




V-LRN

VIRTUAL LEARNING NETWORK



International Business Environment

Block-4

Unit-14

Legal Framework Of Foreign Trade

Virtual Learning Network



Topics to be covered

Introduction

Legal framework of Foreign Trade when the relationship of the parties is contractual and Non-Contractual

An overview of Indian Contract Act 1872

Sale of Goods Act 1930- An overview

Summary

Introduction

- An effective regulatory and legal framework is necessary for the proper and sustained growth.
- In rapidly changing national and global business environment, it has become necessary that regulation of corporate entities is in tune with the emerging economic trends, encourage good corporate governance and enable protection of the interests of the investors and other stakeholders.



Legal Framework Of Foreign Trade When The Relationship Of The Parties Is Contractual

- **CONTRACT AND THE APPLICABLE LAW**

Contract is considered central to all international trade transactions. It is central mainly because the general principles including the limiting principles of contract are applicable to all types of contracts. Such general principles relate to formation, validity, operations etc. of contract.

Law

- **Law** is a system of rules enforced through a set of institutions.
- It shapes politics, economics and society in numerous ways and serves as the foremost social mediator in relations between people.
- Law governs a wide variety of social activities

Contract



A contract is an exchange of promises between two or more parties to do.



- Contract creates legally binding relationship and responsibilities.

Agreement

- Every promise or set of promises forming consideration for each other.
- An agreement is enforceable by law.
- All contracts are agreements but all agreements are not contracts.



Export sales contract (ESC)



where the exporter transfers the property in goods to the importer

An agreement to export where the exporter only agrees to transfer the property in goods at a future date or on the fulfillment of certain conditions



Basic Elements Of Export Contract

- ESC must involve two parties -the exporter (seller) and the importer (buyer)
- Goods form the subject matter of ESC may be existing or future goods.
- In case of export (or sale) the property in goods (ownership) is transferred immediately from the exporter (seller) to the importer (buyer).
- Price is the consideration in a contract of export sales.
- All other elements of a valid contract are also applicable to a contract of export sales



LEGAL FRAMEWORK OF FOREIGN TRADE WHEN THE RELATIONSHIP OF THE PARTIES IS NON-CONTRACTUAL

There is a set of circumstances where the parties to international trade transactions are compelled to obey with the provisions of certain laws and international conventions although their relationship are not contractual as they have not entered into any contract or there is no need for the same.

Exporter and the Government



Government of India has enacted various laws and regulations like Foreign Trade Act 1992, Foreign Exchange Regulation Act, Custom Act, Customs Tariffs Act, Pre-shipment & Quality Control Act etc. and it mandates the exporter to conclude his export contract subject to the provisions of these laws.



सत्यमेव जयते

Government of India



Exporter and International Agencies

The International Chamber of Commerce (ICC), formulated certain conventions (agreements) like INCOTERMS (International Contract Terms) 1990 and UPC (Uniform customs and Practices for Documentary credits) 1993 which have been universally accepted by the international business community to be applicable in international trade transactions.



Exporter and Consumers

Thirdly, increased consumerism in recent years has given rise to a set of Consumer Protection Acts, Product Liability Laws and Directives. Several countries world over have enacted Consumer Protection Acts to safeguard the interests of the consumers.

Indian Contract Act

Section 2 (h) of Indian Contract Act defines a contract as “an agreement enforceable by law” thus to make a contract there must be:

- An agreement
- The agreement shall be enforceable by law.



All agreements are not enforceable by law

Therefore, all agreements are not contracts.

Agreement

- According to Section 2(e) an agreement is defined as “ every promise and every set of promises forming the consideration for each other”.
- A promise is defined as an accepted proposal as Section 2(b) says “ a proposal when accepted becomes a promise “ Therefore it can be said that an agreement is an accepted proposal.



CONTRACT

- According to sec.2(h), a contract is defined as an agreement enforceable before the law.

AGREEMENT

- According to sec.2(e), every promise or set of promises forming consideration for each other.

