

The
Contract Act

[IX of 1872]

Third Edition
2002

DLR

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Preface to 3rd edition

The Second Edition of the Contract Act was published on 1-3-1992. Because of the long gap as well as its tremendous demand, the stock of the publication got exhausted rapidly which necessitated to publish another edition with a greater dimension, covering updated amendments of the statutory law and also updated case law of the High Court and the Appellate Division.

DLR is trying to maintain its avowed policy keeping the book in international standard, intended to satisfy its valued patrons' passionate desire.

We gratefully acknowledge the service rendered by Mr MA Sattar, M Com LLB, Advocate Supreme Court and Mr Mohammad Shibli Sadeque LLB (Hons) & LLM, Advocate Supreme Court for the compilation work.

Equally we express our sincere thanks to Mr Rahmatullah Sarker BA, LLB, Advocate, Supreme Court for his stupendous job rendered to have a mistake free-publication. DLR also owes to Mr Kamal Hossain, Computer-in-charge who also took much pains in getting the publication computer composed and printed with utmost care.

We do hope that this edition will receive well deserved appreciation from our learned readers who will be benefited in acquiring clear knowledge of such type of law.

In spite of our best efforts, utmost care and caution, if any error or omission that might have inadvertently crept in because of printer's devil and for other reasons, any suggestions from the learned readers will be very much appreciated.

In fine, DLR will feel honoured if the edition could have satisfied in general way the demand of our learned professionals.

Dhaka
February, 2002

Publisher

2K NPI

Preface to 1st edition

The Sale of Goods Act originally formed a part of the Contract Act, IX of 1872 and was dealt with in Chapter VII in sections 76 to 123. It has now become an independent law with the title 'the Sale of Goods Act, 1930 (III of 1930); Similarly, Chapter X of the Contract Act dealt with the subject of "Of partnership" and is now a separate Act bearing the title "Partnership Act, 1932 (IX of 1932)". In fact these two Acts, namely, the Sale of Goods Act and the Partnership Act broadly relate to the subject-matter of contract.

In view of their close relationship with the Contract Act these two Acts, that is, the Sale of Goods Act and the Partnership Act are also being brought out separately.

Case-law on the subject of Contract Act has been incorporated. Attempt has been made to make it as exhaustive as possible. Publishers will feel their labour amply paid if this handy edition meets in a general way the demand of the profession.

Dhaka
2nd February, 1975

Publisher

Preface to 2nd edition

The Bangladesh Contract Act inherits the Indian Contract Act which found its place on the statute Law enacted as far back as twenty-fifth day of April, 1872 being Act IX of 1872. It is such branch of Law which has wide range of utility and also linked with every step of development works, specially the construction works. The present world is highly commercialised and busy with nation building works through various forms of Contract. Day by day the aspect of contract is gaining momentum. In this process, not only the law courts are involved, the members of the Bar, Arbitrator, Contractor, Tenderer, Engineer, Businessman are also involved. With this background, the Law on Contracts has been playing vital role and assuming importance of its own. In the day-to-day life every relationship of human being is based upon contractual obligation and this branch of law is of great practical importance.

The first edition of this Volume was published in the year 1975. Because of its popular demand, the stock got exhausted rapidly which necessitated to have another print with a greater dimension, covering, amendments of the statute law together with fair commentary including allied statutory Laws ever published. Although DLR is tremendously faced with manifold problems still our attempt to publish the second edition is intended to satisfy our patrons' passionate desire to get a standard book.

This volume exhaustively deals with various aspects of the Contract Act viz the Offer and Acceptance, Void & Voidable Contract, Contingent Contract, Performance of Contract, Quasi Contract, Contract of Indemnity and Guarantee, Bailment, Law relating to Agency and other allied matters.

The interconnection of service contracts, tenders, technical knowhow of contracts, industrial contracts, contract with foreign agency for joint venture of industrial and commercial development and provision of company law derive their sources of origin from the statutory provision of the law of contract.

This edition also contains the successive amendments after first edition to suit the present conditions and also numerous Case Laws of Indo-Bangladesh-Pakistan Subcontinent Supreme Courts through the forum of *DLR, BLD, BCR, PLD, AIR, CLJ* etc.

