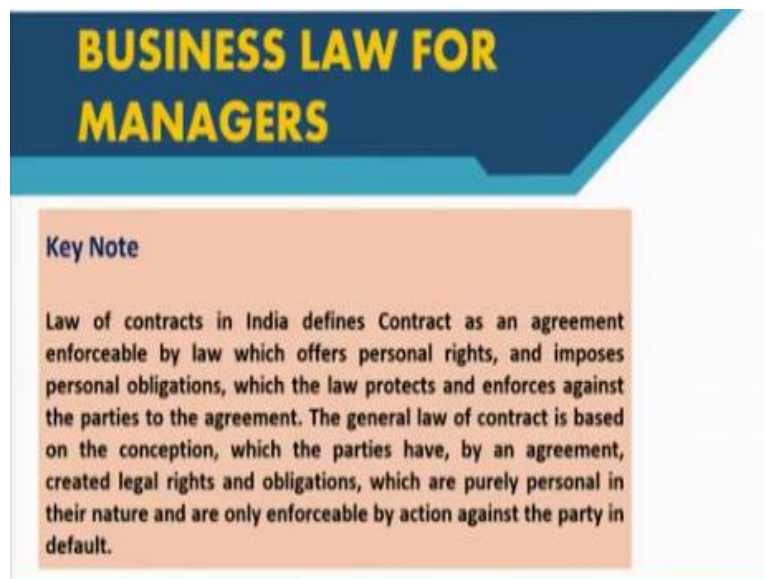


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**Module-4: Law of Contract**

**Lecture - 16**  
**Concept, Elements, Importance and Forms of Contracts**

Good afternoon, we are now on lecture 16 on Concept, Elements, Importance and Forms of Contract.

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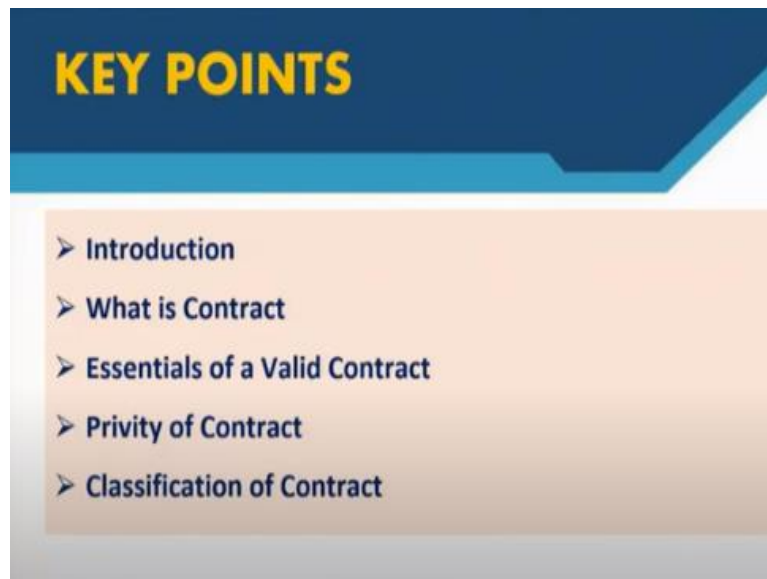


Law of contract is the one of the oldest and still surviving law, 1872. So obviously, it has stood the test of time. Very basic requirements were there which has been captured in this law of contract. Basic Elements of a contract, what are the essential ingredients of a contract? The good thing is even now, we so much depend on this act and it has been all the more visible and came to more limelight I think during the pandemic.

Because everyone was referring to, the best of lawyers were referring to the sections in the contract, when it can be enforceable, what situations it cannot be enforceable? What is that pandemic can be termed as force majeure? Force majeure means something beyond reasonable control. What happens in case of a force majeure? So, law of contract was referred to time and again, an act of 1872.

