

RJA

Rajput Jain & Associates
Chartered Accountants

The Indian Contract Act, 1872

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

VOIDABLE CONTRACTS AND VOID AGREEMENTS;

Voidable Contracts

According to section 2(i) of the Indian contract act, 1872, arrangement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or other, is a voidable contract. In other words, A voidable contract is one which can be set aside or avoided at the option of the aggrieved party. Until the contract is set aside by the aggrieved party, it remains a valid contract. For e.g. a contract is treated as voidable at the option of the party whose consent has been obtained under influence or fraud or misinterpretation

VOIDABLE CONTRACTS AND VOID AGREEMENTS;

Void Agreements

According to Section 2(g), an agreement not enforceable by law is said to be void. Such agreements are void- ab- initio which means that they are unenforceable right from the time they are made. E.g. in agreement with a minor or a person of unsound mind is void –ab-initio because a minor or a person of unsound mind is incompetent to contract.

When one person signifies to another his willingness to do or to abstain from doing any thing with a view to obtaining the assent of that other person to such act or abstinence he is said to make a Proposal .

VARIOUS TERMS USED IN CONTRACTS

1. When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted than its called **Promise**
2. When one person signifies to another his willingness to do or to abstain from doing any thing with a view to obtaining the assent of that other person to such act or abstinence he is said to make a Proposal .
3. The person to whom proposal is made is called Promisee

VOID AGREEMENTS

- Every promise and every set of promises forming the consideration for each other --Agreements
- An agreement not enforceable by law is called Void Agreement
- An agreement enforceable by law is called Contract.
- A proposes by letter to sell a house to B the Communication of the proposal is complete When B accepts the proposal
- All contracts are agreements but all agreements are not contracts
- The minimum age for making a contract is Majority
- Consent of the parties to the contract is said to be free when the parties agree on the same thing in the same sense
- Disclosure does not affect free consent
- Valid contract caused by a mistake of law in India
- When is the object or consideration said to be lawful, If it is not forbidden by law or If it is not immoral
- Void Agreement effect of agreement without consideration

CONTINGENT CONTRACTS

Sections 31 to 36

Section 31. "Contingent contract" defined

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

Illustration

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Section 32. Enforcement of contracts contingent on an event happening.-

Contingent contracts to do or not to do anything if an uncertain future event appends cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations

- a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.
- b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
- c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Section 33. Enforcement of contracts contingent on an event not happening.-

Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Section 34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration

Section 35. When contracts become void which are contingent on happening of specified event within fixed time

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.-Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations

- a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, 'and becomes void if the ship is burnt within the year.
- b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Agreement contingent on impossible events void

Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations

- a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.
- b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

PERFORMANCE OF CONTRACT

- Chapter 10 and 11 (Sections 71-81) of the Contract Act .
- Performance of a contract takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed.
- Section 74 of the Contract Act: Each party to a contract has to fulfil its obligations under the contract.
- General Rule: The parties to a contract must **perform** or **offer to perform** their respective promises.
- Rules Regarding the Performance of Contract
- The parties must carry out precisely what they agreed under their contract—not something less than, or different from, that agreed.
Bolton v. Mahadeva (1972) (Bolton installed a central heating system in Mahadeva's house for an agreed price of 560 Pound. The work was carried out defectively and it was estimated that it would cost 179 Pound to put the matters right. The Court of Appeal held that since Bolton had not performed his side of the contract, he could recover nothing for the work he had done).

RULES CONTD.

Exceptions: Doctrine of Substantial Performance: If the terms of the contract are **substantially** carried out, the contract may be deemed to have been performed. *Hoenig v. Isaacs* (1952).

Acceptance of Partial Performance: If one of the parties only partially fulfils its obligation under the contract and the other party accepts the benefit of the partial performance, the other party is liable for the benefit received.

Prevention of Performance by the Other Party: If a party is prevented from carrying out its side of the contract by the other party, it can bring an action to recover for the work it has done. *Plancé v. Colburn* (1831).

Divisible Contracts: The issue is whether a contract is 'entire' or the obligations under the contract can be split up into stages or parts.

NOVATION, RESCISSION AND ALTERATION OF CONTRACTS

Change in the terms of the contract: Parties has the rights that they can alter or substitute the contract in which they have originally entered into. The parties are free when they want they can alter or substitute the contract they can do this.

If any parties to a contract they do so, their liabilities are regard to be original agreement or if any parties do so the liability of an existing parties may be arise. But the novation parties are to be bound by the new altered. Agreement means they are bound to replace to the new one.

SET OFF

Definition:-

Set – off is the combining of debit and credit accounts so as to arrive at a partial or full repayment of a debt. A banker has the right to set - off different accounts in the name of the same customer provided that he has not agreed to keep them separate and provided that the accounts are in the same right.

In law, set - off consists of the total or partial merging of a claim of one person against another in a counter - claim by the latter against the former. While set - off may be given by agreement it is essentially a statutory right or a right created by Rules of Court.

Set - off is the debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor.

In law, set - off consists of the total or partial merging of a claim of one person against another in a counter - claim by the latter against the former. While set - off may be given by agreement it is essentially a statutory right or a right created by Rules of Court.

Set - off is the debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor.

CREATION OF AGENCY

An agency can be created either in writing or orally. An oral appointment is a valid appointment even though the contract of agency by which agent is authorized has to be in writing.

Creation of Agency

1. Express Agreement
2. Implied Agreement

TYPES OF IMPLIED AGENCY

Agency by Estoppels or Holding out

1. Agency by Necessity
2. Agency in Emergency
3. Agency by Ratification

TYPES OF MERCANTILE AGENTS

1. Factor
2. Commission agent
3. Del cruder Agent
4. Broker
5. Auctioneer

RIGHTS AND DUTIES OF PARTIES

Duties of Agent

An agent is bound to conduct the business of his principal according to the directions given, or in the absence of directions, according to the custom.

