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Mercantile Law Books: MC Kuchhal, Akhileshwar Pathak

****BUY GOODS AND HIRE/AVAIL SERVICES**

****Consideration means money-price**

Consumer: A consumer is a person (an individual Hindu Undivided Family, a voluntary consumer organization and the central or state governments), who for a consideration purchases goods or avails services.

Goods: All movable property except actionable claims and money.

1. Inclusionary clause of consumer/user of goods.
2. Exclusionary clause of consumer/user of goods.
 - a. Resale: A person who buys goods for resale is not a consumer.
 - b. Commercial purpose: A person who buys goods for commercial purpose is not a consumer.
 - i. You are a consumer if you can show self-employment in order to earn a livelihood.

User: A user is also a consumer provided he has the approval of the person who paid the money to buy the goods.

Service: Service of every description available to potential user's facilities and connection with (A-Z any services).

1. Inclusionary clause of consumer/user of services.
 - a. Beneficiary is also a consumer of services, provided he/she has the approval of the consumer who paid the money to hire the services.
 - b. A contract where professional services are rendered.
2. Exclusionary clause of consumer/user of services.
 - a. Free service: Excluded from the definition of service.
 - b. A contract of personnel service excluded: A contract of personnel service is one in which there is a master-servant relationship (in which the master hires the servant for wages and tells him what work has to be done, but more importantly the master even tells the servant how the work has to be executed).

Topics: Minor Agreements, Liquidated damages and penalty, Consideration- essentials of consideration and exceptions, sufficiency and value, free consent, effect of contracts where consents were unfree, fraud in free consent, all the elements of fraud, discharge of contract, mutual agreements, supervening interventions, remedies for breach and damages, suit for damages

Consideration

Definition: When at the desire of the promisor, the promisee or any other person has done or abstained from doing something; does or abstains from doing something; promises to do or abstain from doing something. Such act abstinence or promise is the consideration for the promise.

1. Consideration must move at request of promisor.
2. ***** Consideration may be given not only by the promisee but by any other person.

Case: Chinnaya vs. Ramayya

Please study this case for your reference

3. Consideration may be past, present or future.
4. (Can come in a test) Consideration must have some value (tangible) in the eyes of the law.

Consideration is imperative to make a legal agreement.

Section 25: Consideration – part II

It contains exceptions to the rule that agreements without consideration are void.

Examples:

1. Agreement between persons standing in near relationship to one another out of love and affection and in

X and Y are two brothers and X as younger brother promised to give his elder brother Y ₹ 20,000/month. However, he didn't give anything in writing. Therefore, agreement without consideration is void.

2. For past services voluntarily rendered and for which the promisor, himself, was legally compelled to perform.
***** A voluntarily supports B's son during infancy. B didn't ask A to do so. B wishes to do something for A in return. Can A legally compel B to reimburse? "YES"

3. Ordinarily contributions to charity are agreements without consideration but are valid especially if the promisee in furtherance of the promise has undertaken the necessary steps.

Case: Kedarnath (Promisee) vs. Gori Mohammed (Promiser)

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Section 25 contains exceptions to the consideration rule.

II Exception: for past services voluntarily rendered and for which the promisor himself was legally compelled to perform
Example: A looked after B's infant son voluntarily, B in gratefulness wants to do something for A, B promises to give A something in return, but then B goes back on his word, now A can legally compel B to do what he promised.

III Exception: ordinarily contributions to charity are agreements without consideration but are valid especially if the promisee in furtherance of the promise has undertaken the necessary steps.

Case: Kedarnath vs. Ghauri Mohammad

Free Consent: Free consent is absence of coercion, undue influence, miss-representation and fraud.

Coercion is physical force, applied on the body or property of a person, can be actual or threat, but it must amount to an offence punishable under IPC.

Threat to commit suicide is considered coercive enough to be punishable by law, landmark decision by Madras High Court as in the case below.

Case: Seshamma vs. Amiraju

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Undue influence: Undue influence is mental or moral pressure/force. There should be a superior sub-ordinate relationship, the superior should be in a position to dominate the mind of the sub-ordinate, and superior uses this as an advantage over the sub-ordinate.