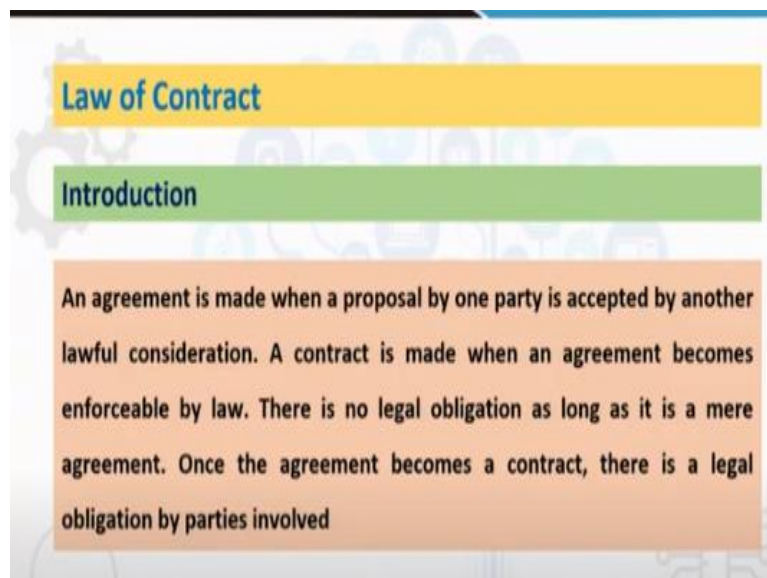
So, so live even now. Because the fundamentals of that law of contract is so strong and so basic that it has stood all the test of time and even today is referred to.

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What is contract, essentials of a valid contract, privity of a contract, classification of contract, we are going to see in these few slides.

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Basically, an agreement which is enforceable by law is a contract. An agreement which is enforceable by law. Now when does an agreement become enforceable by law? An agreement becomes enforceable by law when it has certain characteristics and these characteristics are called the essentials of a contract.

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## Law of Contract

### What is Contract?

An agreement enforceable by law.

In other words... " A promise or set of promises which the law will enforce".

The agreement will create rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, though in some cases the court may order performance by the party in default.

The normal method is, perception is, all agreements are contracts and all contracts are agreements. No. Though loosely we say so agreement is a contract but by contract we mean something which is enforceable by law. Therefore agreements, having all the criteria, characteristics as we discussed right now will only be enforceable. And then when it becomes enforceable, it becomes a contract.

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## Law of Contract

### What is Contract?

#### Examples:

Contract = Agreement + Legal Obligation

1. A agrees to sales a flat to B at a consideration of Rs. 25 lacs.
2. A invites B for a party at his place
3. A promises his son to give a Bi-cycles on his Birthday.

There has to be a legal obligation in general agreement. Certain examples are given. Somebody invites B for a party at his place is not a contract. There is no obligation, there is no legal obligation. Even giving a bicycle to a son on his birthday is not a contract, there is no legal obligation. A agrees to sell flat to B at a consideration of Rs. 25 lakhs is a contract because it is an agreement to sell.

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## Law of Contract

### Essentials of a Valid Contract

- ❖ **Consensus-ad-idem:** It means identity of minds. There must be two parties to a contract. The minds of both the parties to the contract must be ad-idem.
- ❖ **Legal Relationship:** The agreement must create legal relationship between the parties. If there is no intention on the part of parties to create legal relationship, there is no contract.
- ❖ **Lawful Consideration:** Consideration means "something in return". In other words, it means "something in exchange for something".

Now what are the essentials of a valid contract? The first is consensus-ad-idem. It is all Latin. If you look at law, you will find lot of Latin jargons, which is coming from. It means identity of minds. There must be two parties to a contract who are looking at it at the same time in the same way. I am going to sell you a Maruti second-hand car and you are thinking I am going to sell you a Maruti first-hand car.

The concept is totally different. You are thinking I am going to sell you a Maruti a particular brand Alto and you are, I am thinking of or I have communicated to you, I feel I have communicated to you Maruti Alto. But you are thinking, no it is a Maruti Dzire. So, there is no contract. There is no identity of minds. The contract falls flat. A legal relationship, it must create a legal relationship on the parts of the two.

If there is no legal relationship creation, then there is no contract. Consideration. Most important, perhaps the most important in these essentials of a valid contract. Something in return. It can be anything. It can be money or money's worth. But something has to come in return. Consideration is always a two-way traffic and consideration is maybe past, present or future.

