

LAW GENERAL

IBBI VALUATION EXAMINATION –

LAND & BUILDING

PLANT & MACHINERY

CEV INTERNAL APPRAISERS FOUNDATION

IBBI/RVO/2018/010

REGISTERED VALUERS ORGANISATION (RVO) WITH IBBI

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Strictly Private and Confidential

LAW - GENERAL

- Indian Legal System: Salient Features of the Indian Constitution, Fundamental Rights, Directive Principles of the State Policy –
- Government: Executive, Legislature and Judiciary –
- Laws of Contract: Formation of a Contract, Parties, Void, Voidable and Unenforceable Contract, Contingent Contract, Misrepresentation and Fraud and effect thereof, Termination of a Contract, Remedies for Breach, Performance of Contract, Indemnity and Guarantee, Law of Agency –
- Tort: General Principles of Tort, Tort affecting Valuation –
- Law of Arbitration and Conciliation: Salient Features –
- Auction: Authority of Auctioneer, Duties of Vendor, Purchaser and Public, Misdescription and Misrepresentation, Advertisements, Particulars and Catalogues, Statements on the Rostrum, Conduct of Sale, Reservation of Price and Right to Bid, Bidding Agreements. Memorandum of the Sale. The Deposit, Rights of Auctioneer against Vendor and Purchaser –
- Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

LAW - GENERAL

- Laws of Contract: Formation of a Contract, Parties, Void, Voidable and Unenforceable Contract, Contingent Contract, Misrepresentation and Fraud and effect thereof, Termination of a Contract, Remedies for Breach, Performance of Contract, Indemnity and Guarantee, Law of Agency –

Indian Contract Act

Section 1: Short Title Extent, Commencement. –

It extends to the whole of India [except the State of Jammu and Kashmir]; and it shall come into force on the first day of September 1872.

Indian Contract Act

Section 1 to 75 : Deals with General Principles of contracts.

Section 124 to 238 : deals with Specific kinds of contracts only.

Indian Contract Act

Definition of a contract: Sec. 2(h) : "An agreement enforceable by law is a contract."

Flow

Contract ← Agreement ← Promise ←
Accepted proposal ← Proposal/offer.

Indian Contract Act

Interpretation Clause : (Section 2)

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said **to make a proposal**;

(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**;

(c) The person making the proposal is called the “**promisor**”, and the person accepting the proposal is called the “**promisee**”;

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a **consideration** for the promise;

Cont....

Indian Contract Act

Interpretation Clause :

- (e) Every promise and every set of promises, forming the consideration for each other, is an **agreement**;
- (f) Promises which form the consideration or part of the consideration for each other are called **reciprocal promises**;
- (g) An agreement not enforceable by law is said to be **void**;
- (h) An agreement enforceable by law is a **contract**;
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a **voidable contract**;
- (j) A contract which ceases to be enforceable by law becomes **void** when it ceases to be enforceable.

Indian Contract Act

Rules of Proposal

- It may be express or implied.
- It must contemplate to give rise to legal relationship.
- Terms must be certain.
- Offer must be communicated
- Special terms must be communicated in a special manner
- Offer should not contain a term the noncompliance of which would amount to acceptance.
- It may be specific or general.

Indian Contract Act

Rules of Acceptance

- The person to whom the offer is made must give it.
- It must be absolute and unqualified.
- Acceptance must show to fulfill a promise.
- Acceptance of offer means, acceptance of all terms attached to that offer.
- Mental acceptance is ineffectual.
- It must be expressed in the prescribed manner or in some usual manner.
- It must be given within a reasonable time.
- It must succeed the offer.
- Acceptance must be made before the lapse of an offer.

Indian Contract Act

'Every contract is an agreement but every agreement may not be a contract'

Indian Contract Act

Essentials of a valid Contract (Section 10):

- Agreement
- Intention to create legal relationship
- Lawful consideration
- Capacity of the parties
- Free consent
- Lawful object
- Certainty of terms
- Possibility of performance
- May be Writing and should be registered if required.

Indian Contract Act

Essentials of a valid Contract

- Agreement

Section 2 (e) Every promise and every set of promises, forming the consideration for each other, is an **agreement**;

Indian Contract Act

Essentials of a valid Contract

- Intention to create legal relationship

Social Engagement are not binding e.g.
“An agreement to have Lunch at Friend Place.”

