiating the terms of separation, seated in their car. One such arrangement was that the wife will pay up in full the mortgage of the family home, and thereafter the husband will transfer his share of the family home to the wife, making her the sole owner of it.
- The wife kept her part of the deal, but the husband refused to transfer his share of the house to her.
- Held : The rule Balfour v Balfour will not apply in this case, as here the parties negotiated at arms' length when they had already decided to separate. By contrast, in Balfour v Balfour the parties came to their arrangement when they were living on good terms. Therefore any reasonable person would regard the arrangement made prior to their separation by Mr. and Ms. Merritt as intending to be binding in law.

Commercial agreements

- Entered into between parties in relation to a business or commercial transaction.
- The general rule in commercial agreements is, that they will be Legally binding on the parties to it.
- The exception to be not legally binding on them, they can expressly do so. Such agreements only bind the parties "in honour".

05. Certainty of terms

- Conditions
- Warranties
- Exemption clauses.

Condition

- A term which goes to the root or foundation of a contract.
- A breach of a condition entitles the injured party to rescind the contract and claim damages.

Condition

Case Law : condition defined

- In *Wallis v Pratt* [1910] 2 K.B. 1003, a condition was defined as an obligation "which goes so directly to the substance of the contract, or in other words, is so essential to its very nature, that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all."
- A breach of a condition entitles the injured party to rescind the contract and claim damages.

Condition

Case Law : Breach of a condition

Lombard North Central plc v Buttersworth [1987] Q.B. 527

The parties entered into a contract for the hire of computers. A clause in the contract document stated that the prompt payment of all installment payments under the contract was "of the essence."

The hirer delayed in making one installment payment.

Held : The use of the words "of the essence" clearly demonstrated that the parties intended this clause to be treated as a condition in this contract. Hence the delay in making the installment payment amounted to a breach of a condition, and the owner of the computers could treat the contract as repudiated, retake possession of the computers given for hire under the contract, and claim damages for the repudiation of the contract.

Warranty

- A term which is not so vital that a failure to perform it does not affect the substance of the contract."
- A breach of a warranty does not entitle the injured party to rescind the contract. It only gives him the right to claim damages.

Warranty

Case Law : breach of a warranty

- Bettini was a famous opera singer. Gye was the director of the Italian Opera in England. Bettini and Gye entered into a contract where Bettini was to sing for Gye on certain days. It was also agreed that Bettini would arrive in London for rehearsals six days prior to the commencement of the engagement to sing.
- Bettini arrived in London two days prior to the commencement of the engagement, and therefore Gye refused to be bound by the contract between them, citing this breach by Bettini as a breach of a condition which rescinded the contract.
- Held : The breach by Bettini (not arriving six days prior to the concerts for rehearsals), was not a breach of a condition. It only amounted to a breach of a warranty. Therefore the contract could not be rescinded, and Gye was bound by the contract.

Certainty of terms

- In a contract, the terms must be certain. That means that the terms should not be vague, but clear.
- **Case Law : Vague terms**
- A horse is bought subject to the condition that if the horse proves to be lucky, an additional amount will be paid by the offeree to the offeror.
- Held : The condition that the horse should be lucky is a vague term. Therefore this is not valid contract.

Exemption clauses

- Introduced to a contract by a party wishing to exclude certain liabilities of his under the contract
- known as "liability excluding clauses."
- BUT,
the fundamental obligation or the basic responsibility of a person under the contract cannot be excluded by an exemption clause.

Exemption clauses

Example : fundamental obligation cannot be excluded

- In a contract to supply electricity to consumers, the electricity supplying company has a primary responsibility to supply electricity to its consumers. But if there are more interruptions than not to the electricity supplied by the company, the company is not fulfilling this primary obligation. Therefore the company cannot impose an exemption clause stating that they will not be held responsible for continuous breakdowns.
- The exemption clause must be communicated to the other party of the contract, or included in the contract, prior to the conclusion of the contract.