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## Law of Contract

### Essentials of a Valid Contract

- ❖ **Lawful object:** The object or the purpose of an agreement must be lawful. It must not be immoral or illegal or oppose to public policy.
- ❖ **Competent parties:** At least two parties are essential for every valid contract.
- ❖ **Free consent of parties:** The consent of the parties to the agreement must be true, full and free.
- ❖ **Certainty of terms:** The terms of the agreement must be precise and certain. They must not be vague or uncertain. If so, the agreement is not enforceable.
- ❖ **Possibility of performance:** The agreement must be capable of being performed. An agreement to do an impossible act cannot be enforced

Lawful object. The objects for the purpose of agreement must be lawful. Unlawful, immoral activities, which are against public policy, even if you enter into a contract for that, that cannot be enforceable. If you go to enforce you may be pushed into the jail for entering into a contract which is unlawful. Parties must be competent to the contract. Competency of contract, competent parties, we will discuss little later when we go to the other slides.

One of them is a minor cannot enter into a contract. Anybody below 18 years cannot enter into a contract. That is the competency of parties. A person must be of sound mind, then only we can enter into contract. There are other parameters which requires competency of parties. Free consent, very important again. The consent must not be coerced, forced. It must be free.

Certainty of terms. The terms of the agreement must be precise, clear. Ambiguity in the very beginning of an agreement, the agreement may become unenforceable, because it is not clear. No one can make out what was the intention of the parties to enter into this agreement. The certainty of the terms are missing. Possibility of performance. Can this contract be performed?

Something which is not possible to be performed from day zero cannot be entered into a contract. Subsequently it becomes impossible to perform is a different aspect. But from the very beginning if it is, the contract is incapable of being performed, then the contract cannot be enforced. It is not a contract at all.

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**Law of Contract**

**Essentials of a Valid Contract**

- ❖ Agreement not expressly declared void: The agreement must not have been expressly declared void by any law in force in the country.
- ❖ Compliance with the legal formalities: According to the Indian Contract Act, an agreement may be oral or in writing. Where the agreement is to be in writing, it must comply with the necessary legal formalities as to writing, registration and attestation.

It should not be expressly void. We call it contract void ab initio. Contract with a minor is void ab initio. Contract against the law is void ab initio. So, agreement not expressly declared void. Compliance with legal formalities. Indian contract has certain agreements, maybe overall maybe writing. It can be very much oral agreements, but certain agreements have to be in writing.

So, in those cases registration is required, attestation is required, sale of immovable properties cannot be oral agreements.

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**Law of Contract**

**Importance of Contracts**

- ❖ Legally binding.
- ❖ Legally enforceable promise or set of promises.
- ❖ Between two or more competent parties.
- ❖ Law recognizes a duty.
- ❖ Law of contracts affects all aspects of daily life.
- ❖ Commercial Law Contracts having to do with commerce.
- ❖ Common Law Contracts derived from the judgments and decrees of courts.

This we have just covered.

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**Law of Contracts**

**Classification of Contracts.**

- In writing
- Oral- Contract
- Inferred from the Conduct
  - Hiring a Cabs
  - Purchasing an Item from Shop ( ENETRING A MALL – SUIT FILED FOR NON PURCHASE)
- Advisable to have written contract. Mandatory written contract is -
  - Application for transfer of share
  - Application for purchase of share
- Memorandum of Association of Company
- Mortgage or sale of immovable property

Classification of contracts can be in oral. So many oral contracts are examples of their hiring cabs, purchasing items from shop. Hidden contracts, transfer of shares, purchase of property, memorandum of association, articles of association, mortgage.

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**Law of Contract**

**Other forms of Contracts**

- ❖ Formal vs. Informal Contracts.
- ❖ Unilateral vs. Bilateral Contracts.
- ❖ Valid, Voidable, Void, and Unenforceable or illegal Contracts.
- ❖ Express vs. Implied Contracts.
- ❖ Executory vs. Executed Contracts.
- ❖ Quasi Contracts vs. Contracts Implied in Fact.

Forms of contract can be formal contracts, informal contracts, unilateral contracts with one party, one-to-one contracts, bilateral contracts, trilateral or three parties' contract can happen. Valid, voidable, void, and unenforceable contracts. Void contracts we have seen, contracts which cannot be enforced by law. Void ab initio is right from the beginning.

Even there are contracts which are voidable, at the option of the sufferee, the one who suffers, one at the receiving end. He takes a decision whether it will be void or not. He

can still continue with the contract. A valid contract which is neither of these it becomes a valid contract. Anything which is out, all the elements are present, it becomes a valid contract.