Indian Contract Act

Essentials of a valid Contract

- Lawful consideration

Section 23. What considerations and objects are lawful, and what not.—

The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent ; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or

opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.“

Indian Contract Act

Essentials of a valid Contract

- Capacity of the parties

Section 11. Who are competent to contract.—

Every person is competent to contract who is of the **age of majority** according to the law to which he is subject , and who is of **sound mind** and is **not disqualified from contracting** by any law to which he is subject.

Section 12 - What is a sound mind for the purposes of contracting.—

A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Example person disqualified from Contracting

- Alien Enemy
- Foreign Sovereign and Ambassador.

Indian Contract Act

Essentials of a valid Contract

- Free consent

Section 13. “Consent” defined.—

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Section 14. “Free consent” defined.—

Consent is said to be free when it is not caused by—

- (1) coercion, as defined in **section 15**, or
- (2) undue influence, as defined in **section 16**, or
- (3) fraud, as defined in **section 17**, or
- (4) misrepresentation, as defined in **section 18**, or
- (5) mistake, subject to the provisions of **sections 20, 21 and 22**.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Indian Contract Act

Voidable Contract

19. Voidability of agreements without free consent.—

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Cont.....

Indian Contract Act

Voidable Contract

Illustrations

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B, B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Cont.....

Indian Contract Act

Voidable Contract

19A. Power to set aside contract induced by undue influence.—

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations (a) A's son has forged B's name to a promissory note. B under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

Indian Contract Act

Void Contract

- Agreement void where both parties are under mistake as to matter of fact. (Section 20)
- Agreement void, if considerations and objects unlawful in part.(Section 24)
- Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. (Section 25)
- Agreement in restraint of marriage (Section 26)
- Agreement in restraint of trade (Section 27)

Exception 1.—Saving of agreement not to carry on business of which good-will is sold.

Cont.....

Indian Contract Act

Void Contract

- Agreements in restraint of legal proceedings (Section 28)

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.

Exception 2.—Saving of contract to refer questions that have already arisen.

Exception 3.—Saving of a guarantee agreement of a bank or a financial institution

- Agreements void for uncertainty (Section 29)

- Agreements by way of wager void. (Section 30)

Exception in favour of certain prizes for horse-racing.

Indian Contract Act

CONTINGENT CONTRACTS

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 happens 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.

Indian Contract Act

CONTINGENT CONTRACTS

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 A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

Indian Contract Act

CONTINGENT CONTRACTS

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.

Indian Contract Act

DISCHARGE OF CONTRACT

- **Performance of Contract**
- **Breach of Contract**

Indian Contract Act

• **Performance of Contract (Section 37 -67)**

The final step in contract formation is its performance. Performance of Contract should fulfil following conditions

- Certainty and possibility of performance
- it must be unconditional.
- it must be made at a proper time and place.
- under such circumstances that the person to whom it is made may have a reasonable opportunity for inspection.
- An offer to one of several joint promisees has the same legal consequences as an offer to all of them

Indian Contract Act

•Breach of Contract

In case of Breach of Contract, parties has following Remedies

- Injunction

Temporary (interim)

Permanent

- Damages

Nominal

Compensatory

Punitive/Exemplary

- Account of Profits

- Specific performance (where subject matter is unique and money will not adequately compensate.)

- Declaration

- Rectification

- Rescission/Substitution/Novation

Indian Contract Act

- **Indemnity and Guarantee**

According to Section 124 of the Indian Contract Act, '— -A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a "**contract of indemnity**".

According to Section 126 of the Indian Contract Act, '**A contract of guarantee**' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

- The person who gives the guarantee is called the surety.
- The person in respect of whose default the guarantee is given is called the Principal Debtor.
- The person to whom the guarantee is given is called the Creditor.

For example, if A, and his friend B enter a trader's shop, and A asks the trader, supply the articles required by B, and if he does not pay you. I will. It is a contract of guarantee.

The primary liability to pay is that of B but if he fails to pay, A becomes liable to pay. On the other hand, if A says to the trader, "let him (B) have the goods, I will ensure you are paid", the contract is one of indemnity and not a contract of guarantee.

Indian Contract Act

- **Indemnity and Guarantee**

Competency of Parties

A contract of guarantee is an agreement and as such all the essentials of valid contract must be present.