Exemption clauses

Case Law : communication of exemption clauses

- Chired a chair from the council and paid for it. Thereafter C was given a ticket which he put in his pocket without reading. Subsequently when C was sitting on this chair, it collapsed and C was injured. C claimed damages from the council. The council took the position that they are not liable, as the ticket given to contained a clause stating that the council will not be held liable for any accidents.
- Held : Though the ticket did contain an exemption clause, this clause was introduced with the payment of the ticket money by C. Therefore the country cannot rely on this exemption clause, and hence was liable to pay damages to C.

Exemption clauses

- **If the contract document is a bill or ticket or such like document, and if an exemption clause is included in such document, the exemption clause must be clearly printed on such document.**

Unfair Contract Terms Act (No. 26 of 1997)

- This Act imposes limits on the extent to which civil liability for a breach of contract or for negligence or other breach of duty, can be avoided by contract terms.

Unfair Contract Terms Act (No. 26 of 1997)

- Liability exclusion clauses or exemption clauses, in relation to the following, will have no effect in law as per this Act.
 - Exclusion of liability for a death or personal injury resulting from negligence.
 - To render a contractual performance substantially different from that which was reasonably expected under the contract.
 - A term relating to a guarantee given on goods, which purports to exclude liability for losses arising from :
 - The goods proving to be defective, while in the consumer's use, and
 - Resulting from a negligence during the manufacturing or distribution process of the goods.
 - A contract for the sale of goods under the Sale of Goods Ordinance, cannot exclude certain liabilities which are specified under the Ordinance.

Unfair Contract Terms Act (No. 26 of 1997)

- A contract under the Consumer Credit Act (No. 29 of 1982) cannot exclude certain liabilities which are specified under the Consumer Credit Act.
- A contract term cannot take away from a party to the contract the rights he has under another contract, if these rights relate to the enforcement of another person's liability which is prohibited from being excluded under this Act.

6. Genuine consent of the parties

- The parties to a contract must have this genuine consent or agreement in order to make a valid contract. The genuine consent of the parties to contract is also known as “reality of contract”.

6. Genuine consent of the parties

There are certain instances, where there is no reality of contract or genuine consent of the parties to contract. These instances are:

- When the parties to the contract acted under a **mistake**.
- When there is **misrepresentation**.
- When there is **undue influence** on one party.
- When one party is under **duress or threat**.
- Under the principal of "*laesio enormis*"

Mistake

- One party to the contract, or both parties to the contract entered into the contract by making a mistake on a vital matter
- Not all mistakes invalidate a contract. Only mistakes that concern a vital matter and have an effect on the real agreement between the parties can make a contract void.

Mistake

- Mistakes that render a contract void
 1. Mistake as to the nature of the contract itself
 2. Mutual mistake as to the identity of the subject matter of the contract or the thing contracted for
 3. Mistake as to the identity of a party to the contract.
 4. Common mistake as to the existence of the thing contracted for.

Mistake

1. Mistake as to the nature of the contract itself

-one party enters into a contract on the genuine mistaken belief that he is entering a contract of a totally different nature.

Foster v Mackinon (1869) L.R.4.P. 704

case law: mistake on nature of contract

- **M**, an elderly person whose sight was not good, endorsed a bill of exchange thinking it was a guarantee. It was established that there was no negligence on M's part in making this endorsement.
- **Held:** As M was not negligent in making the endorsement, the contract is not binding on him, and hence is void.

Mistake

2. Mutual mistake as to the identity of the subject matter of the contract or the thing contracted for

There is no common consensus or agreement of the parties on the same thing. Therefore the contract is void.

Mistake

Case law: mistake on identity of subject matter
Raffles v Wickelhaus (1864) 2 H and C 906

- E agreed to buy a cargo of cotton from F, which cargo was to arrive on a ship called the "Peerless from Bombay".
- There were in fact two ships by the same name, Peerless from Bombay, which were sailing from Bombay, one in October and the other in December.
- When entering into the contract, E meant the ship leaving Bombay in October, whilst F meant the one leaving in December.
- **Held:** There was no contract formed between E and F, as there was a mutual mistake, as to the identity of the subject matter of the contract. Hence the contract was void.