All the elements we have explained starting from consensus, identity of minds to the contract being in writing contracts. If all these are present, it becomes a valid contract. If any of these items are missing, it can be either void, it can be voidable or unenforceable or illegal contract. So basically, two criteria, valid contract and non-valid contract. Non-valid contracts can still be under void, voidable, unenforceable or illegal.

Now voidable is a contract where its option is of the sufferer. Supposing there is a contract to use a supply car of a certain type. Now you have not supplied the car but still you are okay with the contract. I will take the other car also in place of this, then that becomes a contract. You amend the contract, make a fresh contract. You did not make the, you did not make the contract void.

You made it voidable. It could have been void but you have not accepted, you have still accepted the contract and you have not made the contract void. Express contract, implied contracts. We will express this. Executory executed contracts. Quasi contracts, we will see the examples one by one.

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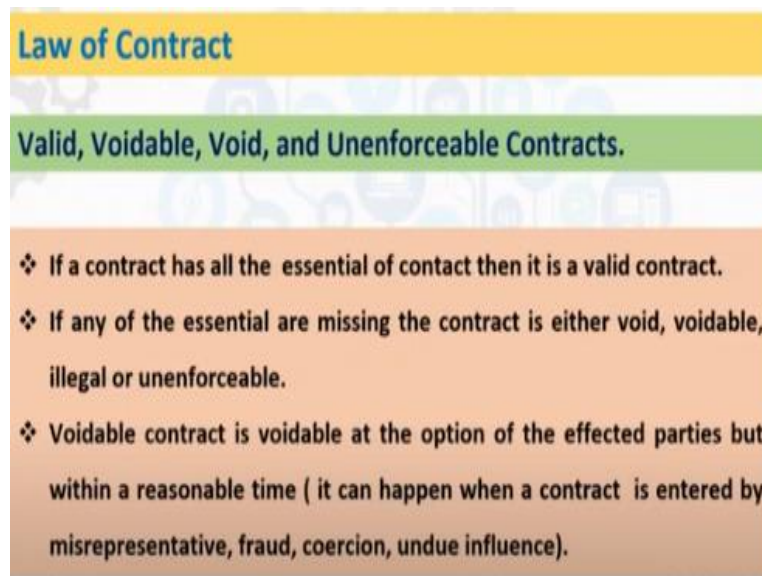




Unilateral contracts means contracts where it is one sided only. Those contracts normally can lead to lot of disputes. Somebody changes some terms in a contract without checking with you, where there is an agreement, full-fledged agreement. One of the terms of the conditions was changed by the other and he is trying to enforce that on you. That is a unilateral contract.

Unilaterally you cannot do that. Or even if you do it, I do not accept it, then you cannot do that. If I accept that unilateral change it becomes an amendment.

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**Law of Contract**

**Valid, Voidable, Void, and Unenforceable Contracts.**

- ❖ If a contract has all the essential of contract then it is a valid contract.
- ❖ If any of the essential are missing the contract is either void, voidable, illegal or unenforceable.
- ❖ Voidable contract is voidable at the option of the effected parties but within a reasonable time ( it can happen when a contract is entered by misrepresentative, fraud, coercion, undue influence).

This we have just explained. If all the elements are there in a contract it is a valid contract. If any of the elements are missing, it became void, voidable or illegal, unenforceable. Voidable at the option of the affected party, the sufferee.

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## Law of Contract

### Valid Contract an Agreement is Void *ab initio*, for example

- ❖ Contract with a minor is void *ab initio*,
- ❖ Wagering agreement ,
- ❖ An agreement to enter into agreement in future,
- ❖ Agreement in restraint of trade
- ❖ Agreement to engage child labour
- ❖ Agreement not to pay bonus to worker
- ❖ Agreement not to join competitors

Now void *ab initio* contracts. Wagering contract. Wagering means speculative contracts. If you have entered into a contract on speculation, based on something happening based on which you will pay somebody something. So that is a wagering contract. Agreement in restraint of trade. If it imposes a restriction on trade, free trade is not there, then in that case, it is a contract which is not a valid contract it is void *ab initio*.

There can be examples where business operations are getting restrained, because of certain restrictions been put by a particular state government. If that is the case, one can go to the court, file a writ petition, go to the court and ask for relief that is a restraint of trade. So that can be a case for relief.

