

## **LL.B. I Term**

### **Paper – LB – 102 - Principles of Contract**

The law of contracts touches equally upon the lives of ordinary persons and the activities of small and big business. This branch of law deals with law relating to promises, their formation, performance and enforceability. It is scattered over several legislations. There are special legislations dealing with particular contractual relationships, e.g. The Sale of Goods Act, 1930, The Partnership Act, 1932.

This paper will include a study of general principles of contracts spelt out in sections 1-75 of the Indian Contract Act, 1872. The remaining provisions of this Act will be covered separately in two papers of LL.B. III/IV Term - Business Association – I (Partnership and Agency) and Commercial Transactions (Sale of Goods, Hire Purchase and Bailments) and one paper of LL.B. VI Term - Negotiable Instruments, Banking and Insurance. The statutory provisions would be supplemented with judicial pronouncements.

#### **Prescribed Legislations:**

- (a) The Indian Contract Act, 1872
- (b) The Specific Relief Act, 1963
- (c) The Indian Majority Act, 1875

#### **Prescribed Books:**

- (a) Nilima Bhadbhade, **Pollock & Mulla, Indian Contract & Specific Relief Acts** (13<sup>th</sup> ed., 2006)
- (b) J. Beatson, **Anson's Law of Contract** (28<sup>th</sup> ed., 2002)
- (c) H.K. Saharay, **Dutt on Contract – The Indian Contract Act, 1872** (10<sup>th</sup> ed., 2006)
- (d) Avtar Singh, **Law of Contract and Specific Relief** (10<sup>th</sup> ed., 2008)

#### **Recommended Book:**

M.P.Furmston, **Cheshire, Fifoot and Furmston's Law of Contract** (15<sup>th</sup> ed., 2007)

#### **Topic 1 : General Introduction – History and Nature of Contractual Obligations**

#### **Topic 2 : Formation of an Agreement**

Intention to create legal relationship; offer and invitation to treat; kinds of offer, communication, acceptance and revocation of offer and acceptance; modes of revocation of offer - Indian Contract Act, 1872, sections 2 – 10

- 1. *Carlill v. Carbolic Smoke Ball Co.* (1891-4) All ER Rep.127 1
- 2. *Pharmaceutical Society of Great Britain v. Boots Cash Chemist (Southern) Ltd.* (1952) 2 All ER Rep. 456 9

3.	<i>Balfour v. Balfour</i> (1918-19) All ER 860 (CA)	11
4.	<i>Lalman Shukla v. Gauri Datt</i> (1913) XL ALJR 489 (All.)	15
5.	<i>Bhagwandas Goverdhandas Kedia v. M/s. Girdharilal Parshottamdas &amp; Co.</i> , AIR 1966 SC 543	17
6.	<i>Harvey v. Facey</i> (1893) AC 552	28
7.	<i>Felthouse v. Bindley</i> (1862) 11 CB 869	29

### **Topic 3 : Making of an Agreement – Special Situations**

Tenders and Auctions - Indian Contract Act, 1872, sections 2 – 10

8.	<i>Union of India v. Maddala Thathiah</i> , AIR 1966 SC 1724	30
9.	<i>Rajendra Kumar Verma v. State of M.P.</i> , AIR 1972 MP 131	36
10.	<i>Kanhaiya Lal Aggarwal v. Union of India</i> , AIR 2002 SC 2766	37
11.	<i>Haridwar Singh v. Bagun Sumbrui</i> (1973) 3 SCC 889	39
12.	<i>Indian Airlines Corporation v. Sm. Madhuri Chowdhuri</i> , AIR 1965 Cal. 252	42

### **Topic 4 : Consideration**

Meaning; basis and the nature of consideration; Doctrine of Privity of Contract and of consideration, its exceptions; Exceptions of consideration – Indian Contract Act, 1872, sections 2(d), 2(f), 23 and 25

13.	<i>Kedarnath Bhattacharji v. Gorie Mahomed</i> (1886) 7 I.D. 64 (Cal.)	54
14.	<i>Doraswami Iyer v. Arunachala Ayyar</i> (1935) 43 LW 259 (Mad.)	56
15.	<i>Abdul Aziz v. Masum Ali</i> , AIR 1914 All. 22	58
16.	<i>Venkata Chinnaya Rau v. Venkataramaya Garu</i> (1881) 1 ID 137 (Mad.)	60
17.	<i>Nawab Khwaja Muhammad Khan v. Nawab Husaini Begam</i> (1910) LR 37 I.A. 152	62