Mistake

3. Mistake as to the identity of a party to the contract.

- This is when one party enters into the contract thinking that he is entering into a contract specifically with a certain person, and later finds out that he had in fact entered into a contract with a totally different person.
- When the identity of the person is material to the contract, such a contract is not binding on the parties and is **void**.

Mistake

Case law: mistake on identity of a party

Cundy v Lindsay (1878) L.R. 3 App. Cas. 459

- Blenkarn imitates the signature of a reputed firm called Blenkiron, and entice X to supply him with goods on credit. X entered into this contract, solely because he believed he was contracting with Blenkiron.
- Held: There was no contract formed between Blenkarn and X, as X never intended to contract with him. Hence the contract was void.

Mistake

4. Common mistake as to the existence of the thing contracted for.

- This means that both parties enter into the contract, thinking that the subject matter of the contract is in existence, whereas at the time the contract was entered into it had ceased to be in existence.
- Such a contract is not binding on the parties and is void.

Mistake

- **Case law: non - existence of subject matter**
- Scott v Coulson (1903) 2 Ch. 249
- G entered into a contract with H, to assign the life policy of L, to H, But unknown to both of them, L had died before the contract was made.
- **Held** : There was no contract, as the subject matter of it was not in existence.

Mistakes that do not render a contract void

- These types of mistakes do not have any effect on the validity of a contract

Mistakes that do not render a contract void

- 1. Mistake as to the quality or value of the items contracted for**
- 2. Mistake of judgment**
- 3. Mistake on a trade description**
- 4. Mistake on ability to perform**

Mistakes that do not render a contract void

- 1. Mistake as to the quality or value of the items contracted for**
 - X buys from Y, a roadside bakery, where many motorists stopped to purchase food.
 - After some time, the road was diverted by a newly constructed by-pass road. This resulted in a drastic reduction of motorists stopping by the shop which X bought.
 - X sought to rescind the contract, saying that he made a mistake in buying the shop.

The fact of the matter was that the contract was to buy the shop. But here the mistake was relating to the value of the shop. That means the mistake was relating to the quality of the contract. This kind of mistake does not have any effect in law.

Mistakes that do not render a contract void

2. Mistake of judgment

- X purchases a certain good, thinking its value is Rs 1 million. But eventually X finds out that it is not valued at more than Rs 100,000. The contract is void.
- ***Mistake as to the meaning of a trade description, when goods are sold under their trade description***

Mistakes that do not render a contract void

3. Mistake on a trade description

- X bought from Y a quantity of rice known by its trade name "A". They both were under the mistaken impression that you could make a certain sweetmeat from this type of rice, when in fact it was not possible. The parties are bound by this contract.
- ***Mistake by one party of his ability to perform the contract***

Mistakes that do not render a contract void

4. mistake on ability to perform

- A enters into a contract thinking he can sew a suit in 1 hour. However, he finds out that it will take him two days. He is bound by the contract.

Misrepresentation

- A “representation” which is not true is called a “misrepresentation”.
- In forming a contract the parties will first negotiate the terms of contract with each other.
- The statements made by the parties in this negotiation process are called “representations”.

Misrepresentation

For a representation to be recognized as a misrepresentation in law, the following conditions be should be present:

- It must be a representation of a material fact.
- The representation must have been made before the conclusion of the contract, and with a view to inducing a party enter into the contract.
- It must have been made with the intention that it should be acted upon by the party to whom it was addressed to.
- It must have actually been acted upon, and must have induced the party.
- It must have been false, to the knowledge of the person making it.

Types of misrepresentation

1. Innocent misrepresentation
2. Negligent misrepresentation
3. Fraudulent misrepresentation

Types of misrepresentation

1. Innocent misrepresentation

- A person makes a representation or statement, honestly believing it to be true.
- When there is an innocent misrepresentation, the innocent party has a right to do either of the following:
 - (i) Rescind the contract
 - (ii) Affirm the contract

Types of misrepresentation

2. Negligent misrepresentation

when the person making the representation or statement had no reasonable grounds to believe that it was true.