Anything that is putting and similarly, if an agreement is there in which there is a restraint of trade, they will not be allowed to trade or you will not be allowed to do any business in a particular area, that kind of restraintment is there, then that is a void agreement. Child labor is not allowed in India. We find factories engaging child labor in some cases.

However, you will find those contracts are never with the child. Child labor contracts are never intended, with all contracts are entered into with contractual workers with others and they in turn, employ child laborers. But as a principle you are responsible, corporate is responsible. The big industry house is responsible not to engage child labor. Agreement not to join competitor.

You enforce an employee to not to join competition. That is a void ab initio agreement. Employee if I freely join competition. Nobody can stop an employee in joining competition. There can be a cooling off period of one year, two years maximum. But one cannot stop an employee in joining competition. A person who is a mechanical engineer, a chemical engineer, or specialized engineer he cannot join anything other than the competition only.

A person who specializes in pharma can join a pharma company only. So, you cannot stop somebody from joining competition.

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**Law of Contract**

**Express Vs. Implied Contract**

- ❖ Express Contracts the parties set forth their intentions specifically and definitely in writing or oral.
- ❖ Implied Contracts is inferred from the actions or conduct of the parties.

Express contracts are written contracts. Implied contracts by your virtue by your action you are entering into contract. The moment you are entering into a cab or you are entering into any transport then you are entered into a contract to pay for the services.

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Quasi contracts are contracts, which are implied in law. Implied in fact contracts hold that sufficient evidence exist for the court to determine that the parties were meant to contract with each other.

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Offer and invitation to offer. These are two concepts which are important to understand that something can be an offer. And something can be an invitation to offer. When you are when a company offers shares, he gives a prospectus, he gives details of the company. He is giving an invitation to offer. It is not an offer. Now you make an application to the company.

It is not that the company will accept that application. It can be oversubscribed, it can be less subscribed, the company may withdraw, many things might happen.

Application does not mean allotment. You are now making an offer; company has to accept that offer. Then it becomes an allotment. So initially when the company is making you aware of something which is coming out, is making a prospectus, IPO.

It is an invitation to offer, inviting to give offer to us. We are not offering. We are offering only awareness to you about the shares that is going to the public. It is for the general public. It is not specific to anybody. It is not marked to Mr. X, Mr. Y, Mr. Z. It is an invitation to all. Similarly, a person who wants to sell a car. He gives an advertisement in the newspaper; I want to sell my car.

So, it is not an offer. It is not to a specific individual. It is a general notice he has given, interested parties may contact. Price range he has given. Even within that price range if I come and quote and say you have to give me the car, there is no way you can enforce the car to you. It is his selection. You are now coming with an offer within that range. Now it is for him to accept or not to accept.

So that is an invitation to an offer and how invitation to offer and acceptance happens in case of a share issue, in case of an advertisement in newspaper.

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We have taken, I have taken certain references to this whole thing. But I think we need to understand one thing that law of contract is more of cases, how it happens. It does not happen only like we are engaged in few words, certain terms we have used

and that is how the contract takes place. It is basically an intent. Many contracts happen where nothing is written by oral.

And I have experience of that, where oral contracts are also becoming binding in nature. It is purely based on trust and faith. Many times, over phone contracts are being finalized. There is no record of that. Even two parties are having the same intent, purpose, objective, consideration, possibility of performance, all things are present. Only thing it is not in written.

Still, the contract holds good. The question come what happens if other party does not agree? Well, that risk is always there in those kinds of contracts. Evidence to find out they enter into a contract then making a case against this in the court of law is a huge task, but trust and faith is a guiding principle for those kinds of contracts. But incorporates, normally written contracts are always welcome.

And in contracts, we want all, we ensure that all the elements of the contract is there. One of the most important elements in that is consideration. Consideration need not be adequate as we say. Consideration need not be adequate. Two parties may enter into a contract where the consideration maybe even one rupee. No one can challenge that contract as long as the two parties are not challenging the contract.

Not only that, consideration can be in the present, past or future. It can be paid immediately; it can be paid in advance and it can even be paid in future. The other aspect of consideration is though it is important that consideration is an element of contract, there is also cases where no consideration no contract. That is, we always say without there is any consideration there cannot be a contract, but there are exceptions to that.

