

Syllabi of Master of Business Laws

1 MBL - I YEAR SYLLABUS

In the first year you will study 5 subjects viz (1.1) Contract Law (1.2) Banking Law (1.3) Corporate Laws (1.4) Industrial Relations Law and (1.5) Environmental Law and Policy. The broad outlines of these subjects - each subject divided into convenient modules - are as follows.

- **COURSE - 1.1: LAW OF CONTRACT**

Module 1: Contract: Concept and its Role in a Developing Society

This module attempts to give an overview of the nature of contractual obligations and its significance in a commercial industrial society. A through examination of the norms relating to the formation of a contract is attempted here. The module would interalia consist of the following relevant topics:

- a) Genesis of Contract and its significance in a commercial developing society - How contractual obligation is different from other kinds of legal obligations - Sanctity of contract and why ? - Erosion of 'bargain' basis of contract; critical legal thought on contractual relationship.
- b) Formation of Contract - Contracts and agreements, distinction - when do agreements become contracts ? - How to determine the existence of contract or agreement ? - Requirements of a valid Contract.

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- c) Test of offer and acceptance - Offer distinguished from invitation to treat - General Offer - Mode of Acceptance - Communication of Offer and Acceptance - Termination of Offer.
 - d) Contracts through 'Tender' and 'Auction Sale'.
 - e) Contractual Terms - Express and Implied Terms - Standard Form Contracts and Issues therein - Statutory and Judicial Attempts to alleviate the Plight of the Weaker Party - Exclusion Clauses and their effect.
 - f) Contractual Intention - Relevance and Significance - Social and Domestic Agreements and other kinds of Agreements - Scott v. Avery Clauses.
 - g) Valid, Void and Voidable Contracts.
 - h) 'Unilateral' and 'Bilateral' Contracts.
 - i) Contract in changing society and the changes in the forms of contract to keep up with the changes in the society.
 - j) International Contracts and the rules relating to Joint Ventures, Foreign Collaborations, etc.
- ***Module 2: Consideration and Capacity***
In this Module the essential requirements of a Valid Contract are examined in detail.

- **A. THE DOCTRINE OF CONSIDERATION**

- i) What is 'Consideration'? - Historical Development of the Doctrine - the 'Price' Theory and 'Detriment' Theory - 'Past', 'Executed' and 'Executory' Consideration.
- ii) Essentiality of Consideration - Exceptions.
- iii) Test of determining the existence of valid consideration - 'adequacy' and 'sufficiency' of consideration - Consideration - Whether consideration exists in transactions like compromises, compositions with creditors, etc. ? Whether pre-existing 'duty' is valid consideration ?
- iv) Doctrine of Consideration and Promissory Estoppel.
- v) Privity of 'Consideration' and 'Privity of Contract' - Exceptions.

- **B. CONTRACTUAL CAPACITY**

In this part of the Module, the legal consequences of contracts entered into by persons who suffer from physical or mental incapacities or legal disabilities imposed on them, will be examined.

- i) **Minor's Contract:**

Who is minor ? - Legal effect of Contracts entered into by a minor - Effect of minor's misrepresentation as to age - Contracts for necessities and beneficial contracts - Remedies available to the minor and the contracting party - property transactions.

- ii) **Contracts by 'lunatics':**

Who is a person of unsound mind ? - Contracts during lucid intervals and at other times - Legal effects.

iii) Other legal disabilities:

Contracts by Corporations - Trustees - Other persons who act in a representative capacity.

- ***Module 3: Free Consent and Public Policy***

In this Module, the legal effect of the operation of factors like mistake, misrepresentation, undue influence and coercion on the agreements is examined.

- a) Mistake - Kinds of mistake - Common, mutual and unilateral - Effect of each one on the validity of contract - Mistake of law and fact - Remedies available when agreement is vitiated by mistake.
- b) Misrepresentation - What is misrepresentation ? - When misrepresentation is operative ? - The test of 'material fact' - Distinction between 'fraud' and 'innocent' mis-representation - Remedies available to the aggrieved party.
- c) Coercion - What is 'coercion' - Distinction between 'Coercion' and 'duress' under English Law - Effect of 'Coercion' on the contract and the remedies available.
- d) 'Undue influence' - Essential features - Distinguished from coercion - Presumption of undue influence in certain cases - Legal effect of contract vitiated by undue influence and remedies available to the aggrieved party.

- ***Social Interest, Public Policy and Law***

The freedom of contracting parties to create mutual rights and duties is curtailed by the policy of law that such agreements shall not be prejudicial to social interest.

This Module attempts to highlight this aspect and examines the legislative and judicial approaches.

- a) Distinction between 'illegal' or 'unlawful agreements' and void contracts - Kinds of unlawful agreements under Sec.23.
- b) 'Public Policy' - Meaning - Heads of Public Policy - Trading with an enemy - Trafficking in public offices - Interference with administration of justice - Marriage brokerage contracts, etc. - Can there be new heads of public policy recognised by judicial creativity ?
- c) Agreements void under the Statute - Scope and ambit of sections 24 to 30 of Indian Contract Act.

- ***Module 4: Public and Government Contracts, Engineering Contract and Quasi Contracts***

- a) Public and Government Contracts

- 1) Introduction - Government as a Contracting party - Growing significance of these contracts - Whether the Government as a contracting party is 'State' for the purpose of Part-III of the Constitution.
- 2) Types of Government contracts - Government contracts as standard form contracts.
- 3) Scope and ambit of Art. 299 of the Constitution; Effect of non-compliance of the provision.
- 4) Government contracts and the law of limitation.