When there is a negligent misrepresentation, the innocent party has a right to do any of the following:

- (i) Rescind the contract
- (ii) Claim damages
- (iii) Refuse to perform the contract
- (iv) Affirm the contract

Types of misrepresentation

3. Fraudulent misrepresentation

When the person making the representation or statement makes it, knowing very well that it was not true.

When there is a fraudulent misrepresentation, the innocent party has a right to do any of the following:

- (i) Rescind the contract
- (ii) Claim damages
- (iii) Refuse to perform the contract
- (iv) Affirm the contract

Undue influence

- When one party to a contract “unfairly” or “unduly” influences the other party to enter into the contract.
- Such contracts are voidable, at the option of the innocent party.
- But if the innocent party affirms the contract, he loses the right to set aside the contract.

Undue influence

- Undue influence falls under two categories
 1. Actual undue influence
 2. Presumed undue influence

Undue influence

1. Actual undue influence

One party to the contract actually influences the other party unduly to enter into the contract with the first party.

- Case law: actual undue influence
- Bank of Credit and Commerce v Aboody (1989) 2 WLR 759
- a husband exercised influence over his wife by threatening her, and got her to sign a contract mortgaging their property in which they were co-owners.
- Held: The wife's consent was obtained under undue influence, and hence was not a genuine consent.

Undue influence

2. Presumed undue influence

When the law presumes that certain relationships can give rise to undue influence.

- Some of these relationships are as follows:
 - Parent and child
 - Parent and guardian
 - Doctor and patient
 - Lawyer and client
 - Spiritual advisor and disciple

Undue influence

- Case law: presumed undue influence
Re Craig [1971] Ch. 95.
- An elderly widower, whose wife died two months earlier, employed a young woman as his secretary and companion. During the next six years, he gave her gifts valued in total E28,000.
- Held: This relationship falls into the category of “presumed undue influence”, as it was a relationship of confidence, and further as the woman failed to rebut this presumption. Therefore the gifts given by the widower were set aside on the grounds of “presumed undue influence.”

Duress or threat

- Actual violence or a threat of violence, directed at the other party of the contract or to his family.
- A contract entered under duress is voidable.

Duress or threat

- **Types of duress**

1. Actual or threatened physical violence or imprisonment.
2. Wrongful detention or threatened seizure of property
3. Threatening with criminal proceedings
4. Economic duress

Duress or threat

1. Actual or threatened physical violence or imprisonment.

- Example: Physical violence
- Kidnapping or threatening to do so.

Duress or threat

2. Wrongful detention or threatened seizure of property

- Case law: threat of seizing property

Maskelly Horne [1915] 3 K.B. 106

- H was the owner of a market. H demanded tolls, from M, a vendor in this market. When M refused to pay, He seized M's goods. Thereafter M paid the toll, and continued to pay it in fear of future seizures.
- Held: The contract for the payment of tolls was voidable, as M's consent was obtained under duress. Therefore M could recover the monies he paid as tolls from H.

Duress or threat

3. Threatening with criminal proceedings

- Case law: threat of litigation

Kaufman v Gerson [1904] 1 K.B. 491

- K obtained the consent of G on a contract between the two of them , by threatening to prosecute G's husband for a criminal offence which he had committed before.
- Held: G is not liable under this contract, as G's consent was obtained under duress.

Duress or threat

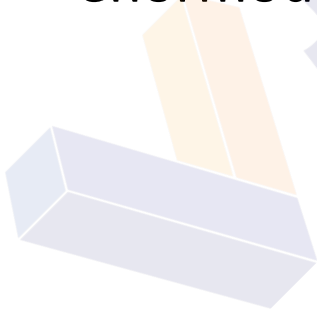
4. Economic duress

An unlawful or illegal threat posed to a person 's property and other financial interests.

