

LESSON 21

BANKER-CUSTOMER RELATIONSHIP**Nature of Legal Relationship:**

Basic legal relationship between banker and customer is **contractual relationship**. This relationship is established from the time of opening an account in a bank. This relationship is at the root of all other legal relationships that exist between the banker and customer. As such, scope, essentials and type of contracts have been discussed in the following paragraphs.

Contract-- Defined

Contract is an agreement enforceable at law.

Essentials of a Valid Contract:

To understand a contract, we need to know what an agreement is. The agreement has been defined in section 2 (e) of the Contract Act which is given below.

Agreement

Every promise or every set of promises, forming the consideration for each other is an agreement.

--To understand an agreement, we must know what a promise is. The promise has been defined in section 2 (b) of the Act which is reproduced below:

Promise

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.

Proposal and Promise:

The word "proposal" is synonymous in English use with "offer". But the language of these definitions appears to confine "proposal" to an offer to be bound by a promise. Thus a man who offers to sell and deliver, then and there, existing portable goods in his immediate control, such as a book or a jewel, does not offer a promise but an act, and if the other party takes the goods on the spot and becomes liable to pay for them, he (the buyer) is the Promisor. In such a case the seller would seem not to make a proposal within the terms of the Contract Act. A quotation of prices is not an offer, but an invitation for offer; the same is true of many common forms of advertisement. A statement of the lowest price at which a landowner is prepared to sell is not an offer. A term in a partition deed that any of the parties wishing to sell his share will sell to the others at the market value is not an offer but an undertaking to make an offer. The Act does not say, but it seems to imply, that every promise is an accepted proposal. In the Common Law this is not so, for a binding promise may be made by deed, that is, by writing under seal without any communication between the parties at all. This is because the deed, as an ancient formal method of proof, was conclusive against its maker.

Promisor and Promisee has been defined in section 2(c)

The person making the proposal is called **"the Promisor"** and

The person accepting the proposal is called **"the Promisee"**

To transform a promise into an agreement consideration is also an important ingredient.

Consideration has been defined in section 2 (d) of the Act which is reproduced below:

Consideration

When at the desire of the Promisor, the Promisee or any other person who 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.

All agreements are not contracts, meaning thereby that all agreements are not enforceable at law. Such agreements are called void agreements. The same has been defined in section 2 (g) of the Act which is reproduced below:

Legal relationship

Intention to create legal relationship must exist, in commercial transactions it is presumed that such intention always exists. Social agreements do not give rise to any legal relationship, hence no rights or obligations arise/accrue from social agreements, i.e. (Social agreements are not enforceable at law)

Free consent

This is an important essential of a valid contract. It requires that contract should be entered into with free consent of parties.

Consent is said to be free if not caused by:

- Coercion
- Undue influence
- Fraud
- Misrepresentation or
- Mistake

Competent Parties

Another important essential of a valid contract is the legal capacity of the parties to enter into a contract; this has been provided in **section 11** of the Act which is reproduced below:

“Every person is competent to contract who is of the age of majority according to 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”.

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. This section deals with personal capacity in three distinct branches: (a) disqualification by infancy; (b) disqualification by insanity; (c) other special disqualifications by personal law.

"To Contract."---means, to bind himself by promise. A minor who gives value, without promising any further performance, to a person competent to contract is entitled to sue him for the promised equivalent. This may be properly not in contract but on a quasi-contract under section 70.

Minor's agreement:

If the first branch of the rule laid down in the section be converted into a negative proposition, it reads thus: No person is competent to contract who is of the age of majority according to the law to which he is subject: in other words, a minor is not competent to contract. This proposition is capable of two constructions · either that a minor is absolutely incompetent to contract, in which case his agreement is void, or that he is incompetent to contract only in the sense that he is not liable on the contract though the other party is, in which case there is a void able contract. If the agreement is void, the minor can neither sue nor be sued upon it, and the contract is not capable of ratification in any manner; if it is void able, he can sue upon it, though he cannot be sued by the other party, and the contract be ratified by the minor on his attaining majority. Where, an infant retains property obtained under the contract from the other party, the equitable remedy of restitution has been applied, even though the infant made no false representation as to his age.

