Business Law

1) Which type of contract, bilateral or unilateral, is more common in business? Why? Under what circumstance would someone prefer one or the other? What are the advantages of each type for the offeror? For the offeree?

A bilateral contract is one wherein each party who has promised something has a duty to perform the same. For instance, in case of a contract of a sale an article, one party has the duty to deliver the article he is selling and the other has the duty to pay money for the article for performance of the contract. However in case of unilateral contract, one party has made a promise anticipating in return for something other than a returned promise. In case of these types of contracts, exclusively the party who has made the promise bears a duty to perform what they said, as the other party has already performed their respective part of the contract. For instance, the two types of usual unilateral contracts are (i) options and (ii) offers which are required to be accepted by performance. An option is right that behaves like a continuing offer, given for consideration, to buy or lease property at an agreed price on the price and terms of the offer within a particular time. On the other hand, offers that are needed to be accepted by performance are akin to an option. These happen when a person makes an offer that can exclusively be accepted by acting on it. (Contract Law)

In business scenario, bilateral contracts are more common. A bilateral contract can be differentiated from a unilateral contract, a promise made by a party in exchange for the performing an act by the other party. In case when a party to a unilateral contract whose performance is required is not duty bound to act, but if he or she acts, the party making the promise is obliged to comply with the terms of the agreement. In case of a bilateral contract, it becomes binding for both parties by their exchange of promises. As regards the express promise, both parties to a bilateral contract make promises. As regards promise, there is the

concept of promisor, i.e. the party making the promise and the opposite party is the promisee. The legal damage happened by the promisee comprises of a different promise by him or her to act in some manner or abstain from doing something which he or she was not earlier legally obliged to perform or to refrain from doing. This legal damage comprises consideration, the reason, intent, or advantage that compels one to enter into a contract. Hence, it goes without saying that consideration is an essential component of a contract. (Bilateral Contracts)

Historically, courts have differentiated between unilateral and bilateral contracts by finding out whether one or both parties gave consideration and at what point they gave the concerned consideration. Bilateral contracts have a binding effect upon both parties from the moment the parties completed the exchange of promise since each promise is considered enough consideration in itself. Unilateral contracts bind exclusively the promisor and do not the promisee till the promisee accepts by acting upon the obligations specified in the offer of the promisor. Recently, the present-day courts have relaxed the difference between unilateral and bilateral contracts. These courts have discovered that an offer might be accepted either by a promise to perform or by actual performance. More and more courts have inferred that the conventional difference between unilateral and bilateral contracts fails to considerably advance legal analysis in a rising number of cases in which the performance is given over an extended period of time. (Bilateral Contracts)

A significant development in economics entailed the recognition that contracts are adopted by transactors are not complete. This basic insight has spawned two important thread of economic research. One thread of research emphasizes the significance of self-enforcement in guaranteeing contractual performance. Developing on Stuart Macaulay's ground breaking study documenting that performance is safeguarded in majority of the business relationships not by the threat of court enforcement, but rather by the threat of

ending of the relationship, this work develops models of self-enforcement in which a termination sanction is enough to guarantee performance of the transactor. Whereas the other, greater unrelated thread of economic research emanating from incomplete contracts happens to be the principal-agent contract design literature. (Brousseau; Glachant, 57)

It is important that to persuade, a theory of contracts must be able to perform three things. It must acknowledge that promising is an institution. It must account for the promisor's fidelity duties, and it should explain the fundamental principles of contract law. Exclusively, one theory fulfills this challenge that happens to be the consequentalist explanation of contract law suggested by law and economics. It has been commonly identified that law as also economics gives a persuasive account of contract law. What is less properly intelligible is that only it does so, and that competitive theories of contract law must be shunned. (Buckley, 41)

2) Does the great increase in the sale of goods over the Internet have any inplications for the perfect tender rule?

The e-directive on selling over the Internet attempts to give confidence through minimizing misuse through purchasers and sellers. It stipulates that (i) a list of important points, should be given to the consumer in a distinct and understandable manner (ii) confirmation in writing, or confirmation in a different durable medium that is available which can be accessible to the consumer, of the important points (iii) the right of withdrawal facilitating consumers to stay away from businesses entered mistakenly or in the absence of sufficiently, providing for a free-look period for seven days which is free from penalty or reason to return back the goods or reimburse the cost of services (iv) performance must be delivered in a space of thirty days of the orders unless otherwise agreed in a express manner. (E-Contracts in India: A Legal perspective)

Even though e-contracts might entail newer methods of payment and delivery, till the time a transaction comprises a bargain for exchange of sufficiently proportionate promises or performances, notwithstanding the manner in which it is performed, the agreement will satisfy with the consideration needs. Performance in a lot of e-contract transactions entails electronic media, particularly in the payment process or in case the contract is needed for the provision of online services like access to information. It is important to note that the Internet has serious implications for the perfect tender rule. Failure on the part of the party to perform fully and firmly as per the terms of an agreement is considered as a breach of contract. Of course, as regards sale of goods, the law in the past has espoused the perfect tender rule, which is a standard entitling a buyer to refuse delivery of goods unless the seller confirms strictly as regards quality as well as quantity provisions of a bargain. (E-Contracts in India: A Legal perspective)

Perfect Tender rule is covered in the Uniform Computer Information Transactions Act --UCITA. The Part 1 of UCITA suggests rule to set up norms and to give guidelines at the time when the parties do not do business with matters in their contracts for transactions relating to computer information. These deals cover computer software, the Internet and online information, multimedia interactive products and computer data and databases. UCITA, nevertheless, normally considers software embedded in devices such as a computerized braking system as goods, and excludes motion picture, sound recordings and print media, leaving aside the present common law and statues, which are considered sufficient, to govern their main business. Besides, UCITIA will permit the parties to select UCITA, or other law, in case of transaction, where otherwise separate bodies of law might apply to different facets of the same transaction. (Overview of the Uniform Computer Transaction Act – UCITA)