- b) Engineering Contracts

What is meant by engineering contracts, various types of engineering contracts, stages in the contract, tenders, management of engineering contract, special features of these contracts.

c) Quasi Contracts

Rationale and equitable basis of quasi-contractual claims at common law - Quasi Contractual claims recognised by the Indian Contract Act, their scope and ambit.

• ***Module 5: Discharge of Contract - Performance and Non-Performance***

This Module attempts to examine in detail, the different modes through which the contracting parties are relieved of their obligations under the Contract.

a) Different modes of discharge - an overview.

b) Performance and tender - Place and time of performance - Whether substantial compliance sufficient - Time of performance - When time is of the essence of contract - By whom contract should be performed - Performance of joint promises - Apportionment of payments - Meaning of tender - Requirement of valid tender.

c) Discharge by agreement

i) Novation - by change of parties and by substitution of new agreements - Novation distinguished from assignment - Assignment of rights and duties.

ii) Remission of performance - Accord and satisfaction - distinction between Section 62, 63 and English Common Law.

d) Discharge by frustration - Scope and ambit of the doctrine of frustration under Indian Law - Supervening impossibility - Meaning; Theories of frustration - when plea of frustration not available - Rights and liabilities of the parties when frustration operates.

- ***Module 6: Breach of Contract and Remedies***

- a) Meaning of 'breach' - 'Anticipatory breach'.
- b) Remedies available to the aggrieved party - Damages and specific relief - Distinction.
- c) Kinds of damages, and principles governing the award of damages - The rule in Hadley v. Baxendale - Remoteness of damage - Damages in specific instances.
- d) Specific performance - Principles governing decreeing of specific performance - Other kinds or reliefs under Specific Relief Act - Discussion on the relevant provisions of the Specific Relief Act.

- ***Module 7: Representative Contract***

The Module, consisting of two parts, first part discusses the basic feature of agency law and the second part deals with the law governing partnership firms.

Part-I: Law of Agency

- a) Nature of 'agency' and distinction from other transaction - Contractual basis of agency and consideration - Different types of agents, such as factors, brokers, auctioneers, del credere agents, etc.
- b) How Principal Agent relationship arises - Previous authority, express or implied - Ratification- Holding out, or estoppel - Agency by operation of Law.

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- c) Scope of agent's authority and rights and liabilities of the Principal and third party as against each other.
 - d) The rights and liabilities of the Agent, as against third parties - When can he sue and be sued on the contract ? - Remedies against unauthorised transactions.
 - e) Rights and liabilities of the Agent as against the Principal.
 - f) Delegation of authority - Distinction between 'Sub-agent' and 'substituted agent' - When delegation permitted - Legal effect of authorised and unauthorised delegation.
 - g) 'Undisclosed Principal' - Rights and liabilities of the parties, in such a transaction.
 - h) Termination of agency - Modes of termination - Position of agency coupled with interest.

Part-II: Partnership Firms

- a) Legal foundation of partnership firms - Distinguished from companies and Joint Hindu Family Business - Different kinds of partnerships.
- b) Authority of a partner - Express and implied authorities - Scope of implied authority - Managing partner and other partners.
- c) Rights and liabilities of a partner as against third parties and other partners.
- d) Minor as a partner - His legal position, rights and liabilities.

- ***Module 8: Special Contracts - Indemnity, Guarantee and Bailment***

- a) Nature of the contract of indemnity - Indemnity distinguished from guarantee - Rights of the indemnified.

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- b) How Principal Agent relationship arises - Previous authority, express or implied - Ratification- Holding out, or estoppel - Agency by operation of Law.

- b) Guarantee distinguished from other transactions - Parties to a contract of guarantee - Indemnifier and Surety compared - Specific guarantee and continuing guarantee - Creditor's rights against principal debtor and surety - Variation of the contractual terms between principal debtor and creditor and its effect on the surety - Discharge of surety - Surety's rights against principal debtor and Co-surety - Principles governing contribution from Co-sureties.
- c) Bailment - Nature of the transaction, essential features and distinguishing marks - Bailment for reward and gratuitous bailment - Bailee's duty of care - other duties.
- d) Finder of lost goods as quasi bailee - Finder's rights for reward, services rendered and of Sale - Other rights - Duties of finder - Rights and liabilities of owner.
- e) Pledge as a special kind of bailment - Pawnee's right against the pawner - When can he exercise the right of sale ? - Legal safeguards for the pawner - Pawner's rights and liabilities.
- ***Module 9: Structuring of Contracts (Subject, Context and Relationship Specific)***
Structure of Contracts - Paragraphs dealing specifically with particular matter - Risk Allocation - Jurisdiction - Collateral Nature of Obligations - Remedies etc.
- ***Module 10: Electronic Contracts (Computer, Software and Cyber)***
Legal response to Information Technological Process - Electronic Trade and related Practices - Computer, Electronic and Cyber Contracts - Applicable Substantive Contract Law Principles - Firming up of these Contracts - Risk Allocation - Enforcement of Cyber Contracts - Issues relating to

Jurisdiction - Adjudication of Cyber Contractual Legal Liability - Comparable International Experiences.