For instance, the contracting parties should be competent to contract. Suppose in the above-mentioned example B is a minor i.e., incompetent to contract.

In such a situation A would be regarded as the principal debtor and he will become personally liable to pay.

Thus, the incapacity of the principal debtor does not affect the validity of a contract of guarantee. The requirement is that the creditor and the surety must be competent to contract.

Indian Contract Act

• Indemnity and Guarantee

Essential Features of Contract of Guarantee

- There should be existence of a debt, for which some person other than the surety should be primarily liable.
- It is not necessary that the surety should be benefited in respect of consideration.
- All the essentials of a valid contract should be present.
- Creditor and surety must be competent i.e., principal debtor need not be competent to contract.
- Surety's liability is dependent on principal debtor's default.
- Guarantee must not be obtained by misrepresentation. (Section 142)
- Guarantee must not be obtained by concealment of material facts. (Section 143)

Indian Contract Act

- **Indemnity and Guarantee**

Extent of Surety's Liability

- In the absence of a contract to the contrary, the liability of surety is co-extensive with that of the liability of the principal debtor. It means that the surety is liable to the same extent to which the principal debtor is liable. **(Section 128)**

For example. A guarantees to B the payment of a bill of exchange by C, the acceptor. On the due date the bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

- It should be noted that the liability of the surety is equal to that of the principal debtor. But if at the time of giving the guarantee, the surety has given the guarantee for a fixed amount, in that case the liability of the surety can, in no case, be more than the fixed amount.

For example, A lends Rs. 5,000 to B and C gives the guarantee for Rs. 3,000 only. If B makes a default, C shall be liable only for Rs. 3,000.

Indian Contract Act

• Indemnity and Guarantee

Type of Guarantee

- When a guarantee is given in respect of a single debt or specific transaction and is to come to an end when the guaranteed debt is paid or the promise is duly performed, it is called **a specific or simple guarantee**.
- However, a guarantee which extends to a series of transactions, is called a **continuing guarantee** (Section 129).

The surety's liability in this case would continue till all the transactions are completed or till the guarantor revokes the guarantee as to the future transactions

Indian Contract Act

- **Law of Agency**

Who may be employe as Agent.

According to section 183, “any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.” As such any person competent to contract may employ an agent and a minor, a lunatic or a drunken person cannot employ an agent.

Section 184 provides “as between the principal and third persons any person may become an agent.” Thus even a minor or a person of unsound mind can be appointed as agent. It is so because the act of the agent is the act of the principal and therefore the principal is liable to third parties for the acts of the minor agent. Of course, in appointing a minor or a person of unsound mind as an agent, the principal runs a great risk because he cannot hold such an agent liable for his misconduct or negligence.

Indian Contract Act

- **Law of Agency**

Creation of Agency

1) Agency by express agreement: By word of mouth or by agreement in writing. However, in certain cases, e.g. execute a deed for sale or purchase of land, the agent must be appointed by executing a formal 'power of attorney' on a stamped paper. (Section 186 and 187)

2) Agency by implied agreement: Implied agency arises when there is no express agreement appointing a person as an agent, but instead the existence of agency is inferred from the circumstances of the case, or from the conduct of the parties on a particular occasion or from the relationship between parties. Such an agency may take the following forms. (Section 186 and 187)

i. Agency by estoppel (Section 237)

ii. Agency by holding out (

iii. Agency by necessity

3) Agency by Ratification: Section 196

Indian Contract Act

- **Law of Agency**

Extent of Agent Authority

An agent can do all such acts as have been assigned to him either expressly or impliedly and thereby bind the principal to third parties by acts done within the scope of his actual or real authority. The authority is said to be express when it is given by words spoken or written. The authority is said to be implied when it is inferred from the circumstances of the case or the ordinary course of dealings.

Authority in Emergency: An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. (Section 189)

Indian Contract Act

- **Law of Agency**

Sub – Agency

“A sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency.” Thus a person employed by an agent is called a sub-agent. A sub-agent acts under the control of the original agent as for the relation in between themselves is that of agent and principal. In other words the original agent acts as principal for the subagent.

Consequences of the appointment of sub-agent. The legal effects of the appointment of a sub-agent as between the principal and the sub-agent inter se and as regards third parties depend upon whether the sub-agent has been properly or improperly appointed.