Part 2 of the UCITA gives modified contract formation rules taken to allow and help in the execution of electronic contracting and rules to find out the terms of contracts formed, inclusive safeguards against “imposed” terms, unauthorized communications, and electronic mistakes, and incentives for pre-transaction disclosure in case of all terms to be a constituent of the contract. Part 3 of UCITA has provisions for parole evidence, alterations in terms, and for interpretations in the absence of expressed treatment by the parties. Part 4 of the UCITA makes adjustment for normally recognized warranties as suitable for computer information transactions, for instance, in order to recognize the international perspective in association with safeguard against violation and misappropriation, and First Amendment considerations undertaken with informational content. Part 5 of UCITA gives the much required clarification as regard the ownership rights and also as regards the capability to transfer rights under a license, inclusive of a manner of security such that financing for these transaction can be done in a secured manner. (Overview of the Uniform Computer Transaction Act – UCITA)

Part 6 of UCITA takes up traditional rules as regards what is acceptable performance in the context of computer information transaction, inclusive of giving rules for the protection of the parties concerning the electronic regulation of performance in order to clarify that the precise general rule is one of material breach of contract as regards cancellation instead of the perfect tender and carry over the popular rules of Article 2 when suitable in the context of the tangible medium on which the information is fixed and also for impracticability. Part 6 also gives guidance in the case of some specialized types of contract. UCITA in Part 7 for the major part carries over the popular rules of Article 2 involving breach when suitable in the perspective of the tangible medium on which the information is fixed, but also takes up a common law rules from Article 2 on the waiver, cure, assurance and anticipatory violation in the perspective of computer information transactions. (Overview of the Uniform Computer Transaction Act – UCITA)

3) Why is fraud in the inducement treated as a personal defense and fraud in the inception treated as a real defense? Is this distinction justifiable? On what grounds?

Defenses might be used to evade payment to an ordinary holder, but not an HDC or a holder having the rights of an HDC. In case there is a violation of the underlying contract for which the negotiable instrument was issued, the maker of the note can refuse payment, or the drawer of a check can place order to stop payment. Breach of warranty might also be claimed as a defense to liability on an instrument. The lack of failure of consideration might constitute a defense in some instances. Fraud in the inducement comprises of situations in which a person who issues a negotiable instrument basing upon false statements by another party will be able to avoid payment of the instrument till the holder presenting the instrument for payment is an HDC. Illegality is considered as acts that make a contract violable and make a defense against an ordinary holder, but not against an HDC. In cases of personal defenses on mental incapacity the law states that a person, who has not been ruled mentally incompetent, nevertheless might claim incapacity as a defense against an ordinary holder, but an HDC. (Signature Liability: Primary)

There are other personal defenses which are (i) discharge by payment or cancellation (ii) unauthorized completion of an incomplete instrument (iii) non-delivery of the instrument and (iv) putting of undue pressure making the contract voidable. However there are federal limits on HDC rights. (i) FTC Rule 433 restricts the rights of an HDC in an instrument giving proof that a debt emanating out of a consumer credit transaction and (ii) Rule 433 applies to any seller of goods or services who takes or receives a consumer credit contract, as also any seller who accepts as full or partial payment in case of a sale or lease the sale proceeds of any sort of purchase money made in relation to the consumer credit contract. The objective of Rule 433 is to safeguard consumers from being compelled to pay a third party for

problematic goods and thereafter make the expenditure pursuing the seller separately. As an outcome of Rule 433, a consumer who finally takes possession of a defective product might impose the flaw as a defense to any claim for payment by the seller or any subsequent holder. (Signature Liability: Primary)

The discharge from liability in an instrument can happen in a lot of ways. (i) In case the party is mainly liable pays the instrument in full settlement, all the parties on the instrument are discharged and (ii) in case a secondarily liable party pays for an instrument, exclusively that party and the arties coming next are discharged. The primary party i.e. the make or drawer and any indorsers before the paying party become liable. Intentional cancellation for instance writing PAID across the face of the instrument that destroys the instrument, discharges the liability of all parties. Besides, material alteration might discharge the liability of any party impacted by the alteration and a party re-acquiring an instrument discharges the liability of all middle indorsers to the next holders those who are not HDCs and in case a party's right of recourse for instance the right to look for reimbursement might be discharged from additional liability. (Signature Liability: Primary)

References

Bilateral Contracts.
<http://law.jrank.org/pages/4745/Bilateral-Contract.html>

Brousseau, Eric; Glachant, Jean-Michel. *The Economics of Contracts: Theories and Applications*. Cambridge University Press, 2002.

Buckley, F. H. *Just Exchange: A theory of Contract*.
Routledge, 2005.

Contract Law. PSU--Student, Legal and Mediation Services.
<http://www.slms.pdx.edu/ContractLaw.html>

Denny, William R; Anderson, Potter. *Overview of the Uniform Computer Transaction Act – UCITA.* Report of the Joint Task Force of the Delaware State Bar Association Sections of Commercial Law, Computer Law, Intellectual Property, and Real and Personal Property. January, 2000.
<http://www.nccusl.org/nccusl/ucita/DE_Bar_Report.pdf>

Nagarkar, Ketki. E-Contracts in India: A Legal perspective. Asian School of Cyber Laws. 2004.
<http://www.asianlaws.org/projects/e-contracts.htm>

Signature Liability: Primary.
<http://profj.us/outlines/ch26.doc>