Types of authority:

- a. Real or apparent authority. Ex: police constable and accused
- b. Fiduciary authority, mutual faith and trust kind of relationships. Ex: father-son, teacher-student, lawyer-client, doctor-patient in these relations we do not have to prove undue influence, it is believed by the law
- c. Contract between persons, one of whom is old and feeble
- d. "pardanasheen woman", a woman observes customary/compulsory seclusion
- e. Unconscionable money transactions, money lending at rates higher than the prevailing market rates. Ex: Private money lenders

Miss-representation: Intention is clean. You believed it to be true but once entered you realise that it was false. Starts with suppression of facts. Miss representation is innocent

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****NOTE: Every buyer must be given a reasonable opportunity to examine his purchase.**

****NOTE: Person who has to enter into a contract has to be of certain qualification, should not be sovereign representatives, convicts, lunatics, idiots, under 18 and insolvent people (person who cannot discharge his financial obligations, person cannot call himself an insolvent person and his creditors can move to court, this is called Order of Adjudication and when he is cleared of charges this is called Order of Discharge, between this period he cannot make a contract, he is insolvent during this period.)**

- b. Active concealment is also fraud, in a way it is suppression-veri
- c. Promises made with no intention of fulfilling them, example: insolvent persons
- d. Any act fitted to deceive is also a fraud
- e. ****According to the law certain disclosures have to be made**

Example: Transfer of property act, section 55 clause 1, while selling a mortgaged house the buyer has to be informed about the mortgage and the associated clauses.

- f. 1. Silence is fraud when there is a duty of abundant disclosure, example: in insurance contracts by the person seeking insurance cover, fiduciary relationships, marriage agreements, family settlements HUF and Karta.
2. Silence is not fraud where there is no duty to disclose, example: sale of goods at Caveat Emptor or buyer beware

****Caveat Emptor: seller need not disclose until asked to do so**

- 3. Sometimes silence is in itself equivalent to speech and hence fraudulent

Discharge of Contract: Contracts come to an end by 6 ways as discussed below.

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- 1. **Discharge by performance:** offer to perform = actual performance, both the parties to the contract have fulfilled their respective obligations and the contract ends on a happy note
- 2. **Discharge by lapse of time:** when time is of essence to the contract, lapse of time automatically discharges the contract
- 3. ****Discharge by operation of law:** We have three methods:
 - a. Merger: merger of companies, amalgamation by absorption & consolidation, merger of two rights-superior and inferior rights, when an inferior right merges with a superior right the inferior right is discharged, example: a tenant buying the house he has rented currently
 - b. Unauthorised material alteration: if one party makes any changes to a contract without the consent of another party involved and the change is significant to the contract, then this is considered as unauthorised material alteration
 - c. Death or incapacity: discharges the contracts that involve personal performance
- 4. **Discharge of contract by mutual agreement:** We have five methods:
 - a. Novation: when novation takes place the old contract is substituted by a new contract between new parties, the consideration in the new contract is cancellation of the old contract by mutual agreement
 - b. Alteration: parties are same, contract is same, only a few changes are made by mutual agreement
 - i. Material: Tend to affect the legal aspects of a contract, example: change in time, etc.
 - ii. Immaterial: Typo errors and mistakes that do not affect the legal aspects of the contract
 - c. Rescission: to rescind or cancel, takes place before due date of performance
 - d. Remission: the promisee agrees to accept less than what was contracted for, difference from alteration is that the promisee is giving an approval for accepting less than what was promised

d. **Suit upon quantum meruit:** QM (quantum meruit) as much as is earned or in proportion to work done. If A has done 70% work and is told by B to not to the 30%, A can sue B for paying for 70% work.

- i. Where work has been done in pursuance of an agreement and the agreement is void on account of the conduct of the defendant
- ii. Where work has been done in pursuance of an agreement and the agreement has become void on account of supervening impossibility, provided the contract is devitable

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- iii. **For the performance of a non-gratuitous act although there exists no express agreement between the parties, the law infers that there was some kind of contract, **Quasi (certain relations resembling those created under a contract/ a finder of lost goods is under the obligation to restore them to the rightful owner, if he has sold the goods he has to pay for the same to the rightful owner right)** or constructive contract between the parties
- iv. **Sometimes even the defaulting party can recover quantum merit damages from the aggrieved party

Liquidated Damages & Penalty: Indian courts only awards damages lower than what you demand and over that is a penalty and it is only awarded by English courts.

Consumer Protection Act: Passed in 1986 for the better protection of the interests of the consumer and it envisages

- a. setting up of consumer protection councils at both centre and state levels: consumer councils are charged with the obligation of promoting and protecting a consumer's interest
- b. **a three tier redressal machinery/consumer courts: district forums → state commissions → national commissions, bottom to top respectively, so that consumers can ventilate their grievances
 - i. Jurisdiction is the competency of the court to handle cases, types of jurisdiction:
 - 1. Territorial:
 - 2. Original/pecuniary: for monetary cases
 - 3. Appellate: only the state and national commissions
 - 4.

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