PROMISE

- According to sec.2(b), When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

Agreement

**AGREEMENT = OFFER +
ACCEPTANCE**

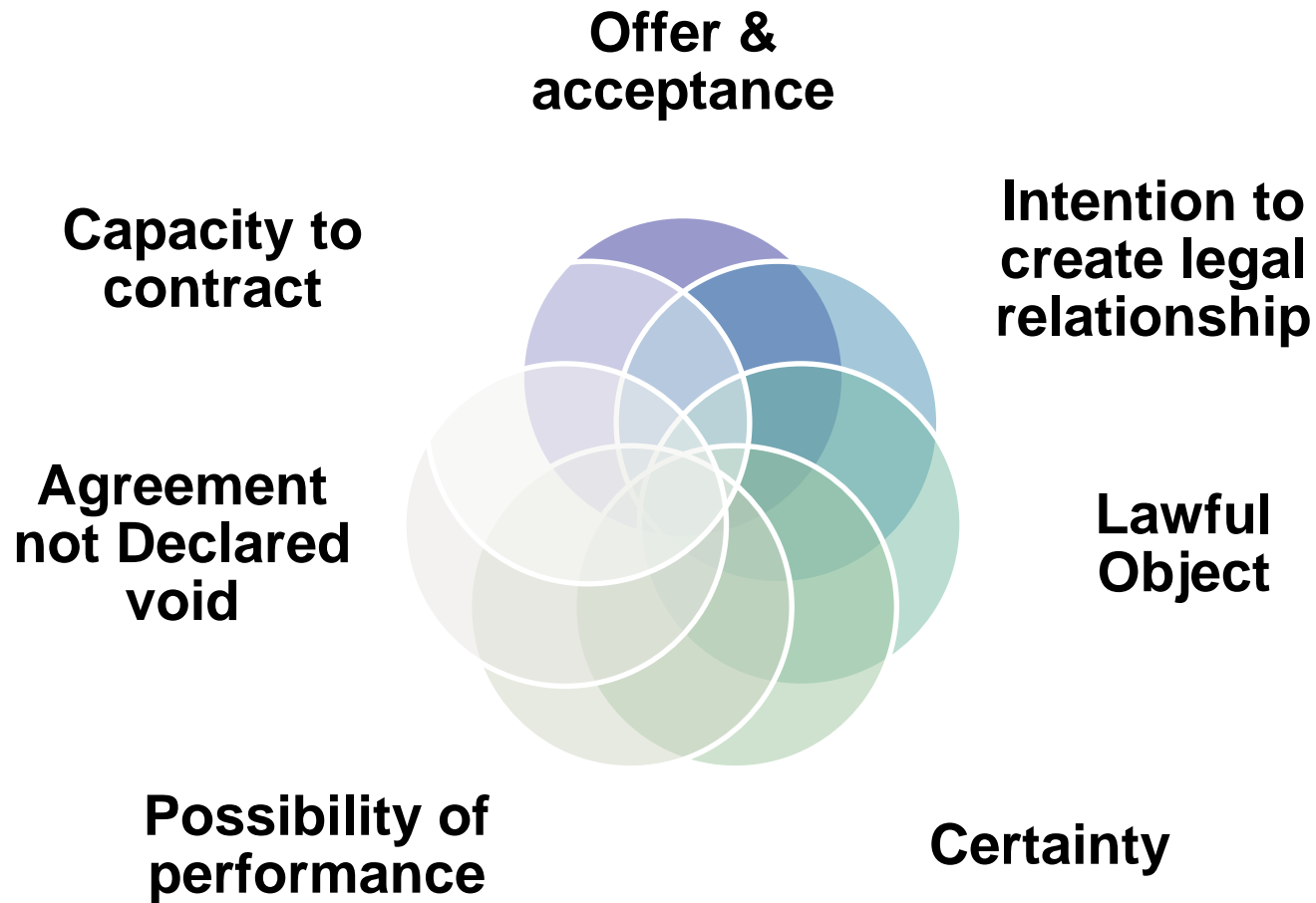
CONSENSUS - AD – IDEM:

According to Sec.13, meeting of minds or identity of minds or receiving the same thing in same sense at same time.

Essentials of a valid contract

- The agreement should be between two parties. An agreement is the result of a proposal or offer by one party followed by its acceptance by the other.
- The agreement should be between the parties who are capable to contract.
- There should be a lawful consideration and lawful object in respect of that agreement.
- There should be free consent of the parties, when they enter into the agreement.
- The agreement must not be one, which has been declared to be void.