### **Topic 5 : Capacity to Contract**

Legal disability to enter into contract - Minors, persons of unsound mind ; person under legal disability; lunatics, idiots; Restitution in cases of minor's agreement; Liability for necessaries supplied to the minor - Indian Contract Act, 1872, sections 10, 11, 12, 64, 65, 68; Specific Relief Act, 1963, section 33; Indian Majority Act, 1875

18.	<i>Mohori Bibee v. Dhurmodas Ghose</i> (1903) 30 I.A. 114	65
19.	<i>Khan Gul v. Lakha Singh</i> , AIR 1928 Lah. 609	69
20.	<i>Ajudhia Prasad v. Chandan Lal</i> , AIR 1937 All. 610	78

### **Topic 6 : Free Consent**

Free consent ; Definition – Coercion, Undue influence, Fraud, Misrepresentation and Mistake; Effect on contracts influenced by any factor vitiating free consent - Indian Contract Act, 1872, sections 13 – 22

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| 21. | <i>Raghunath Prasad v. Sarju Prasad</i> (1923) 51 I.A. 101                       | 87  |
| 22. | <i>Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib</i> ,<br>AIR 1967 SC 878 | 90  |
| 23. | <i>Lakshmi Amma v. T. Narayana Bhatta</i> , 1970 (3) SCC 159                     | 94  |
| 24. | <i>Tarsem Singh v. Sukhminder Singh</i> (1998) 3 SCC 471                         | 100 |

### **Topic 7 : Limitations on Freedom of Contract**

Circumstances in which agreements become void or voidable, Distinction between void and voidable agreements; Unlawful Agreements; Public policy; Agreements with unlawful consideration in part and objects; Agreements without consideration; Agreements in restraint of marriage; Agreements in restraint of trade; Agreements in restraint of legal proceedings; Ambiguous and uncertain agreements & Wagering agreements -Indian Contract Act, 1872, sections 23 – 30

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| 25. | <i>Gherulal Parakh v. Mahadeodas Maiya</i> , AIR 1959 SC 781  | 106 |
| 26. | <i>Niranjan Shankar Golikari v. Century Spinning &amp; Manufacturing Co. Ltd.</i> , AIR 1967 SC 1098  | 119 |
| 27. | <i>Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly</i><br>(1986) 3 SCC 156<br>(Also see <i>D.T.C. v. D.T.C. Mazdoor Congress</i> , AIR 1991 SC 101;<br><i>Bank of India v. O.P. Swarankar</i> , AIR 2003 SC 858) | 128 |
| 28. | <i>Dhurandhar Prasad Singh v. Jai Prakash University</i> ,<br>AIR 2001 SC 2552  | 145 |

### **Topic 8 : Discharge of a Contract**

Modes -Discharge by performance; Frustration; Supervening impossibility of performance; Grounds of Frustration and its effect; Discharge by Agreement and Novation - Indian Contract Act, 1872, sections 37 – 67

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| 29. | <i>Satyabrata Ghose v. Mugneeram Bangur &amp; Co.</i> , AIR 1954 SC 44                                   | 148 |
| 30. | <i>M/s. Alopi Parshad &amp; Sons Ltd. v. Union of India</i> , AIR 1960 SC 588                            | 158 |
| 31. | <i>Punj Sons Pvt. Ltd. v. Union of India</i> , AIR 1986 Del. 158   | 162 |
| 32. | <i>Easun Engineering Co. Ltd. v. The Fertilizers &amp; Chemicals Travancore Ltd.</i> , AIR 1991 Mad. 158 | 167 |

### **Topic 9 : Remedies for Breach of Contract**

(a) Damages; Types of Damages ; Basis of Assessment of Damages; Remoteness of Damages and Measures of Damages; Mitigation of Damages; Penalty & Liquidated Damages – Indian Contract Act, 1872, sections 73 – 74

