



Law of Contract

Muhammad Ekramul Haque

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Dedicated to my parents

Salima Begum
&
Late Sultan Uddin Ahmad

PREFACE

The laws relating to contracts in Bangladesh are governed by the Contract Act, 1872 (*Act IX of 1872*). This Act deals with the basic principles of contracts generally and with some specific types of contracts such as indemnity, guarantee, bailment and agency. Initially this Act contained the provisions of law relating to sale of goods and partnership when it was originally enacted in 1872. Subsequently, these two chapters, i.e., Chapter VII on Sale of Goods and Chapter X on Partnership were omitted and two separate Acts of Parliament, i.e., the Sale of Goods Act, 1930 and the Partnership Act, 1932 were passed to deal with these matters.

This book, in fact, attempts a straightforward analysis of the provisions of the Contract Act, 1872. The principles as contained in every section have been analyzed, and cases decided by the Courts in Bangladesh have been cited in appropriate places. Certain English cases have also been discussed since they were considered necessary for easier understanding of the principles and laws.

In arranging the book, I endeavored to divide it in chapters in conformity with the Contract Act, 1872. The First Chapter deals briefly with the Preamble to the Act and the formation of a contract and will give the readers a primary idea about contract and its governing Act in Bangladesh. The Second Chapter discusses 'offer' and 'acceptance' and is the most elaborate chapter of the book. It contains all relevant rules

regarding communications of offer and acceptance. In writing this chapter, I have deliberately cited many English cases for clear understanding of certain complicated legal issues such as the nature of offer and its distinction with 'invitation to treat'. In this Chapter, certain lacuna in the law have also been raised which may inspire the enthusiastic readers to carry out further study and in-depth research on those issues. Chapters Three and Four examine two out of five elements for the enforceability by law of an agreement, i.e., 'capacity of parties' and 'free consent'. The Fifth Chapter explains the laws relating to consideration generally. Chapter Six covers issues relating to legality of object and consideration of a contract. Chapter Seven deals with the last necessary element for the enforceability of an agreement, i.e., statutory legality. In the process, this chapter also contains discussions related to void agreement taking together all relevant sections of the Act in one place. Chapter Eight discusses relevant sections to contingent contract chronologically. The Performance of contract is discussed in Chapter Nine. Chapter Ten, titled Quasi Contract, deals with certain relations resembling those created by contract. Chapter Eleven concentrates on the consequences of breach of contract and includes discussions relating to damages and assessment of damages. Chapters Twelve to Fourteen focus on certain specific types of contracts, i.e., indemnity, guarantee, bailment, pledge and agency. Lastly, the Appendix contains the full text of the Contract Act, 1872 for convenience of readers.

As I have been teaching the law of contract and business/commercial law for years in different universities in MBA and BBA programs apart from LL.B. (honors), I had to depend on books written by Indian and British writers since I got no text on law of contract with reference to Bangladesh laws. Thus I always felt the necessity of writing a book on law of contract from the Bangladesh perspective to meet the demands of our students. Having this end in

mind, I have tried my best to explain the laws embodied in the Act in a lucid way citing relevant Bangladeshi cases so that it could be useful for the Law, BBA and MBA students as well as for the lawyers who are interested in the basic analysis of the provisions incorporated in the Contract Act, 1872.

Today I remember with gratitude all my teachers and especially Barrister Tofailur Rahman, who taught me the Law of Contract in the University of Dhaka when I was a student of 1st year LL.B. (Honors). I also convey my gratitude to Mr. Md. Ershadul Karim who has taken the pain to go through the manuscript and has also suggested significant improvements. I am thankful to Barrister Nawshad Zamir, Barrister Tanveer Parvez, Barrister Shahjada Al Amin Kabir, Manzur Alam and my colleagues Dalia Pervin, Md. Towhidul Islam and Md. Nazmujjaman Bhuiyan who gave me important suggestions at different times in writing the book. I am grateful to Advocate Parvez Hossain whose energetic support was instrumental in printing the book. I am grateful also to my wife Afsana and my little son Zayed Ekram who have been a continuous source of support and inspiration for me.

Finally, I would like to thank all who have helped me to make this book as much error-free as possible. However, if any problem remains, the responsibility is entirely mine and I would like to implement the corrections and further suggestions in the next edition.

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