

Module 5

Introduction to Merchantile Law

Law of Contract

According to Pollock, Every agreement and promise enforceable by law is a contract.

According to Salmond, A contract is an agreement creating and defining obligation between two or more persons by which rights are acquired by one or more to act or forbearance on the part of others.

According to Anson, The law of contract is that branch of law which determines the circumstances in which a promise shall be legally binding on the person making it.

According to Section 2(h) of the Indian Contract Act, 1872, An agreement enforceable by law is a contract.

From this definition, we find that a contract essentially consists of two elements i.e. an agreement and legal obligation i.e. a duty enforceable by law.

According to Cambridge Dictionary, Contract is a legal document that states and explains a formal agreement between two different people or groups, or the agreement itself.

Law of Contract in India

In India, contracts are being governed by the British enacted legislation i.e. the Indian Contract Act, 1872. This act is based on the principle of English Common Law'. It deals efficiently with all the aspects of contract such as formation, enforcement etc. There are 11 Chapters and 266 sections however Sections 76 to 123 and 239 to 266 have been repealed.

Sale of Goods Act

The Sale of Goods Act, 1930 herein referred to as the Act, is the law that governs the sale of goods in all parts of India. It doesn't apply to the state of Jammu & Kashmir. The Act defines various terms which are contained in the act itself. Such as:

1. "buyer" means a person who buys or agrees to buy goods;
2. "delivery" means voluntary transfer of possession from one person to another;
3. goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

4. “document of title to goods” includes a bill of lading, dock-warrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, [multimodal transport document,] warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;
5. “fault” means wrongful act or default;
6. “future goods” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;
7. “goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;
8. a person is said to be “insolvent” who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;
9. “mercantile agent” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;
10. “price” means the money consideration for a sale of goods;
11. “property” means the general property in goods, and not merely a special property;
12. “quality of goods” includes their state or condition;
13. “seller” means a person who sells or agrees to sell goods;

Partnership Act

In a partnership firm, two or more people come together to carry out a business for the purpose of earning profits and sharing those profits. The partners combine their capital resources and work jointly to carry on the business. According to Section 12 of the Indian Partnership Act, a partnership must be formed for the purpose of carrying a business that is legal in nature. Co-ownership of a property is not considered as a partnership.

- There must be an agreement between the partners to carry on the business of the partnership firm.
- The aim of the formation of the partnership should be to earn profits and share them among partners. The sharing of profit and losses can either be according to the ratio of the capital contributed by each partner or be equally among all the partners unless otherwise specified.
- The partnership agreement must state that the business will be jointly carried on by all of them or some of them acting on the behalf of all. According to Section 13 of the

Partnership Act, 1932, the mutual agency exists between the partners. Every partner in a partnership acts as a principal as well as an agent for other partners. The actions of a partner are binding on the actions of all the other partners.

- **Unlimited Liability-** The partners can be held liable jointly for any debts of the firm. They have an unlimited liability that extends to their private assets for the disposal of the firm's debts.
- According to the Indian Partnership Act, there is no limit on the maximum number of partners that can be there in partnership but there must be a minimum of two partners. However, according to Companies Act 2013, the maximum number of partners must not exceed 100 in case of a partnership. If the number of members in a partnership exceeds 100 then it is termed as an illegal association as per Section 464 of the Companies Act, 2013. As per Section 11 of the Companies Act, the maximum number of partners for **banking** purposes is 10 and for other purposes is 10.

Definition of Partnership

Section 4 of the Indian Partnership Act defines a partnership as “Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all”.

Industrial Law

Industrial law means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

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Industrial Law relates to the laws governing industrial enterprises. These can include a wide range of legal topics, from employment laws to environmental concerns, contracts, industrial relations, and worker safety regulations. Industries vary widely and the policies for each is as unique as the business to which it relates.

Employment and Labor Issues

Employment and labor laws are relevant to any commercial enterprise, and industry is no exception. Indeed, industrialization led not only to the modern conveniences of our technological age, but also the rise of organized labor unions. Employment and labor issues in industrial enterprises are particularly important, given the often hazardous nature of the work.

Industrial Accidents

Another major area of concern to industrial laws is accidents. Industrial workplaces vary widely depending on industry and purpose, from the clean rooms of high-tech manufacturing, to the often dangerous and noisy welding floors of heavy industry. Factories, warehouses, chemical plants, refineries, and many other facilities may also be considered industrial workplaces. Common industrial accidents include forklift accidents, falling objects, slips, trips, and falls, machinery or equipment injuries, explosions or blast injuries, and chemical burns or inhalation. Industrial accident injuries can often be more severe than other workplace injuries given the nature of the work. Indeed, according to the Bureau of Labor Statistics, it is estimated that two out of every 1,000 industrial workers will lose their life from a workplace accident. As a result, personal injury laws are a major area of practice related to industrial laws.

OSHA Regulations

The Occupational Safety and Health Administration (OSHA) monitors workplace safety conditions, including in the industrial sector. According to OSHA, many of the top violations resulting in citations are given to industrial workplaces. Common problems include communication hazards, lack of respiratory protection, poor electrical design, inadequate or disabled machine guards, and improper or unlicensed use of powered industrial trucks.

Other Areas of Industrial Law

As with any business, there are numerous other areas of legal concern for those in the Industrial sector. These can include contracts, real estate questions, shipping and distribution, environmental concerns, and many others.

If you have questions about Industrial Law, feel free to review the materials below on this page. Additionally, for further assistance, you can contact an attorney by visiting our Law Firms page and finding a lawyer in your area.