33. <i>Hadley v. Baxendale</i> (1843-60) All ER Rep. 461	172
34. <i>AKAS Jamal v. Moolla Dawood, Sons &amp; Co.</i> (1915) XX C.W.N. 105	175
35. <i>Karsandas H. Thacker v. M/s. The Saran Engineering Co. Ltd.</i> , AIR 1965 SC 1981	178
36. <i>Maula Bux v. Union of India</i> , AIR 1970 SC 1955	182
37. <i>Shri Hanuman Cotton Mills v. Tata Air Craft Ltd.</i> , 1969 (3) SCC 522	186
38. <i>Ghaziabad Development Authority v. Union of India</i> , AIR 2000 SC 2003	196
39. <i>Oil &amp; Natural Gas Corporation Ltd. v. Saw Pipes Ltd.</i> (2003) 4 SCALE 92	200

### **Topic 10 : Quasi – Contracts**

Obligations resembling those created by Contract (Quasi – Contracts) : Concept and classification - Indian Contract Act, 1872, sections 68 – 72

40. <i>State of West Bengal v. B.K. Mondal &amp; Sons</i> , AIR 1962 SC 779	211
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#### **IMPORTANT NOTE:**

1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
3. The question paper shall include one compulsory question. The question papers set for the examinations held during 2007-08 and 2008-09 are printed below for guidance of the students.

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### **LL.B. I Term Examinations, December, 2008**

**Note:** Answer *five* question including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following
  - (a) Standing offer;
  - (b) All contracts are agreements but all agreements are not contracts.
  - (c) Executed and executory consideration;
  - (d) Liquidated damages;            (e) Minor's liability for necessaries.

2. (a) Novelty Computers (P) Ltd. Kamala Nagar, New Delhi exhibited in their showroom a computer with latest configuration and multi-media hardware and attached to it a price tag of Rs. 27,999 (inclusive of all taxes). X visits the showroom of the company and tenders a cash amount of Rs. 27,999 for the purchase of the said computers. The company, however, refuses to sell the computer saying that it has only one piece and that too has already been sold to someone else. Discuss whether X can compel the company to sell him the computer.  
(b) A writes a letter to B offering to buy his Maruti 800 car for Rs. 1,75,000 saying therein “unless I hear from you, I shall take the car to be mine for Rs. 1,75,000”. B gives no reply but sells the car to C. A. seeks your advice whether he can file a suit against B for damages on account of breach of contract. Advise A.
3. In the light of the dissenting judgement, critically examine the rule of law laid down by the Supreme Court in *Bhagwandas Goverdhandas Kedia v. Girdharilal Purshottamdas & Co.*, AIR 1966 SC 543.
4. B, a young wrestler of about 17½ years, looking much older than his age, procured a loan of Rs. 45,000 on interest at 12% per annum from M, a moneylender and executed a promissory note in his favour. B represented himself to be 21 years old at the time of getting the said loan. B invested Rs. 40,000 with a limited company on interest at 18% *per annum* and lost the remaining amount of Rs. 5,000 in gambling. However, the said company went into the liquidation and B’s entire investment was lost.  
When M filed a suit against B for recovery of the aforesaid amount, the latter pleaded ‘minority’. As a judge, how will you adjudicate the matter?
5. (a) “A stranger to contract cannot sue.” Elucidate the statement.  
(b) A filed a suit against his brother B for possession of a half-share in the property which was alleged to be ancestral one. The suit was dismissed. Later on, to secure reconciliation and family peace, B executed a registered deed agreeing to transfer the half-share in the said property to A. A filed a suit for possession on the basis of this instrument. B raised the plea that the agreement was without consideration and hence void. Decide.
6. (a) Discuss the essential ingredients of ‘undue influence’ and explain how the court should proceed in a case when there is allegation of ‘undue influence’ in a contract.  
(b) M’s son is bedridden and he needs money badly for his treatment. He agrees to dispose of his shop worth Rs. 5 lakh for Rs. One lakh only to N. After one month of the agreement, M applies for cancellation of the agreement on the ground of ‘undue influence’. Will he succeed?
7. Discuss whether A can take the plea of ‘frustration’ in the following cases:  
(a) A agreed to supply 500 picture tubes of color television at Rs. 3,000 per piece to B on 1-1-2008. The goods were to be delivered within one month. On 15-1-2008, the Government announces enhancement in the excise duty leviable on these picture tubes and in consequence the cost price rose from Rs. 2,700 to Rs. 4,000 per tube. A declines to supply the goods.