It may not be out of place to mention here that since enactment of the statutory Law in 1872 innumerable Case Laws have developed and on many points the Law has since been settled by the Privy Council and the Appellate Division of the Supreme Courts of India, Pakistan and Bangladesh rendering conflicting views non-functional.

Sincere efforts have been made to upkeep the original style and structure of the book, founded in monumental and excellence of work, done in the first edition by our revered founder editor, Mr Obaidul Huq Chowdhury. We upheld the highest standard of excellence set by him.

The unique feature of this edition is that it contains exhaustive subject index and accumulated amendments at the end of the book together with exhaustive case laws on different topics in a methodical manner.

We are pleased to express our sincere thanks to MA Sattar M Com, LLB, Rahmatullah Sarker, Advocate Supreme Court and Syed Mokaddas Ali, Advocate Supreme Court who rendered their best services in bringing out this volume with a successful ending.

It is hoped that this edition will receive well deserved appreciation and patronage from learned readers deriving benefits in acquiring clear knowledge of this important branch of Law.

In spite of our best efforts, utmost care and caution, if any error and omission that might have inadvertently crept in because of printer's devil and for other reasons, pointing out of such error and omission along with any suggestion from the learned readers will be very much appreciated.

Dhaka

1st March, 1992

Publisher

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Contract Act
[IX of 1872]

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The Contract Act

¹[Act IX of 1872]

[25th April, 1872].

Preamble—Whereas it is expedient to define and amend certain parts of the law relating to contracts; it is hereby enacted as follows :

Preliminary

1. Short title—This Act may be called the ^{2*} Contract Act, 1872.

Extent, Commencement—It extends to ³[the whole of ⁴Bangladesh]; and it shall come into force on the first day of September, 1872.

1. For the Statement of objects and reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6th, 1866. See Gazette of India, 1867, Ext. p. 34; for the Report of the select Committee. See, *ibid*, Ext. dated 28th March, 1872; for discussions in Council See *ibid*, 1867, supplement, P. 1064; *ibid*, 1871, p. 313; and *ibid*, 1872 p. 527.

The chapters and sections of the Transfer of Property Act, 1882 (IV of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX of 1872 See Act VI of 1882, section 4.

This Act shall be deemed to have been amended in its application to the District of Sylhet, See Assam Money Lender's (Amendment) Act 1943 (Assam Act VI of 1943), Section 1(4).

2. The words "Indian" was omitted by AO 1949. Sch.

3. Subs. by the Central laws (Statute Reform) Ordinance, 1960 (Order XXI of 1960), S 3 and 2nd Sch. (with effect from the 14th October, 1955), for "all the provinces and capital of the Federation" which had been substituted by AO 1949, Arts. 3(2) and 4, for "the whole of British India".

4. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, 2nd Sch. (with effect from 26-3-71).

Enactment repealed—^{1*} * * Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provision of this Act.

Case-Law

Applicability of the Act—The Contract Act deals only with that part of the law of contract applicable to British India. 1924 (Cal) 990.

The Contract Act is not exhaustive and where the Act does not cover the case with which the Court has to deal, the Court is bound to follow the principles of the English Common Law, i.e. the rules of justice, equity and conscience. 56 B 101; 1932 (Bom) 168; 62 (Cal) 612; 39 CWN 461; 1946 (Nag) 114.

The Contract Act does not say anything about the place where the contract is made and it is no part of the ordinary law of contract. Meaning of cause of action with reference to place of contract. 58 C 5931 (Cal) 659.

—Law applicable where parties belong to different countries

Where the parties have expressed their intention that the contract was to be governed by law, it is not possible to accept that the law of the place of preference of the contract *lex loci* solution is to be deemed to be the proper law of the contract governing the substance of the obligation. In the absence of an agreement to the contrary, the same law applies to all the obligations under the contract and the Courts will not readily split the contract. The contract expressly and unequivocally stipulated for payment of the price in pound sterling. That currency was, therefore, the money of account under the proper law of the contract although the actual mode of payment was governed by another principle of International Law relating to foreign Currency obligation called the nominalistic principle i.e. by the law of the place of payment. PLD 1979 Kar 269.

