

**Contract-I<sup>1</sup>**  
**Offered to the 1st year, 1st semester.**  
**Offered in the monsoon semester.**  
**Year 2011**

**Introduction:**

The word 'Contract' has a colloquial usage as well as, a legal connotation. Colloquially it means an agreement. However in legal terms it has got more than one definition. The understanding of the various approaches to the word 'contract' forms the basis of the subject 'Law of Contract'.

There are various reasons which can be cited for studying the subject. The least of them would be the compulsion imposed by the institutional course structure. The foremost reason that makes it imperative to study the course is the wide application of the law of contract in every-day life. We make contracts when we buy a newspaper or travel on a bus. Obviously not all contracts are of those simple types. Contracts dealing with the construction of ships or buildings will be highly complex. Nevertheless, across that spectrum the underlying principles of contract law remain the same and it is those basic principles which are the subject matter of this course. Moreover formation of contract being mandatory for all commercial transactions accentuates the importance of the subject.

It is therefore understandable that contract forms part of the group of law subjects offered to the first year students. Furthermore having been introduced to the law of torts it becomes easy to understand the concepts associated with the law of contract. The reason being that as in torts so also in contract the question of civil liability arises. Therefore once informed with the concept of damages it is easier to further the discussion within the context of contract.

The distinctive feature about this branch of law is that it is categorised into two levels. At the first level there are general principals which form the basic

---

<sup>1</sup> Course Teacher: Lovely Dasgupta, Assistant Professor (Law)

structure of the law of contract. The second level comprises of the special principals of contract. As a foundational course, Contract-I will comprise of the first level i.e. the general principals.

Accordingly the focus will be on the nature of agreement, the reason for non-enforceability of an agreement, the justification for non-performance of an agreement and the ground for awarding damages. The discussion will further entail the analysis of the law of obligations. Thus it will be considered whether it is helpful or not to think of contract law as a component of a wider law of obligations which also includes both tort and the law of restitution.

As a foundation course the approach will be both theoretical and critical. The emphasis will be on case law analysis. The importance of case study in the context of the law of contract is undeniable. Many of the doctrines like *promissory estoppel*, *doctrine of unconscionable bargains*, *economic duress* et al have been evolved through the various judgments. Thus ideologies of the judges and the subsisting socio-economic circumstances will be analysed in order to evaluate the judgments. The relevance of the old doctrines in the present circumstances will also be analysed.

An important area of discussion will be the growing trend of resorting to standard form of contract/adhesive contract. This type of contract challenges the classical notions of the law of contract viz. offer, acceptance and consensus-ad-idem. Another area of debate will be the recognition of the right of third parties in a contract. The divergence between the traditional and the modern notions of the law of contract will thus be of prime concern.

Furthermore a comparative study will be done of the English law and the Indian law of contract. The attempt will be to identify the point of similarity and divergence between the two jurisdictions. The relevance of adhering to the common law principals within the Indian context will be critically analysed.

Overall the study of Contract-I will enable the students to better appreciate the need for State intervention in the formation of contract. It will be open for the students to agree or disagree with the notion that there is at present a movement from contract to status. Thus the changing nature of the law of contract will constantly be a point of reference.

## **Objectives:**

The course will be conducted keeping in perspective the following objectives:

1. To compare the law of torts and the law of contract in order to differentiate between the nature of these two types of civil wrongs;
2. To analyze the various definitions of 'Contract' in order to identify the best approach of understanding the subject;
3. To analyze the concepts associated with the classical contract law in order to evaluate their relevance;
4. To trace the evolution of the law of contract with the changing times in order to evaluate the role of equity in law;
5. To analyze the various doctrines in order to determine their relevance;
6. To analyze the Indian law of contract in order to compare it with the English law;
7. To analyze the role of the State in regulating freedom of contract in order to understand the need for such interference.

## **Course Outline:**

### **Module-1**

#### **Formation of Contract:**

This module comprises of the basic concepts that are required to form the contract. The discussion will begin with an evaluation of the various definitions of the word contract. Thereafter the concepts like offer, acceptance, consideration, capacity and consent will be analyzed. The discussion will conclude with analyses of contingent contract and wagering agreements. The division of the module is as follows

#### **Week-1**

- A. Contract- A promise or a bargain?