Payment of debt incurred during minority:

Where a person on attaining majority pays of debt incurred by him during minority, no question of ratification of a contract arises, since an agreement with a minor is merely void and not unlawful, the sum paid cannot be sued for subsequently, and in law it must be regarded on the same footing as a [gift](#). It is within the competence of a certificated guardian appointed by statute, such as the Guardian and Wards Act, 1890, or the various Courts of Wards Acts to enter into a contract for the purchase or sale of immovable property on behalf of the minor with the sanction of the [Court](#). **Persons otherwise "disqualified from contracting."**---The capacity of a woman to contract is not affected by her marriage under the law.

According to above definition the following parameters would determine **the legal capacities of parties to a contract**:

- **Parties to contract are required to be of the age of majority.**
- *Of sound mind*
- *Not barred from entering into contracts by the operation of law.*

Lawful object

Not expressly declared void--- Some instances of void agreement are given below:

Agreements in restraint of marriage (sec 26)

Every agreement in restraint of the marriage of any person, other than minor, is void

Agreements in restraint of trade (sec 27)

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Agreements in restraint of legal proceedings (sec 28)

Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Legal formalities

The agreements must fulfill all the requirements all the legal formalities such as:

- (i) Writing
- (ii) Witness
- (iii) Attestation
- (iv) Registration

Classification of contracts:

Valid contract

Valid contract is an agreement enforceable by law. In such contract all essentials of a contract as mentioned in section 10 are required to be fulfilled. In case breach of contract by one party, the other party has a right to file a suit for this breach.

Illustration:

A contract for the sale of a car between Mr. Yasir and Mr. Waqas has been concluded and all necessary formalities have been completed. The said contract meets all essentials of a valid contract. If either of the two that is Mr. Yasir or Mr. Waqas fails to perform his part of contract, the counter party can sue the other party for the breach of contract.

Voidable contract

A voidable contract is the one which is enforceable by law at the option of one or more of the parties to the contract, but not at the option of the other or others. As long as the contract is not avoided or cancelled by the party who is entitled to do so, the contract shall remain a valid contract. Such contracts are voidable at the option of aggrieved party.

Voidable contract has been defined in **section 2 (i)** of the Contract Act which is reproduced below: “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”

--A contract becomes voidable in the following situations:

Where consent of a contracting party is not free

Where Promisor prevented from performance of the contract.

--An agreement on account of misrepresentation shall be voidable at the option of the person who is misled by such misrepresentation.

--In case a voidable contract is acted upon by a party as valid, that party cannot subsequently deny the validity thereof.

Void contract

A void contract is the one which is not enforceable by law. It has been provided in **section (j)** of the Contract Act.

“A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. “

A voidable contract is a good contract as long as it is not avoided by the person who has the option to avoid whereas a void contract is not a contract at all from the very beginning in the eye of law.

Example:

Mr. Aslam resident of Lahore entered into an agreement with Mr. Kamal, a rice dealer at Gujranwala for the purchase of 100 tons of rice. District Coordination Officer (DCO) Lahore had imposed restriction on entry of rice in the territorial jurisdiction of District Lahore well before the date of the above agreement. The said agreement is not enforceable at law, hence void.

Situations of void contract

Impossibility of performance. It has been discussed in section 56

Legal contract may become void due to some illegality afterwards.

Revocation of a voidable contract by the party at whose option, the contract is avoidable becomes void contract

Unenforceable Contract

Such contracts are unenforceable before a court of law due to some technical defects such as non-deposit of court fee, submission of unsigned documents, absence of writing, wherever writing required, absence of registration, wherever required under law. On removal of these discrepancies, the contract becomes enforceable.

Express contract

An express promise shall lead to an express contract. Such a contract may be expressed by words spoken or written. Express contracts are contained in the provisions of section 9 of the Act.

Implied contract:

Such contracts are inferred from the acts and conduct of the contracting parties.

Example:

Mr. Aslam was engaged by a business man as a helper at his shop. He has been performing the job assigned to him, however no appointment letter was issued by the shopkeeper. Although there is no

express agreement as to the employment of Mr. Aslam but the acts and the conducts of the respective parties shall lead to a conclusion regarding the nature of contract between them. Since the conclusions shall be inferred from the acts and conduct of the respective parties, such contract would be called an implied contract.

--The provisions regarding express and implied contract as contained in section 9 are given below:

“In so far as the proposal or acceptance of any promise is made in words, the promises is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. “

We shall continue with further discussion on this topic