—Whether the proper law is the *lex Loci Contractus* or *lex Loci solutionis*, the absence of any expressed intention is a matter of presumption. It is open to Court to determine whether there existed any

1. The words "The enactments mentioned in the Schedule hereto are repealed to the extent specified in the third column thereof but" were repealed by the repealing and amending Act, 1914 (X of 1914).

implied or inferred choice of Law in parties contract. *PLD 1981 Karachi 197.*

—Where a foreign-Court applied Law of Pakistan in determining question whether repudiation of contract by appellant was justified on basis of provision of Foreign Exchange Regulation Act, the Court upheld its decision. *PLD 1981 Karachi 197.*

—The contract Act embodies a number of limiting principles which create mutual rights and obligations in a codified form, but so long as the parties do not violate some legal prohibition, they can agree on whatsoever terms they like in respect of the subject matter of their contract, and the law, which includes principles, trade practices and customs having the force of Law, will give effect to them. The provisions of the contract act including the law of agency embodied in the Contract Act, 1872, are not exclusive, speaking as a whole, but to the extent it lays down certain provisions it is exhaustive and imperative. *PLD 1986 Karachi 234.*

—Where there is an ambiguity in the Language of a contract, it must be interpreted against the party who used the expression and in favour of the opposite party. *PLD 1976 Karachi 458.*

—No party can add to the terms of a contract. *PLD 1976 Karachi 14.*

—The intention of the parties has to be gathered not only from the words used in the contracts by the parties but also from the circumstances, their belief, knowledge and intention as expressed in their correspondence. *PLD 1979 Karachi 88.*

—In interpreting the terms of a contract, the court ought not to imply a term unless there is evidence that both parties must have intended that it should be terms of the contract, and the power of the Court of implying terms which the parties have not expressed should be exercised very sparingly and only in cases of necessity. *PLD 1979 Karachi 88.*

2. Interpretation-Clause—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

- (b) 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:
- (c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee":
- (d) When, at the desire of the promisor, the promisee or any other person 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:
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement:
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:
- (g) An agreement not enforceable by law is said to be void:
- (h) An agreement enforceable by law is a contract:
- (i) 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:
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

[See the Cases put after section 9 at pages 13 & 14 infra.]

Case-Law

Section 2(a)—Insurance Policy—The offer to enter into a contract of insurance, as a general rule is considered to have been addressed to the insurers by the person who is seeking to protect himself by insurance against loss. He may have been invited by the insurers to put himself in communication with them but whether the invitation comes to him from the insurers direct, or through the medium of an agent or as a member of

the public through an advertisement, the position remained unchanged and he must submit his proposal which they may accept or decline at their pleasure. *PLD 1978 Lahore 475.*

Tender notice—A tender notice means only an invitation extended to the contractors for making offers. It does not amount to an offer or proposal and the quotation of rates offered by the contractor does not amount to an acceptance of offer or proposal thereby creating any promise or agreement. It is by the acceptance of any of these offers or proposals by the persons calling for tenders that it becomes a promise or an agreement. Thus the mere fact that a person made a certain quotation in response to the tender notice, even granting that it was the lowest quotation, will not, in any manner create an obligation to accept it on the person who issued the tender notice. *PLD 1983 Karachi 340 (DB).*

Auction by public functionaries—Action in case of public functionaries stands at a different footing from ordinary auctions on being unsuccessful in a bid no bidder can claim, as of right, another mode of disposal of the property, the auction of a public functionary entering into an ordinary contract is different from entering into a contract through the process of tenders. The basic concept of financial dealing in the latter case is different from the former. Any serious deviation in the latter mode once adopted without compelling justification, might set at naught the entire concept of clean financial dealings. *PLD 1979 Lahore 930 (DB).*

Section 2(d)—Agreement between debtor and strangers about transfer of business subsequent to borrowings of money by debtor would not bind creditors as to terms of such agreement. Strangers, however, could contest suit on behalf of debtor. *PLD 1986 Karachi 207.*

