

Advanced Contracts, Tendering and Public Procurement
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Lecture - 01
Course Outline and Overview – Part 01

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Course Outline (add/delete more weeks/modules as required - depending on the course)

Week	Lessons/Topics
1	Basics of Contract Law -I- -Concept and its Role in Developing Society -Nature of Contractual Obligations -Difference between Contractual and Other Obligations -Types of Contracts
2	Basics of Contract Law - II -Essential conditions of a valid Contract - Offer and Acceptance -Capacity -Consideration -Free Consent
3	Basics of Contract Law - III -Unfair Terms in Contracts and their Regulation -Void and Voidable Contracts -Contract and Public Policy -Discharge of Contract -Quasi Contracts
4	Basics of Contract Law - IV -Breach of Contracts and Remedies -Unliquidated Damages -Liquidated Damages -Specific Performance -Possible challenges in interpreting contractual clauses
5	Special Contracts - I -Representative Contracts -Contract of Indemnity & Guarantee
6	Special Contracts - II -Contract of Bailment -Pledge & Hypothecation -Leasing & Hire Purchase
7	Special Contracts - III -Carrier Contract and Incoterms -Sale of Goods Act, 1930 -Partnership - Partnership Act, 1932 and LLP Act, 2008
8	Special Contracts - IV -Student-University Contracts -E-Contracts and Standard Form of Contracts



Hello everyone. Welcome to the course on advanced contracts. We will start the course by understanding the course content. This course is going to be offered for 12 weeks and the week-wise plan on dealing and understanding contracts is as follows.

In the first week we will try and understand the basics of contract law. We enter into contracts on a day to day basis in our everyday lives some are implied some are expressed. Implied contracts include instances such as promise to pay for newspaper that is being delivered to us early in the morning along with the milk that comes to our door, taking public transport or an OLA or Uber. Express contracts include employment contracts that we sign to get employed or the commercial contracts on the sale or purchase of property. So, we will try and understand what it takes to understand the law in relation to contract, and what does the law say. And hence a discussion on basic introduction to Indian Contract Act, 1872, will be attempted in week one.

In week two we will discuss the essential conditions of a valid contract that includes an offer, acceptance, capacity, consideration and free consent. Without these a contract will not be

enforceable at law. So, we will try and understand them in a modern context i.e. in a sense how in today's times these conditions of a valid contract are important.

In week three we will discuss unfair terms in contracts. This is a major problem in today's world especially in the context of globalization and privatization. Sometime contracts are used to exploit the other party and that is why there was a necessity for a consumer protection law. So, that consumers are protected from some of these unfair transit contracts. Further, we will try and understand the difference between void and voidable contracts. But most importantly in week three we will try and look at public policy and how the courts can intervene on the grounds of public policy to hold a contract as being void. This is also a major part of the course. Because, in the later weeks of the course we will be talking about clauses like non-compete clause, confidentiality clauses, employment bonds etc. Further, it is also important for to understand the mechanisms in which the contract has to be performed and what are the conditions for discharge of contract. These topics will also be covered along with the aspects of Quasi contracts.

In week four, we will try and look at the different remedies for breach of contract. We will discuss the various aspects of the Specific Relief Act which was also amended in 2018 to bring in a very interesting remedy called substituted performance. This will be discussed along with the law on damages.

After having laid the foundations of contract law in the first four weeks and discussing issues such as which is a valid, which is voidable, which is void contract, and what are the remedies that parties have, then in week five, we will get into the understanding the law on special contracts. The Indian Contract Act, 1872, lays down the basic principles of the rights and obligations of parties in special contracts. It contains contracts such as agency contract, which is also called as representative contract, Indemnity and guarantee.

In week six we will be discussing special contracts such as Bailment, Pledge, Lease and Hire-purchase. After that, we will discuss the law on sale of goods and partnership in week seven.

Starting from week eight, we will branch out to understanding some of the modern forms of contract. For example, we will try and evaluate whether a student university relationship can be governed under contract law as is being done in the United Kingdom currently as of now.

We will also try and understand electronic contracts. With the passing of the Information Technology Act we can also enter into electronic contracts. We know e-commerce is catching

up and there are a lot of consumer contracts that happen online. Business contracts can also be entered into online. We have moved from physical signature to electronic signature all of those aspects will be discussed and analysed in week eight. Further, we will also look at some of the aspects of Escrow agreements. These are special types of agreements that are now being created which closely resemble an agency contract.

In the last four weeks, we will be discussing government contracts, tendering and procurement. We will start with government contracts. The constitution of India does define the aspects that are required for an enforcement of a government contract under Article 299. Government contracts kind of assumes a major part of contracting and business in India and there are so tenders are floated and public procurement is being done on a daily basis. Further, there is privatization of government businesses and hence this is a unique opportunity to understand the law on government contracts. Firstly, we look at the constitutional basis, and discuss the issues of transparency and accountability. Secondly, we will also be looking at competitive pricing and when tendering is required in law and can it be avoided. We will also discuss some of the pre-tendering processes, evaluation of tender bids, determination of L1, H1, the difference between a letter of intent and MOU, the process of issuing work orders. We will also discuss the Central Vigilance Commission (CVC) and Comptroller and Auditor General (CAG) of India guidelines on public procurement.

We will bring a lot of practical aspects in the course where we will try and look the various aspects of negotiation, drafting a contract, evaluating certain clauses in a contract. A very practical hands-on approach will be adopted in the advance weeks so that the students are not only getting an experience of theory of contract law but they will also get into some of the practice and the interpretation and construction of contract law. We will look at specific clauses for example evaluating a force major clause, what has been the supreme court guidelines on force Majeure. After the COVID pandemic, the force Majeure clause has been a very important critical clause in most contracts.

Section 56 of the Indian contract act talks about the law of impossibility of performance. We will compare impossibility of law in contract to force majeure and whether there a difference between the two. Judicial review of government contracts will also be a critical factor because it can be used to check unfairness in contracting both in the procedural sense and also in the substantive sense. And hence, these cases inform us how the courts try and

scrutinize some of these contracts because there is public money that is involved in making government contracts.

In the last week, we will discuss Alternate Dispute Resolution such as arbitration. We will also discuss about the Commercial Court which is now being established to handle disputes in contracts. We will try and understand the Commercial Court Act, 2015. Further, we will try and look at aspects of confidentiality, intellectual property protection, data protection in government contracts as a specific issue as well.

In this 12 weeks course our attempt is to make this course useful for practitioners i.e. those who are actually executing, implementing, negotiating contracts for organizations. This course will be useful to government officers, managers, leaders in organizations who would want to have an insight into contract law in order to understand the practicalities of contract law. This will ensure that their contracts make a business profitability, are legally tenable, and do not run into disputes. We hope that this course will have a learning outcome which can be taken forward in organizations to actually strengthen contracts in both individual as well as an institutional sphere. So, welcome to the course and in the next part we would start with week one in understanding the basics of contract as we go forward.