- Case in law: economic threat
D. and C. Builders Ltd. v Rees [1966] 2 Q.B. 617
- A threat by a debtor pay nothing if the creditor not accept a smaller amount as full settlement of what is due to the creditor, was held to be an “economic duress’ as there unlawful pressure on the creditor.

The principle of :laesio enormis”

- “enormous loss” or “enormous” prejudice”.



The principle of :laesio enormis”

Example: laesio enormis

- A sells his land to B for Rs.1 million. Subsequently A discovers that the market value of this land is about Rs.10 million, and that he made a genuine mistake in fixing the selling price at Rs.1 million.
- As a result A has suffered a huge loss or laesio enormis of Rs. 9 million.
- Therefore A has a right to seek relief from courts, on the grounds of laesio enormis.
- The relief could be in the form of setting aside the contract so made, and the return of the consideration or sales price.

Capacity of parties

- **Capacity of minors to contract**
- **Capacity of persons of unsound mind to contract**
- **Capacity of drunk or intoxicated persons to contract**

Capacity of minors to contract

- A minor is a person who is less than 18 years of age.
- The general rule: a minor does not have the capacity to enter into contracts.
- There are a few exceptions to this general rule.

Capacity of minors to contract

- Exceptions to the general rule.
 - (i) Contracts to purchase “necessaries”**
 - (ii) Educational and employment contracts**
 - (iii) Bank accounts**

Capacity of minors to contract

(i) Contracts to purchase “necessaries”

-A minor can enter into a contract to purchase “necessaries”

Case law: minor’s capacity to purchase necessaries

Nash v Inman [1908] 2 K.B. 1

- Inman , a minor undergraduate of Cambridge University, bought eleven fancy waistcoats from Nash. But at the time of purchase, Inman already had an ample stock of waistcoats.
- Held: These waistcoats were not necessaries, as he had ample clothes. Therefore the contract was not valid, and Inman did not have to pay to Nash for them.

Capacity of minors to contract

(ii) Educational and employment contracts

- The following contracts are binding on a minor,
- Contracts for the education of the minor.
- Contracts which enable him to earn his living.
- Contracts of service and apprenticeship.

Capacity of minors to contract

- **Ratification of contracts entered into by minors**

Capacity of persons of unsound mind to contract

- Mentally unsound persons are said to be in a state of insanity or lunacy
- The general rule: the contract is null and void
- Contracts entered into by an insane person during periods of lucid intervals will be valid and binding in law. Lucid intervals are periods where the insanity has ceased temporarily.

Capacity of drunk or intoxicated persons to contract

- The general rule: Drunkenness or intoxication is not a ground for a contract to be set aside by a court of law; the reason being that drunkenness is a voluntary act.

Possibility of performance of the contract and objective being legal

Possibility of performance of the contract

- The possibility of performing the contract by an average human being.

Possibility of performance

A contract is entered into between A and B, where A offers to pay Rs 10 million to B, if he walks across the Palk Straits. Here the performance of this contract is obviously not possible. Therefore, it is not a valid contract in law.

Objective of the contract to be legal

- The law will not recognize and enforce a contract that is immoral or illegal
- “ex turpi causa non oritur action”: “no action arises from an illegal cause.”

Types of illegal contracts

- 1. contracts made illegal by statutes**
- 2. contracts made illegal under common law**

1. contracts made illegal by statutes

- An example may be found in regulations controlling sales prices of consumer items. If any contract is entered into for the sale of such items for a price above the fixed price, then such contracts is illegal and unenforceable.
- Illegal in common law, based on the grounds of public policy
- This is when, on the grounds of public policy, certain contracts are considered illegal under common law.

2. Contracts made illegal under common law

- (i) A contract to commit a crime.
- (ii) A contract to promote sexual immorality.
- (iii) A contract that promotes corruption in public life.
- (iv) A contract which is prejudicial to the proper administration of justice.
- (v) A contract to defraud revenue.

