BLOGS

Notes on Contract Law- Competency to Contract

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Edit TABLE OF CONTENTS Introduction Competency to enter into Contract Age of Majority Soundness of Mind Disqualified by Law Free Consent Coercion Undue Influence Fraud Misrepresentation Mistake

Introduction

In the **last article**, we discussed the types of contracts and types of offers.

In this article, we will learn concepts related to competency to contract, consent, and consideration in greater detail, to gain a nuanced understanding of the law of contracts.

Competency to enter into Contract

A contract is **valid and enforceable** in a court of law only when the parties are **competent to contract**. Section 11 of the Indian Contract Act, of 1872 states that a person should be **major, of sound mind, and not disqualified by law** to have competency to contract.

Age of Majority

- In India, age of majority is 18 years according to the Indian Majority Act 1875. Upon completion of 18 years of age, majority is attained.
- If a person has a guardian appointed by the court, they attain majority at the age of 21.
- Minors are persons who have not completed eighteen years of age. They are disqualified from contracting because they are incapable of understanding the nature of liabilities arising out of a contract.
- A contract with minor is void from the beginning, that is, void ab initio.

In ***Mohori Bibee v Dharmodas Ghose***, the Privy Council ruled that because a contract with minor is void ab initio, a mortgage agreement with a minor will also be void.

However, if a minor fulfils their obligations, the other party can be taken to Court as the contract becomes enforceable.

To simplify, a minor cannot be taken to court and be compelled to perform their obligation as a contract with them is void from the beginning (void ab initio).

Soundness of Mind

- A contracting party should be of sound mind, that is capable of understanding the terms of the contract and liability incurred. Unsoundness can be temporary or permanent.
- A lunatic person is someone who is of sound mind for a temporary duration. A contract with a lunatic person is valid only when they are of sound mind and capable of understanding the terms of the contract. Otherwise, it is void.
- A contract with a person who suffers from fits or other temporary unsoundness is also the same. Only if they are sane at the time of entering into the contract, it is valid.
- The capability to understand the terms of the contract is also a consideration when a party is under the influence of drugs, alcohol or any other substance.

Disqualified by Law

- A person who is not allowed to enter into contracts is disqualified by the law. This can be an alien enemy, that is, a person who is a citizen of a country that India is at war with, or a convict, or an insolvent person, that is, a person against whom bankruptcy proceedings have been filed.
- Once parties have been determined to be competent to contract, it is important that both of them have free consent while entering into the contract.
- Section 13 of the Indian Contract Act, 1872, contains the definition of consent, which is “when two or more persons agree upon the same thing and in the same sense”.
- Two parties, A and B entered into a contract for the sale of 125 cotton bales through a ship named Peerless from Bombay in the case of Raffles v. Wichelhaus. However, there were two ships named ‘Peerless’.
- Party A was thinking about one of two ships with the same name, while Party B was thinking of the other ship. The judge ruled that neither party had reached a consensus. As a result, the

contract was void.

Free Consent

In Section 14, free consent is defined as consent which is not caused by the following factors-

a. Coercion

Coercion is committing or threatening to commit any act forbidden by the IPC to induce the other party to consent to the contract. Such contracts are voidable at the option of the aggrieved party. The aggrieved party has to prove in court that they were coerced to enter into contract.

b. Undue Influence

When one party has a relationship of trust or confidence with the other party and they use the relationship to gain an unfair advantage over the other. Such a contract is again voidable at the option of the party whose consent was obtained with undue influence.

c. Fraud

Section 17 of the Act, defines fraud as an act committed by a party to induce the other to enter into a contract. This act can include concealment of a fact, a promise without intending to fulfil it or any other act done to deceive the other party. Mere silence is not fraud unless the person has an obligation to speak or the silence is equivalent to speech. A contract due to fraud is void and the offending party should compensate the damages caused.

d. Misrepresentation

When one party imparts wrong details to induce another to enter into an unfair contract, it is termed as misrepresentation. It is essential that the wrong information should be believed to be correct by the party imparting the details. A contract by misrepresentation is voidable at the option of the aggrieved party.

e. Mistake

Mistakes are of two kinds, of fact and of law. When one or both parties to the contract

misunderstand a word that is crucial to understanding its meaning, a mistake of fact results. This mistake may be the result of misunderstanding, ignorance, omission, etc. A mistake is always the result of a careless oversight and these errors may be unilateral or bilateral.

For a mistake of law, the general rule is that ignorance of the law is not an adequate defence if the error relates to Indian laws. This implies that neither side may assert that the other is ignorant of the law. However, if the mistake is related to foreign legislations, it is treated as a mistake of fact in India.

Contracts arising out of bilateral mistake of fact are void, whereas if only one side makes a mistake, the contract remains valid. Mistake of law for Indian laws does not render the contract void.

You can find the last two parts of our notes here and here.