- (b) A agrees to sing at B's theatre at the night on January 1, 2008 but falls ill and is unable to perform on the agreed date. B sues A for breach of contract and claim damages.
8. (a) "Damages are compensatory, not penal." Elucidate.  
 (b) A agrees to sell 2,000 shares of a company to B at Rs. 170 per share. B was to take delivery of the shares on 15<sup>th</sup> February, 2008. By that date, there was depression in the share market and the value of the share had gone down to Rs. 80 only. B did not take delivery of the shares on 15<sup>th</sup> February, 2008. A retained the shares and ultimately sold them in September, 2008 at Rs. 170 per share.
- A files a suit against B for the recovery of Rs. 1,80,000 as damages. B contends that as A did not suffer any losses, he was not entitled to damages as claimed by the plaintiff. Decide the case.

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### LL.B. I Term (Supplementary) Examinations, May-June, 2009

**Note:** Attempt *five* questions including Question No. 1 which is compulsory.  
 All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (a) Distinguish between "offer and "invitation to treat".
  - (b) "A stranger to a contract cannot enforce the contract." Comment.
  - (c) Standard form of contract. Explain
  - (d) Write a short note on "Doctrine of Contract".
  - (e) Explain when proposal can be revoked.
2. A, a merchant who is in Calcutta, makes an offer on telephone to sell his house to his friend B, who is in Bombay. B, hearing the offer on telephone, gives his acceptance instantaneously. Where and when do you think the contract is concluded? What would happen had the parties negotiated by post? Discuss with reference to relevant case law.
3. Does the rule of estoppel apply against a minor, who misrepresents at the time of contract that he had attained the age of majority. Explain the nature of agreement with minor with reference to *Mohribibee v. Dharmodas Ghosh*.
4. "The word 'impossibility' has not been used in Section 56 of Indian Contract Act in the sense of mere physical or literal impossibility."  
 Explain the validity of the above statement with reference to decision in *Satyabrata Ghose v. Mugneeram Bangur*.
5. State the principles of estimating the amount of compensation for breach of contract and bring out distinction between ordinary and special damages.
6. What do you mean by a contract and how it is made? What are the legal issues involved in *Carlill v. Carbolic Smoke Ball Co.* and what was the decision of the appellate court regarding these issues?

7. "A contract which is regular in all other respects may still fail if consent of one of the parties is not free." Elucidate with the help of case law. Explain how undue influence is required to be proved and pleaded.
8. Define 'Acceptance' and explain the following statements:
  - (a) Acceptance must be absolute and unqualified.
  - (b) An agreement does not result from a mere state of mind, intent to accept a proposal or even a mental resolve to accept a proposal does not give rise to a contract. Furthermore mere silence cannot be a mode of acceptance of a proposal.

### LL.B. I Term Examinations, December, 2010

**Note:** Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Write short notes on any 4 (four) of the following:
  - (a) Kalia saves Gabber's property from fire. The circumstances show that Kalia had intended to act gratuitously. Can Kalia claim compensation from Gabber later on?
  - (b) Certain consignment of edible goods were sent by ship 'Peerless' from A in Chennai to B in Andaman Islands. The edibles were perishable and the port authorities refused to deliver up the goods to B except upon payment of an illegal charge for carriage. The consignee B pays the sum charged in order to obtain the goods. Can B later on recover the charge which was illegal and excessive?
  - (c) Pritam pays Rs. 10,000 to Shyam, in consideration of Shyam's promising to marry Lovely, who is Pritam's daughter. Unfortunately, Lovely is dead at the time of making the promise. What is the fate of the contract and can Pritam recover Rs. 10,000 from Shyam?
  - (d) A sends a letter to B promising to sell his car to him for Rs. 2,00,000. When is the proposal complete? B sends reply by telegram accepting A's proposal. When is the acceptance complete? A sends a telegram amending the price to Rs. 2,50,000. Upto what time it could be sent by A so as to be workable?
  - (e) Murari owes Mohan Rs. 20,000 but the debt is barred by the Limitation Act. Murari signs a written promise to pay Mohan Rs. 15,000 on account of the debt. Decide the fate of the contract.
2. Explain the meaning of past, present and future consideration. Give examples of each of them. Examine the validity of these types of consideration on the parity of Indian Contract Act, 1872.

'M' was an old lady. Just before dying she called for her daughter 'D' and her sister 'MS'. 'M' asked 'D' to grant an annuity of Rs. 50,000 per year to 'MS' for her life after 'M' is no more. 'D' in the presence of 'MS' agrees to do the same and afterwards enters into a written agreement to this effect with 'M'. 'M' dies thereafter and 'D' refused to pay her aunt 'MS' the promised sum. 'MS' sues 'D' for breach of contract. You are required to decide the case giving reasons.