Elements of a valid contract



Classification of Contracts

Classification Under Indian Law-

1) Intention or mode of formation

- **Express contract** - When contracts are either in writing or in oral.
- **Implied contract** - When contracts are neither in writing nor in oral.



Classification of Contracts(Contd.)

2) Validity or Enforceability

- **Valid Contracts** : Valid contracts are contracts which have all the essential elements of a valid contract.
- **Void Agreements** : As defined under Sec.2(g) void agreement is an agreement not enforceable by law.
- **Unlawful Agreement** : As defined under Sections 23 & 24, an agreement is unlawful and void if its object or consideration is unlawful or both are unlawful.
- **Illegal Agreements** : Illegal agreement is an unlawful agreement whose object or consideration is criminal in nature or immoral in character or both involve criminality or immorality.

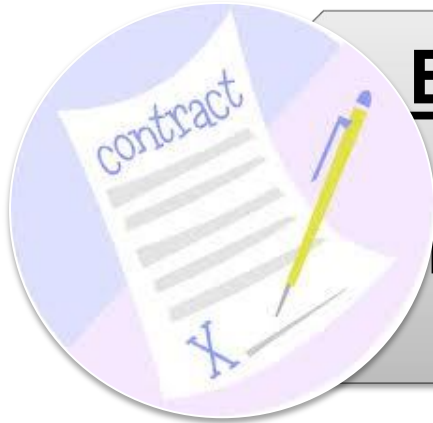


Classification of Contracts(Contd.)

- **Voidable Contracts** : According to Sec 2(i) a voidable contract is a contract which is valid in the beginning but can be avoided subsequently at the option or instance of one of the parties to the contract, but not at the option of the other party.
- **Void Contract** : According to Sec 2(i) a contract which ceases to be enforceable by law becomes void.
- **Unenforceable Contract** : An unenforceable contract is a contract which is neither void nor voidable but cannot be enforced in a court.

Classification of Contracts(Contd.)

3. Based on performance



Executed contract: In a contract where both the parties have performed their duties, there is remaining nothing to perform.



Executory contract: In a contract where both the parties are yet to perform their duties.

Classification of Contracts(Contd.)

4. Based on obligations



Unilateral contract: In a contract one party has performed his obligation and other person is yet to perform his obligation.



Bilateral contract: In a contract where both the parties have performed their obligation. Bilateral & Executory are same and inter-changeable.



Classification of Contracts(Contd.)

5. Quasi Contracts : an obligation of one party to another imposed by law independently of an agreement between the parties.