Unenforceable, voidable, void and illegal contracts

- Categorized based on the legal effect of these contracts.

Unenforceable contracts

- These are valid contracts, which, due to a technical defect, cannot be enforced.
- Example: unenforceable contract
- A sale of land, which is done verbally and not in writing.

Voidable contracts

- These are contracts which can be terminated at the option of one of the parties to it. This party has the option to either go ahead with the contract in spite of the defect, or to put an end to it.
- Example: Voidable contract
- A contract where one party has been induced by misrepresentation or duress.

Void contracts

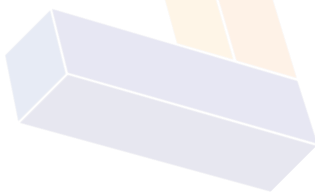
- These contracts have no legal effect, and hence are not binding on any party. The contract is fully null and void.
- Example: void contract
- A contract where there is a genuine mistake by the parties.

Illegal contracts

- These types of contracts contain serious defects, and are void. All collateral contracts arising from this illegal contract will also become void.
- Example: illegal contract
- A contract to kill a person. Here the object of the contract is illegal.

Termination of a contract

- Discharge of a contract: how a valid contract comes to an end.



Termination of a contact

- A contract can be terminated or discharged by the following methods:
 1. **By performance**
 2. **By agreement**
 3. **Termination by notice**
 4. **By an actual breach of the contract.**
 5. **By an anticipatory breach of the contract**
 6. **By the operation of the law**
 7. **By frustration**

Termination of a contact

1. **By performance**

- X and Y entered into a contract where X agreed to sell his horse for Rs 1 million to Y. X delivered his horse to Y and Y paid 1 million to X.
- This contract is now discharged by its performance by the parties to it.

Termination of a contact

2. By agreement

- X and Y entered into a contract where X agrees to supply lunch packets to Y on a daily basis for five months.
- After two months of such supply, they both agree through another contract to terminate the first contract.
- In this situation the first contract stands terminated and discharged.

Termination of a contact

3. Termination by notice

Example: length of termination notice

- A lease agreement may contain a clause which allows either party to terminate the agreement by giving three month's notice.
- Where the length of notice is not specified in the contract, either party can terminate the contract by giving notice of a reasonable length of time.

Termination of a contact

4. By an actual breach of the contract.

- Allows the innocent party to claim for damages

Termination of a contact

5. By an anticipatory breach of the contract

A party to the contract declares his intention of not performing the contract before the actual time for the performance arrives.

- Case law: discharge by anticipatory breach
- *Hochester v De La Tour* (1853) 2 E. and B. 678.
- B entered into a contract with C to recruit C's services as a courier, with effect from 1st June.
- But on 11th May, B informed C that he would not require C's services.
- Thereafter prior to 1st June, C filed action against B, to recover damages for this breach.
- Held: C, was entitled to do so, on the grounds of anticipatory breach.

Termination of a contract

- **By the operation of the law**

A contract will be discharged by the operation of law in the following instances:

(i) Due to insolvency or bankruptcy of either party to the contract.

(ii) Due to a prescription period.

(iii) Due to a merge of an inferior right under the contract, with another superior right.

(iv) When an important term of the contract has been altered or cancelled, by one party without the authority of the other party.

Termination of a contract

By frustration

- The performance of the contract become impossible due to no fault of the parties to the contract

Termination of a contact

For a contract to be discharged due to “frustration” , the following factors should be present. They are:

- i. The event which leads to the frustration of the contract is beyond the control of the parties to the contract.
- ii. If the parties try to perform the contract even after the occurring of the event which led to the frustration, then the contract so performed will be a totally different one to that which the parties initially intended to enter into.
- iii. The event which led to the frustration of the contract, occurred due to no fault of the parties to contract.

Termination of a contact

Frustration can be occurred,

- i. Due to a change in the law, the performance of the contract becomes impossible.
- ii. Due to the destruction of a particular object, which is necessary for the performance of the contract.