Indian Contract Act

- **Law of Agency**

Where a sub-agent is properly appointed. In such a case, as per Section 192, the following consequences emerge:

(1)The principal is bound and liable to third parties for the acts of the subagent, as if he were an agent originally appointed by the principal.

(2)The agent is responsible to the principal for the acts of the sub-agent. For example, if any moneys are due on the sub-agent, the agent is responsible for same and the principal cannot sue the sub-agent on that account. It is so because in the eye of law there is no privity of contract between the principal and the sub-agent and therefore, in general, the principal cannot claim against the sub-agent for negligence.

(3)The sub-agent is responsible for his acts to the agent and not to the principal. But in case the sub-agent is guilty of fraud or willful wrong, he is directly liable to the principal. In such a case the principal has the choice to sue either the agent or the sub-agent.

Indian Contract Act

- **Law of Agency**

Where the appointment of a sub-agent is made without authority and without any justification, as per Section 193, the following consequences arise:

- (1) The principal is not represented by such sub-agent and hence is not liable for the acts of the sub-agent.
- (2) The agent is responsible for the acts of the sub-agent to the principal as well as to the third parties.
- (3) The sub-agent is not responsible to the principal at all. He cannot be held liable by the principal even for fraud or willful wrong. He is responsible for his acts only to the agent (his employer).

Indian Contract Act

- **Law of Agency**

Substituted Agent (Section 194)

“When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is not a sub-agent but a substituted agent of the principal in respect of the business which is entrusted to him.” Thus an agent simply names or appoints a substituted agent at the request of the principal and thereafter drops out altogether from the scene. The substituted agent is directly responsible to the principal and a privity of contract is deemed between him and the principal.

Indian Contract Act

- **Law of Agency**

Substituted Agent (Section 194)

“When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is not a sub-agent but a substituted agent of the principal in respect of the business which is entrusted to him.” Thus an agent simply names or appoints a substituted agent at the request of the principal and thereafter drops out altogether from the scene. The substituted agent is directly responsible to the principal and a privity of contract is deemed between him and the principal.

Indian Contract Act

- **Law of Agency**

Duties of Agent

- 1) Duty to follow principal's directions or customs (Section 211)
- 2) Duty to carry out the work with reasonable skill and diligence (Section 212)
- 3) Duty to render accounts (Section 213)
- 4) Duty to communicate (Section 214)
- 5) Duty not to deal on his own account (Section 215-216)
- 6) Duty not to make any profit out of his agency except his remuneration (Section 217-218)
- 7) Duty on termination of agency by principal's death or insanity (Section 209)
- 8) Duty not to delegate authority (Section 190)

Indian Contract Act

- **Law of Agency**

Termination of Agency

An agency may be terminated in any of the following ways:

1) By act of the parties

- i. Agreement
- ii. Revocation by the principal
- iii. Renunciation by the agent

2) By operation of law

- i. Completion of business of agency
- ii. Expiry of time
- iii. Death of the principal or the agent
- iv. Insanity of the principal or the agent
- v. Insolvency of the principal
- vi. Destruction of the subject matter
- vii. Dissolution of the company
- viii. Principal and agent becomes alien enemy

LAW - GENERAL

- Auction: Authority of Auctioneer, Duties of Vendor, Purchaser and Public, Misdescription and Misrepresentation, Advertisements, Particulars and Catalogues, Statements on the Rostrum, Conduct of Sale, Reservation of Price and Right to Bid, Bidding Agreements. Memorandum of the Sale. The Deposit, Rights of Auctioneer against Vendor and Purchaser –

Auction

- **What is Auction**

- Auction is an process of buying and selling goods or services by offering them up for bid, taking bids, and then selling the item to the highest bidder.
- An auction is generally an event in which goods are sold to the highest bidder. By being open to the public, an auction ensures a wide range of bids, and sometimes items at auction can fetch surprisingly high prices. The bidders, in turn, create their own market, determining on an individual basis how much they want to pay for an item, rather than having prices dictated by the seller. There are a number of types of auctions performed around the world.
- Auctions are used to sell many things in addition to antiques and art. All around the world there are auctions of commodities such as tobacco, fish, cattle, racehorses, and just about anything else where there's a market of multiple people interested in buying the same thing. That's the key to an auction - a bunch of people who are interested in buying the same object, and taking turns offering bids on the object. The right to buy that object will go to the highest bidder.