Trust in favour of Stranger—Where a contract has created a trust in favour of a person who is not a party, a suit by such a party as cesti que trust is maintainable. *PLD 1984 Lah 59.*

—Where a Contract in form of a compromise was made between respondent and another person creating a Trust in favour of Stranger/Petitioner and respondent became trustee of beneficial interest resting in petitioner. Mere fact that the petitioner was stranger to contract was not sufficient to hold that he had no cause of action in the suit filed by him against the respondent to enforce the contract. *PLD 1984 Lah 59.*

Agreement to sell—effect—An agreement to sell does not create any right, title or interest in immovable property. *PLD 1986 Lahore 399.*

Section 2(d), 10 & 23—Read with Premises Rent Control Ordinance, 1963, Section 10(a) & 10(b)—Lease agreement contemplating advance

rent to be liquidated in two years by adjustment of half of the monthly rental every month—consideration or object of lease agreement, whether unlawful—lease agreement, whether enforceable at law or whether violative of the rent control ordinance, 1963—Lease Agreement being for a term of two years, whether compulsorily registerable and whether admissible in evidence. *Shamsuddin Ahmed, vs Mohd. Hassan & others* 31 DLR (AD) 155.

Section 2(f) Agreement must be in proper form—Failure to comply with statutory provisions relating to the manner in which a particular agreement should be made would render it void. *PLD 1976 Lahore 1192.*

Section 2(g)—Void and voidable—distinction between—The expression “void” in the strict and accurate sense means “absolutely null” that is to say incapable of rectification or confirmation and of no effect whatever. The word “voidable” on the other hand is some thing which could be avoided or confirmed and which is not absolutely void. In other words what is voidable has some force or effect, but which may be set aside or annulled for some error of inherent vice or defect. “Thus that which is voidable operates to accomplish the thing sought to be accomplished until the fatal vice in the transaction has been judicially ascertained and declared”. A common place instance of a void act or transaction in the sense of an absolute nullity is an agreement by a person under a legal disability, e.g. a minor or a person of unsound mind. Such act is void ab initio and is incapable of ratification or confirmation. Law forbids the enforcement of such a transaction even if the minor were to ratify if after attaining majority. This is clearly distinguishable from a case in which a thing or an act is “relatively void” which the Law condemns as wrong to the individual concerned who can avoid it by appropriate proceedings. A common place instance of such transaction is that which is brought about by undue influence, fraud etc which remains of full effect unless avoided by appropriate proceedings. *PLD 1976(SC) 258.*

Section 2(h)—Earnest money to bind a contract must follow and not precede the same. If there is no meeting of minds of the parties, *consensus ad idem*, there cannot be any question of earnest money. *Bangladesh Moktijoeddah Kalyan Trust represented by the Managing Director vs Kamal Trading Agency and others* 50 DLR (AD) 171.

Section 2(h)—Agreements for letter of credit, cash credit and hypothecation deed for advances, duly signed by debtor would bind debtor to terms and conditions mentioned in such documents. *PLD 1986 Karachi 107.*

Letter of allotment of land—A document offering plots for construction of houses containing therein memorandum of acceptance, setting forth terms and conditions for allotment of plots would have all the characteristics and necessary ingredients of a contract between parties. Therefore an allotment order relating to plots was nothing but a contract which came into being as a result of offer by Government to sell and acceptance by allottees. *PLD 1987 Lahore 440.*

—**Stage when contract is made**—The question whether the parties had reached a concluded contract or not, is a question of fact to be deduced from the correspondence, and other documentary and oral evidence. The true test for deciding this question is to ascertain whether the parties were of one mind on all the material terms at the time it is said to have been finalised between them and whether they intended that the matter was closed and concluded between them. *PLD 1977 Karachi 377.*

Cancellation or alteration of contract—A party to a contract is not entitled in law to cancel a concluded contract unilaterally. Having entered into an agreement, it is not open to the defendant to resile from the same on untenable grounds as he pleases. Therefore, such a cancellation has no effect in law. Similarly unilateral addition to terms is not permissible. *PLD 1976 Karachi 14. PLJ 1976 Kar 58 (DB).*

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