Termination of a contact

- Case law: frustration due to the destruction of the subject matter

Taylor v Caldwell (1983) 122 ER 309

- T took a music hall on hire from C, but before the first performance, the hall caught fire and got burnt down. T had by this time incurred some expense in arranging some performances. He claimed damages on those expenses, from C.
- Held: The hall was destroyed due to the fault of neither party. Therefore the parties were discharged from their obligations under the contract, as the contract was frustrated. As a result, T is not entitled for damages from C.

Remedies for a breach of a contract

1. Refuse further performance
2. Claim for damages
3. Sue on quantum meruit
4. Sue for specific performance
5. Sue for an injunction
6. Seek relief under the principle of unjust enrichment

Remedies for a breach of a contract

1. Refuse further performance

A agreed to sell good belonging to B, and gave part of the sales price as an advance to B.

Subsequently, A breached the contract and did not sell these goods, B has a right to repudiate the contract. However, in such a case, B also has to return the sales advance he received from A, unless the contract allows B to keep it.

Remedies for a breach of a contract

2. Claim for damages

3. sue on quantum meruit

- “as much as he has earned or deserves.”

4. sue for specific performance

- a court will order the party that is in breach to perform the obligations imposed on him by the contract

Remedies for a breach of a contract

5. Sue for an injunction

An order given by a court prohibiting a party from breaching his obligations under a contract.

- Case law: injunction
- Warner Brothers Pictures v Ingolia (1965) NSW 988
- I agreed to sing for WBP in America. But after disputing her contract, she flew to Australia and commenced performing at a theatre in Australia.
- WBP sued her, and asked for an injunction from court to prevent her from singing in Australia.
- Held: The court granted the injunction, as/ had breached her contract with WBP.

Remedies for a breach of a contract

6. Seek relief under the principle of unjust enrichment

“no person should be allowed to profit at another’s expense without making restitution for the reasonable value of the property, services or other benefits, that have been unfairly received and retained.”

Remedies for a breach of a contract

Generally the following elements should be satisfied in order for a court to grant the relief under the principle of unjust enrichment:

- The aggrieved party must have provided the other party with something of value, expecting compensation in return.
- The defaulting party must have acknowledged, accepted and benefited from whatever the aggrieved party provided.
- It should be inequitable for the defaulting party to enjoy the benefits of whatever the aggrieved party provided him, without paying for it.

Other concepts relating to the law of contracts

- **Prescriptive periods in contracts**
- **The principle of privity of contract**



Prescriptive periods in contracts

- The prescription Ordinance lays down certain time frames within which an action for a breach of a contract should be initiated by the aggrieved party.
- If the aggrieved party fails to initiate the proposed action within this stipulated time frame, the Ordinance prohibits him/her initiating an action for that particular breach thereafter.
- Prescription period for a written contract is six years

Prescriptive periods in contracts

- “doctrine of privity”.
- This means that only a party to the contract has the right to sue and be sued upon it. A third party, who is not a party to the contract, does not get any rights under the contract; furthermore, the contract cannot impose liabilities on a third party.

The principle of privity of contract

Example: privity of contract

- X and Y entered into a contract where X agreed to pay Z upon Y performing a specified task. Y performed as stipulated, but X did not pay Z.
- Under privity of contract, Z cannot enforce X's obligation to pay Z, as Z was not a party to the original contract.
- Only Y can enforce this contract, by suing X.
- Case law: privity of contract
- Dunlop Tyre Co. entered into a contract with Dew and Co. Ltd. to sell Dunlop tyres. Dew and Co. Ltd. agreed with Dunlop not to sell tyres below a specified price, unless with the prior approval of Dunlop Tyre Co.
- A company called Selfridges bought Dunlop tyres from Dew and Co. Ltd, and started to sell them below the price approved by Dunlop Tyre Co.
- Dunlop sued Selfridges, wanting them to stop sales below the price list.
- Held: Dunlop cannot sue Selfridges, as Selfridges was not a party to the original contract between Dunlop and Dew and Co.



END