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.

An agent is bound to render proper accounts to his principal, and has duty, irrespective of any contract to that effect, to produce vouchers by which items of disbursement are supported as part of the obligation to render proper accounts to the principal on demand.(section213)

It is duty of an agent in cases of difficulty, to use all reasonable diligence in communicating with his principal and seeking to obtain his instruction (section 214)

An agent should not set up an adverse title to the goods which he receives from the principal as an agent.

An agent is duty bound to pay sums received to the principal on his account

An agent must not use confidential information entrusted to him by his principal for his own benefit or against the principal.

The agent must not make secret profit from the agency. He must disclose any extra profit that he may make.

An agent must not allow his interest conflict with his duty. For example, he must not compete with his principal.

An agent must not delegate his authority to a sub-agent. This rule is based on the principle

Delegatus non potest delegare a delegate cannot further delegate (section 190)

RIGHTS OF AGENT

The agent has a right to retain any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of his remuneration and advances made or expenses properly incurred by him in conducting such business.

The agent has a right to receive remuneration.

Right of lien: In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property

The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Where he has bought goods for his principal by incurring a personal liability, he has a right of stoppage in transit against the principal, in respect of the money which he has paid or is liable to pay.

Where he is personally liable to the principal for the price of the goods sold, he stands in the position of an unpaid seller towards the buyer and can stop the goods in transit on the insolvency of the buyer

RIGHTS OF PRICIPAL

Right to repudiate the Transaction

To claim any resulted benefit from Agency

Right to Recover Damages

To Resist Agent's claim for Indemnity

DUTIES OF PRINCIPAL

To indemnify against consequences of all lawful acts of agent

To indemnify the agent against consequences of acts done in good faith

To pay compensation against agent's injury

To pay the agent the commission or other remuneration agreed

BY OPERATION OF LAW

On performance of the contract. Where an agent is appointed to perform a specified transactions, his authority comes to an end on the completion of the said transaction.

On expiry of time.

When the agent or the principal dies or becomes of unsound mind.

The death of the agent terminates his authority.

The death of one of the joint agents will terminate the agency only as far as he is concerned, while it will continue to be valid as regards the other surviving agents in the absence of contrary intention

On the insolvency of the principal

On the destruction of the subject matter.

On the principal becoming an alien enemy.

On the dissolution of a company.

On termination of sub-agent's authority.

AGENCY MAY BE TERMINATED BY

Agreement

Revocation of authority by the principal

By operation of Law

EXCEPTIONS

Irrevocable Agency :- When an agency cannot be put an end to, it is said to be irrevocable agency. An agency is irrevocable where the agent himself has an interest in the property which forms the subject-matter of the agency.

Time when Termination takes Effect :-The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him. As regards third persons, it terminates when it comes to their notice.

CONSEQUENCES OF BREACH OF CONTRACT;

What is a breach of contract?

Consider the term 'breach' synonymous with break, just like the broken word mentioned in the above scenario. Breach of contract can be defined as a broken contract, stemming from failure to fulfill any term of a contract without a justifiable, lawful excuse. A breach of contract might occur when a coworker refuses to complete her portion of a job; when an employee does something prohibited by his job contract; or even when a customer prevents the contractor from satisfying the obligation or finishing the project at hand.

Breach of the contract usually comes about in one of several ways.

1. failure to perform on time (or at all);
2. failure to perform to an agreed standard or specification;
3. refusal or inability to perform before the time for performance has arisen

The innocent party has the right to terminate performance of the contract and claim damages suffered as a result of the breach.

BAILMENT AND PLEDGE

In simple terms, **bailment** refers to hand over or assignment the goods, which involves change in possession but not in the ownership of goods. It is the transfer of goods from one party to another party for some specific purpose. It is not same as pledge, which is just a variant of bailment. **Pledge** implies a contract, in which an article is delivered or say deposited with the money lender, as security for repayment of a debt owed by him/ her or performance of promise.

The main difference between pledge and bailment lies in the use of goods, i.e. the use of goods is prohibited in pledge, whereas in the case of bailment the party to whom the goods are being handed over can use them. To further understand the difference between these two, take a look of the given article.

Definition of Bailment:-

- A contract in which the goods are handed over by one party to another party for a specific reason, which is expressed or implied for a short period. The person who delivers the goods is termed as bailor whereas the receiver of the goods is termed as bailee.
- When the purpose of delivering the goods is accomplished, the bailee should return the goods to its actual owner. Here the word goods may include all the movable items, but property and money do not come under the definition of goods. While the transfer of goods the ownership of goods remain with the bailor only the possession of goods transfers for a limited period.
- Bankers or Factors amongst the general lien on the goods bailed to them

Contact Us

- Rajput Jain & Associates Address: P-6/90, Connaught Circus Connaught Place New Delhi-110001
- Mobile No: 9811322785, 9555555480
- Telephone: +91 011 -23343333
- Email : info@carajput.com, singh.swatantra@gmail.com
- Website : www.carajput.com

Corporate & Head Office

- Address: 1598, Level-1, Sector 22-B, Chandigarh
- Mobile No: 9555555480, 9811322784, 9871857333
- Email : rajputjainandassociates@gmail.com

• Address: Building No. 53/160 R5, Bhakti Nagar, Pandeypur Varanasi 221002 (U.P) India

• Address: D 301 Omex Royal Apartment Sector 44 Noida, India

• Address: Building No 65 Ward No.10 Lakhe Chaur Marg, Kathmandu Metropolitan Kathmandu, Nepal.

Branch Offices



Follow us on