So, no consideration, no contract is right. However, there are exceptions in case of natural love and affection. Father passes on property to son or parents pass on property to a son or a daughter. There is no consideration for that other than natural love and affection, but that is enforceable. That is a valid contract. A will is a valid contract. A registered will is a valid contract, is enforceable by law.

What is the consideration given by the other party? Nothing, only natural love and affection. Only for that this is given. So that is enforceable by law. Similarly, for past deeds, if somebody does something and accepts that, that also becomes a valid contract. Gift is a valid contract. A gift deed is a valid contract. So principal and agent relationship, again is a valid contract.

Maybe no consideration is there between them when they are entering into a contract, appointing him as an agent. He may not give any security for that. The contract may be between the principal and the agent based on principal giving that business to him. Agent right now not paying anything to the principal. But the contract still holds good, because the agent is only an extension of the principal.

The primary responsibility lies with the principal. So past deeds, which were past dues also which are time barred, if after that also some action is taken because of which you give a letter saying that I acknowledge the due. Yes, it is time barred. Three years have gone. After six years, seven years, you revive that, give a letter saying I acknowledge the dues.

And I owe that money to you, will pay that money. I will pay that money within such and such date to you. Then a fresh call of action arises and a fresh contract arises. And this contract is a valid contract, can be enforced against if you do not pay within those days. Though, at that particular point of time, no consideration flows because consideration has flown in the past and that become time barred.

But you have revived that after 3 years or 4 years or 5 years by a letter by a contract that I would pay you that money back. So that also becomes a valid contract. So, no consideration no contract has got its exceptions. But important point is consideration need not be adequate. Many times, we have felt that consideration has to be adequate, but there are ample cases where consideration need not be adequate and that cannot be questioned unless and until the parties question it.

And they sometimes question it afterwards, when they bring in issues like undue influence, coercion, force. So, it was not a free contract. It was not a free consent. So, these are the challenges in a contract. When you draft a contract, it has to ensure that

the contract should if it is not for adequate consideration, it should not hit the free consent button.

That should be very well captured, that it has done with free consent, with absolute knowledge of all, and there is no coercion in case of coercion or any kind of influence. Freely, we are giving this property to you or I am giving this property to you at this price determined by us mutually. No one can question. But however, if it is something to do with the property, then in that case, the property maybe valued two crores, you may give it at 10 lakhs or 50 lakhs.

But when it comes to stamp duty registration, the market value will be taken, not the value that you have entered into with him for any reason. So that is more or less but the consideration part of it goes. Free consent again is something which is very debatable after issues happen with that. Later on, realization comes that this contract has not been done with free consent.

There was some kind of influence. To establish that is a challenge. There has to be evidence to establish that and more so when you are doing it after few years after execution. So, it becomes very doubtful that why after so many years this question of undue influence comes. If it actually would have come could have come within reasonable time, but may not be after four years, two years, five years like that.

Contracts, corporate contracts also contains another important clause which we always look into is force majeure. Why this clause is so important. Because the contract force majeure means, the word force majeure means beyond the reasonable control. So many times, the wordings of the force majeure needs to be carefully looked into.

Other party may get away by a force majeure, in which it says anything beyond the reasonable control of the either party and which may include even technological failures, maintenance of the plants, disruptions because of unforeseen circumstances. Anything and everything, any kind of disruption, lack of demand, unplanned shutdown of plants, these are all failures of performance.



Means your plant is not up to the mark. And that inefficiency of yours you are trying to get into or recover or you know insulate through force majeure. You are trying to say it is beyond reasonable control because I am inefficient. So, if you are inefficient in running your plant, why you are entering into business with me and make me also in the process inefficient.

So, force majeure is something which is to be looked into, not from the angle of only beyond the reasonable control. Whether this is really a situation of force majeure or not, that has to be seen. And if it is a critical material for you, if it is very critical supplier for you, if it is a critical item for you, the force majeure has to be carefully looked into. The pandemic has brought in the word pandemic also now in force majeure.

Epidemic and pandemic are part of force majeure now. When the pandemic happened, the first thing the contractors were unable to supply, even it went to the extent of payment. The debtors were unable to pay. The vendors were unable to supply. And then you are also unable to pay, you are also unable to supply.