Auction

Users Involved in Auction

- Vendor
- Buyers / Bidder
- Auctioneer

Auction

Authority of Auctioneer

The legal position of an auctioneer is the same as that of an agent.

- An auctioneer must act in good faith and in the interest of his principal.
- He/she must conduct the sale in accordance with the instructions of his principal.
- An auctioneer is a special agent, who can act only under the authority of his/her principal.
- An auctioneer cannot bind his principal beyond his actually granted authority. Moreover, an agreement or a contract, which is beyond an auctioneer's authority will not be binding on the principal.
- An auctioneer's authority ends when a sale is completed and the purchase price is collected. After an auction, an auctioneer cannot vary the contract of sale or the terms on which title is to be given, without any special authorization

Auction

Duties of Vendor, Purchaser and Public

Vendor

- To Deliver Proper Legal Title
- To Deliver Goods in Proper Condition

Purchaser

- Adherence to the conditions of Auction.
- Pay for the Goods Purchase during Auction.

Public

Normally Public has no duty but they should follow all the Rules and Law of Land during Auction.

Auction

Misdescription and Misrepresentation

Rules of Indian Contract Act relating Misdescription and Misrepresentation are also apply in Auction. Any Agreement caused by Misdescription and Misrepresentation is voidable at the option of the person, whose consent is obtained by such Misdescription and Misrepresentation.

Misdescription (Fraud) is defined as Fraud under Section 17 of Indian Contract Act as under

Fraud" defined.—“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak², or unless his silence is, in itself, equivalent to speech.

Cont.....

Auction

Misdescription and Misrepresentation

18. “Misrepresentation” defined.—“Misrepresentation” means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Auction

Advertisements, Particulars and Catalogues

Advertisements, Particulars and Catalogues are interrelated terms and classified as **Invitation for Proposal / Offer**. It should contain the following details.

- Description of Goods
- Condition of Goods
- Eligibility Conditions for Proposed Buyers / Bidder
- Detail of Do's and Don't for Buyers / Bidder
- Other Relevant Information effect decision of Proposed Buyers / Bidder.

Auction

Statements on the Rostrum

What is Rostrum

“a raised platform on which a person stands to make a public speech, receive an award or medal, play music, or conduct an orchestra.”

“During the auction, Auctioneer also make certain statement. Any Statement make by Auctioneer from the Rostrum has legal effect and binding between the parties”

Auction

Conduct of Sale

“Auctioneer will conduct Sale according Terms and Conditions in Advertisement and any act done beyond the authority unless ratified by buyer and Seller are not binding”

Reservation of Price or Reserve Price means

“the price stipulated as the lowest acceptable by the seller / Vendor for an item sold at auction.”

Right to Bid means

“Person who met the condition prescribed by the Seller / Auctioneer has Right to Bid during the Auction.”

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Bidding Agreements mean

“A joint bidding or consortia bidding agreement under which the parties agree to work together during the Bidding Process or an Agreement to Bid jointly”.

Memorandum of Sale mean

“A memorandum of sale is a document recording the prospective buyer’s interest in purchasing the property and the seller’s terms of the sale. It relates to the ‘sale agreed’ step when purchasing a property. While it’s not a legally binding contract, it acts as written confirmation that a price has been agreed and declares the intention of both parties to complete the sale.”

Auction

The Deposit

There are Two Type of Deposit Involved in Auction

- 1) Earnest Money Deposit “Earnest Money Deposit is the amount that a buyer needs to pay to become eligible to bid for a property. The amount of this deposit is part of the Property's Reserve price, the EMD amount gets adjusted in your final payment or may write off in case of default as depend on the terms and condition of the Auction.”
- 2) Deposit After Auction “It is deposit which a successful Buyer is required to Deposit within certain period to claim title to the Goods sold during Auction.

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Rights of Auctioneer against Vendor and Purchaser

As an agent Auctioneer has following rights against Vendor and Purchaser

- **Right to Receive Remuneration** - According to Section 219 of the Indian Contract Act, An agent is entitle to his remuneration. But Section 220 of the said Act says that, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconduct.
- **Right to Indemnity** - According to Section 222 of the Indian Contract Act, 1872 '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.
- **Right to Compensation** - According to section 225 of the said Act, an agent is entitled to claim compensation for the injuries suffered as a consequence or want of skill of the principal.

THANKS

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