#### **Week -2**

- B. Offer and Acceptance- when does an agreement come into existence

C. Consent and Capacity

Week-3

D. Doctrine of Consideration and Privity

E. Promissory Estoppel

Week-4-6

F. Vitiating Consent

- a. Mistake
- b. Fraud
- c. Undue influence
- d. Coercion
- e. Unconscionable bargains
- f. Void/Voidable/Valid contract

Week-7-9

G. Agreements illegal/against public policy

H. Wagering Agreements

I. Contingent Contracts

**Books:**

**Essential Readings**

Beatson, J., *Anson's Law of Contract*, 28<sup>th</sup> edn., Oxford University Press, 2002.

Bhabade, Nilima, *Mulla Indian Contract and Specific Relief Acts*, Vol. 1, 12<sup>th</sup> edn., Butterworths, 2001.

**References**

McKendrick, Ewan, *Contract Law, Text, Cases and Materials*, 2<sup>nd</sup> edn., Oxford University Press, 2005.

Setalvad, M.C., *The Common Law in India*, Stevens and Sons Ltd., 1960.

Buckley, F.H., *The Fall and Rise of Freedom of Contract*, Duke University Press, 1999.

**Module- 2**

**Performance of Contract**

This module comprises of the various concepts associated with the performance of a contract. The performance of a contract is one of the modes of discharge of a contract. Thus it is relevant to understand when the time of performance is, what the best mode of performance is, how the performance of a contract is accepted and who should perform the contract. This part will also familiarise the students with concepts like assignment, acquiescence, affirmation and repudiation of a contract. The discussion will conclude with the effect of non-performance of a contract. One of the major reasons for non-performance is frustration. The other reason may be due to novation, rescission and alteration. The division of the module is as follows:

#### Week-10-12

- A. Performance of contract- what is it?
- B. Who should perform?
- C. When should the performance of the contract take place?
- D. Doctrine of Frustration and the Indian approach
- E. Other situation when performance is not-required
- F. Quantum Meruit

#### **Books:**

#### **Essential Readings**

Beatson, J., *Anson's Law of Contract*, 28<sup>th</sup> edn., Oxford University Press, 2002.

Bhadbade, Nilima, *Mulla Indian Contract and Specific Relief Acts*, Vol. 1, 12<sup>th</sup> edn., Butterworths, 2001.

#### **References**

Erbacher, Sharon, *Restitution Law, Text, Cases and Materials*, Cavendish Publishing Limited, 1998.

Sujan, M.A., *Law of Frustration of Contract*, 2<sup>nd</sup> edn., Universal Law Publishing Co. Pvt. Ltd.

Wilken and Villiers, *The Law of Waiver, Variation and Estoppel*, 2<sup>nd</sup> edn. Oxford University Press, 2002.

### **Module-3**

#### **Quasi Contract & Consequences of Breach of Contract**

This part will conclude the discussion with an overview of relations resembling those created by contract. The focus will be on topics like unjust enrichment, necessities, doctrine of restitution et al. The discussion will also analyse the consequences of breach of contract. The concepts like damages and specific performance will be thus analysed. The module will seek to answer the following:

#### **Week-13-16**

- A. What is quasi-contract?
- B. When does the doctrine of unjust enrichment operate?
- C. What is doctrine of restitution?
- D. What is the difference in the concept of damages as understood under contract and torts
- E. When is specific performance granted?

#### **Books:**

##### **Essential Readings**

Beatson, J., *Anson's Law of Contract*, 28<sup>th</sup> edn., Oxford University Press, 2002.

Bhadbade, Nilima, *Mulla Indian Contract and Specific Relief Acts*, Vol. 1 & 2, 12<sup>th</sup> edn., Butterworths, 2001.

##### **References**

McMeel, Gerard, *The Modern Law of Unjust Enrichment and Restitution*, Oxford University Press, 2003.

McGregor, Harvey, *Mayne and McGregor on Damages*, 12<sup>th</sup> edn. Sweet and Maxwell, London, 1961.

Fry, *A Treatise on the Specific Performance of Contracts*, 6<sup>th</sup> edn., Universal Law Publishing Co. Pvt. Ltd., 1997.

**The course material will contain photocopies of selected readings and selected cases accompanied by a case list. Additional readings shall also be referred to in the course material.**