So, you know, it was a situation where everyone is facing the same problem. And everyone is trying to send the same clue of a force majeure beyond reasonable control, which is partially right, it was beyond reasonable control. But performed activities, already performed, there also you are not paying the money, or asking for delay or asking for credit, asking for extension of time, citing force majeure.

Force majeure cannot delay the payment. That cannot be a force majeure reason that I will not delay I will not make the payment in spite of providing the receiving the services, because of force majeure. That cannot be accepted anywhere. Payment should be outside the purview of performed services, of services delivered.

But the question of delivering the time plan, time schedule if a situation like this arises, everyone has given time. Everyone, I mean more or less the enormity of the decision of the legal luminaries, the debates, the discussions that went, everybody said the same thing, that what the court will decide would be seen later on.

But right now, one should give time and not take any severe action like penalizing the contract or severing their contracts, or for that matter, taking somebody to court. It will not help because it is a situation beyond the control and nobody predicted this situation. So that is the role of force majeure. The other important thing in the contract is conditions precedent.

Very important to find out what are the conditions preceded in a contract. A contract cannot take place if the conditions precedent does not happen. For example, if the contract to supply power or a contract to establish storage tanks for storing materials. All these would require prior approval, prior approval of the regulatory body. Whether selling power or whether establishing storage tanks in the port area.

Environmental clearance is required, port authority's clearance is required. On the other hand, regulatory authority's permission is required to sell power, respective areas, wherever you are trying to sell power that respective electricity regulatory commission has to give you the power. So, you are entering into contract to sell power to a particular party at a particular price, everything is determined.

And you are saying I am going to supply this power and there is a minimum quantity clause also. The minimum this many powers I will supply. If I fail to supply then I will ensure that you get this supply. If I even cannot ensure you will buy this power. Any differential price I will pay. So, you are writing everything in the contract.

But you are not considering one thing that your power sale is subject to the clearance from the regulatory commission or the regulatory board, whatever it is, the whose permission is required. So, you put very clearly on the condition's precedent that this permission, this contract will take effect only when the permission is reached is number 1.

Number 2, as and when the permissions are reduced and not given are not be able to generate power and therefore the question of supply minimum power will not happen. So, the buyer also would know that he is running that risk, that here is a body he can only supply when he gets the approval, obviously. Without the approval I cannot

supply. Similarly, for tanks, storage tanks at ports etc., environmental clearance is required.

So, unless the EC comes you cannot enter into the, contract cannot take effect. We call it the effective date of a contract. The effective date of a contract is important in a contract because the contract will not have any liability for anyone unless and until the condition's precedents compliance is done. Contracts one important thing also has to be seen is that there is an exit clause in every contract.

That either party may terminate the contract without assigning any reason with sufficient notice. It should not be that you are just shuttled up in that contract, you do not you cannot come out of that contract. True for either party. But important that give reasonable notice and important that whatever has been performed till that time of the contract is honored by all, till the time of termination is honored by both the parties.

Both parties should honor what is done till such time. That is called you know, free exit clause. You should exit, you should have a free exit clause. It is not that you cannot exit till the other party gives consent or till such time all this happens, you know, or there is a particular breach. If the breach does not happen you cannot terminate. No, there should be a free exit.

Even if there is breach or no breach, we can terminate the contract by giving notice of say three months or six months. The other important point in a contract to be seen is jurisdiction clause, arbitration clause and dispute settlement. Because if there is an arbitration, then it has to be neutral arbitration. There has to be arbitrator for both sides and both sides then prepare a third arbitrator will be a neutral arbitrator.

That is normally the procedure. And if there is arbitration, you cannot go to court directly. Only after you exhaust your rights of arbitration, then only you can go to court.

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## CONCLUSION

This lecture session has covered various aspects of an agreement or contract including- introduction, what is contract, essentials of a valid contract, privity of contract, classification of contract. Learning all about will help learners generate their knowledge and capacity.

So, these are the basic points, which need to be considered in a contract. I thought of highlighting the basic points which are there, which needs to have as a business law professional, we should understand that a contract can have various minute details in its wordings. However, it is important that we also understand, we are not may not be legal experts per se but we also understand the nuances of a contract.

Force majeure, condition precedent, termination, arbitration, jurisdiction clauses are very important. We will discuss more as we go forward. Thank you.