BLOGS

Void and Voidable Agreements under Indian Contract Act

Ruchika Mohapatra · 27 Oct 2024

Edit TABLE OF CONTENTS Introduction Elements of Enforceability of Agreements Void Agreements under Indian Contract Act Agreements Expressly Declared Void Voidable Agreements under Indian Contract Act Conclusion

Introduction

The Indian Contract Act, 1872 (the Act) defines the term “contract” under Section 2(h) as: “An agreement enforceable by law is a contract.” In other words, an agreement that the law can enforce is a contract. Section 10 of the Act deals with enforceability of contracts.

First part of Section 10 of the Act clearly states that “All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object.” Offer and acceptance is not sufficient to constitute a contract. Thus, all agreements are contracts if they fulfil certain conditions of enforceability.

Elements of Enforceability of Agreements

- An agreement starts with a valid offer by one party and its acceptance by the other. Both the offer and acceptance must be clear, specific, and communicated.
- An agreement starts with a valid offer by one party and its acceptance by the other. Both the offer and acceptance must be clear, specific, and communicated.
- The agreement must involve lawful consideration and must not have an object that is unlawful or against public policy.
- The parties entering into the agreement must have the legal capacity to do so. Minors, persons of unsound mind, and those disqualified by law are examples of individuals lacking capacity.
- The terms of the agreement must be certain, and performance must be possible. Agreements that are vague or impossible to perform are not enforceable.

Void Agreements under Indian Contract Act

Under the Indian Contract Act, 1872, a void agreement is a type of contract that lacks enforceability from the very beginning. It is deemed as if the contract never existed, and neither party is bound by any of its terms. Section 2(g) of the Indian Contract Act defines void agreements.

1. If the agreement is not enforceable by law, it is considered void.

2. If a person is of unsound mind at the time of making the contract, the agreement is void.

3. Contracts made under coercion or undue influence are voidable at the option of the party subjected to coercion or undue influence.

4. Contracts with minors are void ab initio (from the beginning). However, a minor can either ratify the contract upon reaching majority or disaffirm it.

5. If an agreement is based on a contingency that is impossible, the agreement is void.

6. An agreement with a consideration or object that is unlawful in part or whole is void.

7. An agreement, the consideration or object of which is opposed to public policy, is void.

Agreements Expressly Declared Void

1. Any agreement that restricts a person from marrying is void.

2. Agreements that restrain anyone from exercising a lawful profession, trade, or business are void.
3. Agreements that are so uncertain that their meaning cannot be determined are void.
4. Agreements based on a wager are void, except in certain circumstances like insurance.

Voidable Agreements under Indian Contract Act

Voidable agreements under the Indian Contract Act, 1872 refer to contracts that are initially valid but can be voided or set aside by one of the parties due to certain specified reasons.

- If the consent of a party is obtained under coercion, the agreement is voidable at the option of the coerced party.
- Agreements entered into under undue influence are voidable. The party subjected to undue influence has the option to avoid the contract.
- If a party's consent is obtained by fraud, the affected party can choose to avoid the contract. Fraud includes the suggestion of a fact that is not true by one who does not believe it to be true.
- If a party enters into an agreement based on a misrepresentation, the party deceived has the option to void the contract.
- If consent is caused by mistake, the agreement is voidable. Mistake includes mistakes of fact and mistakes of law.
- When both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is voidable.
- If the consent of a party is caused by fraud or misrepresentation, the party has the option to void the contract.

If a party with the right to avoid the contract chooses to do so, the contract becomes voidable from the beginning. The parties are then restored to their original positions as if the contract never existed.

Voidable agreements offer a level of protection to parties who may have entered into contracts under duress, undue influence, fraud, or misrepresentation. The affected party has the option to either affirm or avoid the contract.

Conclusion

In the Indian Contract Act, 1872, agreements can be categorized as void and voidable based on their enforceability and the circumstances surrounding their formation. Understanding the distinction between void and voidable agreements is crucial in contract law. Void agreements are inherently unenforceable, while voidable agreements are initially valid but can be set aside under specific circumstances.