3. What are the modes of communication of acceptance? When can we say that acceptance is complete with respect of these modes?

'N' was in the business of selling horses. His uncle 'U' visited his stud farm on a pleasure trip. 'N' gladly took him around and showed him the horses. 'U' returned to his place and after three days sent an e-mail to 'N' which said, "If I hear no more from you about that black horse, I shall consider it as mine for Rs. 15,00,000.00" Thereafter, 'N' did not reply back but instructed his manager not to put that black horse up for auction as it had already been sold to his uncle 'U'. The manager followed the instructions diligently and as a result all the horses except that black horse were sold. But 'U' never came forward to make payment for that black horse. 'N' sues 'U' to enforce the contract. Would he succeed? Give reasons for your answer.

4. Write a detailed essay on the legal position of agreements of minors. While writing your essay you are required to analyse the statutory provisions together with leading cases decided by courts in the context.
5. What are the essential ingredients of 'undue influence'? How is a plaintiff required to proceed when he seeks to avoid the contract because it was caused by undue influence? The onus of proof lies on whom in cases of undue influence?
6. What do you understand by discharge of contract? Mention the ways in which a contract would be discharged? Explain the 'doctrine of frustration' in the light of statutory provisions and case law.
7. What do you understand by breach of contract? Explain in detail the various remedies that are available for a breach of contract.
8. Analyse the definition of contract under the Indian Contract Act, 1872. What is the difference between a void agreement and void contract?

During the rainy season when dengue was assuming epidemic proportions in Delhi, Mosrap Co. Ltd. announced by advertisement that whosoever light their popular mosquito repellent (Smokefall) in their bed-room during sleeping hours will not be hit by dengue. One condition of the use mentioned in the advertisement was that the windows of the room during sleeping hours should remain closed. Further it was announced that if anyone is still hit by dengue, he will be compensated with Rs. 10,000. Sheela files a suit against the Co. successfully proving that she had bought Smokefall and still contracted dengue. The Co. refuses to pay compensation and defends by saying that how could the plaintiff prove that she always used the repellent during sleeping hours and with window closed which is an essential condition of the contract. Decide the case and support your answer with reasons, legal provisions and case law.



**LL.B. I Term (Supplementary) Examinations, July, 2011**

**Note:** Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any four of the following:-
  - (a) Liability to pay for non-gratuitous acts
  - (b) Privity of Contract
  - (c) Difference between void Agreement and void Contract
  - (d) Exceptions to consideration
  - (e) Revocation of offer
2. Explain the difference between 'offer' and 'invitation to treat' and discuss whether the following facts constitute offer or not:
  - (i) Display of goods with price tags in a Self-Service Departmental store
  - (ii) Menu Card handed over to a customer in a restaurant
  - (iii) Advertisement inviting tenders
  - (iv) Bid at an auction
3. Critically examine the legal principles laid down in *Bhagwandas Govardhan Kedia V. M/s Girdharilal Parshottamdas & Co.* (AIR 1966 SC 543) with respect to communication of acceptance.
4. Analyse the definition of consideration given in Section 2(d) of the Contract Act, 1872 and explain its main elements. Whether a promise to subscribe a certain sum of money for construction of a Hospital can be enforced by law?
5. Explain the nature of an agreement with a minor with reference to decision in *Mohiribibi v. Dharmoda Ghosh*.  
  
A while still a minor by falsely representing himself to be the age of majority entered into an agreement to sell his house to B and took from him full consideration amount of Rs. 50 lakhs. However, later A refused to execute the sale deed of his house in favour of B on the plea of minority. Advise B about legal remedies available to him against A.
6. What is meant by free consent? When is a contract said to be included by Undue Influence? What essentials are to be proved and by whom if a contract is sought to be avoided on the ground of Undue Influence?
7. "It is well settled that if and when there is frustration the dissolution of the contract occurs automatically."  
  
Examine the above statement with reference to statutory provisions and decided cases and discuss specific grounds of frustration which have become well established.
8. "Section 73 of the Indian Contract Act, 1872 is declatory of Hadley V Baxandle Rules."  
  
Examine the above statement and discuss the rules laid down by Anderson B is Hadley V. Baxandale.



## **LL.B. I Term**

# **Principles of Contract (General Principles)**

**Cases Selected and Edited by**

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