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All You Need To Know About Contract Act for CLAT 2020

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CAPACITY OF THE PARTIES

The parties to the contract must be competent to contract i.e. they should be able to understand the nature of the contract. Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Thus the following persons are considered as incompetent to contract:

- Minors
- Persons of unsound mind
- Persons disqualified by law

Minor: minor is a person who has not completed 18 years of his age and by reason of his tender age is unable to understand the nature of the act. If an infant obtains property or goods by misrepresentation of his age he can be compelled to restore it but only so long as the same is traceable in his possession.

Where he has sold the goods or converted them he cannot be made to repay the value of goods because then it would amount to enforcing a void contact. The object behind this doctrine of restitution is to restore back the ill gotten gains taken by the minor rather than enforcing contract.

In the case of **MOHORIBIBI *V.* DHARMODAS GHOSE** it was held by the Privy Council that an agreement by a minor was absolutely void as against him. Thus the mortgagee cannot recover the money nor can he have the minor's property sold. When the minor himself approaches to court and acts a plaintiff, section 41 of Specific Relief Act shall be applicable i.e. an injunction shall be refused in order to prohibit minor from taking the benefit of his own wrongs.

A minor's agreement cannot be ratified by him on attaining the age of majority but he can be a beneficiary to the contact and can also be admitted as partner in the partnership firm but he shall not be liable for the losses. A minor can be appointed as agent.

Persons of unsound mind: person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

An agreement by a person of unsound mind is absolutely void as against him but he can derive benefit under it. Further, the property of an insane person is always liable for necessaries supplied to him or to anyone whom he is legally bound to support.

Persons disqualified by law: following persons are considered as disqualified by law:

- Alien enemy
- Foreign sovereigns and their accredited agents
- Convict
- Insolvent
- Joint stock company and corporations

FREE CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense. For a valid contract there should be meeting of minds i.e. *consensus ad idem.* Where the consent is caused by coercion, undue influence, fraud, mistake or misrepresentation it is not said to be free and the contract becomes voidable at the option of the party whose consent was so caused.

Coercion: 'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Undue influence: A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. A person is deemed to be in a position to dominate the will of another

- where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other or

- where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress

Fraud: it means an intentional misrepresentation of a material fact which induces other to enter into a contract. Fraud exists when a person makes a misrepresentation of a material fact known to him to be untrue or made with reckless indifference as to whether it is false or true, with the intention of causing the other party to enter into a contract relying upon the same.

Following are essential elements of fraud:

- The act must have been committed by a party to the contract or with his connivance or by his agent
- The act constituting fraud must be either the suggestion, as a fact, of that which is not true, by one who does not believe it to be true or the active concealment of a fact by one having knowledge or belief of the fact.
- The act constituting fraud must have been committed with an intention to deceive other party.
- The act must have induced the other party to enter into a contract

Mere silence or passive concealment is not considered as fraud. Merely because a person does not disclose the defects in the goods sold by him there is not fraud as the principle of*caveat emptor* i.e. let the buyer be aware shall apply.

Misrepresentation: it means when a person makes a false statement which he believes himself to be true and does not intend to deceive the other party. Misrepresentation means misstatement of a fact material to the contract.

Mistake: it means erroneous belief about something. Mistake or error makes the contract void i.e. it is not enforceable at the option of either party. Mistake may be divided into two types' viz. mistake of law and mistake of fact-

Mistake of fact may be of two types:

Bilateral mistake- where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement shall be void.

Unilateral mistake- A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A mistake by one of the parties is called unilateral mistake and it does not affect the validity of the contract.

Mistake of law may be of two types:

Mistake of Indian Law: A contract is not voidable because it was caused by a mistake as to any law in force in India. Ignorance of law is no excuse.

Mistake of Foreign law: mistake as to a law not in force in India has the same effect as a mistake of fact as no one is expected to be conversant with the foreign rules and regulations.

UNLAWFUL AGREEMENT

A contract whose object or consideration is unlawful shall be void. Under the Indian Contract Act following agreements are considered as unlawful:

- Forbidden by law
- Defeats provisions of law
- Fraudulent
- Injurious to person or property
- Immoral
- Opposed to public policy

VOID AGREEMENTS

Section 2(g) in The Indian Contract Act, 1872 states that an agreement not enforceable by law is said to be void. Following agreements are declared expressly as void by the Indian Contract Act:

- Agreement in restraint of marriage
- Agreement in restraint of trade
- Agreement in restraint of legal proceedings
- Uncertain agreements
- Wagering agreement
- Contingent contracts

DISCHARGE OF CONTRACT

A contract is said to be discharged or terminated when the rights and obligations arising out of contract are distinguished or the object of the contract is fulfilled. A contract may be discharged in the following ways:

- By performance of the contract
- By breach of the contract
- By impossibility of performance
- By agreement and novation
- By operation of law

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