MBA –III Semester,
MB 302, LEGAL ASPECTS OF BUSINESS
Unit: 1
Topic: Types of Contract (part 2)
Dr. Faryas Kausar Ansari
Visiting Faculty
Dept. of Management
MMHA&P University, Patna

Types of Contract

2. On the Basis of Formation

A contract is formed either in writing, by word of mouth or is sometimes inferred from the conduct of the parties or the circumstances of the case. Based on the mode of their formation contracts can be classified as (a) express. (b) implied, (c) quasi, or (d) e-commerce type.

(a) Express Contract

Express contract may be made by either spoken words or written words. As the proposal or acceptance of any promise is made in words, the promise is said to be express promise. In express contracts, the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation of the contract.

Example

Mr. A, a student called Mr B on the phone and agreed to buy his textbooks of last semester for Rs. 300. That is an express oral contract between Mr A and Mr B.

(b) Implied Contract

When a proposal or acceptance is made other than in words, such a contract falls in the category of implied contracts. An implied contract is inferred from the acts or conduct of the parties or from the circumstances of the case.

Example

(a) Mr A needed an accountant to complete his tax return. He noticed that there was an accountant's office in his neighbourhood. He dropped by, explained his problem to the accountant, and learned what fees would be charged. The next day, he returned and gave the receptionist all of the necessary information and documents. Then he walked out of the door without saying anything expressly to the accountant. In this are case, conduct of Mr A has entered him into an implied contract with the firm of accountants.

(b) If A boards a bus for going to his destination and whether he takes a seat or not the law will imply a contract from the very nature of the circumstances, and the commuter will obliged to pay for the journey.

(c) Quasi Contracts

A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another. These contracts are strictly not contracts as there is no intention of parties to enter into a contract and such quasi contracts are created by law not by the parties to a contract. Under a quasi-contract, it is legal obligation which is imposed on a party who is required to perform it.

Example

ABC Company Ltd, a TV company, delivered a new Television set to Mrs. Z that she didn't order. She kept the television and did not attempt to return to the company that mistakenly shipped it to her. In This case, a quasi-contract may be enforced on her to pay for the television. Mrs. Z didn't intend to purchase the TV, and the TV

company did not intend to sell her a TV, but since Mrs. Z chose to benefit from the TV at the company's expense, the court may require her to reimburse the TV company to make the situation fair.

(d) E-Commerce Contract

A contract modelled, specified, executed and deployed by a software system is called an e-commerce contractor e-contract. These are conceptually very similar to traditional (paper based) commercial contracts. Vendors present their products, prices and terms to prospective buyers and buyers consider their options, negotiate prices and terms (where possible), place orders and make payments. Then, the vendors deliver the purchased products.

E-commerce contracts also have to meet the requirements in terms essential elements of a valid contract as laid down by the Indian Contract Act. The terms and conditions associated with e-commerce platform are of utmost importance in ensuring and deciding that e-commerce transactions meet the requirements of a valid contract. Unless expressly prohibited, click-wrap agreements would be enforceable and valid, only if the requirements of a valid contract as per Indian Contract Act, 1872. are fulfilled.

Formation of E-Commerce Contracts

Following are the ways to form an E-commerce contract:

(a) **Click-Wrap:** In click-wrap contract, the party's affirmative acceptance is taken by means of checking on an 'I accept' tab with the scroll box that allows accepting party to view the terms and conditions.

(b) **Browse-Wrap:** In case of browse-wrap agreement the mere use (of browse) of the website makes the terms binding on the contracting party,

(c) **Shrink-Wrap**: In case of shrink-wrap agreement the contracting party can read the terms and conditions only after opening the box within which the product (commonly a licence) is packed. Such agreements are relevant in the context of e-commerce mostly because of the kind of goods associated with shrink-wrap agreements.

3. On the Basis of Performance

The extent to which a contract has been performed also provides a basis for classification. On the basis of performance contracts can be: (i) executed, and (ii) executory (bilateral or unilateral) as described below.

(a) Executed Contract

If the consideration for the promise in a contract is given or executed, such a contract is known as a contract with executed consideration. Thus, in an executed contract both the parties have performed their respective obligations

Example

J Inc, agreed to buy ten tons of coal from the Northern Coal Company. The company delivered the coal to J's steel mill, where it was being burned. At that point, the contract was executed on the part of Northern and executed on J's part. After J Inc. paid the company price for the coal supplied, the contract would be executed on both sides.

(b) Executory Contract

When the reciprocal promises or obligation which serves as consideration is to be performed in future such contracts are defined as executory contracts. In an executory contract one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract. Executory contracts can be further divided into unilateral and bilateral.

(i) Unilateral Contract

It is a one-sided contract in which only one party has to perform his promise or obligation to do or forbear at the time of formation of the contract. The other party has fulfilled its obligation at the time of the contract or before the contract comes into existence.

Example

Mr X placed an advertisement in the newspaper, offering a Rs. 1000 reward to the person who returned his missing dog. By offering the reward, he offered a unilateral contract. Mr A has to pay to anyone who fulfils the obligation of returning his dog.

(ii) Bilateral Contract

Where the obligation or promise in a contract is outstanding on the part of both the parties such contracts are called bilateral contracts. Bilateral contracts are also known as contracts with executory consideration.

Example

Mr A offers to buy Mr B's digital camcorder for Rs. 2000. Mr. A tells Mr B that he will give him Rs. 2000 for the camcorder next Friday. Mr B accepts Mr A's offer and promises to give him the camcorder when he pays him on Friday. Mr A and Mr B have formed a bilateral contract under which both will perform their duties in future.