Definition Of A Contract Of Sale

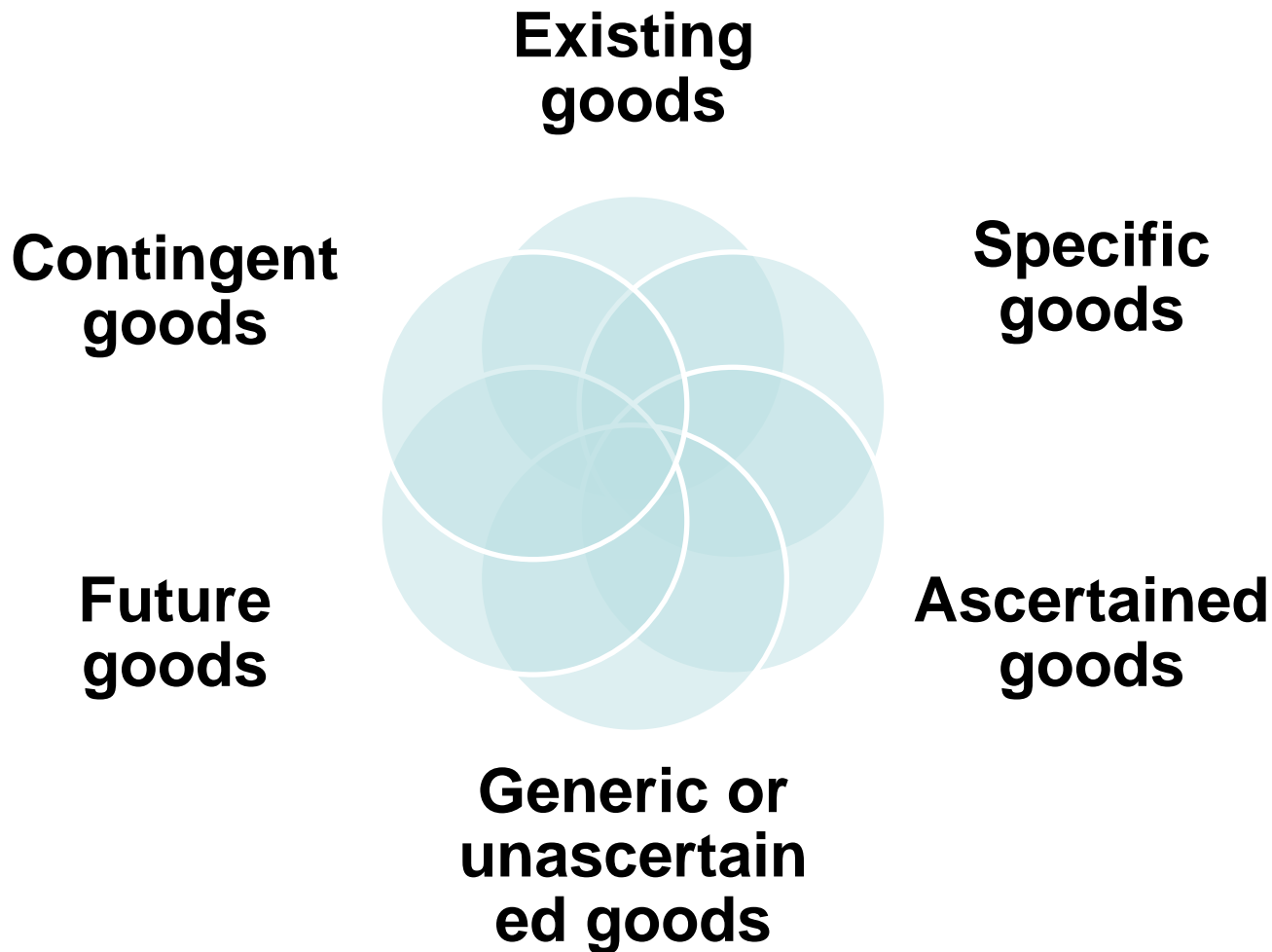
Section 4 defines a contract of sale as “a contract whereby a seller transfers or agrees to transfer the property in goods to the buyer for a price”



Essentials Of A Contract Of Sale

- There must be at least two parties.
- Transfer or agreement to transfer the ownership of goods.
- The subject matter of the contract must necessarily be goods.
- Price is the consideration of the contract of sale.
- Payment by installments.
- All other essentials of a valid contract as per the Indian Contract Act, 1872 must be present.

Classification of goods





Documents of title to goods

Any written instrument, that in the usual course of business or financing is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers.

A document of title is usually either issued or addressed by a bailee to a bailor . Its terms must describe the goods covered by it so that they are identifiable as well as set forth the conditions of the contractual agreement

Documents of title are an integral part of the business world by promoting the free flow of goods without unduly burdening the channels of commerce.

A person who possesses a document of title can legally transfer ownership of the goods covered by it by delivering or endorsing it over to another without physically moving the goods.

Stipulations as to time

- Stipulations as to time in a contract of sale fall under the following two heads:
 - Stipulation relating to time of delivery of goods
 - Stipulation relating to time of payment of the price

As regards the time fixed for the payment of the price, the general rule is that 'time is not deemed to be the essence of the contract', unless a different intention appears from the terms of the contract (sec. 11). Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account.

Express & Implied Conditions & Warranties

**Express
condition
or
warranty:**

**These may be of
any kind that the
parties may
choose to agree
upon,**

**Implied
conditions
and
warranty**

**They are considered
to be incorporated by
law in every contract
of sale of goods
unless the terms of
the contract show a
opposite intention.**

Summary

- The exporter, in the course of international trade transactions, is related contractually to importer and the various servicing agencies and non-contractually to the International Agencies, the Government and the consumers. This relationship becomes legal and binding.
- Such contractual and non-contractual relationships are subject to the limits of various laws and regulations framed thereunder. The parties have to operate within the units and in accordance with the provisions of such laws.

Thank
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